

Scottish Law Commission

(SCOT. LAW COM. No. 56)

**FOURTEENTH
ANNUAL REPORT
1978–1979**

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

*Ordered by The House of Commons to be printed
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The Scottish Law Commission was set up by section 2 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law of Scotland. The present Commissioners are:

The Honourable Lord Hunter, V.R.D., *Chairman*,
Mr. A. E. Anton, C.B.E.,
Mr. R. D. D. Bertram,
Mr. J. Murray, Q.C.,¹
Professor T. B. Smith, Q.C.

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

¹Appointed as Commissioner with effect from 3 September 1979.

SCOTTISH LAW COMMISSION

REPORT FOR THE YEAR ENDED 15th JUNE, 1979

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

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

J. O. M. HUNTER
Chairman

18 September 1979

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

FOURTEENTH ANNUAL REPORT

CONTENTS

<i>Part</i>		<i>Paragraph</i>	<i>Page</i>
I	THE COMMISSION	1-7	1
	STAFF	3	1
	PREMISES	4-6	1
	MEETINGS	7	2
II	GENERAL	8-16	2
III	LAW REFORM PROGRAMMES	17-44	5
	1. FIRST PROGRAMME	17-28	5
	Item 1: Evidence	17	5
	Item 2: Obligations	18	6
	(a) Corporeal Moveables.	19	6
	(b) Security over Moveables	20	7
	(c) Constitution and Proof of Voluntary Obligations	21	7
	(d) Defective Consent and Consequential Matters	22	7
	(e) Defective Expression	23	7
	(f) Penalties and Irritancies	24	7
	(g) Illegality	25	8
	(h) Civil Liability in relation to Animals	26	8
	Item 3: Prescription and Limitation of Actions	27-28	8
	(a) Limitation of Actions in Personal Injury Claims	27	8
	(b) Acquisitive Prescription	28	8
	2. SECOND PROGRAMME	29-40	8
	Item 6: Insolvency, Bankruptcy and Liquidation	29-31	8
	Item 7: Succession	32	9
	Item 8: Diligence	33-34	9
	Item 10: Damages arising from Personal Injuries and Death	35	10
	Item 12: Legal Capacity of Minors and Pupils	36	10
	Item 14: Family Law	37-40	10
	(a) Aliment and Financial Provision	37	10
	(b) Occupancy Rights in the Matrimonial Home and Domestic Violence	38	10
	(c) Family Property Law	39	10
	(d) Illegitimacy	40	10

<i>Part</i>	<i>Paragraph</i>	<i>Page</i>
3. THIRD PROGRAMME	41-44	11
Item 15: Private International Law	41-44	11
(a) EEC Convention on the Law applicable to Contractual Obligations	42	11
(b) Proposed EEC Convention on the Law applicable to Non-Contractual Obligations	43	11
(c) Hague Conference: International Child Abduction	44	12
IV CONSOLIDATION AND STATUTE LAW REVISION	45-48	12
1. CONSOLIDATION	45	12
2. STATUTE LAW REVISION	46-47	14
3. PRIVATE ACTS	48	14
V OTHER STATUTORY FUNCTIONS	49-67	15
1. ADVICE TO GOVERNMENT DEPARTMENTS AND OTHER BODIES	49-57	15
(1) Foreign Money Liabilities	50	15
(2) Conflicts of Jurisdiction affecting the Custody of Children	51	15
(3) Mental Element in Crime	52	15
(4) Breach of Confidence	53	16
(5) Hague Convention on the International Ad- ministration of the Estates of Deceased Persons	54	16
(6) Irritancies in Leases	55	16
(7) Law of Incest in Scotland	56	16
(8) Draft EEC Insurance Services Directive	57	16
2. OTHER MATTERS DEALT WITH UNDER SECTION 3(1)	58-67	17
(1) Proposals	59	17
(2) Married Women's Policies of Assurance (Scot- land) Act 1880	60	17
(3) Powers of Attorney	61	17
(4) Powers of Judicial Factors	62	17
(5) Agricultural Holdings	63	17
(6) Companies (Floating Charges and Receivers) (Scotland) Act 1972	64	17
(7) Criminal Law	65-66	18
(a) Insanity	65	18
(b) Conspiracy—Mobbing and Rioting	66	18
(8) Actions of Ejection and Removings	67	18
VI FOREIGN LEGAL SYSTEMS AND INTERNATIONAL LAW	68-72	18
(1) EEC Draft Insurance Directive: Contract Law	68	18

<i>Part</i>	<i>Paragraph</i>	<i>Page</i>
(2) UNIDROIT—Draft Convention on the Hotel-keeper's Contract	69	18
(3) UNIDROIT—Codification of the Law of Contract	70	19
(4) Hague Conference on Private International Law—Special Commission on Child Abduction	71	19
(5) Visits to Canadian Law Reform Commissions etc.	72	19
VII CONSULTATION	73–81	19
THE LAW COMMISSION	73–76	19
(1) Codification of the Criminal Law	74–75	19
(2) Working Papers on Contract	76	20
OTHER LAW REFORM ORGANISATIONS	77–78	20
THE LEGAL AND OTHER PROFESSIONS IN SCOTLAND	79–80	20
SEMINARS, COLLOQUIA, ETC.	81	20
VIII MISCELLANEOUS	82–88	21
DEPARTMENTAL AND OTHER COMMITTEES	82–86	21
(1) Statute Law Committee	83	21
(2) Civil Judicial Statistics	84	21
(3) Insolvency Law Review Committee	85	21
(4) European Judgments Convention	86	21
SCRUTINY OF BILLS	87	21
APPENDICES	88	21
Appendix I		
Membership of Working Parties, etc.		22
Appendix II		
1. Scottish Law Commission—Papers Published by Her Majesty's Stationery Office (as at 31 August 1979)		24
2. Scottish Law Commission—Memoranda Circulated for Comment and Criticism		26
3. Scottish Law Commission—Published Consultative Documents Circulated for Comment and Criticism		27
4. Scottish Law Commission—Other Published Documents		27
5. Scottish Law Commission—Consultative Papers not Published and with very Restricted Circulation		27
6. Scottish Law Commission—Unpublished Confidential Documents		28
Appendix III		
Statutory Provisions relating to the Scottish Law Commission's Proposals (as at 31 August 1979)		29

I. THE COMMISSION

1. The Scottish Law Commission, which was set up on 16 June 1965, consisted for the greater part of the year under review of a full-time Chairman, two full-time Commissioners and two part-time Commissioners. A vacancy in the membership of the Commission arose on 7 May 1979, when your Lordship ceased to be a Commissioner upon being appointed Lord Advocate, but this vacancy has now been filled by the appointment of Mr. J. Murray, Q.C., as a Commissioner, initially on a part-time basis, with effect from 3 September 1979. We take this opportunity of welcoming Mr. Murray to membership of the Commission.

2. The present Commissioners are:

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

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

STAFF

3. Our legal staff consists of two Parliamentary Draftsmen, both on a part-time basis, our Secretary and eight other qualified lawyers. Mr. J. B. Allan, our Secretary since February 1972, left us on promotion on 30 March 1979. We wish to record our appreciation of the services rendered by Mr. Allan during his term of office. During the year we received assistance from Depute Procurators Fiscal who have been members of our Criminal Law Working Party and who have undertaken research on our behalf into criminal law matters. During the 1978 summer vacation we employed five graduates in law to assist with our research work. We wish to thank them for their assistance. Our non-legal staff remains at eleven.

PREMISES

4. We mentioned in our last Annual Report¹ that the space allocated for our existing library was inadequate to meet present and future needs and that negotiations had taken place in order to obtain the necessary accommodation to the rear of our existing premises. We regret to say that, despite strenuous efforts on our part, these negotiations have not yet been concluded. In the near future the space remaining in our existing library will be insufficient to house our present stock of books, together with the additional volumes of which we expect delivery. Moreover, in the present rather cramped conditions it is impossible to carry out the re-arrangement and re-cataloguing which are now urgently necessary. In these circumstances, it is hoped that the arrangements which were concluded with the responsible Government agencies at the time when we moved into new premises remote from the main Law Libraries, and which have subsequently been confirmed, will be put into effect soon.

¹(1979) Scot. Law Com. No. 55, para. 4.

