

Scottish Law Commission

(SCOT. LAW COM. No. 61)

**FIFTEENTH
ANNUAL REPORT
1979-1980**

*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 present Commissioners are:

The Honourable Lord Hunter, V.R.D., *Chairman*,
Mr. A. E. Anton, C.B.E.,
Mr. R. D. D. Bertram,
Mr. J. Murray, Q.C.,
Professor T. B. Smith, Q.C.

The Secretary of the Commission is Mr. R. Eadie. Its offices are at 140 Causewayside, Edinburgh EH9 1PR.

SCOTTISH LAW COMMISSION
REPORT FOR THE YEAR ENDED 15th JUNE, 1980

*To The Right Honourable the Lord Mackay of Clashfern, Q.C.,
Her Majesty's Advocate*

In accordance with the provisions of section 3(3) as read with section 6(2) of the Law Commissions Act 1965, as amended,¹ we have the honour to submit this the Fifteenth Annual Report of the Scottish Law Commission.

J. O. M. HUNTER
Chairman

7 October 1980

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

FIFTEENTH ANNUAL REPORT

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I. THE COMMISSION

1.1 The Scottish Law Commission, which was set up on 16 June 1965, consists of a full-time Chairman, two full-time Commissioners and two part-time Commissioners. The present Commissioners are:

The Honourable Lord Hunter, V.R.D., <i>Chairman</i>	(Full-time)
Mr. A. E. Anton, C.B.E.	(Full-time)
Mr. R. D. D. Bertram	(Part-time)
Mr. J. Murray, Q.C.	(Part-time)
Professor T. B. Smith, Q.C.	(Full-time)

The Secretary of the Commission is Mr. R. Eadie.

STAFF

1.2 Our legal staff consists of one full-time and two part-time Parliamentary Draftsmen, our Secretary and eight other qualified lawyers. During the year we received assistance from a senior member of the staff of the Crown Office and from Depute Procurators Fiscal who have undertaken research on our behalf into criminal law matters. During the 1979 summer vacation we employed four graduates in law to assist with our research work. We wish to thank them for their assistance. Our non-legal staff remains at eleven.

PREMISES—LIBRARY

1.3 In our last Annual Report¹ we referred to the increasingly cramped conditions of our library and to the negotiations that had been taking place with a view to our obtaining the necessary additional accommodation to the rear of our existing premises. Regrettably, matters do not appear to have progressed to any significant degree in the past year. While we appreciate that current budgetary restraints may have contributed to the delay in concluding the negotiations, we would point out that the commitment to provide the Commission with sufficient space for a library adequate to meet our reasonable needs was entered into by the responsible Government agencies some four years ago when we moved into new premises some distance from the main Edinburgh law libraries and was re-affirmed over two years ago. The lack of space in our existing library is causing serious inconvenience, for without proper library facilities it is extremely difficult for us to perform our duties effectively. We earnestly hope, therefore, that the negotiations we have mentioned will be brought to a speedy and satisfactory conclusion.

1.4 During the past year, despite restrictions on funds available for the purchase of books, we have acquired basic holdings of annotated codes, treatises and works of reference covering the legal systems of our partners in the EEC. We are most grateful for advice on selection which we received from Professor J. Vanderlinden (Belgium), Professor André Tunc (France), Professor Gino Gorla (Italy) and Judge Jeroen Chorus (Netherlands). To Dr. Erich Schanze, Professor Wolff and their colleagues at the Institut für Ausländisches und Internationales Wirtschaftsrecht (Frankfurt) we are particularly indebted, not only for advice and generous donations of books, but also for making special arrangements for us to acquire other works at very substantial rebates on

¹(1979) Scot. Law Com. No. 56, para. 4.

market prices. Thanks to them, our holding of German materials greatly exceeds what we would have been able to afford to buy at normal rates.

1.5 We and our legal staff continue to have access to the University of Edinburgh Law Library for a modest annual payment. This arrangement has been most beneficial to us and 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. But although access to the University Library has been invaluable to us, and will continue to be necessary for the foreseeable future on account of the very wide scope of its contents, the availability of these facilities in no way lessens the need to have within our own premises a library adequate to meet our normal requirements.

MEETINGS

1.6 We continue to hold full Commission meetings twice a month.

II. GENERAL

2.1 This report indicates substantial and satisfactory progress in a considerable number of law reform projects affecting diverse areas of law. That progress is considered particularly satisfactory in a year when the Chairman of the Commission, who is also the Commissioner directly responsible for several major projects, has been absent for prolonged periods on public duties not connected with the Commission's work. In the period under review reports have been submitted to you on Lost and Abandoned Property (including the disposal of uncollected goods) and on Occupancy Rights in the Matrimonial Home and Domestic Violence—topics which are, respectively, integral parts of the Commission's programmes for systematic reform of the law of Obligations and Corporeal Moveables and of Family Law. A report on relatively minor matters affecting the law and practice of Judicial Factors has also been submitted. Matters which arose during preparation of that report, and also research which has been carried out on Powers of Attorney, have suggested that a future programme covering these areas of law might be advantageous. Such a programme could not be embarked upon until our work on Bankruptcy is completed, but meanwhile there may be opportunities for further research in these fields. A report has also been published, as part of our continuing programme of consolidation and revision of statute law, on a major Scotland-only consolidation Bill relating to Education.

2.2 In addition to the foregoing reports, consultative memoranda have been issued (or are about to be issued) on four very different areas of law, namely Incest, Time Limits in Actions for Personal Injuries, Evidence and Diligence. Maintenance of the objective of comprehensive and systematic law reform is continued in the wide and detailed discussion of the law of Evidence against the background of a research paper published during 1979. That objective has also been adhered to in five memoranda shortly to be issued in the series planned to cover reform of the law and practice of Diligence. It will be understood that Diligence is a domain which is in many of its aspects at once complex and controversial. It involves intricate contact and interconnection between social and economic policy, on the one hand, and law and its administration, on the

other. Its procedures have been developed and modified over a lengthy period of Scottish legal history, during large parts of which social and economic conditions were very different from what they are today. The difficulty of the subject is increased by the relative scarcity of modern decisions and legal writing on any of its branches and by a dearth of comprehensive research on debt recovery and enforcement in Scotland. These gaps are only now being repaired, mainly through the efforts of the Commission and the Scottish Office, assisted in some limited areas by a number of recent sheriff court decisions. For these, amongst other, reasons we are anxious that there should be a wide response to our series of consultative memoranda, and that comments will be forthcoming not only from the legal profession but also from a wide range of other interests. In the light of reactions to more general consultations which have already taken place, it seems unlikely that there will be unanimity on certain of the main issues.

2.3 The memorandum on Time Limits in Actions for Personal Injuries is designed to further reforms in an important area of the law of Prescription and Limitation, which was not covered by the Commission's previous work in this field and which was the subject merely of consolidation in Part II of the Prescription and Limitation (Scotland) Act 1973. The memorandum on Incest is a response to a reference made by the Secretary of State for Scotland under section 3(1)(e) of the Law Commissions Act 1965. Its object is to obtain views on tentative proposals for reform in an area of Scots Criminal Law in which changes have long been required and have now become more urgent as a result of the Marriage (Scotland) Act 1977. It is many years since Lord Salvesen more than once called attention to the unsatisfactory state of this area of statute law and pressed for its reform, but in vain.

