

SCOTTISH LAW COMMISSION  
(SCOT. LAW COM. No. 23)

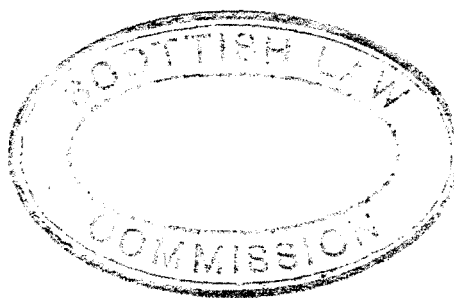
SIXTH  
ANNUAL REPORT  
1970-71

*Presented to Parliament  
by the Secretary of State for Scotland and the Lord Advocate  
under section 3(3) of the Law Commissions Act 1965*

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*Ordered by The House of Commons to be printed  
7th December 1971*

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The Scottish Law Commission was set up by section 2 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law of Scotland. The Commissioners are:

The Hon. Lord Kilbrandon, LL.D., *Chairman*\*

Professor A. E. Anton, M.A., LL.B.

Professor J. M. Halliday, C.B.E., M.A., LL.B.

Mr. A. M. Johnston, T.D., Q.C., B.A., LL.B.†

Professor T. B. Smith, Q.C., M.A., D.C.L., LL.D., F.B.A.

The Secretary of the Commission is Mr. A. G. Brand, M.B.E., M.A., LL.B. Its offices are at the Old College, University of Edinburgh, South Bridge, Edinburgh EH8 9BD.

\* On 30th September 1971 the Hon. Lord Kilbrandon ceased to be Chairman of the Commission on taking up his appointment as Lord of Appeal in Ordinary. He was succeeded as Chairman of the Commission by the Hon. Lord Hunter.

† On 30th September 1971 Mr. A. M. Johnston retired from the Commission to take up his appointment as Senator of the College of Justice with the judicial title of Lord Dunpark. He was succeeded as full-time Commissioner by Mr. E. G. F. Stewart, M.C., Q.C.

Scottish Law Commission  
Report for the year ended 15th June 1971

TO: THE RIGHT HONOURABLE GORDON CAMPBELL, M.C., M.P.,  
*Her Majesty's Secretary of State for Scotland*, and

THE RIGHT HONOURABLE NORMAN WYLIE, V.R.D., Q.C., M.P.,  
*Her Majesty's Advocate*.

In accordance with the provisions of section 3(3) as read with section 6(2) of the Law Commissions Act 1965, we have the honour to submit this the sixth Annual Report of the Scottish Law Commission.

KILBRANDON,  
*Chairman*

30th September 1971.

## THE COMMISSION

1. The Scottish Law Commission, which was set up on 16th June 1965, consists of a full-time Chairman, one full-time Commissioner and three part-time Commissioners. They are:

The Hon. Lord Kilbrandon, LL.D., <i>Chairman</i>	(Full-time) <sup>1</sup>
Professor A. E. Anton, M.A., LL.B.,	(Part-time)
Professor J. M. Halliday, C.B.E., M.A., LL.B.,	(Part-time)
Mr. A. M. Johnston, T.D., Q.C., B.A., LL.B.,	(Full-time) <sup>2</sup>
Professor T. B. Smith, Q.C., M.A., D.C.L., LL.D., F.B.A.	(Part-time)

The Secretary of the Commission is Mr. A. G. Brand, M.B.E., M.A., LL.B.

### STAFF

2. There was no change during this year in our legal staff which consists of two Parliamentary Draftsmen, one on a full-time basis and one employed part-time, our Secretary, and five other qualified lawyers. Our permanent non-legal staff was reduced from seven to six. During the Universities' summer vacation we employed one senior law student on research work and we have found this to be a very useful way of supplementing our research facilities.

### PREMISES

3. We still occupy premises in the Old College of the University. As in previous years we must record our appreciation of the co-operation of the University. We continue to use the Law Library and that of the Centre of European Governmental Studies and we are most grateful to the staffs of these institutions for their helpfulness.

### MEETINGS

4. We have continued our practice of holding meetings of the Commission at regular intervals.

## PROPOSALS

5. The proposals which we have received during the year have been considered in accordance with our statutory duty. As we forecast in previous Annual Reports the number of individual proposals calling for remedial action is diminishing, and we take this opportunity to renew our invitation to organisations and individuals not only to propose for our consideration specific changes in the law, but also to suggest subjects which appear to require examination. It is important that in the preparation of Programmes for the approval of Ministers we should give effect to the practical experience of Scots lawyers, and also take notice of aspects of the law which seem to the public to call for reform.

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## FIRST PROGRAMME

### EVIDENCE

6. As we indicated in our last Annual Report we received many valuable comments on our Memorandum No. 8, published on 5th July 1968, which contained eight Chapters of our proposed Code of Evidence, with an introduction setting out some of the problems of codification of the law. We have delayed further consideration of this topic until the Report of the Committee on Criminal Procedure under the Chairmanship of Lord Thomson is available.

