

SCOTTISH LAW COMMISSION  
(Scot Law Com No 167)



# Thirty-Third Annual Report 1997-98

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 Gill, *Chairman*  
Dr E M Clive,  
Mr P S Hodge, QC,  
Professor K G C Reid,  
Mr N R Whitty.

The Secretary of the Commission is Mr J G S Maclean. Its offices are at 140 Causewayside, Edinburgh EH9 1PR.

# SCOTTISH LAW COMMISSION

## Report for the year ended 15 June, 1998

To: The Rt Hon the Lord Hardie, 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 Thirty-Third Annual Report of the Scottish Law Commission.

BRIAN GILL, *Chairman*

E M CLIVE

PATRICK S HODGE

KENNETH G C REID

N R WHITTY

J G S MACLEAN, *Secretary*  
11 September 1998

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<sup>1</sup> Transfer of Functions (Secretary of State and Lord Advocate) Order 1972 (SI 1972, No 2002).

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# Foreword

This has been a successful year in which we have made good progress on all of our current projects. In this Report we have tried to give an informative picture of our work and of our priorities for the future.

On behalf of the Commissioners I thank our Secretary and our staff for their hard work and their enthusiasm. To them we owe the pleasure of working here.

We also thank our draftsmen, our consultants and our advisory groups for their assistance.

Lastly, we thank you for your interest in our work and for your support.

BRIAN GILL, *Chairman*

# Part 1

## Summary of achievements and aims

### Publications

1.1 Table 1.1 lists the reports and discussion papers which we published during the year to 15 June 1998.

**Table 1.1 SLC reports and discussion papers 1997-98**

Title	Citation	Date of publication	Notes
Interpretation in Private Law	Report (Scot Law Com No 160)	October 1997	See paras 2.12-2.15
Penalty Clauses	Discussion Paper No 103	December 1997	See paras 2.17-2.20
Law of the Tenement	Report (Scot Law Com No 162)	March 1998	See paras 2.47-2.51
Boundary Walls	Report (Scot Law Com No 163)	March 1998	See para 2.40
Diligence on the Dependence and Admiralty Arrestments	Report (Scot Law Com No 164)	March 1998	See paras 2.3-2.5
Leasehold Casualties	Report (Scot Law Com No 165)	April 1998	See paras 3.11-3.17

1.2 Table 1.2 lists reports and discussion papers which were published by the Law Commission either jointly or in association with us.

**Table 1.2 Joint LC/SLC reports and discussion papers 1997-98**

Title	Citation	Date of publication	Notes
Shareholder Remedies	Report (Law Com No 246)	October 1997	See paras 3.25-3.26
Third Parties (Rights against Insurers) Act 1930	Joint Consultation Paper (Consultation Paper No 152, Discussion Paper No 104)	January 1998	See paras 3.27-3.29
Statute Law Revision: Sixteenth Report: Draft Statute Law (Repeals) Bill	Joint Report (Law Com No 252, Scot Law Com No 166)	May 1998	See para 4.8

## Implementation of reports

1.3 In Appendix 1 we give details of the implementation of the reports which we have published since 1987. We understand that most of the reports awaiting implementation are likely to be brought before the Scottish Parliament. We will however review these with the Scottish Administration after devolution.

1.4 The oldest of our unimplemented reports, *Child Abduction* (Scot Law Com No 102), was published in 1987. In early 1998 the Rt Hon Lord Selkirk of Douglas, QC proposed to us that he should introduce the Bill appended to that report as a Private Members Bill in the House of Lords. At your request we reviewed the Bill in light of legislation enacted since 1987, in particular the Children (Scotland) Act 1995. We prepared a revised draft Bill for consultation within the appropriate government departments.

1.5 We understand that the Government's view is that further work and consultation may be required on the cross-border implications of our recommendations and that the matter would be best dealt with after devolution. We are grateful to Lord Selkirk for having drawn attention to the matters raised in our report and for his long-standing interest in our work.

1.6 The Rules Council intend to promulgate Rules of the Court of Session to implement our report on *Multi-Party Actions* (Scot Law Com 154) and have consulted us on their proposals.

## Projects and objectives

1.7 Our work during 1997-98 falls into three main categories:

- projects under our *Fifth Programme of Law Reform* (Scot Law Com No 159)
- provision of advice to government departments under section 3(1)(e) of the Law Commissions Act 1965
- consolidation and statute law revision.

The first of these has absorbed the largest part of our resources. At the same time certain joint projects with the Law Commission, undertaken at the request of the Department of Trade and Industry, have made increasing demands on our resources: see further paras 3.6-3.10, 3.19-3.29. We have had to supplement our legal staff in consequence.

1.8 The objectives which we set ourselves during 1997-98, and in the main met, are described in Parts 2, 3 and 4. In Appendix 2A we list our objectives for the coming year.

## *Sixth Programme of Law Reform*

1.9 We are well on course to meet the overall objectives which we set for the period of the *Fifth Programme of Law Reform*, that is between 1997 and 1999. We have therefore begun planning our *Sixth Programme of Law Reform*, which we intend to publish during 1999 and which will run for three to five years from 2000. We have carried out a preliminary consultation on our tentative proposals, primarily with government departments and legal bodies, and we aim to prepare a first draft of the programme by January 1999. We are also liaising with the Law Commission which intends to publish its *Seventh Programme of Law Reform* during 1998. Precisely when we submit our programme for approval and publication may depend on the devolution timetable.

## Devolution

1.10 Since the publication in July 1997 of the White Paper, *Scotland's Parliament* (Cm 365), we have taken up with your officials certain technical issues on the Scotland Bill concerning the constitution and functions of the Scottish Law Commission under the Law Commissions Act 1965. We welcome the policy underlying the Bill, which confirms that our remit will continue to include all the law applying in Scotland, whether in relation to reserved or devolved matters. We look forward to discussions at a later stage with the Scottish Administration on our role after devolution and the priorities for long-term systematic reform of the law.

1.11 In setting our priorities for the future, and in particular for our *Sixth Programme of Law Reform*, we will have to give due weight to the needs of United Kingdom departments with responsibility for the law on reserved matters. We will work closely with these departments and with the Law Commission in joint projects on such matters.

## Other activities

1.12 In Part 5 we describe the various ways in which we have promoted our work through

- links with government departments, law reform agencies and legal and other organisations
- seminars
- visits.

## Organisation and Management

1.13 Over the past year we have continued with the restructuring of our legal support services and the review of our working methods and internal organisation which we initiated in October 1996 and described in our *Thirty-Second Annual Report 1996-97* (Scot Law Com No 161, paras 1.7, 6.8-6.16). Our core legal staff drawn from the Government legal service has been reduced from seven to six (including our Secretary). We have recruited eight legal assistants on fixed-term contracts for periods varying between one and two years.

1.14 We describe these and other developments in Part 6. In Appendix 2B we list our main management objectives for 1998-99.

## Part 2

### Fifth Programme of Law Reform

#### Preliminary

2.1 In Part 2 we report our progress on the projects included in our *Fifth Programme of Law Reform* (Scot Law Com No 159). We refer, as appropriate, to our *Thirty-Second Annual Report 1996-97* (Scot Law Com No 161). Appendix 2A summarises our objectives for the coming year.

#### Item No 1: Civil remedies - Diligence

*Commissioner:* Mr N R Whitty  
*Project manager:* Dr D I Nichols

2.2 Our work on civil remedies consists of projects on

- diligence on the dependence and admiralty arrestments
- inhibition and adjudication.

Table 2.2 shows our objectives for these projects during 1997-98 and summarises the progress we have made.

**Table 2.2 Civil remedies - Diligence: Projects - Objectives and progress 1997-98**

Objective	Progress	References	Notes
To submit by the end of 1997 a report on diligence on the dependence and admiralty arrestments	Report (Scot Law Com No 164) submitted in December 1997	<i>Fifth Programme of Law Reform</i> , paras 2.4-2.6 <i>Thirty-Second Annual Report 1996-97</i> , paras 2.6, 2.7	See paras 2.3-2.5
To issue in early 1998 a discussion paper on inhibition	Two discussion papers on inhibition, adjudication and related topics to be issued in October/ November 1998	<i>Fifth Programme of Law Reform</i> , paras 2.7-2.9 <i>Thirty-Second Annual Report 1996-97</i> , paras 2.6, 2.8	See paras 2.6-2.10

(i) *Diligence on the dependence, etc*

2.3 Diligence on the dependence is a provisional measure giving security to the pursuer for his financial claims while his action is pending. It prevents the defender from disposing of property or transferring it abroad so as to defeat the claims of the pursuer. It also gives the pursuer a preference in competition with other creditors of the defender.

2.4 Only two types of diligence can be used on the dependence of a court action: arrestment and inhibition. Arrestment attaches the debts and movable property due to the defender by a third party. Inhibition prevents the debtor disposing of, or creating securities over, heritable property or contracting further debts to the prejudice of the inhibiting creditor. Inhibition gives the inhibiting creditor a preference in relation to the proceeds of sale over creditors whose debts were incurred after the inhibition. It is also used as an indirect means of enforcing decrees of payment of money.

2.5 We submitted our *Report on Diligence on the Dependence and Admiralty Arrestments* (Scot Law Com No 164) to you in December 1997. It was published in March 1998. The main recommendations of the report are:

- (i) The warrant for diligence on the dependence of an action should always be granted by a judge and then only if it is justified by special circumstances, instead of being available as a matter of right and granted by a clerk of court. The judge should have to be satisfied that there is a substantial risk that the defender will dissipate or conceal assets or that he is likely to become insolvent. Even then the judge should have to consider whether it is reasonable to grant

the warrant, bearing in mind all the circumstances of the case, including the pursuer's apparent prospects of success in the action.

- (ii) A new form of diligence on the dependence, to be called interim attachment, should be available against goods. The judge should be empowered to grant, on the same conditions, a warrant for interim attachment of corporeal moveables in the defender's possession, other than stock-in-trade or items in his dwelling-house.

The report also includes recommendations for presenting the law on arrestment of ships and their cargoes in a more coherent and intelligible form. In the final section we recommend the abolition of the rules whereby other creditors can share the proceeds of a creditor's arrestment or pouding. Such sharing is uncommon in modern practice and the rules are unduly complex.

(ii) *Inhibition and adjudication*

2.6 As a result of our work on the topic in the latter half of 1997 we decided to expand the scope of our proposed discussion paper on inhibition in several ways. First, it will contain provisional recommendations on land attachment. This is a new diligence designed to replace adjudication as regards land and other heritable property registrable in the Property Registers, that is the Register of Sasines and the Land Register of Scotland. Adjudication is a diligence used by creditors who have obtained a decree for their debt. It attaches the debtor's heritable property. It is rarely used in practice and has remained almost unchanged since 1672. It takes the form of a Court of Session action. Registration of the decree gives the creditor a security

over the heritable property of the debtor. The debtor has a ten-year period in which to pay off the debt. At the end of this period a creditor whose debt remains unsatisfied can bring a further action in the Court of Session to have it declared that the ten-year period of redemption is at an end. Registration of the decree in this further action transfers the ownership of the property irredeemably from the debtor to the creditor.

