

# Scottish Law Commission

(SCOT LAW COM No 156)

## THIRTY-FIRST ANNUAL REPORT 1995–96

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 J G S Maclean.<sup>1</sup> Its offices are at 140 Causewayside, Edinburgh, EH9 1PR.

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1. Mr Kenneth F Barclay was Secretary of the Commission until 31 August 1996.

SCOTTISH LAW COMMISSION

**Report for the year ended 15th June, 1996**

To: The Rt Hon 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 Thirty-First 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

J G S MACLEAN, *Secretary*  
23 September 1996

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



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# Part I Introduction

1.1 During the year covered by this report, we published our reports on *Incapable Adults*<sup>1</sup> and on *Three Bad Rules in Contract Law*,<sup>2</sup> and we completed our report on *Multi-Party Actions*.<sup>3</sup> In addition a report was submitted jointly by both Commissions on the *Chronological Table of Local Legislation*.<sup>4</sup> We also completed work on our discussion paper entitled *Interpretation in Private Law*,<sup>5</sup> and published discussion papers on *Judicial Abolition of the Error of Law Rule and its Aftermath*<sup>6</sup> and on *Recovery of Ultra Vires Public Authority Receipts and Disbursements*.<sup>7</sup>

1.2 Our record of implementation fell short of that achieved in the preceding year, but we note with satisfaction the enactment of the Private International Law (Miscellaneous Provisions) Act 1995 (c 42) which implemented joint reports of the Law Commissions on *Polygamous Marriages*<sup>8</sup> and *Choice of Law in Tort and Delict*.<sup>9</sup> In our last annual report<sup>10</sup> we suggested that priority should be accorded to implementation of at least part of our proposed reforms of the law of succession as well as of our remaining recommendations on family law. Although we are disappointed that since then no steps have been taken to implement these proposed reforms, we have been pleased to learn that the recommendations contained in our report on *Three Bad Rules in Contract Law* have been approved by the Government and that steps will be taken for their early implementation.

1.3 Implementation of our report on *Incapable Adults* calls for special mention. On 18 June 1996 in answer to a Parliamentary Question, the Secretary of State announced that, having given careful consideration to that report, he had decided in favour of further consultation on the basis of our proposals and that he intended to issue a consultation paper in the summer of 1996. In making this decision the Secretary of State acknowledged the consultation which we had carried out before we reached our conclusions. But he also recognised that many people will have strong views on our proposals. We believe that our recommendations for incapable adults can conveniently be divided into two main parts. In the first part, which in length and range is by far the larger, we have made detailed recommendations for new procedures for looking after the property, finances and personal welfare of mentally incapable adults. These recommendations emerged as a result of a prolonged and searching consultative process with, among others, representatives of agencies which are directly involved in these matters. The recommendations won wide support from our main consultees who have expressed a desire to see them implemented at an early date. In our view the provision of resources required to implement these reforms deserves to be given a high priority. Once these resources have been found we consider that the proposals should be placed before Parliament for early consideration.

1.4 The second part of our recommendations is in a different position. These raise two issues of profound public importance which are highly controversial. As we explained in our last annual report,<sup>11</sup> the first of these concerns the effect to be given

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1. Scot Law Com No 151.

2. Scot Law Com No 152.

3. Scot Law Com No 154, published in July 1996.

4. Law Com No 239; Scot Law Com No 155, published in July 1996.

5. Discussion Paper No 101, published in August 1996.

6. Discussion Paper No 99.

7. Discussion Paper No 100.

8. *Private International Law: Polygamous Marriages*, Law Com No 146; Scot Law Com No 96.

9. *Private International Law: Choice of Law in Tort and Delict*, Law Com No 193; Scot Law Com No 129.

10. Thirtieth Annual Report 1994-95, Scot Law Com No 153, para 1.3.

11. Thirtieth Annual Report 1994-95, Scot Law Com No 153, para 2.34.

to so-called “living wills” or “advance statements” made by a person when capable as to the treatment to be afforded after incapacity has supervened. The second concerns the withholding or withdrawal of medical treatment which is likely to be of no benefit, especially where it will result in the patient’s death. Both of these issues became subjects of public concern after our discussion paper was published.

1.5 The second issue, which was not specifically canvassed in our discussion paper, came to the attention of a wider public through the decision of the House of Lords in the English appeal of *Airedale NHS Trust v Bland* [1993] AC 789. That case was concerned with the withdrawal of artificial nutrition and hydration from a patient who was in a persistent vegetative state. Although the speeches of their Lordships influenced both Law Commissions in formulating recommendations relating to the withdrawal of artificial nutrition and hydration, the Scottish public became more aware of the ethical problems raised by the second issue in March 1996. A five-judge court in *Law Hospital NHS Trust v Lord Advocate and Others* 1996 SLT 848 held that, from the standpoint of civil law, it was competent for the Lord Ordinary to grant a declarator that it would not be unlawful for the applicants to withdraw artificial nutrition and hydration from a patient who had been in a persistent vegetative state for four years. The court also indicated, however, that in future cases of this nature where a decision by a court was required the appropriate procedure would be by an application to the *parens patriae* jurisdiction of the Court of Session.

1.6 Before finalising our recommendations on each of these difficult issues we had meetings with, among others, representatives of the Scottish medical profession. We believe that the procedures which we have recommended for dealing with these two issues accurately reflect the opinion of informed Scottish consultees. Nevertheless we consider that ample time should be allowed to enable the additional consultation process that is promised to be undertaken. The time spent on this process will not be wasted if the issues are explained with balance and restraint so as to minimise the risk of suspicion and misunderstanding. The two issues which we have described pose serious challenges to the medical profession. They also have profound consequences for patients and their families. Although it may be thought that the two recent court cases referred to afford a measure of protection to medical carers, we respectfully agree with the judicial assertions made in each case that issues of such complexity and gravity call for the intervention of Parliament. During the period of reflection and discussion preceding the introduction of any proposed legislation on these two issues, we trust that our report will make a positive contribution to the debate. We do not consider that either of the two issues admits of solutions based solely on extreme and unqualified moral propositions.

1.7 The main object of the recommendations contained in our report on *Multi-Party Actions*<sup>1</sup> has been to outline a procedure by which a single court action can be used to resolve factual or legal issues which are common to a plurality of claimants. Although we have derived help from the experience of such procedures in other jurisdictions, in certain important respects we have declined to follow them. For example, differing from the practice adopted in parts of North America, we have not recommended an opt-out procedure whereby claimants would automatically be included in the group and would remain there unless they formally dissociated themselves from the action.<sup>2</sup> We agreed with the majority of consultees that it would be contrary to traditional tenets of individual freedom to deprive a person of the right to choose whether or not to pursue an action.

1.8 We have also recommended that, at least during its initial period, the procedure which we have outlined should be restricted to the Court of Session. In jurisdictions which have class action procedures there have been litigations involving thousands of claimants and raising complex issues. Such litigations present immense management difficulties. We firmly believe that it will assist the introduction of class action procedure in Scotland that these difficulties should be resolved first of all in the

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1. Scot Law Com No 154, published in July 1996.

2. This matter is discussed in paragraphs 4.47 to 4.57 of our report.

Court of Session, and that the experience gained there should in due course provide a source of authoritative guidance for the sheriff court. In this connection the draft Act of Sederunt regulating group proceedings which is appended to our report contains a rule<sup>1</sup> which entitles the Court at its own instance to make such order or direction as may appear appropriate to ensure that the proceedings are conducted fairly and without avoidable delay. We have favoured a rule framed in such general terms because the nature and range of management issues raised by a novel procedure cannot be forecast with sufficient accuracy to enable a body of more detailed rules to be devised. We consider that our preference for court management rules expressed in general terms is consistent with the special rules regulating Court of Session commercial actions<sup>2</sup> as well as the approach to case management adopted by Lord Cullen in his Review of Business of the Outer House of the Court of Session.<sup>3</sup>

1.9 In recommending a procedure for group actions we are anxious to avoid the danger of the Court becoming unnecessarily involved in disputes among members of a group concerning the handling of their claims.<sup>4</sup> We are aware that the Scottish legal profession has dealt effectively with multiple claims arising out of single event disasters such as Piper Alpha. We also recognise that existing procedures give warning that in some situations the claimants may not share “common or similar issues of fact or law”. We refer to *Anderson v The Braer Corporation* 1996 SLT 779. Nevertheless we consider that in the interests of economic and efficient case management, the procedure which we recommend should be made available for those cases for which it is appropriate. The popularity of that procedure will, to a large degree, depend upon satisfactory arrangements being introduced for the provision of legal aid to those claimants who satisfy the qualifying tests.