2.4 It would, in our view, generally be inconsistent with the aims for which the Law Commissions were established for this Commission to be deflected from work on programme subjects merely to deal with particular social or political issues which had gained topical prominence. However, particular aspects of our work on programme subjects can sometimes be brought forward before we are in a position to report on the subject as a whole. Thus we gave priority during the year under review to the preparation of the reports, with draft Bills, on Lost and Abandoned Property and on Occupancy Rights in the Matrimonial Home, which have already been mentioned. In submitting the former of these two reports, we had in mind the danger that certain limited aspects of lost property law dealt with incidentally in existing Burgh Police and local Acts might be incorporated in the forthcoming Government legislation on civic government which is expected to replace these existing Acts. In our report, which made proposals in relation to uncollected goods as well as lost and abandoned property, we stressed that the problems with which it was concerned are less those of civic government than of the general law relating to corporeal moveable property and of the principles which should in future govern that area of law. We therefore expressed the hope that the proposals contained in the report would be embodied in separate legislation, with the object of moving towards the creation of a code relating to rights in corporeal moveable property, as has been done with success in other legal systems. Ideally, it would be desirable to include the whole proposals regarding such rights in a comprehensive report. This was the eventual aim of the series of eight memoranda published by the Commission in which many aspects of the law of Corporeal Moveables were studied. Until Government policy concerning the proposals of the Crowther

Committee on Consumer Credit¹ in relation to security rights over moveables is known and our own Working Party on such rights has reported, it may be impracticable to prepare a comprehensive report on corporeal moveable property in Scots law. European developments in this area of law are also under consideration. Meanwhile, however, it has proved possible to prepare a report (and draft Bill) on the subjects of lost and abandoned property and the disposal of uncollected goods which is designed to cohere in principle with a comprehensive scheme of reform.

2.5 We were asked to give, and did give, considerable priority to our report on Occupancy Rights in the Matrimonial Home and Domestic Violence. The report, which deals with important social issues and with practical and technical problems, may be regarded as a major report in its own right, and it is clear that there is a pressing demand for legislation in the fields which it covers. Nevertheless, the proposals in this report must be seen in the wider context of the Commission's Family Law programme. In due course the Commission will have to make comprehensive proposals regarding Family Property Law, and the necessary preliminary work is already in hand.

2.6 To Bankruptcy, another of our programme subjects, we have for some years devoted a substantial amount of our limited resources. In our last Annual Report we dealt generally with progress on and prospects for our report on Bankruptcy which, we predicted, would contain proposals amounting in effect to a new Bankruptcy code for Scotland. Our appreciation of the situation last year has been substantially confirmed by experience. As the anticipated date for submitting our report draws near, we venture to repeat our view that consideration should be given to returning departmental responsibility for the law of Bankruptcy to a Scottish Department.

2.7 Work on consolidation and revision of statute law continues to progress satisfactorily. We attach considerable importance to this aspect of our work, the value of which may be inadequately appreciated by lawyers as well as laymen. We are studying the present procedures and direction of statute law revision with a view to deploying more effectively our somewhat limited resources in this field. Four major Scottish Bills were completed during the year under review, consolidating the statute law on Education, Solicitors, Water and Slaughter of Animals.

2.8 The Commission and its staff are lawyers, and claim no expertise in social and economic questions, but we are constantly aware of the importance of adequate research where information on such questions is relevant to our work. Thus, while completing the preparation of our first five memoranda on Diligence we were able to take into account drafts of reports on eight projects of research into the scale and social effects of diligence initiated on our behalf by the Central Research Unit of the Scottish Office. We also hope, once our work on Family Property Law gets under way, to derive assistance from social surveys carried out in Scotland by the Office of Population Censuses and Surveys.

2.9 The process of consultation is normally regarded as essential to the satisfactory performance of our statutory duties. Though, on occasion, we may have to respond to a reference from a Minister for advice or information under section 3(1)(e) of our constituting statute without full consultation, we depend

¹Cmnd. 4596.

as a rule on consultation as a necessary guide to policy before expressing in a report concluded views on any substantial proposal for law reform. We are well aware that, being independent of Government, we have no political power to implement the policies which we propose. These can best be commended for implementation if they have been tested by consultation, whether through circulation of memoranda, as we generally prefer, or on occasion by less formal procedures. At a time when we have submitted several comprehensive reports based on consultation and when we are about to issue a considerable number of consultative memoranda discussing complex social and legal issues, we recognise our very considerable debt to those on whose advice and comments we rely. We appreciate that a heavy burden is placed on a number of very busy members of the legal and other professions by our requests for comment and criticism. We are extremely grateful for their response and for the response of public spirited men and women who individually or collectively offer their views on our tentative proposals. In the future we hope to involve more members of the public in the process of consultation, possibly by issuing, in addition to the standard memorandum, short and simply expressed consultation papers more clearly designed to test the opinions of the general public as distinct from the views of professional bodies or of those professionally advised.

2.10 We are charged with the duty of keeping under review the whole of the law of Scotland, and this includes aspects of law for which Government Departments have also specific responsibility. We are concerned to keep all Government Departments informed at an early stage of our provisional thinking regarding reforms in any chapter of law, especially since any reform must have consequences for related—albeit not always obviously related—aspects of the law in the same or a neighbouring chapter. We always welcome information regarding Departmental thinking, whether or not it might conflict with policies which we had contemplated, or regarding other proposals which might affect or frustrate proposals of our own. Such information, if received in time, may sometimes prevent wasteful expenditure of the Commission's resources. Comment by Departments on our consultative memoranda is always weighed with great care, but we appreciate that hard-pressed Whitehall Departments in particular may sometimes find it difficult to respond in detail to wide-ranging—but provisional—proposals for law reform in Scotland. Moreover, whereas the work of the Law Commissions depends on full impartial consultation, the legislative proposals of Government Departments may, for reasons of policy, not be brought to completion or disclosed until implementation seems capable of attainment. This difference of approach can create problems which should, however, be at least in part capable of solution through informal consultation and mutual confidence.

2.11 In previous Annual Reports the order in which we have reported the progress of work on our law reform projects has closely reflected the terms of section 3 of the Law Commissions Act 1965. We dealt first with work under our published programmes¹ of law reform, followed by consolidation and statute law revision, next with projects undertaken as a result of 'references' to us by Government Departments and other bodies under section 3(1)(e) of the Law Commissions Act 1965, and then with other matters arising under section 3(1)

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

of the Act, including proposals for law reform submitted to us by others for our consideration. This order of presentation seemed to us to be logical, and it helped to underline the importance which we attached—and continue to attach—to our programme subjects. But we have come to appreciate that it was not the most convenient arrangement for those not already familiar with our work. This year, therefore, we have experimented by setting out in Part III of our report the main subject headings in more or less alphabetical order irrespective of the origin of the projects listed. We stress, however, that our programme subjects remain of paramount importance, and for this reason we have denoted these subjects by an asterisk in the headings which follow in Part III.