2.7 Our provisional recommendations on the new diligence are based on proposals for the reform of adjudication which we put forward in Discussion Paper No 78 - *Adjudications for Debt and Related Matters* (1988). But we take into account responses to that paper, subsequent changes in registration practice and further consultations with representatives of the Law Society of Scotland and the Keeper of the Registers of Scotland. The paper will also ask for views as to whether inhibition should be retained if land attachment were to be introduced.

2.8 Second, we will put forward proposals to deal with a competition between a creditor using land attachment, the trustee in sequestration or the liquidator of an insolvent company on the one hand and on the other purchasers and others treating with the debtor on the faith of the registers. Some statements in the judgements in the recent case of *Sharp v Thomson* 1997 SC(HL) 66 have caused uncertainty as to whether an adjudger, trustee or liquidator has priority over the holder of a delivered but unrecorded disposition.

2.9 At present adjudication is a diligence of last resort, as well as a diligence against heritable property. It is available when no other diligence is competent. We intend to issue a separate discussion paper containing proposals for

new diligence to replace adjudication as regards assets other than those which would be attachable by land attachment. This paper will also include proposals for attaching money in the possession of debtors.

2.10 The enlargement of our discussion paper on inhibition to include additional topics has delayed it. We shall issue it before the end of October 1998. The second discussion paper will be issued at the same time or shortly afterwards. We still intend to submit to you a report on inhibition, adjudication and related topics before the end of 1999 in accordance with the commitment given in our *Fifth Programme of Law Reform* (para 2.13).

### **Item No 2: Codification**

2.11 Both in our *Fifth Programme of Law Reform* (paras 2.14-2.16) and in our *Thirty-Second Annual Report 1996-97* (paras 2.10-2.12) we highlighted the importance of codification as an element in the systematic development and reform of the law. By codification in this context we mean a comprehensive legislative restatement of the general principles underlying some unified area of the common law. We still intend to undertake a feasibility study of codification, as a long-term project, focusing on a restricted area of the law. Meantime, we do not have resources available for such a project. However, in the draft legislation annexed to recent reports on interpretation in private law and on the law of the tenement we have restated existing common law rules, with modifications: see paras 2.15, 2.48.

### **Item No 3: General principles of private law**

*Commissioner:* Dr E M Clive  
*Project manager:* Mrs G B Swanson

2.12 In the course of our work on contract we considered problems of interpretation. Some of our consultees pointed out to us that there were common problems of interpretation affecting a wide range of legal writings. We therefore decided to look at these problems on a wider basis. In August 1996 we issued Discussion Paper No 101 - *Interpretation in Private Law*, and in our *Fifth Programme of Law Reform* (paras 2.17-2.19), published in February 1997, we set ourselves the objective of submitting a report on the topic during 1997.

2.13 We fulfilled that objective with the publication of our *Report on Interpretation in Private Law* (Scot Law Com No 160) in October 1997.

2.14 In that report we recommend clarification of the law regarding the interpretation of expressions in juridical acts. Juridical acts are acts intended to have legal effect, such as a will or an oral sale agreement, but do not include legislation and court decrees. We recommend that an expression in a juridical act should be given the meaning which would reasonably be given to it in its context, having regard where appropriate to the surrounding circumstances and the nature and purpose of the transaction, objectively ascertained. We recommend exceptions for cases where the parties to a contract have

deliberately used the expression in a special sense or where an expression in a will is ambiguous. In such cases we recommend that the intention of the party or testator should prevail if it can be established.

2.15 The clarification and restatement, with modifications, of the common law rules of interpretation allows the abolition of some existing complicated rules of evidence. These rules restrict the evidence that is admissible for the purpose of interpreting expressions in juridical acts. We recommend that all relevant evidence should be admissible. Evidence will be relevant if it relates to matters to be taken into account under the new rules for interpretation which we recommend.

#### **Item No 4: Obligations**

*Contract: Commissioner:* Dr E M Clive

*Project manager:* Mrs G B Swanson

*Unjustified enrichment:*

*Commissioner:* Mr N R Whitty

*Project manager:* Dr D I Nichols

2.16 Our work on obligations consists of projects on

- contract
- unjustified enrichment.

Table 2.16 shows our objectives for these projects during 1997-98 and summarises the progress we have made.

**Table 2.16 Obligations: Projects - Objectives and progress 1997-98**

Objective	Progress	References	Notes
To issue by the end of 1997 a discussion paper on penalty clauses	Discussion paper (No 103) issued in December 1997	<i>Fifth Programme of Law Reform</i> , paras 2.21-2.23  <i>Thirty-Second Annual Report 1996-97</i> , paras 2.20, 2.21	See paras 2.17-2.20
To issue during 1998 a discussion paper, or discussion papers, on remedies for breach of contract	Discussion paper, or discussion papers, to be issued in early 1999	<i>Fifth Programme of Law Reform</i> , paras 2.21-2.23;  <i>Thirty-Second Annual Report 1996-97</i> , paras 2.20, 2.22	See paras 2.21-2.22
To issue during 1998 a report on the recovery of undue public authority receipts and disbursements	Report to be issued by December 1998	<i>Fifth Programme of Law Reform</i> , paras 2.24-2.29  <i>Thirty-Second Annual Report 1996-97</i> , paras 2.23-2.28	See paras 2.23-2.24

(i) *Contract*

2.17 In our review of the law of contract we are examining penalty clauses and remedies for breach of contract. After the publication of our *Fifth Programme of Law Reform* we decided that it would be more appropriate to deal with penalty clauses as a separate project. In a discussion paper (No 103) on the topic, issued in December 1997, we examined the two main problems in this area of law. The first is that some contractual provisions which are not in any way oppressive or unreasonable may be struck down as unenforceable penalty clauses, because they fall on the wrong side of the line which the law draws between penalties and liquidated damages. The second is that some contractual provisions which are arguably of the nature of oppressive

and unreasonable penalty clauses may escape judicial control, because they are drafted in such a way that they operate without a breach of contract.

2.18 In the paper we ask for views on a number of questions: whether the agreement of contracting parties on a penalty should be enforceable in all cases, or in none, or whether there should be some judicial control; what the criteria should be for the exercise of judicial control; whether judicial control should be confined to cases where a penalty is due when the promisor is in breach of contract; or whether it should extend to cases where the penalty is due if the promisor fails to perform, or to perform in a particular way, under a contract or when there is an early termination of a contract. We also ask whether judicial control over

penalty clauses should apply whatever form the penalty takes.

2.19 We engaged Professor W W McBryde of the University of Dundee as a consultant on this project. We gratefully acknowledge his substantial contribution to our discussion paper. We also gratefully acknowledge the invaluable assistance given by members of the advisory group on contract law. The members of the group are listed in Appendix 3A.

2.20 The consultation period expired on 31 March 1998, and we have now considered the policy questions arising from the comments we received. The report will be drafted as and when the remaining work to be done on contract allows. We intend to submit the report before the end of 1999 in accordance with the commitment given in our *Fifth Programme of Law Reform* (para 2.23).

2.21 Our remaining work on contract relates to the clarification of the law on remedies for breach of contract. We are looking at a number of areas: breach of contract in general; suspension of performance; rescission; the right to compel performance; and damages.

2.22 We have again engaged Professor McBryde as a consultant for part of the project. The remaining work is being done in-house. We intend to issue one or more discussion papers in early 1999 and to fulfil our objective under our *Fifth Programme of Law Reform* (para 2.23) of submitting a report before the end of 1999. We shall consult the advisory group on contract law at key stages in the project.

(ii) *Unjustified enrichment*

2.23 In our *Fifth Programme of Law Reform* (paras 2.24-2.29) and our *Thirty-Second Annual Report 1996-97* (paras 2.23-

2.28), we set out our objectives in relation to the law of unjustified enrichment. The first was to complete our work on the questions raised by the case of *Woolwich Equitable Building Society v Inland Revenue Commissioners* [1993] AC 70, which we examined in Discussion Paper No 100 - *Recovery of Ultra Vires Public Authority Receipts and Disbursements* (1996); the second was to consider a more comprehensive reform of the law of unjustified enrichment, as a long-term project. We have decided not to pursue the second objective meantime, and to reassess the need for comprehensive reform after 1999 in the light of the then state of the law and the pressure, if any, for reform. We intend to fulfil the first objective by submitting before the end of 1998 a short report with draft legislation proposing certain limited reforms. The report will be primarily concerned with the questions whether there should be a statutory rule for the automatic recovery of *ultra vires* public authority receipts (equivalent to the rule in English law laid down by the *Woolwich* case); and whether the existing statutory provisions on recovery of central and local government taxes and rates should be amended.

2.24 The report will also make recommendations on an important question on which we consulted in Discussion Paper No 99 - *Judicial Abolition of the Error of Law Rule and its Aftermath* (1996), namely, whether to introduce a statutory bar to the re-opening of payment transactions settled on the faith of a common understanding of the law subsequently changed by judicial decision. Our recommendation on this matter may well be influenced by the forthcoming judgment of the House of Lords (whose decision is awaited) in an English case - *Kleinwort Benson Ltd v Birmingham City Council*. This case raises the questions whether the error of law

rule should be abrogated in English law (as it has been by a Court of Five Judges in Scots law) and if so - which is more important for Scots law - whether this should be followed by a bar to the opening of settled payment transactions. Our report will be submitted as soon as possible after the judgement is available.

### **Item No 5: Persons**

*Guardianship of the incapable:*

*Commissioner:* Dr E M Clive

*Project manager:* Dr D I Nichols

2.25 Our recent and prospective work includes projects on

- guardianship of the incapable
- judicial factors.

#### (i) *Guardianship of the incapable*

2.26 In our *Thirty-Second Annual Report 1996-97* (paras 2.30-2.33) we reported on our work on the legal issues arising out of mental incapacity and vulnerability. In February 1997 the Scottish Office issued a consultation paper, *Managing the Finances and Welfare of Incapable Adults*, accepting as a basis for legislation many of the recommendations in our *Report on Incapable Adults* (Scot Law Com No 151) published in September 1995. In December 1997 the Lord Chancellor's Department issued a similar consultation paper, *Who Decides? Making Decisions on Behalf of Mentally Incapacitated Adults*, seeking comments on the Law Commission's parallel report, *Mental Incapacity* (Law Com No 231) published in February 1995. Part of that paper canvasses views on whether there should be Great Britain-wide provisions on medical treatment, as the recommendations in the two reports from the Commissions are thought to be

sufficiently similar. In early 1998 an Alliance for the Promotion of the Incapable Adults Bill was established to press for legislation on the basis of our report.

#### (ii) *Judicial factors*

2.27 A judicial factor is an individual appointed by the court to take over the management of another person's property or financial affairs. One of the commonest reasons for such an appointment is mental incapacity. In that case the judicial factor is known as a curator bonis. During our work on mental incapacity, and our earlier work on family law, we became aware that the law relating to judicial factors generally was in need of overhaul.