### OBLIGATIONS

7. During this year we have been examining in detail the Report of the Working Party set up jointly by the Law Commission and ourselves to study the subject of exemption clauses. The two Commissions hope to publish in the early autumn of 1971 a joint paper<sup>1</sup> containing provisional proposals relating to (i) the exclusion of liability for negligence in the sale of goods, and (ii) exemption clauses in contracts for the supply of services and other contracts.

8. Along with the Law Commission we are proceeding with our work on codification of the law of contract. This work is organised by a small joint team which lays its proposals before the Advisory Panel<sup>2</sup> set up by the two Commissions in 1967. Preliminary drafts dealing with breach of contract and performance of contract were discussed at a meeting of the Advisory Panel which was held at All Souls College, Oxford, in April 1971. These topics are now being re-examined in the light of the discussion at that meeting.

### PRESCRIPTION AND LIMITATION OF ACTIONS

9. Our Report on this subject was submitted on 7th August 1970 and published on 27th November 1970<sup>3</sup>. Since then we have been working on the drafting of a Prescription and Limitation (Scotland) Bill to give effect to most of the recommendations contained in our Report. This work has to some extent been affected by the Law Reform (Miscellaneous Provisions) Bill<sup>4</sup>, Part I of which deals with matters relating to limitation of actions. We were at one time given to understand that there was a possibility of legislation in the present session of Parliament, but we were disappointed. We hope that an early place may be found for it.

10. We have referred in previous Annual Reports to the Committee of Experts set up by the Council of Europe to study the subject of time-limits. The Committee has now completed its work. We refer to this again in paragraph 36.

### INTERPRETATION OF STATUTES

11. The special topic of Treaties in relation to Interpretation of Statutes is being studied by a Working Party set up by the two Law Commissions. Professor Anton is a member of this Working Party.

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<sup>1</sup> Now circulated as Scottish Law Commission Memorandum No. 15 and Law Commission Working Paper No. 39.

<sup>2</sup> A list of members of the Advisory Panel appears in Appendix 1 of this Report.

<sup>3</sup> Published by HMSO 1970 (Scot. Law Com. No. 15).

<sup>4</sup> This Bill received the Royal Assent on 1st July 1971.

## SECOND PROGRAMME

### INSOLVENCY, BANKRUPTCY AND LIQUIDATION

12. The Working Party<sup>1</sup> which was set up in November 1968 to study this subject in detail has completed its work and has prepared a Report for submission to the Commission for consideration. We shall be circulating widely for comment and criticism a Memorandum based on the Working Party's Report.

### SUCCESSION

13. With the assistance of Professor Meston of the University of Aberdeen we have continued our study of proposals which have been submitted to us relating to amendment of the Succession (Scotland) Act 1964. We have, however, been considering the wider aspect of succession in the context of possible changes in "family property" law, and we are keeping in touch with the Law Commission on this subject with a view to the possibility of improving while bringing closer together the succession laws of Scotland and England.

### DILIGENCE

14. We have set up a Working Party<sup>2</sup> to examine the Scots law of Diligence, and a note of topics for consideration has been prepared with a view to consultation on the widest basis.

### RECIPROCAL ENFORCEMENT OF JUDGMENTS

15. As we indicated in our last Annual Report we received a large number of observations on our Memorandum No. 12 on the Judgments Extension Acts which was published on 1st December 1969. A programme of work was arranged with the Law Commission and the Director of Law Reform in Northern Ireland involving the preparation of a draft of a Report setting out (a) which of the proposals made in our Memorandum should be recommended, with or without modification, (b) which should not be recommended and why, and (c) any new proposals which should be recommended in the light of the comments on the Memorandum. We have, however, deferred further consideration of this topic until a decision is taken as to the entry of the United Kingdom into the European Economic Community. The reciprocal enforcement of judgments within the Community is regulated by a Convention, and, if the United Kingdom join the Community, it will probably be desirable that arrangements for enforcement of judgments in the different parts of the United Kingdom should be similar to those in force in the Community.

### DAMAGES ARISING FROM PERSONAL INJURIES AND DEATH

16. We are preparing a further Memorandum containing tentative proposals for dealing with the situation which arose in the case of *Darling v. Gray and Sons* (1892) 19R (HL) 31 and the related questions of (1) relatives' claims to solatium, (2) the classes of relatives who may claim, and (3) determination of the quantum of the dependants' claims for loss of support.

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<sup>1</sup> A list of members of this Working Party appears in Appendix 1 of this Report.

<sup>2</sup> A list of members of this Working Party appears in Appendix 1 of this Report.

## PRESUMPTION OF DEATH

17. We referred in our last Annual Report to the substantial response which we received to our invitation for comments on our Memorandum No. 11 entitled "Presumptions of Survivorship and Death" which was published on 8th September 1969. We have now studied the observations which the Memorandum has elicited. Some of these have led to further consultation. We hope to submit our Report to Ministers before the end of 1971.