III. PROGRESS OF LAW REFORM PROJECTS

3.1 The position at 15 June 1980 in each of our current law reform projects is set out in the following paragraphs. The main subject headings are presented in alphabetical order, but as we stress in Part II of this report,¹ we continue to attach greatest importance to our 'programme' work, that is, to projects undertaken in accordance with our published programmes² of law reform. In the main headings set out below, programme subjects are denoted by the use of an asterisk.

BANKRUPTCY*

(Second Programme, Item 6)

3.2 We stated in our last Annual Report³ that we hoped that revision of our draft report on Bankruptcy would be completed by the autumn of last year, so that work on a draft Bankruptcy Bill might commence. Our Bankruptcy team is now giving instructions to the draftsman for the preparation of the draft Bill. Our intention is that the report and accompanying draft Bill, covering the whole area of personal bankruptcy law, will be completed during the period covered by our next Annual Report. In formulating our proposals, we have benefited much from informal discussions with members of the Accountant of Court's Office, with accountants practising in the insolvency field, and with members of the Bankruptcy and Liquidation Committee of the Law Society of Scotland.

3.3 We referred in our last Annual Report⁴ to a consultation paper issued by us about the recent case of *Gibson v. Hunter Home Designs Ltd.*⁵ In that case, a person who had contracted to buy a house paid the purchase price in exchange for a letter of obligation under which the solicitor for the seller, a building company, undertook to deliver a disposition in favour of the purchaser within a period of one month. In the event, the seller went into liquidation before delivery of the disposition, and the liquidator's subsequent refusal to deliver it

¹See para. 2.11.

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

³(1979) Scot. Law Com. No. 56, para. 29.

⁴(1979) Scot. Law Com. No. 56, para. 30.

⁵1976 S.L.T. 94.

*Denotes programme subject.

to the purchaser was upheld by the Court of Session. The majority of those consulted were opposed to any change of the law in relation to the actual circumstances of the case but agreed with our proposal that a trustee in sequestration (or liquidator) should not be entitled to compete with a purchaser for value who had actually taken (but not yet completed) a title to property.

CRIMINAL LAW

General

3.4 The bulk of our work in the field of the Criminal Law has arisen from requests made to us by Government Departments and other bodies for advice under section 3(1)(e) of the Law Commissions Act 1965 or from proposals for reform of the law submitted to us under section 3(1)(a) of that Act. In addition, we have from time to time considered the possible implications for Scotland of working papers and reports produced by the Law Commission for England and Wales under their programme subject 'Codification of Criminal Law'. In the past, we have been assisted in this aspect of our work by the Working Party which we set up in 1974 under the chairmanship of the Hon. Lord Cameron. In the latter part of the year under review, however, a senior member of the staff of the Crown Office has assisted us in this field. Partly as a result of this development, we have not had the occasion in the past year to refer any further matters to our Working Party, but we take the opportunity of thanking Lord Cameron and the other members (both past and present) of the Working Party¹ for the valuable help they have given us over the years.

Incest

3.5 On 22 April 1980 we issued our Memorandum No. 44—*The Law of Incest in Scotland*. We asked for comments to be submitted by 31 October 1980. A number of comments have been received and we are awaiting further submissions.

Mental Element in Crime

3.6 On 21 June 1978, the Law Commission for England and Wales published their Report on the Mental Element in Crime.² On 21 May 1979 we received from the Scottish Home and Health Department a reference under section 3(1)(e) of the Law Commissions Act 1965 in the following terms:

'To consider, in relation to the law of Scotland, the Report of the Law Commission (No. 89) on the Mental Element in Crime and to advise.'

Two preliminary papers have been prepared and further research is being undertaken. A draft consultative memorandum is currently in the course of preparation.

Conspiracy—Mobbing and Rioting

3.7 We are proceeding with research into the law relating to conspiracy (including the law relating to mobbing and rioting), but as our proposed

¹A list of members of this Working Party as at 31 August 1979 appeared in Appendix I to our Fourteenth Annual Report ((1979) Scot. Law Com. No. 56).

²(1978) Law Com. No. 89.

memorandum on the Mental Element in Crime may have some bearing on this subject, detailed consideration will be deferred until work on that memorandum has been completed.

Coercion

3.8 In our last Annual Report,¹ we stated that we had submitted to the Scottish Home and Health Department the report of our Working Party and our further comments on the Report by the Law Commission for England and Wales entitled *Defences of General Application*.² Arising from these submissions, we are currently undertaking further research into the law relating to coercion.

DAMAGES ARISING FROM PERSONAL INJURIES AND DEATH*

(Second Programme, Item 10)

3.9 Our report on *Damages for Personal Injuries: (1) Admissibility of Claims for Services; (2) Admissible Deductions*³ following upon Memorandum No. 21, was submitted to your predecessor on 20 April 1978 and published on 18 July 1978. No legislation has yet been introduced following on this report.

3.10 Last year, in response to representations made to us, we issued a short consultation paper concerning the practical effect of section 5(6) of the Damages (Scotland) Act 1976, which was said to place an unreasonable duty on pursuers, in actions for damages arising out of a fatal accident, to trace and serve notices of the action on all persons with a potential claim. We are now examining the solutions suggested to us with a view to preparing a report on the matter.

DILIGENCE*

(Second Programme, Item 8)

3.11 In previous Annual Reports,⁴ we stated our intention to issue seven consultative memoranda on Diligence. Five of these memoranda will be published together in the autumn of 1980. These memoranda are:

- First Memorandum on Diligence: General Issues and Introduction
- Second Memorandum on Diligence: Poindings and Warrant Sales
- Third Memorandum on Diligence: Arrestment and Judicial Transfer of Earnings
- Fourth Memorandum on Diligence: Debt Arrangement Schemes
- Fifth Memorandum on Diligence: Administration of Diligence.⁵

Decisions taken in relation to the topics covered by these memoranda will set the future pattern of the legal, procedural and organisational aspects of the system of enforcement of debt and court orders, and we have therefore given

¹(1979) Scot. Law Com. No. 56, para. 74.

²Law Com. No. 83.

³(1978) Scot. Law Com. No. 51.

⁴Thirteenth Annual Report ((1979) Scot. Law Com. No. 55), para. 36; Fourteenth Annual Report ((1979) Scot. Law Com. No. 56), para. 33.

⁵These five Memoranda have now gone to press; they are expected to be published in October 1980 as Scottish Law Commission Memoranda Nos. 47 to 51 inclusive.

*Denotes programme subject.

these priority over the topics to be considered in the two remaining memoranda.¹

3.12 We had intended to issue a consultative memorandum on the enforcement of aliment and periodical allowance on divorce and, without further consultation, to submit a report on the collection of aliment and periodical allowance.² In view, however, of the present restrictions on public expenditure and other factors, we now think that consultation would be desirable as a basis for a report on the two aspects of the matter. Our Sixth Memorandum on Diligence will, therefore, cover both the collection and the enforcement of aliment and periodical allowance.³ This will be our next priority. The series of memoranda will be completed by a seventh memorandum on miscellaneous topics in the domain of Diligence.

3.13 In the preparation of our memoranda, we have been able to rely on drafts of reports on the eight projects of research into the scale and social effects of diligence initiated on our behalf by the Central Research Unit of the Scottish Office.⁴ It is expected that these reports will be published at, or shortly after, the date of publication of the five memoranda on Diligence referred to at paragraph 3.11 above.

