

# Scottish Law Commission

(SCOT LAW COM No 101)

## TWENTY-FIRST ANNUAL REPORT 1985–86

Laid before Parliament by the Lord Advocate  
under Section 3(3) of the Law Commissions Act 1965

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

The Honourable Lord Maxwell, *Chairman*,  
Dr E M Clive,  
Professor P N Love, CBE,<sup>1</sup>  
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1. Appointed as a Commissioner with effect from 1 August 1986 in place of Mr R D D Bertram, WS (whose second term of office expired on 31 July 1986).

Scottish Law Commission

**Report for the year ended 15th June, 1986**

*To: The Right Honourable the Lord Cameron of Lochbroom, QC,  
Her Majesty's Advocate*

In accordance with section 3(3) as read with section 6(2) of the Law Commissions Act 1965, as amended,<sup>1</sup> we have the honour to submit this the Twenty-First Annual Report of the Scottish Law Commission.

*(Signed)* PETER MAXWELL, *Chairman*  
E M CLIVE  
PHILIP N LOVE  
JOHN MURRAY  
GORDON NICHOLSON

R EADIE, *Secretary*  
8 September 1986

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1. Transfer of Functions (Secretary of State and Lord Advocate) Order 1972 (S.I. 1972, No. 2002).



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# Part I General survey of the past year

1.1 In the past year we have, we believe, continued to make reasonable progress with our work on our principal function of law reform.

## Reports and consultative documents published

**Reports** 1.2 During the year under review,<sup>1</sup> five law reform reports, together with a report on statute law revision,<sup>2</sup> were published. Four of these were mentioned in our last annual report<sup>3</sup>—the very major report on *Diligence and Debtor Protection*,<sup>4</sup> the report on *Civil Liability in relation to Animals*,<sup>5</sup> the small report on *Art and Part Guilt of Statutory Offences*<sup>6</sup> and the report prepared jointly with the Law Commission for England and Wales on *Polygamous Marriages*.<sup>7</sup> On 22 May 1986 our report on *Corroboration, Hearsay and Related Matters in Civil Proceedings*<sup>8</sup> was published. This report proposed substantial and fairly radical reforms of the law of evidence, removing or relaxing, subject to certain safeguards, long-standing rigidities and restrictions in the law which, in our opinion, tend to inhibit rather than assist the attainment of justice in civil litigation. We believe that such reforms, if implemented, would have a considerable impact on litigation, and we hope that in some instances they might help to reduce expense.

**Consultative documents** 1.3 In addition to the substantial consultative memorandum on *Legal Capacity and Responsibility of Minors and Pupils*,<sup>9</sup> referred to in our last annual report,<sup>10</sup> we published during the year under review consultative memoranda on *Constitution and Proof of Voluntary Obligations and the Authentication of Writings*,<sup>11</sup> on *Child Abduction*<sup>12</sup> and on *Computer Crime*.<sup>13</sup> We refer to each of these further below.

## Current work

1.4 We tend in the main to concentrate on fairly large-scale reviews of substantial areas of the law. There are, of course, exceptions to this, chiefly where we are invited to consider specific individual problems giving cause for concern. Examples are our recent report on *Art and Part Guilt of Statutory Offences*<sup>14</sup> and our earlier report on *Negligent Misrepresentation*.<sup>15</sup> The latter resulted in the introduction of one section into the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985.<sup>16</sup> Moreover, we endeavour to concentrate on areas of law where reform is likely to be of real practical impact and benefit, and where the existing law appears to produce unjust or unreasonable results, or to have become unduly restrictive or complex or obscure,

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1. Strictly speaking, the period covered is the year ended 15 June 1986, but in order to present a more complete picture we refer below to certain more recent developments.

2. See further para 1.16 below.

3. (1985) Scot Law Com No 98, paras 1.1, 1.7, 1.17, 2.11, 2.14, 2.27 and 2.36.

4. (1985) Scot Law Com No 95.

5. (1985) Scot Law Com No 97.

6. (1985) Scot Law Com No 93.

7. (1985) Scot Law Com. No 96.

8. Scot Law Com No 100.

9. Consultative Memorandum No 65.

10. See (1985) Scot Law Com No 98, paras 1.10 and 2.20.

11. Consultative Memorandum No 66.

12. Consultative Memorandum No 67.

13. Consultative Memorandum No 68.

14. (1985) Scot Law Com No 93. See para 2.13 below.

15. (1985) Scot Law Com No 92.

16. 1985 c 73, section 10.

or to be out of touch with and inappropriate for modern conditions. We do not attempt here to refer to more than a few of the more important matters on which we are currently engaged as details of all of our projects are set out in Part II. These matters are mentioned as illustrations of the general approach referred to above, and not in any particular order.

## Law reform work generally

1.5 Our consultative memorandum on *Legal Capacity and Responsibility of Minors and Pupils*<sup>1</sup> contains a major review of this large area and suggests for consideration a quite radical recasting of the law. The existing law has origins in Roman law. It makes rigid distinctions between, first, boys under the age of 14 and girls under the age of 12, second, young persons of either sex over those ages but under the age of 18 and, third, persons over 18. It also contains many complexities, not least of which are those relating to questions of tutory and curatory. We think there is a good case for replacing this whole edifice by a simpler and more flexible set of rules which are more acceptable and more appropriate to modern conditions. As this report nears completion, we are beginning detailed consideration of the responses to consultation. In re-assessing the options for reform, we shall also take into account the results of the surveys of public opinion referred to below.<sup>2</sup>

1.6 Our consultative memorandum on *Constitution and Proof of Voluntary Obligations and the Authentication of Writings*<sup>3</sup> deals with another very large area of the law, much of which is of ancient origin and is arguably excessively complex, obscure and restrictive. Responses to this consultation have now been received and we are re-examining the provisional proposals for reform in light of the many helpful comments submitted to us. We hope we may be able in due course to recommend at least some substantial simplification of the law in this area.

1.7 We are conducting a major review of the law of succession in Scotland and are about to publish consultative memoranda on this topic.<sup>4</sup> Because of the very large scale of this operation there will be three separate memoranda, dealing respectively with, first, intestate succession and legal rights, second, the making and revocation of wills and, third, a number of miscellaneous topics. Here again, much of the present law is of ancient origin and arguably out of touch, at least to some extent, with modern conditions. For example, there is still a rather arbitrary distinction, mainly for the purposes of legal rights, between heritable and moveable property. It is open to question whether this distinction, which has its origins in the pre-eminent importance attached to ownership of land in times gone-by, can be justified in present day circumstances.

1.8 We expect to publish fairly soon a consultative memorandum dealing with the topic of rights of relief and aspects of contributory negligence,<sup>5</sup> and more imminently, one on floating charges and receivers.<sup>6</sup> On the receivership aspects of the latter we have drawn freely on the helpful observations made regarding the current law and practice by a Joint Working Party of the legal and accountancy professions under the chairmanship of Professor R B Jack. The completion of this memorandum owes a great deal to the valuable knowledge and experience in this field of Mr R D D Bertram, WS, who, until his departure from the Commission this summer,<sup>7</sup> was Commissioner-in-charge of the project. Mr Bertram's successor as a part-time Commissioner is Professor P N Love, CBE, who is Professor of Conveyancing and Professional Practice at the University of Aberdeen.

1.9 Having submitted our main report on diligence,<sup>8</sup> which recommends reforms of the most common modes of enforcement of debt against moveable property (pounding and sale of goods and arrestment of earnings), we are working on the

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1. Consultative Memorandum No 65. See para 2.20 below.

2. See paras 1.20 and 2.20 below.

3. Consultative Memorandum No 66. See para 2.23 below.

4. See para 2.40 below.

5. See para 2.30 below.

6. See para 2.59 below.

7. Mr Bertram ceased to be a Commissioner on 31 July 1986 on completion of his second term of office.

8. (1985) Scot Law Com No 95.

next stage of this project. This involves considering possible reforms of the law of enforcement of debt against heritable property, by the processes of adjudication and inhibition.<sup>1</sup> Our research has shown that this is in fact a matter of considerable (and increasing) practical impact. We think it probable that the law, which again has its origins in days when ownership of land had a place in the social scheme which it does not occupy today, is not only obscure but may also be out of touch with modern conditions. Simultaneously, and because the two topics to some extent overlap, we are looking at the topic of diligence on the dependence. This is, broadly, the procedure by which in Scotland a pursuer in a civil litigation can 'freeze' certain heritable and moveable assets of his opponent pending the outcome of the litigation. Again, the existing law is very old and we have reason to believe that, as applied to modern conditions, it has given rise in some cases to considerable dissatisfaction.

1.10 In the field of criminal law (apart from evidence, mentioned separately below<sup>2</sup>), we mention two matters to which we attach particular importance. The first is the law relating to abduction of children which, regrettably, is causing increasing concern.<sup>3</sup> We received a reference on this subject from the Secretary of State for Scotland<sup>4</sup> following on the passing by Parliament of the Child Abduction Act 1984, which is largely confined to England and Wales but which contains certain provisions relating to Scotland. The Scottish provisions as they stand are, we believe, unsatisfactory. Having obtained helpful advice in response to our consultative memorandum,<sup>5</sup> we are now actively considering recommendations for reform. It seems to us that there are two main problems in this difficult area. The first is whether, and if so to what extent, our existing common law, including the ancient crime of plagiary, requires to be replaced or supplemented by modern legislation. The second problem is how to strike the right balance to ensure that, on the one hand, there is an appropriate and effective criminal sanction against serious cases of child abduction and, on the other, that the criminal law does not intervene unduly in matters which should be left to the civil law, particularly in relation to inter-parental disputes. We hope to submit our proposals on this topic before very long.

1.11 The other criminal law exercise which we think merits special mention is computer crime.<sup>6</sup> This exercise, which emanated from a proposal from the Law Society of Scotland, is an outstanding example of an area where the law may have failed to keep pace adequately with modern technological developments. While the common law of Scotland in relation to crime has always proved highly adaptable, it seems to us that the development of the computer may have brought with it activities of a kind which should be struck at by the criminal law but which do not fit readily into any concept of crime already known to our common law. We are glad to note that the consultative memorandum on this topic,<sup>7</sup> which we published in March 1986, has attracted a remarkable degree of interest, not only in Scotland but elsewhere. We are very grateful for the comments and advice we have received from many sources. We are now considering what recommendations to make in the light of the views expressed to us.

1.12 It may be that our current exercise on computer crime is symptomatic of a larger problem. Our law developed in times when communication was almost wholly by the spoken or written word and records were almost wholly kept in written form. In a relatively short space of time all this has changed. We are now in an age where, for example, computers talk to other computers over great distances without human intervention, and information of all kinds is stored, corrected, updated and revealed automatically by electronic devices. All this could have a profound effect on, for example, the law relating to banking, insurance and contract generally. It seems likely that at some stage law reform agencies such as ours will have to consider further,

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1. See para 2.15 below.

2. See para 1.13.

3. See para 2.12 below.

4. See our Twentieth Annual Report (1985) Scot Law Com No 98, para 2.10.

5. Consultative Memorandum No 67.

6. See para 2.11 below.

7. Consultative Memorandum No 68.

and in depth, to what extent the present law, both criminal and civil, is adequately geared to the requirements of these new developments.

