

SCOTTISH LAW COMMISSION



THIRTY-SIXTH  
ANNUAL REPORT  
2001

(SCOT LAW COM No 186)

# Scottish Law Commission

(SCOT LAW COM NO 186)

THIRTY-SIXTH

ANNUAL REPORT

2001

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The Scottish Law Commission was established 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 Honourable Lord Gill, *Chairman*,  
Mr Patrick S Hodge, QC,  
Professor Gerard Maher,  
Professor Kenneth G C Reid,  
Professor Joseph M Thomson

The Secretary of the Commission is Miss Jane L McLeod. Its offices are at 140 Causewayside, Edinburgh EH9 1PR.

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The text of this report is available on the Scottish Law Commission's website

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\* Amended by the Scotland Act 1998 (Consequential Modifications)(No 2) Order 1999 (S.I. 1999/1820)



# Scottish Law Commission

Report for the year to 31 December 2001

To: Jim Wallace Esq QC MSP  
Deputy First Minister and Minister for Justice

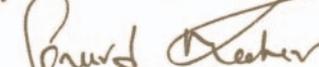
In accordance with section 3(3) as read with section 6(2) of the Law Commissions Act 1965 we have the honour to submit to the Scottish Ministers the Thirty-Sixth Annual Report of the Scottish Law Commission.



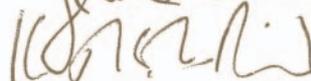
BRIAN GILL, *Chairman*



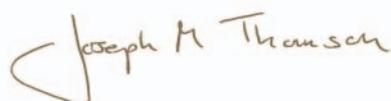
PATRICK S HODGE



GERARD MAHER



KENNETH G C REID



JOSEPH M THOMSON



JANE L MCLEOD, *Secretary*  
7 January 2002

# Commissioners and staff



## BACK ROW (left to right)

Mr J M Dods; Mrs G B Swanson; Mr P S Hodge, QC; Prof J M Thomson; Prof G Maher;  
Mrs I Hennessey; Miss L Napier; Mr I Ritchie

## MIDDLE ROW (left to right)

Mrs H C Ryan; Mrs V A Forbes; Mrs S Sutherland; Mrs L E Young; Miss F McCarthy;  
Mrs A V Manners; Mr D Bonvarlet

## FRONT ROW (left to right)

Mr A Fleming; Mr N G T Brotchie; Miss J E Melville; Mrs A D Dryden; Dr D I Nichols;  
Miss J L McLeod; The Hon Lord Gill, Chairman; Miss C A Munro; Miss B Elliot;  
Mr A G Fay; Prof K G C Reid; Mr S Price; Miss K Trewern

We are grateful to the staff of Historic Scotland for the use of their office at Longmore House for this photograph.

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# Foreword

This has been one of the most successful years in the Commission's history. We have published two reports, six discussion papers and one consultation paper, together with one report and one consultation paper that we published jointly with the Law Commission.

Since devolution, references from the Scottish Ministers have formed an increasingly significant part of our work. In the course of this year we have received four new references, all of them on topics of current importance.

Early this year we responded to the Scottish Ministers' wide-ranging review of public bodies and we were pleased when the Scottish Ministers accepted that our continued existence was fully justified by the quality and quantity of our output.

The problem of drafting resources has continued to trouble us. We have referred to it in our last two annual reports. This year we have adopted the expedient of commissioning consultants ad hoc to draft some of our Bills. We hope that a more lasting solution will be found.

We are grateful for the support that you have given to our work throughout the year. I am grateful too to all my colleagues for their enthusiasm and commitment. This is the last annual report that I shall present. It has been a privilege to be Chairman and I feel fortunate to have held such an enjoyable and fulfilling appointment.



Brian Gill.

BRIAN GILL, *Chairman*



# Summary of the year

## Introduction

1.1 We are pleased to present our *Thirty-Sixth Annual Report* for 2001. The report aims to record our achievements this year, to provide information on the progress we have made with our work and to set out our objectives for 2002.

1.2 This is the second annual report covering a calendar year. As we mentioned in our *Thirty-Fifth Annual Report*<sup>1</sup> the change to reporting on a calendar year basis enables us to report more readily on progress with work under our *Sixth Programme of Law Reform*,<sup>2</sup>

which sets out our programme of law reform for the five years to the end of 2004.

## Publications 2001

1.3 Apart from our *Thirty-Fifth Annual Report*, this year we have published two reports (one jointly with the Law Commission), six discussion papers, one joint consultation paper with the Law Commission, and one consultation paper on consolidation.

1.4 Table 1 provides details of our publications this year.

**Table 1: Publications 2001**

| Title   | Citation  | Date of publication |
|---|---|---------------------|
| Thirty-Fifth Annual Report 2000   | Scot Law Com No 182                                     | 8 March 2001        |
| Discussion Paper on Conversion of Long Leases   | Discussion Paper No 112                                 | 17 April 2001       |
| Discussion Paper on Law of the Foreshore and Seabed   | Discussion Paper No 113                                 | 19 April 2001       |
| Draft Recommendations on the Consolidation of the Salmon and Freshwater Fisheries Legislation in Scotland | Consultation Paper<br>(Not part of our numbered series) | 30 April 2001       |
| Report on Diligence   | Scot Law Com No 183                                     | 17 May 2001         |
| Discussion Paper on <i>Sharp v Thomson</i>  | Discussion Paper No 114                                 | 16 July 2001        |
| Report on Third Parties - Rights against Insurers<br>(Joint Report with the Law Commission)               | Law Com No 272<br>Scot Law Com No 184                   | 31 July 2001        |
| Discussion Paper on Age of Criminal Responsibility  | Discussion Paper No 115                                 | 31 July 2001        |
| Discussion Paper on Title to Sue for Non-Patrimonial Loss   | Discussion Paper No 116                                 | 8 October 2001      |
| Discussion Paper on Irritancy in Leases of Land   | Discussion Paper No 117                                 | 25 October 2001     |
| Limited Partnerships Act 1907<br>(Joint Consultation/Discussion Paper with the Law Commission)            | Consultation Paper No 161<br>Discussion Paper No 118    | 6 November 2001     |

<sup>1</sup> Scot Law Com No 182.

<sup>2</sup> Scot Law Com No 176, published 17 March 2000.

## Implementation of reports

1.5 We are pleased that our Report on *Leasehold Casualties* (Scot Law Com No 165) was implemented this year.<sup>3</sup>

1.6 In their Second Programme for Government published on 29 January 2001 (*Working Together for Scotland; A Programme for Government*), Scottish Ministers undertook to bring forward proposals to reform the law on title conditions following publication in October 2000 of our Report on *Real Burdens* (Scot Law Com No 181). In May this year the Executive published a consultation paper - *Draft Title Conditions (Scotland) Bill* - on the Bill annexed to our report. The responses to the consultation are presently being analysed and we understand that legislation will be introduced as soon as an opportunity arises in the legislative programme.

1.7 A draft Tenements (Scotland) Bill was included in our Report on *The Law of the Tenement* (Scot Law Com No 162), published in March 1998. Following our Report on *Real Burdens* we were asked by the Scottish Executive to update the provisions of the Bill to take account of our work on real burdens and title conditions.

1.8 This has been done and a new version of the Bill has been delivered to the Executive. The new version can be found on our website. The changes to the Bill are essentially technical in nature. The most important change is the deletion of the off-the-peg management scheme for tenements (Management Scheme B). This scheme now appears in the draft Title Conditions (Scotland) Bill where it is known as the Development Management Scheme. It applies to property of other types as well as tenements.

1.9 In a policy statement issued in October 2001 the Scottish Executive announced its intention to bring forward a Bill in the early part of 2002, to replace the Mental Health (Scotland) Act 1984. The intention is to include

measures that we recommended in our Report on *Vulnerable Adults* (Scot Law Com No 158), published in February 1997, to improve the procedures for intervention in cases of suspected abuse of persons who are mentally disordered.

1.10 We are also pleased that the Company Law Review Steering Group have adopted in their recommendations for reform<sup>4</sup> both our contribution to the Law Commission's Report on *Shareholder Remedies* (Law Com No 246) and the main recommendations of both Law Commissions in the joint Report on *Company Directors: Regulating Conflicts of Interest and Formulating a Statement of Duties* (Law Com No 261, Scot Law Com No 173).

## Briefing to Scottish Ministers and the Scottish Parliament

1.11 During the year we have provided briefings for Scottish Ministers on various aspects of our work. We have also supplied information to the Scottish Executive in connection with preparation of Ministerial correspondence and answers to Parliamentary questions.

## Achievement of our law reform objectives for 2001

1.12 In Appendix 2 to our *Thirty-Fifth Annual Report* we set out our Law Reform Objectives for 2001. The vast majority of these have been met, in many cases ahead of schedule. In addition to these objectives we have also completed our Discussion Paper on *Title to Sue for Non-Patrimonial Loss* and a joint Consultation Paper on the *Limited Partnerships Act 1907*.

1.13 Our law reform work falls into three main categories:

- Projects under our *Sixth Programme of Law Reform*
- Advisory work
- Consolidation and Statute Law Revision

<sup>3</sup> The Leasehold Casualties (Scotland) Act 2001 received Royal Assent on 12 April 2001.

<sup>4</sup> Modern Company Law for a Competitive Economy: Final Report, URN 01/942 (July 2001), para 7.46 and Annex C, Explanatory Notes, para 22.

In the following paragraphs we summarise progress made on this work during the year.

- **Projects under our *Sixth Programme of Law Reform***

1.14 This year our key objectives in relation to our programme work were to publish discussion papers on irritancies and leasehold conversion and to submit a report on diligence.<sup>5</sup> We have achieved all three objectives.

1.15 Part 2 gives further details of work under our *Sixth Programme*.

- **Advisory work**

1.16 We have achieved our objective for publication of a joint report with the Law Commission on *Third Parties - Rights against Insurers*, although with some slight slippage in the timetable. We have also achieved the objectives of publishing our Discussion Paper on *Law of the Foreshore and Seabed* and our Discussion Paper on *Sharp v Thomson*. Although not published by the end of the year, our Report on *Age of Criminal Responsibility* was submitted to the Scottish Ministers on 30 November.

1.17 Part 3 gives further details of our advisory work.

- **Consolidation and Statute Law Revision**

1.18 We have continued to make progress during the year with our work on statute law revision.

1.19 We regret that it has not been possible to publish a report on the consolidation of the salmon and freshwater fisheries legislation as we had intended. Part 4 explains the reason for this and gives further details of our work on consolidation and statute law revision.

### Other activities

1.20 One of the Commission's functions under the Law Commissions Act 1965 is to promote the reform of Scots law. In Part 5 we describe some of the activities we have undertaken this year to promote our work.

