

SCOTTISH LAW COMMISSION  
(Scot Law Com No 153)



# Thirtieth Annual Report 1994-95

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 Davidson, *Chairman*  
Dr E M Clive,  
Mr W A Nimmo Smith, QC,  
Professor K G C Reid,  
Mr N R Whitty.

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

# SCOTTISH LAW COMMISSION

**Report for the year ended 15th June, 1995**

To: The Lord Mackay of Drumadoon, 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 Thirtieth Annual Report of the Scottish Law Commission.

(Signed) C K DAVIDSON, *Chairman*  
E M CLIVE  
W A NIMMO SMITH  
KENNETH G C REID  
N R WHITTY

KENNETH F BARCLAY, *Secretary*  
11 December 1995

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

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# Part I Introduction

1.1 The year covered by this report ended with the thirtieth anniversary of the Law Commissions. On 14 June 1995 a joint meeting of the Commissions took place at the Law Commission's offices in London. The meeting was followed by a reception in the Hall of the Inner Temple. Under the chairmanship of our Chairman, Lord Davidson, the achievements of the past 30 years were reviewed by the Lord Chancellor, Dr Peter North and Sir Henry Brooke, the Chairman of the Law Commission. The optimistic tone of the speeches reflected an increasing public awareness of the role played by the Commissions in the law reform process. It is a pleasure to record our appreciation of the excellent arrangements made by the Law Commission for this celebration.

1.2 For this Commission one of the most encouraging developments has been the big improvement in the rate of implementation of our reports.<sup>1</sup> Our *Report on Confiscation and Forfeiture*,<sup>2</sup> which was published in June 1994, was implemented by the Criminal Justice (Scotland) Act 1995. The same Act implemented our *Report on Hearsay Evidence in Criminal Proceedings*,<sup>3</sup> thereby bringing to an end our current work on criminal evidence. The Requirements of Writing (Scotland) Act 1995 and the Civil Evidence (Family Mediation) (Scotland) Act 1995 received the Royal Assent on 1 May 1995. We take this opportunity to express our thanks to the Earl of Balfour and Baroness Carnegy of Lour who respectively introduced these two measures in the House of Lords as private Member's Bills. The Children (Scotland) Act 1995 implemented recommendations concerning parental responsibilities and rights, guardianship and the administration of children's property contained in our *Report on Family Law*<sup>4</sup> which was published in May 1992. In addition several joint reports of the Commissions were implemented. The Sale and Supply of Goods Act 1995 implemented a joint report<sup>5</sup> published in May 1987. The Sale of Goods (Amendment) Act 1995 implemented the joint report on *Sale of Goods Forming Part of a Bulk*.<sup>6</sup> Finally, the Private International Law (Miscellaneous Provisions) Bill received its Second Reading in the House of Lords in December 1994 and was committed to a Special Public Bill Committee. The Bill, which by the end of the year under review had reached its Committee Stage in the House of Commons, will, when enacted, implement joint reports on polygamous marriages<sup>7</sup> and choice of law in tort and delict.<sup>8</sup>

1.3 The improved rate of implementation owes a great deal to the consistent support for the work of the Commissions afforded by the Lord Chancellor and your predecessor, Lord Rodger of Earlsferry. That support had practical results in the progress of the Children

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<sup>1</sup> According to a comparative study of twelve Commonwealth law reform bodies carried out by the Australian Law Reform Commission, as at December 1993 this Commission still maintained its leading position with 81% of all its reports implemented. (ALRC Submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs, *Law Reform - The Challenge Continues*, vol 3, p 139 (AGPS, Canberra, 1994).)

<sup>2</sup> Scot Law Com No 147.

<sup>3</sup> Scot Law Com No 149.

<sup>4</sup> Scot Law Com No 135.

<sup>5</sup> *Report on Sale and Supply of Goods*, Law Com No 160, Scot Law Com No 104.

<sup>6</sup> Law Com No 215, Scot Law Com No 145.

<sup>7</sup> Law Com No 146, Scot Law Com No 96.

<sup>8</sup> Law Com No 193, Scot Law Com No 129.

(Scotland) Bill through the House of Commons, where recent amendments to the standing orders of the Scottish Grand Committee led to a reduction in the amount of time required on the floor of the House. In the House of Lords a Special Public Bill Committee, set up under the recently introduced Jellicoe procedure, heard evidence from, among others, Dr Eric Clive and Professor Paul Beaumont of Aberdeen University. We also have pleasure in acknowledging that the implementation of law reform recommendations contained in reports of both Commissions has been assisted by the skilful and vigorous advocacy of Sir Henry Brooke. The case for giving more time at Westminster to Law Commission Bills has been reinforced by a research study carried out by the Law Commission.<sup>9</sup> This study found that those Bills which were not incorporated in the programme of Government measures occupied very little time on the floor of either House. Our experience of Scottish Bills based on recommendations contained in our reports is, broadly, similar. In our last annual report we suggested that priority among the outstanding reports should be given to the requirements of writing, family law, including confidentiality in mediation, and succession. We venture to suggest that in the current year priority should be accorded to implementation of at least part of our proposed reform of the law of succession as well as of our remaining recommendations on family law.

1.4 During the year covered by this report we published our reports on *Confiscation and Forfeiture* and on *Criminal Evidence: Report on Hearsay Evidence in Criminal Proceedings*. We also completed our *Report on Incapable Adults*,<sup>10</sup> and published a discussion paper on *Multi-Party Actions*.<sup>11</sup> The reports on Confiscation and Forfeiture and on Criminal Evidence, which, subject to amendment, have both been implemented, make significant changes in our criminal law. Although the provisions on confiscation of the proceeds of crime are extensive, we have attempted so far as possible to make them simple for prosecutors to apply and for accused persons to understand. In the provisions dealing with forfeiture of property used in crime our aim has been to create a regime in which a fair balance is maintained between the traditional protection afforded by the law to accused persons and the interests of the public, both in the United Kingdom and abroad, in curbing criminal conduct. The report on hearsay in criminal evidence restates existing exceptions to the hearsay rule and adds new exceptions designed to deal with difficulties recently encountered with confessions of guilt allegedly made by incriminees who do not give evidence in court. In the Criminal Justice (Scotland) Act 1995 Parliament has taken that reform one stage further and enacted that an accused can use as substantive evidence in his own defence an extra judicial statement allegedly made by a co-accused who declines to give evidence in court. Sheriff Iain Macphail WC, who was the lead Commissioner in both of these projects, completed the relative reports before his five-year term of office came to an end in December 1994. His contributions to the work of the Commission, especially in criminal law and evidence, have been characterised by meticulous scholarship and enlightened commonsense.

1.5 It is a pleasure to record the appointment of Mr N R Whitty, a member of our legal staff, as a Commissioner in succession to Sheriff Macphail. During the year under review Mr Whitty has taken forward our project on unjustified enrichment. At a seminar organised jointly by this Commission and Edinburgh University Law Faculty on 22 October 1994

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<sup>9</sup> *Parliamentary Procedures and the Law Commission*, A Research Study by Philippa Hopkins, with a foreword by the Law Commission, November 1994.

<sup>10</sup> Scot Law Com No 151.

<sup>11</sup> Discussion Paper No 98.

participants representing a wide range of legal opinion discussed options for reform. The merits of a statutory restatement of our law on unjustified enrichment were persuasively presented by Dr Eric Clive whose approach to reform found general support in scholarly papers on the reform of unjustified enrichment in South Africa delivered by Professor Reinhard Zimmerman of the University of Regensburg and Professor Daniel Visser of the University of Cape Town. Those favouring a more gradual approach to reform with the courts rather than the legislature taking the lead were encouraged by a decision of a court of five judges in December 1994<sup>12</sup> disapproving *Glasgow Corporation v Lord Advocate*<sup>13</sup> and restoring the decision of the whole court in *Stirling v Lauderdale*<sup>14</sup> which held that a payment made under error of law could be recovered. We believe that the Commission's work on unjustified enrichment made a significant contribution to the rehabilitation of *Stirling*. The telegraphic brevity of the report of that decision in *Morison's Dictionary* was supplemented by reference to the written pleadings one version of which was first discovered by Mr Ross McDonald of Dundee University in the Scottish Record Office and referred to in our Discussion Paper No 95 on *Recovery of Benefits Conferred Under Error of Law*.<sup>15</sup> We note that the rival arguments in these pleadings relied upon conflicting opinions culled from the writings of leading scholars of the *ius commune*, and that both in 1733 and in 1994 the court had regard to Scottish principles of equity and justice. In the light of the decision in *Morgan Guaranty* we intend to publish a discussion paper which will consider the implications of that decision and seek views on whether statutory safeguards are needed. Dr Clive's draft restatement of our law on unjustified enrichment will be appended to this discussion paper and comment invited upon it. In a second discussion paper we shall consider the report of the Law Commission on *Restitution: Mistakes of Law and Ultra Vires Public Authority Receipts and Payments*.<sup>16</sup> As we anticipated in our last annual report, the Law Commission has refrained from recommending enactment in statutory form of the common law principle introduced by the House of Lords in *Woolwich Equitable Building Society v IRC*<sup>17</sup> allowing an automatic right of recovery of payments made to a public authority in response to an *ultra vires* demand. But in the interests of cross-border uniformity we will suggest amendments designed to secure consistency in the legislation regulating recovery of undue payments of the main statutory exactions.

1.6 The success of our two seminars on unjustified enrichment has persuaded us that other current projects would benefit from similar treatment. In the year under review we resumed work on diligence on the dependence and admiralty arrestments. On 29 April 1995, in conjunction with Strathclyde University Law School, we held a half-day seminar in Edinburgh on diligence on the dependence. The main attention was focused on the question whether that diligence should continue to be granted automatically or whether each application should be subjected by the court to some sort of screening process. We are grateful to Professor Gerry Maher of Strathclyde University for a cogently argued paper in which, under reference to practice in other jurisdictions, he made a strong case for the introduction of a screening process in Scotland. Those favouring minimal reform pointed to the potentially heavy burden on court resources that a screening system would involve and argued instead for a less exacting standard to be imposed upon the debtor in an application

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<sup>12</sup> *Morgan Guaranty Trust Company of New York v Lothian Regional Council* 1995 SLT 299.

<sup>13</sup> 1959 SC 203.

<sup>14</sup> (1733) Mor 2930.

<sup>15</sup> These were the manuscript pleadings. The printed versions submitted to the whole court in 1733 were found in the Kames Collection in the Advocates' Library by Counsel for the pursuers in the *Morgan Guaranty* case.

<sup>16</sup> Law Com No 227.

<sup>17</sup> [1993] 1 AC 70.

for recall. The seminar was notable for revealing an encouraging amount of common ground among the divergent interests represented.

1.7 At the beginning of 1995 a Special Advisory Panel set up by the Department of Trade and Industry published its draft Bill amending the law of rights in security over moveable property.<sup>18</sup> The subject-matter of the Panel's remit is one of key importance in our commercial law and has occupied much of the Commission's time over the past 25 years. We therefore submitted a detailed critique of the draft Bill in our written response which we amplified orally at a seminar arranged by the Law Faculty of Edinburgh University on 22 February. In appropriate projects we intend to follow the example of DTI and of other Government departments in submitting a draft Bill for consultation prior to completing our report.