## LEGAL CAPACITY OF MINORS AND PUPILS

18. The Working Party<sup>1</sup> which was set up in the autumn of 1969 to examine this subject has completed its work and has prepared a Report for submission to the Commission for consideration. We shall shortly be circulating for comment and criticism a Memorandum based on the Working Party's Report.

## CRIMINAL PROCEDURE

19. The Departmental Committee which was set up under the Chairmanship of Lord Thomson is continuing its examination of Scottish Criminal Procedure. Mr. Johnston is a member of this Committee<sup>2</sup>.

## FAMILY LAW

20. As we indicated in our last Annual Report the two Law Commissions issued separate papers with common recommendations on jurisdiction in divorce<sup>3</sup>. We have completed our study of the comments which we have received on our Memorandum, but before submitting our Report we are considering, with the Law Commission, whether our proposals and recommendations on divorce jurisdiction should be extended to cover actions of nullity of marriage.

21. A Joint Report by the Law Commission and ourselves on the Hague Convention on Recognition of Divorces and Legal Separations was published on 1st December 1970<sup>4</sup>, and a Bill was introduced in Parliament in this present session<sup>5</sup>.

22. The Divorce (Scotland) Bill, introduced by Mr. Robert Hughes, was withdrawn owing to lack of Parliamentary time. As we indicated in our last Annual Report we deplore the divergence in principle between the divorce laws of Scotland and England. Irretrievable breakdown of marriage has been the sole ground of divorce in England and Wales since 1st January 1971. This reform is supported by the Scottish Law Commission and the Council of the Law Society of Scotland yet two attempts by private members in successive

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<sup>1</sup> A list of members of this Working Party appears in Appendix 1 of this Report.

<sup>2</sup> Mr. E. G. F. Stewart has now been appointed a member of the Committee.

<sup>3</sup> Law Commission Working Paper No. 28 issued in April 1970; Scottish Law Commission Memorandum No. 13 issued in August 1970.

<sup>4</sup> Cmnd. 4542.

<sup>5</sup> The Recognition of Divorces and Legal Separations Bill received the Royal Assent on 27th July 1971.

Parliamentary sessions to effect this have been defeated by hazards to which Government legislation is not subject. Much of our work on Family Law reform depends upon the shape of our divorce laws and it is difficult for us to formulate equitable principles of Family Law, particularly in relation to patrimonial rights, so long as the concept of the "guilty" spouse dominates our divorce laws.

23. We have studied the question of matrimonial relief and declarations of validity in connection with marriages entered into under a law which permits polygamy. The Matrimonial Proceedings (Polygamous Marriages) Bill which has been introduced into the House of Lords does not apply to Scotland. It is not expected to pass during this session. On the understanding that it may be introduced next session we have advised that while the Bill in its present form does not deal with a number of ancillary matters which might arise in connection with a polygamous or potentially polygamous marriage, it ought to apply to Scotland, and ought to be amended in certain particulars with that end in view. We shall, of course, be considering the ancillary matters in the course of our work on other subjects (e.g. the rights of succession in the estate of a man who leaves more than one widow).

## FIRST PROGRAMME OF CONSOLIDATION AND STATUTE LAW REVISION

### CONSOLIDATION

24. We are preparing a Second Programme of Consolidation and have asked a number of individuals and organisations for their views as to what enactments ought to be included.

The following is the present position with regard to the work on consolidation of Statutes under our First Programme of Consolidation and Statute Law Revision.

*(a) Consolidation of enactments applying to Scotland only, and consolidation separately for Scotland of enactments which apply to other parts of the United Kingdom as well as to Scotland.*

- (1) Rents (Scotland)—This Consolidation Bill received the Royal Assent on 12th May 1971.
- (2) Roads and Bridges (Scotland)—The drafting of a Consolidation Bill is still in progress and will take a considerable time to complete.
- (3) Lands Clauses (Scotland)—The question whether to proceed with consolidation of existing enactments or to propose amendments to bring them up to date was deferred pending decisions about possible legislation in this field, but the question is again under active consideration.
- (4) Town and Country Planning (Scotland)—Work is continuing on the preparation of a Bill which, it is hoped, will be ready for introduction in the next session of Parliament.