5. On the assumption (which, we hope, remains well-founded) that we will shortly have sufficient space and funds for the development of a library adequate to meet the Commission's reasonable needs, we have sought advice from various sources regarding holdings, space requirements and arrangement. In this connection, we are sincerely grateful for the advice and help freely given to us by Mr. W. A. F. P. Steiner and Miss Muriel Anderson of the Institute of Advanced Legal Studies, Mr. D. Raistrick, Librarian of the Law Commission for England and Wales, Professor D. M. Walker of the University of Glasgow, Professor A. B. Wilkinson of the University of Dundee and Professor The MacNeil of Barra.

6. For a modest annual payment, we and our legal staff continue to have access to the University of Edinburgh Law Library. This arrangement has been very beneficial to us at a time when our own library facilities have not yet been fully developed. Moreover, access to the University Law Library will, in consequence of the wider scope of its contents, continue to be necessary for the foreseeable future. We wish to record our appreciation of the co-operation and assistance which we have received in this regard from the University and its officers, particularly the Law Librarian, Miss M. E. Sturgeon.

MEETINGS

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

II. GENERAL

8. During the past year our main effort has been devoted to intensive work on certain of our large programme subjects: Bankruptcy, Diligence, Family Law, Evidence, Obligations and Private International Law. We believe that performance of work of this nature must, in the light of the provisions of section 3(1) of the Law Commissions Act 1965, be regarded as one of the Commission's most important functions. Experience in our work on Bankruptcy, however, has demonstrated the very considerable extent to which the resources of a relatively small law reform body may be absorbed by a single large project over a period of years. The same has also already proved to be true of our work on Diligence, which covers the whole law and practice relating to the enforcement of decrees. Because of the close inter-relationship between Bankruptcy and Diligence and their respective procedures, the work on Diligence was planned to follow behind the work on Bankruptcy, and until the work on Bankruptcy is completed it is unlikely that the fairly small team working on Diligence can be reinforced.

9. Inevitably, these major programme subjects include some areas that prove to be sensitive and controversial and others, usually more extensive, that are highly technical and difficult. The Diligence programme is typical in these respects, and much the same has proved true of Family Law. Projects such as these, covering very wide areas of law and practice, not only demand systematic consideration but also call for objective and informed policy decisions based on adequate social and legal research and wide consultation. We seek to be responsive to those controversies and expressions of dissatisfaction about present law and practice which come to our notice from time to time, but we regard it as

essential that recommendations for particular reforms should, so far as practicable, be designed to fit into the fabric of the larger areas of law and practice to which they relate; otherwise the coherence of a legal system and its component parts may easily be destroyed by spasmodic and hasty introduction on a narrow *ad hoc* basis of special remedies to meet particular problems or criticisms. The more radical the reforms that may be proposed, the more difficult it usually is to fit the changes into the existing fabric. While we do not shrink from proposing or supporting such reforms where a need for them exists, experience shows that they are likely to present technical difficulties which must be resolved in a manner that is satisfactory and lasting as well as economical; indeed, reform of the purely technical and procedural aspects of major subjects requires more time and effort than is generally realised.

10. The final stage of our programme work on Bankruptcy, namely the preparation of a draft Bill to accompany our report, is now approaching. This will inevitably be time-consuming and may occupy a year or more. The preparation of draft Clauses embodying proposed legislation on a subject as large and important as Bankruptcy is bound to demand adjustment and sometimes rethinking of many matters covered by the draft report. This is one of a number of reasons why the seconding of Parliamentary Draftsmen to the Commission has proved to be absolutely essential. We are particularly relieved that, at a time when our work on Bankruptcy is moving towards completion, a full-time Parliamentary Draftsman has now been seconded to the Commission to fill the place which has been vacant since our previous full-time Parliamentary Draftsman retired in March 1977.

11. When our programme work on Bankruptcy is completed with the submission of a report and draft Bill, questions may arise as to the responsibility for promoting what would in effect be a new Bankruptcy code for Scotland. Bankruptcy is a core area of the commercial and mercantile law of Scotland. It has been called, and rightly so, 'the Diligence of last resort'. It is the acid test of the validity and effect of many commercial and other transactions. Responsibility for the Scots law of Bankruptcy rested for many years with a Scottish Minister. This may be illustrated by the fact that the examination of the Scots law of Bankruptcy which preceded the passing of the Bankruptcy (Scotland) Act 1913 was carried out by a Departmental Committee appointed by the Secretary for Scotland under the Chairmanship of a judge of the Court of Session. The Bill which became the Bankruptcy (Scotland) Act 1913 was piloted through the Standing Committee on Scottish Bills by the Lord Advocate. It may be inferred from the Report of the Royal Commission on Scottish Affairs,¹ which sat from 1952 to 1954, that the Board of Trade did not at that time administer Scottish Bankruptcy legislation. It is understood that doubts subsequently arose about departmental responsibility for the subject, and in 1972 the Commission was informed that this responsibility had by administrative action been entrusted to the Department of Trade and Industry. In both recent proposals for Scottish Devolution,² however, Bankruptcy was to be a devolved subject. We are satisfied that these proposals to return responsibility for the Scots law of Bankruptcy to a Scottish Department were, in principle, sound. It is an area of

¹Cmnd. 9212, para. 214.

²Scotland and Wales Bill, Clause 25, Schedule 6; Scotland Act 1978, section 63, Schedule 10.

Scots law which is distinctive and one which involves both an underlying philosophy and resulting procedures substantially different from those which prevail in England. Though we have been receptive to certain ideas drawn from English and other common law systems of Bankruptcy, we have found that serious limits to the scope of harmonisation are presented by the very different fabric of the general law of Scotland, both in its substantive and its procedural aspects. This area of Scots law, therefore, is one which, in our opinion, is peculiarly appropriate to be handled by a Scottish Minister armed with first-hand advice from Scots lawyers and administrators, and we do not think that the concern of the Department of Trade with other aspects of the law of Insolvency should present any insuperable difficulties. We therefore suggest that consideration be given to returning departmental responsibility for Bankruptcy to a Scottish Department. In making this suggestion, we wish to make it clear that we do not imply any criticism of the way in which the Department of Trade has discharged its functions in this field of law, but, for the reasons which we have given, we believe that the time is ripe for these functions to be entrusted once more to a Scottish Department.

12. We are aware of the pressures which have arisen as a result of complaints and criticisms concerning certain aspects of the law and practice in the field of Diligence, including procedures followed in poindings and warrant sales. The difficulties of formulating proposals for reform in this large and highly technical area of law and practice should not, however, be underestimated. A piece-meal approach would be most unfortunate; there are many administrative and technical problems, as well as large questions of legal, social and economic policy, demanding solution. In consequence, the papers which are to be submitted during consultation to the many interested persons and organisations must, so far as possible, be all-embracing, accurate and informative, as well as sound in their presentation of existing law and practice. Subject to these necessary constraints, we are doing all in our power with the resources available to make early progress with this important project.

13. We recognise that we have other functions which are second only in importance to work on our programme subjects. In particular, we appreciate that there is a place for the preparation in the Commission of proposals for legislation of a more limited character. In this regard, high priority is being given to the preparation of reports, with draft Bills, on Lost and Abandoned Property¹ and Occupancy Rights in the Matrimonial Home and Domestic Violence.² We think it important that Ministers should have the advantage of considering the final views of the Commission on these subjects as soon as is practicable. In both cases, the pressure for legislation, which has emerged for different reasons, is well understood. In the case of Occupancy Rights in the Matrimonial Home and Domestic Violence, it is necessary for the Commission to give careful and objective consideration to the strong and, in various respects, conflicting opinions and comments which have been received from the many persons and interests who have responded to consultation. Inevitably, when social and legal questions of such importance are under consideration, widely differing views are held by those who may seek, or oppose, proposals for reform. But the necessity and difficulty of solving the accompanying technical problems

¹See para. 19.

²See para. 38.

sometimes tend to be overlooked. In the realm, for example, of Occupancy Rights, desirable reforms of Family Law will have to be reconciled with practical and technical difficulties in Property Law. The possible effects of such reforms on existing or projected economic and housing policies are amongst the many other factors which the Commission must constantly bear in mind.

14. The reference¹ to the further consideration by the two Law Commissions of matters concerning Conflicts of Jurisdiction affecting the Custody of Children will be noted. This is a particularly difficult and sensitive area of Conflicts, not only as regards the relationship between the different legal systems in the United Kingdom but also internationally. Activities in a number of different international organisations, which are proceeding concurrently with discussions inside the United Kingdom and the Commonwealth, have greatly complicated the issues. In the circumstances, it seems doubtful whether satisfactory solutions can emerge internationally for some considerable time ahead, but a renewed attempt is being made by the two Law Commissions to evolve an agreed system of jurisdictional rules which could remove many of the existing cross-border problems and lead to satisfactory provisions for recognition and enforcement between the separate legal systems of the United Kingdom.

