

SCOTTISH LAW COMMISSION
(Scot Law Com No 126)

Fourth Programme of Law Reform

Laid before Parliament by the Lord Advocate under section
3(2) of the Law Commissions Act 1965

*Ordered by The House of Commons to be printed
25th April, 1990*

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 Davidson, *Chairman*,
Dr E M Clive,
Professor P N Love, CBE,
Sheriff I D Macphail, QC,
Mr W A Nimmo Smith, QC.

The Secretary of the Commission is Mr K F Barclay. Its offices are at 140 Causeway-side, Edinburgh EH9 1PR.

Scottish Law Commission

To: The Right Honourable the Lord Fraser of Carmyllie, QC,
Her Majesty's Advocate

Section 3(1)(d) read along with section 6(2) of the Law Commissions Act 1965 imposes on the Scottish Law Commission a duty to prepare and submit to you from time to time programmes for the examination of different branches of the law with a view to reform, including recommendations as to the agency (whether the Commission or another body) by which any such examination should be carried.

On 4 May 1973 we submitted to you the third of these programmes and now have the honour to submit the fourth, with a brief explanatory memorandum.

(Signed) C K DAVIDSON, *Chairman*

28 February 1990

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*The items in our First Programme were numbered 1 to 5, in our Second Programme 6 to 14 and in our Third Programme 15. In terms of section 3(2) of the Law Commissions Act 1965 this Programme was approved by the Lord Advocate.

Memorandum by the Commission

The Commission has now been in existence for almost 25 years and while we have not yet concluded our study of all of the fifteen items contained in our previous three Programmes, we think it proper to submit a Fourth Programme at the present time.

The following is a brief comment on the particular branches of law recommended for inclusion in our proposed Fourth Programme.

Item No 16—Property Law (To be examined by the Commission)

In a number of our previous exercises (such as matrimonial homes) we have, to some extent, impinged incidentally on property questions. We take the view, however, that a programme on this topic would enable us to take on directly subjects falling under this head and in this connection our first objective is the consideration of land tenure law reform with a view to the completion in due course of statutory reform of feudal tenure. We would also propose in due course to examine other matters and in particular aspects of leasehold property law.

Item No 17—Judicial Factors, Powers of Attorney and Guardianship of the Incapable (To be examined by the Commission)

We have received a proposal from the Law Society of Scotland that the topic of powers of attorney and judicial factors should be looked at by the Commission. We think that it would be useful to include in our examination of these topics tutory, guardianship and supervision of the personal welfare of individuals who are incapable of looking after themselves and with this in mind we think that our Programme should be widened to cover it.