1.10 During the year under review we have had occasion to reconsider the recommendations contained in our report on *Civil Liability—Contribution*<sup>5</sup> which was published in 1988 and has not yet been implemented. In recent years concerns have been expressed in many jurisdictions about the law on joint and several liability. Arguments in favour of reform have been voiced in the United Kingdom most strongly by, and on behalf of, the construction industry and professional bodies, notably company auditors.

1.11 In May 1995 the Lord Chancellor’s Department and the Department of Trade and Industry invited the common law team of the Law Commission to undertake an initial feasibility investigation to determine whether a full Law Commission project should be undertaken on this area of law, and seek to ascertain whether there was a case for abolishing joint and several liability in favour of a system whereby each defendant may be liable to the plaintiff for only a proportionate share of the loss. At the end of 1995 the team published for consultation a feasibility investigation<sup>6</sup> which concluded that a full Law Commission project on joint and several liability should not be undertaken.

1.12 While the feasibility investigation was being prepared, we responded to a consultation paper on *Latent Defects Liability and BUILD Insurance* issued by the Department of the Environment. On joint and several liability our views were similar to those expressed by the common law team of the Law Commission. In particular, we agreed with the team that a finding of joint and several liability is based on the view that, in respect of blame and causation, each defender is liable for 100 per cent of the pursuer’s damages; that it is unjust that a pursuer who is not at all at fault should bear the risk of a defender’s insolvency; and that it would not be treating like cases alike to have one rule for an economic loss claim brought against a negligent solicitor and another rule for a like claim brought against a negligent auditor.

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1. Rule 43A.12.(1)(b).

2. Chapter 47 of RCS 1994.

3. Report dated December 1995, published by Scottish Courts Administration.

4. See, for example, Recommendation 19 that court approval should not be required for abandonment or settlement.

5. Scot Law Com No 115.

6. Feasibility Investigation of Joint and Several Liability.

1.13 We derived a great deal of help from representatives of the Scottish Building Contracts Committee who confirmed that the present law regulating joint and several liability creates serious difficulties for professional defenders. On 25 October 1995 our Chairman addressed a seminar arranged by the Committee and held at Stirling University. In relation to joint and several liability he accepted that instances can be found of a legal rule which previously had been of general application being “balkanised”. Such a process was, however, unsettling for the law, giving rise to refined and sometimes unrealistic distinctions, and should be treated as a last resort. While sympathising with professional defenders, we agree with the common law team that other expedients should be explored, including amendment of section 310 of the Companies Act 1985 (c 6) so as to enable auditors to limit their liability by contract, and possibly a reconsideration of the Unfair Contract Terms Act 1977 (c 50) so as to allow exclusion or limitation of professional liability for economic loss. Because joint and several liability is a rule of general application, we believe that the Law Commissions rather than departmental committees are the appropriate bodies to carry out a review of the relevant law. In this connection we submit that the modest, but useful, reforms contained in our report on *Civil Liability—Contribution*<sup>1</sup> should be implemented.

1.14 For some time we have been faced with difficult decisions in determining the priority to be given to the competing claims that are made upon us. In considering these matters, we have to take account of the fact that our already modest resources have been cut as a result of economies in public spending. In broad terms, our resources have to be allocated fairly among three main areas. The first of these covers topics which require reform irrespective of legal developments outside Scotland. The second area comprises topics which we have decided to examine partly in response to reforms effected or proposed in other jurisdictions, notably England and Wales. The third area is that of statute law, including consolidation and revision.

1.15 In the first area we attach prime importance to reform of property law where the most urgent matters are reform of the law of the tenement and abolition of the feudal system. Both of these topics have occupied our attention for several years. Work on the law of the tenement is now well advanced. A seminar has been arranged with Glasgow University for 25 September 1996 at which a draft Bill will be discussed with legal practitioners and others having first-hand experience in that sphere. The seminar will also be attended by Professor C G van der Merwe of the University of Stellenbosch, who is a leading international expert on apartment ownership. We hope to submit our report during 1997. This project is the most intricate which we have attempted in property law so far. Once it has been completed we intend to concentrate on the abolition of the feudal system. The name of the project is apt to mislead. The abolition of one system of land tenure necessarily implies its replacement with another. The substitution of a new system of absolute ownership in place of long entrenched feudal principles presents the Commission with its most formidable task to date. After careful consideration we have reached the firm opinion that the undivided attention of our property law team should be given to completion in sequence of these two projects. We therefore regret that one consequence of this decision is that our project on boundary walls will be further delayed. The delay on this project was the subject of an adjournment debate in the House of Commons on 13 March 1996 initiated by Mr Brian Donohoe MP. While we understand the feelings of frustrations experienced by Mr Donohoe’s constituent on whose behalf the debate was initiated, we consider that our decision was dictated by the discipline of having to allocate our scarce resources in the fairest and most effective manner. The same discipline has delayed work on residential long leases which includes the difficult issue of leasehold casualties.

1.16 During the year under review we have devoted a substantial amount of our resources to topics which have been affected by reforms recently proposed in other jurisdictions. In our previous report we pointed to the contribution our researches

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1. Scot Law Com No 115.

had made towards the decision of the five-judge court in *Morgan Guaranty Trust Company of New York v Lothian Regional Council* 1995 SLT 299. The main effect of that decision was to supersede the provisional proposal contained in our discussion paper No 95 on *Recovery of Benefits Conferred Under Error of Law* that the rule precluding recovery of benefits conferred under error of law should be abrogated by statute. While we recognise that the *Morgan Guaranty* case has made a considerable advance in the development of the Scots law on unjustified enrichment, we consider that there remain outstanding important questions concerning matters of detail following upon that decision together with a clarification of the taxonomy of that whole branch of law. At the same time we were aware of the need to explain in some detail the common law of Scotland relating to the recovery of *ultra vires* public authority receipts in the light of the majority decision of the House of Lords in the English appeal of *Woolwich Equitable Building Society v IRC* [1993] AC 70 that a citizen who makes an undue payment of tax to a public authority pursuant to an unlawful demand has a *prima facie* right to its restitution.

1.17 These considerations form part of the background to the publication in February 1996 of our two discussion papers, the first entitled *Judicial Abolition of the Error of Law Rule and Its Aftermath*<sup>1</sup> and the second entitled *Recovery of Ultra Vires Public Authority Receipts and Disbursements*.<sup>2</sup> The main purpose of the first paper is to invite comments on a proposal to publish a discussion paper setting out a “restatement” of the existing law of unjustified enrichment and asking whether comprehensive statutory codification or further piecemeal statutory reforms are called for. In the second discussion paper we invite comment on points which we believe must be clarified if the Scots law on unjustified enrichment is to be reasonably coherent and comprehensive. At present we are not persuaded that the *Woolwich* rule should be introduced into our law by statute. One reason for that view is that it is unsatisfactory to introduce the public/private dichotomy into Scots enrichment law. Our research has directed us to favour the view that broader grounds of recovery should be developed which would represent a natural development of our civilian common law. At the same time we recognise the need to amend the statutory provisions at present regulating recovery of the principal central and local Government taxes and charges to bring them in line with the *Woolwich* rule. In this latter connection we have been greatly assisted by the detailed work carried out by the Law Commission in examining the relevant legislation governing such taxes and charges. The first discussion paper has an appendix setting out draft rules on unjustified enrichment together with a detailed commentary. We believe that the appendix will assist readers of the papers to form an opinion as to whether it would be more desirable to have a comprehensive statutory codification of the law of unjustified enrichment rather than piecemeal statutory reforms where these appear to be required.