15. Both Law Commissions have felt increasing concern about certain aspects of their involvement in matters of European and Private International Law, including the work which we perform, often jointly with our English colleagues, in pursuance of our Third Programme of Law Reform. Ministers are aware from recent correspondence of the main questions which are causing disquiet in this regard, and in particular of the failures on some occasions to provide to the Commissions background information necessary for satisfactory performance of their work in these fields. The difficulties are recognised, and we hope that solutions to these problems can be found during the coming year. Meanwhile, it seems inevitable that this Commission will have to continue to devote considerable, and possibly increasing, resources to work arising from European and international developments.

16. Our work on consolidation and revision of statute law² continues in a reasonably satisfactory manner. The importance of this work in re-organising the Statute Book and cutting out dead wood from it has sometimes been overlooked or underestimated. We nevertheless regard these facets of our work, and the contemporaneous production of Statutes in Force, as most important aspects of law reform. The Parliamentary Draftsmen and members of legal staff, who, with the aid of the Government Departments concerned, carry out this essential but relatively unexciting work, deserve the gratitude of the public, of the legislature and of the legal profession alike.

III. LAW REFORM PROGRAMMES

1. FIRST PROGRAMME³

Item 1: Evidence

17. The research paper prepared by Sheriff I. D. Macphail has now been published and copies of the paper were issued recently to interested bodies and

¹In para. 51 of this Report.

²See Part IV.

³(1965) Scot. Law Com. No. 1.

individuals. Work on the consultative memorandum to be issued in conjunction with the research paper has reached an advanced stage, and it had been hoped to publish this memorandum in the autumn. The recent change in the Commission's membership may, however, result in some interruption of this work.

Item 2: Obligations

18. We continue to make progress on various matters falling within this Programme subject, which in many respects is interrelated with the law of Property. Our ultimate objective is comprehensive reform and restatement of this chapter of the law.

(a) *Corporeal Moveables*

19. On 31 August 1976 we published a series of Memoranda¹ on the law relating to Corporeal Moveables. The individual Memoranda deal with

- (1) General introduction and summary of provisional proposals
- (2) Passing of risk and of ownership
- (3) Some problems of classification
- (4) Protection of the onerous *bona fide* acquirer of another's property
- (5) Mixing, union and creation
- (6) Lost and abandoned property
- (7) Usucapion or acquisitive prescription
- (8) Remedies

As we indicated in our last Annual Report,² we consider that it would be premature at this stage to draft a report on Memorandum No. 25, which deals with the passing of risk and of ownership, principally because our Working Party on Security over Moveables³ is examining *inter alia* reservation of ownership clauses which are intended to operate by way of security in contracts of sale. For similar reasons, we share the opinion of consulted bodies that it is also premature to report on Memoranda Nos. 26 and 28, which deal with problems of classification and mixing, union and creation respectively, pending further work on security over moveables. A separate report on Memorandum No. 29 on Lost and Abandoned Property (including Uncollected Goods) is being given priority. The principal reason for this is that a number of relevant statutory provisions are to be found in the Burgh Police (Scotland) Act 1892 and various local Acts, and these Acts are due to be repealed by 1981 and replaced by a statute applying throughout Scotland which will deal comprehensively with civic government. In view of the possibility that a Bill for that purpose may be introduced in the 1979-80 Parliamentary Session, we are responding to a request from government departments to expedite the preparation of our report. Work has also started on the preparation of a report on the remaining Memoranda in this series, which will deal with protection of the onerous *bona fide* acquirer of another's property, acquisitive prescription and remedies.

¹Scottish Law Commission Memoranda Nos. 24-31.

²(1979) Scot. Law Com. No. 55, para. 21.

³A list of members of the Working Party is in Appendix I to this Report.

(b) Security over Moveables

20. Our Working Party on Security over Moveable Property,¹ who are considering the question of the introduction into Scots law of a system of security over moveable property based upon Article 9 of the Uniform Commercial Code of the United States of America, have met thirteen times during the year under review. The Working Party have formed views on most of the many difficult problems connected with the question remitted to them. Their task now is to dispose of the remaining problems and to draft a report for submission to us.

(c) Constitution and Proof of Voluntary Obligations

21. On 10 March 1977 we published a series of Memoranda² containing provisional proposals relating to the constitution and proof of voluntary obligations, and invited the submission of views before 30 September 1977. The individual Memoranda deal with

- (1) General introduction and summary of provisional proposals
- (2) Unilateral promises
- (3) Formation of contract
- (4) Abortive Constitution
- (5) Stipulations in favour of third parties
- (6) Formalities of constitution and restrictions on proof.

The comments so far received on this series of Memoranda have been analysed. We are, however, awaiting further submissions before the preparation of a report is undertaken.

(d) Defective Consent and Consequential Matters

22. On 1 June 1978 we published a Memorandum³ on the scope and effect in law of defects of will or consent such as error, force and fear, and fraud. Among the consequential matters considered were delictual liability for misrepresentation, money as a surrogatum for restitution and procedure for securing judicial authority to annul obligations. We asked for comments to be submitted by 30 November 1978. Some comments have been received but we are still awaiting comments from one of the principal legal bodies concerned.

(e) Defective Expression

23. In the course of the year under review, work has proceeded on the preparation of a memorandum on the subject of defective expression in contracts. We hope to consider a draft of this memorandum in the late summer, with a view to publication before the end of 1979.

(f) Penalties and Irritancies

24. Further research has been carried out on the general law relating to irritancies, penalty clauses and liquidated damages clauses in contracts. A memorandum will be drafted when resources permit.

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

²Scottish Law Commission Memoranda Nos. 34–39.

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

(g) *Illegality*

25. Some work has been carried out on the preparation of a memorandum and will be resumed when resources permit.

(h) *Civil Liability in relation to Animals*

26. Further research has been undertaken with a view to the preparation of a memorandum on this subject.

Item 3: Prescription and Limitation of Actions

(a) *Limitation of Actions in Personal Injury Claims*

27. A research paper was prepared for us which surveys the present law in Scotland and England on the subject of limitation of actions in personal injury claims, and examines the possibility of reform. A draft memorandum is at present in course of revision, but pressure of other work now makes it unlikely that the memorandum will be published until some time in 1980.

(b) *Acquisitive Prescription*

28. This subject is being considered in our review of the law of Corporeal Moveables.¹

2. SECOND PROGRAMME²

Item 6: Insolvency, Bankruptcy and Liquidation

29. We stated in our last Annual Report³ that our Bankruptcy Team continued to be engaged in the preparation of a draft report. The bulk of this report has now been submitted to us and, as the examination of the report has proceeded, we have seen our way to propose further changes in the law. We are engaging on limited consultation on these proposals, but we hope, nevertheless, that the revision of the report may be completed by autumn, when work on the draft Bill may commence. It is now clear that nothing less than a new Bankruptcy Act is required and, in consequence, the drafting of the Bill is likely to take some time.

30. In May 1979, we circulated to certain bodies and individuals, including the Faculty of Advocates, the Law Society of Scotland and the Institute of Chartered Accountants of Scotland, a consultation paper about a recent case, *Gibson v. Hunter Homes Designs Ltd.*⁴ In that case, a person who had contracted to buy a house had paid the purchase price in exchange for a letter of obligation under which the solicitor for the seller, a building company, undertook to deliver a disposition in favour of the purchaser within a period of one month. In the event, the seller went into liquidation before delivery of the disposition, and the liquidator's subsequent refusal to deliver it to the purchaser was upheld by the Court of Session. We invited views on the desirability or otherwise of altering the law in relation to those circumstances and proposed that, in any event, a trustee in sequestration or liquidator should not be entitled to compete with an acquirer for value who had actually obtained (but not completed) a title to property.

¹See para. 19.

²(1968) Scot. Law Com. No. 8.

³(1979) Scot. Law Com. No. 55, para. 33.

⁴1976 S.L.T. 94.