### Achievement of our management objectives for 2001

1.21 In Appendix 2 to our *Thirty-Fifth Annual Report* we set out our management objectives for this year. We are pleased to report that all the objectives have been met, some well ahead of schedule. We give more details of these and other management developments in Part 6.

### Objectives for 2002

1.22 In Appendix 1 we set out our law reform and management objectives for 2002. We will report on progress with these in our next annual report.

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<sup>5</sup> *Thirty-Fifth Annual Report* (Scot Law Com No 182), Appendix 2.

# Projects under our Sixth Programme of Law Reform

## Introduction

2.1 In this Part we report on the progress we have made during the year on the projects included in our *Sixth Programme of Law Reform*.<sup>1</sup> The items in the following paragraphs are

numbered in accordance with the *Sixth Programme*.

2.2 Table 2 lists the objectives for projects under the *Sixth Programme* and the progress made this year.<sup>2</sup>

Table 2: Projects under our Sixth Programme of Law Reform: objectives and progress 2001

| Topic/objective  | Progress                                   | References  | Notes                   |
|--|--|---|-------------------------|
| <b>Irritancies</b><br>To issue a discussion paper by the autumn of 2001                          | Discussion Paper published 25 October 2001 | Medium-term project under the <i>Sixth Programme</i> (paras 2.5 to 2.8)   | See paras 2.5 to 2.9    |
| <b>Judicial factors</b><br>To undertake a review of the legislation relating to judicial factors | Work not yet started                       | Long-term project under the <i>Sixth Programme</i> (paras 2.9 and 2.10)   | See para 2.10           |
| <b>Land registration</b><br>To undertake a review of the Land Registration (Scotland) Act 1979   | Work not yet started                       | Medium-term project under the <i>Sixth Programme</i> (paras 2.13 to 2.17)   | See paras 2.12 to 2.17  |
| <b>Leasehold tenure</b><br>To issue a discussion paper by the end of June 2001                   | Discussion Paper published 17 April 2001   | Medium-term project under the <i>Sixth Programme</i> (paras 2.11 and 2.12)  | See paras 2.18 to 2.26  |
| <b>Trusts</b><br>To undertake a review of certain issues relating to express trusts              | Work has started on this project           | Medium-term project under the <i>Sixth Programme</i> (paras 2.25 to 2.34)   | See paras 2.28 and 2.29 |
| <b>Diligence</b><br>To submit a report in spring 2001  | Report submitted 23 April 2001             | Carried forward from the <i>Fifth Programme</i> (Scot Law Com No 159) as a short-term project under the <i>Sixth Programme</i> (paras 2.35 to 2.39) | See paras 2.30 to 2.36  |

<sup>1</sup> Scot Law Com No 176.

<sup>2</sup> Table 2 does not include details of projects under the Programme which were completed before 2001.

**Item No 1: Codification**

2.3 We have continued to take a close interest in the work being done on a draft Criminal Code. This project is an unofficial one being undertaken by a small group of law professors.<sup>3</sup>

2.4 Following a consultation conference in November 2000 which was attended by Professor Maher and Dr David Nichols, the draft code was revised and sent out for further consultation. The draft is now being revised again in the light of further work and reflection by the group, taking into account the comments received on the second consultation.

**Item No 2: Obligations**

*Commissioner:* Professor J M Thomson

*Project Manager:* Mrs J A Morrison

***Irritancies***

2.5 This is a medium-term project under our *Sixth Programme* (paras 2.5 to 2.8). We published our Discussion Paper on *Irritancy in Leases of Land* (DP No 117) on schedule on 25 October this year. The consultation period runs until 28 February 2002.

2.6 Irritancy is a remedy available to a landlord in the event of a breach of contract by his tenant, allowing the landlord to terminate the lease prematurely. The common law of irritancy in commercial leases is subject to statutory restrictions contained in sections 4-7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985.

2.7 In our discussion paper we examine whether the 1985 Act strikes the right balance between providing adequate protection to tenants and retaining an effective remedy for breach of contract. The paper also considers whether the statutory control of irritancy should be extended to leases of agricultural property.

2.8 We are grateful to the members of our advisory group and our panel of practitioners, as detailed in Appendix 2, for their

contribution to this project. Highly productive meetings of the group and the panel were held in April and August.

2.9 The project is due to be completed by the end of 2004, when the *Sixth Programme* comes to an end.

**Item No 3: Persons**

*Commissioner:* Professor G Maher

*Project Manager:* Dr D I Nichols

***Judicial factors***

2.10 Our *Sixth Programme* (paras 2.9 and 2.10) includes the review and modernisation of the law relating to judicial factors. This is a long-term project which is likely to be carried forward into our next Programme of Law Reform. We have not yet started work on this.

**Item No 4: Property**

*Commissioner:* Professor K G C Reid

*Project Manager:* Mr J M Dods

2.11 Our programme work on property law consists of projects on

- land registration
- leasehold tenure

***Land Registration***

2.12 Under our *Sixth Programme* (paras 2.13 to 2.17) our objective is to undertake a review of the Land Registration (Scotland) Act 1979 as a medium-term project.

2.13 The Land Register for Scotland was set up under the 1979 Act as a replacement for the Register of Sasines which has been in use since 1617. The new Register is expected to apply to the whole of Scotland by 2003. Under the previous system based on the Register of Sasines, registration did not of itself confer rights in land. The validity of a right depended primarily on the validity of a constitutive deed. However, the Land Register is not a register of deeds, but of interests in land. A right is

<sup>3</sup> Professor Chris Gane, Aberdeen, Professor Pamela Ferguson, Dundee, Professor Sandy McCall Smith, Edinburgh, Professor Sir Gerald Gordon, Edinburgh and Professor Eric Clive, Edinburgh.

created by being entered on the Register, and all rights so entered are valid even if the initiating deed was not. In general, entries in the Register are guaranteed and the possibility of mistake is covered by an indemnity scheme.

2.14 Experience has shown that there are difficulties with the Land Registration (Scotland) Act 1979. Other difficulties have come to light as a result of substantial litigation in recent years. These difficulties include the relationship between registration and rectification; the grounds on which the Register may be rectified; the meaning of certain key terms used in the 1979 Act such as "inaccuracy", "proprietor in possession" and "carelessness"; the circumstances in which indemnity is payable, and the amount due; and the scope of the rule that the Keeper must reimburse expenditure in claims made against him. Underlying all these detailed questions is a more general one. The 1979 Act lacks a conceptual framework commensurate with the radical changes that it introduced. The relationship between different provisions is not sufficiently articulated; and the conceptual vacuum makes it difficult to deal with matters that are not expressly provided for in the legislation.

2.15 In carrying forward the review we shall also bear in mind the possibility of early introduction of automated registration of title to land (ARTL). The Registers of Scotland are currently carrying out a pilot scheme in association with a number of legal firms. It is important that any legislation that may result from the review should be fully compatible with the idea of ARTL.

2.16 We have not been able to start work on this project this year due to our work on conversion of long leases and *Sharp v Thomson*. We plan to do so during the course of 2002. However, as a preliminary step, we are currently canvassing the legal profession for their views on the operation of the Act and, in particular, on the legal issues that have caused difficulties in practice.

2.17 Depending on resources (including drafting resources) we intend to complete the project by the end of 2004, when the *Sixth Programme* comes to an end.

### *Leasehold tenure*

2.18 Under our *Sixth Programme* (paras 2.11 and 2.12) our objective is to consider, as a medium-term project, whether some categories of long lease should be converted to ownership.

2.19 Long leasehold tenure has many of the characteristics of ownership. Leases for periods such as 999 years are in practice if not in law equivalent to perpetual feus. They were recognised as such by some landlords and many were granted because of restrictions on the power to feu. Ultra-long leasehold tenure can therefore be regarded as a sort of shadow feudal tenure. It suffers from many of the disadvantages of feudal tenure. The hierarchical structure of leases and subleases is needlessly complex where the only right of value is that held by the ultimate tenant. The system is also open to abuse. It allows an inappropriate degree of control by a person who has little or no interest in the land and provides an opportunity to charge money for waivers. In the case of feus the disadvantages were considered sufficient grounds for their conversion into proper ownership (by the Abolition of Feudal Tenure etc. (Scotland) Act 2000 from a day to be appointed). It can be argued that the reform of land tenure would be incomplete without the conversion to ownership of ultra-long leases.

2.20 There are other difficulties with long leases. As they are relatively rare and are concentrated within certain geographical areas, they can lead to an increase in transaction costs when a property comes to be sold. It may also be difficult to obtain a loan over a property. There are special difficulties with flatted properties where the common law of the tenement presupposes ownership rather than an ultra-long lease. There may also be problems in the very long term when such leases come to an end and the tenant loses the property without compensation, including compensation for improvements.

2.21 We published our Discussion Paper on *Conversion of Long Leases* (DP No 112) on 17 April 2001. The strategy behind the paper is based on empirical work carried out by us at the Registers of Scotland. This showed that approximately two thirds of the long leases

surveyed were for more than 175 years and, of these, most were for 999 years. The results of the research are given in Appendix A of the paper.

2.22 In our discussion paper we propose that ultra-long leases, that is to say leases for more than 175 years, should be converted into ownership. The scheme follows closely the scheme for conversion of feus introduced by the Abolition of Feudal Tenure etc. (Scotland) Act 2000. On a fixed day, known as the "appointed day", all ultra-long leases would be upgraded to ownership subject to the possibility of opting-out by the tenant. The landlord would be entitled to compensation for loss of rent. The conditions in the lease would be extinguished except those concerned with maintenance and use of common facilities or the provision of services, or those preserved by the landlord for the benefit of neighbouring land. Special provision would be made for rights of way and other servitudes.

2.23 We also consider whether a second conversion scheme (modelled on the scheme in the Long Leases (Scotland) Act 1954) should be introduced for residential ground leases granted for 50 years or more which are too short to qualify under the main scheme. Our research suggests that there is a small number of such leases – possibly fewer than 1000. As an alternative we ask whether tenants of such leases would be better served by a form of security of tenure – such as an extension of the lease for a fixed period.

2.24 The consultation period ended on 31 July 2001. We are presently working up our recommendations for reform taking into account the comments received. We are also instructing the preparation of a draft Bill to implement the recommendations. We are not able to say at this point when the report will be submitted. This depends on a number of factors which are outwith our control, in particular the availability of drafting resources. There is also the possibility that in the Title Conditions (Scotland) Bill the Scottish Executive will revisit the provisions in Part 4 of the Abolition of Feudal Tenure etc. (Scotland) Act 2000 which deal with feudal real burdens and which provide the model for the treatment of conditions in leases on conversion.