EVIDENCE*

(First Programme, Item 1)

3.14 In our last Annual Report⁵ we referred to the publication of a research paper on the law of Evidence of Scotland prepared for us by Sheriff I. D. Macphail. As we anticipated, completion of the consultative memorandum which we had intended to issue shortly after publication of that research paper has been slightly delayed due to the change in the Commission's membership last year. The memorandum has now been completed, however, and we expect it to be published soon.⁶

FAMILY LAW*

(Second Programme, Item 14)

Occupancy Rights in the Matrimonial Home and Domestic Violence

3.15 During the year under review we gave very high priority to the preparation of a report following upon our Memorandum No. 41—*Family Law: Occupancy Rights in the Matrimonial Home and Domestic Violence*, in response to which we had received a large number of comments. Preparation of our report took rather longer than we had initially anticipated. We are pleased to record,

¹See para. 3.12 below.

²See (1979) Scot. Law Com. No. 56, para. 33.

³The enforcement of aliment and periodical allowance by a continuous diligence against earnings will be discussed in our Third Memorandum on Diligence.

⁴See our Thirteenth Annual Report ((1979) Scot. Law Com. No. 55), para. 37, and for further details, the Register of Research of the Central Research Unit of the Scottish Office (1979), pp. 22–25.

⁵(1979) Scot. Law Com. No. 56, para. 17.

⁶This Memorandum was published on 16 September 1980 as Scottish Law Commission Memorandum No. 46.

*Denotes programme subject.

however, that the completed report, with a draft Bill annexed, was submitted to you on 7 May 1980.¹

Aliment and Financial Provision

3.16 Work is continuing on the preparation of a report on this topic following upon our Memorandum No. 22, and instructions have been given to the draftsman for the preparation of a draft Bill to accompany the report. It is hoped to publish the report during the first half of 1981.

Family Property Law

3.17 We understand that the Office of Population Censuses and Surveys are now well advanced in their preparation of a report following the fact-finding and attitude survey on Family Property Law in Scotland referred to in our last Annual Report.² Preliminary findings have been made available to us and to Professor E. M. Clive of the University of Edinburgh who is undertaking the preparation of a research paper on this topic. We hope to be in a position to prepare a consultative memorandum in the course of 1981.

Illegitimacy

3.18 In our last Annual Report,³ we stated that we intended to prepare a consultative memorandum on certain legal issues concerning the status of Illegitimacy. Much useful preliminary work has been done but, because of the demands made on our resources by other commitments, it is still not possible for us to forecast when such a memorandum may be ready for publication.

OBLIGATIONS: CORPOREAL MOVEABLES*

(First Programme, Item 2)

3.19 This heading covers a very wide area of the law of Scotland. The law of Obligations and the law of Property are, strictly speaking, distinct chapters of the law, but in questions of transfer of and security over moveables the law of Obligations frequently has effects on Property law.

Corporeal Moveables

3.20 On 31 August 1976 we issued eight memoranda⁴ on the law relating to Corporeal Moveables. Thereafter, on 16 January 1980 we published a report, based on Memorandum No. 29, on *Lost and Abandoned Property*,⁵ including the disposal of uncollected goods. The preparation of a draft report on good faith acquisition of corporeal moveable property, following on Memorandum No. 27, has reached an advanced stage. We have decided, however, to postpone discussion of any draft report based on the series of memoranda on Corporeal moveables until such time as it can be reviewed more appropriately in co-ordination with completed work on security over moveables.

¹This Report was published on 17 July 1980 as Scot. Law Com. No. 60.

²(1979) Scot. Law Com. No. 56, para. 39.

³(1979) Scot. Law Com. No. 56, para. 40.

⁴Scottish Law Commission Memoranda Nos. 24-31.

⁵(1980) Scot. Law Com. No. 57.

*Denotes programme subject.

Security over Moveables

3.21 Our Working Party on Security over Moveables,¹ who have been considering the question of the introduction into Scots law of a system of security over moveable property based upon Article 9 of the Uniform Commercial Code of the United States of America, have met nine times during the year under review. In the course of the year the Working Party were invited to examine the specific question of security in connection with the financing of North Sea oil operations, and this has inevitably delayed their preparation of a draft report on the wider issues remitted to them. The Working Party are in the meantime proceeding with their examination of the question of security in connection with North Sea oil operations.

Constitution and Proof of Voluntary Obligations

3.22 On 10 March 1977 we issued six memoranda² on the constitution and proof of voluntary obligations. Consultation on this series of memoranda has been completed and a draft report is in the process of preparation.

Defective Consent and Consequential Matters

3.23 On 1 June 1978 we published a memorandum³ on the scope and effect in law of defects of will or consent such as error, force and fear, and fraud, and on certain consequential matters including delictual liability for misrepresentation. We have now received comments from all consulted bodies and work has begun on the preparation of a report.

Defective Expression

3.24 On 30 November 1979, we published our Memorandum No. 43—*Defective Expression and its Correction* which is concerned with defectively expressed contracts. Central to the issues discussed in the memorandum, we provisionally propose that a new legal remedy be introduced into Scots law to enable courts to correct latent defective expression in a contract and simultaneously to enforce the contract as correctly expressed. We asked for comments to be submitted to us by 30 May 1980, and we are currently analysing the comments we have so far received.

Penalties and Irritancies

3.25 Because of the commitment of resources to matters of higher priority, we regret that no further work has been carried out meantime on the general law relating to irritancies, penalty clauses and liquidated damages clauses in contracts. A memorandum will be drafted when resources permit.

Illegality

3.26 A research paper has been prepared on this topic and the preparation of a memorandum will proceed when resources permit.

¹A list of the members of the Working Party appears in Appendix I to this Report.

²Scottish Law Commission Memoranda Nos. 34–39.

³Scottish Law Commission Memorandum No. 42 (2 Vols.).

Civil Liability in relation to Animals

3.27 Work on this topic has been disrupted owing to the competing demands on our resources of matters of greater priority. We hope, however, that it may be possible to prepare a memorandum towards the end of 1980 or early in 1981.

Legal Capacity of Minors and Pupils

3.28 This programme item¹ (which is, strictly speaking, a separate subject in its own right) is largely concerned with capacity in the context of Obligations (though it does extend to testamentary capacity and capacity to perform other legal acts). Further progress cannot be made with work on this subject until difficult problems have been resolved in other areas of law including Guardianship.

PRESCRIPTION AND LIMITATION OF ACTIONS*

(First Programme, Item 3)

Limitation of Actions in Personal Injury Claims

3.29 On 17 April 1980 we issued our Memorandum No. 45 on *Time-Limits in Actions for Personal Injuries*. We have asked for comments to be submitted to us by 31 October 1980.