1.18 Recent developments of the relevant English law have in part influenced our decision to examine the law on constructive trusts. The reasons why we consider that this subject is one urgently requiring review are summarised in paragraph 2.53 below. We believe that the subject of the constructive trust in Scots law is one which fully justifies the holding of a seminar at which participants may have the benefit of insights from the law of South Africa as well as of England and Wales. Because existing Scottish literature on the subject is limited, we consider it necessary to produce a position paper explaining the differences between the relevant English and Scottish rules. In addition we are co-operating with the Law Commission in a review of certain United Kingdom statutes, notably the Trustee Investments Act 1961, Third Parties (Rights of Insurers) Act 1930 and provisions of the Companies Acts dealing with shareholder remedies. We firmly believe that the importance for Scotland of the legislation referred to is sufficient justification for our participation in these projects.

1.19 The third main area of activity is that concerning statute law. Over many years we have co-operated harmoniously and productively with the Law Commission in

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1. Discussion Paper No 99.

2. Discussion Paper No 100.

the preparation of a succession of Statute Law (Repeals) Bills, the latest of which obtained Royal Assent in November 1995. We also note with satisfaction the completion of the *Chronological Table of Local Legislation (1797-1994)*,<sup>1</sup> the fruit of co-operation between the two Commissions extending over 20 years. We repeat the hope expressed by the Chairmen of both Commissions on the publication of the Table that not only will it help lawyers to identify accurately a whole range of Acts of Parliament which until now have been shrouded in unnecessary mystery, but also will provide an impetus for their rationalisation and reform.

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1. See para 2.60 below.

# 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 The main subject of our reference from the Lord Advocate is title and interest to sue in relation to review by the courts of the decisions of administrative authorities. The Glasgow University study of judicial review during 1988-1992, which has now been published,<sup>2</sup> records the belief that title and interest requirements may have become more relaxed than the older cases would indicate. The study suggests that this change should be recognised more formally by a “definitive statement by the court of the relevant principles”.<sup>3</sup> Such a statement would helpfully supplement the court’s explanation in the leading case of *West v Secretary of State for Scotland*<sup>4</sup> of the principles which determine the competency of judicial review applications.

2.3 We have now resumed work on this project and as the first stage we will consider whether it might be desirable to confer standing expressly, as recommended by the Law Commission, on unincorporated associations (and other bodies) raising a matter of public interest warranting judicial review.<sup>5</sup> Other matters which are covered by our reference include the question whether the Court of Session should be entitled to substitute its own decision for that of an inferior body or tribunal, and the connection between review at common law and review under statute.<sup>6</sup>

2.4 As indicated in previous years we continue to monitor the case-law in the field of judicial review and to build on our computer database of relevant decisions from 1985.

## Criminal Law

**General** 2.5 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 (c 22) and references under section 3(1)(e) of that Act. At the present time there are no major projects in the criminal law field on which we are working. We did receive a proposal, however, that the law relating to fire-raising should be looked at and we have undertaken some limited preliminary work in that field.

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1. 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.

2. Tom Mullen, Kathy Pick and Tony Prosser, *Judicial Review in Scotland* (John Wiley & Sons, 1996).

3. *Judicial Review in Scotland*, p 54.

4. 1992 SC 385, 1992 SLT 636.

5. Report on *Administrative Law: Judicial Review and Statutory Appeals*, Law Com No 226 (1994), para 5.41.

6. These matters are referred to in paras (2)(a) and (3)(b) of our reference, the terms of which are given in our Annual Report for 1987-88 (Scot Law Com No 114), para 2.4.

## Diligence\*

(Second Programme, Item 8)

2.6 As we mentioned in our last annual report,<sup>1</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>2</sup> Following a seminar we have reconsidered our policy, particularly on diligence on the dependence, and as a result it is not now likely that our report will be submitted before the spring of 1997.

## Evidence\*

(First Programme, Item 1)

### Extrinsic evidence

2.7 Aspects of the law on the admissibility of extrinsic evidence in the interpretation of documents in the field of private law were considered in our Discussion Paper on *Contract Law: Extrinsic Evidence, Supersession, and the Actio Quanti Minoris*.<sup>3</sup> However, as stated in our last annual report,<sup>4</sup> the comments received on that discussion paper confirmed us in our belief that the topic ought to be considered separately and more generally.

2.8 A first draft of a discussion paper on *Interpretation in Private Law* has been prepared and has been considered by the Working Party on Contract Law<sup>5</sup> and by the Commission. We aim to publish the discussion paper in the autumn of 1996.

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

(Fourth Programme, Item 17)

2.9 In our last annual report<sup>6</sup> we gave details of our work in connection with mentally incapable adults and anticipated that we would submit a report during the Summer of 1995. Our *Report on Incapable Adults*<sup>7</sup> was submitted to your predecessor in July 1995 and published in September of that year.

2.10 Since then we have worked on a report on the interim and emergency powers available to public authorities for the protection of mentally disordered or vulnerable adults. Discussion Paper No 96, *Mentally Disordered and Vulnerable Adults: Public Authority Powers*, was published in 1993. The topics dealt with by that discussion paper included:

- (a) the local authority's duty to investigate where adults are vulnerable or are suspected of being vulnerable and they or their property appear to be at risk,
- (b) the rights of the local authority and the Mental Welfare Commission to obtain access to and inspect premises, to interview and assess vulnerable adults and to remove vulnerable adults from their homes, and
- (c) the exclusion of a person who lives with and is violent towards or threatens a vulnerable adult.

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1. Thirtieth Annual Report 1994-95, Scot Law Com No 153, para 2.6.

2. Discussion Paper No 90, paras 3.47-3.60.

3. Discussion Paper No 97.

4. Thirtieth Annual Report 1994-95, Scot Law Com No 153, para 2.14.

5. Appendix I lists the membership of the Working Party.

6. Thirtieth Annual Report 1994-95, Scot Law Com No 153, paras 2.33 to 2.36; see also para 1.8.

7. Scot Law Com No 151.

2.11 As we mentioned in our last annual report<sup>1</sup> further work on vulnerable adults was deferred until our *Report on Incapable Adults* was finished. The preparation of a report on this topic is now well advanced and we anticipate submitting it to you during the latter half of 1996.

## Obligations\*

(First Programme, Item 14)

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

2.12 With one exception,<sup>2</sup> the topics from our Discussion Paper on *Contract Law: Extrinsic Evidence, Supersession, and the Actio Quanti Minoris*<sup>3</sup> were dealt with in our Report on *Three Bad Rules in Contract Law*<sup>4</sup> which was submitted to you on 24 November 1995 and published on 11 January 1996. The report recommended the abolition of three rules of Scottish contract law all of which have pernicious effects.

2.13 The first rule is the so-called parole evidence rule. Under the present law, when a document has been drawn up which appears to contain the terms of a contract, the general rule is that extrinsic evidence (that is, evidence of anything outside the document itself) cannot be led to prove an additional term. We consider that the existing law can lead to manifest injustice. Parties may have expressly agreed that certain terms, although not embodied in the document which records most of the terms of their contract, are nonetheless to be additional terms of the contract. The present law enables one of the parties to ignore the additional terms, found on the document and plead that extrinsic evidence of the additional terms is inadmissible. Such a plea will have every chance of success.

2.14 The so-called parole evidence rule also applies to unilateral voluntary obligations, such as bonds. We consider that the policy considerations in relation to contracts and unilateral voluntary obligations are the same so that our recommendations apply to both.

2.15 We recommended that the so-called parole evidence rule should be replaced by a presumption that a document which appears to contain all the express terms of a contract or unilateral voluntary obligation does contain all those terms, but that this presumption should be capable of being rebutted, extrinsic evidence being admissible for that purpose. This presumption should be without prejudice to the effect of an express provision in a document that it contains all the express terms of a contract between the parties and to the effect of any enactment on constitution or formal validity.

2.16 The second rule, the so-called *Winston v Patrick* (1980 SC 246, 1981 SLT 41) rule or supersession rule, is that, generally, the terms of a contract are superseded entirely by a later conveyance. So, for example, in the sale of a house, contractual terms agreed between the buyer and the seller (for example, as to the condition of the central heating system) are superseded as soon as the disposition of the house is handed over. Unless steps have been taken to counteract this rule, the buyer will find that the agreed terms can no longer be relied on.