1.13 We are now also turning our attention to the law of evidence in criminal trials, having submitted a report on corroboration and hearsay in relation to civil proceedings.<sup>1</sup> There are fundamental distinctions between civil and criminal cases. In particular, a civil dispute is determined as between opposing parties on a 'balance of probabilities', whereas in a criminal trial conviction depends on proof of guilt 'beyond reasonable doubt'. This means that reform which may be suitable for the former would be quite inappropriate for the latter. We think, nonetheless, that there may well be room in relation to criminal proceedings for relaxing at least some of the existing restrictions and rigidities. In particular, we are considering whether, subject to appropriate safeguards, greater use than is now permissible could be made of written evidence, thereby reducing expense and delay and cutting down the number of witnesses who have to spend time waiting to give oral evidence in court. These are, of course, only preliminary thoughts, and as usual there will be no question of our making recommendations until we have consulted widely on our provisional proposals.

1.14 Our work on the very large project on administrative law in Scotland<sup>2</sup> (discontinued a number of years ago) has recently been resumed. Stated very generally, this concerns powers which the courts have, or should have, to review the decisions of central and local government authorities and countless tribunals and other public bodies of various kinds. This is a major subject which has fairly recently attracted interest and attained a considerable degree of importance not only in Scotland but also in the United Kingdom generally. So far as Scotland is concerned, this is demonstrated by the extent to which the new accelerated procedure for judicial review introduced in the Court of Session a short time ago has already been utilised. An example of the widespread United Kingdom interest in the matter was the recent conference held at Brunel University (and attended by a member of our staff) to consider the possibility of a United Kingdom research initiative on the subject.<sup>3</sup> The scale of this subject is potentially very large, partly because of the great diversity of decision-making powers which may be subject to review, and partly also because of the great diversity of existing powers of review available to the courts at common law or under numerous statutes. We are concerned directly or indirectly with certain research projects in Scotland in this area, notably projects being carried out at the University of Edinburgh and the University of Dundee, both of which are supported by the Economic and Social Research Council, and a project in relation to statutory powers of review presently being undertaken on our behalf by Mr C M G Himsworth, a senior lecturer at the University of Edinburgh. It is premature to predict precisely where we will be going on this matter. At present, however, we intend to consider, first, questions of title and interest to sue, possibly followed by consideration of remedies, including in particular the extent to which the courts have, or should have, powers not merely to quash decisions under review but also, in certain cases, to substitute their own decisions.

#### **Statute law work**

1.15 Our work on statute law falls into two main parts: consolidation and statute law revision. As regards consolidation of United Kingdom and Great Britain statutes, the Law Commission for England and Wales, with its larger resources, takes the lead. The present position is set out in detail in Part II of this report.<sup>4</sup> As regards Scotland-only consolidation, we regret that progress remains less satisfactory than we would like.<sup>5</sup> To some extent the problem arises from our very limited drafting resources. But, in addition to this we have the difficulty that, unlike the position on law reform projects, we are not wholly our own masters in this field, since we require the co-operation of relevant government departments, and, no doubt because of pressure of other work, they are not always in a position to provide it as speedily as we would

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1. (1986) Scot Law Com No 100, published on 22 May 1986. See para 1.2 above.

2. See paras 2.2 to 2.4 below, and also our Twentieth Annual Report (1985) Scot Law Com No 98, paras 1.12 and 2.2.

3. See para 3.12 below.

4. See paras 2.48 to 2.50 below.

5. See paras 2.43 to 2.47 below.

wish. We are still hoping to have the very large Housing consolidation Bill<sup>1</sup> ready for introduction in the 1986–87 Parliamentary Session, but this will depend upon the full co-operation of the Scottish Office. It is also hoped that consolidations of prisons legislation and legislation relating to the Court of Session may be ready for introduction in the 1986–87 Session.

1.16 The position on statute law revision, on which the two Law Commissions work jointly and which makes an important contribution to tidying-up the Statute Book, is more satisfactory. The recommended repeals contained in the Bill annexed to the Twelfth Joint Report<sup>2</sup> on this subject have been implemented in the Statute Law (Repeals) Act 1986, and we are now actively engaged on work for the Thirteenth Joint Report.<sup>3</sup> We are committing rather more resources to this area of work than previously. We have been fortunate in having the temporary services of a retired clerk of court, who has been assisting us in tracing obsolete statute law in relation to court procedures. We have also received considerable assistance in this area from a number of recent graduates in law who have worked with us during the summer vacation.

1.17 We are also continuing jointly with the Law Commission for England and Wales the work of drawing up a chronological table of local and personal and private Acts. One outcome of this work is that we have been able to identify many local authority private Acts which have been affected by the general cesser provisions in public general statutes<sup>4</sup> and can now, in consultation with the local authorities, consider proposing the express repeal of these Acts in the statute law revision process. This should result eventually in greater certainty for the many users of these Acts.

#### **Working methods and procedure**

1.18 There are a few matters which we should mention under this head. First, we continue to have excellent relations with the Law Commission for England and Wales, with whom we are working closely on several projects. These include a number of private international law projects where it is particularly important that the laws of the United Kingdom should, so far as possible, coincide. Important current joint work in these areas includes consideration of proposals concerning the rules of choice of law in tort and delict,<sup>5</sup> the law of domicile<sup>6</sup> and the rules of choice of law in relation to marriage.<sup>7</sup> On each of these matters preparation of a joint report is in hand. We are also closely co-operating with the Law Commission for England and Wales in the preparation of a report recommending changes in the law of sale and supply of goods,<sup>8</sup> and, of course, on the work in the statute law field mentioned above.<sup>9</sup> We are grateful to our colleagues in London for their help and advice on these and many other matters.

1.19 Second, in appropriate cases, we have been trying to find new ways of ascertaining the views of a wider public than those (mainly members of the legal profession) who normally comment on our consultative memoranda. One method we fairly recently adopted is the publication along with our consultative memoranda of ‘popular’ pamphlets. These are designed for non-lawyers who could scarcely be expected to express views on all the detailed technical legal questions, but who may well have views on the substantial issues at stake. We are repeating this device in relation to our memoranda on succession<sup>10</sup> which we consider a very suitable case for this approach. There must be many people who cannot be expected to have a grasp of, for example, the technicalities of prior rights and legal rights, but who may have very strong and clear views as to how, in general terms, a deceased person’s estate should be distributed. It would be of great assistance to us if we could be made aware of such views.

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1. See para 2.46 below.

2. (1985) Law Com No 150; Scot Law Com No 99.

3. See para 2.51 below.

4. See, for example, Local Government (Scotland) Act 1973, section 225(6) and (9).

5. See para 2.34 below.

6. See para 2.38 below.

7. See para 2.39 below.

8. See para 2.28 below.

9. See para 1.16 above.

10. See para 2.40 below.

1.20 We also attach considerable importance in appropriate cases to public opinion surveys. For example, a public opinion survey was carried out on attitudes to family property in Scotland on which we drew heavily in our reports on *Aliment and Financial Provision*<sup>1</sup> and on *Matrimonial Property*.<sup>2</sup> In our major report on *Diligence and Debtor Protection* an elaborate programme of research organised by the Central Research Unit of the Scottish Office was of great importance in leading us to our conclusions.<sup>3</sup> More recently, in connection with our current work on succession, we received this year a report by System Three (Scotland) on public attitudes on this topic.<sup>4</sup> We have been making use of the findings of this report for the purposes of the three consultative memoranda shortly to be published on this subject, and we will rely on them further when we come to prepare our report. In relation to our current work on legal capacity and responsibility of minors and pupils, System Three (Scotland) has provided us with a valuable survey of the attitudes of adults, and the Central Research Unit will shortly be reporting to us the results of two surveys dealing, respectively, with the attitudes of young persons who have recently left school and of school children themselves.<sup>5</sup> Again, we are likely to rely heavily on the results of these surveys in formulating our conclusions.

1.21 Finally, as foreshadowed in our last annual report,<sup>6</sup> during the year under review we have supplemented our normal methods of gauging opinion by holding public meetings on issues raised in our memorandum on *Legal Capacity and Responsibility of Minors and Pupils*.<sup>7</sup> We organised three such meetings, one in Edinburgh, one in Glasgow and one in Aberdeen. We had lively discussions at these meetings and found them most helpful and interesting. We mean to repeat this procedure on appropriate occasions in the future. We are considering further to what extent within our resources it may be possible to devise other means of ascertaining the views of a wider public.

## Implementation

1.22 We continue to derive encouragement from the extent to which our reports recommending reform of the law are being implemented by Parliament. As mentioned in our last annual report,<sup>8</sup> four Bills implementing recommendations in our reports were introduced in the 1984–85 Parliamentary Session. These were: the Bankruptcy (Scotland) Bill, implementing the recommendations in our report on bankruptcy;<sup>9</sup> the Family Law (Scotland) Bill, implementing the recommendations in our reports on aliment and financial provision<sup>10</sup> and matrimonial property;<sup>11</sup> the Law Reform (Miscellaneous Provisions) (Scotland) Bill which, amongst other things, implemented the recommendations in our reports on irritancies in leases,<sup>12</sup> evidence in cases of rape and other sexual offences,<sup>13</sup> rectification of contractual and other documents<sup>14</sup> and negligent misrepresentation;<sup>15</sup> and the Housing Associations Bill, implementing the recommendations in the joint report on the consolidation of the Housing Acts, so far as affecting Scotland.<sup>16</sup> All of these Bills have now received the Royal Assent.<sup>17</sup>

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1. (1981) Scot Law Com No 67, paras 1.2, 3.17 to 3.23.

2. (1984) Scot Law Com No 86, paras 1.3, 2.6 to 2.9.

3. (1985) Scot Law Com No 95, para 1.3, Appendix D.

4. See para 2.41 below.

5. See para 2.20 below. (We have already had a preliminary indication of the findings of these two surveys.)

6. (1985) Scot Law Com No 98, paras 1.10 and 2.20.

7. See para 2.20 below.

8. (1985) Scot Law Com No 98, para 1.26. (The recommendations by the two Commissions relating to the consolidation of the Companies Acts, although reflected in the relevant consolidation Bill, were in fact implemented by Orders in Council.)

9. (1982) Scot Law Com No 68.

10. (1981) Scot Law Com No 67.

11. (1984) Scot Law Com No 86.

12. (1983) Scot Law Com No 75.

13. (1983) Scot Law Com No 78 (subject to modification).

14. (1983) Scot Law Com No 79.

15. (1985) Scot Law Com No 92.

16. (1985) Law Com No 144; Scot Law Com No 94.

17. Bankruptcy (Scotland) Act 1985 (c 66); Family Law (Scotland) Act 1985 (c 37); Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c 73); Housing Associations Act 1985 (c 69).

1.23 During the 1985–86 Session the following Bills were introduced: the Incest and Related Offences (Scotland) Bill, implementing the recommendations contained in our report on the law of incest;<sup>1</sup> the Law Reform (Parent and Child) (Scotland) Bill, implementing the recommendations in our report on illegitimacy;<sup>2</sup> the Statute Law (Repeals) Bill, implementing the recommendations made by the Law Commission for England and Wales and ourselves in the Twelfth Joint Report on Statute Law Revision;<sup>3</sup> and the Family Law Bill, implementing (amongst other things) the important joint recommendations made by the two Commissions on child custody conflicts.<sup>4</sup> These recommendations were designed to secure, as far as possible, that there will not in future be conflicting decisions within the United Kingdom in relation to the custody of children and that custody orders made on one side of the Border can be enforced on the other. The Incest and Related Offences (Scotland) Bill, the Law Reform (Parent and Child) (Scotland) Bill and the Statute Law (Repeals) Bill have already received the Royal Assent,<sup>5</sup> and the Family Law Bill may have done so by the time this report is published. The first two of these Bills were designed to modernise and make acceptable the law on incest and on the position of persons born out of wedlock, respectively. The second Bill has the incidental purpose of simplifying a mass of old law on the topic. Both Bills were introduced by private Members (Lord Wilson of Langside and Lord James Douglas-Hamilton, MP, respectively). We are particularly pleased that private Members have shown an interest in our work and have found time to introduce measures giving effect to it. We hope that they may continue to do so in the future in appropriate cases. We find it most encouraging that, generally speaking, with the exception of very recent reports (including the massive report with draft Bill annexed on the subject of diligence<sup>6</sup>) almost all the recommendations for the reform of the law made by this Commission have been or are in the process of being implemented by Parliament.