31. The Consultative Committee on Insolvency Law Review under the chairmanship of Professor R. B. Jack met for the first time in September 1978¹ and since then have met on four occasions. The Committee have examined suggestions made to and proposals by the Insolvency Law Review Committee (for England and Wales) with a view to ensuring that Scottish views are available to Government when they consider whether and how to give effect to the recommendations of the Insolvency Law Review Committee.

Item 7: Succession

32. We explained in our last Annual Report² that, because of the commitment of resources to other subjects, no work was being done on this subject at that time. This remains the position, and in any event we consider that it would be advisable to defer systematic consideration of the law of Succession until our study of family property law³ is further advanced.

Item 8: Diligence

33. As mentioned in our last Annual Report,⁴ we intended to issue seven memoranda dealing with the following topics in the general field of diligence:

- (1) an introductory memorandum;
- (2) a memorandum on the introduction of wage-earners' debt arrangement schemes;
- (3) a memorandum on arrestment and judicial transfer of earnings;
- (4) a memorandum on poindings and warrant sales;
- (5) a memorandum on collection and enforcement of aliment and periodical allowance on divorce;
- (6) a memorandum on the administration of the system of diligence and related matters; and
- (7) a memorandum on miscellaneous topics (such as diligence against heritable property and arrestment on the dependence).

Work has progressed satisfactorily on the legal and technical aspects of all of these topics in the course of the year under review and we are in the process of incorporating the findings of the various research projects undertaken on our behalf and referred to in the next paragraph. We have decided to issue a report on the collection of aliment and periodical allowance without further consultation, and we hope to undertake preparation of this report in the coming year; but a consultative memorandum will be issued on the question of enforcement, and this may also cover powers proposed to be conferred on collecting officers based in the sheriff courts.

34. In our last Annual Report⁵ we mentioned that eight research projects had been initiated on our behalf by the Central Research Unit of the Scottish Office in order to provide more information on the scale and social effects of diligence.

¹The background to the setting up of this Committee is explained in our last Annual Report, (1979) Scot. Law Com. No. 55, para. 34. A list of the members of the Consultative Committee appears in Appendix I to this Report.

²(1979) Scot. Law Com. No. 55, para. 35.

³See para. 39.

⁴(1979) Scot. Law Com. No. 55, para. 36.

⁵(1979) Scot. Law Com. No. 55, para. 37.

Satisfactory progress has been made in all of these projects; some of the results have already been received and we hope to receive the remainder towards the end of 1979.

Item 10: Damages arising from Personal Injuries and Death

35. Our Report on *Damages for Personal Injuries: (1) Admissibility of Claims for Services; (2) Admissible Deductions*,¹ following upon Memorandum No. 21, was submitted to your predecessor on 20 April 1978, and published on 18 July 1978.

Item 12: Legal Capacity of Minors and Pupils

36. Due to the continued commitment of staff resources to other subjects, we regret that we are not yet in a position to recommence work on this item.

Item 14: Family Law

(a) *Aliment and Financial Provision*

37. Work is continuing on the preparation of a report on this topic. During the coming year we expect to be in a position to consider a draft of the proposed report and to give instructions for the preparation of a draft Bill, which is likely to be fairly substantial.

(b) *Occupancy Rights in the Matrimonial Home and Domestic Violence*

38. Many bodies submitted comments to us on our Memorandum No. 41—*Family Law: Occupancy Rights in the Matrimonial Home and Domestic Violence* to which we referred in our last Annual Report.² The last comments were received in February of this year and we are currently giving the preparation of a report our urgent attention. In view of the sensitive and, in some respects, controversial nature of the subject matter, we have considered it necessary to take particular care in studying the comments and views (some of them widely differing) which have reached us from the various persons and interests consulted. There are also considerable technical problems to take into account in formulating satisfactory proposals for legislation.

(c) *Family Property Law*

39. To assist us in the preparation of a consultative memorandum on Family Property Law, the Social Survey Division of the Office of Population Censuses and Surveys have undertaken a fact-finding and attitude survey on Family Property Law in Scotland. The interviews for this survey took place in May and June 1979, and we understand that the Report on the survey will be published in the course of next year. This Report will enable Professor E. M. Clive of the University of Edinburgh to complete the research paper which we asked him to prepare on this topic. We understand that this research paper is unlikely to be available until the latter part of 1980.

(d) *Illegitimacy*

40. Following discussion of this topic at a seminar held at All Souls College, Oxford in March 1979 in conjunction with our annual Joint Meeting with the

¹(1978) Scot. Law Com. No. 51.

²(1979) Scot. Law Com. No. 55, para. 43.

Law Commission for England and Wales, Professor E. M. Clive of Edinburgh University has prepared a research paper for us on certain legal issues pertaining to the status of illegitimacy. We intend to prepare a consultative memorandum on these issues, but because of the demands made on our resources by other commitments it is not possible for us to forecast when such a memorandum might be ready for publication.

3. THIRD PROGRAMME¹

Item 15: Private International Law

41. The Steering Committee on Private International Law² comprising members of both Law Commissions, continues to supervise the consideration of matters covered by the Third Programme.

(a) *EEC Convention on the Law applicable to Contractual Obligations*

42. In our last Annual Report³ we referred to the fact that the EEC Group of Experts decided in March 1979 that the draft Convention, which originally extended to both Contractual and Non-Contractual Obligations, should be limited to Contractual Obligations, but that the Group agreed that negotiations should be resumed later with a view to preparing a separate Convention on Non-Contractual Obligations. The Joint Working Group on Private International Law⁴ set up by the two Law Commissions continued to assist the United Kingdom Delegation⁵ to the EEC Group of Experts in Brussels in their consideration of the draft Convention on the Law applicable to Contractual Obligations. The EEC Group met in Brussels in November 1978 and February 1979 and have completed their consideration of the text of the draft Convention. The Group, however, will remain in being to consider *inter alia* the interpretation of the Convention by the European Court. The text of the draft Convention has now been submitted to Governments of Member States with a request for their comments by 31 December 1979. The United Kingdom Government recently published the draft Convention with a view to securing the comments of interested persons.

(b) *Proposed EEC Convention on the Law applicable to Non-Contractual Obligations*

43. As explained above, the EEC Group of Experts agreed that negotiations should commence at a later date with a view to the preparation of a Convention relating to Non-Contractual Obligations. The Government decided that the United Kingdom should participate in those negotiations and our respective Ministers invited the Law Commission for England and Wales and ourselves—

- (1) to undertake consultations within the United Kingdom so that the United Kingdom position may be formulated; and
- (2) to advise the United Kingdom Delegation once negotiations commence.

¹(1973) Scot. Law Com. No. 29.

²A list of members of the Steering Committee is in Appendix I to this Report.

³(1979) Scot. Law Com. No. 55, para. 47.

⁴A list of members of the Working Group is in Appendix I to this Report.

⁵The UK delegates are the Hon. Lord Maxwell, Mr. K. M. H. Newman, Professor A. L. Diamond and Mr. A. Akbar.

The two Law Commissions have commenced an examination of the relevant choice of law rules with a view to the possible issue of a consultative document.

(c) *Hague Conference: International Child Abduction*

44. The Hague Conference on Private International Law convened in March 1979 a Special Commission to consider the problem of international child abduction. The United Kingdom was represented by Mr. R. L. Jones of the Home Office and by Mr. Anton, who was elected Chairman of the Special Commission. The Special Commission reached provisional conclusions relating to the establishment of a system of administrative co-operation between States and to the role of the courts in matters of child abduction. The Special Commission will meet again in November 1979 with a view to the preparation of a draft Convention which, it is hoped, will be concluded at the XIVth Session of the Hague Conference in 1980. The conclusions of the Conference will require to be taken into account by the two Law Commissions in the course of their examination of the subject of Conflicts of Jurisdiction affecting the Custody of Children.¹

IV. CONSOLIDATION AND STATUTE LAW REVISION

1. CONSOLIDATION

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

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

*Second Programme*²

(1) *Education (Scotland) Acts*—We have considered and approved a report containing our recommendations relative to this consolidation Bill. The current print of the Bill is at present being considered by the Scottish Education Department. The draftsman is awaiting comments from that Department before finalising the print for the Legislation Committee.

(2) *Enactments relating to the functions of the Scottish Electricity Boards*—The Electricity (Scotland) Bill referred to in our last Annual Report³ received the Royal Assent on 22 March 1979.

(3) *National Health (Scotland) Acts*—The National Health (Scotland) Bill referred to in our last Annual Report⁴ received the Royal Assent on 20 July 1978.