2.17 The supersession rule has given rise to great uncertainty in the law. In practice solicitors attempt to get round this legal difficulty by various methods, but there are doubts about the effectiveness of some of these methods and, at best, they require provisions which may be elaborate and ought to be unnecessary.

2.18 We recommended that, unless the parties agree otherwise, any unimplemented or unfulfilled term of a contract should not be superseded by virtue only of the execution, or delivery and acceptance, of a deed in implement of the contract.

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1. Thirtieth Annual Report 1994-95, Scot Law Com No 153, para 2.36.

2. See para 2.7 above.

3. Discussion Paper No 97.

4. Scot Law Com No 152. See also Thirtieth Annual Report 1994-95, Scot Law Com No 153, para 2.17.

2.19 The third rule is the so-called rule against the *actio quanti minoris*. There is a general rule that a buyer of property, other than moveable property coming within the Sale of Goods Act 1979, cannot, while keeping the property, successfully claim damages for a breach by the seller of a contractual term relating to the property which results in a diminution in its value.

2.20 The rule applies in particular to sales of houses. So, even if the buyer of a house can prove a breach of contract by the seller, he or she cannot recover damages for this type of breach unless the house is returned to the seller. There are many cases where the buyer of a house would be most unwilling to reconvey the house and start looking for another one.

2.21 We recommended that the so-called rule against the *actio quanti minoris* should cease to have effect.

2.22 We understand that implementing legislation will be enacted as soon as Parliamentary time permits.

#### **Law of contract in general**

2.23 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 held, jointly with the University of Edinburgh, a seminar on 21 October 1995 which addressed the existing problems in Scottish law in the light of European and international developments. In the light of the papers delivered, and comments made at this seminar we are proceeding with the preparation of a discussion paper. Our consideration of remedies for breach of contract will include the topic of penalty clauses and similar clauses to which our attention has been directed by the Faculty of Advocates.

#### **Trustee investments**

2.24 In conjunction with the Law Commission we have been assisting HM Treasury in the preparation of a consultation document on the possible repeal or substantial amendment of the Trustee Investments Act 1961 (c 62). This document, *Investment Powers of Trustees*, was issued in May 1996. It puts forward proposals for replacing the restrictions on trustees' powers of investment contained in the Act and its schedules by a general power to invest the trust fund as if the trustees were the absolute owners. This general power would however be subject to the requirements to act prudently, take advice where necessary and select investments suitable to the trust.

2.25 If those consulted favour the proposals it is intended to proceed by way of an order under the Deregulation and Contracting Out Act 1994 (c 40). We anticipate that we will be further involved in assisting with the drafting of the order, in particular the amendments to existing Scottish legislation consequential on the repeal or amendment of the 1961 Act.

#### **Unjustified enrichment**

2.26 As mentioned in our last annual report,<sup>1</sup> the case of *Morgan Guaranty Trust Company of New York v Lothian Regional Council*,<sup>2</sup> which in effect abolished the error of law rule, (ie the rule precluding recovery of benefits conferred under error of law) and restored the old law as it had existed in the Institutional period of Scots law, superseded the main proposal (of abrogation by statute of the error of law rule) in our earlier discussion paper on *Recovery of Benefits Conferred Under Error of Law*.<sup>3</sup>

2.27 On the assumption that the error of law rule would be abolished by statute, Discussion Paper No 95 had also 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

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1. Thirtieth Annual Report 1994-95, Scot Law Com No 153, paras 2.19-2.20.

2. 1995 SLT 299.

3. Discussion Paper No 95 (1993).

been made was changed by a later judicial decision.<sup>1</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, but also expressly rejected the floodgates approach. We have therefore considered afresh the issue of a statutory bar.

2.28 Our discussion paper on *Judicial Abolition of the Error of Law Rule and its Aftermath*<sup>2</sup> was published on 28 February 1996. The discussion paper examines the case for the introduction of a statutory bar to recovery and provisionally concludes against it.<sup>3</sup>

2.29 The discussion paper also invites comments on our proposal to publish, in due course, a discussion paper comprehensively reviewing the existing law on unjustified enrichment and seeking views on whether comprehensive statutory codification or further piecemeal statutory reforms are desirable.<sup>4</sup> A possible model codification which was proposed at a seminar held on 22 October 1994 by one of our Commissioners, Dr Eric M Clive, in a personal capacity, is appended to the discussion paper.

2.30 Comments on the proposals in the discussion paper were requested by the end of May 1996, but other commitments of our principal consultees have necessitated the extension of this deadline until the end of October 1996.

2.31 Our last annual report<sup>5</sup> also narrated an intention to publish a discussion paper on *Recovery of Ultra Vires Public Authority Receipts and Disbursements*. This discussion paper was also published on 28 February 1996.<sup>6</sup> It examines possible amendments of Scots law following the House of Lords decision in the case of *Woolwich Equitable Building Society v Inland Revenue Commissioners* [1993] AC 70 which held that a citizen may recover an undue payment of tax which he made to a public authority following an *ultra vires* demand. The paper argues that the *Woolwich* rule does not go far enough and questions whether development by way of the extension of the existing relatively narrow grounds, and the recognition of additional narrow grounds, of restitution of undue payments is the best path to reform.

2.32 Accepting, with minor modifications, recommendations of the Law Commission (Law Com No 227, Section C) and extending them to the Scottish legislation on non-domestic rates, Discussion Paper No 100 also provisionally proposes that the enactments on refund of the principal central and local government taxes and charges should be amended. In consonance with the *Woolwich* rule, refund of undue payments should be permitted under these enactments without proof of error and subject to certain defences (eg failure to exhaust statutory appeals).

2.33 Finally, Discussion Paper No 100 examines the *Auckland Harbour Board* rule (*Auckland Harbour Board v The King* [1924] AC 318 (PC)) under which *ultra vires* disbursements by central government from the Consolidated Fund, and possibly other *ultra vires* disbursements by public authorities from other public funds, are always recoverable. We provisionally agree with the Law Commission (Law Com No 227, Section D) that legislative reform is unnecessary.

2.34 Comments on the proposals in Discussion Paper No 100 were requested by the end of May 1996, but, as in the case of Discussion Paper No 99, the deadline for comments has been extended until the end of October 1996.

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1. Discussion Paper No 95, paras 2.84-2.125.

2. Discussion Paper No 99.

3. Discussion Paper No 99, paras 3.1-3.51, Proposition 1.

4. Discussion Paper No 99, paras 4.1-4.60, Proposition 2.

5. Thirtieth Annual Report 1994-95, Scot Law Com No 153, paras 2.21-2.24.

6. Discussion Paper No 100.

2.35 It is hoped to publish a report on the specific proposals for legislation in the first half of 1997.

## Private International Law\*

(Third Programme, Item 15)

**Extra-territorial effect of arrestments** 2.36 As mentioned in paragraph 2.6 above the report has been delayed by the decisions taken on other aspects of diligence. We now hope that a report will be submitted by spring 1997. As previously indicated, however, this will cover only the proposals to confer on the Scottish courts powers to protect an arrestee from double jeopardy.<sup>1</sup>

**Polygamous marriages and choice of law in tort and delict** 2.37 Last year we mentioned<sup>2</sup> that a Bill had been introduced to implement joint reports on polygamous marriages<sup>3</sup> and choice of law in tort and delict.<sup>4</sup> That Bill has now been enacted as the Private International Law (Miscellaneous Provisions) Act 1995 (c 42).

## Property Law\*

(Fourth Programme, Item 16)

**Abolition of the feudal system** 2.38 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*. As mentioned in our last annual report<sup>5</sup> the issues in this project are extensive and complicated but we have made progress.

2.39 We will shortly complete a scheme for the compulsory redemption of all remaining feuduties. The major difficulty here is to devise an appropriate method of compulsory allocation of unallocated *cumulos*. The detailed structure of the scheme has also required careful consideration.

2.40 We attach great importance to this project, and our intention is that further staff resources should be diverted to it as soon as they become available.