2.25 We have set up an advisory group to assist with this project, as detailed in Appendix 2.

2.26 The project is due to be completed by the end of 2004, when the *Sixth Programme* ends.

### Item No 5: Statute Law Revision and Consolidation

2.27 We outline the progress with our work on Statute Law Revision and Consolidation in Part 4.

### Item No 6: Trusts

*Commissioner:* Professor J M Thomson  
*Project Manager:* Dr D I Nichols

2.28 This is a medium-term project under our *Sixth Programme* (paras 2.25 to 2.34). Work has recently started with an examination of the issues which appear to be matters on which reform is most urgently needed. These include

- the powers and duties of trustees; and
- the liability of trustees and the scope of exemption clauses.

2.29 This project is due for completion by the end of 2004, when the *Sixth Programme* comes to an end.

### Item No 7: Completion of work on Diligence

*Commissioner:* Professor G Maher  
*Project Manager:* Dr D I Nichols

2.30 In May we published our Report on *Diligence* (Scot Law Com No 183) which completed our work on this area of law. The report recommends the following major reforms of the law of diligence:

#### *Adjudication for debt*

2.31 The report recommends the abolition of this diligence which operates against the debtor's land and also as a residual diligence, ie against any other property for which there is no existing diligence. The law of adjudication has remained largely unchanged since 1672 and much of it is uncertain and obscure. Adjudication is cumbersome and expensive for creditors to use and fails to protect the interests of debtors.

*Land attachment*

2.32 The report recommends the introduction of a new diligence called land attachment to replace adjudication for debt as a diligence against land. The new diligence would consist of two stages: first, the registration in the Land Register or Sasine Register of a notice of land attachment. This would secure the unpaid debt over the debtor's land. Secondly, an application to the court for authority to sell the land. A six month delay between registration of the notice of land attachment and application for sale is recommended. Application for sale would not be granted where the debt was less than £1,500 or where the proceeds of sale would be unlikely to reduce the debt by at least £500 or 10%. The report leaves open the question of whether a debtor's dwellinghouse could be sold. Two alternatives are presented. Dwellinghouses could be included at the sale stage of the diligence with extra measures of debtor protection, or they could be exempted from sale altogether.

*Attachment orders*

2.33 The report also recommends the introduction of another new diligence called an attachment order to replace adjudication as a residual diligence. An attachment order would cover property such as patents, licences and timeshares. A residual diligence gives effect to the principle that all the debtor's assets should be subject to enforcement unless exempted to protect the debtor from undue hardship. The creditor would have to apply to the court for an attachment order and, following service of a schedule of attachment on the debtor, apply for a further order to satisfy the debt out of the attached property. The types of satisfaction order that may be granted include sale, transfer, income transfer, lease or licence.

*Money attachment*

2.34 Cash, cheques and other negotiable instruments in the debtor's possession are thought not to be liable to any current diligence. The report recommends that if goods and other corporeal moveable property in the debtor's possession are to be attachable for debt then it should also be possible to attach money in business premises. Officers of

court would not be permitted to attach money situated in a dwellinghouse or the residential part of a building or to search individuals or their handbags and wallets for money. A money attachment would be incompetent where the value of the money attached did not exceed the likely total expenses of the diligence plus the lesser of £50 or 10% of the debt.

*Inhibition*

2.35 The report recommends the retention of inhibition as a diligence, subject to reform to clarify and simplify the law. Inhibition should no longer confer a preference on the inhibitor in respect of future debts incurred by the debtor, but inhibitors should continue to be able to reduce future voluntary deeds granted by the debtor. The report recommends a number of measures to protect third party purchasers or lenders who transact with a debtor who, unknown to them, is inhibited.

2.36 In a departure from our usual practice the report does not include a draft Bill. This is mainly due to the difficulties we have continued to experience in obtaining drafting resources. It is also due to the fact that we were aware that the Scottish Executive was conducting a wide-ranging review of all aspects of the diligence system. We took the view that it would be better to submit our report without a draft Bill so that our recommendations could be taken into account as part of that review.

# Advisory Work

## Introduction

3.1 One of our main functions is to provide advice and information to government departments, the Scottish Administration and other bodies concerned with law reform. We generally undertake this work in response to references, usually from Scottish Ministers. These references tend to focus on specific legal issues. Often the advice is required in a short timescale to address particular concerns. We therefore give priority to completing work on a reference as quickly as possible.

3.2 In most cases, we provide our advice in a published report following consultation on a discussion paper.

3.3 In other cases our advice is provided informally. Occasionally we provide advice and information outwith the strict terms of our statutory remit where we consider that it will promote law reform generally.

3.4 An important part of our work in this area is the provision of advice on Scots law on an informal basis to the Law Commission to assist its project teams.

3.5 This has been a busy and productive year in relation to our advisory work. We received a number of new references from Scottish Ministers as follows

- Unfair Contract Terms
- Damages (Scotland) Act 1976
- Delictual Liability for Psychiatric Injury
- Defences of Insanity and Diminished Responsibility

3.6 Table 3 lists our current references and the progress we have made during the year. The table includes details of the new projects and the objectives we set ourselves for progress on them this year.

**Table 3: Advisory work: objectives and progress 2001<sup>1</sup>**

| Topic  | Objective  | Progress   | References  | Notes                  |
|--|--|--|---|------------------------|
| <b>Partnership</b><br><i>(joint project with the Law Commission)</i>                             | To publish a joint consultation paper on the Limited Partnerships Act 1907 in 2001 | Joint consultation paper published 6 November 2001 | Reference from the Department of Trade and Industry | See paras 3.7 to 3.16  |
| <b>Third Parties - Rights against Insurers</b><br><i>(joint project with the Law Commission)</i> | To publish a joint report by the end of May 2001                                   | Joint report published 31 July 2001                | Reference from the Department of Trade and Industry | See paras 3.18 to 3.20 |
| <b>Review of the Law of the Foreshore and Seabed</b>   | To publish a discussion paper by early summer 2001                                 | Discussion paper published 19 April 2001           | Reference from Scottish Ministers                   | See paras 3.21 to 3.24 |

<sup>1</sup> Table 3 does not include details of our project on Jurisdictions under the Agricultural Holdings (Scotland) Acts, as our report was published in May 2000 (see para 3.17); but we continue to be involved in that matter.

| Topic  | Objective  | Progress  | References   | Notes                  |
|--|--|---|--|------------------------|
| <i>Sharp v Thomson</i>   | To publish a discussion paper by the end of December 2001                                      | Discussion paper published 16 July 2001                                       | Reference from Scottish Ministers  | See paras 3.25 to 3.33 |
| <b>Age of Criminal Responsibility</b>  | To publish a discussion paper by the end of July 2001 and a report by the end of December 2001 | Discussion paper published 31 July 2001 and Report submitted 30 November 2001 | Reference from Scottish Ministers  | See paras 3.34 to 3.37 |
| <b>Unfair Contract Terms</b><br><i>(joint project with the Law Commission)</i> | To publish a joint consultation paper during 2002  | Work is well advanced on the preparation of a joint consultation paper        | Reference from Scottish Ministers and the Department of Trade and Industry (received March 2001) | See paras 3.38 to 3.40 |
| <b>Damages (Scotland) Act 1976 - Title to Sue for Non-Patrimonial Loss</b>     | To publish a discussion paper by the end of October 2001                                       | Discussion paper published 8 October 2001                                     | Reference from Scottish Ministers (received March 2001)  | See paras 3.41 to 3.46 |
| <b>Delictual Liability for Psychiatric Injury</b>                              | To publish a discussion paper by early summer 2002   | Work is on schedule on preparation of a discussion paper                      | Reference from Scottish Ministers (received July 2001)   | See paras 3.47 to 3.49 |
| <b>Defences of Insanity and Diminished Responsibility</b>                      | To publish a discussion paper by the end of December 2002                                      | Preliminary work started  | Reference from Scottish Ministers (received October 2001)  | See paras 3.50 to 3.52 |

## Partnership

*Commissioner:* Mr P S Hodge QC

*Project Manager:* Mrs G B Swanson

3.7 This is a joint project with the Law Commission stemming from a reference from the Department of Trade and Industry. Our terms of reference are:

"To carry out a review of partnership law, with particular reference to: independent legal

personality; continuity of business irrespective of changes in ownership; simplification of solvent dissolution; a model partnership agreement and to make recommendations. The review is to be conducted under the present law of partnership, namely the Partnership Act 1890 and the Limited Partnerships Act 1907."

3.8 We published a joint Consultation Paper on *Partnership Law* on 13 September 2000. That paper dealt with general partnership law (see

*Thirty-Fifth Annual Report*, paras 3.4 to 3.10). We are grateful to all those who responded to the paper. Their comments have been invaluable in developing our policy. The main proposals for reform of the general law of partnership on which we consulted were summarised in the *Thirty-Fifth Annual Report*. During the year we have refined these proposals in co-operation with the Law Commission: as well as analysing the consultation responses we have taken part in seminars on partnership law reform in London and Manchester and we have benefited from the advice of our advisory group. We are preparing our final recommendations and instructing a draft Bill. In addition, this year, on 6 November, we published a further joint Consultation Paper on the *Limited Partnerships Act 1907* (Consultation Paper No 161; DP No 118).

3.9 A limited partnership is an ordinary partnership with certain modifications made by the 1907 Act. The main difference between an ordinary and a limited partnership is that in a limited partnership only active partners ("general partners") are fully liable whereas those who merely invest ("limited partners") are, as long as they do not engage in management of the partnership, liable to third parties only to the extent of their capital contribution.

3.10 The limitation of liability means that the limited partnership is a useful vehicle for investors who do not wish to take an active role in the management of their funds. They may use the limited partnership to create an investment fund under the control of a general partner who alone has unlimited liability. It also offers the investor privacy as the accounts of the limited partnership are not generally disclosed. Like other partnerships, it also provides the benefit of fiscal transparency - the partnership is not treated as an entity distinct from its members for the purposes of income tax or capital gains tax.

3.11 Over the last 10 years, limited partnerships have been used increasingly for property investment. The tax-transparent structure makes it an attractive vehicle for institutional investors, such as pension funds

or insurance companies, which are partially or wholly tax-exempt. It enables them to invest jointly with tax-paying entities, such as property companies, without losing their tax advantages.

3.12 In 1987, the Inland Revenue and the Department of Trade and Industry approved a statement on the use of limited partnerships as venture capital investment funds. Since then, limited partnerships have become the standard structure used by venture capitalists not only for United Kingdom funds but also for European funds. The venture capital industry in the United Kingdom is the largest and most developed in Europe, accounting for almost half of the total European venture capital investment in 1998.

3.13 Limited partnerships have been used in Scotland in agricultural tenancies for many years. Since 1997, Scottish limited partnerships have also been used as vehicles for investment in Lloyd's as their separate legal personality enables them to become names.