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1. (1981) Scot Law Com No 69.

2. (1984) Scot Law Com No 82.

3. (1985) Law Com No 150; Scot Law Com No 99.

4. Report on *Custody of Children—Jurisdiction and Enforcement within the United Kingdom*, (1985) Law Com No 138, Scot Law Com No 91.

5. Incest and Related Offences (Scotland) Act 1986 (c 36); Law Reform (Parent and Child) (Scotland) Act 1986 (c 9); Statute Law (Repeals) Act 1986 (c 12).

6. (1985) Scot Law Com No 95.

# PART II Progress of law reform projects

2.1 The present position<sup>1</sup> in each of our current law reform projects is set out in the following paragraphs. The main subject headings are presented in alphabetical order. Programme subjects, which derive from our published programmes,<sup>2</sup> are denoted by the use of an asterisk.

## Administrative law

2.2 Work has now begun on the first phase of our project on administrative law. This will be concerned primarily with title and interest to sue. It is planned to issue in due course a consultative memorandum covering both common law and statutory processes of judicial review.

2.3 We are continuing to receive assistance in this work from Mr CMG Himsforth, Senior Lecturer in the Department of Constitutional and Administrative Law at the University of Edinburgh, who is investigating statutory provisions for review.

2.4 We envisage at present a subsequent phase of the project dealing with remedies, including the power of the court to substitute its own decision for a decision under review, although the planning for this phase is still very provisional. It is hoped, however, that some empirical research will be carried out by the University of Edinburgh into the impact of the decisions of the court on the authorities affected, and an application for funding, supported by the Commission, has recently been approved by the Economic and Social Research Council. If the research proceeds according to plan, findings relevant to the second phase of our project should begin to emerge during 1988-89.

## Bankruptcy\*

(Second Programme, Item 6)

2.5 The recommendations contained in our report on *Bankruptcy and Related Aspects of Insolvency and Liquidation*<sup>3</sup> have been implemented, with some modifications, in the Bankruptcy (Scotland) Act 1985.<sup>4</sup>

## Criminal law

**General** 2.6 The bulk of our work in the criminal law field has continued to derive from proposals for law reform projects under section 3(1)(a) of the Law Commissions Act 1965 and requests for advice, or 'references', under section 3(1)(e) of that Act. We also respond to consultation by the Law Commission for England and Wales and other bodies. Future work is expected to arise in a number of areas of the criminal law, including, for example, the relationship between theft and clandestine use of property.

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1. For the sake of presenting a more complete picture, we mention certain developments which have taken place since the end of our reporting period (15 June 1986).

2. First Programme, (1965) Scot Law Com No 1; Second Programme, (1968) Scot Law Com No 8; Third Programme, (1973) Scot Law Com No 29.

3. (1982) Scot Law Com No 68.

4. 1985 c 66.

\* Denotes programme subject.

- Incest** 2.7 During the 1985-86 Parliamentary session Lord Wilson of Langside introduced in the House of Lords a Bill to implement the recommendations contained in our report on *The Law of Incest in Scotland*<sup>1</sup> which was published on 23 December 1981. The Bill, subject to a few relatively minor amendments, was enacted on 18 July 1986.<sup>2</sup>
- Mobbing and rioting** 2.8 On 5 July 1984, in response to a proposal from the Crown Agent under section 3(1)(a) of the Law Commissions Act 1965, we published Consultative Memorandum No 60—*Mobbing and Rioting*. In our Memorandum we identified what appeared to us to be certain defects in the existing law and practice. The weight of consultation, however, was firmly against the creation of a new statutory offence, though some of those who commented on the Memorandum shared our unease regarding two particular matters (common purpose and the doctrine of guilt by association). In the comments received, there was some support for the view that problems in relation to those matters might be alleviated by changes in the use, and manner of libelling, of charges of mobbing and rioting.
- 2.9 After careful consideration, we concluded that changes in practice could remove some of the major problems which we had identified, and in these circumstances we decided not to recommend any statutory reforms at this stage. We advised you (and also the Crown Agent) by letter<sup>3</sup> of the outcome of consultation and of the decision we had reached in the matter. In doing so, however, we made it clear that we would be willing to reconsider the matter at a later date if circumstances so require. The proposal in question extended to the law of conspiracy,<sup>4</sup> but in writing to you, our Chairman indicated that we have no plans to examine this topic in the foreseeable future.
- Attempted homicide** 2.10 As indicated in our last annual report,<sup>5</sup> after considering the response to Consultative Memorandum No 61—*Attempted Homicide*—published on 27 September 1984, we concluded that we should not recommend any reform of the existing law on this topic and so advised you and the Crown Agent.
- Computer crime** 2.11 As mentioned in our last annual report,<sup>6</sup> this project is the subject of a proposal by the Law Society of Scotland under section 3(1)(a) of the Law Commissions Act 1965. Consultative Memorandum No 68—*Computer Crime*—was published on 6 March 1986. It examines various difficult problems in this field and invites views on the suggestion that gaining unauthorised access to a computer (including the activity commonly known as ‘hacking’) might become the basis of a criminal offence. Comments were sought by 30 September 1986.
- Child abduction** 2.12 Consultative Memorandum No 67—*Child Abduction*—was published on 29 August 1985, with an invitation to comment by 31 January 1986. In light of the comments received, we have recently re-assessed the options for reform with a view to submitting a report to the Secretary of State for Scotland in response to the reference received from him on 30 July 1984.
- Art and part guilt of statutory offences** 2.13 Our report on *Art and Part Guilt of Statutory Offences*<sup>7</sup> was published on 18 July 1985. The report recommended the creation of a new, general offence of aiding, abetting, counselling, procuring or inciting the commission of any statutory offence. No legislation has yet been introduced to give effect to the Commission’s recommendation.

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1. (1981) Scot Law Com No 69.

2. See Incest and Related Offences (Scotland) Act 1986 (c 36).

3. We understand that, in accordance with an undertaking given by the Solicitor-General for Scotland in February 1986 in answer to a Parliamentary Question by Mr James Wallace, MP (*Hansard* (HC) 26 February 1986, Vol 92, No 66, Written Answers, Cols 550-551) a copy of our Chairman’s letter to you was placed in the House of Commons Library.

4. The terms of the proposal are set out in Consultative Memorandum No 60, para 1.1.

5. (1985) Scot Law Com No 98, para 2.8.

6. (1985) Scot Law Com No 98, para 2.9.

7. (1985) Scot Law Com No 93.

## Forfeiture of the proceeds of crime

2.14 In our last annual report<sup>1</sup> we mentioned that a reference on the general topic of forfeiture of the proceeds of crime had been received from the Secretary of State for Scotland under section 3(1)(e) of the Law Commissions Act 1965. The Secretary of State announced in January 1986<sup>2</sup> that he had decided to suspend the reference for the time being when it became clear that political pressure for rapid Government action to keep Scotland fairly closely in line with legislation for England and Wales relating to drug trafficking offences<sup>3</sup> would not allow time for the Commission's normal consultation and reporting processes to be completed. We have undertaken, however, to advise on problems that may arise in the preparation of the corresponding Scottish legislation. Moreover, we envisage that we may be asked to resume work on other, broader aspects of the reference in due course.

## Diligence\*

(Second Programme, Item 8)

2.15 Following publication, on 14 November 1985, of our report on *Diligence and Debtor Protection*,<sup>4</sup> work has commenced on the preparation of two further consultative memoranda on diligence, namely:

- (a) a consultative memorandum on diligence against heritable property (covering primarily inhibitions and adjudications); and
- (b) a consultative memorandum on diligence on the dependence, taking account of the options and provisional proposals on diligence against heritable property but covering also arrestments on the dependence.

It is proposed that these two memoranda should be issued simultaneously since they are expected to overlap to a considerable extent.

## Evidence\*

(First Programme, Item 1)

2.16 The recommendations in our report on *Evidence in Cases of Rape and Other Sexual Offences*<sup>5</sup> have been implemented, in a slightly modified form, by section 36 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985.<sup>6</sup> Our report on *Corroboration, Hearsay and Related Matters in Civil Proceedings*<sup>7</sup> was submitted to you on 28 February 1986 and published on 22 May 1986. Work has commenced on comparable areas in relation to criminal proceedings, and on the topic of the admissibility of evidence adduced by means of affidavit, certificate or written statement in such proceedings. We are also considering the problems relating to the admissibility of computer evidence in criminal proceedings.

## Family law\*

(Second Programme, Item 14)

## Aliment and Financial Provision

2.17 Our report on *Aliment and Financial Provision*<sup>8</sup> was published on 5 November 1981. The recommendations contained in this report have been implemented, with some modifications, in the Family Law (Scotland) Act 1985.<sup>9</sup>

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1. (1985) Scot Law Com No 98, para 2.12

2. *Hansard* (HC), 21 January 1986, Vol 90, No 40, Written Answers, Cols 100.101.

3. Drug Trafficking Offences Bill. (This Bill received the Royal Assent on 8 July 1986—Drug Trafficking Offences Act 1986 (c 32).)

4. (1985) Scot Law Com No 95.

5. (1983) Scot Law Com No 78.

6. 1985 c 73.

7. (1986) Scot Law Com No 100.

8. (1981) Scot Law Com No 67.

9. 1985 c 37.

\* Denotes programme subject.

- Matrimonial property law** 2.18 Our report on *Matrimonial Property*<sup>1</sup> was published on 21 June 1984. Its recommendations have also been implemented, with slight modification, in the Family Law (Scotland) Act 1985.
- Illegitimacy** 2.19 Our report in *Illegitimacy*<sup>2</sup> was published on 26 January 1984. A Private Member's Bill, introduced by Lord James Douglas-Hamilton, MP, in the 1985-86 Parliamentary Session to implement the recommendations in this report, received the Royal Assent on 26 March 1986.<sup>3</sup>
- Law of children (incorporating legal capacity of minors and pupils)** 2.20 On 26 June 1985, as the first stage of our major project on reform of the law of children, we published Consultative Memorandum No 65—*Legal Capacity and Responsibility of Minors and Pupils*. A short pamphlet with questionnaire attached was published on the same date. Comments on both documents were requested by 31 December 1985. In order to elicit a wide response to our provisional proposals for reform, we held public meetings in Edinburgh, Aberdeen and Glasgow at which the issues raised in the memorandum and pamphlet were discussed. We are now re-assessing the options for reform in light of the comments received. Two surveys of the opinions of young people relative to the provisional proposals in our Consultative Memorandum have now been undertaken by the Central Research Unit of the Scottish Office.<sup>4</sup> A survey of adult opinion on the proposals was carried out at an earlier stage.<sup>5</sup>

## Obligations\*

(First Programme, Item 2)

- Rights in security over moveable property** 2.21 Work on the above topic has been suspended pending the outcome of the review for Great Britain of the law of security over moveable property, commissioned by the Department of Trade and Industry. This review is being undertaken by Professor A L Diamond (formerly Director of the Institute of Advanced Legal Studies, University of London), together with Mr A J Sim, a recently retired senior member of our legal staff, who will be concerned primarily with the Scots law aspects of the exercise. The review team is being assisted by a specially-appointed panel of Scottish experts and has engaged in consultation with persons and bodies in Scotland and elsewhere in Great Britain who have an interest in this subject. In order to assist the Scottish consultees in responding to the consultation, the Commission, with the agreement of Professor Diamond and the Department, has published the Report of the Working Party on Security over Moveable Property referred to in last year's annual report.<sup>6</sup>
- 2.22 The question of the extent of any further involvement of the Commission in this area of the law will no doubt fall to be re-assessed after the current review has been completed.
- Constitution and proof of voluntary obligations and the authentication of writings** 2.23 On 31 July 1985 we published Consultative Memorandum No 66—*Constitution and Proof of Voluntary Obligations and the Authentication of Writings*. Comments were invited by 31 March 1986. An analysis of the comments received has been carried out and the options for reform are now being re-assessed.
- Defective consent and consequential matters: negligent misrepresentation** 2.24 The recommendation in our report on *Negligent Misrepresentation*<sup>7</sup> was implemented by section 10 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985.<sup>8</sup>

1. (1984) Scot Law Com No 86.