1.8 Our *Report on Incapable Adults* contains wide-ranging recommendations for reform of the law relating to those who are unable to look after themselves. Because successful care of the incapable requires practical experience, we have attached more than usual importance to consultation in carrying through this project. We have derived invaluable help from organisations and individuals who have attended the numerous seminars in which representatives of the Commission have participated. The emphasis of our recommendations has been on devising a flexible regime for the personal guardianship and management of the property of incapable adults. One merit of such a regime is that it enables an adult, where appropriate, to retain a measure of control over his or her affairs. At the same time we have appreciated the need to provide effective protection for incapable adults against financial exploitation and physical abuse, a need which becomes more urgent as the size of the disabled population increases. In this connection we have been concerned to provide adequate protection for those who grant powers of attorney whereby the attorney can make welfare and financial decisions after the granter becomes incapable. A like concern has influenced our recommendations relating to the withdrawal of medical treatment from, and the carrying out of non-therapeutic research upon, incapable patients. On the withdrawal of medical treatment our recommendations have followed the decision of the House of Lords in *Airedale NHS Trust v Bland*<sup>19</sup> so far as it was held that withdrawal of artificially administered nutrition from a person in a persistent vegetative state amounts to withdrawal of medication; on the other hand we have declined to recommend that every proposed withdrawal of treatment in such circumstances must be the subject of an application to the court. In taking this stance we believe that we are anticipating the opinion expressed in the House of Lords that after an interval applications to the court should no longer be an invariable requirement. We have therefore recommended that application to the court should be resorted to only in cases of exceptional difficulty.

1.9 We have continued to make progress with our property law projects, abolition of the feudal system, the law of the tenement and mutual boundary walls. In our discussion paper on the *Law of the Tenement* we provisionally proposed a new regime for the management of future tenements, one feature of which would be an increase in the number of parts owned in common rather than individually. Consultees, however, were strongly in favour of reforming the law regulating existing tenements as well. On further reflection we anticipate difficulties in enacting a uniform regime based largely on an enlarged common ownership

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<sup>18</sup> Department of Trade and Industry, *Security over Moveable Property in Scotland*, a Consultation Paper, November 1994.

<sup>19</sup> [1993] AC 789.

for existing and future tenements alike. An additional complication has been uncertainty within the profession regarding the law relating to real burdens following upon the decision of the House of Lords in *David Watson v Woolwich Equitable Building Society*.<sup>20</sup> In spite of these difficulties we intend to complete our report in the near future. Our project on the feudal system is more extensive and complicated; we are not yet satisfied that we have devised a sound and effective statutory scheme substituting absolute ownership for feudal tenure while at the same time retaining the beneficial features of real burdens which are designed to protect the amenity of neighbouring properties. Before preparing our report we intend to hold a seminar at which a draft Bill may be subjected to comment and criticism. In April 1995 Professor Philip Love, our lead Commissioner on property law projects, resigned. We very much appreciate the valuable contributions that Professor Love has made to the work of the Commission and regret that his heavy commitments as Vice-Chancellor of Liverpool University have prevented him from seeing current projects on property law through to completion.

1.10 We have made further progress on the areas of contract which were the subject of our discussion paper on *Contract Law - Extrinsic Evidence, Supersession and the Actio Quanti Minoris*.<sup>21</sup> In the light of advice received from consultees we recognise that some further work may have to be done in relation to the law on the use of extrinsic evidence in interpreting the terms of a written contract. On the remaining topics mentioned in the discussion paper consultation has been supportive of our proposals for reform. We therefore intend to publish a report on these latter topics in the near future, and in due course to deal generally with extrinsic evidence in the interpretation of contracts and other documents as a separate project.

1.11 We believe that the thirtieth anniversary of the Commission provides a suitable point at which to consider the future course of law reform in Scotland. We are aware of areas of law which are ripe for reform. These include penalty clauses in contracts, damages in contract and delict, and law reforms designed to facilitate electronic commerce. We think that it would be helpful to hold a seminar at which Commissioners would be able to discuss with representatives of, among others, Government departments, local authorities, professional bodies and universities both the areas of law which could benefit from reform and the degree of priority which should be accorded to each project. The proposed seminar, if it enabled a large enough area of common ground to be identified, could facilitate the preparation of a fifth programme of law reform which would consolidate previous programmes, so far as these remain outstanding, and give a clearer indication of the order in which programme topics are to be addressed as well as the time which it is estimated that each will take. If, as is likely, the timetable is upset by new, and more urgent, projects or any other unexpected development, amendments could be intimated in subsequent annual reports.

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<sup>20</sup> 1992 SC (HL) 21.

<sup>21</sup> Discussion Paper No 97.

## Part II Progress of Law Reform Projects

2.1 In this Part of our report we set out in detail the present position in each of our current law reform projects. The main subject headings are presented in alphabetical order. Projects which fall within our published Programmes<sup>1</sup> are denoted by the use of an asterisk.

### Administrative Law

2.2 Work has continued towards the preparation of the discussion paper which we referred to in our Twenty-Ninth Annual Report<sup>2</sup> but has been delayed due to the need to give other matters priority. We have, however, made contact with the Team at the University of Glasgow who are carrying out a study of judicial review in Scotland during the period 1988-1992.<sup>3</sup>

2.3 We have considered the effect of European Community law on standing in our national courts, in particular, the question of whether some litigants may be given standing to sue in Scottish courts in cases where they would not otherwise be able to meet the requirements of title and interest to sue. We are considering the trends revealed by analysis of the grounds cited in recent petitions for judicial review and whether they are such that there is a need to consider changes to the way petitions for judicial review are brought before the courts. We have, as in previous years, monitored the case-law in the field of judicial review and continue to build on our computer a database of relevant decisions from 1985.

### Criminal Law

#### General

2.4 Our work in the criminal law field derives from proposals for law reform projects under section 3(1)(a) of the Law Commissions Act 1965 and references under section 3(1)(e) of that Act.

#### Forfeiture and confiscation

2.5 As was mentioned in our Twenty-Ninth Annual Report<sup>4</sup> our *Report on Forfeiture and Confiscation*<sup>5</sup> was published in June 1994. As is mentioned in Part I<sup>6</sup> the report was implemented in the Criminal Justice (Scotland) Act 1995.

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<sup>1</sup> First Programme, (1965) Scot Law Com No 1; Second Programme, (1968) Scot Law Com No 8; Third Programme, (1973) Scot Law Com No 29; Fourth Programme, (1990) Scot Law Com No 126.

<sup>2</sup> Scot Law Com No 148, paras 2.2-2.24.

<sup>3</sup> Preliminary findings are given in the article by Tom Mullen, Cathy Pick and Tony Prosser of the School of Law at the University of Glasgow: "Trends in Judicial Review in Scotland" [1995] Public Law 52-56.

<sup>4</sup> Scot Law Com No 148, para 2.6.

<sup>5</sup> Scot Law Com No 147.

<sup>6</sup> Para 1.2.

## **Diligence\***

(Second Programme, Item 8)

2.6 As we mentioned in our last annual report,<sup>7</sup> work is proceeding on the completion of a report following upon our Discussion Paper No 84 on *Diligence on the Dependence and Admiralty Arrestments* (1989), our Consultation Paper on *Arrestments of Ships Securing Claims against Demise Charterers* (1990) and the provisional proposals in our Discussion Paper No 90 on *Extra-Territorial Effect of Arrestments and Related Matters* (1990) concerning the power of the court to protect arrestees from double jeopardy.<sup>8</sup> Progress is being made on the completion of the report which we aim to submit in the first half of 1996.

## **Evidence\***

(First Programme, Item 1)

### **Hearsay and related matters in criminal proceedings**

2.7 In our last annual report,<sup>9</sup> we welcomed the change of mind by the Scottish Office regarding the recommendation contained in our *Report on Documentary Evidence and Proof of Undisputed Facts in Criminal Proceedings*<sup>10</sup> for the introduction of a new procedure whereby facts which were not in dispute between the prosecution and the defence may be established at the trial without proof by means of the oral evidence of witnesses. This has now been implemented by section 16 of the Criminal Justice (Scotland) Act 1995.

2.8 As we mentioned in our last annual report,<sup>11</sup> the outstanding matters from our Discussion Paper No 77 on *Criminal Evidence: Affidavit Evidence, Hearsay and Related Matters in Criminal Proceedings* were the extent to which the rule against hearsay might be further modified, and the extent to which the prior statements of witnesses should be admissible. Our *Report on Hearsay Evidence in Criminal Proceedings*<sup>12</sup> was submitted to you on 30 December 1994 and was published on 22 February 1995.

2.9 We made two principal recommendations. First, because the hearsay rule can prevent a criminal court from considering useful information which is relevant to the issue of the accused's guilt or innocence, we recommended the introduction of some further limited exceptions, and the clarification of some of the existing exceptions, to the rule. These all relate to circumstances where there are insurmountable difficulties in the way of obtaining the direct evidence of the maker of the statement. The revised and extended list of exceptions covers cases where the maker of the statement (1) is dead; (2) is ill; (3) is abroad; (4) cannot be found; (5) is brought to court but (a) refuses to be sworn or, having been sworn, (b) successfully claims privilege against self-incrimination or (c) refuses to answer questions.

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<sup>7</sup> Twenty-Ninth Annual Report, Scot Law Com No 148, para 2.8.

<sup>8</sup> Discussion Paper No 90, paras 3.47-3.60.

<sup>9</sup> Twenty-Ninth Annual Report, Scot Law Com No 148, para 1.4.

<sup>10</sup> (1992) Scot Law Com No 137.

<sup>11</sup> Para 2.10.

<sup>12</sup> Scot Law Com No 149.

2.10 Our recommendations also included the introduction of several safeguards against the abuse of these exceptions, for example, a statement should not be admissible if the applicant has caused the person who made the statement not to be available.

2.11 The hearsay rule also applies to a statement made by a witness before he or she gives evidence in court. If the witness gives evidence which is inconsistent with the statement, the statement may be proved, but only in order to diminish the credibility of his or her evidence. As a general rule, a prior statement is not evidence of the matters it contains. We recommended that a prior statement which a witness has made in a precognition on oath or in prior proceedings should be evidence of the matters contained in it irrespective of what the witness may say about its truthfulness in court.

2.12 We also recommended that a prior statement which is contained in a document should be admissible as evidence of the matters contained in it, provided that, as in the case of *Jamieson v HM Advocate* (No 2) 1995 SLT 666, the witness accepts that he or she made the statement and adopts it as his or her evidence. This recommendation is intended to assist a witness who finds it difficult to give evidence in court, either because his or her memory of the events dealt with in the statement is no longer clear, or because he or she is distressed on account of the nature of these events.

2.13 We are pleased to note that the report has now been implemented, subject to modifications, by the Criminal Justice (Scotland) Act 1995.<sup>13</sup>

### **Extrinsic evidence**

2.14 The Commission has been concerned for some time about the state of the law on the admissibility of extrinsic evidence in the interpretation of documents in the field of private law. Aspects of this question were considered in our discussion paper on *Contract Law - Extrinsic Evidence, Supersession and the Actio Quanti Minoris*.<sup>14</sup> However, the comments received on that discussion paper confirm us in our belief that the topic ought to be considered more generally and we hope to produce a short discussion paper on it at an early date.

### **Obligations\***

(First Programme, Item 14)

### **Formation of contract**

2.15 Our *Report on Formation of Contract*<sup>15</sup> which was published on 22 July 1993 has not yet been implemented.

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<sup>13</sup> Clauses 17, 18 and 20. (Clause 19 concerns statements by accused persons. Scot Law Com No 149 did not make any recommendations on such statements. See paras 5.71-5.77 and draft Bill, clause 3(6).) See also Criminal Procedure (Scotland) Bill 1995, clauses 260, 261 and 263.

<sup>14</sup> Discussion Paper No 97. See para 2.17. below.

<sup>15</sup> Scot Law Com No 144.

## **Sale and supply of goods**

2.16 The joint report on *Sale of Goods Forming Part of a Bulk*<sup>16</sup> which was published by this Commission and the English Law Commission was implemented by the Sale of Goods (Amendment) Act 1995 (c 28).