3.14 The consultation paper makes proposals to update the law and to remove doubts which have caused concern to users of this business vehicle and to their advisers. There is a strong case for updating the 1907 Act to enable the law in the United Kingdom to continue to compete effectively with foreign jurisdictions some of which have recently overhauled their limited partnership legislation. Comments on all or any of the issues in the consultation paper are sought by 11 January 2002.

3.15 The Commissions aim to develop policy in light of the responses to both the joint consultation papers with a view to reporting on both subjects with draft legislation during 2002.

3.16 We are grateful to the members of our advisory group on partnership law, as detailed in Appendix 2, for their assistance with our work. The group had a successful meeting in September this year to discuss development of our policy. We expect to hold another meeting next year, following the end of the consultation period, to discuss matters arising from the drafting of our report and draft Bill.

### Jurisdictions under the Agricultural Holdings (Scotland) Acts

*Commissioner:* The Hon Lord Gill  
*Project Manager:* Mrs J A Morrison

3.17 In paragraph 3.12 of our *Thirty-Fifth Annual Report* we described the Commission's role in advising the Scottish Executive on their proposals for reform of dispute resolution in the law of agricultural holdings. While other factors have delayed the Executive's timetable for publication of a draft Bill, the Commission continues to play an active role in assisting the Environment and Rural Development Department in this area.

### Third Parties - Rights against Insurers

*Commissioner:* Professor J M Thomson  
*Project Manager:* Mrs G B Swanson

3.18 On 31 July 2001 we published a joint Report on *Third Parties - Rights against Insurers* (Law Com No 262, Scot Law Com No 184). The report recommends the repeal of the Third Parties (Rights against Insurers) Act 1930 and its replacement with new legislation. A draft Bill is published with the report.

3.19 It has long been recognised that the 1930 Act is seriously flawed. A central problem is that the third party has to establish his case in proceedings against the defender before obtaining any rights against the insurer. This can lead to wasteful duplication and delay. The third party is also hampered by the fact that the 1930 Act rarely entitles him to details of the insurance position before he raises proceedings. A number of other problems, arising from developments in insolvency law and insurance practice, have also come to light.

3.20 Four principal recommendations are put forward. The first concerns a new streamlined procedure to avoid wasteful litigation. The third party would be entitled to resolve all issues relating to his claim in a single set of proceedings against the insurer. The second concerns improved rights to information so that third parties would be entitled to information concerning the insurance policy from the outset. The third concerns the omission of legal expenses insurance from the scope of the 1930 Act. This

represents a serious obstacle to the Government's aim that such insurance should play a wider role in the funding of litigation. Under our recommendations, a third party would be able to claim directly against an insurer even if the insurance covers liabilities voluntarily incurred by the insured. Lastly, we consider that it is not right that third parties faced with insureds who become involved in voluntary insolvency arrangements should be obliged to make, and involve other creditors in, expensive and time-consuming applications to the courts. We recommend that a third party with rights against an insurer should not be bound by a voluntary procedure to the extent that he is able to recover from the insurer. We also recommend a number of detailed changes to improve or clarify the working of the 1930 Act scheme.

### Review of the Law of the Foreshore and Seabed

*Commissioner:* Professor J M Thomson  
*Project Manager:* Mrs J A Morrison

3.21 Towards the end of 1999 we received a reference from Scottish Ministers as follows:

"Taking account of the Land Reform Action Plan, to consider the existing law of the foreshore and seabed, and to advise on possible reforms, with a view to improving clarity and consistency."

3.22 We published our Discussion Paper on *Law of the Foreshore and Seabed* (DP No 113) on 19 April 2001. In our discussion paper we analyse the Scottish Executive's proposal to create a statutory right of access over land, including the foreshore. We also examine the legal definition of the foreshore and seabed, the nature of the Crown's interest in and the extent and protection of the public rights exercisable on the foreshore. We also consider a number of other topics relating to the foreshore and seabed including the power to restrict the exercise of the public rights for military purposes or in connection with civil aviation, crofters' rights, udal law and the ownership and control of the foreshore and seabed within harbours. The consultation period ended on 31 July. We received many comments on our proposals and the analysis of the responses is well advanced.

3.23 We are grateful to the members of our advisory group, as detailed in Appendix 2, for their contribution to the project. The group held a meeting in November this year to discuss the development of our policy in the light of consultation responses.

3.24 We are on target to publish our report by the end of 2002.

### *Sharp v Thomson*

*Commissioner:* Professor K G C Reid

*Project Manager:* Mr J M Dods

3.25 On 27 September 2000 we received the following reference from Scottish Ministers:

"To consider the implications of the decision of the House of Lords in *Sharp v Thomson* 1997 SC (HL) 66 and to make recommendations as to possible reform of the law."

3.26 Various types of insolvency or diligence processes may disrupt a sale of land or other property. The seller may be sequestrated. The seller's creditors may prevent the sale by inhibition or attach the land by adjudication. If the seller is a company, the company may go into receivership or liquidation, and a floating charge may attach. Usually the buyer will know if the seller is insolvent and can take appropriate steps. But not always. There can be a delay between the onset of insolvency and its registration in a public register; and there is a further delay before the information on the register appears in a search available to the buyer. This creates a blind period of a number of days during which the seller's status may be unknown to the buyer.

3.27 There are two risks in particular. One is that the buyer pays at a time when the seller is already insolvent. In that case the deed of conveyance may be invalid. The other is that the seller becomes insolvent after payment but before completion of the purchaser's title by registration, with the result that the seller's trustee, receiver or liquidator receives (or may receive) a preferential right. In such cases the buyer can lose both the money and the property.

3.28 In *Sharp v Thomson* the seller of land (a company) went into receivership after

payment and delivery of the conveyance but before registration. Accordingly a floating charge crystallised. The solution adopted by the House of Lords was to say that, once a conveyance is delivered, the seller loses beneficial interest in the land. For the purposes at least of the legislation on floating charges, such land can no longer be regarded as the seller's property. Accordingly, it is not caught by the floating charge, and the buyer takes free of the security.

3.29 This approach has been criticised, as disrupting the established rules of property law without proposing a coherent replacement; as leaving much that is uncertain in an area of critical financial and economic importance; as undermining the doctrine of faith of the registers; as creating practical problems for sales by trustees, receivers and liquidators; and as providing only a partial solution to the problem identified by the case.

3.30 We published our Discussion Paper on *Sharp v Thomson* (DP No 114) on 16 July 2001. In the paper we accept the criticisms of the approach adopted by the House of Lords and propose in its place the introduction of special legislative protection for the buyer.

3.31 We make a number of proposals of a technical nature. There are two broad aims. One is to improve the flow of information about insolvency processes to the various registers. The other is to ensure that an acquirer who registers promptly is unaffected by the insolvency of the seller. The reform is not confined to land but extends to other registered property such as company shares or certain types of intellectual property. And it applies not only to ownership but to rights in security, leases and other rights which are constituted by registration.

3.32 The consultation period ended on 31 October. We received a good response to the paper from consultees, who included the legal profession, academics, public and representative bodies. There was overall support for the proposals although with some reservations about their applicability to intellectual property. We are grateful to all those who took the trouble to comment.

3.33 The next step is to consider the proposals for reform in light of the comments received from consultees with a view to preparing final recommendations and, if necessary, instructing a draft Bill. We shall not be able to move on to that stage until our work on conversion of long leases is complete. At that point it is likely that we shall turn to the project on land registration (see paras 2.12 to 2.17) leaving completion of this project until the discussion paper on the Land Registration (Scotland) Act 1979 has been published.

### Age of Criminal Responsibility

*Commissioner:* Professor G Maher  
*Project Manager:* Dr D I Nichols

3.34 On 31 October 2000 we received a reference from Scottish Ministers:

"To identify the legal issues which are involved in rules fixing an age of criminal responsibility; to consider in the light of contemporary legal doctrines and principles the rule contained in section 41 of the Criminal Procedure (Scotland) Act 1995 that it shall be conclusively presumed that no child under the age of 8 can be guilty of any offence; to identify the legal implications of any change to that rule; and to make any recommendations for reform."

3.35 We published our Discussion Paper on *Age of Criminal Responsibility* (DP No 115) on 31 July this year.

3.36 Our Report on *Age of Criminal Responsibility* (Scot Law Com No 185) was submitted to Scottish Ministers on 30 November 2001. It contains three main recommendations. First, it recommends the abolition of the rule in section 41 of the Criminal Procedure (Scotland) Act 1995 which provides that a child under the age of 8 cannot be guilty of an offence. We believe that the age of criminal responsibility is better seen as the age at which accused persons become liable to the full adult system of prosecution, rather than the age below which they lack capacity to commit crimes. Second, the discretionary power of the Crown to prosecute offenders under the age of 16 in terms of section 42(1) of the 1995 Act should be retained for the rare cases where prosecution is in the public

interest. However, it is recommended that the prosecution of children under the age of 12 should become incompetent, in order to protect such children from being subjected to procedures which they are unable fully to participate in or comprehend.

3.37 The third recommendation relates to children's hearings. In the case of *Merrin v S* (1987 SLT 193) it was decided that a child under the age of 8 could not be referred to a hearing on the ground of having committed an offence, since in terms of section 41 of the 1995 Act such a child cannot be guilty of any offence. The report recommends that this decision be overruled, so enabling child offenders to be dealt with by children's hearings even though they are immune from prosecution in the courts.

### Unfair Contract Terms

*Commissioner:* Professor J M Thomson  
*Project Manager:* Mrs G B Swanson

3.38 In March 2001 we received a reference from Scottish Ministers and the Department of Trade and Industry to undertake this joint project with the Law Commission. The terms of reference are as follows:

"To consider the desirability and feasibility of:

- (1) Replacing the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1999 with a unified regime which would be consistent with Council Directive 93/13 on Unfair Terms in Consumer Contracts;
- (2) Extending the scope of the Unfair Terms in Consumer Contracts Regulations (or the equivalent in any legislation recommended to replace those Regulations in accordance with (1) above) to protect businesses, in particular small enterprises; and
- (3) Making any replacement legislation clearer and more accessible to the reader, so far as is possible without making the law significantly less certain, by using language which is non-technical with simple sentences, by setting out the law in a simple structure following a clear logic and by using presentation which is easy to follow."

3.39 The Commissions have taken the view that a unified regime is both desirable and feasible. We consider that there could be a case for extending the protection currently enjoyed by consumers to small businesses. Moreover, we agree that any replacement legislation should be as accessible as possible.

3.40 The Commissions aim to publish a joint consultation paper during 2002.

### Damages (Scotland) Act 1976 - Title to Sue for Non-Patrimonial Loss

*Commissioner:* Professor J M Thomson  
*Project Manager:* Mrs S Sutherland

3.41 In March 2001 we received the following reference from Scottish Ministers:

"To consider the provisions of the Damages (Scotland) Act 1976 that set out which relatives of a deceased person can claim non-patrimonial damages; and to make recommendations as to possible changes in the law."