(4) *Enactments relating to Solicitors in Scotland*—A first print of the Solicitors (Scotland) Bill, together with associated tables, has been prepared and sent to interested bodies for comment.

¹See para. 51.

²(1973) Scot. Law Com. No. 27.

³(1979) Scot. Law Com. No. 55, para. 48(a).

⁴(1979) Scot. Law Com. No. 55, para. 48(a).

Third Programme¹

On 3 November 1977 we submitted to your predecessor our Third Programme of Consolidation and Statute Law Revision which was published on 22 February 1978. In this Programme we listed eleven items suitable for consolidation. Progress has been made on five of the items.

- (1) *Adoption*—The Adoption (Scotland) Bill referred to in our last Annual Report² received the Royal Assent on 20 July 1978.
- (2) *Water*—A first print of a Bill, together with associated tables, has been prepared and sent to the Scottish Office for comment.
- (3) *Rents*—Instructions have been received from the Scottish Development Department with a view to the consolidation of the Rent (Scotland) Acts. Work on a consolidation Bill will commence when the services of a draftsman are available.
- (4) *Building Legislation*³—A second print of a Bill has been forwarded to the Scottish Development Department for comment.
- (5) *Slaughterhouses*³—A third print of a Bill has been sent to the Department of Agriculture and Fisheries for Scotland. The draftsman is awaiting instructions to introduce the Bill.

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

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

Employment Protection (Consolidation) Act 1978
Export Guarantees and Overseas Investment Act 1978
Interpretation Act 1978
Oaths Act 1978
Agricultural Statistics Act 1979
Alcoholic Liquor Duties Act 1979
Capital Gains Tax Act 1979
Customs and Excise Duties (General Reliefs) Act 1979
Customs and Excise Management Act 1979
Exchange Equalisation Account Act 1979
Excise Duties (Surcharges or Rebates) Act 1979
Hydrocarbon Oil Duties Act 1979
International Monetary Fund Act 1979
Matches and Mechanical Lighters Duties Act 1979
Tobacco Products Duty Act 1979
Wages Councils Act 1979

- (2) A Bill to consolidate the enactments relating to the Sale of Goods is about to go before Parliament.⁴

¹(1978) Scot. Law Com. No. 46.

²(1979) Scot. Law Com. No. 55, para. 48(a).

³The drafting of these Bills is being undertaken by Parliamentary Draftsmen in the Lord Advocate's Department.

⁴This Bill is now before Parliament.

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

Civil Aviation
Judicial Pensions
Medical
Pilotage
Representation of the People
Reserve Forces
Reserve Forces (Protection of Civil Interests)
Social Work (Education and Training)
Trustee Savings Banks
Value Added Tax
Weights and Measures

(4) Proposals for Bills on the following subjects are currently under consideration:

Clean Air
Corn Returns
Countryside
New Towns
Overseas Development and Co-operation
Prices and Charges
Trade Unions and Employers' Associations

2. STATUTE LAW REVISION

46. All the proposals for repeals which we have received have been or are in the course of being examined and consultations on these proposals are being conducted with interested representative bodies and with Government Departments.

47. As noted in our last Annual Report,¹ the Statute Law (Repeals) Bill implementing the recommendations of the Ninth Report on Statute Law Revision received the Royal Assent on 31 July 1978. Work is continuing in conjunction with our English colleagues on the Tenth Report on Statute Law Revision and it is intended that this will be published by the end of 1979 and the relative Statute Law (Repeals) Bill introduced into Parliament shortly thereafter.

3. PRIVATE ACTS

48. In our last Annual Report² we referred to the work being done by the Law Commission for England and Wales on the preparation of an authoritative Chronological Table of all private Acts passed since 1539. We understand that this work is making good progress, but that as the preparation of the table is a massive undertaking, resources are being concentrated on the first stage (covering approximately the fifty years prior to 1974) with a view to publication of this part of the table when it is completed.

¹(1979) Scot. Law Com. No. 55, para. 50.

²(1979) Scot. Law Com. No. 55, para. 51.

V. OTHER STATUTORY FUNCTIONS

1. ADVICE TO GOVERNMENT DEPARTMENTS AND OTHER BODIES

49. We continue to give advice to Government Departments and other bodies under section 3(1)(e) of the Law Commissions Act 1965, and some of the matters on which we have advised are mentioned in the following paragraphs. In the first eight of these paragraphs we report progress on the subjects which have been formally referred to us for advice under that section.

(1) *Foreign Money Liabilities*

50. For the reasons given in our Thirteenth Annual Report,¹ no work is being undertaken by us on this reference at present.

(2) *Conflicts of Jurisdiction affecting the Custody of Children*

51. In our last Annual Report² we referred to the Joint Working Paper/Memorandum published by the Law Commission for England and Wales and ourselves on *Custody of Children—Jurisdiction and Enforcement within the United Kingdom*.³ We explained that the Law Commission were reconsidering their approach on the proposed common grounds of jurisdiction and had prepared an alternative scheme which we had under consideration. The examination, however, of international child abduction by the Hague Conference on Private International Law makes it likely that the two Commissions may have to defer the preparation of their final Report pending the conclusions of the XIVth Session of the Hague Conference in 1980.⁴ We are continuing, however, to maintain close contact with the Law Commission on the issues relating to the enforcement of custody orders, both internationally and within the United Kingdom.

(3) *Mental Element in Crime*

52. On 21 June 1978, the Law Commission for England and Wales published their Report on the Mental Element in Crime.⁵ On 21 May 1979 we received from the Scottish Home and Health Department a reference under section 3(1)(e) of the Law Commissions Act 1965 in the following terms:

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

A Depute Procurator Fiscal carrying out research on our behalf has prepared a paper on the nature of the English proposals and the appropriateness or otherwise of applying these proposals or any of them to Scotland. This paper is currently under consideration with a view to the preparation of a consultative memorandum on the matter referred to us by the Department.

¹(1979) Scot. Law Com. No. 55, para. 53.

²(1979) Scot. Law Com. No. 55, para. 54.

³Scottish Law Commission Memorandum No. 23; Law Commission Working Paper No. 68.

⁴See para. 44.

⁵(1978) Law Com. No. 89.

(4) *Breach of Confidence*

53. For the reasons mentioned in our last Annual Report,¹ we have not yet commenced work on the drafting of a report following upon our Memorandum No. 40—*Confidential Information*.

(5) *Hague Convention on the International Administration of the Estates of Deceased Persons*

54. Work on the preparation of a draft report on this topic has been suspended pending receipt of the provisional proposals of the Law Commission for England and Wales.

(6) *Irritancies in Leases*

55. We hope to complete the preparation of a draft memorandum on this topic shortly and to be in a position to publish the final version of the memorandum in the course of the coming year.

(7) *Law of Incest in Scotland*

56. On 9 February 1977 we received from your predecessor, a reference in the following terms:

‘To review the law of Scotland on incest, to consider what changes in that law may be desirable, to report their findings and to make recommendations to the Secretary of State for Scotland on possible legislation to reform the law on incest.’

A draft memorandum has been prepared and is being considered by us with a view to publication during 1980. We are indebted to Depute Procurators Fiscal who have worked with us for the past two years for much of the research leading to the preparation of the draft memorandum on this subject.

(8) *Draft EEC Insurance Services Directive*

57. On 17 May 1978 your predecessor asked us to

‘consider and advise on the implications of the draft second EEC Directive on the co-ordination of insurance laws and the provision of services in relation to choice of law rules both current and proposed under the draft EEC Convention on Contractual Obligations’.

As mentioned in our last Annual Report,² the Lord Chancellor made a similar request to the Law Commission for England and Wales, and the two Law Commissions referred this matter to the Joint Working Group which has been advising the United Kingdom delegation to the EEC Group of Experts concerned with the draft EEC Convention on Contractual Obligations.³ After analysing the comments received on the consultative document referred to in our last Annual Report, the Joint Working Group prepared a report which was submitted to the Lord Chancellor and the Solicitor General for Scotland in April 1979.

¹(1979) Scot. Law Com. No. 55, para. 58.

²(1979) Scot. Law Com. No. 55, para. 62.

³See para. 42.

2. OTHER MATTERS DEALT WITH UNDER SECTION 3(1)

58. As part of our functions we have to examine the law for anomalies and defects; consider the simplification and modernisation of the law; and consider proposals for law reform. In fulfilment of this function, the following matters have been or are being examined.