2.28 We accordingly set ourselves the objective under our *Fifth Programme of Law Reform* (paras 2.30-2.31) of reviewing the legislation relating to judicial factors, as a long-term project. We do not have the resources available to make a start on the project and it is unlikely that we will be able to do so until after 1999.

### **Item No 6: Property**

*Commissioners:* Dr E M Clive, The Hon Lord Gill, Professor K G C Reid

*Project manager:* Mr J M Dods

2.29 Our work on property consists of projects on

- feudal tenure
- leasehold tenure
- mutual boundary walls
- real burdens
- tenement property.

Table 2.29 shows our objectives for these projects during 1997-98 and summarises the progress we have made.

**Table 2.29 Property: Projects - Objectives and progress 1997-98**

Objective	Progress	References	Notes
To submit in 1998 a report with draft legislation to abolish and replace the feudal system	Report to be submitted by December 1998	<i>Fifth Programme of Law Reform</i> , paras 2.33-2.35;  <i>Thirty-Second Annual Report 1996-97</i> , paras 2.38-2.43	See paras 2.30-2.37
To submit before the end of 1999 a report on mutual boundary walls, etc	Report submitted in December 1997	<i>Fifth Programme of Law Reform</i> , para 2.38  <i>Thirty-Second Annual Report 1996-97</i> , paras 2.47-2.49	See para 2.40
To issue during 1998 a discussion paper on real burdens	Discussion paper to be issued by December 1998	<i>Thirty-Second Annual Report 1996-97</i> , paras 2.38-2.43	See paras 2.41-2.46
To submit before the end of 1997 a report on the law of the tenement	Report submitted in December 1997	<i>Fifth Programme of Law Reform</i> , paras 2.39-2.42  <i>Thirty-Second Annual Report 1996-97</i> , paras 2.50-2.52	See paras 2.47-2.51

(i) *Feudal tenure*

2.30 Almost all land and buildings in Scotland are held on feudal tenure, under which multiple rights of ownership co-exist in the same property. The case for abolition of the system is well documented and not seriously disputed. It has outlived its usefulness and is open to abuse. We aim to replace it with a modern system based on the principle of outright ownership of land.

2.31 We have continued to make good progress on the project and intend to submit our report by the end of 1998.

2.32 Our main proposals are now well settled. We may modify our current views on some matters of detail. We will be recommending the abolition of the feudal system. This will involve the abolition of all feudal superiorities. It will no longer be possible to create a new feudal estate. The right of ownership held by a vassal will be converted into one of outright ownership of the land, but subject to certain subordinate real rights and other encumbrances which will survive abolition. The Crown will lose any rights which it holds as feudal superior but prerogative rights as Sovereign or Head of State will be preserved. We are presently considering the removal of all baronial elements from the system of land

ownership and the conversion of the titular, heraldic and ceremonial privileges of barony into a form of incorporeal property wholly detached from land and subject to the jurisdiction of the Lord Lyon.

2.33 All remaining feuduties will be compulsorily extinguished on the day of abolition. Compensation may be due by a former vassal to a former superior, but the responsibility for calculating the sum due by a vassal and for claiming that amount will rest with the superior. The claim will be subject to a time limit. The compensation will be based in general terms on the formula laid down in the Land Tenure Reform (Scotland) Act 1974. There will be an instalment scheme.

2.34 We have been considering whether there should be any exceptions to the general abolition of the superior's right to enforce real burdens. The most deserving case is probably the superior who owns contiguous land. Unlike the absentee superior he may have a genuine interest in the enforcement of burdens. Any saving that we recommend here will be subject to our general recommendations for the reform of the law of real burdens: see paras 2.41-2.46. A further saving might be in respect of real burdens which provide for the maintenance and use of "common facilities", that is facilities (such as recreational ground or a private water or drainage system) which are intended to be of benefit to another property or properties. There is also a case for a special saving for burdens imposed by certain conservation bodies for conservation purposes.

2.35 We are considering whether, taking into account the circumstances where the Lands Tribunal has power to award compensation, there are any other cases in addition to feuduty where compensation might be payable to a

superior. We will also be making recommendations dealing with the consequences of abolition for the Keeper of the Registers. Finally, our work will result in a major simplification of the legislation relating to conveyancing, land registration and associated topics. We will be putting forward many consequential amendments and in particular repeals of much obsolete material. This work will lead inevitably to consolidation in the long term.

2.36 We have been in regular contact with the Land Reform Policy Group which was set up by the Government to "identify and assess proposals for land reform in rural Scotland, taking account of their cost, legislative and administrative implications and their likely impact on the social and economic development of rural communities and on the natural heritage". There is some overlap between our work and that of the Group but for the most part we are looking at different aspects of land reform. The Group is primarily concerned with matters of public policy which involve political considerations and which require to be considered in a much wider context than law reform. We are looking at matters where policy is more settled and which in many respects are technical.

2.37 We have continued to receive valuable assistance from our advisory group on the practical implications of our recommendations. The members of the group are listed in Appendix 3B.

(ii) *Leasehold tenure*

2.38 Long leasehold tenure has many of the characteristics of ownership. Leases for periods of 999 years, or leases subject to indefinite rights of renewal, are in practice if not in law equivalent to perpetual feus. They were recognised as such by some landlords. Many were

granted because of restrictions on the power to feu. The problems caused by these leases are well documented. Tenants, on expiry of their leases, lose possession of their homes which, in some cases, they or members of their family have built. They may be entitled to no compensation or to inadequate compensation. They may have to pay large sums to their landlord to buy back property which they regard as their own. Under our *Fifth Programme of Law Reform* (paras 2.36-2.37) we set ourselves the objective of examining leasehold tenure, in particular long leases of residential subjects, as a long-term project.

2.39 We have not yet started work on the project and are unlikely to do so until after we have completed our projects on feudal tenure and real burdens. However, our work on leasehold casualties has highlighted the wider problem as to the future of ultra-long leasehold tenure: see paras 3.11-3.17. There is a strong argument that the interest of the tenant under a lease for several hundred years should be converted into outright ownership on payment of compensation to the landlord. Several respondents to our discussion paper (No 102) on leasehold casualties advocated this solution to the problem of leasehold casualties. While we were not persuaded by these arguments, the abolition of leasehold casualties will make it easier to deal with the problems of ultra-long leasehold tenure.

(iii) *Mutual boundary walls*

2.40 We submitted our *Report on Boundary Walls* (Scot Law Com No 163) to you in December 1997. It was published in March 1998. In a preliminary consultation paper in 1992 we had sought views as to whether legislation on boundary walls was necessary and, if so, whether the legislation should adopt the

approach of *Thom v Hetherington* 1988 SLT 724 or the approach at that time proposed for the law of the tenement. We reassessed the options in the light of the responses to the consultation paper and our work on the law of the tenement. In our report we conclude that the existing law on boundary walls is satisfactory and recommend that there is no need to introduce legislation either to reform or to restate the law.

(iv) *Real burdens*

2.41 Real burdens are conditions imposed in title deeds for the purpose of regulating the use of land and buildings for the benefit of other proprietors who might be affected by that use. They developed in the late eighteenth and early nineteenth centuries as a means of regulating the rapid urbanisation which accompanied the industrial revolution. At a time when there was no planning legislation and the idea of public control over land was still in its infancy, real burdens provided a highly effective method of private regulation. Without them it is unlikely that the development of towns and cities in Victorian Scotland would have proceeded so successfully. Today they are still a useful means of private regulation and are found throughout Scotland. They are common in rural areas, but on the whole are overwhelmingly an urban phenomenon. Similar forms of private regulation are found in other industrialised countries.

2.42 Real burdens are not feudal in origin or in nature but are the outgrowth of urbanisation. Many burdens, however, have been absorbed into the feudal system of land tenure and will be extinguished with the abolition of that system. But other burdens will survive.

2.43 There is accordingly a strong case for examining the whole of the law of real

burdens with a view to fundamental reform. It was for that reason we set ourselves the objective in our *Thirty-Second Annual Report 1996-97* (paras 2.41-2.43) of issuing a separate discussion paper on the topic by the end of 1998 and submitting the relative report by the end of 1999.

2.44 We have made good progress on the project and intend to issue our discussion paper on schedule. In it we will deal with the fundamental question of whether real burdens can be justified. There is a view that, given the growth of planning law and other modes of public regulation, such as building control and public health legislation, there is no longer any place for the private regulation of land use. We will consider this question by examining the merits of the two types of real burdens which will survive the abolition of feudal burdens, namely, neighbour burdens and community burdens. Neighbour burdens regulate relations between individual proprietors. Their essential feature is the absence of reciprocity. Community burdens regulate discrete communities such as housing estates, blocks of flats or sheltered housing developments. They are essentially uniform and reciprocal.

2.45 If real burdens are to survive, the law must be clarified. For an effective system of real burdens only those burdens which can be justified should be permitted. There should be no doubt as to the identity of the party with the right to enforce. It should be easier, quicker and cheaper to discharge or vary real burdens. The property registers should be transparent and accurate. We will put forward proposals designed to make it easier to identify the person with the right to enforce, taking into account the problems caused by implied rights; to resolve doubts as to the validity of burdens which regulate the management

and maintenance of common facilities; to deal with the problem of obsolete burdens, for instance by altering the rules of prescription or introducing a cull or a rolling extinctive period; and to make it easier and cheaper to discharge real burdens.

2.46 In June 1998 we tested some of our provisional proposals at a seminar which was organised in association with the University of Edinburgh: see further paragraphs 5.6-5.7.

(v) *Tenement property*

2.47 In accordance with our published commitment, we submitted our *Report on The Law of the Tenement* (Scot Law Com No 162) to you in December 1997. It was published in March 1998.

2.48 The existing law of the tenement is based on common law rules which developed in the seventeenth century. These rules are widely seen as defective, particularly as they provide no mechanism for collective decision-making by owners. As a consequence it is often difficult to obtain the necessary agreement to carry out repairs. Our recommendations would remedy these defects. They are intended to apply to all tenements, present and future, whether used as dwellinghouses or as commercial premises. The report, if implemented, will help many people in the day-to-day running of their property. The recommendations amount to a code which would replace the existing common law of the tenement.

2.49 There are two key recommendations. First, we recommend that the existing common law rules which demarcate ownership within a tenement should be clarified and restated in modern statutory language. Second, we set out to fill a widely acknowledged gap in the

existing law by recommending a proper system of management for tenements. The draft Bill contains two model management schemes, Scheme A and Scheme B, and we recommend that owners and developers should be free if they wish to devise a scheme of their own. This means that all tenements would have some sort of management scheme and therefore a mechanism for ensuring that repairs are carried out and that decisions are reached on other matters of management.