Prescription and Limitation in Private International Law

3.30 Following on the publication of the Law Commission's Working Paper No. 75—*Classification of Limitation in Private International Law*, we have been preparing a consultation paper on the Scottish position for restricted circulation which we hope to issue in the near future.²

PRIVATE INTERNATIONAL LAW*

(Third Programme)

EEC Convention on the Law applicable to Contractual Obligations

3.31 The Joint Working Group on Private International Law³ set up by the two Law Commissions continues to assist the United Kingdom with regard to this Convention, the object of which is to harmonise the choice of law rules of the Member States of the EEC in the field of contract. The Permanent Representatives Committee of the Council of Ministers of the European Communities set up an *ad hoc* Working Party on 16 January 1980 to consider the text of the Convention and to take account of Government observations on it. This Working Party finalised the Convention on 28 April 1980 and has transmitted it to the Permanent Representatives Committee along with the text of the report by Professors Giuliano and Lagarde, and the Working Party's own report on outstanding questions. The most important of these questions relates to the possibility of conferring upon the European Court of Justice powers to interpret the Convention.

¹Item 12, Second Programme, (1968) Scot. Law Com. No. 8.

²This consultation paper was issued on 31 July 1980.

³A list of members of this Joint Working Group appeared in Appendix I to our Fourteenth Annual Report ((1979) Scot. Law Com. No. 56).

*Denotes programme subject.

Proposed EEC Convention on the Law applicable to Non-Contractual Obligations

3.32 In our last Annual Report¹ we explained that it is proposed to resume negotiations at a later date within the European Communities on a Convention relating to Non-Contractual Obligations. The United Kingdom Government invited the two Law Commissions *inter alia* to undertake consultations so that a United Kingdom position may be formulated. The two Commissions have set up a Joint Working Party on Private International Law (Tort/Delict)² to prepare a consultative document on the relevant choice of law rules. Introductory papers to be submitted to the Joint Working Party have been prepared within the two Commissions.

Hague Conference: International Child Abduction

3.33 In our last Annual Report³ we mentioned that the Hague Conference on Private International Law had convened a Special Commission to consider international child abductions. The Special Commission met for a second time in November 1979 and then prepared a draft Convention on the 'Civil Aspects of International Child Abduction'. The United Kingdom was again represented by Mr. R. L. Jones, formerly of the Home Office and by Mr. Anton, who chaired the meeting. The draft Convention will be considered at the XIVth Session of the Hague Conference in October 1980. The conclusions of the conference will be taken into account by the two Law Commissions in the course of their examination of the United Kingdom law relating to assumption of jurisdiction in child custody cases and the recognition of custody decrees.⁴

Conflicts of Jurisdiction affecting the Custody of Children

3.34 In our last Annual Report⁵ we referred to the consideration by the two Law Commissions of this topic following the receipt of observations on our Joint Working Paper/Memorandum on *Custody of Children—Jurisdiction and Enforcement within the United Kingdom*.⁶ We have now reached agreement with the Law Commission for England and Wales on the main issues in this field and have informally consulted interested bodies in relation to a scheme, closely related to that in our Joint Working Paper/Memorandum, relative to the grounds of jurisdiction in custody within the United Kingdom. The two Commissions intend to proceed to a report as soon as resources can be allocated to this project.

Recognition of Foreign Nullity Decrees

3.35 In our Joint Report on the *Hague Convention on Recognition of Divorces and Legal Separations*⁷ we and the Law Commission for England and Wales made recommendations which were implemented by the Recognition of Divorces and Legal Separations Act 1971. But that Act does not apply to the recognition of external decrees of nullity nor to the recognition of other decrees relating to status, where the common law remedies remain applicable. Following the

¹(1979) Scot. Law Com. No. 56, para. 42.

²A list of members of this Joint Working Party is in Appendix I to this Report.

³(1979) Scot. Law Com. No. 56, para. 44.

⁴See para. 3.34 below.

⁵(1979) Scot. Law Com. No. 56, para. 51.

⁶Scottish Law Commission Memorandum No. 23; Law Commission Working Paper No. 68.

⁷(1970) Scot. Law Com. No. 16; Law Com. No. 34.

decision of the House of Lords in *Indyka v. Indyka*,¹ there is some uncertainty both in English law and in Scots law about the basis upon which such decrees fall to be recognised. The Law Commission for England and Wales and the Scottish Law Commission, therefore, have set up a Joint Working Party² to examine the basis upon which external nullity decrees and, possibly, other external decrees relating to status fall to be recognised under our two systems of law.

Foreign Money Liabilities

3.36 Work on this subject has been resumed. It is currently being considered by a Joint Working Party³ set up by the Law Commission for England and Wales and ourselves.

Hague Convention on the International Administration of the Estates of Deceased Persons

3.37 Both Law Commissions have, for the present, suspended work on this subject.

SUCCESSION*

(Second Programme, Item 7)

3.38 We explained in our last Annual Report⁴ that no work was being done on this subject at present, principally because of the commitment of resources to other subjects, but also because we thought it advisable to defer systematic consideration of the law of Succession until our study of Family Property Law was further advanced. This remains the position.

STATUTE LAW

Consolidation

3.39 As in previous Reports we comment on current progress under the following heads:

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

*First Programme*⁵

Court of Session—We have decided to resume work on the consolidation of enactments relating to the Court of Session. A first print of a Bill has been prepared as a basis for consultation with interested bodies.

*Second Programme*⁶

(1) *Education (Scotland) Acts*—The Education (Scotland) Bill has been introduced into Parliament and was considered by the Joint Committee on

¹[1969] 1 A.C. 33.

²A list of members of this Joint Working Party appears in Appendix I to this Report.

³A list of members of this Joint Working Party appears in Appendix I to this Report.

⁴(1979) Scot. Law Com. No. 56, para. 32.

⁵(1966) Scot. Law Com. No. 2.

⁶(1973) Scot. Law Com. No. 27.

*Denotes programme subject.

Consolidation Bills on 23 April 1980. It is hoped that this Bill will reach the Statute Book during the 1979–80 Parliamentary Session.¹

(2) *Enactments relating to Solicitors in Scotland*—The Solicitors (Scotland) Bill was considered by the Joint Committee on Consolidation Bills on 11 June 1980. It is hoped that this Bill will be enacted during the 1979–80 Parliamentary Session.²

*Third Programme*³

On 3 November 1977 we submitted to your predecessor our Third Programme of Consolidation and Statute Law Revision which was published on 22 February 1978. In this Programme we listed eleven items suitable for consolidation. Work on one of these items—Adoption—has been completed,⁴ and progress has been made on four of the remaining items.

(1) *Water*—The Water (Scotland) Bill was considered by the Joint Committee on Consolidation Bills on 12 March 1980. It is hoped that this Bill will reach the Statute Book during the 1979–80 Parliamentary Session.⁵

(2) *Rents*—Instructions have been received from the Scottish Development Department with a view to the consolidation of the Rent (Scotland) Acts, but work on a consolidation Bill has for the time being been deferred because it appears likely that changes in the existing law will result from proposed legislation introduced during the 1979–80 Parliamentary Session.

(3) *Building Legislation*⁶—It is hoped to introduce the Building (Scotland) Bill during the next Parliamentary Session.

(4) *Slaughterhouses*⁶—The Slaughter of Animals (Scotland) Bill received the Royal Assent on 20 March 1980.

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

(1) During the year under review the following Acts were passed:

Sale of Goods Act 1979
Reserve Forces Act 1980

(2) A Bill to consolidate the enactments relating to Overseas Development and Co-operation has been introduced into Parliament.

(3) Bills on the following subjects are currently in course of preparation:

Animal Health
Civil Aviation
Film Finance
Judicial Pensions
Litter
Medical
Pilotage
Public Service Vehicles Licensing

¹The Education (Scotland) Bill received the Royal Assent on 1 August 1980.