**Law of the tenement** 2.41 As anticipated in our last annual report,<sup>6</sup> we and the University of Edinburgh, Department of Private Law held a half-day seminar on 7 September 1995 on the reform of the law of the tenement in the context of the comparative law of apartment ownership. Papers were presented by Professor Cornelius van der Merwe of the University of Stellenbosch<sup>7</sup> and Professor Kenneth G C Reid of this Commission,<sup>8</sup> and the seminar was attended by members of the legal profession and by other professionals working in the field of tenement management.

2.42 Following the seminar we have been working on our revised proposals for reform. We and the University of Glasgow are organising a second seminar to be held on 25 September 1996. The purpose of the seminar will be to seek comments on provisions intended to implement our recommendations before we finalise them for submission to you in our report.

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1. Discussion Paper No 90, paras 3.47-3.60.

2. Thirtieth Annual Report 1994-95, Scot Law Com No 153, para 2.27.

3. Law Com No 146, Scot Law Com No 96.

4. Law Com No 193, Scot Law Com No 129.

5. Thirtieth Annual Report 1994-95, Scot Law Com No 153, paras 1.9 and 2.28.

6. Thirtieth Annual Report 1994-95, Scot Law Com No 153, para 2.29.

7. Professor van der Merwe's paper was reproduced in the *Scottish Law and Practice Quarterly*, Vol 1, April 1996, p 205.

8. The paper was presented by Professor Reid in his capacity as Professor of Property Law, of the Department of Private Law, University of Edinburgh before he commenced his appointment as a part-time Commissioner.

**Residential long leases** 2.43 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** 2.44 As we explain in Part I above, work on this project continues to be temporarily suspended because of the need to divert resources to more urgent matters.

## Other Matters

**Multi-party actions** 2.45 In our report on this subject,<sup>1</sup> which is to be published in July 1996, we recommend the introduction in the Court of Session of a procedure which would enable cases raising common issues, whether of fact or of law, to be aggregated in “group proceedings”. Such proceedings would be subject to the court being satisfied that the procedure was the most suitable available for resolution of the common issues. Persons who considered that their claim shared the common issues would be invited by public notice to join the proceedings and “opt-in”. The report records our view that satisfactory arrangements for financial assistance to group litigants from public funds are essential if the procedure is to achieve its full potential. The Commission therefore recommend that the Secretary of State for Scotland and the Scottish Legal Aid Board consider the appropriate detailed arrangements for the provision of legal aid for group proceedings and other multi-party actions.

**Fiduciary duties and regulatory bodies** 2.46 As we have mentioned in previous Reports, we received in April 1990 from the Department of Trade and Industry a reference under section 3(1)(e) of the Law Commissions Act 1965 in the following terms:-

“Certain professional and business activities are subject to public law regulation by statutory and self-regulatory control. The Scottish Law Commission is to consider the principles which should govern the effect of such controls on the fiduciary and analogous duties of those carrying on such activities and to make recommendations. The inquiry will consider examples from differing areas of activity but will be with particular reference to financial services.”

2.47 The Law Commission received a similar reference and, in consultation with the Scottish Law Commission, issued a Consultation Paper No 124 in June 1992 which set out various legislative options. The Law Commission reported in November 1995. They decided not to proceed with their provisional recommendation for legislation requiring a court to take account of reasonable regulatory rules in determining the content of a fiduciary obligation and they decided against recommending the introduction of an exculpatory provision for fiduciaries.

2.48 The Law Commission did, however, recommend that there should be legislation to clarify the effect of Chinese walls.<sup>2</sup> They proposed that the effect of section 48(2)(h) of the Financial Services Act 1986 should be clarified so as to give statutory protection to a firm which operates an established Chinese wall arrangement which fulfils the relevant regulatory requirements made by the Securities and Investments Board under that subsection. The firm should be protected from liability where:

- (i) information is withheld from a customer (or is not made available for the customer’s use) pursuant to the Chinese wall arrangement;

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1. *Multi-Party Actions*, Scot Law Com No 154, published in July 1996.

2. Chinese walls, in this context, are institutional and procedural barriers put up to restrict the flow of information within a firm (or within an individual company or between companies within a group) in order to ensure that information entrusted in confidence to one department is not disclosed inadvertently or improperly to another department in the same firm.

- (ii) a firm places itself in a position where its own interest on one side of the Chinese wall conflicts with a duty owed to the customer of a department on the other side of the Chinese wall and as a result of the Chinese wall neither department is aware of the conflict; or
- (iii) a firm owes conflicting duties to the customers of different departments on different sides of the Chinese wall, and as a result of the Chinese wall neither department is aware of the conflict.

2.49 There was no fundamental disagreement between this Commission and the Law Commission over the conclusions reached in the report. We agreed with the recommendation made. In the circumstances, we felt that the expense of issuing a formal report could not be justified. Accordingly, with the agreement of the Minister, we responded to the reference by reporting by letter that this Commission agreed with the findings and conclusions of the Law Commission and recommended that the draft Bill appended to that Commission's Report should extend to Scotland. We have since been informed that the government has concluded that legislation to implement the Law Commission's report would not be justified.

### Shareholders' remedies

2.50 As mentioned in our last annual report,<sup>1</sup> in February 1995 the Lord Chancellor and the President of the Board of Trade requested the Law Commission, in consultation with us, to carry out a review of the remedies currently available to shareholders and to suggest ways in which the law could be rationalised and improved. We have participated in the deliberations of a working party which was formed to consider these matters, and in the preparation of a consultation paper, which is expected to be published in September 1996. We gratefully acknowledge the assistance of Mr David P Sellar, Advocate, who was co-opted as a member of the working party and whose assistance proved invaluable in the drafting of the Scottish elements of the consultation paper.

### Third Parties (Rights Against Insurers) Act 1930

2.51 At the instigation of the Department of Trade and Industry, we and the Law Commission are undertaking a review of the Third Parties (Rights Against Insurers) Act 1930. This Act provides that if an insured person becomes insolvent after a claim by a third party arises against him or her which is covered by the policy the insured person's rights against the insurer are transferred to the third party. Without this legislation the sum payable under the policy would be paid to the insured's estate for the benefit of all the creditors, so that the third party would receive only a proportion of that sum. We are currently working with the Law Commission with a view to publishing a joint discussion paper on possible reforms of the 1930 Act.

### Constructive trusts

2.52 We have commenced an examination of the law on constructive trusts which urgently requires review for a number of reasons.<sup>2</sup> First, the principles of the Scots law on constructive trusts have never been fully researched. Yet litigation on the topic is growing in Scotland<sup>3</sup> and burgeoning in England. Second, pressure has arisen for the extension of the Scottish doctrine of constructive trust to encompass additional categories of constructive trust already recognised in English law.<sup>4</sup> It is said that the Scots law of constructive trusts is "underdeveloped". Such a conclusion is highly controversial. Third, in our work, the topic of constructive trusts constantly arises as an incident of a diverse range of other actual or potential law reform

1. Thirtieth Annual Report 1994-95, Scot Law Com No 153, para 2.44.

2. This topic cuts across several programme items including the law of obligations (unjustified enrichment); property; and bankruptcy.

3. See eg *Raymond Harrison & Co's Tr v North West Securities Ltd* 1989 SLT 718 (OH); *Sutman International Inc v Herbage* unreported 2 August 1991 (OH); 1991 GWD 30-1772 ; *Southern Cross Commodities Property Ltd v Martin* 1991 SLT 83(OH); *Style Financial Services Ltd v Bank of Scotland* 1996 SLT 421 affg 1994 GWD 15-908 (OH); *Sharp v Thomson* 1995 SLT 836 at pp 853, 854; 857; 867, 868; affg 1994 SLT 1068 at pp 1088,1089.