2. (1984) Scot Law Com No 82.

3. See Law Reform (Parent and Child) (Scotland) Act 1986 (c 9).

4. One of these CRU surveys was on school pupils; the other was on young people who had left school. The results of both surveys are expected soon (we have recently had a preliminary indication of the findings).

5. See our Twentieth Annual Report, (1985) Scot Law Com No 98, para 2.20.

6. (1985) Scot Law Com No 98, para 2.22.

7. (1985) Scot Law Com No 92.

8. 1985 c 73.

\* Denotes programme subject.

- Defective expression—rectification of documents** 2.25 The recommendations in our report on *Rectification of Contractual and Other Documents*<sup>1</sup> were in substance implemented by sections 8 and 9 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985.
- Corporeal moveables** 2.26 No further work is being undertaken in this area for the time being.
- Civil liability in relation to animals** 2.27 Our report on *Civil Liability in relation to Animals*<sup>2</sup> was published on 8 November 1985. As yet, no legislation has been introduced to implement the report.
- Sale and supply of goods** 2.28 Following a further re-assessment of the policy options discussed in the joint consultative document,<sup>3</sup> work is proceeding on the preparation of a joint report on this topic by the Law Commission for England and Wales and ourselves. Difficulties have been encountered in some areas of the project and completion of the report seems likely to take a rather longer time than was previously envisaged.
- Legal capacity of minors and pupils** 2.29 As indicated above,<sup>4</sup> work is progressing on this topic as part of our major project on reform of the law of children.
- Rights of relief and contributory negligence** 2.30 On 7 December 1984 we received a proposal on the above topic from the Faculty of Advocates under section 3 (1) (a) of the Law Commissions Act 1965. The proposal requested us to consider the question of rights of relief in relation to claims based on delict, with particular reference to the power of the court under section 3 (2) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 to decide that a person found liable in damages is entitled to recover a contribution from another person who, if sued, might also have been held liable.
- 2.31 We have since taken the view that the exercise should not be confined to rights of relief in delict but should include rights of relief arising in other circumstances, such as breach of contract or breach of trust. In addition, we have decided to consider as a separate issue the topic of contributory negligence, particularly in relation to claims based on contract. Our consultative memorandum on these topics is expected to be published in the near future.<sup>5</sup>
- Other obligations topics** 2.32 The position regarding other topics in the obligations field mentioned in our last annual report<sup>6</sup> remains unchanged.

### Prescription and limitation of actions\* (First Programme, Item 3)

- Prescription and limitation in relation to latent damage** 2.33 Considerable interest and concern have been expressed in Scotland and elsewhere recently regarding the problems arising from latent damage within the context of prescription and the limitation of actions. The Lord Chancellor's Law Reform Committee reported on the topic as regards England and Wales in 1984,<sup>7</sup> and a Bill to give effect to the Committee's recommendations was introduced in the 1985–86 Session.<sup>8</sup> We have decided, with your encouragement, to investigate the difficulties arising in Scotland in this area of the law, and the preparation of a consultative memorandum is in hand.

1. (1983) Scot Law Com No 79.

2. (1985) Scot Law Com No 97.

3. Law Commission Working Paper No 85; Scottish Law Commission Consultative Memorandum No 58—*Sale and Supply of Goods* (published in October 1983).

4. See para 2.20 above.

5. It is hoped that this consultative memorandum will be published by November 1986, under the title *Civil Liability—Contribution*.

6. (1985) Scot Law Com No 98, para 2.32.

7. Twenty-fourth Report of the Lord Chancellor's Law Reform Committee: *Latent Damage* (Cmnd 9390).

8. The Bill was enacted on 18 July 1986 (see Latent Damage Act 1986 (c 37)).

\* Denotes programme subject.

## Private international law\*

(Third Programme)

- Choice of law rules in tort and delict** 2.34 In December 1984, the two Law Commissions published a joint consultative document on the choice of law rules in tort and delict.<sup>1</sup> Comments were invited by 16 July 1985. Following re-assessment of the principal options for reform at a joint meeting of the two Commissions earlier this year, work has begun on the preparation of a joint report.
- Conflicts of jurisdiction affecting the custody of children** 2.35 The joint report by the two Law Commissions on *Custody of Children—Jurisdiction and Enforcement within the United Kingdom*<sup>2</sup> was published on 15 January 1985. A Bill to implement its recommendations is currently before Parliament.<sup>3</sup>
- Recognition of foreign nullity decrees, etc** 2.36 The joint report by the two Law Commissions on *Recognition of Foreign Nullity Decrees and Related Matters*<sup>4</sup> was published on 19 September 1984. The recommendations in this report are being implemented (with some modification) in the Bill referred to in the preceding paragraph.
- Polygamous marriages** 2.37 The joint report by the two Law Commissions on *Polygamous Marriages—Capacity to Contract a Polygamous Marriage and Related Issues*<sup>5</sup> was published on 8 August 1985. No indication has yet been given as to when legislation to implement the proposals in this report may be introduced.
- Domicile** 2.38 The two Law Commissions published a joint consultative document on the law of domicile<sup>6</sup> on 16 April 1985. Comments were invited by 31 July 1985. The options for reform were re-assessed at a joint meeting of the two Commissions earlier this year and work is in hand on the preparation of a joint report.
- Choice of law rules relating to marriage** 2.39 A joint consultative document on this topic<sup>7</sup> was published by the two Commissions on 16 April 1985. Comments were invited by 31 July 1985. Following re-assessment of the options for reform at the meeting referred to in the previous paragraph, work is proceeding on the preparation of a joint report.

## Succession\*

(Second Programme, Item 7)

2.40 Three consultative memoranda have been prepared on the law of succession. The first deals with intestate succession and legal rights; it discusses possible reforms of the law of intestate succession and the claims which can be made by a person who is excluded from inheriting either by a will or by the law of intestate succession. The second is concerned with the making and revocation of wills; it looks at the possible validation of improperly executed wills, rectification of wills to correct errors of expression and what effect the testator's subsequent marriage or divorce should have on his or her will. The third memorandum deals with some miscellaneous topics in the law of succession; it covers a variety of matters including criminal heirs, the Forfeiture Act 1982, presumptions of survivorship and special destinations. These memoranda will be published simultaneously in the near future<sup>8</sup> along with a fairly short pamphlet covering the main issues and aimed rather more at the general public.

1. Law Commission Working Paper No 87; Scottish Law Commission Consultative Memorandum No 62—*Choice of Law in Tort and Delict*.

2. (1985) Law Com No 138; Scot Law Com No 91.

3. The Family Law Bill.

4. (1984) Law Com No 137; Scot Law Com No 88.

5. (1985) Law Com No 146; Scot Law Com No 96.

6. Law Commission Working Paper No 88; Scottish Law Commission Consultative Memorandum No 63—*The Law of Domicile*.

7. Law Commission Working Paper No 89; Scottish Law Commission Consultative Memorandum No 64—*Choice of Law Rules in Marriage*.

8. The memoranda (Consultative Memoranda Nos 69 to 71) are expected to be published in September 1986.

\* Denotes programme subject.

2.41 Two research projects on succession have been commissioned. The first, a survey which seeks the views of some 1,000 Scottish adults on various aspects of succession law, has already been completed. The results have been received and have been incorporated in the consultative memoranda. The purpose of the second project is to look at a representative sample of wills and confirmations in order to establish how estates are inherited at present.

## Statute law

- Consolidation** 2.42 As in the past, progress is recorded under two heads: consolidation of legislation applying to Scotland only; and consolidation of legislation extending to other parts of the United Kingdom as well as to Scotland.
- (a) *Scotland-only consolidations*  
*First Programme*<sup>1</sup> 2.43 *Court of Session*—As mentioned in our last annual report, a further print of the consolidation Bill was prepared and circulated for comment following the decision to incorporate certain enactments into an Act of Sederunt. Helpful comments have been received from a number of those consulted, and significant progress has been made. There are still some difficult issues to be resolved, however, before further progress can be made towards introduction of the Bill (which we hope will be possible during the 1986–87 Session).
- Second Programme*<sup>3</sup> 2.44 As indicated in our last annual report,<sup>4</sup> work on the Commission's Second Programme of Consolidation and Statute Law Revision has been completed.
- Third Programme*<sup>5</sup> 2.45 Work on four of the items in the Third Programme (Adoption, Slaughterhouses, Water and Rents) has now been completed. The position regarding the remaining seven of the original eleven items in the Programme is as follows:
- (1) *Building legislation*—Work on this consolidation remains deferred for the reasons stated in the Sixteenth Annual Report.<sup>6</sup>
  - (2) *Prisons*—Work on the preparation of a Bill to consolidate the legislation relating to prisons in Scotland has made significant progress. It is hoped that the Bill will be introduced during the 1986–87 Session.
  - (3) *Valuation and Rating*—In view of the recent announcement that Government legislation is planned for this area in the fairly near future,<sup>7</sup> and of the commitment of drafting resources to matters of higher priority, any further work on this proposed consolidation will be deferred for the time being.
  - (4) *Other items*—Instructions have not yet been received from the Scottish Office with regard to any of the other items in the Programme.
- Fourth Programme*<sup>8</sup> 2.46 Work on one of the four items contained in the Commission's Fourth Programme of Consolidation and Statute Law Revision, namely Foster Care, has been completed. The position regarding the remaining three items in the Programme is as follows:
- (1) *Housing*—As indicated in our last annual report,<sup>9</sup> the Scottish Office found it necessary to divert its resources in this area to the preparation of a Government 'Programme' Bill. Largely for that reason, there was no prospect of a Bill being ready for introduction in the 1985–86 Parliamentary Session. The draftsman has, however, proceeded with the preparation of a second draft of the proposed Bill (extending to over 300 Clauses and more than 20 Schedules) which was sent to the Scottish Office for comment recently. Given the full co-operation

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1. (1966) Scot Law Com No 2.

2. (1985) Scot Law Com No 98, para 2.41.

3. (1973) Scot Law Com No 27.

4. (1985) Scot Law Com No 98, para 2.42.

5. (1978) Scot Law Com No 46.

6. (1981) Scot Law Com No 70, para 3.38.

7. See Green Paper 'Paying for Local Government' (Cmnd 9714), para 8.48.

8. (1982) Scot Law Com No 71.

9. (1985) Scot Law Com No 98, para 2.44.

of the Scottish Office, we are hopeful that the Bill will be introduced in the 1986–87 Session and that it will have good prospects of reaching the Statute Book by the end of the Session.

(2) *Planning*—It is understood that the Scottish Office is considering the preparation of instructions for a Bill to consolidate the legislation relating to Town and Country Planning in Scotland. In view of other commitments, it is not possible to say at this stage when the services of a draftsman are likely to become available to undertake work on this major consolidation.