## **Extrinsic evidence, supersession, and the actio quanti minoris**

2.17 We are proceeding with the preparation of a report and draft Bill following on analysis of the comments received on our discussion paper on *Contract Law: Extrinsic Evidence, Supersession, and the Actio Quanti Minoris*.<sup>17</sup> The most important practical problem to be dealt with in the report and draft Bill is the rule, illustrated in the case of *Winston v Patrick* 1980 SC 246, that a conveyance supersedes a contract. This rule has the unfortunate effect that a contract for the sale of a house may fall completely on delivery of the disposition, even where some provisions of the contract have nothing to do with the conveyance of the house but relate to such matters as the state of the central heating system. Another unfortunate rule to be dealt with in the report is that whereby a buyer of certain types of property cannot, while keeping the property, successfully claim damages for breach by the seller of a contractual term relating to the property which results in a diminution of its value. Consultation on our discussion paper revealed strong support for the reform of both these rules, and we hope to submit a report recommending such reform early in 1996. The report will also deal with the notoriously complex rules on the admissibility of extrinsic evidence to prove additional terms in contracts which are partly in writing.

## **Law of contract in general**

2.18 We are continuing to work on our review of the whole of the law of contract with a view to identifying areas where it would be useful to produce discussion papers on particular proposals for reform. One area of great practical importance in which uncertainties of the law can cause difficulties for contracting parties is that of remedies for breach of contract. To help us to identify the need for legislative reform in this area we are planning to hold, jointly with the University of Edinburgh, a seminar on 21 October 1995 which will address the existing problems in Scottish law in the light of European and international development. Our consideration of remedies for breach of contract will include the topic of penalty clauses and similar clauses to which we referred in our last annual report.<sup>18</sup>

## **Unjustified enrichment**

### **Recovery of benefits conferred under error of law**

2.19 In our Discussion Paper No 95 on *Recovery of Benefits Conferred Under Error of Law*, published in September 1993, we sought views on provisional proposals that the error of law rule (ie the rule precluding recovery of benefits conferred under error of law) should be abrogated by statute.<sup>19</sup> In December 1994, however, this provisional proposal was superseded by the important judgment in *Morgan Guaranty Trust Company of New York v*

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<sup>16</sup> Scot Law Com No 145; Law Com No 215.

<sup>17</sup> Discussion Paper No 97.

<sup>18</sup> Twenty-Ninth Annual Report 1993-94, Scot Law Com No 148, para 2.19.

<sup>19</sup> Scot Law Com Discussion Paper No 95 (1993), vol 1, Proposition 1 (para 2.95).

*Lothian Regional Council*<sup>20</sup> which in effect abolished that rule, and restored the old law as it had existed in the Institutional period of Scots law.<sup>21</sup>

2.20 On the assumption that the error of law rule would be abolished by statute, our Discussion Paper No 95 had sought views on a consequential statutory provision specifically designed to safeguard payees from the risk that third-party payers would bring actions of repetition where the view of the law on which their payments had been made was changed by a later judicial decision.<sup>22</sup> The argument, which was based on expediency rather than equity, was that abolition of the error of law rule should not "open the floodgates" letting in a large number of claims and reopening previously settled transactions. The *Morgan Guaranty* case, however, has created a new situation. The court not only criticised the intrusion in enrichment law of rules based on expediency rather than equity<sup>23</sup> but also expressly rejected the floodgates approach.<sup>24</sup> We, therefore, propose to consult afresh on the issue of a statutory safeguard in a discussion paper on *Judicial Abolition of the Error of Law Rule and its Aftermath*.<sup>25</sup>

### **Recovery of ultra vires public authority receipts and disbursements**

2.21 We intend to publish shortly a discussion paper on *Recovery of Ultra Vires Public Authority Receipts and Disbursements*. This paper will have several aims and will broadly cover for Scotland the topics covered in English law by the Law Commission in their Report on *Restitution: Mistakes of Law and Ultra Vires Public Authority Receipts and Payments*<sup>26</sup> which was published in November 1994. First, our proposed discussion paper will explain the common law of Scotland relating to the recovery of *ultra vires* public authority receipts.

2.22 Secondly, it will seek views on our provisional decision not to recommend a special statutory rule providing for the automatic recovery of ultra vires public authority receipts (which would be equivalent to the rule of English law laid down by the House of Lords in *Woolwich Equitable Building Society v IRC*,<sup>27</sup> - "the *Woolwich* rule"). In *Morgan Guaranty*, Lord President Hope said that the Inner House's decision in that case achieved the same result as the decision in *Woolwich* but "by reference to the principles of Scots law".<sup>28</sup> We think, however, that the court's decision in *Morgan Guaranty* does not by itself introduce in Scots law a new ground of repetition equivalent to the *Woolwich* ground applying in cases in which (like *Woolwich* itself) the payment was not made in error. There are nevertheless dicta in *Morgan Guaranty* from which such a ground might be developed.

2.23 Thirdly, our proposed discussion paper will seek views on proposals to amend the statutory provisions for the recovery of the principal central and local government taxes and charges in order to harmonise them with the *Woolwich* rule.<sup>29</sup> Most of these proposals relate

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<sup>20</sup> 1995 SLT 229, 1995 SCLR 225 (Court of Five Judges) reversing Lord Ordinary 1995 SLT 299 at pp 301-308; 1994 SCLR 213 (OH).

<sup>21</sup> The Court also abolished the requirement that the pursuer proved that his error was excusable: 1995 SLT 299 at p 316A, B per Lord President Hope; at p 320I per Lord Clyde; at p 322F, G per Lord Cullen.

<sup>22</sup> Paras 2.84-2.125.

<sup>23</sup> 1995 SLT 299 at pp 309L - 310B per Lord President Hope; 321I per Lord Cullen.

<sup>24</sup> 1995 SLT 299 at p 315L per Lord President Hope; at p 320C, D per Lord Clyde.

<sup>25</sup> This paper will also consider the implications of the *Morgan Guaranty* case for the development of Scots enrichment law.

<sup>26</sup> (1994) Law Com No 227.

<sup>27</sup> (1993) AC 70 (HL affg CA), revg [1989] 1 WLR 137.

<sup>28</sup> 1995 SLT 299 at 315L.

<sup>29</sup> These will broadly correspond to Law Com No 227, Section C, Parts VIII-XV.

to United Kingdom or Great Britain enactments and have already been recommended for England and Wales but our proposals relating to the refund of overpaid non-domestic rates affect Scotland only. In both cases, Scottish interests have yet to be consulted.

2.24 Finally, the paper will consider whether any change should be made to the rule relating to the recovery of *ultra vires* payments out of the Consolidated Fund.<sup>30</sup>

### **Further work on the law on unjustified enrichment**

2.25 As anticipated in our last Annual Report,<sup>31</sup> Edinburgh University Law Faculty and we held a one-day seminar on 22 October 1994 to assess the case for the codification of the Scots law of unjustified enrichment. Papers were delivered by three distinguished visiting jurists, namely, Professor Reinhard Zimmerman, University of Regensburg; Professor Daniel Visser, University of Cape Town, and Professor Peter Birks, University of Oxford.<sup>32</sup> Dr Eric Clive of this Commission also presented a paper proposing a codification of the Scottish law on unjustified enrichment.<sup>33</sup> We propose to circulate Dr Clive's paper along with the foregoing discussion papers.

2.26 We hope to publish a complete review of the law on unjustified enrichment in due course to pave the way for a discussion paper assessing whether or not our law of unjustified enrichment should be codified and if so according to what plan? We aim to keep in touch with Professor Visser who is continuing to work for the South African Law Commission on proposals to introduce a statutory enrichment action in South African law.

### **Private International Law\***

(Third Programme, Item 15)

#### **Extra-territorial effect of arrestment**

2.27 As mentioned in our Twenty-Ninth Annual Report<sup>34</sup> we have now returned to this project. It is hoped to prepare a report which should be completed by Spring 1996. This, however, will cover only the proposals to confer on the Scottish courts powers to protect an arrestee from double-jeopardy.<sup>35</sup>

As mentioned in Part I of this report the Private International Law (Miscellaneous Provisions) Bill has been introduced to implement joint reports on polygamous marriages and choice of law in tort and delict.<sup>36</sup>

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<sup>30</sup> This will correspond to Law Com No 227 on *Restitution: Mistakes of Law and Ultra Vires Public Authority Receipts and Payments*, Section D (Part XVII) on "Claims by Public Bodies".

<sup>31</sup> Twenty-Ninth Annual Report (1993-94), para 2.23.

<sup>32</sup> The papers were R Zimmerman, "Unjustified Enrichment: The Modern Civilian Approach: à propos the Reform of Scots Enrichment Law" to be published in a forthcoming issue of the *Oxford Journal of Legal Studies*; D Visser, "Draft Rules on Unjustified Enrichment and Commentary"; P Birks, "Against Codification and Against Codification of Unjust Enrichment".

<sup>33</sup> "Draft Rules on Unjustified Enrichment and Commentary".

<sup>34</sup> Twenty-Ninth Annual Report 1993-94, Scot Law Com No 148, para 2.25.

<sup>35</sup> Discussion Paper No 90, paras 3.47-3.60. See also para 2.6 above.

<sup>36</sup> Para 1.2.

## **Property Law\***

(Fourth Programme, Item 16)

### **Abolition of the feudal system**

2.28 We have continued throughout the year to work on issues arising out of the responses received from consultees to Discussion Paper No 93 on *Abolition of the Feudal System*.<sup>37</sup> The issues have proved more difficult and complex than anticipated but we have made progress and will continue to give the matter priority.

### **Law of the tenement**

2.29 As mentioned in last year's annual report<sup>38</sup> we had hoped to submit our report by the end of the year. This has not been possible because we have found it necessary to reconsider our policy approach in the light of further research and comments received. To take matters forward we and the University of Edinburgh, Department of Private Law, are organising a half-day seminar to be held on 7 September 1995. The theme of the seminar is the reform of the law of the tenement in the context of the comparative law of apartment ownership. We are pleased that two distinguished scholars in this field will give papers at the seminar. Professor Cornelius G van der Merwe of the University of Stellenbosch will present the first paper which will consider trends in the comparative law of apartment ownership which is of relevance to the reform of the law of the tenement. Professor Kenneth G C Reid of the University of Edinburgh will present the second paper which will comment on a paper which we are presently preparing entitled *Second Thoughts on the Law of the Tenement*. The Commission's paper will re-examine the scheme which we proposed in our Discussion Paper No 91 on the *Law of the Tenement*, outline our re-thinking following consultation and put forward revised proposals for reform of the law. We hope that the seminar will generate discussion and constructive comments on our new proposals which will assist us in finalising our recommendations.

2.30 We expect to complete our report within the year 1996-97.

### **Residential long leases**

2.31 Work on this project continues to be delayed by the need to give priority to other matters. It is our intention to resume work on the discussion paper when circumstances permit.

### **Boundary walls**

2.32 Because of the need to divert resources to more urgent matters this project has been temporarily suspended.

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<sup>37</sup> Discussion Paper No 93.

<sup>38</sup> Twenty-Ninth Annual Report 1993-94, Scot Law Com No 148.

## Judicial Factors, Powers of Attorney and Guardianship of the Incapable\*

(Fourth Programme, Item 17)

2.33 Throughout the year we have been engaged in preparing a report dealing with decision-making in the field of financial and personal welfare matters for those who lack the capacity to make such decisions themselves. This report will follow on from our Discussion Paper No 94 *Mentally Disabled Adults: Legal arrangements for managing their welfare and finances* which we published in September 1991. The areas dealt with in the discussion paper included powers of attorney to deal with financial, health care and personal welfare matters; judicial appointees, whom we term guardians, for the same range of matters; and the authority of doctors and other health care professionals to give treatment to, and carry out research on, incapable patients.