²The Solicitors (Scotland) Bill received the Royal Assent on 1 August 1980.

³(1978) Scot. Law Com. No. 46.

⁴See Adoption (Scotland) Act 1978 (c. 28).

⁵The Water (Scotland) Bill received the Royal Assent on 1 August 1980.

⁶The drafting of these two Bills has been undertaken by Parliamentary Draftsmen in the Lord Advocate's Department.

Reserve Forces (Protection of Civil Interests)
Social Work (Education and Training)
Trustee Savings Banks.

(4) Work on the preparation of Bills on the following subjects has begun but has for the time being been deferred, either because of the possibility of substantive changes in the law or because of difficulties which require resolution by primary legislation in advance of consolidation, viz:

Cinema Performances
Clean Air
Corn Returns
Countryside
New Towns
Prices and Charges
Representation of the People
Trade Unions and Employers' Associations
Value Added Tax
Weights and Measures.

Statute Law Revision

3.40 We have continued to work in co-operation with our colleagues in the Law Commission for England and Wales on the Tenth Report on Statute Law Revision. It is currently intended that the relative Statute Law (Repeals) Bill should be introduced into Parliament before the end of 1980.

3.41 The Law Commission for England and Wales also have in hand the preparation of a report on the modernisation of statute law in which the procedures used at present to effect the revision of statute law (as well as other matters, including consolidation) will be discussed. We are grateful to the Law Commission for keeping us informed of the progress of their work, and we understand they will give us the opportunity of commenting on their proposed report before it is published. Apart from this, we are engaged on our own account in examining the present procedures and direction of statute law revision with a view to deploying more effectively our own somewhat limited resources in the field. Our aim is to establish a method of working which will enable us, while continuing to liaise closely with our English colleagues in areas of common interest, nevertheless to direct a greater part of our effort to matters of more direct concern to Scotland.

Statutes in Force

3.42 The new official revised edition of the public general statutes, known as *Statutes in Force*, is nearing completion. As a member of the Editorial Board, our Chairman has, with the assistance of our full-time Parliamentary Draftsman and other members of our legal staff, continued to play a part in the preparation of the edition, work on which has proceeded in stages over a number of years. The new edition has the advantage of being in loose-leaf form and we commend its use to members of the legal profession and others as a valuable aid to finding the law.

OTHER MATTERS

Breach of Confidence

3.43 We consider that the time is not yet ripe for us to make further progress on this project following upon our Memorandum No. 40—*Confidential Information*—which we issued in April 1977. There are a number of other topics, relating to various aspects of privacy, which have recently been under consideration in various quarters, and on which Government policy decisions are awaited. These topics include freedom of information; official secrets; contempt of court; defamation; and data protection.

Irritancies in Leases

3.44 The preparation of a draft memorandum on this topic has reached an advanced stage. We hope it will be possible to publish the final version of this memorandum before the end of 1980 or early in 1981.

Married Women's Policies of Assurance (Scotland) Act 1880

3.45 A Private Member's Bill based on our report on the *Married Women's Policies of Assurance (Scotland) Act 1880*¹ was introduced in the 1979–80 Session of Parliament. It is hoped that this Bill may reach the Statute Book before the Session ends.

Powers of Attorney

3.46 Work on this topic remains in abeyance meantime because of the need to concentrate our resources on matters of greater priority.

Powers of Judicial Factors

3.47 We submitted to you on 18 April 1980 our report on *Powers of Judicial Factors*.² The report recommends an alteration of the law to facilitate the exercise by judicial factors of certain of their statutory powers, particularly as regards the sale and purchase of heritable property.

Agricultural Holdings

3.48 We regret that, owing to the pressure of other commitments, resources are still not available for the preparation of a memorandum on the statutory provisions relating to the termination of leases of agricultural holdings.

Companies (Floating Charges and Receivers) (Scotland) Act 1972

3.49 We explained in our last Annual Report³ that we had still to consider further certain questions arising from the comments received on our Memorandum No. 33—*Law of Rights in Security: Company Law: Registration of Charges (Scotland)*. That remains the position.

Actions of Ejection and Removings

3.50 Mr. A. G. M. Duncan, Senior Lecturer, Department of Scots Law, University of Edinburgh, has carried out further research into the law of

¹(1978) Scot. Law Com. No. 52.

²The Report was published on 3 July 1980 as Scot. Law Com. No. 59.

³(1979) Scot. Law Com. No. 56, para. 64.

ejection and Removings. Unfortunately, he was prevented by illness from completing his assignment during the year under review. We understand, however, that Mr. Duncan expects to be in a position to submit the completed research paper to us before the end of 1980.

Miscellaneous: Advice to Government Departments etc.

3.51 Under this heading we report progress on certain items which do not readily fit into any of the other classifications adopted in this report. We include in particular various matters of an international character on which our advice has been sought by Government Departments, but we stress that this list is not exhaustive. The provision of advice to Government Departments, particularly on matters of European and Private International Law, continues to place considerable demands on our resources. 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 dealt with elsewhere in this report. In other cases, however, the requests have been dealt with informally.

(a) *EEC draft Insurance Directive: Contract Law*

On 9 March 1978 we were invited by the Department of Trade to comment on a draft Directive on the Laws, Regulations and Administrative Provisions relating to Insurance Contracts. This Directive was initially examined by our Working Party¹ on Contract Law under the chairmanship of Professor Smith. Comments have been prepared on the latest available draft of the Directive, but it is understood that the draft is undergoing further revision. We propose to submit a report to the Department of Trade in the course of the coming year.

(b) *EEC draft Directive on Reservation of Title to Corporeal Moveables*

In August 1979 the Department of Trade invited us to comment on an EEC draft Directive on Reservation of Title to Goods. In response to this invitation we submitted brief comments to the Department in September 1979. Our understanding is that the draft Directive is at present being examined by a Working Party of the EEC Commission.

(c) *UNIDROIT—Codification of the Law of Contract*

A Study Group has been set up under the auspices of the International Institute for the Unification of Private Law (UNIDROIT) to prepare uniform rules for international trade contracts in general. The first meeting of the Study Group was held in Rome from 10 to 14 September 1979 and we were represented at that meeting by Professor Smith.

(d) *UNCITRAL—draft Convention on Contracts for the International Sale of Goods.*

On 17 September 1979 we were invited by the Department of Trade to comment on a draft Convention on Contracts for the International Sale of Goods prepared by the United Nations Committee on International Trade Law (UNCITRAL). Professor Smith had previously served as a United Kingdom delegate at the Eleventh Session of UNCITRAL in New York in 1978, when an earlier draft of the Convention was considered. Comments

¹A list of members of this Working Party appears in Appendix I to this Report.

on the latest draft of the Convention were submitted to the Department prior to the Diplomatic Conference which commenced in Vienna on 10 March 1980. The Conference finally adopted the text of the Convention on 10 April 1980.

IV. CONSULTATION

THE LAW COMMISSION FOR ENGLAND AND WALES

4.1 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 the EEC draft Conventions on Contractual and Non-Contractual Obligations¹ and Conflicts of Jurisdiction affecting the Custody of Children.² The annual Joint Meeting was held in Edinburgh on 17 April 1980. We wish to record our appreciation of the generous hospitality provided by the University of Edinburgh.