3.42 Where a person dies as a consequence of injuries sustained as a result of another person's delictual conduct, the deceased's family may be entitled to claim damages under the Damages (Scotland) Act 1976.

3.43 In order to be able to sue, the pursuer must be a relative of the deceased as defined in Schedule 1 to the 1976 Act. The relative's claim is usually for compensation for loss of financial support (patrimonial loss). Members of a smaller group of relatives - the deceased's "immediate family" - are entitled to claim damages for non-patrimonial loss.

3.44 There has been growing disquiet about the provisions of the 1976 Act in relation to the people who are entitled to claim non-patrimonial damages. Concern has been expressed in particular that the list of relatives does not include brothers and sisters of the deceased. The provisions of the 1976 Act have been criticised in several cases, notably in *Monteith v Cape Insulation* (1999 SLT 116) in which the court suggested that the law needed clarification.

3.45 On 8 October this year we published our Discussion Paper on *Title to Sue for Non-Patrimonial Loss* (DP No 116). The discussion

paper invited comments on possible amendments to the list of relatives in Schedule 1 to the Damages (Scotland) Act 1976, who can claim damages for non-patrimonial loss in respect of the death of a relative.

3.46 The consultation period ended on 30 November. We are now preparing our report in the light of the responses we have received. We intend to submit our report by the end of March 2002.

### Delictual Liability for Psychiatric Injury

*Commissioner:* Professor J M Thomson  
*Project Manager:* Dr D I Nichols

3.47 In July 2001 we received a reference from Scottish Ministers as follows:

"To examine the law of Scotland relating to psychiatric injury caused by another person and to make recommendations as to possible changes in the law."

3.48 We have not been asked to deal with this project as a matter of urgency. However, we have started to look at the existing law in Scotland and some other jurisdictions. We have also set up an advisory group, as detailed in Appendix 2. The group held its first meeting at the end of October.

3.49 We intend to publish a discussion paper by early summer 2002 and submit a report in the first half of 2003.

### Defences of Insanity and Diminished Responsibility

*Commissioner:* Professor G Maher  
*Project Manager:* Mrs S Sutherland

3.50 In October 2001 we received the following reference from Scottish Ministers:

"(1) To consider -

(a) the tests to establish insanity (either as a defence or as a plea in bar of trial) and the plea of diminished responsibility; and

(b) issues of the law of evidence and procedure involved in raising and establishing insanity and diminished responsibility;

(2) to make recommendations for reform, if so advised; and

(3) consequent upon any such recommendations for reform, to consider what changes, if any, should be made to the powers of the courts to deal with persons in respect of whom insanity (either as a defence or a plea in bar of trial) or diminished responsibility has been established."

3.51 We started work on this project in December with a view to holding a seminar in the spring of 2002. The aim of the seminar will be to assist the team in identifying the specific issues involved in reform of this area. At present our proposal is that the seminar should discuss the following

- Weaknesses in existing Scots law of insanity and diminished responsibility;
- Recent changes in the law of insanity in other jurisdictions; and
- Appropriate methods of reform of the law on these issues.

3.52 We intend to publish a discussion paper by the end of 2002 and submit our report by the end of 2003.

### Electronic Commerce

*Commissioner:* Mr P S Hodge QC

3.53 A review of certain aspects of domestic and international law with a view to facilitating electronic commerce was included in the Law Commission's *Seventh Programme of Law Reform* (Law Com No 259), published in 1999. The project has been focusing on statutory form requirements, the international sale and carriage of goods and the associated banking and insurance transactions. We have been assisting the Law Commission in relation to Scottish aspects of this project. The Law Commission's advice to government was published on 19 December.

# Consolidation and Statute Law Revision

## Introduction

4.1 Consolidation and statute law revision are important elements in the process of law reform. Under the Law Commissions Act 1965 one of our functions is to prepare programmes of consolidation and statute law revision. To date we have prepared four such programmes,<sup>1</sup> work on which has already been completed.

4.2 In our *Thirty-Fifth Annual Report* (Scot Law Com No 182) we referred to the fact that it was not possible for us to undertake work on consolidation of legislation without support from the appropriate department of the Scottish Executive. We reported that departments did not appear to have the resources to support a new programme of consolidation. That has remained the position this year. It is for this reason that we report with some regret that we have not published a new formal programme of work on consolidation. However, we continue to believe that a programme of work would be useful and we shall continue to pursue this matter with the Executive.

4.3 Although at present we have no formal programme of work on consolidation and statute law revision, we have nevertheless continued work on these areas throughout the year.

## Consolidation

*Commissioner:* The Hon Lord Gill  
*Project Manager:* Mrs S Sutherland

### Consolidation of the legislation relating to Wireless Telegraphy

4.4 We have been working with the Law Commission on a joint project to consolidate the legislation relating to wireless telegraphy. In the Queen's Speech in June this year, it was announced that a draft Bill would be published to create a single regulator for the media and communications industries and to reform the broadcasting and telecommunications

regulations. The legislation being consolidated is likely to be affected by this Bill. We and the Law Commission have therefore temporarily suspended work on the consolidation.

### Consolidation of the legislation relating to Salmon and Freshwater Fisheries

4.5 We have been working for some time on the consolidation of the legislation relating to salmon and freshwater fisheries in Scotland. The legislation is complex and much of it dates back to Victorian times. Our report will contain recommendations that are intended to remedy some anomalies and tidy up some matters in the various Acts. The aim is to produce a coherent body of legislation, which will assist those using it in the short to medium-term and enable the Scottish Ministers to make any future amendments from a more satisfactory legislative base.

4.6 On 30 April we issued a consultation paper on our draft recommendations for the consolidation. The consultation period ended on 29 June. There was considerable support from consultees for the consolidation.

4.7 We have amended the draft recommendations and Bill to take account of the comments made by consultees and further work by the team.

4.8 We are grateful to the draftsman, Mr Patrick Layden, the Legal Secretary to the Lord Advocate, for his work on preparation of the Bill and for his contribution to the project. We are also grateful to our consultant Mr Robert Williamson, who has given a great deal of his time to assist us with our work.

<sup>1</sup> (1966) Scot Law Com No 2; (1973) Scot Law Com No 27; (1978) Scot Law Com No 46; and (1982) Scot Law Com No 71.

4.9 We intended to complete the project this year. However, some of the provisions of our draft Bill relate to matters falling within the scope of the Technical Standards Directive (98/34/EC).<sup>2</sup> In terms of the Directive such provisions require to be notified to the European Commission where they would not constitute pure consolidation. Accordingly the draft Bill was sent to the Commission at the beginning of October.

4.10 Once we have a response from the Commission we will complete work on our report and Bill. We expect to be able to complete the project during the course of 2002.

### Statute Law Revision

*Commissioner:* The Hon Lord Gill  
*Project Manager:* Mrs S Sutherland

4.11 The purpose of statute law revision is to repeal statutes that are obsolete or which no longer serve any useful purpose, in order to remove them from the statute book. This process of tidying-up the statute book makes it easier for lawyers and others to use it.

4.12 Since devolution our work on statute law revision has been divided into two parts. First, we are working on proposed repeals of legislation relating to matters that are within the devolved competence of the Scottish Parliament. These repeals will be included in a Statute Law (Repeals) (Scotland) Bill which will accompany our First Report to Scottish Ministers on Statute Law Revision.

4.13 In our last annual report we mentioned that we had started work on a review of all the Scottish local legislation relating to water supplies. We are in the process of sending out our repeal proposals to the relevant bodies inviting them to submit comments.

4.14 Secondly, we continue to work with the Law Commission on the proposed repeal of legislation relating to matters reserved to the Westminster Parliament in terms of Schedule 5 to the Scotland Act 1998. These repeals will be included in the next Statute Law (Repeals) Bill which will accompany the Commissions'

Seventeenth Report on Statute Law Revision. The report is due to be completed in 2003.

4.15 In March our project manager had a useful meeting with the Law Commission team to discuss the project and plan future work.

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<sup>2</sup> Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations.

# Promoting Law Reform

## Introduction

5.1 Throughout the year we have continued our links with other law reform agencies and those interested in law reform.

5.2 In the following paragraphs we give details of some of our activities during 2001.

## Consultation

5.3 One of the key ways in which we promote an awareness of our work is through consultation. In relation to our law reform projects we distribute copies of our discussion papers as widely as possible. From this year all new discussion papers may be purchased from The Stationery Office. They are also all available on our website immediately on publication.

5.4 Once again we express our gratitude to those in the legal profession and others who find time to comment on our proposals. Their contribution to our work is vital if our recommendations for reform are to be both workable and acceptable to the public at large.

5.5 Our consultation process is also enhanced by our participation in seminars that either relate specifically to one of our projects or enable us to publicise aspects of our work. A number of such opportunities have arisen over the past year, details of which are given later in this Part.

## International links

5.6 This year we have continued to contribute to debate on law reform at an international level.

5.7 On 4 and 5 May Professor Maher attended the International Pallas Conference in Nijmegen, the Netherlands.

5.8 From 5 to 9 May the Chairman, the Hon Lord Gill, attended the Fourth Worldwide Common Law Judiciary Conference in Vancouver, Canada. The conference was co-sponsored by the Judiciary Leadership

Development Council and the Judiciary of British Columbia, Canada.

5.9 From 9 to 11 May the Chairman attended the Act of Settlement Conference "The 1701 Conference" in Vancouver, Canada.

5.10 On 15 June Professor Reid attended a conference at the University of Utrecht in the Netherlands, and presented a paper on "Real Rights and Real Obligations".

5.11 From 10 to 13 July the Chairman was part of a legal delegation to China led by the Justice Minister, Jim Wallace, QC, MSP. The visit was part of the "British Law Month" organised by the British Council and was aimed at fostering links between the Chinese and United Kingdom legal communities. This followed a visit to Scotland in February this year by the Chinese Vice-Minister of Justice and Ministry of Justice officials.

5.12 From 15 to 18 October the Chairman attended a Judges and Prosecutors Seminar entitled "Chinese - European Comparative Legal Systems" held in Beijing and organised under the auspices of the EU-China Legal and Judicial Co-operation Programme. Lord Gill presented a paper on "Legal Ethics and the Judicial Influence in Law Reform in Europe - The Scottish Dimension".

5.13 On 22 November Mr Hodge met Dr Say and Mr Yang, both members of the Cambodian Constitutional Council, to discuss the role of the Commission and the impact of devolution on law and law reform.

## Links with government departments and agencies and the Scottish Administration

5.14 During the year Commissioners and members of staff had meetings with officials of the Scottish Executive Justice Department, Environment and Rural Affairs Department, the Housing Division of the Development Department and the Office of the Solicitor to the Scottish Executive.

