

**Winter 2024**

**e-bulletin**

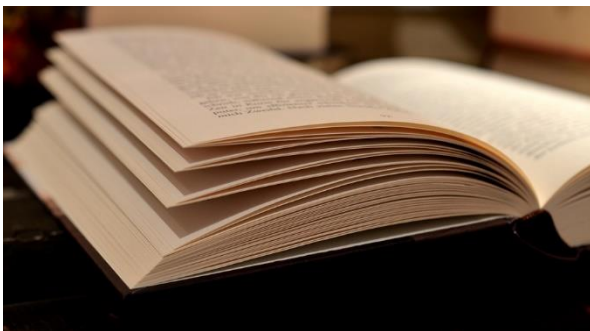
**Keeping you up to date with Scottish Law Commission news and publications**

## Welcome

Welcome to the Scottish Law Commission's regular bulletin. We aim to keep you informed about what we have been up to and what we have coming up.

Our current law reform projects are listed below. Some are mentioned later in this Bulletin. For further information on any particular project please click on the link.

### Current Projects:



- [Heritable securities](#)
- [Compulsory owners' associations \(tenements\)](#)
- [Aspects of the law of leases](#)
- [Homicide](#)
- [Aspects of family law](#)
- [Damages for personal injury](#)
- [Execution of documents](#)

### Current Programme of Law Reform

- [11th Programme](#)

# Recent publications

## Report on damages for personal injury

We [published](#) our Final Report and draft Damages (Scotland) Bill on 4 December 2024.

Our recommendations for reform of the law on damages for personal injury focus on four areas: damages for services; deductions from damages; provisional damages and asbestos-related disease; and management of children's awards of damages.

The recommendations include:

- Updating the definition of “relative” in section 13(1) of the Administration of Justice Act 1982 to better reflect today's society;
- Extending the class of persons entitled to damages for services rendered to an injured person under section 8 of the Administration of Justice Act 1982 to include, for example, friends and neighbours;
- Clarifying what qualifies as a “contribution” towards a permanent health insurance scheme for the purpose of determining whether a payment made to an injured person under that scheme should be deducted from an award of damages under section 10 of the Administration of Justice Act 1982;
- Inserting new section 10A into the Administration of Justice Act 1982 confirming that injured persons are entitled to opt for private medical treatment, care, accommodation and equipment rather than rely on NHS or local authority support;
- In cases of asbestos-related disease, inserting new sections 17ZA and 18ZZA into the Prescription and Limitation (Scotland) Act 1973 to the effect that an asymptomatic condition such as pleural plaques will no longer result in a time-bar preventing recovery of damages for a later-developing symptomatic condition such as mesothelioma;
- Amending section 13 of the Children (Scotland) Act 1995 to require increased supervision by the courts where damages are awarded to young children.

We are grateful to all those who contributed to the damages project and, in particular, those who responded to our Discussion Paper and those on our specialist Advisory Groups.

## Discussion Paper on civil remedies for domestic abuse

Our [discussion paper](#) on civil remedies for domestic abuse was published in October.

Whereas the criminal law has recently been reformed in the Domestic Abuse (Scotland) Act 2018, the law of civil remedies in relation to domestic abuse has been criticised for failing to meet the requirements of victims. It is scattered across a number of different statutes including: the Matrimonial Homes (Family Protection) (Scotland) Act 1981, the Protection from Harassment Act 1997, the Civil Partnership Act 2004, the Protection from Abuse (Scotland) Act 2001, and the Domestic Abuse (Scotland) Act 2011. Stakeholders tell us that the legislation is complicated and inconsistent, and it is not clear which remedy is the most appropriate for a victim/survivor of domestic abuse to seek. The legislation has also been

criticised for not sufficiently taking into account of the impact of domestic abuse on children affected by it and for the lack of communication between the civil and criminal courts when dealing with family law actions (such as child contact).

We are seeking views on reform of the existing civil remedies for domestic abuse and on a proposal for a new statutory delict of domestic abuse, with the introduction of a definition of “abusive behaviour” in civil law. The consultation period ends on 22 January 2025 and we would like to encourage all those with an interest to respond. Please see our project page for further information and for a response form to the discussion paper.

## Updates

### Discussion Paper on Tenement law: compulsory owners’ associations

Consultation on our [discussion paper](#) closed on 1 August, and we are very grateful to all those who provided a response. These will help greatly in forming our final recommendations for reform. Work on our Report, including a draft Bill, will begin in the New Year.

This project is part of a wider piece of work on tenement maintenance in Scotland. A Scottish Parliamentary Working Group was set-up in 2018, with its final recommendations published in 2019. Three recommendations were made by the Working Group, one of which was the establishment of compulsory owners’ associations to help facilitate the effective maintenance of tenements in Scotland. Under this recommendation, the owner of every tenement flat in Scotland would be required to enter into an association with the owners of the other flats in the same building. The core purpose of the association would be to manage maintenance and repairs for the building. In January 2022, the Commission received a referral from the then Cabinet Secretary for Social Justice, Housing, and Local Government (Shona Robison MSP) to carry out a project on the creation of compulsory owners’ associations. Work on the project began in the same year. The project forms part of the Commission’s Eleventh Programme of Law Reform (2023 – 2027). We currently estimate that it will be completed by Spring 2026, as requested in the reference letter.