Codification of the Criminal Law

4.2 Elsewhere in this report,³ we refer to our interest in the work of the Law Commission on their major programme subject 'Codification of the Criminal Law'. We are grateful to the Law Commission for continuing to keep us informed of the progress of their work in this field and for affording us the opportunity to comment from time to time on the possible implications for Scotland of certain of their projects.

Working Party on Contract

4.3 Our Working Party⁴ on Contract Law, under the chairmanship of Professor Smith, has remained in being for the purpose of considering working papers published by the Law Commission and such other matters as may be referred to it from time to time.

OTHER LAW REFORM ORGANISATIONS

4.4 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

4.5 We continue to consult with the leading organisations of the legal and other professions in Scotland and with other bodies. We have also 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.

4.6 We are also most grateful for the help we continue to receive from the Librarian and staff of the Edinburgh University Library, Edinburgh University

¹See paras. 3.31 and 3.32.

²See para. 3.34.

³See para. 3.4.

⁴A list of members of this Working Party appears in Appendix I to this Report.

Law Library, the Centre of European Governmental Studies, the National Library of Scotland, the Advocate's Library and the Signet Library.

SEMINARS, COLLOQUIA ETC

4.7 Our Chairman attended a conference on criminology held at the University of Cambridge by the Institute of Criminology on 11 to 13 July 1979.

4.8 Our Chairman also attended a colloquium on 'Methods of Law Reform' held by the United Kingdom National Committee of Comparative Law at the University of Warwick on 11 and 12 September 1979.

4.9 Mr. Bertram and a member of our legal staff attended the Annual Conference of the Law Society of Scotland held at Aviemore on 9 to 11 May 1980.

4.10 At the invitation of the Scottish Law Agents Society, our Chairman attended the Annual Conference of the Society held at Ayr on 13 June 1980 and gave a talk on 'Law Reform—The Process of Consultation'.

V. MISCELLANEOUS

DEPARTMENTAL AND OTHER COMMITTEES

5.1 Our Commissioners and legal staff serve on various Government and Departmental Committees some of which are referred to in the following paragraphs.

Statute Law Committee

5.2 Our Chairman continues to serve on the Statute Law Committee and continues as a member of the Editorial Board.

Civil Judicial Statistics

5.3 The Working Party of officials (including a member of the legal staff of the Commission) set up by the Scottish Courts Administration to review the Annual Civil Judicial Statistics for Scotland has now been disbanded.

Insolvency Law Review Committee

5.4 Professor R. B. Jack continues to attend, as Scottish observer, the meetings of the Insolvency Law Review Committee set up by the Department of Trade to review all aspects of the insolvency laws of England and Wales.

Consultative Committee on Insolvency Law Review

5.5 In 1978 we set up a Consultative Committee on Insolvency Law Review¹ under Professor Jack's chairmanship, to ensure that Scottish views are ascertained and can be fully taken into account when the Government come to consider the Report of the Insolvency Law Review Committee. The Consultative Committee met on several occasions during the past year.

¹A list of members of this Committee appears in Appendix I to this Report.

European Judgments Convention

5.6 During the year Mr. Anton continued to attend meetings of the Committee set up by your predecessor, under the chairmanship of the Hon. Lord Maxwell, to consider, in the light of current developments, the Scottish rules of jurisdiction in civil and commercial matters and the procedure for the recognition and enforcement in Scotland of external judgments. The Committee have now completed their work and submitted their Report to you.

SCRUTINY OF BILLS

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

APPENDICES

5.8 Membership of the various Working Parties etc. appears in Appendix I. A list of papers which have been prepared by the Commission appears in Appendix II. Included in this Appendix are certain consultative documents, some published and some unpublished, which were given restricted circulation. The extent to which our proposals have been incorporated in legislation is indicated in Appendix III.

APPENDIX I

MEMBERSHIP OF WORKING PARTIES ETC.

Working Party on Security over Moveable Property¹

Professor J. M. Halliday, C.B.E. (Chairman)	Solicitor, Glasgow
Mr. R. H. Barclay	Solicitor, Glasgow
Mr. T. Gardiner	Solicitor, Glasgow
Mr. A. M. Hamilton	Solicitor, Glasgow
Professor R. B. Jack	Solicitor, Glasgow
Mr. G. R. H. Reid ²	Solicitor, Glasgow
Professor W. A. Wilson	University of Edinburgh
Secretary: Mr. A. J. Sim, Scottish Law Commission	

Consultative Committee on Insolvency Law Review

Professor R. B. Jack (Chairman)	Solicitor, Glasgow
Mr. A. E. Anton, C.B.E.	Scottish Law Commission
Mr. D. G. Antonio	Law Society of Scotland
Mr. S. M. Fraser	Institute of Chartered Accountants of Scotland
Mr. J. D. Goold, C.A.	Confederation of British Industry
Mr. A. McAndrew	Committee of Scottish Clearing Bankers
Mr. D. Macgregor	Scottish Trade Union Congress
Mr. G. W. Penrose, Q.C.	Faculty of Advocates
Mr. E. S. Robertson	Department of Trade, Scotland
Secretary: Mr. J. Clarkson, Scottish Law Commission	

Steering Committee on Private International Law

The Hon. Lord Hunter, V.R.D.	} Joint Chairmen	Scottish Law Commission
The Hon. Mr. Justice Kerr		Law Commission
Mr. A. E. Anton, C.B.E.		Scottish Law Commission
Dr. P. M. North		Law Commission
Joint Secretaries	} Mr. R. Eadie Mr. J. C. R. Fieldsend ³	Scottish Law Commission
		Law Commission

Joint Working Party on Private International Law (Tort/Delict)

Professor A. L. Diamond (Chairman)	Institute of Advanced Legal Studies, University of London
Mr. A. Akbar ⁴	Law Commission
Mr. A. E. Anton, C.B.E.	Scottish Law Commission
Mr. T. Norman Biggart	Solicitor, Glasgow
Mr. L. Collins	Solicitor, London

¹The membership of the Working Party has been supplemented, for the purpose of its examination of the question of security in connection with North Sea oil operations, by the addition of Mr. J. T. Cameron, Q.C., Mr. T. M. Lawrie, Solicitor, Glasgow, and Mrs. L. Lilleker of the Office of the Solicitor to the Secretary of State for Scotland.

²We regret to report that ill-health made it necessary for Mr. Reid to resign from the Working Party during the year under review.

³Mr. Fieldsend ceased to be Secretary of the Law Commission and Joint Secretary of the Steering Committee on 27 June 1980. His successor is Mr. B. M. F. O'Brien.

⁴Mr. Akbar has ceased to be a member of the Joint Working Party on Private International Law (Tort/Delict).