(3) *Criminal procedure*—No indication has yet been given as to when instructions may be received for the preparation of a Bill to consolidate the legislation relating to criminal procedure. It may well be, however, that the departments concerned are not treating this item as an immediate priority bearing in mind that reasonably up-to-date texts of the main body of the legislation affected (the Criminal Procedure (Scotland) Act 1975 with relative amending enactments) are fairly readily available.

*Additional items* 2.47 As mentioned in our last annual report,<sup>1</sup> with our agreement, a draftsman in the Lord Advocate's Department is undertaking the preparation of a Bill to consolidate the legislation relating to *Agricultural Holdings* in Scotland. A first draft of the proposed Bill has been produced.

(b) *United Kingdom and Great Britain consolidations* 2.48 The following Acts have been passed since completion of this Commission's Twentieth Annual Report:

Company Directors Disqualification Act 1986  
Housing Associations Act 1985  
Housing (Consequential Provisions) Act 1985  
Insolvency Act 1986  
Weights and Measures Act 1985.

2.49 A Bill on the following subject, introduced in the 1985–86 Session, has yet to receive the Royal Assent:

Parliamentary Constituencies.

2.50 Bills on the following subjects are in course of preparation:

Charitable Appeals and Collections  
Clean Air  
Income and Corporation Taxes  
Opticians  
Sea Fisheries  
Road Traffic  
Social Security.

**Statute law revision** 2.51 The Twelfth Joint Report of the two Commissions on Statute Law Revision<sup>2</sup> was published on 14 November and the relative Bill was introduced into Parliament on 28 November 1985. The Bill received the Royal Assent on 2 May 1986.<sup>3</sup> Work has now begun on the Thirteenth Joint Report with a view to introducing a Bill into Parliament as soon as practicable. We are receiving assistance in this work from Mr J F McNish, a retired clerk of court, who is investigating obsolete statutes relating to court procedures.

**Local legislation** 2.52 There have been no further meetings of the Joint Working Party on Local Legislation since its first report was submitted to the Statute Law Committee on 7 December 1984.

2.53 The previous Chairman of the Joint Working Party, the Hon Mr Justice Ralph Gibson,<sup>4</sup> had expressed interest in the operation of the Private Legislation Procedure

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1. (1985) Scot Law Com No 98, para 2.45.

2. (1985) Law Com No 150; Scot Law Com No 99.

3. See Statute Law (Repeals) Act 1986 (c 12).

4. Now Lord Justice Gibson.

(Scotland) Act 1936. This Commission undertook to provide the necessary background information on the topic, and a paper prepared by Mr Gavin Douglas, QC, one of the Commission's part-time Parliamentary Draftsmen and Counsel to the Secretary of State for Scotland on Private Legislation Procedure, was made available to the present Chairman of the Working Party, the Hon Mr Justice Beldam, in November 1985.

2.54 Work has continued, mainly in London, on the Chronological Table of Local and Personal Acts. Interests in Scotland have been consulted on the first instalment of the Table, covering the effects of legislation between 1925 and 1973 on all local and personal Acts, and the response has been generally favourable. A valuable by-product of the Table in Scotland has been the information recovered on apparently extant local authority Acts. Many of these, it is thought, are affected by the repeals in general terms contained in section 225 of the Local Government (Scotland) Act 1973, section 137 of the Civic Government (Scotland) Act 1982 and section 154 of the Roads (Scotland) Act 1984. Work has begun on identifying just which provisions of the local authority Acts concerned remain live law, and it is hoped that a major clarification of the status of these Acts can be achieved through the medium of a Statute Law (Repeals) Bill in due course.

## Other matters

**Breach of confidence** 2.55 Our report on *Breach of Confidence*<sup>1</sup> was published on 20 December 1984. No indication has yet been given as to whether a Bill may be introduced to implement the possible scheme of legislative reform which the Commission put forward in its report as a means of supplementing the existing common law principles, should this be considered desirable.

**Irritancies in leases** 2.56 The recommendations contained in our report on *Irritancies in Leases*,<sup>2</sup> published on 17 February 1983, have been implemented in the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985.<sup>3</sup>

**Judicial factors** 2.57 Since our last annual report<sup>4</sup> was submitted, it has proved possible for us to turn our attention to the topic of judicial factors, which (together with powers of attorney)<sup>5</sup> is known to be of considerable interest to the legal profession. Indeed, we received from the Law Society of Scotland on 3 April 1986 a proposal under section 3(1)(a) of the Law Commissions Act 1965 in the following terms:

'To consider the law relating to the administration of the property of persons who are incapable of managing their own affairs, and the law relating to judicial factors and their supervision by the Accountant of Court, with a view to proposing appropriate reform of the law where that may appear to be necessary.'

Preliminary consideration has been given to the range of issues which might be covered in a consultative memorandum on this topic, and further work is in hand with a view to issuing such a memorandum in the course of the coming year.

**Powers of attorney** 2.58 Also on 3 April 1986, we received a proposal from the Law Society of Scotland on the topic of powers of attorney. This proposal is in the following terms:

'To consider the law relating to powers of attorney with a view to proposing appropriate reform of the law where that may appear to be necessary.'

Here again, some preliminary work has already been carried out, and further work is in hand with a view to issuing a consultative memorandum in the course of the next year.

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1. (1984) Scot Law Com No 90.

2. (1983) Scot Law Com No 75.

3. 1985 c 73, sections 4-7.

4. (1985) Scot Law Com No 98.

5. See next paragraph.

**Floating charges and receivers**

2.59 Work on the preparation of a consultative memorandum on floating charges and receivers has been completed, and we hope that it will be published soon.<sup>1</sup> The topic of company charge registration has been omitted from the consultative memorandum at the request of the Department of Trade and Industry which has included this subject in its general review for Great Britain of the law relating to security over moveable property.<sup>2</sup>

**Recovery of possession of heritable property**

2.60 We have formulated policy for a report on this topic and the report and relative draft Bill are now in the course of preparation. We have decided, however, to carry out further, but more limited, consultation on two separate issues which have arisen during the course of preparing the report and draft Bill. The first concerns a possible statutory definition of the Scottish term and quarter days for all purposes in the law of Scotland.<sup>3</sup> The second issue arises from the recent decision of the Inner House of the Court of Session in *Morrison's Executors v Rendall*,<sup>4</sup> and concerns, in relation to both agricultural and non-agricultural leases, the entitlement of parties to a lease to contract out of the statutory notice provisions relating to termination of the lease.<sup>5</sup>

### Miscellaneous: advice to Government Departments, etc

2.61 It has been our practice to mention under this heading items which do not readily fit into any of the other classifications adopted in this report, including matters of an international character on which our advice has been sought by Government departments. In some instances such matters have been the subject of formal references to us under section 3(1)(e) of the Law Commissions Act 1965 and have resulted in our undertaking law reform projects. Matters in this category are covered elsewhere in this report. In other cases, however, the requests have been dealt with informally. We do not think it would be appropriate for us to give an exhaustive list of matters in the second category in this report.

**Reservation of title to corporeal moveables**

2.62 It is understood that the draft European Convention on reservation of title to corporeal moveables referred to in previous annual reports<sup>6</sup> remains under consideration in the Council of Europe, and that work on a draft EEC Directive on the same topic is still in abeyance pending the outcome of the discussions on the draft Convention.

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1. This consultative memorandum is expected to be published during October 1986.

2. See paras 2.21–2.22 above.

3. The relevant Consultation Paper—*The Scottish Term and Quarter Days: A Statutory Definition*—was published on 17 July 1986.

4. 1986 SLT 227.

5. The Relevant Consultation Paper—*Termination of Leases: Contracting Out of the Statutory Notice Provisions*—was published on 17 July 1986.

6. See our Nineteenth Annual Report, (1984) Scot Law Com No 89, para 3.58.

# Part III Consultation

## The Law Commission for England and Wales

3.1 We continue our close co-operation with the Law Commission for England and Wales. During the year under review we have worked together on various matters, including sale and supply of goods,<sup>1</sup> choice of law rules in tort delict,<sup>2</sup> the law of domicile<sup>3</sup> and choice of law rules relating to marriage.<sup>4</sup> The annual Joint Meeting was held in Edinburgh on 8 and 9 April 1986.

### **Codification of the criminal law, etc.**

3.2 We are grateful to the Law Commission for continuing to keep us informed of the progress of its work on its major programme subject, 'Codification of the Criminal Law', and for affording us the opportunity to comment from time to time on the possible implications for Scotland of certain of its projects.

### **Working party on contract law**

3.3 Our Working Party<sup>5</sup> on Contract Law has remained in being for the purpose of considering relevant papers published by the Law Commission for England and Wales and such other matters as may be referred to it from time to time.

## Other law reform organisations

3.4 We have maintained our contact with law reform organisations in various parts of the world and are pleased to welcome members of these organisations who come to visit us.

## The legal and other professions in Scotland

3.5 We continue to consult with the leading organisations of the legal and other professions in Scotland and with other bodies. In this regard, we have continued to hold informal meetings with representatives of the Faculty of Advocates and the Law Society of Scotland and have found these meetings most useful. As in previous years, we wish to record our appreciation of the valuable assistance afforded by those whom we have invited to act as consultants or advisers and by others who have served on our working parties.

3.6 We are also most grateful for the help we continue to receive from the Librarian and staff of the Edinburgh University Library, Edinburgh University Law Library, the Centre of European Governmental Studies, the National Library of Scotland, the Advocates' Library, the Signet Library and the Institute of Advanced Legal Studies, London.

## Conferences, seminars, etc

3.7 Commissioners and members of our legal staff attended a number of conferences, seminars and colloquia in the course of the year under review: a few of the more important of these are mentioned below.

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1. See para 2.28.

2. See para 2.34.

3. See para 2.38.

4. See para 2.39.

5. A list of the present members of the Working Party appears in Appendix I to this report.

3.8 Dr Clive attended the Fifth World Conference of the International Society on Family Law held in Brussels from 8 to 14 July 1985.

3.9 Sheriff Nicholson attended the Second National Computer Security Conference, held in Windsor under the auspices of the Computer Fraud and Security Bulletin, on 5 and 6 November 1985. He also attended the Annual Conference of the Scottish Association for the Study of Delinquency held at Peebles from 15 to 17 November 1985, and in addition he and a member of our legal staff attended a one-day conference on the subject of child abuse held by the Association in Edinburgh on 28 April 1986.

3.10 A member of our legal staff attended a conference on the topic 'Consumers in Debt', held in London under the auspices of the National Consumer Council, on 14 January 1986.

3.11 Mr Bertram and a member of our legal staff attended the Annual Conference of the Law Society of Scotland, held at Gleneagles Hotel from 18 to 20 April 1986. As in previous years, the informal discussions with practising members of the profession about aspects of the Commission's work which took place against the background of the conference proved most beneficial.

3.12 A member of our legal staff attended a conference on the topic of administrative justice, held at Brunel University under the auspices of the Economic and Social Research Council, on 22 and 23 May 1986.

# Part IV Miscellaneous

## Commissioners

4.1 The Commission consists of a full-time Chairman, two full-time Commissioners, and two part-time Commissioners. The present Commissioners are:

The Honourable Lord Maxwell, <i>Chairman</i>	(Full-time)
Dr E M Clive	(Full-time)
Professor P N Love, CBE	(Part-time)
Mr J Murray, QC	(Part-time)
Sheriff C G B Nicholson, QC	(Full-time)

4.2 Mr R D D Bertram, WS, ceased to be a member of the Commission on 31 July 1986 on completing his second term of office as a part-time Commissioner. We wish to express our sincere appreciation of the contribution made by Mr Bertram to our work. On 1 August 1986 we welcomed his successor, Professor P N Love, CBE, to membership of the Commission.