2.50 Scheme A will in principle apply to all tenements. It can be varied and it is subject to the provisions of the existing titles. It can also be disappplied and replaced by another management scheme, if the owners so decide. The scheme provides for the collective management and maintenance of "scheme property". The scheme property comprises those parts of a tenement which are fundamental to the building as a whole and which therefore require to be maintained in common, for example the roof and the external walls. The scheme provides that decisions on repairs and on certain other matters can be reached by majority vote. Such decisions are then binding on everyone, although there is a right to challenge a decision by application to the sheriff. This means that if the majority decide to repair the roof and the decision is not challenged, the repair can go ahead and, unless the titles provide otherwise, everyone has to pay for the repair. Scheme B is an optional and more sophisticated scheme. It provides for an owners' association with a manager. The association will be a body corporate. The scheme provides for annual budgeting and, where the owners decide, for the building up of a reserve fund to pay for major repairs.

2.51 The report also includes recommendations on compulsory

insurance of flats, emergency repairs, access for repairs, obligations of support and shelter, the liability of incoming owners for repairs and other costs, demolition of a tenement and rights in relation to the positioning of television aerials and satellite dishes.

### **Item No 7: Trusts**

*Commissioner:* Dr E M Clive

*Project manager:* Dr D I Nichols

2.52 Under our *Fifth Programme of Law Reform* (paras 1.13-1.14, 2.43-2.45) we set ourselves the objective of examining aspects of the law on trusts, as a long-term project. In doing so we recognised that the content and timing of the project might be affected by the parallel work which is being undertaken by the Law Commission and which has resulted in a consultation paper (No 146) on trustees' powers and duties, published in June 1997.

2.53 It is unlikely that we will have resources available to start on the project before 2000. Meantime, however, we have agreed to undertake some joint work with the Law Commission on the investment powers of trustees. The two Commissions previously worked together on this at the request of H M Treasury. A consultation document, *Investment Powers of Trustees*, was subsequently published by H M Treasury in May 1996. A draft order was prepared under the Deregulation and Contracting Out Act 1994 to implement the proposals, at least in part. The order lapsed with the prorogation of Parliament in March 1997 and has not been revived. This new phase of the work is intended to lead to new primary legislation which will more comprehensively implement the proposals in the consultation document. We will give particular attention to the amendments which might be required to existing primary and secondary legislation

affecting Scotland. The results of our work will be incorporated in a joint part of the report to be published during 1999 by the Law Commission following on its consultation paper (No 146).

## Part 3

### Advisory work

#### Preliminary

3.1 We have a duty under section 3(1)(e) of the Law Commissions Act 1965 to provide advice and information to government departments and other bodies concerned with law reform. Sometimes we incorporate our advice in a published report following on a discussion paper and full consultation. Sometimes we advise informally. We also provide advice and information outwith the strict terms of our statutory remit where we think that this would promote the cause of law reform generally.

3.2 From time to time we provide advice informally to the Law Commission's project teams on aspects of Scots law. We regard this as an important task in light of the requirement under section 3(4) of the Law Commissions Act 1965 that the Commissions should act in

consultation with each other in the exercise of their functions.

3.3 We have carried out work in response to requests for advice on

- administrative law
- Companies Act 1985, Part X
- leasehold casualties
- multi-party actions
- partnership
- shareholder remedies
- Third Parties (Rights Against Insurers) Act 1930.

Table 3.3 shows our main objectives for these projects during 1997-98 and summarises the progress we have made. We refer, as appropriate, to our *Thirty-Second Annual Report 1996-97* (Scot Law Com No 161). Appendix 2A summarises our objectives for the coming year.

**Table 3.3 Advisory work: Objectives and progress 1997-98**

Project	Objective	Progress	References	Notes
Companies Act 1985, Part X	To contribute to a joint consultation/discussion paper with the Law Commission, to be issued during 1998	Joint consultation paper to be issued in September 1998	Request for advice from the Department of Trade and Industry	See paras 3.6-3.10

**Table 3.3 (cont.)**

<b>Project</b>	<b>Objective</b>	<b>Progress</b>	<b>References</b>	<b>Notes</b>
Leasehold casualties	To submit a report by the end of March 1998	Report submitted in March 1998	Request for advice from the Secretary of State for Scotland (February 1997)  <i>Thirty-Second Annual Report 1996-97, paras 3.6-3.15</i>	See paras 3.11-3.17
Partnership	To contribute to a joint consultation/discussion paper with the Law Commission, to be issued during 1998	Joint consultation/discussion paper, or papers, to be issued in 1999	Request for advice from Department of Trade and Industry (February 1997)  <i>Thirty-Second Annual Report 1996-97, paras 3.19-3.23</i>	See paras 3.19-3.24
Shareholder remedies	To contribute to a report to be published by the Law Commission in October/November 1997	Report published in October 1997	Request for advice from the Lord Chancellor and the President of the Board of Trade (February 1995)  <i>Thirty-Second Annual Report 1996-97, paras 3.24-3.28</i>	See paras 3.25-3.26
Third Parties (Rights Against Insurers) Act 1930	To contribute to a joint consultation/discussion paper with the Law Commission, to be issued before the end of 1997	Joint consultation/discussion paper issued in January 1998	Request for advice from the Department of Trade and Industry  <i>Thirty-Second Annual Report 1996-97, paras 3.29-3.31</i>	See paras 3.27-3.29

## Administrative law

3.4 In our *Thirty-Second Annual Report 1996-97* (paras 3.3-3.5) we described recent work we had carried out in response to a request from a former Lord Advocate for advice on title and interest to sue in relation to judicial review. Although that request was withdrawn by your predecessor, we have continued to discuss with your officials the possibility that we might undertake further work on title and interest to sue, focusing on representative bodies.

3.5 We are now considering whether we should include work on title and interest to sue and on aspects of interdict in our forthcoming *Sixth Programme of Law Reform*. The two items would together constitute a substantial body of work on important issues of access to justice which are of current public concern.

## Companies Act 1985, Part X

*Commissioner:* Mr P S Hodge, QC  
*Project manager:* Mrs D F Barbirou

3.6 The Department of Trade and Industry has asked the Law Commission and the Scottish Law Commission to carry out a review of directors' duties with a view to making recommendations for simplifying and modernising Part X of the Companies Act 1985 (which contains detailed and complex provisions regarding the enforcement of fair dealing by directors). The review is also to consider whether there is a case for a statutory statement of the fiduciary duties and duty of care owed by directors to their company.

3.7 The Department is engaged in a wider review of company law, announced in the Green Paper, *Modern Company Law*, published in March 1998. Our work raises a variety of questions regarding the accessibility and structure of the

legislation and the rights and responsibilities of shareholders and directors. These questions feature in the wider review. The Department wishes to have an indication of the general trend of the response to the Commissions' proposals by December 1998 when the Steering Group for the wider review consider the strategic framework.

3.8 In the circumstances we have allocated additional resources to the project in order to support the work of the Law Commission, which has the major role. The intention is to issue a joint consultation/discussion paper by September 1998, so that the main results of the consultation will be available by late November 1998. A report will follow during 1999.

3.9 In our work on the project we have had the assistance of Mr R D D Bertram, now visiting Professor to the Heriot Watt University and the University of Edinburgh, who has acted as our consultant. We are grateful to him for assisting us so willingly.

3.10 We intend to establish an advisory group of specialists in company law to advise us on aspects of the project during the consultation period and subsequently. An empirical survey of company directors in the United Kingdom is also being undertaken. One of the objectives of the survey is to ascertain whether directors think a statement of the duties owed by them to the company might assist them in their understanding of their day-to-day responsibilities.

## Leasehold casualties

*Commissioners:* Dr E M Clive,  
Professor K G C Reid  
*Project manager:* Mr J M Dods

3.11 In February 1997 we received a request from the Secretary of State for Scotland

- to consider the law on leasehold casualties and advise on possible reforms.

We were asked to report by March 1998. We submitted our *Report on Leasehold Casualties* (Scot Law Com No 165) in March 1998. It was published in May 1998.

3.12 A leasehold casualty is an extra amount, over and above the rent, which must be paid by the tenant to the landlord from time to time if the lease so requires. For example, a purchaser who takes over the lease may have to pay an amount equal to the annual rental value of the land and buildings. Or the lease may provide for a "duplicand" - an extra payment of the ground rent or tack duty - to be payable at fixed intervals or if the lease is taken over by the tenant's heir. Leasehold casualties occur only in long leases - usually for 999 years - granted before September 1974. They often date from the eighteenth or nineteenth century. They are leases of the ground. The tenant and his predecessors over the years have built and improved the buildings. The ground rent or tack duty is usually small - a few pounds a year on average. These leases are common only in some parts of Scotland.

3.13 Leasehold casualties are a historical anomaly. They were modelled on feudal casualties. Feudal casualties were abolished by the Feudal Casualties (Scotland) Act 1914 and after 1914 many landlords ceased to collect leasehold casualties. Recently some landlords have begun to claim them again. This has led to calls for reform. In our report we recommend that all leasehold casualties should be abolished. Practically all of the consultees who responded to our

discussion paper (No 102, issued in May 1997) agreed that they were an anachronism.

3.14 We recommend that no compensation should be payable in respect of the abolition of rental value casualties. The typical rental value casualty requires an amount equal to the full annual value of the land and buildings to be paid to the landlord when the lease is assigned to a new tenant. The main reason for our recommendation is that rental value casualties are oppressive exactions based on archaic provisions in titles. They are in effect a privately imposed transfer tax and can have an adverse effect on house sales and purchases. They enable the landlord to obtain a return on the value of tenants' expenditures; for it is invariably the tenants who have built or paid for the buildings which give the property its current rental value.

3.15 We recommend that compensation should be payable by the tenant to the landlord, if claimed, in respect of the abolition of all casualties other than rental value casualties. Non-rental value casualties are not oppressive. They do not amount to a levy on the value of tenants' expenditures. They are generally for small amounts. The landlord will have one year from the date of abolition to give notice to the tenant of his claim for compensation. If he does not claim within the year the right will fall. The Bill appended to our report contains a table which will make it easy to calculate the compensation due.

3.16 We consider that our recommendations are in accordance with the European Convention on Human Rights. States are entitled under the Convention to control the use of property in the general interest. A State is therefore free under the Convention to prevent a landlord using an archaic provision in his

title to make claims which the State reasonably considers to be oppressive and contrary to public policy. In considering any question of compensation a State can take into account the tenants' "moral entitlement" to buildings erected or paid for by tenants.

3.17 We have been greatly assisted by our advisory group on leasehold casualties. The members are listed in Appendix 3C. We are also grateful to the Keeper of the Registers of Scotland for making facilities available to our researchers; and to the many other people who provided us with information or advice for the purposes of the report.

### Multi-party actions

*Commissioner:* Mr P S Hodge, QC  
*Project manager:* Mrs D F Barbirou

3.18 Following on our report on *Multi-Party Actions* (Scot Law Com No 154), published in July 1996, the Rules Council is considering the draft Act of Sederunt appended to our report. We have been asked for our further views.

### Partnership

*Commissioners:* Dr E M Clive,  
Mr P S Hodge, QC  
*Project Manager:* Mrs D F Barbirou

3.19 In February 1997 the Department of Trade and Industry asked the Law Commission and the Scottish Law Commission to carry out a review of the law of partnership. The terms of reference are:

"To carry out a review of the law of partnership, with particular reference to: independent legal personality; continuity of business irrespective of changes of ownership; simplification of solvent dissolution; a model partnership agreement; and to make recommendations - the review to be conducted under the present law of

partnership, namely the Partnership Act 1890 and the Limited Partnership Act 1907."