4. See eg R Burgess, "The Unconstructive Trust" 1977 J R 200; W A Wilson, "Romalpa and Trust" 1983 SLT (News) 106 at p 108; W J Stewart, *The Law of Restitution in Scotland* (1992) pp 97—100; A R Wilson, "The Constructive Trust in Scots Law" 1993 J R 99; P Hood, "Tracing, Constructive Trusts and Unjustified Enrichment" 1994 SLT (News) 263; K M Norrie, "Proprietary Rights of Cohabitants" 1995 J R 209; A Duff, "Windfall or Not?" 1995 SLT (News) 216 at pp 217,218.

projects.<sup>1</sup> But to get to the bottom of the subject requires a project of its own which is long overdue. Fourth, in the absence of adequate research on the Scots law, it is difficult for the Scottish courts to devise a strategy determining the role which the constructive trust should occupy in the legal system as a whole. Even if no legislation at all were to follow, the Commission's research could give assistance to our courts of a kind which they may not obtain elsewhere until it is too late. Fifth, the Scots law is significantly different from, yet is increasingly dominated by, the English law on "equitable proprietary claims".<sup>2</sup> In *Re Goldcorp*,<sup>3</sup> Lord Mustill remarked that the English law was still developing and that the history and foundations in principle of the creation and tracing of equitable proprietary interests in English law should be the subject of close examination and full argument. In our opinion a similar examination is urgently necessary in Scots law. Sixth, in their Sixth Programme of Law Reform, the Law Commission included "The Law of Trusts"<sup>4</sup> and within that domain targeted the topic of remedies,<sup>5</sup> a principal remedy being the English constructive trust. If the government were to decide to legislate to amend this branch of English law which has been partially transplanted into different Scottish legal soil, it may well come under pressure to legislate also in Scotland and ought to be able to rely on the Scottish Law Commission to produce parallel reforms. Seventh, there is a very close connection between unjustified enrichment and constructive trusts. It is therefore an economic use of resources for us to review constructive trusts at the same time as we conduct a review of unjustified enrichment.<sup>6</sup> Finally, one of the roles of the constructive trust in Scots law is as a remedy for breach of a fiduciary obligation but the questions "who is a fiduciary?" and "what is a fiduciary relationship?" in Scots law require to be systematically and comprehensively researched.

2.53 A seminar, sponsored by Edinburgh and Strathclyde Universities and ourselves, will be held on 19 October 1996 to consider the future of the institution of the constructive trust in Scots law. Four distinguished scholars have agreed to give papers, namely Professor J W G Blackie of Strathclyde University, Mr Justice Edwin Cameron, Judge of the Supreme Court of South Africa, Professor G L Gretton of Edinburgh University, and Mr Charles Harpum, a member of the Law Commission. We intend to circulate a position paper before the seminar to its participants and a discussion paper on the topic after the seminar.

## Statute Law

**Consolidation** 2.54 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*

2.55 Progress continues to be made on the consolidation of the Scottish Town and Country Planning legislation which will result in four statutes. It is hoped that these Bills will be introduced early in the next Parliamentary session. Work also continues on the consolidation of the legislation relating to the National Health Service

1. The following are examples: bankruptcy and floating charges (protection of unfeft purchasers); "family" property (home sharing by spouses, cohabitees etc); unjustified enrichment; confiscation of the proceeds of crime (tracing against money laundering); remedies for breach of confidence; the relationship between fiduciary obligations and regulatory rules; illegal transactions including trusts; reservation of title (*Romalpa*) clauses and constructive trusts over the proceeds of sub-sales; tracing to protect a debtor's earnings in a bank account from arrestment; return of VAT to sports clubs members.

2. See eg *Style Financial Services Ltd v Bank of Scotland* 1996 SLT 421.

3. *In re Goldcorp Exchange Ltd (in receivership)* [1995] 1 AC 74 (PC).

4. Law Commission, *Sixth Programme of Law Reform* (1995) Law Com No 234, Item 7.

5. *Ibid* at p 32, Item 7(c): "the personal and proprietary remedies available for the recovery of property that has been transferred in breach of trust or fiduciary duty or in circumstances which constitute a devastavit by personal representatives".

6. See para 2.29 above.

(Scotland) and on the Land Clauses legislation. The legislation relating to Criminal Procedure legislation which was referred to in our last annual report<sup>1</sup> has now been enacted.<sup>2</sup>

(b) *United Kingdom and Great Britain consolidations*

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

Merchant Shipping Act 1995 (c 21)  
Shipping and Trading Interests (Protection) Act 1995 (c 22)  
Goods Vehicle (Licensing of Operators) Act 1995 (c 23)  
Employment Rights Act 1996 (c 18)  
Industrial Tribunals Act 1996 (c 17).

2.57 Work is presently under way at the Law Commission in connection with the legislation relating to Nurses, Midwives and Health Visitors.

**Statute law revision**

2.58 The Statute Law (Repeals) Bill, a draft of which was annexed to the Fifteenth Report on Statute Law Revision and presented to Parliament in March 1995, obtained Royal Assent on 8 November 1995. This particular Act, unlike most of its predecessors, dealt extensively with local legislation.

2.59 Work has begun on entries for the next draft Statute Law (Repeals) Bill to be annexed to the Sixteenth Report on Statute Law Revision but the report will not be submitted until 1998.

**Chronological Table of  
Local Legislation**

2.60 All arrangements are now in place for publication, early in July 1996, of the Chronological Table of Local Legislation (1797-1994)<sup>3</sup> ("the Local Table") which records details of amendments, repeals etc to the provisions of approximately 26,500 public local Acts made in that period. To coincide with its publication, a joint report of both Commissions, entitled *Statute Law Revision: Report on the Chronological Table of Local Legislation*, will also be published. That joint report was signed in May 1996 and is expected to be presented to Parliament in July 1996.<sup>4</sup>

**Local legislation**

2.61 Work continues on identifying for express repeal redundant but still extant local legislation. In the light of the timetable for the Sixteenth Report on Statute Law Revision (with associated draft Statute Law (Repeals) Bill) and of the extent of the problem now disclosed by the Local Table of extant local authority—promoted local legislation repealed in general but not express terms, steps were taken in the course of the year to establish whether express repeal might, in appropriate circumstances, be more speedily achieved by subordinate legislation. Discussions were therefore initiated with the Office of the Solicitor to the Secretary of State for Scotland with a view to order-making powers in the Local Government (Scotland) Act 1973 (c 65) being used to effect such repeals.

2.62 As a result of these discussions, the Commission is currently undertaking necessary research and consultation before preparing schedules of proposed repeals for possible inclusion in statutory instruments to be made by the Secretary of State for Scotland. Much of the Commission's work on local legislation for the Statute Law (Repeals) Act 1995 (c 44) was directed to Glasgow. The further research now in hand is also directed there since Glasgow's municipal authority was the most prolific Scottish promoter of local authority-based local legislation.

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1. Thirtieth Annual Report 1994-95, Scot Law Com No 153, para 2.46.

2. Criminal Procedure (Scotland) Act 1995 (c 46).

3. Published by HMSO on 3 July 1996—4 volume set (cost £180) ISBN 0 11 043002 6.

4. Law Com No 241; Scot Law Com No 155, presented to Parliament July 1996.

## 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 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. Dr Eric M Clive, one of our Commissioners, continues to be 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, also continues as Chairman of the Good Practice Group on Neurosurgery for Mental Disorders set up under the Scottish Office Clinical Resource and Audit Group.<sup>1</sup> He also continues to serve as a member on 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.

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1. The Group's report *Neurosurgery for Mental Disorder* was published in September 1996.

## 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. 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 fosters the discussion of the Commission's law reform projects and recommendations and contributes to the Commission's overall aim of achieving necessary reform of Scots law.

# 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)
Mr N R Whitty	(Full-time)
Mr W A Nimmo Smith, QC	(Part-time)
Professor K G C Reid (from 1 October 1995)	(Part-time).

## Staff

4.2    Our legal staff consists of our Secretary and eight other qualified lawyers. In addition we have the services of Parliamentary Draftsmen in the Lord Advocate's Department in London. During the summer vacation of 1995 we employed five honours graduates in law to assist with our research work. Our complement of non-legal staff is ten. 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:

<i>Parliamentary draftsman</i>	
Mr G S Douglas, QC	(Part-time)
<i>Secretary</i>	
Mr K F Barclay	
<i>Grade 5 Solicitors</i>	
Mr R Bland	
One post vacant at present	
<i>Other members of legal staff</i>	
Mr J M Dods	
Mrs D M Howieson	
Mrs A B D McFee	
Dr D I Nichols	
Mrs S Sutherland	
Mrs G B Swanson	
<i>Librarian</i>	
Mr N G T Brotchie	
<i>Chief Clerk</i>	
Mr J Dodson (until 17 October 1995)	
Mr W Barclay (from 23 October 1995).	