(b) *Consolidation of Enactments applying to other parts of the United Kingdom as well as to Scotland.*

- (1) During the year under review the following Acts were passed:
  - Guardianship of Minors Act 1971 (extends to Scotland so far as it amends the Maintenance Orders Act 1950)
  - Vehicles (Excise) Act 1971
  - Hydrocarbon Oil (Customs and Excise) Act 1971
  - Coinage Act 1971
  - National Savings Bank Act 1971
  - Attachment of Earnings Act 1971 (section 20(2)—which relates to the Maintenance Orders Act 1950—extends to Scotland)
- (2) Bills on the following subjects are before Parliament:
  - Tribunals and Inquiries<sup>1</sup>
  - Prevention of Oil Pollution<sup>2</sup>
- (3) A Bill to consolidate the Road Traffic Acts is almost ready for introduction<sup>3</sup>.
- (4) Work is still proceeding on the following:
  - Friendly Societies
  - Estate Duty
  - Poisons
  - Betting and Gaming
  - Clean Air
  - National Debt
  - Local Employment
  - Summer Time

#### STATUTE LAW REVISION

25. The work now being undertaken by the Editorial Board in relation to the new perpetually renewable edition of the Statutes in Force emphasises the importance and value of statute law revision in repealing obsolete and unnecessary provisions. The survival of dead matter in the Statute Book makes for unnecessary work and expense and provides a justifiable source of criticism for those who claim that large areas of it are irrelevant and out of date.

All the proposals for repeals which we have received have been or are in course of being examined. The proposals most recently received are in the fields of road and agriculture legislation.

During the year liaison was maintained with the Law Commission in respect of the Scottish interest in the Bills introduced as the Wild Creatures and Forest Laws Bill<sup>4</sup> and the Statute Law (Repeals) Bill<sup>5</sup>. The latter Bill was considered at four meetings of the Joint Select Committee on Consolidation Bills, who, on 28th April 1971, reported favourably on the Bill subject to a few amendments.

In conjunction with the Law Commission a new Bill is being prepared for introduction in the next Parliamentary session. While this will be predominantly

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<sup>1</sup> This Bill received the Royal Assent on 27th July 1971.

<sup>2</sup> This Bill received the Royal Assent on 27th July 1971.

<sup>3</sup> The Bill was introduced on 26th July 1971. It is anticipated that there will not be time for it to pass in this session of Parliament, and that it will be re-introduced early next session.

<sup>4</sup> This Bill received the Royal Assent on 1st July 1971.

<sup>5</sup> This Bill received the Royal Assent on 27th July 1971.

concerned with United Kingdom repeals it is expected to have an increased number of purely Scottish repeals.

## ADVICE, ETC.

26. We continue to give advice to Government Departments and others as required by section 3(1)(e) of the Law Commissions Act 1965. Among other matters on which we have been consulted are the following:

- (a) In our last Annual Report we mentioned that our Report giving advice on what amendments might be made to the Companies (Floating Charges) (Scotland) Act 1961 was submitted to the President of the Board of Trade in February 1970 and the Report was published on 22nd April 1970<sup>1</sup>. Our hope that a Bill, of which we had submitted a draft, to implement the proposals contained in the Report would be introduced in this session of Parliament was not realised. We trust that time will be found to introduce the Bill early in the next Parliamentary session. Financial and commercial interests in Scotland are, for lack of this legislation, at a decided disadvantage compared with their counterparts in England and Wales.
- (b) As we mentioned in our last Annual Report we set up a small Consultative Committee<sup>2</sup> to assist us to give advice on the question of existing remedies for the judicial control of administrative acts and omissions. This Committee met to consider a draft Working Paper prepared by Professor Bradley of the University of Edinburgh who has acted as special consultant. We shall be circulating a Memorandum<sup>3</sup> based on Professor Bradley's paper for comment and criticism.
- (c) We have carried out research work on questions relating to Dean of Guild Courts and Building Authorities which were raised by the Law Society of Scotland and the Society of Town Clerks of Scotland, and the results of this research are now under consideration.
- (d) The Consultative Group<sup>4</sup> on tax law set up jointly by the two Commissions has completed its work. A Report by the two Commissions on the taxation of income and gains derived from land was published on 28th April 1971<sup>5</sup>. The Consultative Group has been reconstituted and is now studying the question of Estate Duty.
- (e) We submitted a paper to the Scottish Development Department on their proposals for legislation about private streets, and subsequently discussed various points at a meeting with officials of the Department.
- (f) We are in consultation with the Lord Advocate's Department concerning the proposed ratification of the 1948 Geneva Convention on the International Recognition of Rights in Aircraft. We have expressed our views on (1) a draft Schedule which deals with the application to Scotland of an

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<sup>1</sup> Cmnd. 4336.

<sup>2</sup> A list of members of this Committee appears in Appendix 1 of this Report.

<sup>3</sup> Circulated as the Commission's Memorandum No. 14.

<sup>4</sup> A list of members of the Consultative Group appears in Appendix 1 of this Report.

<sup>5</sup> Cmnd. 4654.

Order in Council under section 16 of the Civil Aviation Act 1968 establishing a public record of aircraft mortgages in the United Kingdom and providing for priorities as between different mortgages of the same aircraft, and (2) a draft form of mortgage to be annexed to the Schedule.

- (g) At the request of the Department of Trade and Industry we are examining the Crowther Committee's Report on Consumer Credit for its effects, if any, on the subjects on which we are working.
- (h) We have submitted comments on a Memorandum prepared by a Working Party set up by the Lord Chancellor on the Domicile of Married Women.
- (i) We have been asked to consider with the Law Commission a draft Convention of the Council of Europe relating to the place of payment of money liabilities.
- (j) We advised on the application to Scotland of clause 3 of the Powers of Attorney Bill which received the Royal Assent on 12th May 1971.