3.20 In our *Thirty-Second Annual Report 1996-97* (paras 3.20-3.22) we described the results of the preliminary consultation which we carried out in April 1997. We are now examining in detail the problems identified by consultees. We should point out that, while this is a joint project with the Law Commission, the two systems of law have different starting points. The principal characteristic of a Scottish firm is its independent legal personality. This is the main difference between the Scottish and English law of partnership. The Law Commission must therefore begin with questions of whether and how to confer independent legal personality on a firm under English law. An option being considered is introducing registration of the partnership as a prerequisite of independent legal personality. The existing independent legal personality of a Scottish firm is not dependent on registration. It is a matter of general law. Our starting point is to consider how our general law on the personality of a firm might be improved. When considering whether to introduce a new form of registered partnership into Scotland we will have to take account of the basic difference between the two systems.

3.21 We are considering whether the prohibition on a firm from holding title to heritable property (as opposed to trustees holding property on its behalf) should be abolished; and if so, what kind of protection might be required for third parties acquiring property from a firm and for the Keeper of the Registers of Scotland. We are also considering the removal of anomalies in the law which regulates the raising of actions by and against Scottish firms, as well as the general issue of how partners - past and present - might be more readily identified by those transacting with the firm.

3.22 A particular concern of those who responded to our preliminary consultation was the effect of a change in membership of a firm on its legal personality, and so on its legal existence. We are examining the problems arising from the different views of the effect of a change in membership, and in particular the view that it necessarily involves in law the termination of the firm and the creation of a new firm with all the consequences that entails. Failure to fulfil the legal requirements for transfer of contracts and other property and liabilities from the old to the new firm carries with it potentially serious consequences. We are therefore examining the options for establishing clear rules which would enable a firm to continue to exist notwithstanding changes in its membership.

3.23 In relation to the winding up of a solvent firm (solvent dissolution), we are examining the extent to which the powers are unclear or insufficient. For example, it appears that partners winding up a solvent firm have no power to enter into new obligations or to take on new business - even where this would be the most beneficial way of conducting the winding up and where failure to do so might reduce the value of the goodwill and effectively close down the business. We are also examining the effectiveness of the current system whereby judicial factors may be appointed to wind up a solvent firm in a case of dispute among partners. We are considering how the system might be simplified and improved.

3.24 This is potentially a major project. We propose, subject to further discussion with the Law Commission, to issue one or more consultation/discussion papers in 1999. We intend to establish an advisory group of specialists. We will also consult those who have interests in particular aspects, for example, heritable property and judicial factors. Thereafter we will consult widely with those who commonly

use partnership as a business structure in the pursuit of a profession or trade.

### **Shareholder remedies**

*Commissioner:* Mr P S Hodge, QC  
*Project Manager:* Mrs D F Barbirou

3.25 The Law Commission's *Report on Shareholder Remedies* (Law Com No 246), on which we were consulted and to which we contributed, was published in October 1997. The primary aim of the recommendations is to clarify and simplify the common law, so that a member of a company will have a clear right to enforce liability for breach of duty by the company's directors. The recommendations also seek to simplify the provisions of the Companies Act 1985 for the protection of minority shareholders in small private companies. The intention is to provide a simpler and less expensive remedy to a shareholder who has been excluded from the management of the company and who seeks a court order to have his shareholding bought out.

3.26 The Department of Trade and Industry intends to issue a consultation paper seeking views on the recommendations contained in the report.

### **Third Parties (Rights against Insurers) Act 1930**

*Commissioners:* Dr E M Clive,  
Mr P S Hodge, QC  
*Project manager:* Mrs D F Barbirou

3.27 At the request of the Department of Trade and Industry, we are working jointly with the Law Commission on a review of the Third Parties (Rights against Insurers) Act 1930 in the light of the current law and market practices of the insurance industry. The Law Commission has the major role.

3.28 The 1930 Act deals with third party claims against an insured person who is or becomes insolvent. Without the legislation the sum payable by the insurance company under the policy would be paid to the insolvent insured person's estate so that the third party would receive, at most, only a proportion of the amount claimed. Where the third party's claim is agreed, or is established by arbitration or legal proceedings, the Act transfers to the third party the insured person's rights to be indemnified by the insurance company under the policy. Any sums payable by the company are paid directly to the third party claimant.

3.29 In January 1998 the Commissions published a joint consultation/discussion paper (Consultation Paper No 152, Discussion Paper No 104). We have participated in policy discussions and contributed to the paper. Comments were invited by 21 April 1998. An analysis of the comments from consultees is currently under way. The aim is to publish a joint report during 1999.

## Part 4

### Statute law

#### Preliminary

4.1 In our work on statute law we co-operate closely with the Law Commission. Major projects are under way on

- consolidation
- statute law revision.

Table 4.1 shows our main objectives for these projects during 1997-98 and summarises the progress we have made. Appendix 2A summarises our objectives for the coming year. In our account we refer, as appropriate, to our *Thirty-Second Annual Report 1996-97* (Scot Law Com No 161).

**Table 4.1 Statute law: Main objectives and progress 1997-98**

Objective	Progress	Notes
To prepare a Bill, for introduction into Parliament during the 1998-99 session, to consolidate the legislation relating to salmon and freshwater fisheries in Scotland	Substantial preparatory work carried out and draft clauses awaited	See paras 4.2-4.5
To contribute to a joint report with the Law Commission on statute law revision, to be published during 1998	<i>Statute Law Revision: Sixteenth Report: Draft Statute Law (Repeals) Bill</i> (Law Com No 252, Scot Law Com No 166) published in May 1998	See para 4.8
To contribute, jointly with the Law Commission, to the preparation of a chronological table of Private and Personal Acts (1539-1994), to be published by in the first half of 1999	Initial draft examined and revised for the Scottish interest in May/June 1998	See para 4.9

#### Consolidation

*Commissioner:* The Hon Lord Gill  
*Project manager:* Mrs D M Howieson

4.2 In our *Thirty-Second Annual Report 1996-97* (para 4.6) we described our efforts to promote a new programme of

consolidation and statute law revision. It has become apparent that the government departments do not have the resources at present to support such a programme. For our part we are willing to make resources available. But we could not carry through any consolidation on our own initiative without the support of the

appropriate department. In these circumstances we cannot commit ourselves to a published programme.

(i) *Scotland-only consolidations*

4.3 We have made progress on one of the projects that we considered for inclusion in the new programme, the consolidation of the legislation relating to salmon and freshwater fisheries in Scotland. The project is now well under way and we await the first draft clauses from our Parliamentary draftsman. Our aim is to introduce the Bill into Parliament during the 1998-99 session. But the exercise is not at all straightforward. A report from us recommending the correction of anomalies in the legislation will certainly be required. The legislation may also contain more radical defects which will have to be corrected by other means before we can proceed with the consolidation.

4.4 The project has widespread support. Our staff are working closely with the Scottish Office Agriculture, Environment and Fisheries Department and with the department's consultant, who has been engaged expressly for the purpose of assisting us. He is Mr R Williamson, formerly Inspector of Salmon Fisheries for Scotland. His knowledge of the existing law and his experience of its operation is unrivalled.

4.5 We also considered consolidation of the police legislation for inclusion in the new programme. There is departmental support in principle for this. We intend to take up that project once the consolidation of the salmon and freshwater fisheries legislation is sufficiently advanced.

(ii) *GB and UK consolidations*

4.6 The Petroleum Bill was introduced into Parliament in December 1997 and

received the Royal Assent on 11 June 1998. Work is proceeding on the consolidation of the legislation relating to the armed forces.

**Statute law revision**

*Commissioner:* The Hon Lord Gill

*Project manager:* Mrs D M Howieson

4.7 Statute law revision is the process whereby legislation which is no longer of practical utility is removed from the body of statute law. The principal instrument is the Statute Law (Repeals) Bill. Such bills are drafted periodically and appended to reports, which are invariably published jointly with the Law Commission.

(i) *Sixteenth Report*

4.8 The *Sixteenth Report* on statute law revision (Law Com No 252, Scot Law Com No 166), with a draft Statute Law (Repeals) Bill appended, was presented to Parliament in May 1998. The Bill had its second reading in the House of Lords on 4 June 1998 and was subsequently considered by the Joint Parliamentary Committee on Consolidation and Statute Law Revision on 24 June 1998. Apart from proposing the partial or total repeal of numerous GB and UK statutes, the Bill also includes a part (Schedule 1, Part VII) devoted exclusively to the repeal of Scottish local Acts. This is the result of our continuing work on Scottish local legislation. In total we recommend 76 Scottish local Acts for repeal in their entirety.

(ii) *Chronological Table of Local Legislation*

4.9 In July 1996 the Law Commission, in association with us, published the *Chronological Table of Local Legislation (1797-1994)*. In March 1998 the second cumulative annual supplement was

published updating the Table to 31 December 1996. Publication of annual supplements is now the responsibility of the Stationery Office. We are encouraged by the commitment to publish annual updates, since otherwise the many years of work in preparing the Table would be seriously devalued. We are assisting the Law Commission in preparing a complementary table of Private and Personal Acts (1539-1994). The aim is to publish the table at the beginning of 1999.

(iii) *Repeal of local legislation*

4.10 In our *Thirty-Second Annual Report 1996-97* (para 4.17) we mentioned the possibility of using subordinate legislation by the Secretary of State for Scotland under the Local Government (Scotland)

Act 1973 to effect the repeal of Scottish local Acts repealed by that Act in general terms, though not explicitly. This general repeal has caused considerable confusion. We therefore think it is a justifiable use of our resources to help the local authorities which are worst affected. We are currently working with the legal department of Glasgow City Council on local legislation applying to the city. Extensive preliminary research is required to tackle the repeal of scores of local Acts promoted by the former Glasgow Corporation, one of the major promoters of private legislation in Scotland. We aim to prepare, in the course of the coming year, a schedule of selected repeals for inclusion in appropriate subordinate legislation under the 1973 Act.

## Part 5

### Promoting law reform

#### Preliminary

5.1 It is one of our objectives to promote law reform generally. It is therefore important that we should be accessible to those who have an interest in law reform. We maintain links in the United Kingdom and elsewhere with

- government departments and agencies
- law reform agencies
- legal and other societies and organisations
- universities.

In particular we hold regular meetings with representatives of the main legal institutions concerned with law reform in Scotland, for example, the Faculty of Advocates, the Law Society of Scotland, the Society of Public Teachers of Law and the Universities' Faculties of Law.

5.2 Within the limits of our resources, Commissioners and legal staff are encouraged to make their expertise available to other organisations concerned with law reform. In connection with individual projects, we occasionally hold seminars to which we invite specialists and representatives from public authorities, organisations and interest groups. We are also willing to receive visits, or to visit others, to present or discuss our work.