(1) *Proposals*

59. We continue to receive from time to time proposals for changes in the law. We take under consideration all such proposals and in subsequent paragraphs we mention what action is being taken in relation to some of them.

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

60. In our last Annual Report¹ we noted the publication of our Report on the *Married Women's Policies of Assurance (Scotland) Act 1880*.² During the year under review we have furnished observations to the Scottish Home and Health Department with regard to comments received by the Department on that Report.

(3) *Powers of Attorney*

61. Owing to the need to commit our resources to matters of greater priority, further work on this topic has had to be deferred for the time being. We shall resume work on the preparation of a memorandum when resources are available to do so.

(4) *Powers of Judicial Factors*

62. We had intended to submit early in 1979 a short report on the proposed amendment of the Trusts (Scotland) Acts 1921 and 1961 to facilitate the exercise by judicial factors of certain of their statutory powers, particularly as regards the sale and purchase of heritable property. We regret that, because of the pressure of other commitments, we have not yet submitted this report to you, but we hope to be in a position to do so shortly.

(5) *Agricultural Holdings*

63. Resources are still not available for the preparation of a memorandum on the statutory provisions relating to the termination of leases of agricultural holdings.

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

64. We explained in our last Annual Report³ that some of the comments received on Memorandum No. 33—*Law of Rights in Security: Company Law: Registration of Charges (Scotland)*—had opened up further questions for consideration. We have still to dispose of these questions.

¹(1979) Scot. Law Com. No. 55, para. 65.

²(1978) Scot. Law Com. No. 52.

³(1979) Scot. Law Com. No. 55, para. 69.

(7) *Criminal Law*

(a) *Insanity*

65. We have considered the Report of our Working Party on Criminal Law¹ under the chairmanship of Lord Cameron relating to insanity in bar of trial and insanity at the time of the crime as a defence. A note of our views on this subject has been forwarded to the Scottish Home and Health Department.

(b) *Conspiracy—Mobbing and Rioting*

66. We have undertaken some preliminary research into the law relating to conspiracy (including the law relating to mobbing and rioting), but in view of the commitment of our resources to other projects we are not in a position to forecast when our examination of this topic will be completed.

(8) *Actions of Ejection and Removings*

67. Mr. A. G. M. Duncan, Senior Lecturer, Department of Scots Law, University of Edinburgh is actively continuing his research into the law of ejection and removing. We understand that he will be in a position to submit his research paper to the Commission towards the end of 1979 or early in 1980.

VI. FOREIGN LEGAL SYSTEMS AND INTERNATIONAL LAW

(1) *EEC Draft Insurance Directive: Contract Law*

68. On 9 March 1978 we were invited by the Department of Trade to comment on a draft Directive on the Laws, Regulations and Administrative Provisions relating to Insurance Contracts. This Directive has been examined by our Working Party² on Contract Law under the chairmanship of Professor Smith, and their observations have been submitted to us. We have prepared comments on the latest available draft of the Directive; but we understand that the EEC Commission will shortly be adopting a revised draft, and we propose to submit a report on that draft to the Department of Trade.

(2) *UNIDROIT—Draft Convention on the Hotelkeeper's Contract*

69. A former member of our legal staff represented the United Kingdom at a further meeting of the Committee of Governmental Experts, held in Rome under the auspices of the International Institute for the Unification of Private Law (UNIDROIT), to consider a draft Convention on the Hotelkeeper's Contract. At that meeting, which was held in Rome from 23 to 31 October 1978, the second reading of the draft Convention and the examination of the final draft Articles were completed. The UNIDROIT Secretariat subsequently circulated a Note to Member States asking if they were prepared to participate in a Diplomatic Conference with a view to the adoption of the draft Convention.

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

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

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

70. A Study Group has been set up under the auspices of UNIDROIT to prepare uniform rules for international trade contracts in general. The first meeting of the Study Group is to be held in Rome from 10 to 14 September 1979 and we are to be represented at that meeting by Professor Smith.

(4) *Hague Conference on Private International Law—Special Commission on Child Abduction*

71. As mentioned elsewhere in this Report,¹ Mr. Anton represented the United Kingdom at the discussions of the Special Commission of the Hague Conference on Child Abduction from 12 to 22 March 1979 and had the honour of being appointed Chairman of the Commission.

(5) *Visits to Canadian Law Reform Commissions etc.*

72. During September and October 1978 Mr. Anton visited various Canadian Law Reform Commissions. In the course of his stay in Canada, Mr. Anton also delivered the Horace E. Read Memorial Lecture at Dalhousie University.

VII. CONSULTATION

THE LAW COMMISSION

73. We continue our close co-operation with the Law Commission. During the year under review we have continued to work together on the EEC draft Convention on Contractual Obligations² and also on the EEC draft Insurance Services Directive.³ The annual Joint Meeting was held at All Souls College, Oxford on 22 and 23 March 1979. We wish to record our appreciation of the generous hospitality provided by All Souls College.

(1) *Codification of the Criminal Law*

74. In our last Annual Report,⁴ we referred to the deliberations of the Working Party⁵ set up under the chairmanship of the Hon. Lord Cameron to examine Working Papers, draft Reports and Reports produced by the Law Commission under their programme subject 'Codification of the Criminal Law'. In this regard, we have considered the report of our Working Party on the Report by the Law Commission entitled *Defences of General Application*⁶ and have forwarded our Working Party's Report, together with our further comments, to the Scottish Home and Health Department. The action taken by us concerning the Law Commission's Report on *The Mental Element in Crime*⁷ is dealt with elsewhere in this Report.⁸

¹See para. 44.

²See para. 42.

³See para. 57.

⁴(1979) Scot. Law Com. No. 55, para. 83.

⁵A list of members of this Working Party appears in Appendix I to this Report.

⁶Law Com. No. 83.

⁷Law Com. No. 89.

⁸See para. 52.

75. The Scottish Home and Health Department asked us to consider the Report by the Law Commission on *The Territorial and Extra-territorial Extent of the Criminal Law*,¹ to which was appended draft clauses for a proposed Criminal Jurisdiction Bill. Comments on the possible implications of this Report for Scotland have been submitted to the Department for their consideration.

(2) *Working Papers on Contract*

76. During the last year the Working Party² on Contract Law, under the chairmanship of Professor Smith, have considered the Law Commission's Working Paper No. 73 *Non-disclosure and Breach of Warranty*. This examination was carried out in conjunction with work on an EEC draft Directive on Insurance Contracts.³

OTHER LAW REFORM ORGANISATIONS

77. We continue to inform the Law Reform Consultant at the Office of the Legislative Draftsmen, Northern Ireland, on matters of common interest.

78. We have maintained our contact with law reform organisations in other parts of the world and are pleased to welcome members of these organisations who come to visit us.

THE LEGAL AND OTHER PROFESSIONS IN SCOTLAND

79. We continue to consult with the leading organisations of the legal and other professions in Scotland and with other bodies. We have also continued to hold informal meetings with representatives of the Faculty of Advocates and the Law Society of Scotland and have found these meetings most useful. As in previous years we wish to record our appreciation of the valuable assistance afforded by those whom we have invited to act as consultants or advisers and by others who have served on our Working Parties.

80. 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 Advocate's Library and the Signet Library.

SEMINARS, COLLOQUIA ETC.

81. (1) Our Chairman and Mr. Bertram, together with three members of our legal staff, attended the Annual Conference of the Scottish Legal Action Group held in Stirling on 3 and 4 February 1979, at which you delivered a talk on 'Devolution and Scots Law Reform'.

(2) On the invitation of the Société Suisse de Droit International, Mr. Anton attended a colloquium on the proposed Swiss Code of Private International Law held at Fribourg, Switzerland on 26 to 28 April 1979.

(3) Mr. Bertram and a member of our legal staff attended the Annual Conference of the Law Society of Scotland held at Aviemore on 11 to 13 May 1979. They also participated in a symposium on 'Matrimonial Property and Domestic Rights' which was held in conjunction with the Conference.

¹Law Com. No. 91.

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

³See para. 68.

(4) Our Chairman, Mr. Anton and Mr. Bertram attended a conference on Marital Violence held in Glasgow on 23 May 1979 under the auspices of the Glasgow Branch of the Scottish Association for the Study of Delinquency.

VIII. MISCELLANEOUS

DEPARTMENTAL AND OTHER COMMITTEES

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

(1) *Statute Law Committee*

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

(2) *Civil Judicial Statistics*

84. A member of the legal staff continues to represent us at meetings of the Working Party of officials set up by the Scottish Courts Administration to review the Annual Civil Judicial Statistics for Scotland.