2.34 Since our discussion paper was published two issues in the medical field have become the subject of concern amongst lawyers, doctors and the general public. The first is the effect of statements (written or oral) made by people when capable as to the treatment to be afforded to them when they are incapable. These are popularly but inaccurately known as "living wills"; we prefer the term "advance statement". A series of cases in England has established that in certain circumstances a refusal of treatment made in an advance statement must be given effect to.<sup>39</sup> The second issue is the withholding or withdrawing of medical treatment which is, or is likely to be, of no benefit to the patient, especially where withholding or withdrawal will result in the patient's death. The case of *Airedale NHS Trust v Bland*<sup>40</sup> concerned withdrawal of artificial nutrition and hydration from a young man in a persistent vegetative state.

2.35 We decided to include both the topics mentioned in the preceding paragraph in our report. The law of Scotland is uncertain due to the absence of any analogous cases. We held useful discussions with Scottish representatives of the medical profession and also benefitted from having an observer on a working party charged with producing a Code of Practice on advance statements.<sup>41</sup> The Law Commission was also engaged in the preparation of a report on mental incapacity<sup>42</sup> and representatives of both Commissions continued to meet throughout the year to discuss matters of mutual concern.

2.36 We intend to submit our report to you during the summer of 1995.<sup>43</sup> As we mentioned in our last annual report<sup>44</sup> we have decided to defer further work on the interim or emergency powers available to public authorities for the protection of mentally disordered or vulnerable adults until our Report on Incapable Adults is submitted. We hope to start work on a report towards the end of 1995.

2.37 We will also be starting work on those areas of the law on judicial factors and powers of attorney which are not covered in our *Report on Incapable Adults*.

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<sup>39</sup> *Re T (Adult: Refusal of Treatment)* [1993] Fam 95; *Airedale NHS Trust v Bland* [1993] AC 789; *Re C (Adult: Refusal of Treatment)* [1994] 1 WLR 290.

<sup>40</sup> [1993] AC 789.

<sup>41</sup> British Medical Association in collaboration with the Royal College of Physicians, The Royal College of Nursing and the Royal College of General Practitioners. The Code *Advance Statements about Medical Treatment* was published in April 1995.

<sup>42</sup> Its *Report on Mental Incapacity* Law Com. 231 was published in March 1995.

<sup>43</sup> Our *Report on Incapable Adults* was submitted to your predecessor in July and published in September 1995.

<sup>44</sup> Twenty-Ninth Annual Report 1993-94, Scot Law Com No 148, para 2.35.

## **Other Matters**

### **Multi-party actions**

2.38 The discussion paper and report by our Working Party, which we mentioned in our last annual report<sup>45</sup> were published in November 1994. The responses received are now being analysed with a view to the framing of recommendations to be included in due course in our report on this subject.

### **Fiduciary duties and regulatory bodies**

2.39 As we mentioned in our preceding annual report, we received a reference from the Department of Trade and Industry in terms similar to a contemporaneous reference given to the Law Commission. We are preparing a short report which, in order to avoid duplication, will draw heavily on the work done by the Law Commission.

### **Bankruptcy law**

2.40 In our last annual report<sup>46</sup> we stated that we had issued a consultation paper to a restricted number of consultees on the issue of whether, in the law of bankruptcy, claims or awards representing solatium for personal injury or future wage loss should continue to vest for the benefit of creditors.<sup>47</sup>

2.41 We were gratified that 19 consultees responded to the paper. The consultation exercise revealed four main points. First, the scale of the problem is unclear. Secondly, although it could be argued that there is a substantial point of principle at least in relation to future wage loss, there is no general demand for reform in respect of either solatium or future wage loss. Thirdly, there is a substantial body of opinion opposed to significant change. Fourthly, an examination of avenues of possible reform, such as statutory alimentary trusts, served to show that considerable complexities would combine to make a workable scheme unlikely.

2.42 Taking these points into account, and the apparent impossibility of making any effective reform in relation to extra-judicial settlements, we have decided not to recommend any reform in this area. Furthermore, as the principal issues are not being taken any further, we have agreed that the subsidiary issues of the extension of the powers of a trustee in bankruptcy to enable him to initiate an action for solatium for personal injury and the policy relating to non-vested contingent interests should be put to one side, and perhaps re-examined if or when an appropriate vehicle for reform presents itself.

### **Company law**

2.43 As mentioned in our last annual report<sup>48</sup> we assisted the Law Commission with information in the preparation of a feasibility study relating to private companies for the Department of Trade and Industry. The study was completed and was sent to the

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<sup>45</sup> Twenty-Ninth Annual Report 1993-94, Scot Law Com No 148, para 2.36.

<sup>46</sup> Twenty-Ninth Annual Report 1993-94, Scot Law Com No 148, para 2.38-2.41.

<sup>47</sup> This does not form part of our numbered series of consultative memoranda/discussion papers.

<sup>48</sup> Twenty-Ninth Annual Report 1993-94, Scot Law Com No 148, para 2.42.

Department of Trade and Industry in August last year and was used by the Department as the basis for a consultation document which it issued in November.<sup>49</sup>

### **Shareholders' remedies**

2.44 Along with the Law Commission we were invited by the Department of Trade and Industry to consider the remedies currently available to shareholders and to suggest ways in which the law could be rationalised and improved. It is hoped that an initial consultation paper will be published next year.

### **Statute Law**

#### **Consolidation**

2.45 As in our previous annual reports we report under two heads: consolidation of legislation applying to Scotland only; and consolidation of legislation extending to other parts of the United Kingdom as well as to Scotland.

(a) *Scotland-only consolidations*

2.46 Progress continues to be made on the consolidation of the Scottish Town and Country Planning legislation which will result in four statutes. Work also continues on the consolidation of the legislation relating to the National Health Service (Scotland) and on the Land Clauses legislation. Bills to consolidate the Criminal Procedure legislation have been introduced to Parliament. At the present time we are considering a proposal for consolidation of the legislation relating to Salmon Fisheries.

(b) *United Kingdom and Great Britain consolidations*

2.47 During the course of our reporting year the following measures were enacted:

Vehicles Excise and Registration Act 1994  
Value Added Tax Act 1994  
Drug Trafficking Act 1994

### **Statute law revision**

2.48 The Statute Law (Repeals) bill, annexed to the Fifteenth Report on Statute Law Revision submitted to you on 25 January 1995, was introduced into Parliament on 22 March 1995 and is currently proceeding there. The Bill deals extensively with local legislation. For example, it contains the repeal of a number of Glasgow Police Acts of the nineteenth and early twentieth century, and of Dog Warden Acts applicable in particular Scottish local authority areas and dated between 1976 and 1981. In all cases these Acts have been superseded by the provisions of public general statute.

2.49 Work has now begun on preparing a Sixteenth Report on Statute Law Revision, which report is expected to be a joint report of both Commissions. A Statute Law (Repeals)

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<sup>49</sup> *Company Law Review: The Law Applicable to Private Companies*. A consultative document, DTI, November 1994, URN 94/529.

Bill will as usual be annexed to that report but it is not expected that the report will be submitted before 1998.

### **Local legislation**

2.50 The printing and publication of the Chronological Table of Local Legislation are now in hand. This Table was originally drafted to cover the period 1797-1973 but the opportunity has been taken to update it to cover the period 1797-1993. A market research survey was commissioned by HMSO prior to finalising the arrangements for publication. The results of that survey are expected to be available to the Law Commissions in July 1995.

2.51 Progress continues to be made in recommending for express repeal redundant but still extant local legislation. It is intended that there will be a number of such Acts, including a further group of Glasgow Police Acts, recommended for repeal in the Sixteenth Report mentioned above.

## **Part III    General**

3.1     In Part II of this report we have described the progress of the law reform projects on which we are presently working. While these projects take up most of the time of Commissioners and staff, they do not give a full picture of our work and there are a number of other calls on our time which may not be reflected in the publication of our discussion papers and reports, but which add appreciably to our total workload. In this part of the report we mention these matters briefly.

### **Advice to Government Departments, etc**

3.2     As has been mentioned in previous reports, our views are sought by government departments on a number of matters. This falls within the functions of the Commission as provided in section 3(1)(e) of the Law Commissions Act 1965 ( c 22). Sometimes this is done as part of a formal consultation exercise undertaken by a department. On other occasions our advice is sought informally and even confidentially. We also, where appropriate, respond to consultation exercises carried out by other bodies where we are of the view that to do so would help promote the cause of law reform.

### **Proposals for Law Reform**

3.3     During the year we received from members of the public and organisations proposals for reform in particular areas of law. In most cases after some preliminary research we decided that no work needed to be done at this time. In others we agreed that some work would be carried out in the future. An example was a proposal received from a practising solicitor that we look at the rules governing accumulation of income as provided in the Trusts (Scotland) Act 1961. We hope to take this matter forward when resources permit.

### **Departmental Committees and Other Bodies**

3.4     Our Commissioners and legal staff are from time to time appointed to serve on government departmental committees and as members of other bodies concerned with the development and reform of the law. Our Chairman is a member of the Advisory Committee on Statute Law which advises the Lord Chancellor in connection with his responsibilities in relation to the revision, modernisation and production of the Statute Book to ensure that it is in readily accessible form so that citizens may know by what statutes they are bound. This year Dr Eric Clive, one of our Commissioners, has been involved in assisting Scottish Courts Administration and the Lord Chancellor's Department in relation to the Council of Europe's work on family law and incapable adults and also in relation to the draft Hague Convention on the Protection of Children. Dr Nichols, a member of our legal staff, has continued as Chairman of the Good Practice Group on Neurosurgery for Mental Disorders set up under the Scottish Office Clinical Resource and Audit Group as mentioned in our last annual

report.<sup>1</sup> He also continues to serve as a member of the Advisory Committee of the Legal Services Agency Mental Health Legal Representation Project (Lothian). Other members of staff assist in the Scottish Office's Legal Studies Research Group and in the Criminal Law Research Group and, where necessary, act in an advisory capacity in connection with various research projects.

### **Conferences, Seminars, etc**

3.5 During the year Commissioners and legal staff of the Commission participated in a number of conferences and seminars. We consider such participation to be an important part of our work in enabling us to keep the law under review and to assist us in obtaining comments on our published discussion papers. In addition Commissioners and legal staff have on occasion given papers to conferences and seminars.

### **Consultation**

3.6 We continue to have close co-operation with the Law Commission for England and Wales as is mentioned in Part I. During the year under review we have continued to work together on various matters, including fiduciary duties and regulatory bodies, unjustified enrichment and guardianship of the incapable. We are grateful to the Law Commission for continuing to keep us informed of the progress of its work on topics of interest to us, and for affording us the opportunity of commenting from time to time on the possible implications for Scotland of certain of its projects.

3.7 We have maintained our contacts with law reform organisations in various parts of the world and continue to exchange papers with them. We also have met with representatives of some of these organisations during their visits to this country.

### **Media**

3.8 On publication of our reports and the issue of our discussion papers it is normal for the Commission to issue a news release and to hold a news conference. Such news conferences are normally well attended by members of the media, including representation from the daily and weekly newspapers and radio and television. During the year under review we have had good coverage of the news conferences we held, and we are most grateful to the members of the media for attending and for reporting on the matters covered. Commissioners and staff members have also given interviews to the press and have participated in radio programmes on matters relating to the work of the Commission. We are also grateful to the coverage given to our work by the editors of various legal journals. The publicity given continues to encourage demand from members of the public and individual members of the legal profession for copies of our discussion papers.

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<sup>1</sup> Twenty-Ninth Annual Report 1993-94, Scot Law Com No 148, para 3.4.

## Part IV Miscellaneous

### Commissioners

4.1 The Commission consists of a full-time Chairman, two full-time Commissioners, and two part-time Commissioners. During the year under review the Commissioners were:

The Honourable Lord Davidson, <i>Chairman</i>	(Full-time)
Dr E M Clive	(Full-time)
Professor P N Love, CBE (until April 1995) <sup>1</sup>	(Part-time)
Sheriff I D Macphail, QC (until 31 December 1994) <sup>2</sup>	(Full-time)
Mr N R Whitty (from 1 January 1995)	(Full-time)
Mr W A Nimmo Smith, QC	(Part-time).