### ANOMALIES AND DEFECTS

27. As part of our duty under the Law Commissions Act 1965 we continue to examine the law for anomalies or defects which appear to us to call for changes in the law. The following matters have been or are being examined:

- (a) We are still investigating with the assistance of the Law Society of Scotland the question relating to the alteration of English company registers following upon removal from office of a trustee by order of the Court of Session.
- (b) We are in consultation with the Law Society of Scotland about the proposals which we received for amendment of Part V of the Mental Health (Scotland) Act 1960 which deals with cases of persons found insane or mentally disordered in the course of criminal proceedings. The provisions of section 4 of the Criminal Procedure (Insanity) Act 1964 which is concerned with accused persons who are unfit to plead will be considered by the Thomson Committee on Criminal Procedure.
- (c) We have continued our study concerning the law relating to the acquisition of title to moveable property, but we are not yet in a position to publish any proposals on the subject.
- (d) We are preparing a Memorandum containing our tentative proposals for extension of the Married Women's Policies of Assurance Act 1880.
- (e) In our last Annual Report we mentioned that we had considered, and intimated to the Scottish Office, our general support of proposals by the Law Society of Scotland relating to accident claims involving foreign motorists. A Bill which deals with this is progressing through Parliament—the Law Reform (Jurisdiction in Delict) (Scotland) Bill<sup>1</sup>.
- (f) The Motor Vehicles (Passenger Insurance) Act 1971 provides for compulsory passenger insurance for all motor vehicles. The Commission made representations to the Minister of Transport in 1968 in support of the principles of the Act.

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<sup>1</sup> This Bill received the Royal Assent on 27th July 1971.

- (g) We are glad to note that the Administration of Estates Act 1971 implements the recommendations contained in the Report of the Working Party which was set up by the Lord Chancellor and the Secretary of State for Scotland on the recommendation of the two Commissions. The Working Party recommended abolition of resealing in Scotland of English probates and letters of administration and in England and Wales of Scottish confirmations.
- (h) We have referred in previous Annual Reports to the large number of proposals which we have received in connection with liquor licensing and we expressed the hope that, as this field of legislation seemed to be a source of considerable discontent, a review of the Licensing Acts, which would take into account these proposals, might not be too long delayed. We are pleased to note that a Committee has been set up to review the liquor licensing law of Scotland. We have drawn the Committee's attention to the difficulties arising out of the present state of the law as exemplified by the case of *Noble v. Heatly* 1967 SLT 26 and more recently by that of *Aldridge v. Simpson-Bell* 1971 SLT (Notes) 23.
- (i) We consulted various bodies, including the Law Society of Scotland, the Scottish Branch of the International Commission of Jurists, and representative finance houses about a proposal which we have received for the introduction in Scotland of procedure to enable a debtor officially to clear his name once a debt which has been the subject of a small debt decree has been settled.
- (j) We have received a proposal that a warrant to cite witnesses by any of the High Courts or Supreme Courts of any of the countries comprising the United Kingdom of Great Britain and Northern Ireland should have effect in any part of the United Kingdom. We are in consultation with the Director of Law Reform in Northern Ireland, the Law Commission and the Law Society of Scotland about the matter.
- (k) In our Report on Interpretation of Statutes<sup>1</sup>, made jointly with the Law Commission, we recommended legislation to introduce a presumption that in future enactments, unless express provision to the contrary were made, a breach of a statutory duty imposed by the enactment would be actionable at the suit of any person who by reason of the breach suffered or apprehended damage. In the absence of any such statutory presumption we made representations to your Departments that enactments should deal expressly with the question whether or not breaches of duty should give rise to civil liability. We were glad to know that your Departments would keep this point in mind and, in particular, that the Scottish Parliamentary draftsmen would, if necessary, raise the matter with any Government Department preparing legislation applicable to Scotland.
- (l) In our last Annual Report we referred to our consideration of questions relating to "group insurance policies" and the Life Assurance Act 1774. We understand that these questions will be covered in a review of the law relating to insurance companies now being conducted by the Department of Trade and Industry, and accordingly we have, for the present, discontinued our work on this subject.

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<sup>1</sup> Published by HMSO 1969 (Scot. Law Com. No. 11; Law Com. No. 21).

## COMPUTERS

28. In paragraph 32 of our last Annual Report we welcomed the institution of the Scottish Legal Computer Research Trust. Professor Halliday continues as a Trustee, and we are represented on the Executive Committee of the Trust by one of our legal staff. This member of staff was one of two British lawyers who visited Sweden in October 1970 under the auspices of the Council of Europe to study the use of computers there for processing legal data. In May 1971 he also took part in a corresponding study visit on computers and the law in the United Kingdom arranged for delegates from other member States of the Council of Europe.