5.15 On 16 January Professor Maher visited officials of the Irish Department of Justice, Equality and Law Reform in Dublin. They discussed matters relating to a Bill before the Irish Parliament on the topic of age of criminal responsibility.

5.16 On 11 April the Chairman gave a talk on the work of the Commission to staff of the Office of the Solicitor to the Scottish Executive.

5.17 On 3 May Andrew Mylne, Elizabeth Watson, David McGill, and Alison Taylor, members of staff of the Scottish Parliament, visited us and gave presentations to the legal staff on the work of the Parliament, including the legislative process and operation of parliamentary committees.

#### *Links with law reform agencies*

5.18 This year we have continued to maintain our close links with law reform bodies in the United Kingdom, the Commonwealth and the United States through the exchange of copies of our publications. We have also been pleased to welcome visitors from other law reform agencies.

5.19 We have particularly close contact with the Law Commission and enjoy good working relations with them. Commissioners and staff have had a number of meetings with their counterparts in London to discuss joint projects and other matters of mutual interest.

#### *Law reform agencies in the United Kingdom*

5.20 On 19 January Mr Michael Foster, Secretary to the Northern Ireland Law Reform Advisory Committee and Ms Claire Archbold from the Northern Ireland Office of Law Reform visited the Commission and met the Secretary.

5.21 On 4 May the Chairman of the Northern Ireland Law Reform Advisory Committee, Mr Justice Girvan, visited us and met Professor Reid, Professor Thomson and the Secretary to discuss working practices, our current programme of work and our relationship with the Scottish Parliament.

5.22 On 4 October the Chairman took part in a seminar held by the Law Commission at the Institute of Advanced Legal Studies, London,

entitled "Towards a Land Compensation Code: Disregarding 'the Scheme'".

#### *Law reform agencies elsewhere*

5.23 On 17 January Professor Maher had a meeting in Dublin with the President and members of the Law Reform Commission of Ireland. They discussed issues relating to law reform generally and topics of interest to both Commissions.

5.24 On 26 April Professor David Gwynn Morgan, Director of Research at the Law Reform Commission of Ireland visited us and met Professor Maher, Professor Reid and Professor Thomson.

5.25 On 16 November, Judge Declan Budd, President, Judge Moriarty, Commissioner, and Ms Dara Dowling, Researcher, of the Law Reform Commission of Ireland visited us. They met the Secretary, Professor Maher, Professor Reid, Dr David Nichols and Mrs Gillian Swanson.

#### *Links with legal and other societies and organisations*

5.26 We have continued to develop our links with legal and other professional societies and organisations in Scotland. We welcome the opportunity to meet representatives of these bodies and discuss our current work with them.

5.27 On 21 February Professor Maher and Miss Stewart, one of our legal assistants, attended a seminar organised by the Legal Services Agency in Glasgow on "Debt Law – The Future".

5.28 On 21 March Professor Reid presented a lecture on the abolition of the feudal system at the Law Society of Scotland.

5.29 On 30 May the Chairman presented a paper at a conference on "The Rights of Third Parties under Contract – an International Comparison". The conference was organised by the Franco-British Lawyers Society and was held at University College, London.

5.30 On 6 September Dr David Nichols gave a talk to the Society of Trust and Estate Practitioners on our project on trusts. The talk

resulted in some useful feedback and subsequently the Law Society of Scotland suggested some areas that should be examined with a view to reform.

5.31 On 10 October the Chairman spoke at the Dinner of the Deacon Convenor of the Trades House of Glasgow.

5.32 On 13 November the Chairman addressed the Scottish Agricultural Arbiters' Association Annual General Meeting on the subject of agricultural arbitration in the 21st century.

5.33 On 16 and 17 November Professor Thomson attended a Law Society of Scotland Family Law Association Seminar at St Andrews. He took part in a debate on non-patrimonial loss.

5.34 On 22 November Professor Thomson addressed the Royal Faculty of Procurators in Glasgow on the subject of the Commission's current work.

5.35 On 23 November Mr Hodge gave a talk on "Commercial Law Reform", including the reform of company law and partnership law, to the In-House Lawyers Group of the Law Society of Scotland at a conference organised by the Faculty of Advocates.

5.36 On 6 December Mr Hodge attended a conference on "Partnership Law in the 21st Century" in Manchester organised by the Manchester Law Society in association with the Manchester Chamber of Commerce and Industry. He gave a talk on "Partnership Law Reform".

### Links with Universities

5.37 Throughout the year we have maintained our close links with university law faculties, particularly those in Scotland. We are grateful for the opportunity to participate in conferences and seminars sponsored by the universities and to foster discussion on law reform topics.

5.38 On 9 and 10 April Professor Maher attended the Scottish Law Faculties Conference at Pitlochry.

5.39 On 30 April Professor Maher attended a conference on Reforming Scotland's Legal System at Edinburgh University.

5.40 As in previous years, we have supported the British Council European Young Lawyers Programme, organised by the University of Edinburgh. We were pleased that one of this year's participants Ms Sanna-Mari Karjalainen, a lawyer from Finland, joined us for a short placement.

5.41 On 1 May all the participants in the programme visited the Commission and Professor Thomson, the Secretary and Mrs Susan Sutherland gave short presentations on the structure of the Commission and our current work.

5.42 On 23 July Professor Maher attended a seminar at the University of Edinburgh on Reforming the UK's Top Courts.

5.43 On 12 September Professor Reid attended the annual conference of the Society of Public Teachers of Law<sup>1</sup> and gave a lecture on property law.

5.44 Professor Thomson was President of the Society of Public Teachers of Law from 1 October 2000 until 30 September 2001.

5.45 On 23 October Professor Reid spoke on the Commission's proposals on *Sharp v Thomson* as the inaugural lecture of the Centre for Property Law at the University of Aberdeen.

5.46 On 24 October Professor Thomson attended a seminar at the University of Strathclyde and presented a paper on "Delictual Liability for Psychiatric Injury". He presented the paper at another seminar on 23 November at the Robert Gordon University.

5.47 On 27 November Professor Maher attended the Private Law Forum Seminar, at the University of Edinburgh and presented a paper on "Taking Diligence Seriously - Reflections on an Uncertain Category of Scots Law".

5.48 On 30 November Professor Thomson attended the Society of Public Teachers of Law

<sup>1</sup> Since December this year, called the Society of Legal Scholars of the United Kingdom and Ireland.

Symposium on Trusts, at King's College, London.

### Visits to the Commission

5.49 In addition to the visits that we received from representatives of other law reform agencies, we have been pleased to welcome a number of distinguished visitors to the Commission this year.

5.50 On 13 February Mr Jim Gallagher, Secretary of the Scottish Executive Justice Department, visited the Commission.

5.51 On 23 February a delegation from the Chinese Ministry of Justice visited us and met the Chairman, Professor Maher, Professor Reid and the Secretary. The delegation was led by Mme Hu Zejun, Director-General, Department of Personnel Administration, the Ministry of Justice (now, the Vice Justice Minister). The other visitors included Mr Li Xueting, Director-General, Justice Department of Chongqing, Mr Wang Xingrang, Chief of No 2 Division, Department of Supervision, Ministry of Justice, Ms Feng Rui, Senior Research Fellow of the Law Institute of the Chinese Academy of Social Sciences, Mr Kang Yu, Director, Division of Bilateral Exchange, Department of Judicial Assistance and Foreign Affairs, Ministry of Justice, and Ms Yang Ke, Senior Judge and Deputy Head of No 2 Criminal Tribunal of Beijing High People's Court. The visit was organised by the British Council.

5.52 On 1 March Mr Luis Angel Vasquez, the Minister of Justice and Human Rights, La Paz, Bolivia visited the Commission. He met the Chairman, Mr Hodge, Professor Maher, Professor Reid and the Secretary.

5.53 On 4 April Mr Richard Cornes, of the Department of Law, Essex University came to the Commission and met the Chairman and Professor Maher. They discussed an Economic and Social Research Council funded research project on the implications of constitutional reform for the Appellate Committee of the House of Lords and the Judicial Committee of the Privy Council.

### Presentations and talks by Commissioners and staff

5.54 On 14 March the Chairman gave the James Wood lecture at Glasgow University on "Law Reform in the Twenty-First Century: - Why? How? What?"

5.55 On 18 May Professor Reid addressed the AGM of the Sheltered Housing and Retirement Owners' Confederation on the effect of the Title Conditions (Scotland) Bill on sheltered housing.

5.56 On 4 June Mr Hodge, Mrs Gillian Swanson and two of our legal assistants, attended a conference at the Senate House, University of London, on "Partnership Law for the New Millennium". The conference was organised by the Centre for Corporate Law and Practice of the Institute of Advanced Legal Studies under the joint auspices of the Law Commission and the Scottish Law Commission. Mr Hodge presented a paper entitled "A Scottish Perspective on the Proposed Reforms".

5.57 On 13 June Professor Reid gave a presentation on the Title Conditions (Scotland) Bill at a seminar in Edinburgh organised by INNIS, a retirement housing advice service provided by Age Concern and funded by the Scottish Executive.

5.58 On 23 August Professor Reid gave a presentation to a sub-group of the Housing Improvement Task Force whose remit is common or shared obligations in respect of tenement property. The presentation was on the Commission's recommendations for reform of the law of the tenement.

5.59 On 29 August Mr Hodge attended the 3rd Annual Company Law Conference organised by Central Law Training, in Edinburgh. He spoke on the reform of partnership law in the context of company law reforms.

5.60 On 13 September the Chairman attended the 21st Anniversary Party of the Planning Exchange's Journal - *Scottish Planning and Environment Law*. He gave a short address on his vision of the Scottish planning system over the next 21 years.

5.61 On 19 September Professor Thomson gave a talk at the Contract Law Conference in Edinburgh, organised by Central Law Training.

5.62 On 6 October Dr David Nichols gave a talk to the Society of Messengers-at-Arms and Sheriff Officers on the Commission's Report on *Diligence* (Scot Law Com No 183).

5.63 On 19 October Professor Maher attended a consultation meeting in Edinburgh on Children in Scotland. He gave a paper on "Age of Criminal Responsibility".

#### Articles on our law reform projects

5.64 From time to time we submit short articles for inclusion in the Journal of the Law Society of Scotland on some of our law reform projects. Such articles publicise our work and encourage practitioners to submit comments on our proposals for reform.

5.65 We are also asked occasionally to contribute articles to other legal journals on aspects of our work. This year the Chairman wrote an article for The Scottish Parliament Law Review on "The Scottish Law Commission - its contribution since devolution".