### Staff

4.2 Our legal staff consists of our Secretary and eight other qualified lawyers, and until 25 February 1995, two part-time Parliamentary Draftsmen. In addition we have the services of Parliamentary Draftsmen in the Lord Advocate's Department in London. During the summer vacation of 1994 we employed five honours graduates in law to assist with our research work. Our complement of non-legal staff remains at eleven. We wish to thank them all for their assistance.

4.3 At the end of this year and during the year the principal members of staff were:

#### *Parliamentary draftsmen*

Mr G S Douglas, QC	(Part-time)
Mr W C Galbraith, QC (until 25 February 1995)	(Part-time)

#### *Secretary*

Mr K F Barclay

#### *Grade 5 Solicitors*

Mr R Bland  
Mr N R Whitty (until 31 December 1994)<sup>3</sup>  
Vacant (from 1 January 1995)

#### *Other members of legal staff*

Mr J M Dods  
Mrs D M Howieson  
Mrs A B D McFee  
Dr D I Nichols

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<sup>1</sup> See para 1.9 above.

<sup>2</sup> See para 1.4 above.

<sup>3</sup> See para 1.5 above.

Mrs S Sutherland  
Mrs G B Swanson

*Librarian*  
Mr N G T Brotchie

*Chief Clerk*  
Mr J Dodson.

#### **The legal and other professions, etc**

4.4 We continue to consult with the leading organisations of the legal and other professions in Scotland and with other bodies. In this regard, we have held informal meetings with representatives of the Faculty of Advocates and the Law Society of Scotland. As in previous years we have found these meetings most useful. We record our appreciation of the valuable assistance afforded by those whom we have invited to act as consultants or advisers and by others who have assisted us in various ways.

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

4.6 Membership of working parties appears in Appendix I. We are grateful to the non-Commission members of our working party on contract law for giving their time to assist us in our consideration of relevant matters. In Appendix II we list reports, consultative memoranda/discussion papers and other documents prepared by the Commission. These lists include certain consultative documents which were given restricted circulation. The extent to which our proposals have been incorporated by legislation is indicated in Appendix III.

# Appendix I

## Membership of Working Party

*Working Party on Contract Law*

Dr E M Clive (Chairman)

Professor R Black, QC

Mr M G Clarke, QC

Professor W W McBryde

Scottish Law Commission

University of Edinburgh

Faculty of Advocates

University of Dundee

Secretariat: Scottish Law Commission

# Appendix II

## 1 Scottish Law Commission – Reports, etc Published by Her Majesty's Stationery Office

	<i>Commission No</i>	
<b>1965</b>	1	First Programme of Law Reform
<b>1966</b>	2	First Programme of Consolidation and Statute Law Revision
	3	First Annual Report 1965-66
<b>1967</b>	4	Proposals for Reform of the Law of Evidence relating to Corroboration
	5	Reform of the Law Relating to Legitimation <i>per subsequens matrimonium</i> (Cmnd 3223)
	6	Divorce – The Grounds Considered (Cmnd 3256)
	6A	*Report on the Consolidation of Certain Enactments relating to Shellfish Fisheries and Shellfish – Sea Fisheries (Shellfish) Bill (Cmnd 3267)
	7	Second Annual Report 1966-67
<b>1968</b>	8	Second Programme of Law Reform
	9	Third Annual Report 1967-68
<b>1969</b>	10	*Report on the Consolidation of the Trustee Savings Banks Acts 1954 to 1968 – Trustee Savings Banks Bill (Cmnd 4004)
	11	*Report on the Interpretation of Statutes
	12	*Report on Exemption Clauses in Contracts – First Report: Amendments to the Sale of Goods Act 1893
	13	Fourth Annual Report 1968-69
<b>1970</b>	14	Report on the Companies (Floating Charges) (Scotland) Act 1961 (Cmnd 4336)
	15	Reform of the Law relating to Prescription and Limitation of Actions
	16	*Report on the Hague Convention on Recognition of Divorces and Legal Separations (Cmnd 4542)
	17	Fifth Annual Report 1969-70
	18	*Report on the Consolidation of Certain Enactments relating to Coinage (Cmnd 4544)

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

*Commission  
No*

	19	*Report on the Consolidation of Certain Enactments relating to Excise Duties on Mechanically Propelled Vehicles, and to the Licensing and Registration of such Vehicles (Cmnd 4547)
<b>1971</b>	20	*Report on the Consolidation of Enactments relating to the National Savings Bank (Cmnd 4574)
	21	*Report on the Taxation of Income and Gains derived from Land (Cmnd 4654)
	22	*Report on the Consolidation of Certain Enactments relating to Road Traffic - Road Traffic Bill (Cmnd 4731)
	23	Sixth Annual Report 1970-71
<b>1972</b>	24	Report on the Consolidation of Certain Enactments relating to Town and Country Planning in Scotland - Town and Country Planning (Scotland) Bill (Cmnd 4949)
	25	Family Law - Report on Jurisdiction in Consistorial Causes affecting Matrimonial Status
	26	*Statute Law Revision - Fourth Report: Draft Statute Law (Repeals) Bill (Cmnd 5108)
<b>1973</b>	27	Second Programme of Consolidation and Statute Law Revision
	28	Seventh Annual Report 1971-72
	29	Third Programme of Law Reform
	30	Report on Liability for Antenatal Injury (Cmnd 5371)
	31	Report on the Law relating to Damages for Injuries Causing Death
	32	*Statute Law Revision - Fifth Report: Draft Statute Law (Repeals) Bill (Cmnd 5493)
<b>1974</b>	33	Eighth Annual Report 1972-73
	34	Report on Presumption of Death
	35	*Friendly Societies Bill - Report on the Consolidation of the Friendly Societies Acts 1896 to 1971 and certain other enactments relating to the Societies to which those Acts apply (Cmnd 5634)
	36	*Statute Law Revision - Sixth Report: Draft Statute Law (Repeals) Bill (Cmnd 5792)

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

	<i>Commission No</i>	
<b>1975</b>	37	Ninth Annual Report 1973-74
	38	*Supply Powers Bill – Report on the Consolidation of Enactments relating to Supply Powers (Cmnd 5850)
	39	*Exemption Clauses - Second Report
	40	*Statute Law Revision – Seventh Report: Draft Statute Law (Repeals) Bill (Cmnd 6303)
<b>1976</b>	41	Tenth Annual Report 1974-75
	42	Family Law: Report on Liability for Adultery and Enticement of a Spouse
<b>1977</b>	43	Eleventh Annual Report 1975-76
	44	*Statute Law Revision - Eighth Report: Draft Statute Law (Repeals) Bill (Cmnd 6719)
	45	*Report on Liability for Defective Products (Cmnd 6831)
<b>1978</b>	46	Third Programme of Consolidation and Statute Law Revision
	47	Twelfth Annual Report 1976-77
	48	*Statute Law Revision - Ninth Report: Draft Statute Law (Repeals) Bill (Cmnd 7189)
	49	Electricity (Scotland) Bill – Report on the Consolidation of Certain Enactments relating to Electricity in Scotland (Cmnd 7178)
	50	Adoption (Scotland) Bill – Report on the Consolidation of Certain Enactments relating to Adoption in Scotland (Cmnd 7187)
	51	Damages for Personal Injuries: Report on (1) Admissibility of Claims for Services (2) Admissible Deductions
	52	Report on the Married Women's Policies of Assurance (Scotland) Act 1880 (Cmnd 7245)
	53	*Interpretation Bill – Report on Interpretation Act 1889 and Certain other Enactments relating to the Construction and Operation of Acts of Parliament and other Instruments (Cmnd 7235)
	54	*Customs and Excise Management Bill - Report on the Consolidation of the Enactments relating to the Collection and Management of the Revenues of Customs and Excise (Cmnd 7418)
	<b>1979</b>	55
56		Fourteenth Annual Report 1978-79

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

		<i>Commission</i>
		<i>No</i>
<b>1980</b>	57	Report on Lost and Abandoned Property
	58	Education (Scotland) Bill - Report on the Consolidation of Certain Enactments relating to Education in Scotland (Cmnd 7688)
	59	Report on Powers of Judicial Factors (Cmnd 7904)
	60	Report on Occupancy Rights in the Matrimonial Home and Domestic Violence
	61	Fifteenth Annual Report 1979-80
	62	*Judicial Pensions Bill - Report on the Consolidation of Certain Enactments relating to Pensions and other Benefits payable in respect of Service in Judicial Office (Cmnd 8097)
	63	*Statute Law Revision - Tenth Report: Draft Statute Law (Repeals) Bill (Cmnd 8089)
<b>1981</b>	64	Report on Section 5 of the Damages (Scotland) Act 1976
	65	*Trustee Savings Banks Bill - Report on the Consolidation of the Trustee Savings Banks Acts 1969 to 1978 (Cmnd 8257)
	66	*Report on the Council of Europe Convention on Foreign Money Liabilities (1967) and on the Place of Payment of Money Liabilities (1972) (Cmnd 8318)
	67	Family Law - Report on Aliment and Financial Provision
	68	Report on Bankruptcy and Related Aspects of Insolvency and Liquidation
	69	Report on the Law of Incest in Scotland (Cmnd 8422)
	70	Sixteenth Annual Report 1980-81
<b>1982</b>	71	Fourth Programme of Consolidation and Statute Law Revision
	72	Family Law - Report on Financial Provision after Foreign Divorce
	73	Seventeenth Annual Report 1981-82
<b>1983</b>	74	Prescription and the Limitation of Actions - Report on Personal Injuries Actions and Private International Law Questions
	75	Report on Irritancies in Leases (Cmnd 8760)
	76	Family Law - Report on Outdated Rules in the Law of Husband and Wife
	77	*Medical Bill - Report on the Consolidation of the Medical Acts 1956 to 1978 and certain related provisions (Cmnd 8839)
	78	Evidence - Report on Evidence in Cases of Rape and Other Sexual Offences

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

<i>Commission</i>		
		<i>No</i>
	79	Obligations - Report on Rectification of Contractual and Other Documents
	80	Report on the Mental Element in Crime (Cmnd 9047)
	81	Eighteenth Annual Report 1982-83
<b>1984</b>	82	Family Law - Report on Illegitimacy
	83	*Amendment of the Companies Acts 1948-1983 - Report under section 116 of the Companies Act 1981 (Cmnd 9114)
	84	*Dentists Bill - Report on the Consolidation of the Dentists Acts 1957 to 1983 (Cmnd 9119)
	85	*Road Traffic Regulation Bill - Report on the Consolidation of the Road Traffic Regulation Act 1967 and certain related enactments (Cmnd 9162)
	86	Family Law - Report on Matrimonial Property
	87	*Further Amendments of the Companies Acts 1948-1983 - Report under section 116 of the Companies Act 1981 (Cmnd 9272)
	88	*Private International Law - Report on Recognition of Foreign Nullity Decrees and Related Matters (Cmnd 9341)
	89	Nineteenth Annual Report 1983-84
	90	Report on Breach of Confidence
<b>1985</b>	91	*Family Law - Report on Custody of Children: Jurisdiction and Enforcement within the United Kingdom (Cmnd 9419)
	92	Obligations - Report on Negligent Misrepresentation
	93	Report on Art and Part Guilt of Statutory Offences (Cmnd 9551)
	94	*Report on the Consolidation of the Housing Acts - Housing Bill, Housing Associations Bill, Landlord and Tenant Bill (Cmnd 9515)
	95	Report on Diligence and Debtor Protection
	96	*Private International Law - Polygamous Marriages: Report on Capacity to Contract a Polygamous Marriage and Related Issues (Cmnd 9595)
	97	Obligations - Report on Civil Liability in relation to Animals
	98	Twentieth Annual Report 1984-85
	99	Statute Law Revision - Twelfth Report: Draft Statute Law (Repeals) Bill (Cmnd 9648)
<b>1986</b>	100	Evidence - Report on Corroboration, Hearsay and Related Matters in Civil Proceedings
	101	Twenty-First Annual Report 1985-86