## CONSULTATION

### THE LAW COMMISSION

29. We have maintained our close co-operation with the Law Commission. Apart from meetings to discuss individual subjects, we held our annual Joint Meeting with the Law Commission at Cardiff in April. We were pleased that the two Commissions were able to visit Wales for this purpose, and we wish to express our thanks to the Principal and members of University College Cardiff for their welcome and the excellent facilities they provided.

30. Apart from consultations with the Law Commission on matters of common interest (e.g. Contract and Family Law) we have offered observations on the following Working Papers issued by them:

- (a) Working Paper No. 29—Territorial and Extraterritorial Extent of the Criminal Law, and
- (b) Working Paper No. 30—Strict Liability and the Enforcement of the Factories Act 1961.

31. We are in consultation with legal and other bodies in Scotland about the possible effects of applying to Scotland proposals contained in the following Law Commission Working Papers:

- (a) Working Paper No. 25—The Law of Landlord and Tenant
- (b) Working Paper No. 31—The Mental Element in Crime
- (c) Working Paper No. 32—Transfer of Land: Land Registration

### OTHER LAW REFORM ORGANISATIONS

32. We have continued our liaison on matters of common interest with the Director of Law Reform in Northern Ireland and we have increased our contacts with law reform organisations in other parts of the world. We have been pleased to welcome members of these organisations who have visited us during the year, and we are gratified by the interest expressed in our activities and the demand for copies of our published papers. To several organisations abroad we have been able to supply on request information on particular aspects of the law of Scotland, and we have benefited considerably from a study of papers produced by other law reform organisations on subjects which we are studying.

## THE LEGAL AND OTHER PROFESSIONS IN SCOTLAND

33. We have continued to consult with the leading organisations of the legal and other professions in Scotland and with other bodies on the details of our tentative proposals for changes in the law as set out in the Memoranda which we publish from time to time. We are grateful to those who take trouble to prepare comments and observations and to give us the benefit of their practical experience. We also wish to thank all those who have served on our various Working Parties and other bodies which we have set up. It would be quite impossible for us to carry out our statutory functions without their advice and assistance.

### SEMINARS, COLLOQUIA, ETC.

34. The Commission has been represented at the following seminars, etc. during this year:

Legal Workshop on the subject of Civil Procedure and Evidence held by the Institute of Advanced Legal Studies at London University from 13th to 17th July 1970.

Conference on Civil Law held by the United Kingdom National Committee of Comparative Law at Oxford in September 1970.

Seminar on Matrimonial Property held jointly by the Society of Public Teachers of Law and the Law Commission at Manchester on 23rd and 24th September 1970.

International Legal Conference held by the British Institute of International and Comparative Law in Dublin from 1st to 4th October 1970.

Conference on Methods of Law Reform in the Commonwealth held by the British Institute of International and Comparative Law at Windsor from 23rd to 26th April 1971.

## FOREIGN LEGAL SYSTEMS AND INTERNATIONAL LAW

35. Professor Anton attended a meeting of the Council of Europe Subcommittee on Fundamental Legal Concepts which was held from 19th to 23rd October 1970 and at which the concepts of domicile and residence were discussed.

36. A member of our legal staff continued to serve on the Council of Europe Committee of Experts on "Time-Limits" until it completed its work in September 1970. Member Governments of the Council of Europe are now considering the Committee's proposals.

37. Professor Anton also attended a meeting in Rome from 30th June to 4th July 1970 and was Chairman of another meeting, also in Rome, from 21st to 29th May 1971 of a Committee of governmental representatives appointed to consider the Unidroit Conventions containing draft Uniform Laws on "Agency in private law relations of an international character" and on "The contract of Commission on the international sale and purchase of goods". He was Chairman of a small Working Party set up by the Committee which met in Geneva from 17th to 22nd December 1970.

## STATUTE LAW COMMITTEE

38. Our Chairman continues to serve on the Statute Law Committee and as a member of the Editorial Board<sup>1</sup> which supervises the production of the new publication entitled "Statutes in Force, (Official Revised Edition)" which, in a different form, will replace the current (1950) edition of "Statutes Revised".

## SCRUTINY OF BILLS

39. Our work on the scrutiny of Bills continues so far as our resources permit.

## LIST OF PAPERS

40. A list of papers which have been prepared by the Commission and made public appears in Appendix II of this Report.

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<sup>1</sup> A list of members of the Board appears in Appendix 1 of this Report.

## APPENDIX 1

### MEMBERSHIP OF ADVISORY PANELS, WORKING PARTIES ETC.

#### *Joint Working Party on Exemption by Contract from Common Law and Statutory Liabilities*

The Hon. Lord Kilbrandon and Mr. Andrew Martin Q.C.<sup>1</sup> (Joint Chairmen).