(3) *Insolvency Law Review Committee*

85. Professor R. B. Jack continues to attend, as Scottish observer, the meetings of the Insolvency Law Review Committee set up by the Department of Trade to review all aspects of the insolvency laws of England and Wales. Elsewhere in this Report,¹ we refer to the work of our Consultative Committee on Insolvency Law Review which we set up in 1978, under Professor Jack's chairmanship, to ensure that Scottish views are ascertained and can be fully taken into account when the Government come to consider the Report of the Insolvency Law Review Committee.

(4) *European Judgments Convention*

86. Mr. Anton continues to attend meetings of the Committee set up by your predecessor, under the chairmanship of the Hon. Lord Maxwell, to consider, in the light of current developments, the Scottish rules of jurisdiction in civil and commercial matters and the procedure for the recognition and enforcement in Scotland of external judgments.

SCRUTINY OF BILLS

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

APPENDICES

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

¹See para. 31.

APPENDIX I

MEMBERSHIP OF WORKING PARTIES ETC.

Working Party on Security over Moveable Property

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

Consultative Committee on Insolvency Law Review

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

Steering Committee on Private International Law

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

Joint Working Group on Private International Law (Obligations)

The Hon. Lord Hunter, V.R.D. (Chairman)	Scottish Law Commission
Mr. A. Akbar	Law Commission
Mr. J. B. Allan ¹	Scottish Law Commission
Mr. A. E. Anton, C.B.E.	Scottish Law Commission
Professor A. L. Diamond	Institute of Advanced Legal Studies, University of London
The Hon. Lord Maxwell	
Mr. K. M. H. Newman	Lord Chancellor's Department
Dr. P. M. North	Law Commission
Secretary: Miss J. A. Killick, Law Commission	

¹Mr. Allan left the Commission on 30 March 1979.

Joint Working Party on International Conflicts of Jurisdiction affecting the Custody of Children

The Hon. Lord Hunter, V.R.D.	} Joint Chairmen	Scottish Law Commission
The Hon. Mr. Justice Kerr		Law Commission
Mr. A. E. Anton, C.B.E.		Scottish Law Commission
Mr. R. K. Batstone		Foreign Commonwealth Office
Mr. M. C. Blair		Lord Chancellor's Department
Mr. B. O'Brien		Law Commission
Sir Denis W. Dobson, K.C.B., O.B.E., Q.C.		
Mr. H. F. MacDiarmid		Scottish Courts Administration
Lady Johnston		Law Commission
Mr. R. L. Jones		Home Office
Dr. P. M. North		Law Commission
Mr. J. Clarkson		Scottish Law Commission
Mr. J. W. Wilson		Supreme Court of Northern Ireland

Secretary: Mr. T. L. Rees, Law Commission

Working Party to examine Law Commission Working Papers on Criminal Law

The Hon. Lord Cameron, K.T., D.S.C.		
(Chairman)		Crown Office, Edinburgh
Mr. J. D. Allan		Crown Office, Edinburgh
Mr. D. W. Batchelor ¹		Crown Office, Edinburgh
Sheriff G. H. Gordon, Q.C.		Sheriff's Library, Glasgow
Mr. J. Martin		Procurator Fiscal's Office, Dumfries
Mr. A. C. Normand		Procurator Fiscal's Office, Perth
Dr. A. F. Rodger		Advocate, Edinburgh
Mr. N. J. Shanks		Scottish Home and Health Department

Secretary: Mr. J. G. S. MacLean, Scottish Law Commission

Working Party to examine Law Commission Working Papers relating to the Law of Contract²

Professor T. B. Smith, Q.C. (Chairman)		
Mr. R. D. D. Bertram		Scottish Law Commission
Mr. R. Black		Faculty of Advocates
Mr. J. T. Cameron, Q.C.		Faculty of Advocates
Mr. M. G. Clarke		Faculty of Advocates
Dr. W. W. McBryde		University of Aberdeen

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

¹Mr. Batchelor left the Commission on 31 May 1979.

²The membership of the Working Party was supplemented, for the purpose of consideration of the EEC Draft Directive on Insurance Contracts (see para. 68 above), by the addition to this list of members of Mr. D. H. Cameron, formerly Legal Adviser to the General Accident Fire and Life Assurance Corporation Limited, and Mr. T. N. Risk, Solicitor, Glasgow.

APPENDIX II

1 SCOTTISH LAW COMMISSION—PAPERS PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE
(as at 31 August 1979)

Commission

	<i>No.</i>	
1965	1	First Programme of Law Reform
<hr/>		
1966	2	First Programme of Consolidation and Statute Law Revision
	3	First Annual Report 1965-66
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1967	4	Proposals for Reform of the Law of Evidence relating to Corroboration
	5	Reform of the Law Relating to Legitimation <i>per subsequens matrimonium</i> (Cmnd. 3223)
	6	Divorce—The Grounds Considered (Cmnd. 3256)
	6A	*Report on the Consolidation of Certain Enactments relating to Shellfish Fisheries and Shellfish—Sea Fisheries (Shellfish) Bill (Cmnd. 3267)
	7	Second Annual Report 1966-67
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1968	8	Second Programme of Law Reform
	9	Third Annual Report 1967-68
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1969	10	*Report on the Consolidation of the Trustee Savings Banks Acts 1954 to 1968— Trustee Savings Banks Bill (Cmnd. 4004)
	11	*Report on the Interpretation of Statutes
	12	*Report on Exemption Clauses in Contracts—First Report: Amendments to the Sale of Goods Act 1893
	13	Fourth Annual Report 1968-69
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1970	14	Report on the Companies (Floating Charges) (Scotland) Act 1961 (Cmnd. 4336)
	15	Reform of the Law Relating to Prescription and Limitation of Actions
	16	*Report on the Hague Convention on Recognition of Divorces and Legal Separations (Cmnd. 4542)
	17	Fifth Annual Report 1969-70
	18	*Report on the Consolidation of Certain Enactments relating to Coinage (Cmnd. 4544)
	19	*Report on the Consolidation of Certain Enactments relating to Excise Duties on Mechanically Propelled Vehicles, and to the Licensing and Registration of such Vehicles (Cmnd. 4547)
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1971	20	*Report on the Consolidation of Enactments relating to the National Savings Bank (Cmnd. 4574)
	21	*Report on the Taxation of Income and Gains derived from Land (Cmnd. 4654)
	22	*Report on the Consolidation of Certain Enactments relating to Road Traffic— Road Traffic Bill (Cmnd. 4731)
	23	Sixth Annual Report 1970-71

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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)
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- 28 Seventh Annual Report 1971–72
- 29 Third Programme of Law Reform
- 30 Report on Liability for Antenatal Injury (Cmnd. 5371)
- 31 Report on the Law relating to Damages for Injuries Causing Death
- 32 *Statute Law Revision—Fifth Report: Draft Statute Law (Repeals) Bill (Cmnd. 5493)
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- 1974 33 Eighth Annual Report 1972–73
- 34 Report on Presumption of Death
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- 36 *Statute Law Revision—Sixth Report: Draft Statute Law (Repeals) Bill (Cmnd. 5792)
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- 1975 37 Ninth Annual Report 1973–74
- 38 *Supply Powers Bill—Report on the Consolidation of Enactments relating to Supply Powers (Cmnd. 5850)
- 39 *Exemption Clauses—Second Report
- 40 *Statute Law Revision—Seventh Report: Draft Statute Law (Repeals) Bill (Cmnd. 6303)
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- 1976 41 Tenth Annual Report 1974–75
- 42 Family Law: Report on Liability for Adultery and Enticement of a Spouse
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- 1977 43 Eleventh Annual Report 1975–76
- 44 *Statute Law Revision—Eighth Report: Draft Statute Law (Repeals) Bill (Cmnd. 6719)
- 45 *Report on Liability for Defective Products (Cmnd. 6831)
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- 1978 46 Third Programme of Consolidation and Statute Law Revision
- 47 Twelfth Annual Report 1976–77
- 48 *Statute Law Revision—Ninth Report: Draft Statute Law (Repeals) Bill (Cmnd. 7189)
- 49 Electricity (Scotland) Bill—Report on the Consolidation of Certain Enactments relating to Electricity in Scotland (Cmnd. 7178)