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

		<i>Commission</i>
		<i>No</i>
<b>1987</b>	102	Report on Child Abduction (Cm 64)
	103	Housing (Scotland) Bill – Report on the Consolidation of Certain Enactments relating to Housing in Scotland (Cm 104)
	104	*Report on Sale and Supply of Goods (Cm 137)
	105	*Private International Law – Report on Choice of Law Rules in Marriage
	106	Report on Computer Crime (Cm 174)
	107	*Private International Law – Report on the Law of Domicile (Cm 200)
	108	Report on the Scottish Term and Quarter Days (Cm 208)
	109	Twenty-Second Annual Report 1986-87
	110	Report on the Legal Capacity and Responsibility of Minors and Pupils
	<b>1988</b>	111
112		Report on Requirements of Writing
113		*Road Traffic Bill, Road Traffic Offenders Bill, Road Traffic (Consequential Provisions) Bill - Report on the Consolidation of Certain Enactments relating to Road Traffic (Cm 390)
114		Twenty-Third Annual Report 1987-88
115		Report on Civil Liability – Contribution
<b>1989</b>	116	Report on Reform of the Ground for Divorce
	117	*Statute Law Revision - Thirteenth Report: Draft Statute Law (Repeals) Bill (Cm 671)
	118	Report on Recovery of Possession of Heritable Property
	119	*Extradition Bill – Report on the Consolidation of Legislation relating to Extradition (Cm 712)
	120	Report on Evidence: Blood Group Tests, DNA Tests and Related Matters
	121	*Opticians Bill – Report on the Consolidation of Legislation relating to Opticians (Cm 738)
	122	Report on Prescription and Limitation of Actions (Latent Damage and Other Related Issues) (Cm 790)
	123	Twenty-Fourth Annual Report 1988-89
<b>1990</b>	124	Report on Succession
	125	Report on the Evidence of Children and Other Potentially Vulnerable Witnesses
	126	Fourth Programme of Law Reform

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

<i>Commission</i>		
<i>No</i>		
	127	Report on the Passing of Risk in Contracts for the Sale of Heritable Property
	128	Twenty-Fifth Annual Report 1989-90
	129	*Private International Law - Choice of Law in Tort and Delict
<b>1991</b>	130	Rights of Suit in Respect of Carriage of Goods by Sea
	131	Twenty-Sixth Annual Report 1990-91
	132	*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 (Cm 1726)
<b>1992</b>	133	Report on Statutory Fees for Arrestees
	134	Report on The Effect of Death on Damages (Cm 1848)
	135	Report on Family Law
	136	Report on Evidence: Protection of Family Mediation
	137	Evidence: Report on Documentary Evidence and Proof of Undisputed Facts in Criminal Proceedings
	138	*Clean Air Bill – Report on the Consolidation of Certain Enactments relating to Clean Air (Cm 2085)
<b>1993</b>	139	Twenty-Seventh Annual Report 1991-92
	140	*Statute Law Revision: Fourteenth Report - Draft Statute Law (Repeals) Bill (Cm 2176)
	141	Crofters (Scotland) Bill – Report on the Consolidation of Certain Enactments relating to Crofting (Cm 2187)
	142	*Pension Schemes Bill – Report on the Consolidation of the Legislation relating to Pension Schemes (Cm 2184)
	143	*Health Service Commissioners Bill – Report on the Consolidation of the Legislation relating to the Health Service Commissioners (Cm 2255)
	144	Report on Formation of Contract: Scottish Law and the United Nations Convention on Contracts for the International Sale of Goods
	145	*Sale of Goods Forming Part of a Bulk
	146	Twenty-Eighth Annual Report 1992-93
<b>1994</b>	147	Report on Forfeiture and Confiscation (2 vols) (Cm 2622)
	148	Twenty-Ninth Annual Report 1993-94
<b>1995</b>	149	Evidence: Report on Hearsay Evidence in Criminal Proceedings
	150	*Statute Law Revision: Fifteenth Report - Draft Statute Law (Repeals) Bill (Cm 2784)

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

**2 Scottish Law Commission – Consultative memoranda/Discussion papers circulated for comment and criticism**

			<i>No of Resulting Report</i>
<b>1966</b>	Memorandum No 1	Probates or Letters of Administration as Links in Title to Heritable Property under the Succession (Scotland) Act 1964	
	Memorandum No 2	Expenses in Criminal Cases	
<b>1967</b>	Memorandum No 3	Restrictions on the Creation of Liferents	
	Memorandum No 4	Applications for Planning Permission	
	Memorandum No 5	Damages for Injuries Causing Death	
	*Memorandum No 6	Interpretation of Statutes	11
<b>1968</b>	*Memorandum No 7	Provisional Proposals Relating to Sale of Goods	12
	Memorandum No 8	Draft Evidence Code - First Part	
<b>1969</b>	Memorandum No 9	Prescription and Limitation of Actions	15
	Memorandum No 10	Examination of the Companies (Floating Charges) (Scotland) Act 1961	14
	Memorandum No 11	Presumptions of Survivorship and Death	34
	Memorandum No 12	Judgments Extension Acts	
<b>1970</b>	Memorandum No 13	Jurisdiction in Divorce	25
<b>1971</b>	Memorandum No 14	Remedies in Administrative Law	
	*Memorandum No 15	The Exclusion of Liability for Negligence in the Sale of Goods and Exemption Clauses for the Supply of Services and other Contracts	39
	Memorandum No 16	Insolvency, Bankruptcy and Liquidation	68
<b>1972</b>	Memorandum No 17	Damages for Injuries Causing Death	31 and 64

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

			<i>No of Resulting Report</i>
<b>1974</b>	Memorandum No 18	Liability of a Paramour in Damages for Adultery and Enticement of a Spouse	42
	Memorandum No 19	Powers of Judicial Factors	59
<b>1975</b>	*Memorandum No 20	Liability for Defective Products	45
	Memorandum No 21	Damages for Personal Injuries – Deductions and Heads of Claim	51
<b>1976</b>	Memorandum No 22	Aliment and Financial Provision (2 Vols)	67
	*Memorandum No 23	Custody of Children – Jurisdiction and Enforcement within the United Kingdom	91
	Memorandum No 24	Corporeal Moveables – General Introduction and Summary of Provisional Proposals	
	Memorandum No 25	Corporeal Moveables - Passing of Risk and of Ownership	
	Memorandum No 26	Corporeal Moveables - Some Problems of Classification	
	Memorandum No 27	Corporeal Moveables - Protection of the Onerous <i>bona fide</i> Acquirer of Another's Property	
	Memorandum No 28	Corporeal Moveables - Mixing, Union and Creation	
	Memorandum No 29	Corporeal Moveables - Lost and Abandoned Property	57
	Memorandum No 30	Corporeal Moveables - Usucapion or Acquisitive Prescription	
	Memorandum No 31	Corporeal Moveables – Remedies	
	Memorandum No 32	Comments on White Paper ' <i>Our Changing Democracy: Devolution to Scotland and Wales</i> '	
Memorandum No 33	Appendix – Devolution, Scots Law and the Role of the Commission Law of Rights in Security – Company Law – Registration of Charges: Scotland		

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

			<i>No of Resulting Report</i>
<b>1977</b>	Memorandum No 34	Constitution and Proof of Voluntary Obligations – General Introduction and Summary of Provisional Proposals	
	Memorandum No 35	Constitution and Proof of Voluntary Obligations – Unilateral Promises	
	Memorandum No 36	Constitution and Proof of Voluntary Obligations – Formation of Contract	144
	Memorandum No 37	Constitution and Proof of Voluntary Obligations – Abortive Constitution	
	Memorandum No 38	Constitution and Proof of Voluntary Obligations – Stipulations in Favour of Third Parties	
	Memorandum No 39	Constitution and Proof of Voluntary Obligations – Formalities of Constitution and Restrictions on Proof	112
	Memorandum No 40	Confidential Information	90
<b>1978</b>	Memorandum No 41	Family Law: Occupancy Rights in the Matrimonial Home and Domestic Violence (2 Vols)	60
	Memorandum No 42	Defective Consent and Consequential Matters (2 Vols)	92
<b>1979</b>	Memorandum No 43	Defective Expression and its Correction	79
<b>1980</b>	Memorandum No 44	The Law of Incest in Scotland	69
	Memorandum No 45	Time-Limits in Actions for Personal Injuries	74
	Memorandum No 46	The Law of Evidence	78 and 100
	Memorandum No 47	First Memorandum on Diligence: General Issues and Introduction	95
	Memorandum No 48	Second Memorandum on Diligence: Poindings and Warrant Sales	95

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

		<i>No of Resulting Report</i>	
	Memorandum No 49	Third Memorandum on Diligence: Arrestment and Judicial Transfer of Earnings	95
	Memorandum No 50	Fourth Memorandum on Diligence: Debt Arrangement Schemes	95
	Memorandum No 51	Fifth Memorandum on Diligence: Administration of Diligence	95
	Memorandum No 52	Irritancies in Leases	75
<b>1982</b>	Memorandum No 53	Family Law: Illegitimacy	82
	Memorandum No 54	Some Obsolete and Discriminatory Rules in the Law of Husband and Wife	76
	Memorandum No 55	Civil Liability in relation to Animals	97
	*Memorandum No 56	Polygamous Marriages (Capacity to Contract a Polygamous Marriage and the Concept of the Potentially Polygamous Marriage)	96
<b>1983</b>	Memorandum No 57	Matrimonial Property	86
	*Memorandum No 58	Sale and Supply of Goods	104
<b>1984</b>	Memorandum No 59	Recovery of Possession of Heritable Property	118
	Memorandum No 60	Mobbing and Rioting	
	Memorandum No 61	Attempted Homicide	
	*Memorandum No 62	Private International Law: Choice of Law in Tort and Delict	129
<b>1985</b>	*Memorandum No 63	Private International Law: The Law of Domicile	107
	*Memorandum No 64	Private International Law: Choice of Law Rules in Marriage	105
	Memorandum No 65	Legal Capacity and Responsibility of Minors and Pupils	110

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

		<i>No of Resulting Report</i>	
	Memorandum No 66	Constitution and Proof of Voluntary Obligations and the Authentication of Writings	112
	Memorandum No 67	Child Abduction	102
<b>1986</b>	Memorandum No 68	Computer Crime	106
	Memorandum No 69	Intestate Succession and Legal Rights	124
	Memorandum No 70	The Making and Revocation of Wills	124
	Memorandum No 71	Some Miscellaneous Topics in the Law of Succession	124
	Memorandum No 72	Floating Charges and Receivers	
	Memorandum No 73	Civil Liability - Contribution	115
<b>1987</b>	Discussion Paper No 74	Prescription and Limitation of Actions (Latent Damage)	122
<b>1988</b>	Discussion Paper No 75	The Evidence of Children and Other Potentially Vulnerable Witnesses	125
	Discussion Paper No 76	The Ground for Divorce - Should the Law be Changed?	116
	Discussion Paper No 77	Criminal Evidence - Affidavit Evidence, Hearsay and Related Matters in Criminal Proceedings	137 and 149
	Discussion Paper No 78	Adjudications for Debt and Related Matters (2 Vols)	
	Discussion Paper No 79	Equalisation of Diligences	
	Discussion Paper No 80	Evidence - Blood Group Tests, DNA Tests and Related Matters	120
<b>1989</b>	Discussion Paper No 81	Passing of Risk in Contracts for the Sale of Land	127
	Discussion Paper No 82	Forfeiture and Confiscation	
	Discussion Paper No 83	Bulk Goods: Section 16 of the Sale of Goods Act 1979 and Section 1 of the Bills of Lading Act 1855	130
	Discussion Paper No 84	Diligence on the Dependence and Admiralty Arrestments	