Members, other than representatives of the Law Commission and Scottish Law Commission—

Mr. J. A. Beaton	Scottish Office
Mr. W. E. Bennett	Confederation of British Industry
Professor G. J. Borrie	Consumer Council
Mr. M. R. E. Kerr, Q.C.	The Bar Council
Mr. P. Maxwell, Q.C.	Faculty of Advocates
Mr. S. W. T. Mitchelmore	Department of Trade & Industry
Mr. G. R. H. Reid	Law Society of Scotland
Mr. R. G. Scriven	Association of British Chambers of Commerce
Mr. J. B. Sweetman	Treasury Procurement Policy Committee
Mr. S. Terrell, Q.C.	The Bar Council
Mrs. L. E. Vickers	Consumer Council
Mr. J. H. Walford	The Law Society
Mr. M. J. Ware	Department of Trade & Industry
Secretary: Mr. R. G. Greene, Law Commission.	

#### *Advisory Panel on Contract*

The Rt. Hon. Lord Devlin  
The Rt. Hon. Lord Diplock  
The Rt. Hon. Lord Justice Megaw, C.B.E., T.D.  
The Rt. Hon. Lord Justice Roskill  
The Hon. Lord Robertson  
The Hon. Mr. Justice Donaldson  
Mr. P. S. Atiyah  
Mr. A. R. Barrowclough  
Professor G. J. Borrie  
Mr. L. A. Duffield  
Professor A. G. Guest  
Mr. I. R. Guild, w.s.  
Mr. Mark Littman, Q.C.  
Mr. R. A. Lynex  
Mr. R. A. MacCrimdale, Q.C.  
Mr. A. J. Mackenzie Stuart, Q.C.  
Dr. F. A. Mann  
Professor F. J. Odgers  
Mr. A. L. Price, Q.C.  
Dr. L. S. Sealy  
Mr. Mark H. Sheldon  
Mr. G. J. Treitel  
Professor K. W. Wedderburn  
Professor J. F. Wilson

#### *Working Party on Insolvency, Bankruptcy and Liquidation*

The Hon. Lord Kilbrandon (Chairman).  
Professor J. M. Halliday, C.B.E. (Vice-Chairman).  
Mr. R. A. Bennett, Q.C. Faculty of Advocates  
Mr. W. A. Cook, C.B.E. Law Society of Scotland  
Mr. R. D. Gould Sheriff Clerk, Edinburgh  
Mr. R. McWhirter Committee of Scottish Bank General Managers  
Mr. C. R. Munro, C.A. The Scottish Chamber of Commerce  
Mr. D. G. Slidders, C.A. Institute of Chartered Accountants of Scotland  
Mr. G. Wallace Confederation of British Industry  
Secretary: Mr. J. B. S. Lewis, Scottish Law Commission.

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<sup>1</sup> Mr. Martin retired from the Law Commission in June 1970.



*Working Party on Diligence*

Mr. A. M. Johnston, T.D., Q.C. (Chairman).  
Sheriff J. A. Dick, M.C., Q.C.  
Mr. J. R. Cowie  
Mr. A. C. Macpherson  
Mr. A. Lothian  
Mr. A. McLean, s.s.c.  
Mr. J. M. Bell  
Mr. J. Donald  
Secretary: Miss M. M. Stevenson, Scottish Law Commission

Sheriff-Clerk Depute, Dunfermline  
Solicitor, Glasgow  
Faculty of Advocates  
Law Society of Scotland  
Society of Messengers-at-Arms and Sheriff Officers  
Society of Messengers-at-Arms and Sheriff Officers

*Working Party on the Legal Capacity of Minors and Pupils*

The Hon. Lord Kilbrandon (Chairman).  
Professor T. B. Smith, Q.C.  
Mr. Farquhar Gillanders  
Miss E. M. Houston  
Mr. K. Sweeney  
Professor D. M. Walker, Q.C.  
Secretary: Miss M. M. Stevenson, Scottish Law Commission

Assistant Registrar, University of Glasgow  
Solicitor, Edinburgh  
Institute of Chartered Accountants of Scotland  
Faculty of Law, University of Glasgow

*Consultative Committee on Administrative Law*

The Hon. Lord Kilbrandon (Chairman).  
The Hon. Lord Hunter.  
Mr. A. M. Johnston, T.D., Q.C.  
Mr. A. L. Bushnell, C.B.E.  
Mr. J. S. Dalgetty  
Mr. C. E. Jauncey, Q.C.  
Mr. J. Mellick, O.B.E.  
Professor J. Bennett Miller  
Secretary: Mr. H. R. M. Macdonald, Scottish Law Commission.

County Clerk, Perth  
formerly Solicitor to the Secretary of State  
for Scotland  
Faculty of Advocates  
Solicitor, Glasgow  
University of Glasgow

*Consultative Group on Tax Law*

(a) (Taxation of Income and Gains derived from Land)

Professor J. M. Halliday, C.B.E. (Chairman).  
Mr. H. M. Begg  
<sup>1</sup> Mr. E. I. Goulding, Q.C.  
Mr. J. P. Lawton  
Mr. D. A. Smith  
Mr. D. S. Morpeth  
Secretary: Mr. B. M. F. O'Brien, Law Commission.  
Assistant Secretary: Mr. H. D. Brown, Law Commission.