### Discussion Paper on Aspects of leases: Tenancy of Shops (Scotland) Act 1949

Our [discussion paper](#) on the Tenancy of Shops (Scotland) Act 1949 was published in April 2024. This is the second topic in our umbrella project on leases, following on from our report on the termination of leases which was issued in 2022.

The 1949 Act gives certain tenants the right to apply for a renewal of their lease beyond its end date. The Act appears unsatisfactory in various respects and the Discussion Paper asked for views as to whether it should be repealed, or reformed, or whether it should be left as it is. These questions will affect a wide range of tenants and landlords as well as their advisers. The consultation period ran over the period 30 April to 31 July 2024. We received 28 responses from a range of stakeholders. We are currently considering the consultations responses and considering the appropriate reform option with a view to publishing a report in spring 2025.



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## Project on execution of documents

In our Spring 2024 e-Bulletin we announced the appointment of Ann Stewart as a part-time Commissioner to lead our new project on execution of documents, one of the topics included in our 11th Programme of Law Reform.

Since joining us at the end of April, Ann and her team have been conducting preliminary investigations to determine the scope of the project. This has involved carrying out initial research on a variety of issues and also holding a series of meetings with stakeholders to raise awareness of the project and to discuss and gather initial views on issues relating to the execution of documents in Scotland.

If your organisation would like the project team to come and talk to you about our work then please contact us at [info@scotlawcom.gov.uk](mailto:info@scotlawcom.gov.uk).

In terms of next steps, we are assembling an Advisory Group of individuals with an interest and expertise in the law and practice in this area to advise us throughout the lifetime of the project. Also, in early 2025 we will begin work on drafting a Discussion Paper setting out our research and initial proposals for law reform which will, in due course, go out to public consultation.

## Project on homicide

Work on the homicide law project continues. We are currently focussing on developing a draft Report and an accompanying draft Bill. This is a long-term project continued over from our Tenth Programme of Law Reform into our Eleventh Programme. We greatly appreciate the ongoing input and support of our expert Advisory Group in progressing the project.

We expect to be publishing our final Report and recommendations in the course of 2025.

# Implementation

## Judicial Factors (Scotland) Bill

The Judicial Factors (Scotland) Bill was introduced into the Scottish Parliament on 5 December 2023. It is based on a [Commission report](#) from 2013. A judicial factor is an officer appointed by the court to collect, hold and administer property in accordance with the relevant law, and all judicial factors are supervised by the Accountant of Court. The main legislation, dating from the 19<sup>th</sup> century, is in need of modernisation. Stage 2 of the Bill took place on 19 November 2024 and we hope that the Bill will complete its passage through Parliament in the next few months.

The Bill can be found on the Scottish Parliament's [website](#).

## Leases (Automatic Continuation etc.) (Scotland) Bill

The [Scottish Government's Programme for Government for 2024 – 2025](#) set out its intention to bring forward a Leases (Automatic Continuation etc.) (Scotland) Bill. This will implement the recommendations made by the SLC in the 2022 [Report on Aspects of Leases: Termination](#), SLC No 260. These recommendations relate to the termination of commercial leases including notices to quit, notice periods, irritancy and tacit relocation (automatic continuation).

## Report on review of contract law: formation, interpretation, remedies for breach, and penalty clauses

We published a [Report on Review of Contract Law: Formation, Interpretation, Remedies for Breach, and Penalty Clauses](#) in 2018. In 2024, over the summer, the Scottish Government published a [consultation](#) about this Report seeking views as to whether circumstances have changed since the Report was published and whether the views previously expressed still hold. The consultation closed at the end of September 2024 and the responses can be found at [Citizen Space webpage](#). We welcome this consultation as a helpful step forward and it is hoped that this may lead to reform of contract law.

### Other projects

As we have reported before, we have been made aware that Scottish Government officials are also beginning work on the SLC [Report on Financial Provision on Cohabitation Breakdown](#) (2022). Further details can be seen in the [letter](#) from the Minister for Victims and Community Safety to Lady Paton.

## News

### Commissioner re-appointed



We were delighted that [Professor McCarthy was re-appointed as a Commissioner](#) until 30 September 2027. The appointment was announced by the Minister for Victims and Community Safety, Siobhan Brown MSP in July 2024. Professor McCarthy is leading our work on Tenement law: compulsory owners' associations and Heritable Securities.

### Chief Executive

Rachel Rayner joined us as Chief Executive on 12 July 2024. Rachel is a Scottish Government lawyer with extensive experience of every aspect of legislation, both primary and secondary. She also has previous involvement with many institutions instrumental in shaping the law of Scotland.



### Legal Assistants

At the end of August we welcomed our new Legal Assistants - Rebecca Farquhar, Natalie Fowler, Rachael Irvine and Julia Lopatka. We are grateful for all the work done by our previous Legal Assistants - Craig Dalziel, Alex Enaholo, Georgia McCuaig and Adam Nimmo.



## Further information

Further information about the Commission and our law reform work can be found on our website at [www.scotlawcom.gov.uk](http://www.scotlawcom.gov.uk). The website has full text versions of all of our reports and discussion papers as well as other material.

Follow us on X (formerly Twitter): [@scotlawcom](https://twitter.com/scotlawcom), and see videos about the Commission and our work: <https://www.youtube.com/channel/UCMHecvTB9TgJE8G7t8RpYRA>.

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