# The Commission – its structure and management

## The Commission

6.1 Appendix 3 gives details of Commissioners and staff as at 31 December 2001.

## Chairman

6.2 In November the Chairman, Lord Gill, tendered his resignation in light of his impending installation as Lord Justice Clerk at the end of that month. His resignation will take effect on appointment of his successor. This marks the end of a distinguished term of office which began on 1 October 1996. We wish Lord Gill well in his new appointment.

## Parliamentary Counsel

6.3 The Office of the Scottish Parliamentary Counsel continues to be responsible for providing drafting services for our Bills. Mr John Harkness who is on loan to the UK Government from the Office of the Scottish Parliamentary Counsel continues to be responsible for drafting our Bills relating to matters reserved to the Westminster Parliament.

6.4 However, the problem of drafting resources has continued to trouble us. We have referred to it in our last two annual reports.<sup>1</sup> The needs of the Executive's own legislative programme must come first; but this has meant increasingly that the Office of the Scottish Parliamentary Counsel has little capacity to devote to preparation of our Bills. This can in turn delay completion of our projects. Until a more lasting solution is found, and in so far as our resources allow, we have adopted the expedient of commissioning consultants ad hoc to draft some of our Bills. This arrangement has worked well so far. We are indebted to Professor Eric Clive, one of our former Commissioners and currently on the drafting panel for the Scottish Parliament's Non-Executive Bills Unit, who has drafted the Bill for our Age of Criminal Responsibility project. Another member of the panel, Miss

Lorna Drummond, Advocate, has been engaged to draft the Bill for our project on the Damages (Scotland) Act 1976.

## Legal support to Commissioners

### *Government legal service staff*

6.5 Our complement of core legal staff, including our Secretary, remains at six. All of these posts are filled by lawyers who are on loan from the Office of the Solicitor to the Scottish Executive. One of the core posts is currently filled on a part-time basis. An extra member of legal staff has recently joined us on loan from the Office of the Solicitor to the Scottish Executive to provide some additional resources.

### *Legal assistants*

6.6 At present we have six legal assistants, three who joined us as law graduates, two who joined us after completing a Masters degree and one who joined us after completing her diploma in legal practice. They all make a considerable contribution to the work of the law reform project teams.

### *Trainee solicitors*

6.7 Over the course of this year we have had three trainees. They come to us for six month periods as part of their training under our arrangement with the Office of the Solicitor to the Scottish Executive. We try to give our trainees a varied experience of the Commission's work. They are assigned to one or more of the law reform project teams and also spend some time working on statute law revision. Our trainees also have an opportunity to participate in the teams reviewing some of our office procedures.

### *Temporary research assistant*

6.8 This year we employed one recent law graduate as a temporary research assistant during the summer.

<sup>1</sup> Scot Law Com No 179 and Scot Law Com No 182.

### Administrative staff

6.9 We have a total of ten members of staff who provide general administrative, IT, secretarial and library services.

6.10 We are grateful to all our legal and administrative staff, including those who have moved to new posts during the year, for their assistance and contribution to our work.

### Scholarship scheme for law graduates

6.11 The position on this remains as it was reported in our last annual report.<sup>2</sup> We shall return to this as and when funds become available.

### Consultancies

6.12 We continue to enlist the assistance of experts as consultants in our work.

6.13 This year we were fortunate to have assistance from officials of the Crown Office and the Scottish Children's Reporter Administration, in connection with preparation of our Discussion Paper on *Age of Criminal Responsibility*.

6.14 We have also had considerable assistance this year from Mr Robert Williamson, a retired Inspector of Salmon and Freshwater Fisheries, in connection with our work on the consolidation of the salmon and freshwater fisheries legislation.

6.15 We are grateful to Mrs Elizabeth Purves who developed a computer database for our files. We have also commissioned Mrs Purves to design a database for all our publications.

### Advisory groups

6.16 We have been assisted in our work this year by a number of advisory groups, and a panel of practitioners as detailed in Appendix 2. This year we have established two new advisory groups - on the Conversion of Long Leases and on Damages for Psychiatric Injury and the third for our expected reference on Registration of Company Charges. This achieves the management objective we set in Appendix 2 of our last annual report. We are grateful to the members of these groups for

giving up their time to assist us with our projects. The practical experience and expert knowledge of the members of the groups are invaluable to us.

6.17 We wish to pay tribute to the late Mr Campbell White, Solicitor, who died in October this year. Mr White gave us valuable advice in past years on our work on property law. During this year his contribution to the work of the advisory group on partnership law was outstanding and we and the rest of the group will miss his help and support.

### Library

6.18 Our library is a vital asset which continues to develop and take advantage of new technology. To safeguard the library and its book stock, we have recently installed a sophisticated fire suppressant and alarm system. Fortunately this has not yet had to be used. In addition to our comprehensive collection of printed materials we make extensive use of electronic sources of information to underpin our research work. For example, we have access to the Westlaw database as well as other CD-ROM databases of legal information, and we monitor the Internet for sources to include in our extensive in-house database of law-related websites.

6.19 This year our Librarian, Mr Nick Brotchie, has continued to maintain close links with other law libraries, in particular those of the Scottish Executive, Faculty of Advocates, the Signet Library, the University of Edinburgh and the Law Commission in London. We welcome reciprocal arrangements with these and other libraries.

### Information technology

6.20 We continue to make good use of our local area network and have increased the number of PCs available to staff. This has greatly enhanced communication within the office. The system has been relatively trouble free and our increasing in-house expertise has meant that we are becoming less reliant on the IT support services provided by Servo (formerly known as On-site Support Services). The system has been used to good effect to redevelop our intranet facilities.

<sup>2</sup> Scot Law Com No 182, para 6.16.

6.21 Access to the Internet continues to enhance our research base and is a major source of information in all aspects of the Commission's work.

### Website

6.22 Now in its second year of operation, our website<sup>3</sup> continues to develop and to attract interest worldwide. With the addition of the full text of the publications which we issued in 2001, as well as the inclusion of some older (pre-website) reports, the site is quickly becoming a valuable source of information about our work. We also now use the website to advertise employment opportunities for legal assistants arising at the Commission. We intend to introduce further new features to the site, including making it searchable as well as fully accessible. We intend also to add to the website a paper that has been prepared internally analysing how our publications have been used by the courts. We welcome comments on the site and will give careful consideration to any suggestions for its improvement.

### Intranet

6.23 We are pleased to have achieved the management objective we set ourselves for this year, to develop and improve intranet facilities. Using Microsoft FrontPage software, our in-house IT Team designed and launched (at the beginning of November) a fully operational intranet which greatly improves access to shared electronic documents and other resources on our local IT network. The intranet is an important asset for the day-to-day work of the Commission and we recognise that it will require careful management and further development if its potential benefits to all staff are to be properly realised. Appropriate in-house editorial arrangements for this purpose are in place.

### Other management and organisational issues

6.24 In our last annual report we reported on the work of various office review teams that were established to look at aspects of the management and organisation of the Commission. Their work has resulted in a number of developments over the course of the year.

6.25 We now have a comprehensive induction pack for all new Commissioners and staff providing details about the Commission, its work and office procedures. A new appraisal system for our legal assistants has also been introduced.

6.26 In April this year we launched the first of our monthly in-house information bulletins. These are intended to update staff on developments with our projects and on management matters.

6.27 In November our file database came into operation. At present the database contains details of our administrative files but we intend to expand it next year to include our legal files. Among its features the database allows staff to search for details of files and request files electronically.

6.28 We are also making progress with the preparation of a database of Commission publications which will help us to manage more effectively the distribution of our discussion papers and reports.

6.29 One of our management objectives for this year was to implement a scheme for the recycling of waste paper. The scheme was introduced in February and has since been extended to cover other items of recoverable office waste. We hope to do more to improve our performance in this area over the coming year.

6.30 In December we completed our training and development strategy. This was later than we had intended but work on this had to be delayed so that we could take account of the new Scottish Executive performance management and development appraisal system introduced in the course of 2001.

### Equal opportunities

6.31 With effect from 3 December 2001, the Commission became subject to a new statutory duty<sup>4</sup> to have due regard when exercising its functions to the need

<sup>3</sup> [www.scotlawcom.gov.uk](http://www.scotlawcom.gov.uk)

<sup>4</sup> Introduced by the Race Relations (Amendment) Act 2000.

- To eliminate unlawful racial discrimination; and
- To promote equality of opportunity and good relations between persons of different racial groups.

6.32 This new duty is imposed on a wide range of public authorities.<sup>5</sup> Its aim is to make these issues an integral part of the way public functions are carried out. We endorse this aim and are considering what further steps we can take in support of it. More generally, in all aspects of our work we are committed to ensuring that equality and diversity issues are taken fully into account. This has an impact not only on personnel matters at the Commission but also on the substance of our law reform work and on our consultation process.

### Co-ordination and finance

6.33 The Scottish Executive Access to Justice and International Group continues to be responsible for our funding and for the co-ordination of our work with that of the Scottish Executive. We are grateful to Mr David Stewart, Head of the Justice Department's Judicial Appointments and Finance Division and to Mr Peter Beaton, Head of the Civil Justice and International Division, and to their staff for advice and support on these matters during the year.

6.34 In Appendix 4 we give details of our running costs for this year. We also include details of the running costs to 31 March 2000 and 31 December 2000, which were detailed in our last annual report. As noted earlier, this is our second annual report covering a calendar year. We think that it is more helpful to provide details of our running costs on an annual basis to correspond with the period covered by the annual report and to include details of the two previous years for comparison.

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<sup>5</sup> See Schedule 1A to the Race Relations Act 1976, as inserted by the 2000 Act, and SI 2001/3457.