			<i>No of Resulting Report</i>
<b>1990</b>	Discussion Paper No 85	Family Law: Pre-Consolidation Reforms	135
	Discussion Paper No 86	The Effects of Cohabitation in Private Law	135
	Discussion Paper No 87	Statutory Fees for Arrestees	133
	Discussion Paper No 88	Parental Responsibilities and Rights, Guardianship and the Administration of Children's Property	135
	Discussion Paper No 89	The Effect of Death on Damages	134
	Discussion Paper No 90	Extra-Territorial Effect of Arrestments and Related Matters	
	Discussion Paper No 91	Law of the Tenement	
<b>1991</b>	Discussion Paper No 92	Confidentiality in Family Mediation	136
	Discussion Paper No 93	Property Law - Abolition of the Feudal System	
	Discussion Paper No 94	Mentally Disabled Adults - Legal Arrangements for Managing their Welfare and Finances	
<b>1993</b>	Discussion Paper No 95	Recovery of Benefits Conferred under Error of Law (2 Vols)	
<b>1994</b>	Discussion Paper No 96	Mentally Disordered and Vulnerable Adults: Public Authority Powers	
	Discussion Paper No 97	Contract Law - Extrinsic Evidence, Supersession and the Actio Quanti Minoris	
	Discussion Paper No 98	Multi-Party Actions: Court Proceedings and Funding Multi-Party Actions: Report by Working Party set up by Scottish Law Commission	

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

### 3 Scottish Law Commission – Other published documents

- 1974            \*Private International Law – Consultative Document on EEC Preliminary Draft Convention on the Law applicable to Contractual and Non-Contractual Obligations
- 1979            Research Paper on the Law of Evidence of Scotland by Sheriff I D Macphail
- 1984            Research Paper on Actions of Ejection and Removing by Mr A G M Duncan
- 1986            Report of Working Party on Security over Moveable Property
- 1988            Research Paper on Evidence from Children – Alternatives to In-court Testimony in Criminal Proceedings in the United States of America by Kathleen Murray
- 1991            Report on the Effect of the Execution of Diligence on the Operation of Prescription
- 1993            Responses to 1993 Review of Criminal Evidence and Criminal Procedure - Programming of Business in the Sheriff Courts.

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

- 1969            Married Women's Policies of Assurance (Scotland) Act 1880 – Working Paper
- 1973            Consultation Paper on Divorce for Incurable Insanity
- 1974            Insolvency, Bankruptcy and Liquidation in Scotland – Consultative Paper
- 1978            Consultation Document - Private International Law: Choice of Law Rules in the EEC Draft Insurance Services Directive
- 1979            Consultation Paper - Bankruptcy: *Gibson v Hunter Home Designs Ltd*  
Consultative Note on section 5(6) of the Damages (Scotland) Act 1976

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

- 1980 Consultation Paper - Prescription and Limitation in Private International Law
- 1981 Consultation Paper - Financial Provision after Foreign Divorce
- 1982 Consultation Paper - Exchange of Standard Term Forms in Contract Formation  
Consultation Paper - Breach of Confidence
- 1983 Consultation Paper - Custody of Children: Jurisdiction and Enforcement within the United Kingdom: Jurisdiction of the Sheriff Court  
Supplementary Consultation Paper - Conflicts of Jurisdiction affecting the Custody of Children  
Consultation Paper - Illegitimacy and the Guardianship Acts  
\*Consultation Paper - Recognition of Foreign Nullity Decrees and Related Matters
- 1984 Consultation Paper - Art and Part Guilt of Statutory Offences
- 1986 Consultation Paper - The Scottish Term and Quarter Days: A Statutory Definition (Resulting Report - Scot Law Com No 108)  
Consultation Paper - Termination of Leases: Contracting Out of the Statutory Notice Provisions
- 1990 Arrestments of Ships Securing Claims against Demise Charterers  
Consultation Paper - The Effect of the Execution of Diligence on the Operation of Prescription
- 1991 \*Supplementary Consultation Paper - Sale of Goods Forming Part of a Bulk - Insolvency Aspects
- 1992 Consultative Paper - Mutual Boundary Walls  
  
\*Consultation Paper on Formation of Contract: Scottish Law and the United Nations Convention on Contracts for the International Sale of Goods (Resulting Report Scot Law Com No 144)
- 1994 Consultation Paper on the Law of Bankruptcy: Solatium for Personal Injury/Future Wage Loss.

## 5 Scottish Law Commission - Unpublished Documents

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

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

# Appendix III

## Statutory Provisions relating to the Scottish Law Commission's Proposals

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
(a) <i>Memoranda</i>		
Restrictions on the Creation of Liferents (Memorandum No 3)	5.5.67	Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c 70), section 18
Applications for Planning Permission (Memorandum No 4)	11.5.67	Town and Country Planning (Scotland) Act 1969 (c 30), section 79
(b) <i>Reports</i>		
Proposals for Reform of the Law of Evidence Relating to Corroboration (Scot Law Com No 4)	20.4.67	Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c 70), section 9
Reform of the Law Relating to Legitimation <i>per subsequens matrimonium</i> (Scot Law Com No 5) (Cmnd 3223)	20.4.67	Legitimation (Scotland) Act 1968 (c 22), Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c 70), section 5
Divorce - The Grounds Considered (Scot Law Com No 6) (Cmnd 3256)	12.5.67	Divorce (Scotland) Act 1976 (c 39)
*Sea Fisheries (Shellfish) Bill (Scot Law Com No 6A) (Cmnd 3267)	11.5.67	Sea Fisheries (Shellfish) Act 1967 (c 83)
*Trustee Savings Banks Bill (Scot Law Com No 10)	17.4.69	Trustee Savings Banks Act 1969 (c 50)
*The Interpretation of Statutes (Scot Law Com No 11)	11.6.69	None
*Exemption Clauses in Contracts - First Report: Amendment to the Sale of Goods Act 1893 (Scot Law Com No 12)	18.9.69	Supply of Goods (Implied Terms) Act 1973 (c 13)

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

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
The Companies (Floating Charges) (Scotland) Act 1961 (Scot Law Com No 14) (Cmnd 4336)	22.4.70	The Companies (Floating Charges and Receivers) (Scotland) Act 1972 (c 67)
Reform of the Law Relating to Prescription and Limitation of Actions (Scot Law Com No 15)	27.11.70	Prescription and Limitation (Scotland) Act 1973 (c 52)
*Hague Convention on Recognition of Divorces and Legal Separations (Scot Law Com No 16) (Cmnd 4542)	1.12.70	Recognition of Divorce and Legal Separations Act 1971 (c 53)
*Coinage Bill (Scot Law Com No 18) (Cmnd 4544)	26.11.70	Coinage Act 1971 (c 24)
*Vehicles (Excise) Bill (Scot Law Com No 19) (Cmnd 4547)	2.12.70	Vehicles (Excise) Act 1971 (c 10)
*National Savings Bank Bill (Scot Law Com No 20) (Cmnd 4574)	13.1.71	National Savings Bank Act 1971 (c 29)
*Taxation of Income and Gains derived from Land (Scot Law Com No 21) (Cmnd 4654)	23.4.71	In part by section 82 of the Finance Act 1972 (c 41)
*The Road Traffic Bill (Scot Law Com No 22) (Cmnd 4731)	26.7.71	Road Traffic Act 1972 (c 20)
Town and Country Planning (Scotland) Bill (Scot Law Com No 24) (Cmnd 4949)	20.4.72	Town and Country Planning (Scotland) Act 1972 (c 52)
Family Law – Report on Jurisdiction in Consistorial Causes affecting Matrimonial Status (Scot Law Com No 25)	29.9.72	Domicile and Matrimonial Proceedings Act 1973 (c 45)
*Statute Law Revision - Fourth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 26) (Cmnd 5108)	28.9.72	Statute Law (Repeals) Act 1973 (c 39)

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

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
Report on Liability for Antenatal Injury (Scot Law Com No 30) (Cmnd 5371)	30.8.73	None required
Report on the Law Relating to Damages for Injuries Causing Death (Scot Law Com No 31)	24.10.73	Damages (Scotland) Act 1976 (c 13)
*Statute Law Revision - Fifth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 32) (Cmnd 5493)	6.12.73	Statute Law (Repeals) Act 1974 (c 22)
Report on Presumption of Death (Scot Law Com No 34)	3.9.74	Presumption of Death (Scotland) Act 1977 (c 27)
*Friendly Societies Bill (Scot Law Com No 35) (Cmnd 5634)	27.6.74	Friendly Societies Act 1974 (c 46)
*Statute Law Revision - Sixth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 36) (Cmnd 5792)	5.12.74	Statute Law (Repeals) Act 1975 (c 10)
*Supply Powers Bill (Scot Law Com No 38) (Cmnd 5850)	6.1.75	Supply Powers Act 1975 (c 9)
*Exemption Clauses - Second Report (Scot Law Com No 39)	2.10.75	Unfair Contract Terms Act 1977 (c 50)
*Statute Law Revision - Seventh Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 40) (Cmnd 6303)	8.12.75	Statute Law (Repeals) Act 1976 (c 16)
Family Law - Report on Liability for Adultery and Enticement of a Spouse (Scot Law Com No 42)	23.6.76	In part by section 10 of the Divorce (Scotland) Act 1976 (c 39)
*Statute Law Revision - Eighth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 44) (Cmnd 6719)	6.1.77	Statute Law (Repeals) Act 1977 (c 18)

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

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
*Liability for Defective Products (Scot Law Com No 45) (Cmnd 6831)	15.6.77	Consumer Protection Act 1987 (c 43)
*Statute Law Revision - Ninth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 48) (Cmnd 7189)	11.5.78	Statute Law (Repeals) Act 1978 (c 45)
Electricity (Scotland) Bill (Scot Law Com No 49) (Cmnd 7178)	23.5.78	Electricity (Scotland) Act 1979 (c 11)
Adoption (Scotland) Bill (Scot Law Com No 50) (Cmnd 7187)	3.5.78	Adoption (Scotland) Act 1978 (c 28)
Damages for Personal Injuries: Report on (1) Admissibility of Claims for Services (2) Admissible Deductions (Scot Law Com No 51)	18.7.78	Administration of Justice Act 1982 (c 53), Part II
Report on the Married Women's Policies of Assurance (Scotland) Act 1880 (Scot Law Com No 52) (Cmnd 7245)	27.7.78	Married Women's Policies of Assurance (Scotland) (Amendment) Act 1980 (c 56)
*Interpretation Bill (Scot Law Com No 53) (Cmnd 7235)	8.6.78	Interpretation Act 1978 (c 30)
*Customs and Excise Management Bill (Scot Law Com No 54) (Cmnd 7418)	7.12.78	Customs and Excise Management Act 1979 (c 2)
Report on Lost and Abandoned Property (Scot Law Com No 57)	16.1.80	In part by the Civic Government (Scotland) Act 1982 (c 45), Part VI
Education (Scotland) Bill (Scot Law Com No 58) (Cmnd 7688)	2.4.80	Education (Scotland) Act 1980 (c 44)
Report on Powers of Judicial Factors (Scot Law Com No 59) (Cmnd 7904)	3.7.80	Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c 55), section 8
Report on Occupancy Rights in the Matrimonial Home and Domestic Violence (Scot Law Com No 60)	17.7.80	Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c 59)