## Staff

4.3 Our legal staff consists of one full-time and two part-time Parliamentary Draftsmen, our Secretary and eight other qualified lawyers. Throughout the year we received assistance from a Depute Procurator Fiscal who has undertaken valuable research on our behalf into criminal law matters. During the summer vacation of 1985 we employed four honours graduates in law to assist with our research work. We wish to thank them all for their assistance. Our complement of non-legal staff remains at eleven.

4.4 At the date of preparation of this report the principal members of staff were:

### *Parliamentary draftsmen*

Mr J F Wallace, QC	(Full-time)
Mr G S Douglas, QC	(Part-time)
Mr W C Galbraith, QC	(Part-time)

### *Secretary*

Mr R Eadie

### *Assistant Solicitors*

Mr N R Whitty  
Mrs L A Lilleker

### *Other members of legal staff<sup>1</sup>*

Mr J G S Maclean  
Dr D I Nichols  
Mr J C Mullin  
Miss J L McLeod

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1. In addition, as indicated above, valuable assistance has been received from a Depute Procurator Fiscal. Throughout most of the period under review the Depute Procurator Fiscal concerned was Mrs A M Cowan, who was an active member of both the criminal law and evidence teams. She was succeeded on 30 June 1986 by Mr D Kelly.

Mrs D F Barbirou  
Mr M McMillan

*Librarian*  
Mrs C A John<sup>1</sup>

*Chief Clerk*  
Mrs M J W Turnbull

## Library

4.5 Although, as mentioned in our last annual report,<sup>2</sup> our new library facilities at 140 Causewayside are an immense improvement on the cramped accommodation they replaced, we and our legal staff still have access to the University of Edinburgh Law Library. Access to the University Library has been very beneficial to us, and will continue to be necessary for the foreseeable future in view of the wide scope of its contents. We again express our appreciation of the co-operation and assistance which we have received from the University and its officers, including in particular the Law Librarian, Miss M E Sturgeon.

## Departmental committees and other bodies

4.6 Our Commissioners and legal staff are from time to time appointed to serve on Government and departmental committees and as members of other bodies concerned with the development and reform of the law.

### **Statute Law Committee**

4.7 Our Chairman serves on the Statute Law Committee and is a member of the Editorial Board for Statutes in Force. The Commission's full-time Parliamentary Draftsman now acts as an alternate member of both bodies. In addition, our Secretary has been appointed a member of the 'Secretariat' recently set up under the chairmanship of Sir Derek Oulton, KCB, QC,<sup>3</sup> to assist the Statute Law Committee in its work.

### **Departmental Advisory Committee on Arbitration Law**

4.8 Mr Murray continues to serve as a member of the Department of Trade and Industry Advisory Committee on Arbitration Law, which is chaired by Lord Justice Mustill. A member of our legal staff<sup>4</sup> acts as an alternate member. The Committee's first task is to advise the Government regarding the United Nations draft Model Law on International Commercial Arbitration.

### **International Society on Family Law**

4.9 Dr Clive is a member of the Executive Council of the International Society on Family Law.

## Scrutiny of Bills

4.10 We now confine our detailed scrutiny of Bills to those which particularly touch upon areas of law under current examination by us.

## Appendices

4.11 Membership of Working Parties appears in Appendix I. In Appendix II we list reports, consultative memoranda and other documents prepared by the Commission. These lists include certain consultative documents which were given restricted circulation. The extent to which our proposals have been incorporated in legislation is indicated in Appendix III.

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1. Succeeding Mrs T P Macdonald.

2. (1985) Scot. Law Com No 98, para 4.4.

3. Permanent Secretary of the Lord Chancellor's Department.

4. Mr J C Mullin.

# Appendix I

## Membership of Working Parties

### *Joint Working Party on Local Legislation*

The Hon Mr Justice Beldam <sup>1</sup> (Chairman)	Law Commission for England and Wales
The Hon Lord Maxwell	Scottish Law Commission
Mr B J Davenport, QC	Law Commission for England and Wales
Mr H W Gamon, CBE MC	Society of Parliamentary Agents
Mr J G S Maclean (as alternate for Lord Maxwell)	Scottish Law Commission
Mr D Rippengal, CB QC	Counsel to Chairman of Committees
Mr R H Streeten	Law Commission for England and Wales
Mr M J Ware, CB	Department of the Environment
Secretary: Mr A M Rowland, Law Commission for England and Wales	

### *Working Party on Contract Law*

Mr J Murray, QC (Chairman)	Scottish Law Commission
Mr R D D Bertram, WS <sup>2</sup>	Scottish Law Commission
Professor R Black	University of Edinburgh
Mr M G Clarke	Faculty of Advocates
Dr W W McBryde	University of Aberdeen
Professor Emeritus Sir Thomas Smith QC	Consultant on Obligations
Secretary: Mr J C Mullin, Scottish Law Commission	

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1. Succeeding the Hon Mr Justice Ralph Gibson (now Lord Justice Gibson) on 1 October 1985.

2. Mr Bertram ceased to be a member on 31 July 1986 on the expiry of his second term of office as a Commissioner.

# Appendix II

## 1 Scottish Law Commission—Reports, Etc Published by Her Majesty's Stationery Office (as at 31 August 1986)

	<i>Commission No</i>	
1965	1	First Programme of Law Reform
1966	2	First Programme of Consolidation and Statute Law Revision
	3	First Annual Report 1965–66
1967	4	Proposals for Reform of the Law of Evidence relating to Corroboration
	5	Reform of the Law Relating to Legitimation <i>per subsequens matrimonium</i> (Cmnd 3223)
	6	Divorce—The Grounds Considered (Cmnd 3256)
	6A	*Report on the Consolidation of Certain Enactments relating to Shellfish Fisheries and Shellfish—Sea Fisheries (Shellfish) Bill (Cmnd 3267)
	7	Second Annual Report 1966–67
1968	8	Second Programme of Law Reform
	9	Third Annual Report 1967–68
1969	10	*Report on the Consolidation of the Trustee Savings Banks Acts 1954 to 1968—Trustee Savings Banks Bill (Cmnd 4004)
	11	*Report on the Interpretation of Statutes
	12	*Report on Exemption Clauses in Contracts—First Report: Amendments to the Sale of Goods Act 1893
	13	Fourth Annual Report 1968–69
1970	14	Report on the Companies (Floating Charges) (Scotland) Act 1961 (Cmnd 4336)
	15	Reform of the Law Relating to Prescription and Limitation of Actions
	16	*Report on the Hague Convention on Recognition of Divorces and Legal Separations (Cmnd 4542)
	17	Fifth Annual Report 1969–70
	18	*Report on the Consolidation of Certain Enactments relating to Coinage (Cmnd 4544)
	19	*Report on the Consolidation of Certain Enactments relating to Excise Duties on Mechanically Propelled Vehicles, and to the Licensing and Registration of such Vehicles (Cmnd 4547)
1971	20	*Report on the Consolidation of Enactments relating to the National Savings Bank (Cmnd 4574)
	21	*Report on the Taxation of Income and Gains derived from Land (Cmnd 4654)
	22	*Report on the Consolidation of Certain Enactments relating to Road Traffic—Road Traffic Bill (Cmnd 4731)
	23	Sixth Annual Report 1970–71
1972	24	Report on the Consolidation of Certain Enactments relating to Town and Country Planning in Scotland—Town and Country Planning (Scotland) Bill (Cmnd 4949)
	25	Family Law—Report on Jurisdiction in Consistorial Causes affecting Matrimonial Status
	26	*Statute Law Revision—Fourth Report: Draft Statute Law (Repeals) Bill (Cmnd 5108)
1973	27	Second Programme of Consolidation and Statute Law Revision
	28	Seventh Annual Report 1971–72
	29	Third Programme of Law Reform
	30	Report on Liability for Antenatal Injury (Cmnd 5371)
	31	Report on the Law relating to Damages for Injuries Causing Death
	32	*Statute Law Revision—Fifth Report: Draft Statute Law (Repeals) Bill (Cmnd 5493)

\* Produced jointly with the Law Commission for England and Wales.

*Commission*

	<i>No</i>	
1974	33	Eighth Annual Report 1972–73
	34	Report on Presumption of Death
	35	*Friendly Societies Bill—Report on the Consolidation of the Friendly Societies Acts 1896 to 1971 and certain other enactments relating to the Societies to which those Acts apply (Cmnd 5634)
	36	*Statute Law Revision—Sixth Report: Draft Statute Law (Repeals) Bill (Cmnd 5792)
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1975	37	Ninth Annual Report 1973–74
	38	*Supply Powers Bill—Report on the Consolidation of Enactments relating to Supply Powers (Cmnd 5850)
	39	*Exemption Clauses—Second Report
	40	*Statute Law Revision—Seventh Report: Draft Statute Law (Repeals) Bill (Cmnd 6303)
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1976	41	Tenth Annual Report 1974–75
	42	Family Law: Report on Liability for Adultery and Enticement of a Spouse
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1977	43	Eleventh Annual Report 1975–76
	44	*Statute Law Revision—Eighth Report: Draft Statute Law (Repeals) Bill (Cmnd 6719)
	45	*Report on Liabilities for Defective Products (Cmnd 6831)
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1978	46	Third Programme of Consolidation and Statute Law Revision
	47	Twelfth Annual Report 1976–77
	48	*Statute Law Revision—Ninth Report: Draft Statute Law (Repeals) Bill (Cmnd 7189)
	49	Electricity (Scotland) Bill—Report on the Consolidation of Certain Enactments relating to Electricity in Scotland (Cmnd 7178)
	50	Adoption (Scotland) Bill—Report on the Consolidation of Certain Enactments relating to Adoption in Scotland (Cmnd 7187)
	51	Damages for Personal Injuries: Report on (1) Admissibility of Claims for Services (2) Admissible Deductions
	52	Report on the Married Women’s Policies of Assurance (Scotland) Act 1880 (Cmnd 7245)
	53	*Interpretation Bill—Report on Interpretation Act 1889 and Certain other Enactments relating to the Construction and Operation of Acts of Parliament and other Instruments (Cmnd 7235)
	54	*Customs and Excise Management Bill—Report on the Consolidation of the Enactments relating to the Collection and Management of the Revenues of Customs and Excise (Cmnd 7418)
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1979	55	Thirteenth Annual Report 1977–78
	56	Fourteenth Annual Report 1978–79
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1980	57	Report on Lost and Abandoned Property
	58	Education (Scotland) Bill—Report on the Consolidation of Certain Enactments relating to Education in Scotland (Cmnd 7688)
	59	Report on Powers of Judicial Factors (Cmnd 7904)
	60	Report on Occupancy Rights in the Matrimonial Home and Domestic Violence
	61	Fifteenth Annual Report 1979–80
	62	*Judicial Pensions Bill—Report on the Consolidation of Certain Enactments relating to Pensions and other Benefits payable in respect of Service in Judicial Office (Cmnd 8097)
	63	*Statute Law Revision—Tenth Report: Draft Statute Law (Repeals) Bill (Cmnd 8089)
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1981	64	Report on Section 5 of the Damages (Scotland) Act 1976
	65	*Trustee Savings Banks Bill—Report on the Consolidation of the Trustee Savings Banks Acts 1969 to 1978 (Cmnd 8257)
	66	*Report on the Council of Europe Conventions on Foreign Money Liabilities (1967) and on the Place of Payment of Money Liabilities (1972) (Cmnd 8318)
1981/ 82	67	Family Law—Report on Aliment and Financial Provision
	68	Report on Bankruptcy and Related Aspects of Insolvency and Liquidation
1981	69	Report on the Law of Incest in Scotland (Cmnd 8422)
	70	Sixteenth Annual Report 1980–81
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1982	71	Fourth Programme of Consolidation and Statute Law Revision
	72	Family Law—Report on Financial Provision after Foreign Divorce
	73	Seventeenth Annual Report 1981–82

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\* Produced jointly with the Law Commission for England and Wales.