## 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 held an informal

meeting with representatives of the Law Society of Scotland. 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 the Commission's Working Party on Contract Law, which we have expanded this year, appears in Appendix I. We are grateful to the non-Commission members of this working party 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 on Contract Law

Dr E M Clive (Chairman)	Scottish Law Commission
Mr J M Arnott	Solicitor, Edinburgh
Professor R Black, QC	University of Edinburgh
Professor J W G Blackie	University of Strathclyde
Mr M G Clarke, QC	Edinburgh
The Hon Lord Coulsfield	Court of Session
The Hon Lord Davidson	Scottish Law Commission
Professor A Forte	University of Aberdeen
Mr G Jamieson	Solicitor, Paisley
Miss L J Macgregor	Solicitor, Edinburgh
Professor H L MacQueen	University of Edinburgh
Professor W W McBryde	University of Dundee
Ms C A McLintock	Solicitor, Edinburgh
Sheriff Principal C G B Nicholson, QC	Edinburgh
Dr H A Patrick	Solicitor, Edinburgh
Ms L A Patterson	Solicitor, Edinburgh
The Hon Lord Penrose	Court of Session
Dr D P Sellar	Advocate, Edinburgh
Professor J M Thomson	University of Glasgow
Mr N R Whitty	Scottish Law Commission
Sheriff S Wilkinson, QC	Glasgow
Mr J Wolffe	Advocate, Edinburgh
Mr S Woolman	Advocate, Edinburgh
Dr D I Nichols (Secretary)	Scottish Law Commission
<i>Observers</i>	
Mr P M Beaton	Scottish Courts Administration
Mr J L Jamieson	Office of the Solicitor to the Secretary of State for Scotland

# Appendix II

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

	<i>Commission No</i>	
1965	1	First Programme of Law Reform
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1966	2	First Programme of Consolidation and Statute Law Revision
	3	First Annual Report 1965-66
<hr/>		
1967	4	Proposals for Reform of the Law of Evidence relating to Corroboration
	5	Reform of the Law Relating to Legitimation <i>per subsequens matrimonium</i> (Cmnd 3223)
	6	Divorce - The Grounds Considered (Cmnd 3256)
	6A	*Report on the Consolidation of Certain Enactments relating to Shellfish Fisheries and Shellfish - Sea Fisheries (Shellfish) Bill (Cmnd 3267)
	7	Second Annual Report 1966-67
<hr/>		
1968	8	Second Programme of Law Reform
	9	Third Annual Report 1967-68
<hr/>		
1969	10	*Report on the Consolidation of the Trustee Savings Banks Acts 1954 to 1968 - Trustee Savings Banks Bill (Cmnd 4004)
	11	*Report on the Interpretation of Statutes
	12	*Report on Exemption Clauses in Contracts - First Report: Amendments to the Sale of Goods Act 1893
	13	Fourth Annual Report 1968-69
<hr/>		
1970	14	Report on the Companies (Floating Charges) (Scotland) Act 1961 (Cmnd 4336)
	15	Reform of the Law relating to Prescription and Limitation of Actions
	16	*Report on the Hague Convention on Recognition of Divorces and Legal Separations (Cmnd 4542)
	17	Fifth Annual Report 1969-70
	18	*Coinage Bill - Report on the Consolidation of Certain Enactments relating to Coinage (Cmnd 4544)
	19	*Vehicles (Excise) Bill - 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)
<hr/>		
1971	20	*National Savings Bank Bill - 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
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1972	24	Report on the Consolidation of Certain Enactments relating to Town and Country Planning in Scotland - Town and Country Planning (Scotland) Bill (Cmnd 4949)
	25	Family Law - Report on Jurisdiction in Consistorial Causes affecting Matrimonial Status
	26	*Statute Law Revision - Fourth Report: Draft Statute Law (Repeals) Bill (Cmnd 5108)

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

*Commission*

	<i>No</i>	
<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)
<hr/>		
<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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<b>1975</b>	37	Ninth Annual Report 1973-74
	38	*Supply Powers Bill - Report on the Consolidation of Certain 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)
<hr/>		
<b>1976</b>	41	Tenth Annual Report 1974-75
	42	Family Law: Report on Liability for Adultery and Enticement of a Spouse
<hr/>		
<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 Liabilities for Defective Products (Cmnd 6831)
<hr/>		
<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)
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<b>1979</b>	55	Thirteenth Annual Report 1977-78
	56	Fourteenth Annual Report 1978-79
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<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)

*Commission**No*

<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	*Private International Law - Report on the Council of Europe Conventions 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
<hr/>		
<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
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<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
	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
	<hr/>	
<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
	<hr/>	
<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)
<hr/>		
<b>1986</b>	100	Evidence - Report on Corroboration, Hearsay and Related Matters in Civil Proceedings
	101	Twenty-First Annual Report 1985-86
<hr/>		
<b>1987</b>	102	Report on Child Abduction (Cm 64)
	103	Housing (Scotland) Bill - Report on the Consolidation of Certain Enactments relating to 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

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

*Commission*

*No*

	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
<hr/>		
<b>1988</b>	111	*Court of Session Bill - Report on the consolidation of Certain Enactments, and the Repeal of other Enactments, relating to the Court of Session (Cm 315)
	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
<hr/>		
<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
<hr/>		
<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
	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
<hr/>		
<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)
<hr/>		
<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)
<hr/>		
<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 Services 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
<hr/>		
<b>1994</b>	147	Report on Confiscation and Forfeiture (2 vols) (Cm 2622)
	148	Twenty-Ninth Annual Report 1993-94
<hr/>		
<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)
	151	Report on Incapable Audlts (Cm 2962)

	<i>Commission</i>	
	<i>No</i>	
1996	152	Report on Three Bad Rules in Contract Law
	153	Thirtieth Annual Report 1994-95

## 2 Scottish Law Commission—Consultative memoranda/Discussion papers circulated for comment and criticism

			<i>No of Resulting Report</i>
1966	Memorandum No	1—Probates or Letters of Administration as Links in Title to Heritable Property under the Succession (Scotland) Act 1964	
	Memorandum No	2—Expenses in Criminal Cases	
1967	Memorandum No	3—Restrictions on the Creation of Liferents	
	Memorandum No	4—Applications for Planning Permission	
	Memorandum No	5—Damages for Injuries Causing Death	
	*Memorandum No	6—Interpretation of Statutes	11
1968	*Memorandum No	7—Provisional Proposals Relating to Sale of Goods	12
	Memorandum No	8—Draft Evidence Code - First Part	
1969	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	
1970	Memorandum No	13—Jurisdiction in Divorce	25
1971	Memorandum No	14—Remedies in Administrative Law	
	*Memorandum No	15—The Exclusion of Liability for Negligence in the Sale of Goods and Exemption Clauses for the Supply of Services and other Contracts	39
	Memorandum No	16—Insolvency, Bankruptcy and Liquidation	68
1972	Memorandum No	17—Damages for Injuries Causing Death	31 and 64
1974	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
1975	*Memorandum No	20—Liability for Defective Products	45
	Memorandum No	21—Damages for Personal Injuries - Deductions and Heads of Claim	51
1976	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> '	
	Appendix—Devolution, Scots Law and the Role of the Commission		
	Memorandum No	33—Law of Rights in Security - Company Law - Registration of Charges: Scotland	

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

<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: Poidings and Warrant Sales	95
	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
	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>	Memorandum 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)	

		<i>No of Resulting Report</i>
<b>1988</b>	Discussion Paper No 79—Equalisation of Diligences	
<b>(Cont)</b>	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	147
	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	
<b>1990</b>	Discussion Paper No 85—Family Law: Pre-Consolidation Reform	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	152
	Discussion Paper No 98—Multi-Party Actions: Court Proceedings and Funding Multi-Party Actions: Report by Working Party set up by Scottish Law Commission	154
<b>1996</b>	Discussion Paper No 99—Judicial Abolition of the Error of Law Rule and its Aftermath Appendix - Draft Rules on Unjustified Enrichment and Commentary	
	Discussion Paper No 100—Recovery of Ultra Vires Public Authority Receipts and Disbursements	