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<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
*Judicial Pensions Bill (Scot Law Com No 62) (Cmnd 8097)	27.11.80	Judicial Pensions Act 1981 (c 20)
*Statute Law Revision – Tenth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 63) (Cmnd 8089)	10.12.80	Statute Law (Repeals) Act 1981 (c 19)
Report on Section 5 of the Damages (Scotland) Act 1976 (Scot Law Com No 64)	29.4.81	Administration of Justice Act 1982 (c 53), Part II
*Trustee Savings Banks Bill (Scot Law Com No 65) (Cmnd 8257)	11.6.81	Trustee Savings Banks Act 1981 (c 65)
*Report on the Council of Europe Conventions on Foreign Money Liabilities (1967) and on the Place of Payment of Money Liabilities (1972) (Scot Law Com No 66) (Cmnd 8318)	28.7.81	None required
Family Law - Report on Aliment and Financial Provision (Scot Law Com No 67)	5.11.81	Family Law (Scotland) Act 1985 (c 37)
Report on Bankruptcy and Related Aspects of Insolvency and Liquidation (Scot Law Com No 68)	26.2.82	Bankruptcy (Scotland) Act 1985 (c 66)
Report on the Law of Incest in Scotland (Scot Law Com No 69) (Cmnd 8422)	23.12.81	Incest and Related Offences (Scotland) Act 1986 (c 36)
Report on Financial Provision after Foreign Divorce (Scot Law Com No 72)	28.10.82	Matrimonial and Family Proceedings Act 1984 (c 42), Part IV
Prescription and Limitation of Actions – Report on Personal Injuries Actions and Private International Law Questions (Scot Law Com No 74)	10.2.83	Prescription and Limitation (Scotland) Act 1984 (c 45)

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<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
Report on Irritancies in Leases (Scot Law Com No 75) (Cmnd 8760)	17.2.83	Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c 73)
Family Law - Report on Outdated Rules in the Law of Husband and Wife (Scot Law Com No 76)	12.5.83	Law Reform (Husband and Wife) (Scotland) Act 1984 (c 15)
*Medical Bill (Scot Law Com No 77) (Cmnd 8839)	24.3.83	Medical Act 1983 (c 54)
Report on Evidence in Cases of Rape and Other Sexual Offences (Scot Law Com No 78)	21.7.83	Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c 73)
Report on Rectification of Contractual and Other Documents (Scot Law Com No 79)	28.7.83	Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c 73)
The Mental Element in Crime (Scot Law Com No 80)	23.11.83	None required
Family Law - Report on Illegitimacy (Scot Law Com No 82)	26.1.84	Law Reform (Parent and Child) (Scotland) Act 1986 (c 9)
*Amendment of the Companies Acts 1948-1983 (Scot Law Com No 83) (Cmnd 9114)	21.12.83	Companies Acts (Pre-Consolidation Amendments) Order 1983 (S.I. 1983/134) Companies Act 1985 (c 6)
*Dentists Bill (Scot Law Com No 84) (Cmnd 9119)	18.1.84	Dentists Act 1984 (c 24)
*Road Traffic Regulation Bill (Scot Law Com No 85) (Cmnd 9162)	21.2.84	Road Traffic Regulation Act 1984 (c 27)
Family Law - Report on Matrimonial Property (Scot Law Com No 86)	21.6.84	Family Law (Scotland) Act 1985 (c 37)
*Further Amendments of the Companies Acts 1948-1983 (Scot Law Com No 87) (Cmnd 9272)	25.6.84	Companies Acts (Pre-Consolidation Amendments) (No 2) Order 1984 (S.I. 1984/1169) Companies Act 1985 (c 6)

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<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
*Private International Law – Report on Recognition of Foreign Nullity Decrees and Related Matters (Scot Law Com No 88) (Cmnd 9341)	19.9.84	Family Law Act 1986 (c 55)
Report on Breach of Confidence (Scot Law Com No 90)	20.12.84	None required
*Family Law - Report on Custody of Children: Jurisdiction and Enforcement within the United Kingdom (Scot Law Com No 91) (Cmnd 9419)	15.1.85	Family Law Act 1986 (c 55)
Obligations - Report on Negligent Misrepresentation (Scot Law Com No 92)	24.1.85	Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c 73)
Report on Art and Part Guilt of Statutory Offences (Scot Law Com No 93) (Cmnd 9551)	18.7.85	Criminal Justice (Scotland) Act 1987 (c 41)
*Report on the Consolidation of the Housing Acts – Housing Bill, Housing Associations Bill, Landlord and Tenant Bill (Scot Law Com No 94) (Cmnd 9515)	10.5.85	Housing Associations Act 1985 (c 69)
Report on Diligence and Debtor Protection (Scot Law Com No 95)	14.11.85	In part by Debtors (Scotland) Act 1987 (c 18)
*Private International Law – Polygamous Marriages: Report on Capacity to Contract a Polygamous Marriage and Related Issues (Scot Law Com No 96)	8.8.85	Private International Law (Miscellaneous Provisions) Bill before Parliament
Obligations – Report on Civil Liability in relation to Animals (Scot Law Com No 97)	8.11.85	Animals (Scotland) Act 1987 (c 9)

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<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
*Statute Law Revision - Twelfth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 99) (Cmnd 9648)	14.11.85	Statute Law (Repeals) Act 1986 (c 12)
Evidence - Report on Corroboration, Hearsay and Related Matters in Civil Proceedings (Scot Law Com No 100)	22.5.86	Civil Evidence (Scotland) Act 1988 (c 32)
Report on Child Abduction (Scot Law Com No 102) (Cm 64)	12.2.87	None
Housing (Scotland) Bill (Scot Law Com No 103) (Cm 104)	17.3.87	Housing (Scotland) Act 1987 (c 26)
*Report on Sale and Supply of Goods (Scot Law Com No 104) (Cm 137)	28.5.87	Sale of Goods Amendments Act 1995 (c 28)
* Private International Law - Report on Choice of Law Rules in Marriage (Scot Law Com No 105)	2.7.87	Foreign Marriage (Amendment) Act 1988 (c 44)
Report on Computer Crime (Scot Law Com No 106) (Cm 174)	23.7.87	In part by Computer Misuse Act 1990 (c 18)
*Private International Law - Report on the Law of Domicile (Scot Law Com No 107) (Cm 200)	3.9.87	None
Report on the Scottish Term and Quarter Days (Scot Law Com No 108) (Cm 208)	29.10.87	Term and Quarter Days (Scotland) Act 1990 (c 22)
Report on the Legal Capacity and Responsibility of Minors and Pupils (Scot Law Com No 110)	17.12.87	Age of Legal Capacity (Scotland) Act 1991 (c 50)

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<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
Court of Session Bill - Report on the Consolidation of Certain Enactments and the Repeal of Other Enactments relating to the Court of Session (Scot Law Com No 111) (Cm 315)	9.3.88	Court of Session Act 1988 (c 36)
Report on Requirements of Writing (Scot Law Com No 112)	13.7.88	Requirements of Writing (Scotland) Act 1995 (c 7)
*Road Traffic Bill, Road Traffic Offenders Bill, Road Traffic (Consequential Provisions) Bill - Report on the Consolidation of Certain Enactments Relating to Road Traffic (Scot Law Com No 113) (Cm 390)	6.6.88	Road Traffic Act 1988 (c 52), Road Traffic Offenders Act 1988 (c 53), Road Traffic (Consequential Provisions) Act 1988 (c 54)
Report on Civil Liability - Contribution (Scot Law Com No 115)	15.12.88	None
Report on Reform of the Ground for Divorce (Scot Law Com No 116)	28.4.89	None
*Statute Law Revision - Thirteenth Report - Draft Statute Law (Repeals) Bill (Scot Law Com No 117) (Cm 671)	4.5.89	Statute Law (Repeals) Act 1989 (c 43)
Report on Recovery of Possession of Heritable Property (Scot Law Com No 118) (Cm 724)	25.8.89	None
*Extradition Bill - Report on the Consolidation of Legislation Relating to Extradition (Scot Law Com No 119) (Cm 712)	27.6.89	Extradition Act 1989 (c 33)
Evidence: Blood Group Tests, DNA Tests and Related Matters (Scot Law Com No 120)	19.10.89	Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c 40) and the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c 9)

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<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
*Opticians Bill – Report on the Consolidation of Legislation Relating to Opticians (Scot Law Com No 121) (Cm 738)	11.7.89	Opticians Act 1989 (c 44)
Report on Prescription and Limitation of Actions (Latent Damage and Other Related Issues) (Scot Law Com No 122) (Cm 790)	12.10.89	None
Report on Succession (Scot Law Com No 124)	25.1.90	None
Report on the Evidence of Children and Other Potentially Vulnerable Witnesses (Scot Law Com No 125)	15.2.90	Partial implementation in the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c 40) and the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c 9)
Report on the Passing of Risk in Contracts for the Sale of Heritable Property (Scot Law Com No 127)	18.10.90	None
*Private International Law – Choice of Law in Tort and Delict (Scot Law Com No 129)	12.12.90	Private International Law (Miscellaneous Provisions) Bill before Parliament
Report on the Effect of the Execution of Diligence on the Operation of Prescription (see Appendix II, 3 (not published by HMSO))	20.3.91	None
*Rights of Suit in Respect of Carriage of Goods by Sea (Scot Law Com No 130)	20.3.91	Carriage of Goods by Sea Act 1992 (c 50)
*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 (Scot Law Com No 132) (Cm 1726)	5.11.91	Social Security Contributions and Benefits Act 1992 (c 4), Social Security Administration Act 1992 (c 5), Social Security (Consequential Provisions) Act 1992 (c 6)

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<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
Report on Statutory Fees for Arrestees (Scot Law Com No 133)	23.1.92	None
Report on The Effect of Death on Damages (Scot Law Com No 134) (Cm 1848)	5.3.92	Damages (Scotland) Act 1993 (c 5)
Report on Family Law (Scot Law Com No 135)	7.5.92	Partial implementation - Children (Scotland) Act 1995 (c 36)
Report on Evidence: Protection of Family Mediation (Scot Law Com No 136)	4.11.92	Civil Evidence Family Mediation Act 1995 (c 6)
Report on Documentary Evidence and Proof of Undisputed Facts in Criminal Proceedings (Scot Law Com No 137)	21.10.92	Partial implementation in Prisoners and Criminal Proceedings (Scotland) Act 1993 (c 9)
*Clean Air Bill - Report on the Consolidation of Certain Enactments relating to Clean Air (Scot Law Com No 138)	10.11.92	Clean Air Act 1993 (c 11)
*Statute Law Revision: Fourteenth Report - Draft Statute Law (Repeals) Bill (Scot Law Com No 140)	27.4.93	Statute Law Repeals Act 1993 (c 50)
Crofters (Scotland) Bill - Report on the Consolidation of Certain Enactments relating to Crofting (Scot Law Com No 141)	24.5.93	Crofters (Scotland) Act 1993 (c 44)
*Pension Schemes Bill - Report on the Consolidation of the legislation relating to Pension Schemes (Scot Law Com No 142)	11.5.93	Pensions Schemes Act 1993 (c 48)
*Health Service Commissioners Bill - Report on the Consolidation of the legislation relating to the Health Service Commissioners (Scot Law Com No 143)	15.6.93	Health Service Commissioners Act 1993 (c 46)

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<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
Report on Formation of Contract: Scottish Law and the United Nations Convention on Contracts for the International Sale of Goods (Scot Law Com No 144)	22.7.93	None
*Sale of Goods Forming Part of a Bulk (Scot Law Com No 145)	21.7.93	Sale of Goods (Amendment) Act 1995 (c 28)
Report on Forfeiture and Confiscation (Scot Law Com No 146) (Cm 2622)	8.9.94	Criminal Justice (Scotland) Act 1995 (c 20)
Evidence: Report on Hearsay Evidence in Criminal Proceedings (Scot Law Com No 149)	22.2.95	Criminal Justice (Scotland) Act 1995 (c 20)
*Statute Law Revision: Fifteenth Report - Draft Statute Law (Repeals) Bill (Scot Law Com No 150) (Cm 2784)	22.3.95	Statute Law (Repeals) Bill before Parliament.

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