5.3 We now give some examples of such activities during 1997-98.

#### Consultation - Seminars

5.4 Our main instrument of consultation is the discussion paper. In a

typical project we issue several hundred discussion papers to public authorities, organisations and interested groups and individuals. From time to time we hold seminars. These enable us to target a small, well-informed audience and to discuss central issues in depth.

5.5 During 1997-98 we benefited substantially from the contribution of our consultees. It is not always easy for consultees to find time to consider complex issues of law reform and we gratefully acknowledge the help which they gave so willingly.

5.6 In June 1998 we held a joint seminar with the University of Edinburgh on some of our provisional proposals for the reform of the law of real burdens (paras 2.41-2.46). In the morning session Professor K G C Reid presented a paper outlining the provisional proposals. Professor R Rennie of the University of Glasgow responded with a paper commenting on the proposals. In the afternoon session Professor K Gray of the University of Cambridge commented on our proposals from the perspective of English law and Professor G Alexander of Cornell University presented a paper on the "publicness" of private control of land use.

5.7 The seminar was attended by academics, practitioners, members of the Land Reform Policy Group, members of the Lands Tribunal for Scotland and representatives of chartered surveyors, consumers and local authorities. The debate was stimulating and useful. We value the comments of those who attended and thank them for their contribution.

## International links

5.8 Law reform in this country is increasingly affected by international developments. It is important that, consistently with the demands of our other work, we should contribute to law reform at the international level.

(i) *Council of Europe*

5.9 Dr E M Clive continues as vice-chairman of the Group of Specialists set up by the Council of Europe to prepare a draft Recommendation on principles concerning the legal protection of incapable adults. The Group intends to finalise the text of its draft Recommendation in October 1998. The draft will then be submitted to the European Committee on legal co-operation.

(ii) *Hague Conference on Private International Law*

5.10 In September 1997 a Special Commission of the Hague Conference on Private International Law considered and adopted a preliminary draft Convention on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of the protection of adults. Dr E M Clive acted as Chairman of the Special Commission.

(iii) *Law of trusts*

5.11 Professor K G C Reid is the Scottish representative on a working group set up by the University of Nijmegen to examine the law of trusts in the countries of the European Union.

(iv) *Other contributions*

5.12 Dr E M Clive presented papers at two international conferences in the course of the year.

## Links with government departments and agencies

5.13 During 1997-98 our Chairman had meetings with Ministers at the Scottish Office and with representatives of the Department of Trade and Industry. He also attended meetings in London of the Lord Chancellor's Advisory Committee on Statute Law.

5.14 In January 1998 our Chairman, Dr E M Clive and Professor K G C Reid met Lord Sewel and members of the Land Reform Policy Group, which was set up by the Government to identify and assess proposals for land reform in rural Scotland. There is some overlap between our work on feudal tenure (paras 2.30-2.37) and the work of the Group. The meeting was successful and was followed by further meetings between members of the Group and members of our property law team (Commissioners and legal staff). Our discussions with the Group have helped us in our work on both the project on feudal tenure and the project on real burdens.

5.15 In June 1998 Dr E M Clive delivered a paper on the Scottish law on financial provision on divorce at a forum held for the Lord Chancellor's Ancillary Relief Advisory Group.

## Links with law reform agencies

5.16 We have continued to maintain our contacts with law reform agencies in the United Kingdom and elsewhere and to exchange publications with them.

(i) *Law reform agencies in the United Kingdom*

5.17 During 1997-98 we worked closely with the Law Commission on a number of joint law reform projects as well as in the field of statute law (paras 3.6-3.10, 3.19-3.29, 4.6-4.9). We value this relationship

and hope to finalise a concordat with the Law Commission for the guidance of Commissioners and legal staff in planning and working on joint projects.

5.18 Our Chairman had regular meetings in Edinburgh and London with Mrs Justice Arden, the Chairman of the Law Commission. Other Commissioners and legal staff exchanged visits in the course of their work.

5.19 Our Chairman, Mrs Justice Arden and Mr Justice Girvan, the Chairman of the Law Reform Advisory Committee for Northern Ireland, had a meeting to discuss issues of United Kingdom and European concern.

(ii) *Law reform agencies elsewhere*

5.20 We received visits from Professor R A MacDonald, President of the Law Commission of Canada, Mr Justice Sandura, the Chairman of the Law Reform Commission of Zimbabwe, and Miss Z Seedat, a member of the South African Law Commission. We subsequently provided Miss Seedat with papers relating to children's hearings in Scotland.

5.21 We welcome such visitors and seek to establish reciprocal arrangements with their institutions.

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

5.22 We wish to strengthen our links with legal and other professional societies and organisations throughout Scotland. We welcome invitations from such societies and organisations to address them on subjects of mutual interest or to meet their representatives.

(i) *David Hume Institute*

5.23 Our Chairman delivered a paper at a seminar on access to justice organised by the David Hume Institute in Edinburgh.

He also participated in a conference on intellectual property organised by the Institute and chaired one of the sessions.

(ii) *Franco-British Lawyers Society*

5.24 Our Chairman delivered a paper on civil procedure in England, France and Scotland at the colloquium of the Franco-British Lawyers Society held in Inverness.

(iii) *Law Society of Scotland*

5.25 The Law Society of Scotland has a key role in law reform. In August 1997 our Chairman and Secretary met the President of the Society and the convenor of the law reform committee to discuss how we might respectively promote law reform in Scotland. In June 1998 we met representatives of the Society's conveyancing committee to discuss the particular issues raised by the recent case of *Sharp v Thomson* 1997 SC (HL) 66 (para 2.8). Mr N R Whitty prepared a paper to focus the discussion.

5.26 Our Chairman delivered a paper to a conveyancing seminar in Dundee organised by the Society. He also attended the annual dinner of the Council of the Society and the ceremony of presentation of diplomas to new entrants to the profession, where he delivered an address.

(iv) *Other legal and professional societies*

5.27 Our Chairman responded to a number of invitations received from other legal societies, including the Property Managers Association Scotland, the Royal Faculty of Procurators in Glasgow and the Society of Solicitors in the Supreme Courts. The Royal Faculty has established an advisory committee to deal with our discussion papers and contribute to our projects where appropriate. We are grateful for their support.

(v) *Scottish Child Law Centre*

5.28 In March 1998 Dr E M Clive delivered a paper on the origins of the Children (Scotland) Act 1995 at a conference organised by the Scottish Child Law Centre.

(vi) *Society of Messengers-at-Arms and Sheriff Officers*

5.29 In June 1998 Mr N R Whitty delivered a paper to the Society of Messengers-at-Arms and Sheriff Officers explaining the recommendations contained in our *Report on Diligence on the Dependence and Admiralty Arrestments* (1998, Scot Law Com No 164): see paras 2.3-2.5.

### **Links with universities**

5.30 We look to the Scottish universities for consultants and legal research staff and take every opportunity to meet their staff and students and to participate in academic conferences and seminars.

(i) *Conferences, etc*

5.31 During 1997-98 our Chairman delivered papers at the annual conference of the Scottish Law Faculties held in Pitlochry; at a conference on law reform, held in the University of Glasgow and sponsored by the Society of Public Teachers of Law; and at a seminar on devolution organised by the University of Strathclyde. Mr N R Whitty delivered a paper on security over moveables at a seminar held in the University of Aberdeen.

(ii) *European Lawyers Programme*

5.32 In April 1998 we received a visit from participants in the extended study programme for young European lawyers run by the University of Edinburgh. Our Secretary and two members of our legal staff gave short talks on the role of the

Law Commissions, our current programme of law reform and methods of working and our work on statute law. Subsequently one of the participants elected to spend part of his study period working with Mr P S Hodge, QC. The supervisors of the programme confirmed that our contribution to the programme had been well received by participants.

(iii) *Meetings*

5.33 In November 1997 we met representatives of the Society of Public Teachers of Law to discuss priorities for law reform and possible topics for inclusion in our forthcoming *Sixth Programme of Law Reform*.

5.34 In January 1998 our Chairman and Secretary met the deans of the law faculties of the Universities of Aberdeen, Dundee, Edinburgh, Glasgow and Strathclyde to discuss the recruitment of graduates to our legal staff and the ways in which legal academics might contribute to our work. This followed a series of separate meetings between our Secretary and the individual deans. They had a number of useful suggestions, some of which we have already taken up.

(iv) *Universities outwith Scotland*

5.35 We continue to maintain our contacts with universities outwith Scotland. Our Chairman received visits from Professor H J Erasmus of the University of Stellenbosch and Professor F Maraist of the University of Louisiana. Mr N R Whitty visited the University of Regensburg.

### **Visits**

5.36 In addition to those already mentioned, our Chairman received numerous other visitors, including Mr B Donohoe MP, Professor T Kamenova, Director of the Institute for

Legal Studies of the Bulgarian Academy of Sciences and Mr Justice van Zyl from South Africa. Professor Kamenova, who has responsibility for the preparation of certain statutory codes in Bulgaria, also met members of our legal staff and discussed our current projects and methods in some detail, particularly in relation to our work on statute law.

## Part 6

### Staff and management

#### Commissioners and staff; draftsmen

6.1 Commissioners and staff as at 15 June 1998 are listed in the organisation chart in Appendix 4. Legislative drafting is carried out for us by two members of your department in London, Mr G M Clark and Miss M Mackenzie.

6.2 Mrs E M Houston, Administrative Officer, transferred to the Forestry Commission on 16 March 1998; Mrs S Sutherland, Solicitor, returned to the Office of the Solicitor to the Secretary of State for Scotland on 30 March 1998; and Mr J D Wood, Messenger, retired on 19 September 1997. We thank them all for their work on our behalf.

6.3 We are grateful to our draftsmen and to all our staff for their contribution to our work.

#### Legal support services

6.4 In our *Thirty-Second Annual Report 1996-97* (Scot Law Com No 161, paras 6.8-6.9) we described our plans for diversifying our legal support services and reallocating a proportion of resources to finance a mix of

- advisory groups of legal and other experts to support particular projects
- attachments for experienced legal academics
- consultancies involving lawyers from the universities and the private sector
- fixed-term research posts for new law graduates

- scholarships for post-graduate research in areas of law with which we are concerned.

6.5 Our Secretary and the five members of our core legal staff are on loan from the Office of the Solicitor to the Secretary of State for Scotland. Such staff come to us for periods of three to five years, or in some cases longer. They bring to our work an experience of the machinery of government and the legislative process which we value highly and which we could not readily get from any other source.

6.6 Our legal assistants are recent law graduates employed under fixed-term contracts for periods up to two years. At present we have eight, of whom six joined us after university and two joined us after traineeships in the private sector. This will reduce to seven in October 1998. One of the trainees was assigned to us by McGrigor Donald, Solicitors, Glasgow. We are grateful to them for helping us in this way and hope to set up similar arrangements in future. Our general aim in creating all these posts is to complement the skills and experience of our core legal staff with the skills and ideas of young lawyers fresh from training in the university or the private sector.