# Appendix 1

## Objectives for 2002

### Law Reform Objectives

| Objective  | References   | Notes                  |
|--|--|------------------------|
| To report with the Law Commission on Partnership and Limited Partnership, during 2002                            | Reference from the Department of Trade and Industry                        | See paras 3.7 to 3.16  |
| To publish a report on the Law of the Foreshore and Seabed, by the end of December 2002                          | Reference from Scottish Ministers  | See paras 3.21 to 3.24 |
| To publish a joint consultation paper with the Law Commission on Unfair Contract Terms, during 2002              | Reference from Scottish Ministers and the Department of Trade and Industry | See paras 3.38 to 3.40 |
| To submit a report on Title to Sue for Non-Patrimonial Loss, by the end of March 2002                            | Reference from Scottish Ministers  | See paras 3.41 to 3.46 |
| To publish a discussion paper on Delictual Liability for Psychiatric Injury, by early summer 2002                | Reference from Scottish Ministers  | See paras 3.47 to 3.49 |
| To publish a discussion paper on Defences of Insanity and Diminished Responsibility, by the end of December 2002 | Reference from Scottish Ministers  | See paras 3.50 to 3.52 |

## Management Objectives

| Key Area                                    | Objective  | Notes                                     |
|---|--|---|
| Project planning                            | To submit our <i>Thirty-Sixth Annual Report</i> by the end of March 2002   |   |
| Use of advisory groups                      | To establish advisory groups as necessary for projects under our <i>Sixth Programme of Law Reform</i> or in relation to references received  | See paras 6.16 and 6.17                   |
| Website                                     | <p>(i) To ensure, so far as within the Commission's control, that the website is updated (a) in relation to new publications, on the date of publication; and (b) in relation to other information, within two weeks of any relevant changes.</p> <p>(ii) To extend the website's interactive facilities and to make it fully accessible by the end of 2002.</p> | See para 6.22                             |
| Internal organisation and office procedures | <p>(i) To prepare and implement an environmental efficiency plan by the end of June 2002.</p> <p>(ii) To re-organise the legal files and add details of them to our file database by the end of December 2002.</p> <p>(iii) To complete work on our publications database by the end of December 2002.</p>   | <p>See para 6.27</p> <p>See para 6.28</p> |

## Appendix 2

# Advisory groups

### Projects under our Sixth Programme of Law Reform (Scot Law Com No 176)

#### Item No 1: Obligations: Advisory Group on Irritancies

|                                   |                         |
|-----------------------------------|-------------------------|
| Mr Stephen Giusti                 | Solicitor, Glasgow      |
| Mr Peter McCormack                | Advocate, Edinburgh     |
| Mr Philip Rodney                  | Solicitor, Glasgow      |
| Mr David Smith                    | Solicitor, Edinburgh    |
| Mrs Judith A Morrison (Secretary) | Scottish Law Commission |

#### Panel of Practitioners on Irritancies

|                                   |  |
|-----------------------------------|--|
| Mr Gordon Arthur                  | Head of Commercial Faculty, Royal Institution of Chartered Surveyors in Scotland |
| Mr David Bankier                  | Solicitor, Glasgow   |
| Mr Paul Haniford                  | Solicitor, Glasgow   |
| Mr Hamish Hodge                   | Solicitor, Edinburgh   |
| Mr Iain Macniven                  | Solicitor, Glasgow   |
| Ms Lynne Raeside                  | Head of Policy Unit, Royal Institution of Chartered Surveyors in Scotland        |
| Mr Sandy Reid                     | Solicitor, Edinburgh   |
| Mr Mark Taylor                    | Head of Valuation Faculty, Royal Institution of Chartered Surveyors in Scotland  |
| Mr Ian Wattie                     | Solicitor, Edinburgh   |
| Mrs Judith A Morrison (Secretary) | Scottish Law Commission  |

#### Item 4: Advisory Group on Conversion of Long Leases

|                            |                         |
|----------------------------|-------------------------|
| Mr Stewart Brymer          | Solicitor, Dundee       |
| Mr Angus McAllister        | University of Paisley   |
| Mr Somerled Notley         | Solicitor, Edinburgh    |
| Professor Robert Rennie    | University of Glasgow   |
| Mr John M Dods (Secretary) | Scottish Law Commission |

## Advisory Work

### Advisory Group on Partnership Law

|                                   |                                 |
|-----------------------------------|---------------------------------|
| Mr R Craig Connal                 | Solicitor, Glasgow              |
| Professor George L Gretton        | University of Edinburgh         |
| Mr David Guild                    | Faculty of Advocates            |
| Sheriff William H Holligan        | Sheriff, Glasgow                |
| Mr David B Sinton                 | Chartered Accountant, Edinburgh |
| Mr Ian M Stubbs                   | Solicitor, Glasgow              |
| Mr Campbell White <sup>1</sup>    | Solicitor, Glasgow              |
| Mr David S Williamson             | Solicitor, Edinburgh            |
| Mrs Gillian B Swanson (Secretary) | Scottish Law Commission         |

### Advisory Group on Law of the Foreshore and Seabed

|                                   |                         |
|-----------------------------------|-------------------------|
| Mr Ian Abercrombie QC             | Advocate, Edinburgh     |
| Sheriff Vincent Canavan           | Sheriff, Greenock       |
| Mr Martin Corbett                 | Registers of Scotland   |
| Professor Alan Page               | University of Dundee    |
| Professor Robert Rennie           | University of Glasgow   |
| Mrs Judith A Morrison (Secretary) | Scottish Law Commission |

### Advisory Group on Damages for Psychiatric Injury

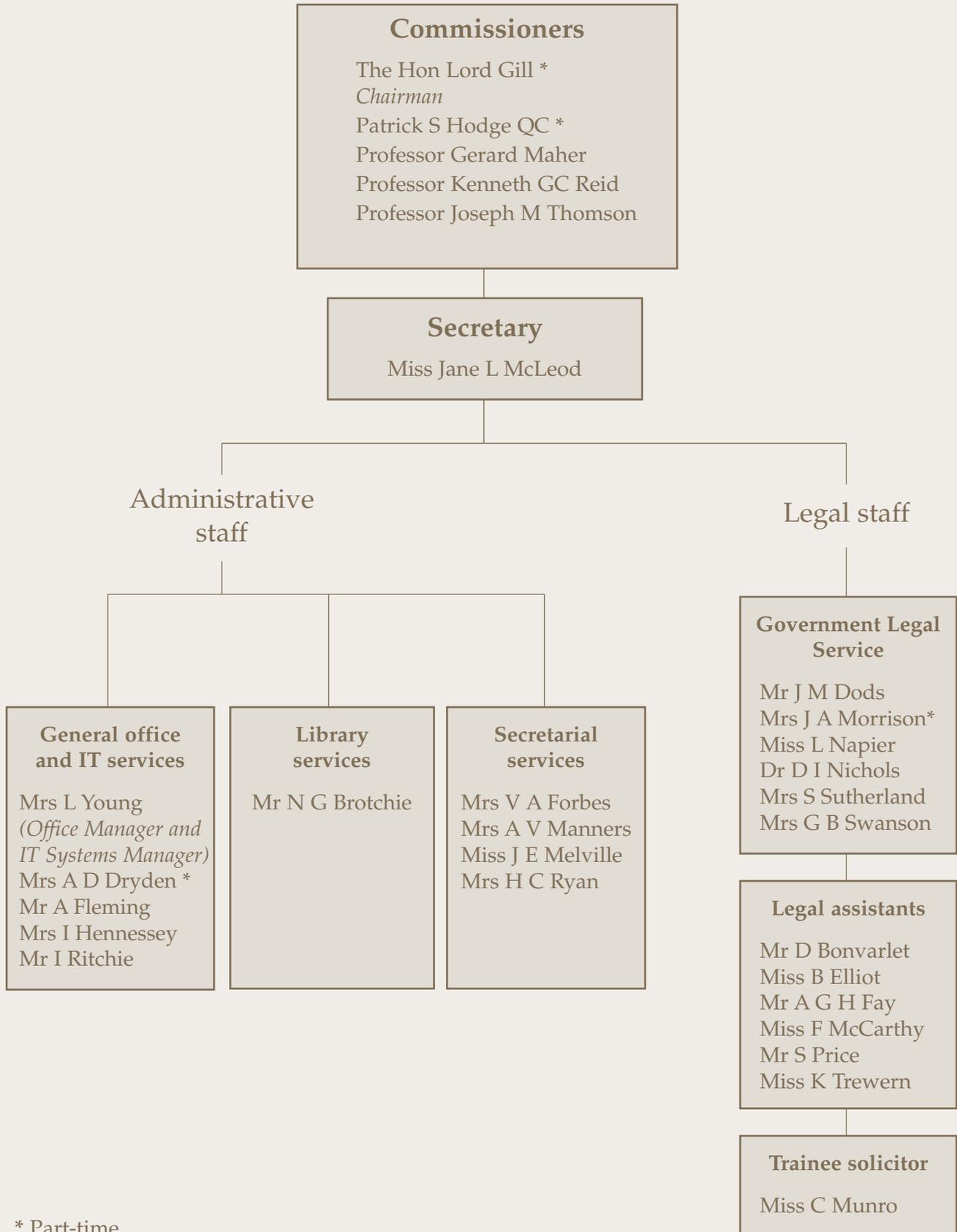
|                                |  |
|--------------------------------|--|
| Dr Pamela Abernethy            | Solicitor, Edinburgh                   |
| Dr Douglas Brodie              | University of Edinburgh                |
| Dr Chris Freeman               | Psychiatrist, Royal Edinburgh Hospital |
| Mr D Ian Mackay QC             | Advocate, Edinburgh                    |
| Miss Ishbel McLaren            | Solicitor, Edinburgh                   |
| Mr Peter G Milligan            | Advocate, Edinburgh                    |
| Professor Barry Rodger         | University of Strathclyde              |
| Dr David I Nichols (Secretary) | Scottish Law Commission                |

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<sup>1</sup> See para 6.18.

# Scottish Law Commission

Commissioners and Staff  
As at 31 December 2001



\* Part-time

# Running costs

|   | Year to<br>31 December<br>2001 |               | Year to<br>31 December<br>2000 |               | Year to<br>31 March<br>2000 |               |
|---|--------------------------------|---------------|--------------------------------|---------------|-----------------------------|---------------|
|   | £000                           | £000          | £000                           | £000          | £000                        | £000          |
| Salaries, etc of Commissioners <sup>1</sup>   | 518.5                          |               | 490.4                          |               | 380.3                       |               |
| Salaries, etc of legal staff <sup>2</sup>     | 449.1                          |               | 389.6                          |               | 319.9                       |               |
| Salaries of administrative staff <sup>3</sup> | <u>194.0</u>                   | 1161.6        | <u>179.7</u>                   | 1059.7        | <u>166.4</u>                | 866.6         |
| Accommodation charges <sup>4</sup>            |                                | 59.1          |                                | 68.0          |                             | 57.6          |
| Printing and publishing <sup>5</sup>          |                                | 69.2          |                                | 75.8          |                             | 80.0          |
| Telephone and postage                         |                                | 15.4          |                                | 15.0          |                             | 11.3          |
| Travel and subsistence                        |                                | 7.5           |                                | 13.0          |                             | 7.4           |
| Miscellaneous <sup>6</sup>                    |                                | 4.7           |                                | 5.0           |                             | 4.3           |
| Totals  |                                | <u>1317.5</u> |                                | <u>1236.5</u> |                             | <u>1027.2</u> |

<sup>1</sup> Earnings Related National Insurance Contributions, superannuation payments and pensions to former Commissioners are included.

<sup>2</sup> Earnings Related National Insurance Contributions, superannuation payments and consultants' fees and expenses are included.

<sup>3</sup> Earnings Related National Insurance Contributions and superannuation payments are included.

<sup>4</sup> Charges include maintenance, rates and utilities.

<sup>5</sup> Costs of binding, library purchases, machinery maintenance, photocopying, reprographic services and stationery are included.

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