*Commission*

	<i>No</i>	
1983	74	Prescription and the Limitation of Actions—Report on Personal Injuries Actions and Private International Law Questions
	75	Report on Irritancies in Leases (Cmnd 8760)
	76	Family Law—Report on Outdated Rules in the Law of Husband and Wife
	77	*Medical Bill—Report on the consolidation of the Medical Acts 1956 to 1978 and certain related provisions (Cmnd 8839)
	78	Evidence—Report on Evidence in Cases of Rape and Other Sexual Offences
	79	Obligations—Report on Rectification of Contractual and Other Documents
	80	Report on the Mental Element in Crime
	81	Eighteenth Annual Report 1982–83
1984	82	Family Law—Report on Illegitimacy
	83	*Amendment of the Companies Acts 1948–1983—Report under section 116 of the Companies Act 1981 (Cmnd 9114)
	84	*Dentists Bill—Report on the Consolidation of the Dentists Acts 1957 to 1983 (Cmnd 9119)
	85	*Road Traffic Regulation Bill—Report on the Consolidation of the Road Traffic Regulation Act 1967 and certain related enactments (Cmnd 9162)
	86	Family Law—Report on Matrimonial Property
	87	*Further Amendments of the Companies Acts 1948–1983—Report under section 116 of the Companies Act 1981 (Cmnd 9272)
	88	*Private International Law—Report on Recognition of Foreign Nullity Decrees and Related Matters (Cmnd 9341)
	89	Nineteenth Annual Report 1983–84
	90	Report on Breach of Confidence
1985	91	*Family Law—Report on Custody of Children: Jurisdiction and Enforcement within the United Kingdom (Cmnd 9419)
	92	Obligations—Report on Negligent Misrepresentation
	93	Report on Art and Part Guilt of Statutory Offences (Cmnd 9551)
	94	*Report on the Consolidation of the Housing Acts—Housing Bill, Housing Associations Bill, Landlord and Tenant Bill
	95	Report on Diligence and Debtor Protection
	96	*Private International Law—Polygamous Marriages: Capacity to Contract a Polygamous Marriage and Related Issues
	97	Obligations—Report on Civil Liability in relation to Animals
	98	Twentieth Annual Report 1984–85
	99	Statute Law Revision—Twelfth Report: Draft Statute Law (Repeals) Bill (Cmnd 9648)
1986	100	Evidence—Report on Corroboration, Hearsay and Related Matters in Civil Proceedings

## 2 Scottish Law Commission—Consultative memoranda<sup>2</sup> circulated for comment and criticism (as at 31 August 1986)

1966	Memorandum No 1—Probates or Letters of Administration as Links in Title to Heritable Property under the Succession (Scotland) Act 1964
	Memorandum No 2—Expenses in Criminal Cases
1967	Memorandum No 3—Restrictions on the Creation of Liferents
	Memorandum No 4—Applications for Planning Permission
	Memorandum No 5—Damages for Injuries Causing Death
	*Memorandum No 6—Interpretation of Statutes
1968	*Memorandum No 7—Provisional Proposals Relating to Sale of Goods
	Memorandum No 8—Draft Evidence Code—First Part
1969	Memorandum No 9—Prescription and Limitation of Actions
	Memorandum No 10—Examination of the Companies (Floating Charges) (Scotland) Act 1961
	Memorandum No 11—Presumptions of Survivorship and Death
	Memorandum No 12—Judgments Extension Acts
1970	Memorandum No 13—Jurisdiction in Divorce
1971	Memorandum No 14—Remedies in Administrative Law

\* Produced jointly with the Law Commission for England and Wales.

2. The publications in this series are now referred to by their full title of 'consultative memorandum', but in order to avoid undue repetition they will continue to be listed in this Appendix in the form set out.

- \*Memorandum No 15—The Exclusion of Liability for Negligence in the Sale of Goods and Exemption Clauses for the Supply of Services and other Contracts  
 Memorandum No 16—Insolvency, Bankruptcy and Liquidation
- 1972 Memorandum No 17—Damages for Injuries Causing Death
- 1974 Memorandum No 18—Liability of a Paramour in Damages for Adultery and Enticement of a Spouse  
 Memorandum No 19—Powers of Judicial Factors
- 1975 \*Memorandum No 20—Liability for Defective Products  
 Memorandum No 21—Damages for Personal Injuries—Deductions and Heads of Claim
- 1976 Memorandum No 22—Aliment and Financial Provision (2 Vols)  
 \*Memorandum No 23—Custody of Children—Jurisdiction and Enforcement within the United Kingdom  
 Memorandum No 24—Corporeal Moveables—General Introduction and Summary of Provisional Proposals  
 Memorandum No 25—Corporeal Moveables—Passing of Risk and of Ownership  
 Memorandum No 26—Corporeal Moveables—Some Problems of Classification  
 Memorandum No 27—Corporeal Moveables—Protection of the Onerous *bona fide* Acquirer of Another's Property  
 Memorandum No 28—Corporeal Moveables—Mixing, Union and Creation  
 Memorandum No 29—Corporeal Moveables—Lost and Abandoned Property  
 Memorandum No 30—Corporeal Moveables—Usucapion or Acquisitive Prescription  
 Memorandum No 31—Corporeal Moveables—Remedies  
 Memorandum No 32—Comments on White Paper '*Our Changing Democracy: Devolution to Scotland and Wales*'  
 Appendix—Devolution, Scots Law and the Role of the Commission  
 Memorandum No 33—Law of Rights in Security—Company Law—Registration of Charges: Scotland
- 1977 Memorandum No 34—Constitution and Proof of Voluntary Obligations—General Introduction and Summary of Provisional Proposals  
 Memorandum No 35—Constitution and Proof of Voluntary Obligations—Unilateral Promises  
 Memorandum No 36—Constitution and Proof of Voluntary Obligations—Formation of Contract  
 Memorandum No 37—Constitution and Proof of Voluntary Obligations—Abortive Constitution  
 Memorandum No 38—Constitution and Proof of Voluntary Obligations—Stipulations in Favour of Third Parties  
 Memorandum No 39—Constitution and Proof of Voluntary Obligations—Formalities of Constitution and Restrictions on Proof  
 Memorandum No 40—Confidential Information
- 1978 Memorandum No 41—Family Law: Occupancy Rights in the Matrimonial Home and Domestic Violence (2 Vols)  
 Memorandum No 42—Defective Consent and Consequential Matters (2 Vols)
- 1979 Memorandum No 43—Defective Expression and its Correction
- 1980 Memorandum No 44—The Law of Incest in Scotland  
 Memorandum No 45—Time-Limits in Actions for Personal Injuries  
 Memorandum No 46—The Law of Evidence  
 Memorandum No 47—First Memorandum on Diligence—General Issues and Introduction  
 Memorandum No 48—Second Memorandum on Diligence: Poidings and Warrant Sales  
 Memorandum No 49—Third Memorandum on Diligence: Arrestment and Judicial Transfer of Earnings  
 Memorandum No 50—Fourth Memorandum on Diligence: Debt Arrangement Schemes  
 Memorandum No 51—Fifth Memorandum on Diligence: Administration of Diligence
- 1981 Memorandum No 52—Irritancies in Leases
- 1982 Memorandum No 53—Family Law: Illegitimacy  
 Memorandum No 54—Some Obsolete and Discriminatory Rules in the Law of Husband and Wife  
 Memorandum No 55—Civil Liability in relation to Animals  
 \*Memorandum No 56—Polygamous Marriages  
 (Capacity to Contract a Polygamous Marriage and the Concept of the Potentially Polygamous Marriage)
- 1983 Memorandum No 57—Matrimonial Property  
 \*Memorandum No 58—Sale and Supply of Goods
- 1984 Memorandum No 59—Recovery of Possession of Heritable Property  
 Memorandum No 60—Mobbing and Rioting  
 Memorandum No 61—Attempted Homicide  
 \*Memorandum No 62—Private International Law: Choice of Law in Tort/Delict
- 1985 \*Memorandum No 63—Private International Law: The Law of Domicile  
 \*Memorandum No 64—Private International Law: Choice of Law Rules in Marriage

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\* Produced jointly with the Law Commission for England and Wales.

Memorandum No 65—Legal Capacity and Responsibility of Minors and Pupils  
Memorandum No 66—Constitution and Proof of Voluntary Obligations and the Authentication of Writings  
Memorandum No 67—Child Abduction  
Memorandum No 68—Computer Crime

### 3 Scottish Law Commission—Other published documents

- 1974 \*Private International Law—Consultative Document on EEC Preliminary Draft Convention on the Law applicable to Contractual and Non-contractual Obligations
- 1979 Research Paper on the Law of Evidence of Scotland by Sheriff I D Macphail
- 1984 Research Paper on Actions of Ejection and Removing by Mr A G M Duncan
- 1986 Report of Working Party on Security over Moveable Property

### 4 Scottish Law Commission—Consultative documents not published and with restricted circulation

- 1969 Married Women's Policies of Assurance (Scotland) Act 1880—Working Paper
- 1973 Consultation Paper on Divorce for Incurable Insanity
- 1974 Insolvency, Bankruptcy and Liquidation in Scotland—Consultative Paper
- 1978 Consultation Document—Private International Law: Choice of Law Rules in the EEC Draft Insurance Services Directive
- 1979 Consultation Paper—Bankruptcy: Gibson v Hunter Home Designs Ltd  
Consultative Note on section 5 (6) of the Damages (Scotland) Act 1976
- 1980 Consultation Paper—Prescription and Limitation in Private International Law
- 1981 Consultation Paper—Financial Provision after Foreign Divorce
- 1982 Consultation Paper—Exchange of Standard Term Forms in Contract Formation  
Consultation Paper—Breach of Confidence
- 1983 Consultation Paper—Custody of Children: Jurisdiction and Enforcement within the United Kingdom: Jurisdiction of the Sheriff Court  
Supplementary Consultation Paper—Conflicts of Jurisdiction affecting the Custody of Children  
Consultation Paper—Illegitimacy and the Guardianship Acts  
\*Consultation Paper—Recognition of Foreign Nullity Decrees and Related Matters
- 1984 Consultation Paper—Art and Part Guilt of Statutory Offences
- 1986 Consultation Paper—The Scottish Term and Quarter Days: A Statutory Definition  
Consultation Paper—Termination of Leases: Contracting Out of the Statutory Notice Provisions

### 5 Scottish Law Commission—Unpublished Confidential Documents

- 1975 \*Interim Report on the EEC Preliminary Draft Convention on the Law applicable to Contractual and Non-Contractual Obligations

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\* Produced jointly with the Law Commission for England and Wales.