6.7 Our experience so far is encouraging. Our arrangements with the Office of the Solicitor to the Secretary of State for Scotland would allow further reductions in the core legal staff over the period to 2002. We consider that for the present our core legal staff should not be further reduced.

6.8 We have continued our practice of employing recent law graduates as temporary research assistants during the summer months. Between July and September 1997 we employed two, Mr A Proudfoot, University of Dundee and Miss N Speirs, University of Edinburgh. We decided to employ two again in 1998.

6.9 For the future we hope to devise a scholarship scheme, under which a law graduate could count work for us towards a post-graduate qualification. We have had preliminary discussions with the deans of the law faculties of the Universities of Aberdeen, Dundee, Edinburgh, Glasgow and Strathclyde. However, we cannot develop the idea further until we have resources available.

6.10 We are also considering with the Law Society of Scotland and the Office of the Solicitor to the Secretary of State for Scotland how we might enter into standard traineeship contracts with those who join us immediately after university. We have found that some good candidates are deterred from accepting research appointments with us because the completion of their professional training would be postponed. The posts we offer would be more attractive if service with us could count as part of the traineeship requirement.

### **Consultancies**

6.11 We wish to make more use of consultants under revised arrangements. In future, our consultants may spend a proportion of their time at our office in Edinburgh, where they will have support from our legal and administrative staff and access to our library and computer facilities. The first of our consultants under the new arrangements is Professor W W McBryde, University of Dundee, who has been engaged in a major consultancy on our work on contract

(paras 2.19, 2.22). This consultancy has been successful. We are grateful to Professor McBryde for his work. We hope to build on that experience in future consultancies.

6.12 We have continued to use consultancies of the more traditional form for short-range projects. Mr R D D Bertram, for example, has advised us on matters of company law (para 3.9). We also engaged three post-graduates at the University of Edinburgh, Miss M-J Conter, Mr F Lesaint and Miss M-A Paus, to provide us with short papers on comparative law in connection with our work on real burdens.

### **Advisory groups**

6.13 During 1997-98 we benefited substantially from the work of our advisory groups on

- contract law (para 2.19)
- feudal tenure (para 2.37)
- leasehold casualties (para 3.17).

The members of these groups are listed respectively in Parts A, B and C of Appendix 3. We are grateful to all of them for their contribution to our work.

6.14 In the course of the coming year we will extend our use of advisory groups to our projects on company law, partnership and real burdens.

### **Library**

6.15 Our library and the expertise of our librarian, Mr N G T Brotchie, are vital assets. Our librarian maintains excellent working relationships with fellow law librarians, in particular those of the Faculty of Advocates, the Scottish Office, the Society of Solicitors to the Supreme Courts and the University of Edinburgh. We welcome reciprocal arrangements with these and other libraries.

## **Information technology**

6.16 On the installation of a new computer network, our librarian will become network administrator. He will lead a small team to oversee the introduction of the new facilities. These will include internal and external e-mail, e-fax, access to the internet and eventually a website. We expect the new system to be installed before the end of the 1998-99 financial year, with a website following shortly thereafter. We intend to place on the website our discussion papers and reports, as well as a complete bibliography of our publications.

## **Office procedures**

6.17 We have embarked on a general review of our internal organisation and procedures and have set up a number of small groups of administrative and legal staff to look at filing, publication procedures and general services such as typing and photocopying.

## **Finance**

6.18 Responsibility for our funding rests with Scottish Courts Administration. We are grateful to Mr D Stewart, Deputy Director, and his staff for the advice and support they have so willingly provided during 1997-98, particularly in relation to recruitment and information technology.

6.19 In Appendix 5 we summarise our running costs for the year to 31 March 1998. We include for comparison the corresponding figures for the year to 31 March 1997.

# Appendix 1

## Scottish Law Commission: Reports 1987-1998

Year	Scot Law Com No	Title	Implementation
1987	102	Child Abduction	
	103	Housing (S) Bill: Report on the Consolidation of Certain Enactments relating to Housing in Scotland	Housing (S) Act 1987 (c26)
	104 (160)	Sale and Supply of Goods	Sale and Supply of Goods Act 1994 (c35)
	105 (165)	Private International Law: Choice of Law Rules in Marriage	Foreign Marriage (Amendment) Act 1988 (c44)
	106	Report on Computer Crime	Partial implementation by Computer Misuse Act 1990 (c18) Recommendations 1 and 2 are implemented by s1
	107 (168)	Private International Law: Report on The Law of Domicile	
	108	Report on the Scottish Term and Quarter Days	Term and Quarter Days (S) Act 1990 (c22)
	110	Report on the Legal Capacity and Responsibility of Minors and Pupils	Age of Legal Capacity (S) Act 1991 (c50)
1988	111	Court of Session Bill: Report on the Consolidation of Certain Enactments, and the Repeal of Other Enactments, relating to the Court of Session	Court of Session Act 1988 (c36)
	112	Report on Requirements of Writing	Requirements of Writing (S) Act 1995 (c7)

Year	Scot Law Com No	Title	Implementation
	113 (171)	Road Traffic Bill, Road Traffic Offenders Bill, Road Traffic (Consequential Provisions) Bill: Report on the Consolidation of Certain Enactments relating to Road Traffic	Road Traffic Act 1988 (c52) Road Traffic Offenders Act 1988 (c53) Road Traffic (Consequential Provisions) Act 1988 (c54)
	115	Report on Civil Liability – Contribution	
1989	116	Report on Reform of the Ground for Divorce	
	117 (179)	Statute Law Revision: Thirteenth Report: Draft Statute Law (Repeals) Bill	Statute Law (Repeals) Act 1989 (c43)
	118	Recovery of Possession of Heritable Property	
	119 (182)	Extradition Bill: Report on the Consolidation of Legislation Relating to Extradition	Extradition Act 1989 (c33)
	120	Report on Evidence: Blood Group Tests, DNA Tests and Related Matters	Partial implementation by Law Reform (Miscellaneous Provisions) (S) Act 1990 (c40) Recommendation 5 is implemented by s70  Partial implementation by Prisoners and Criminal Proceedings (S) Act 1993 (c9) Recommendations 1-4 are implemented by s28
	121 (183)	Opticians Bill: Report on the Consolidation of Legislation Relating to Opticians	Opticians Act 1989 (c44)
	122	Report on Prescription and Limitation of Actions (Latent Damage and Other Related Issues)	
1990	124	Report on Succession	

Year	Scot Law Com No	Title	Implementation
	125	Report on the Evidence of Children and Other Potentially Vulnerable Witnesses	<p>Partial implementation by Law Reform (Miscellaneous Provisions) (S) Act 1990 (c40) Recommendations 9 and 12-14 are implemented by s58 and ss56-57 respectively</p> <p>Partial implementation by Prisoners and Criminal Proceedings (S) Act 1993 (c9) Recommendations 10 and 11 are implemented by ss33 and 34 respectively</p>
	127	Report on the Passing of Risk in Contracts for the Sale of Heritable Property	
	129 (193)	Private International Law: Choice of Law in Tort and Delict	Private International Law (Miscellaneous Provisions) Act 1995 (c42)
1991		Report on the Effect of the Execution of Diligence on the Operation of Prescription	
	130 (196)	Rights of Suit in Respect of Carriage of Goods by Sea	Carriage of Goods by Sea Act 1992 (c50)
	132 (203)	Social Security Contributions and Benefits Bill, Social Security Administration Bill, Social Security (Consequential Provisions) Bill: Report on the Consolidation of the Legislation relating to Social Security	<p>Social Security Contributions and Benefits Act 1992 (c4)</p> <p>Social Security Administration Act 1992 (c5)</p> <p>Social Security (Consequential Provisions) Act 1992 (c6)</p>
1992	133	Report on Statutory Fees for Arrestees	
	134	Report on the Effect of Death on Damages	Damages (S) Act 1993 (c5)

Year	Scot Law Com No	Title	Implementation
	135	Report on Family Law	Partial implementation by Children (S) Act 1995 (c36) Recommendations 1-10 and 12-41 are implemented in Part I
	136	Report on Evidence: Protection of Family Mediation	Civil Evidence (Family Mediation) (S) Act 1995 (c6)
	137	Evidence: Report on Documentary Evidence and Proof of Undisputed Facts in Criminal Proceedings	Partial implementation by Prisoners and Criminal Proceedings (S) Act 1993 (c9) Recommendations 1-19 are implemented by s29 and Sch3  Partial implementation by Criminal Justice (S) Act 1995 (c20) Recommendations 25-35 are implemented by s16
	138 (209)	Clean Air Bill: Report on the Consolidation of Certain Enactments relating to Clean Air	Clean Air Act 1993 (c11)
1993	140 (211)	Statute Law Revision: Fourteenth Report: Draft Statute Law (Repeals) Bill	Statute Law (Repeals) Act 1993 (c50)
	141	Crofters (S) Bill: Report on the Consolidation of Certain Enactments relating to Crofting	Crofters (S) Act 1993 (c44)
	142 (212)	Pension Schemes Bill: Report on the Consolidation of the Legislation relating to Pension Schemes	Pension Schemes Act 1993 (c48)
	143 (213)	Health Service Commissioners Bill: Report on the Consolidation of the Legislation relating to the Health Service Commissioners	Health Service Commissioners Act 1993 (c46)
	144	Report on Formation of Contract: Scottish Law and the United Nations Convention on Contracts for the International Sale of Goods	
	145 (215)	Sale of Goods Forming Part of a Bulk	Sale of Goods (Amendment) Act 1995 (c28)

Year	Scot Law Com No	Title	Implementation
1994	147	Report on Confiscation and Forfeiture	Criminal Justice (S) Act 1995 (c20)
1995	149	Evidence: Report on Hearsay Evidence in Criminal Proceedings	Criminal Justice (S) Act 1995 (c20)
	150 (233)	Statute Law Revision: Fifteenth Report: Draft Statute Law (Repeals) Bill	Statute Law (Repeals) Act 1995 (c44)
	151	Report on Incapable Adults	
1996	152	Report on Three Bad Rules in Contract Law	Contract (S) Act 1997 (c34)
	154	Multi-Party Actions	
	155 (241)	Statute Law Revision: Report on the Chronological Table of Local Legislation	None required
	157	Town and Country Planning (S) Bill, Planning (Listed Buildings and Conservation Areas) (S) Bill, Planning (Hazardous Substances) (S) Bill, Planning (Consequential Provisions) (S) Bill: Report on the Consolidation of Certain Enactments relating to Town and Country Planning in Scotland	Town and Country Planning (S) Act 1997 (c8) Planning (Listed Buildings and Conservation Areas) (S) Act 1997 (c9) Planning (Hazardous Substances) (S) Act 1997 (c10) Planning (Consequential Provisions) (S) Act 1997 (c11)
1997	158	Report on Vulnerable Adults	
	160	Report on Interpretation in Private Law	
1998	162	Report on the Law of the Tenement	
	163	Report on Boundary Walls	None required
	164	Report on Diligence on the Dependence and Admiralty Arrestments	

Year	Scot Law Com No	Title	Implementation
165		Report on Leasehold Casualties	
166	(252)	Statute Law Revision: Sixteenth Report: Draft Statute Law (Repeals) Bill	