### 3 Scottish Law Commission—Other published documents

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

<b>1969</b>	Married Women's Policies of Assurance (Scotland) Act 1880—Working Paper
<b>1973</b>	Consultation Paper on Divorce for Incurable Insanity

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

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

# 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>
<i>(a) Memoranda</i>		
Restrictions on the Creation of Liferents (Memorandum No 3)	5.5.67	Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c 70), section 18
Applications for Planning Permission (Memorandum No 4)	11.5.67	Town and Country Planning (Scotland) Act 1969 (c 30), section 97
<i>(b) Reports</i>		
Proposals for Reform of the Law of Evidence Relating to Corroboration (Scot Law Com No 4)	20.4.67	Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c 70), section 9
Reform of the Law Relating to Legitimation <i>per subsequens matrimonium</i> (Scot Law Com No 5) (Cmnd 3223)	20.4.67	Legitimation (Scotland) Act 1968 (c 22), Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c 70), section 5
Divorce—The Grounds Considered (Scot Law Com No 6) (Cmnd 3256)	12.5.67	Divorce (Scotland) Act 1976 (c 39)
*Sea Fisheries (Shellfish) Bill (Scot Law Com No 6A) (Cmnd 3267)	11.5.67	Sea Fisheries (Shellfish) Act 1967 (c 83)
*Trustee Savings Banks Bill (Scot Law Com No 10) (Cmnd 4004)	17.4.69	Trustee Savings Banks Act 1969 (c 50)
*Interpretation of Statutes (Scot Law Com No 11)	11.6.69	None
*Exemption Clauses in Contracts—First Report: Amendment to the Sale of Goods Act 1893 (Scot Law Com No 12)	18.9.69	Supply of Goods (Implied Terms) Act 1973 (c 13)
The Companies (Floating Charges) (Scotland) Act 1961 (Scot Law Com No 14) (Cmnd 4336)	22.4.70	The Companies (Floating Charges and Receivers) (Scotland) Act 1972 (c 67)
Reform of the Law Relating to Prescription and Limitation of Actions (Scot Law Com No 15)	27.11.70	Prescription and Limitation (Scotland) Act 1973 (c 52)
*Hague Convention on Recognition of Divorces and Legal Separations (Scot Law Com No 16) (Cmnd 4542)	1.12.70	Recognition of Divorce and Legal Separations Act 1971 (c 53)
*Coinage Bill (Scot Law Com No 18) (Cmnd 4544)	26.11.70	Coinage Act 1971 (c 24)
*Vehicles (Excise) Bill (Scot Law Com No 19) (Cmnd 4547)	2.12.70	Vehicles (Excise) Act 1971 (c 10)
*National Savings Bank Bill (Scot Law Com No 20) (Cmnd 4574)	13.1.71	National Savings Bank Act 1971 (c 29)
*Taxation of Income and Gains derived from Land (Scot Law Com No 21) (Cmnd 4654)	23.4.71	In part by section 82 of the Finance Act 1972 (c 41)
*The Road Traffic Bill (Scot Law Com No 22) (Cmnd 4731)	26.7.71	Road Traffic Act 1972 (c 20)

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<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
Town and Country Planning (Scotland) Bill (Scot Law Com No 24) (Cmnd 4949)	20.4.72	Town and Country Planning (Scotland) Act 1972 (c 52)
Family Law - Report on Jurisdiction in Consistorial Causes affecting Matrimonial Status (Scot Law Com No 25)	29.9.72	Domicile and Matrimonial Proceedings Act 1973 (c 45)
*Statute Law Revision - Fourth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 26) (Cmnd 5108)	28.9.72	Statute Law (Repeals) Act 1973 (c 39)
Report on Liability for Antenatal Injury (Scot Law Com No 30) (Cmnd 5371)	30.8.73	None required
Report on the Law Relating to Damages for Injuries Causing Death (Scot Law Com No 31)	24.10.73	Damages (Scotland) Act 1976 (c 13)
*Statute Law Revision - Fifth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 32) (Cmnd 5493)	6.12.73	Statute Law (Repeals) Act 1974 (c 22)
Report on Presumption of Death (Scot Law Com No 34)	3.9.74	Presumption of Death (Scotland) Act 1977 (c 27)
*Friendly Societies Bill (Scot Law Com No 35) (Cmnd 5634)	27.6.74	Friendly Societies Act 1974 (c 46)
*Statute Law Revision—Sixth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 36) (Cmnd 5792)	5.12.74	Statute Law (Repeals) Act 1975 (c 10)
*Supply Powers Bill (Scot Law Com No 38) (Cmnd 5850)	6.1.75	Supply Powers Act 1975 (c 9)
*Exemption Clauses - Second Report (Scot Law Com No 39)	2.10.75	Unfair Contract Terms Act 1977 (c 50)
*Statute Law Revision—Seventh Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 40) (Cmnd 6303)	8.12.75	Statute Law (Repeals) Act 1976 (c 16)
Family law—Report on Liability for Adultery and Enticement of a Spouse (Scot Law Com No 42)	23.6.76	In part by section 10 of the Divorce (Scotland) Act 1976 (c 39)
*Statute Law Revision—Eighth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 44) (Cmnd 6719)	6.1.77	Statute Law (Repeals) Act 1977 (c 18)
*Liability for Defective Products (Scot Law Com No 45) (Cmnd 6831)	15.6.77	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)

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

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<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
*Dentists Bill (Scot Law Com No 84) (Cmnd 9119)	18.1.84	Dentists Act 1984 (c 24)
*Road Traffic Regulation Bill (Scot Law Com No 85) (Cmnd 9162)	21.2.84	Road Traffic Regulation Act 1984 (c 27)
Family Law—Report on Matrimonial Property (Scot Law Com No 86)	21.6.84	Family Law (Scotland) Act 1985 (c 37)
*Further Amendments of the Companies Acts 1948-1983 (Scot Law Com No 87) (Cmnd 9272)	25.6.84	Companies Acts (Pre-Consolidation Amendments) (No 2) Order 1984 (S.I. 1984/1169) Companies Act 1985 (c 6)
*Private International Law—Report on Recognition of Foreign Nullity Decrees and Related Matters (Scot Law Com No 88) (Cmnd 9341)	19.9.84	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) (Cmnd 9595)	8.8.85	Private International Law (Miscellaneous Provisions) Act 1995 (c 42), sections 5-8
Obligations—Report on Civil Liability in relation to Animals (Scot Law Com No 97)	8.11.85	Animals (Scotland) Act 1987 (c 9)
*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 and Supply of Goods Amendment 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

*Date of*

<i>Titles of relevant Memoranda and Reports</i>	<i>Publication</i>	<i>Statutory Provision</i>
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)
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)
Report on 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)
*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) Act 1995 c(c 42), Sect 9-15
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)
	<i>Date of</i>	

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<i>Titles of relevant Memoranda and Reports</i>	<i>Publication</i>	<i>Statutory Provision</i>
*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)
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) (Scotland) 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) (Cm 2085)	10.11.92	Clean Air Act 1993 (c 11)
*Statute Law Revision: Fourteenth Report—Draft Statute Law (Repeals) Bill (Scot Law Com No 140) (Cm 2176)	27.4.93	Statute Law Repeals Act 1993 (c 50)
Crofters (Scotland) Bil—Report on the Consolidation of Certain Enactments relating to Crofting (Scot Law Com No 141) (Cm 2187)	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) (Cm 2184)	11.5.93	Pension 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) (Cm 2255)	15.6.93	Health Service Commissioners Act 1993 (c 46)
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 Confiscation and Forfeiture (Scot Law Com No 147) (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) Act 1995 (c 44)
Report on Incapable Adults (Scot Law Com No 151) (Cm 2962)	7.9.95	None <sup>1</sup>
Report on Three Bad Rules in Contract Law (Scot Law Com No 152)	11.1.96	None <sup>2</sup>

1. But see Para 1.3 above.

2. But see Para 1.2 above.