Institute of Chartered Accountants of Scotland  
The Bar Council  
The Law Society  
Board of Inland Revenue  
Institute of Chartered Accountants of England  
and Wales

(b) (Estate Duty)

Mr. M. C. Nourse, Q.C. (Chairman).  
Mr. John C. Craig  
Professor J. M. Halliday, C.B.E.  
Mr. J. P. LAWTON  
Mr. A. K. Tavaré  
Mr. W. H. B. Johnson  
Secretary: Mr. B. M. F. O'Brien, Law Commission.  
Assistant Secretary: Mr. H. D. Brown, Law Commission.

Institute of Chartered Accountants of Scotland  
Barrister  
Solicitor's Office, Inland Revenue  
Board of Inland Revenue

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<sup>1</sup> Now Mr. Justice Goulding.

*Editorial Board, Statutes in Force (Official Revised Edition)*

The Hon. Mr. Justice Scarman, O.B.E. (Chairman)

The Hon. Lord Kilbrandon.

<sup>1</sup> Sir Harvey Druitt, K.C.B.

Sir John Fiennes, K.C.B.

Sir Derek Hilton, M.B.E.

Sir John Gibson, C.B., Q.C.

Mr. A. B. Lyons

Secretary: Mr. M. L. Dunlap, Law Commission.

Treasury Solicitor

First Parliamentary Counsel

The Law Society

Statutory Publications Office

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<sup>1</sup> Sir Harvey Druitt retired in June 1971 and was succeeded by Mr. Henry Ware, Treasury Solicitor.

APPENDIX 2

*Scottish Law Commission—Papers published by Her Majesty's Stationery Office*

- First Programme of Law Reform
- First Programme of Consolidation and Statute Law Revision
- First Annual Report 1965–66
- Proposals for Reform of the Law of Evidence Relating to Corroboration
- Reform of the Law Relating to Legitimation *per subsequens matrimonium* (Cmnd. 3223)
- Divorce—The Grounds Considered (Cmnd. 3256)
- \*Report on the Consolidation of Certain Enactments relating to Shellfish Fisheries and Shellfish—Sea Fisheries (Shellfish) Bill (Cmnd. 3267)
- Second Annual Report 1966–67
- Second Programme of Law Reform
- Third Annual Report 1967–68
- \*Report on the Consolidation of the Trustee Savings Banks Acts 1954 to 1968—Trustee Savings Banks Bill (Cmnd. 4004)
- \*Report on the Interpretation of Statutes
- \*Report on Exemption Clauses in Contracts—First Report: Amendments to the Sale of Goods Act 1893
- Fourth Annual Report 1968–69
- Report on the Companies (Floating Charges) (Scotland) Act 1961 (Cmnd. 4336)
- Reform of the Law Relating to Prescription and Limitation of Actions
- \*Report on the Hague Convention on Recognition of Divorces and Legal Separations (Cmnd. 4542)
- Fifth Annual Report 1969–70
- \*Report on the Consolidation of Certain Enactments Relating to Coinage—Coinage Bill (Cmnd. 4544)
- \*Report on the Consolidation of Certain Enactments Relating to Excise Duties on Mechanically Propelled Vehicles, and to the Licensing and Registration of such Vehicles—Vehicles Excise Bill (Cmnd. 4547)
- \*Report on the Consolidation of Enactments Relating to the National Savings Bank—National Savings Bank Bill (Cmnd. 4574)
- \*Report on the Taxation of Income and Gains derived from Land (Cmnd. 4654)
- \*Report on the Consolidation of Certain Enactments Relating to Road Traffic—Road Traffic Bill (Cmnd. 4731)

*Scottish Law Commission—Memoranda circulated for comment and criticism*

- Memorandum No. 1—Probates or Letters of Administration as Links in Title to Heritable Property under the Succession (Scotland) Act 1964
- Memorandum No. 2—Expenses in Criminal Cases
- Memorandum No. 3—Restrictions on the Creation of Liferents
- Memorandum No. 4—Applications for Planning Permission
- Memorandum No. 5—Damages for Injuries Causing Death
- \*Memorandum No. 6—Interpretation of Statutes
- \*Memorandum No. 7—Provisional Proposals Relating to Sale of Goods
- Memorandum No. 8—Draft Evidence Code—First Part
- Memorandum No. 9—Prescription and Limitation of Actions
- Memorandum No. 10—Examination of the Companies (Floating Charges) (Scotland) Act 1961
- Memorandum No. 11—Presumptions of Survivorship and Death
- Memorandum No. 12—Judgments Extension Acts
- Memorandum No. 13—Jurisdiction in Divorce
- Memorandum No. 14—Remedies in Administrative Law

\* Produced jointly with the Law Commission.