**NB** Numbers in brackets in column 2 are the Law Com Nos of reports produced jointly with the Law Commission.

## Appendix 2

### Objectives 1998-99

#### A. *Law reform objectives*

Objective	Source	Notes
To issue in October/November 1998 two discussion papers on inhibition, adjudication and related topics; and to submit the relative report by December 1999	<i>Fifth Programme of Law Reform</i> , paras 2.7-2.13	See paras 2.6-2.10
To submit by December 1999 a report on penalty clauses	<i>Fifth Programme of Law Reform</i> , paras 2.21-2.23	See paras 2.17-2.20
To issue in early 1999 a discussion paper, or discussion papers, on remedies for breach of contract; and to submit the relative report by December 1999	<i>Fifth Programme of Law Reform</i> , paras 2.21-2.23	See paras 2.21-2.22
To submit by December 1998 a report on the recovery of undue public authority receipts and disbursements	<i>Fifth Programme of Law Reform</i> , paras 2.24-2.29	See paras 2.23-2.24
To submit by December 1998 a report with draft legislation to abolish and replace the feudal system	<i>Fifth Programme of Law Reform</i> , paras 2.33-2.35  <i>Thirty-Second Annual Report 1996-97</i> , paras 2.38-2.43	See paras 2.30-2.37
To issue by December 1998 a discussion paper on real burdens; and to submit the relative report by December 1999	<i>Thirty-Second Annual Report 1996-97</i> , paras 2.38-2.43	See paras 2.41-2.46
To contribute to a joint part of a report by the Law Commission on investment powers of trustees, to be published during 1999	<i>Fifth Programme of Law Reform</i> , para 2.44	See paras 2.52-2.53

A. (cont.)

Objective	Source	Notes
To contribute to a joint consultation/discussion paper with the Law Commission on Part X of the Companies Act 1985, to be published in September 1998; and to a joint report to be published during 1999	Request for advice from the Department of Trade and Industry	See paras 3.6-3.10
To contribute to a joint consultation/discussion paper, or papers, with the Law Commission on partnership, to be issued in 1999	Request for advice from the Department of Trade and Industry (February 1997)	See paras 3.19-3.24
To contribute to a joint report with the Law Commission on the Third Parties (Rights against Insurers) Act 1930, to be published during 1999	Request for advice from the Department of Trade and Industry	See paras 3.27-3.29
To prepare a Bill for introduction into Parliament during the 1998-99 session to consolidate the legislation relating to salmon and freshwater fisheries legislation in Scotland		See paras 4.3-4.4
To contribute, jointly with the Law Commission, to the preparation of a chronological table of Private and Personal Acts to be published in the first half of 1999		See para 4.9
To prepare a schedule of repeals of Scottish local Acts to be included in subordinate legislation promoted during 1999		See para 4.10

## B. *Management objectives*

<b>Key area</b>	<b>Objective</b>	<b>Notes</b>
Project planning	To prepare a draft <i>Sixth Programme of Law Reform</i> by January 1999	See para 1.9
Recruitment of legal staff	To assess the feasibility of introducing a scholarship scheme during the financial year 1999-2000	See para 6.9
Contracts for legal assistants	To introduce formal traineeship contracts for legal assistants	See para 6.10
Use of advisory groups	To establish advisory groups for projects on company law, partnership and real burdens	See para 6.14
Information technology	To prepare for and monitor the introduction of a new computer network, etc	See para 6.16
Internal organisation and office procedures	To continue our revision of office procedures	See para 6.17

## Appendix 3

### Advisory groups

#### *A. Obligations: Advisory group on contract law*

Dr E M Clive (Chairman)	-	Scottish Law Commission
Mr J M Arnott	-	Solicitor, Edinburgh
Professor R Black, QC	-	University of Edinburgh
Professor J W G Blackie	-	University of Strathclyde
Mr M G Clarke, QC	-	Edinburgh
The Hon Lord Coulsfield	-	Court of Session
Professor A Forte	-	University of Aberdeen
Mr G Jamieson	-	Solicitor, Paisley
Miss L J Macgregor	-	University of Glasgow
Professor H L MacQueen	-	University of Edinburgh
Professor W W McBryde	-	University of Dundee
Ms C A McLintock	-	Solicitor, Edinburgh
Sheriff Principal C G B Nicholson, QC	-	Edinburgh
Dr H A Patrick	-	Solicitor, Edinburgh
Ms L A Patterson	-	Solicitor, Edinburgh
The Hon Lord Penrose	-	Court of Session
Mr D P Sellar	-	Advocate, Edinburgh
Professor J M Thomson	-	University of Glasgow
Mr N R Whitty	-	Scottish Law Commission
Sheriff A B Wilkinson, QC	-	Edinburgh
Mr J Wolffe	-	Advocate, Edinburgh
Mr S Woolman	-	Advocate, Edinburgh
Mrs G B Swanson (Secretary)	-	Scottish Law Commission

#### *Observers*

Mr P M Beaton	-	Scottish Courts Administration
Mr H F MacDiarmid	-	Office of the Solicitor to the Secretary of State for Scotland

*B. Property: Advisory group on feudal tenure*

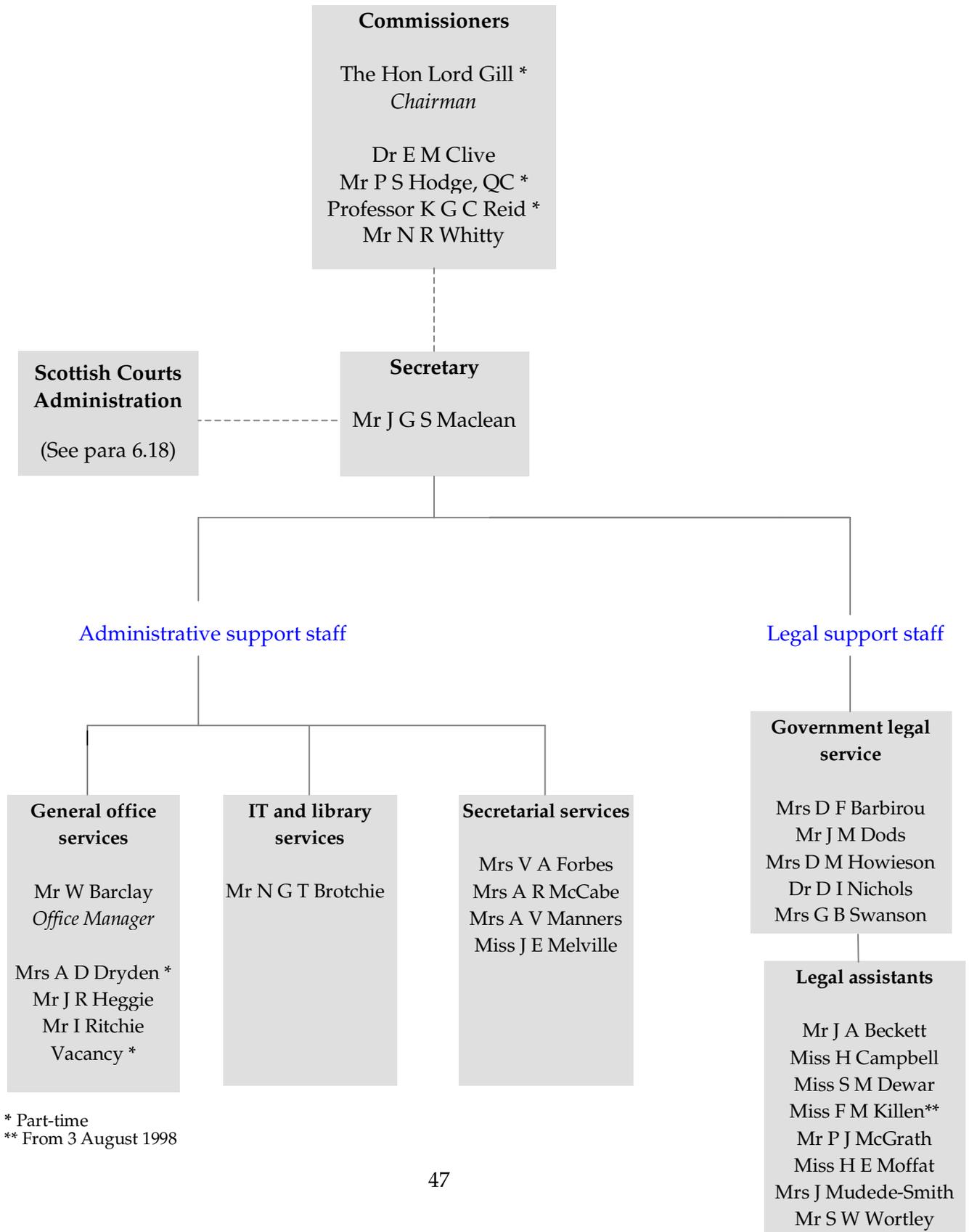
Mr S Brymer	-	Solicitor, Dundee
Professor D J Cusine	-	University of Aberdeen
Mr I Davis	-	Registers of Scotland
Mr B A Merchant	-	Solicitor, Inverness
Mr W Rankin	-	Registers of Scotland
Professor R Rennie	-	University of Glasgow
Mr R G Shearer	-	Solicitor, Edinburgh
Professor J H Sinclair	-	University of Strathclyde
Mr C White	-	Solicitor, Glasgow
Mr J M Dods (Secretary)	-	Scottish Law Commission

*C. Property: Advisory group on leasehold casualties*

Mr M D Barclay	-	Chartered Surveyor, Glasgow
Miss L J Miller	-	Solicitor, Edinburgh
Mr A G Rennie	-	Deputy Keeper of the Registers of Scotland
Professor R Rennie	-	University of Glasgow
Mr J M Dods (Secretary)	-	Scottish Law Commission

# Appendix 4

## Scottish Law Commission : Establishment and organisation



## Appendix 5

### Running costs

	Year to 31 March 1998		Year to 31 March 1997	
	£000	£000	£000	£000
Accommodation charges (1)		163.5		163.0
Salaries, etc of Commissioners (2)	309.9		254.8	
Salaries, etc of legal staff (3)	466.2		432.7	
Salaries, etc of non-legal staff (4)	<u>150.5</u>	926.6	<u>154.3</u>	841.8
Printing and publishing, etc (5)		76.9		58.8
Telephone and postage		10.5		6.9
Travel and subsistence		7.8		5.6
Miscellaneous (6)		2.2		1.7
		<hr/>		<hr/>
		1187.5		1077.8
		<hr/>		<hr/>

#### Notes

- (1) Charges include maintenance, rates, rent and utilities.
- (2) ERNIC, superannuation payments and pensions to former Commissioners are included.
- (3) ERNIC, superannuation payments and consultants' fees and expenses are included.
- (4) ERNIC and superannuation payments are included.
- (5) Costs of binding, library purchases, machinery maintenance, photocopying, reprographic services and stationery are included.
- (6) Costs of hospitality, office services and training are included.