# Appendix III

## Statutory Provisions relating to the Scottish Law Commission's Proposals (as at 31 August 1986)

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
<i>(a) Memoranda</i>		
Restrictions on the Creation of Liferents (Memorandum No 3)	5.5.67	Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c 70), section 18.
Applications for Planning Permission (Memorandum No 4)	11.5.67	Town and Country Planning (Scotland) Act 1969 (c 30), section 79.
<i>(b) Reports</i>		
Proposals for Reform of the Law of Evidence Relating to Corroboration (Scot Law Com No 4)	20.4.67	Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c 70), section 9.
Reform of the Law Relating to Legitimation <i>per subsequens matrimonium</i> (Scot Law Com No 5) (Cmnd 3223)	20.4.67	Legitimation (Scotland) Act 1968 (c 22), Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c 70), section 5.
Divorce—The Grounds Considered (Scot Law Com No 6) (Cmnd 3256)	12.5.67	Divorce (Scotland) Act 1976 (c 39).
*Sea Fisheries (Shellfish) Bill (Scot Law Com No 6A) (Cmnd 3267)	11.5.67	Sea Fisheries (Shellfish) Act 1967 (c 83).
*Trustee Savings Banks Bill (Scot Law Com No 10)	17.4.69	Trustee Savings Banks Act 1969 (c 50).
*Interpretation of Statutes (Scot Law Com No 11)	11.6.69	None.
*Exemption Clauses in Contracts—First Report: Amendment to the Sale of Goods Act 1893 (Scot Law Com No 12)	18.9.69	Supply of Goods (Implied Terms) Act 1973 (c 13).
The Companies (Floating Charges) (Scotland) Act 1961 (Scot Law Com No 14) (Cmnd 4336)	22.4.70	The Companies (Floating Charges and Receivers) (Scotland) Act 1972 (c 67).
Reform of the Law Relating to Prescription and Limitation of Actions (Scot Law Com No 15)	27.11.70	Prescription and Limitation (Scotland) Act 1973 (c 52).
*Hague Convention on Recognition of Divorces and Legal Separations (Scot Law Com No 16) (Cmnd 4542)	1.12.70	Recognition of Divorce and Legal Separations Act 1971 (c 53).
*Coinage Bill (Scot Law Com No 18) (Cmnd 4544)	26.11.70	Coinage Act 1971 (c 24).
*Vehicles (Excise) Bill (Scot Law Com No 19) (Cmnd 4547)	2.12.70	Vehicles (Excise) Act 1971 (c 10).
*National Savings Bank Bill (Scot Law Com No 20) (Cmnd 4574)	13.1.71	National Savings Bank Act 1971 (c 29).
*Taxation of Income and Gains derived from Land (Scot Law Com No 21) (Cmnd 4654)	23.4.71	In part by section 82 of the Finance Act 1972 (c 41).
*The Road Traffic Bill (Scot Law Com No 22) (Cmnd 4731)	26.7.71	Road Traffic Act 1972 (c 20).

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<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
Town and Country Planning (Scotland) Bill (Scot Law Com No 24) (Cmnd 4949)	20.4.72	Town and Country Planning (Scotland) Act 1972 (c 52).
Family Law—Report on Jurisdiction in Consistorial Causes affecting Matrimonial Status (Scot Law Com No 25)	29.9.72	Domicile and Matrimonial Proceedings Act 1973 (c 45).
*Statute Law Revision—Fourth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 26) (Cmnd 5108)	28.9.72	Statute Law (Repeals) Act 1973 (c 39).
Report on Liability for Antenatal Injury (Scot Law Com No 30) (Cmnd 5371)	30.8.73	None required.
Report on the Law Relating to Damages for Injuries causing Death (Scot Law Com No 31)	24.10.73	Damages (Scotland) Act 1976 (c 13).
*Statute Law Revision—Fifth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 32) (Cmnd 5493)	6.12.73	Statute Law (Repeals) Act 1974 (c 22).
Report on Presumption of Death (Scot Law Com No 34)	3.9.74	Presumption of Death (Scotland) Act 1977 (c 27).
*Friendly Societies Bill (Scot Law Com No 35) (Cmnd 5634)	27.6.74	Friendly Societies Act 1974 (c 46).
*Statute Law Revision—Sixth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 36) (Cmnd 5792)	5.12.74	Statute Law (Repeals) Act 1975 (c 10).
*Supply Powers Bill (Scot Law Com No 38) (Cmnd 5850)	6.1.75	Supply Powers Act 1975 (c 9).
*Exemption Clauses—Second Report (Scot Law Com No 39)	2.10.75	Unfair Contract Terms Act 1977 (c 50).
*Statute Law Revision—Seventh Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 40) (Cmnd 6303)	8.12.75	Statute Law (Repeals) Act 1976 (c 16).
Family Law—Report on Liability for Adultery and Enticement of a Spouse (Scot Law Com No 42)	23.6.76	In part by section 10 of the Divorce (Scotland) Act 1976 (c 39).
*Statute Law Revision—Eighth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 44) (Cmnd 6719)	6.1.77	Statute Law (Repeals) Act 1977 (c 18).
*Liability for Defective Products (Scot Law Com No 45) (Cmnd 6831)	15.6.77	None.
*Statute Law Revision—Ninth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 48) (Cmnd 7189)	11.5.78	Statute Law (Repeals) Act 1978 (c 45).
Electricity (Scotland) Bill (Scot Law Com No 49) (Cmnd 7178)	23.5.78	Electricity (Scotland) Act 1979 (c 11).
Adoption (Scotland) Bill (Scot Law Com No 50) (Cmnd 7187)	3.5.78	Adoption (Scotland) Act 1978 (c 28).
Damages for Personal Injuries: Report on (1) Admissibility of Claims for Services (2) Admissible Deductions (Scot Law Com No 51)	18.7.78	Administration of Justice Act 1982 (c 53), Part II.
Report on the Married Women's Policies of Assurance (Scotland) Act 1880 (Scot Law Com No 52) (Cmnd 7245)	27.7.78	Married Women's Policies of Assurance (Scotland) (Amendment) Act 1980 (c 56).

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<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
*Interpretation Bill (Scot Law Com No 53) (Cmnd 7235)	8.6.78	Interpretation Act 1978 (c 30).
*Customs and Excise Management Bill (Scot Law Com No 54) (Cmnd 7418)	7.12.78	Customs and Excise Management Act 1979 (c 2).
Report on Lost and Abandoned Property (Scot Law Com No 57)	16.1.80	In part by the Civic Government (Scotland) Act 1982 (c 45), Part VI.
Education (Scotland) Bill (Scot Law Com No 58) (Cmnd 7688)	2.4.80	Education (Scotland) Act 1980 (c 44).
Report on Powers of Judicial Factors (Scot Law Com No 59) (Cmnd 7904)	3.7.80	Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c 55), section 8.
Report on Occupancy Rights in the Matrimonial Home and Domestic Violence (Scot Law Com No 60)	17.7.80	Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c 59).
*Judicial Pensions Bill (Scot Law Com No 62) (Cmnd 8097)	27.11.80	Judicial Pensions Act 1981 (c 20).
*Statute Law Revision—Tenth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 63) (Cmnd 8089)	10.12.80	Statute Law (Repeals) Act 1981 (c 19).
Report on Section 5 of the Damages (Scotland) Act 1976 (Scot Law Com No 64)	29.4.81	Administration of Justice Act 1982 (c 53), Part II.
*Trustee Savings Banks Bill (Scot Law Com No 65) (Cmnd 8257)	11.6.81	Trustee Savings Banks Act 1981 (c 65).
*Report on the Council of Europe Conventions on Foreign Money Liabilities (1967) and on the Place of Payment of Money Liabilities (1972) (Scot Law Com No 66) (Cmnd. 8318)	28.7.81	None required.
Family Law—Report on Aliment and Financial Provision (Scot Law Com No 67)	5.11.81	Family Law (Scotland) Act 1985 (c 37).
Report on Bankruptcy and Related Aspects of Insolvency and Liquidation (Scot Law Com No 68)	26.2.82	Bankruptcy (Scotland) Act 1985 (c 66).
Report on the Law of Incest in Scotland (Scot Law Com No 69) (Cmnd 8422)	23.12.81	Incest and Related Offences (Scotland) Act 1986 (c 36).
Report on Financial Provision after Foreign Divorce (Scot Law Com No 72)	28.10.82	Matrimonial and Family Proceedings Act 1984 (c 42), Part IV.
Prescription and Limitation of Actions—Report on Personal Injuries Actions and Private International Law Questions (Scot Law Com No 74)	10.2.83	Prescription and Limitation (Scotland) Act 1984 (c 45).
Report on Irritancies in Leases (Scot Law Com No 75) (Cmnd 8760)	17.2.83	Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c 73).
Family Law—Report on Outdated Rules in the Law of Husband and Wife (Scot Law Com No 76)	12.5.83	Law Reform (Husband and Wife) (Scotland) Act 1984 (c 15).
*Medical Bill (Scot Law Com No 77) (Cmnd 8839)	24.3.83	Medical Act 1983 (c 54).
Report on Evidence in Cases of Rape and Other Sexual Offences (Scot Law Com No 78)	21.7.83	Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c 73).
Report on Rectification of Contractual and Other Documents (Scot Law Com No 79)	28.7.83	Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c 73).

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<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
The Mental Element in Crime (Scot Law Com No 80)	23.11.83	None required.
Family Law—Report on Illegitimacy (Scot Law Com No 82)	26.1.84	Law Reform (Parent and Child) (Scotland) Act 1986 (c 9).
*Amendment of the Companies Acts 1948–1983 (Scot Law Com No 83) (Cmnd 9114)	21.12.83	Companies Acts (Pre-Consolidation Amendment) Order 1983 (S.I. 1983/134) Companies Act 1985 (c 6).
*Dentists Bill (Scot Law Com No 84) (Cmnd 9119)	18.1.84	Dentists Act 1984 (c 24).
*Road Traffic Regulation Bill (Scot Law Com No 85) (Cmnd 9162)	21.2.84	Road Traffic Regulation Act 1984 (c 27).
Family Law—Report on Matrimonial Property (Scot Law Com No 86)	21.6.84	Family Law (Scotland) Act 1985 (c 37).
*Further Amendments of the Companies Acts 1948–1983 (Scot Law Com No 87) (Cmnd 9272)	25.6.84	Companies Acts (Pre-Consolidation Amendments) (No. 2) Order 1984 (S.I. 1984/1169) Companies Act 1985 (c 6).
*Private International Law—Report on Recognition of Foreign Nullity Decrees and Related Matters (Scot Law Com No 88) (Cmnd 9341)	19.9.84	None. <sup>1</sup>
Report on Breach of Confidence (Scot Law Com No 90)	20.12.84	None.
*Family Law—Report on Custody of Children: Jurisdiction and Enforcement within the United Kingdom (Scot Law Com No 91) (Cmnd 9419)	15.1.85	None. <sup>1</sup>
Obligations—Report on Negligent Misrepresentation (Scot Law Com No 92)	24.1.85	Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c 73).
Report on Art and Part Guilt of Statutory Offences (Scot Law Com No 93) (Cmnd 9551)	18.7.85	None.
*Report on the Consolidation of the Housing Acts—Housing Bill, Housing Associations Bill, Landlord and Tenant Bill (Scot Law Com No 94) (Cmnd 9515)	10.5.85	Housing Associations Act 1985 (c 69).
Report on Diligence and Debtor Protection (Scot Law Com No 95)	14.11.85	None.
*Private International Law—Polygamous Marriages: Capacity to Contract a Polygamous Marriage and Related Issues (Scot Law Com No 96)	8.8.85	None.
Obligations—Report on Civil Liability in relation to Animals (Scot Law Com No 97)	8.11.85	None.
Statute Law Revision—Twelfth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 99) (Cmnd 9648)	14.11.85	Statute Law (Repeals) Act 1986 (c 12).
Evidence—Report on Corroboration, Hearsay and Related Matters in Civil Proceedings (Scot Law Com No 100)	22.5.86	None.

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1. The proposals in these reports are being implemented in a Bill introduced in the 1985–86 Parliamentary Session.