Mr. H. F. Macdiarmid
Mr. C. G. J. Morse
Dr. P. M. North

Scottish Courts Administration
King's College, London
Law Commission

Secretary: [Vacant at present]¹

Joint Working Party on Recognition of Foreign Nullity Decrees

Mr. A. E. Anton } Joint
Dr. P. M. North } Chairmen
Mr. A. Akbar²
Mr. J. Clarkson
Mr. S. M. Cretney
The Hon. Lord Dunpark
Mr. J. Siddle

Scottish Law Commission
Law Commission
Law Commission
Scottish Law Commission
Law Commission
Court of Session
Foreign and Commonwealth Office

Secretary: Miss A. E. Tutton, Law Commission

Joint Working Party on Foreign Money Liabilities

Dr. P. M. North (Chairman)
Mr. A. Akbar³
Mr. A. E. Anton, C.B.E.
Mr. R. D. D. Bertram
Mr. R. Brodie
Mr. R. Cassels
Mr. A. Cope
Miss M. McLellan
Miss N. O'Flynn
Mr. A. Parry

Law Commission
Law Commission
Scottish Law Commission
Scottish Law Commission
Scottish Courts Administration
Royal Bank of Scotland
Law Commission
Lord Chancellor's Department
Department of Trade
Foreign and Commonwealth Office

Secretary: [Vacant at present]⁴

Working Party to examine Law Commission Working Papers relating to the Law of Contract⁵

Professor T. B. Smith, Q.C. (Chairman)
Mr. R. D. D. Bertram
Mr. R. Black
Mr. J. T. Cameron, Q.C.⁶
Mr. M. G. Clarke
Dr. W. W. McBryde

Scottish Law Commission
Scottish Law Commission
Faculty of Advocates
Faculty of Advocates
Faculty of Advocates
University of Aberdeen

Secretary: Mr. H. R. M. Macdonald, Scottish Law Commission.

¹Mr. R. J. Dormer, Law Commission, became Secretary of this Joint Working Party with effect from 1 October 1980.

²Mr. Akbar has ceased to be a member of the Joint Working Party on Recognition of Foreign Nullity Decrees.

³Mr. Akbar has ceased to be a member of the Joint Working Party on Foreign Money Liabilities.

⁴Mr. A. Cope, Law Commission, became the Secretary of this Joint Working Party with effect from 1 October 1980.

⁵The membership of the Working Party was supplemented, for the purpose of consideration of the EEC Draft Directive on Insurance Contracts (see para. 3.51(a) above), by the addition to this list of members of Mr. D. H. Cameron, formerly Legal Adviser to the General Accident Fire and Life Assurance Corporation Limited, and Mr. T. N. Risk, Solicitor, Glasgow.

⁶Mr. Cameron ceased to be a member of this Working Party on 15 October 1979.

APPENDIX II

1 SCOTTISH LAW COMMISSION—PAPERS PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE (AS AT 30 SEPTEMBER 1980)

		<i>Commission No.</i>	
1965	1		First Programme of Law Reform
<hr/>			
1966	2		First Programme of Consolidation and Statute Law Revision
	3		First Annual Report 1965–66
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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
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1968	8		Second Programme of Law Reform
	9		Third Annual Report 1967–68
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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
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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)
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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

*Produced jointly with the Law Commission.

		<i>Commission No.</i>	
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)
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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)
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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 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 Liability 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)

*Produced jointly with the Law Commission.

Commission

No.

- 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

2 SCOTTISH LAW COMMISSION—MEMORANDA CIRCULATED FOR COMMENT AND CRITICISM

- 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
*Memorandum No. 15—The Exclusion of Liability for Negligence in the Sale of Goods and Exemption Clauses in Contracts for the Supply of Services and Other Contracts
Memorandum No. 16—Insolvency, Bankruptcy and Liquidation
- 1972 Memorandum No. 17—Damages for Injuries Causing Death

*Produced jointly with the Law Commission.

- 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 Provisions (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

3 SCOTTISH LAW COMMISSION—PUBLISHED CONSULTATIVE DOCUMENTS CIRCULATED FOR COMMENT AND CRITICISM

- 1974 *Private International Law—EEC Preliminary Draft Convention on the Law applicable to Contractual and Non-Contractual Obligations

*Produced jointly with the Law Commission.

4 SCOTTISH LAW COMMISSION—OTHER PUBLISHED DOCUMENTS

1979 Research Paper on the Law of Evidence of Scotland by Sheriff I. D. Macphail

5 SCOTTISH LAW COMMISSION—CONSULTATIVE PAPERS NOT PUBLISHED AND WITH VERY 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

6 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

*Produced jointly with the Law Commission.

APPENDIX III

STATUTORY PROVISIONS RELATING TO THE SCOTTISH LAW COMMISSION'S PROPOSALS (AS AT 30 SEPTEMBER 1980)

<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 Life-rents (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 (Joint Report with the Law Commission) (Scot. Law Com. No. 6A) (Cmnd. 3267)	11.5.67	Sea Fisheries (Shellfish) Act 1967 (c. 83).
Trustee Savings Banks Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 10) (Cmnd. 4004)	17.4.69	Trustee Savings Banks Act 1969 (c. 50).
Interpretation of Statutes (Joint Report with the Law Commission) (Scot. Law Com. No. 11)	11.6.69	None.
Exemption Clauses in Contracts—First Report: Amendment to the Sale of Goods Act 1893 (Joint Report with the Law Commission) (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 (Joint Report with the Law Commission) (Scot. Law Com. No. 16) (Cmnd. 4542)	1.12.70	Recognition of Divorces and Legal Separations Act 1971 (c. 53).

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
Coinage Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 18) (Cmnd. 4544)	26.11.70	Coinage Act 1971 (c. 24).
Vehicles (Excise) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 19) (Cmnd. 4547)	2.12.70	Vehicles (Excise) Act 1971 (c. 10).
National Savings Bank Bill (Joint Report with the Law Commission) (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 (Joint Report with the Law Commission) (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 (Joint Report with the Law Commission) (Scot. Law Com. No. 22) (Cmnd. 4731)	26.7.71	Road Traffic Act 1972 (c. 20).
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 (Joint Report with the Law Commission) (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 (Joint Report with the Law Commission) (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 (Joint Report with the Law Commission) (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 (Joint Report with the Law Commission) (Scot. Law Com. No. 36) (Cmnd. 5792)	5.12.74	Statute Law (Repeals) Act 1975 (c. 10).

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
Supply Powers Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 38) (Cmnd. 5850)	6.1.75	Supply Powers Act 1975 (c. 9).
Exemption Clauses—Second Report (Joint Report with the Law Commission) (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 (Joint Report with the Law Commission) (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 (Joint Report with the Law Commission) (Scot. Law Com. No. 44) (Cmnd. 6719)	6.1.77	Statute Law (Repeals) Act 1977 (c. 18).
Liability for Defective Products (Joint Report with the Law Commission) (Scot. Law Com. No. 45) (Cmnd. 6831)	15.6.77	None.
Statute Law Revision—Ninth Report: Draft Statute Law (Repeals) Bill (Joint Report with the Law Commission) (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	None.
Report on the Married Women's Policies of Assurance (Scotland) Act 1880 (Scot. Law Com. No. 52) (Cmnd. 7245)	27.7.78	None.
Interpretation Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 53) (Cmnd. 7235)	8.6.78	Interpretation Act 1978 (c. 30).
Customs and Excise Management Bill (Joint Report with the Law Commission) (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	None.

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
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	None.
Report on Occupancy Rights in the Matrimonial Home and Domestic Violence (Scot. Law Com. No. 60)	17.7.80	None.