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- 50 Adoption (Scotland) Bill—Report on the Consolidation of Certain Enactments relating to Adoption in Scotland (Cmnd. 7187)
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(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)
- 1979 55 Thirteenth Annual Report 1977–78

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- 1967 Memorandum No. 3—Restrictions on the Creation of Liferents
Memorandum No. 4—Applications for Planning Permission
Memorandum No. 5—Damages for Injuries Causing Death
*Memorandum No. 6—Interpretation of Statutes
- 1968 *Memorandum No. 7—Provisional Proposals Relating to Sale of Goods
Memorandum No. 8—Draft Evidence Code—First Part
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- 1970 Memorandum No. 13—Jurisdiction in Divorce
- 1971 Memorandum No. 14—Remedies in Administrative Law
*Memorandum No. 15—The Exclusion of Liability for Negligence in the Sale of Goods and Exemption Clauses in Contracts for the Supply of Services and Other Contracts
Memorandum No. 16—Insolvency, Bankruptcy and Liquidation
- 1972 Memorandum No. 17—Damages for Injuries Causing Death
- 1974 Memorandum No. 18—Liability of a Paramour in Damages for Adultery and Enticement of a Spouse
Memorandum No. 19—Powers of Judicial Factors
- 1975 *Memorandum No. 20—Liability for Defective Products
Memorandum No. 21—Damages for Personal Injuries—Deductions and Heads of Claim

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 *Memorandum No. 23—Custody of Children—Jurisdiction and Enforcement within the United Kingdom
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 Memorandum No. 26—Corporeal Moveables—Some Problems of Classification
 Memorandum No. 27—Corporeal Moveables—Protection of the Onerous *bona fide* Acquirer of Another's Property
 Memorandum No. 28—Corporeal Moveables—Mixing, Union and Creation
 Memorandum No. 29—Corporeal Moveables—Lost and Abandoned Property
 Memorandum No. 30—Corporeal Moveables—Usucapion or Acquisitive Prescription
 Memorandum No. 31—Corporeal Moveables—Remedies
 Memorandum No. 32—Comments on White Paper “*Our Changing Democracy: Devolution to Scotland and Wales*” Appendix—Devolution, Scots Law and the Role of the Commission
 Memorandum No. 33—Law of Rights in Security—Company Law—Registration of Charges: Scotland
- 1977 Memorandum No. 34—Constitution and Proof of Voluntary Obligations—General Introduction and Summary of Provisional Proposals
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 Memorandum No. 38—Constitution and Proof of Voluntary Obligations—Stipulations in Favour of Third Parties
 Memorandum No. 39—Constitution and Proof of Voluntary Obligations—Formalities of Constitution and Restrictions on Proof
 Memorandum No. 40—Confidential Information
- 1978 Memorandum No. 41—Family Law: Occupancy Rights in the Matrimonial Home and Domestic Violence (2 Vols.)
 Memorandum No. 42—Defective Consent and Consequential Matters (2 Vols.)

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

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

4 SCOTTISH LAW COMMISSION—OTHER PUBLISHED DOCUMENTS

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

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

- 1969 Married Women's Policies of Assurance (Scotland) Act 1880—Working Paper

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- 1973 Consultation Paper on Divorce for Incurable Insanity
- 1974 Insolvency, Bankruptcy and Liquidation in Scotland—Consultative Paper
- 1978 Consultative Document—Private International Law: Choice of Law Rules in the EEC Draft Insurance Services Directive

6 SCOTTISH LAW COMMISSION—UNPUBLISHED CONFIDENTIAL DOCUMENTS

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

*Produced jointly with the Law Commission.

APPENDIX III

STATUTORY PROVISIONS RELATING TO THE SCOTTISH LAW COMMISSION'S PROPOSALS (as at 31 August 1979)

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
<i>(a) Memoranda</i>		
Restrictions on the Creation of Life-rents (Memorandum No. 3)	5.5.67	Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c. 70), section 18.
Applications for Planning Permission (Memorandum No. 4)	11.5.67	Town and Country Planning (Scotland) Act 1969 (c. 30), section 79.
<i>(b) Reports</i>		
Proposals for Reform of the Law of Evidence Relating to Corroboration (Scot. Law Com. No. 4)	20.4.67	Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c. 70), section 9.
Reform of the Law Relating to Legitimation <i>per subsequens matrimonium</i> (Scot. Law Com. No. 5) (Cmnd. 3223)	20.4.67	Legitimation (Scotland) Act 1968 (c. 22); Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c. 70), section 5.
Divorce—The Grounds Considered (Scot. Law Com. No. 6) (Cmnd. 3256)	12.5.67	Divorce (Scotland) Act 1976 (c. 39).
Sea Fisheries (Shellfish) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 6A) (Cmnd. 3267)	11.5.67	Sea Fisheries (Shellfish) Act 1967 (c. 83).
Trustee Savings Banks Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 10) (Cmnd. 4004)	17.4.69	Trustee Savings Banks Act 1969 (c. 50).
Interpretation of Statutes (Joint Report with the Law Commission) (Scot. Law Com. No. 11)	11.6.69	None.
Exemption Clauses in Contracts—First Report: Amendments to the Sale of Goods Act 1893 (Joint Report with the Law Commission) (Scot. Law Com. No. 12)	18.9.69	Supply of Goods (Implied Terms) Act 1973 (c. 13).
The Companies (Floating Charges) (Scotland) Act 1961 (Scot. Law Com. No. 14) (Cmnd. 4336)	22.4.70	The Companies (Floating Charges and Receivers) (Scotland) Act 1972 (c. 67).
Reform of the Law Relating to Prescription and Limitation of Actions (Scot. Law Com. No. 15)	27.11.70	Prescription and Limitation (Scotland) Act 1973 (c. 52).
Hague Convention on Recognition of Divorces and Legal Separations (Joint Report with the Law Commission) (Scot. Law Com. No. 16) (Cmnd. 4542)	1.12.70	Recognition of Divorces and Legal Separations Act 1971 (c. 53).

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
Coinage Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 18) (Cmnd. 4544)	26.11.70	Coinage Act 1971 (c. 24).
Vehicles (Excise) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 19) (Cmnd. 4547)	2.12.70	Vehicles (Excise) Act 1971 (c. 10).
National Savings Bank Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 20) (Cmnd. 4574)	13.1.71	National Savings Bank Act 1971 (c. 29).
Taxation of Income and Gains derived from Land (Joint Report with the Law Commission) (Scot. Law Com. No. 21) (Cmnd. 4654)	23.4.71	In part by section 82 of the Finance Act 1972 (c. 41).
The Road Traffic Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 22) (Cmnd. 4731)	26.7.71	Road Traffic Act 1972 (c. 20).
Town and Country Planning (Scotland) Bill (Scot. Law Com. No. 24) (Cmnd. 4949)	20.4.72	Town and Country Planning (Scotland) Act 1972 (c. 52).
Family Law—Report on Jurisdiction in Consistorial Causes affecting Matrimonial Status (Scot. Law Com. No. 25)	29.9.72	Domicile and Matrimonial Proceedings Act 1973 (c. 45).
Statute Law Revision—Fourth Report: Draft Statute Law (Repeals) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 26) (Cmnd. 5108)	28.9.72	Statute Law (Repeals) Act 1973 (c. 39).
Report on Liability for Antenatal Injury (Scot. Law Com. No. 30) (Cmnd. 5371)	30.8.73	None required.
Report on the Law relating to Damages for Injuries causing Death (Scot. Law Com. No. 30) (Cmnd. 5371)	24.10.73	Damages (Scotland) Act 1976 (c. 13).
Statute Law Revision—Fifth Report: Draft Statute Law (Repeals) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 32) (Cmnd. 5493)	6.12.73	Statute Law (Repeals) Act 1974 (c. 22).
Report on Presumption of Death (Scot. Law Com. No. 34)	3.9.74	Presumption of Death (Scotland) Act 1977 (c. 27).
Friendly Societies Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 35) (Cmnd. 5634)	27.6.74	Friendly Societies Act 1974 (c. 46).
Statute Law Revision—Sixth Report: Draft Statute Law (Repeals) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 36) (Cmnd. 5792)	5.12.74	Statute Law (Repeals) Act 1975 (c. 10).

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
Supply Powers Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 38) (Cmnd. 5850)	6.1.75	Supply Powers Act 1975 (c. 9).
Exemption Clauses—Second Report (Joint Report with the Law Commission) (Scot. Law Com. No. 39)	2.10.75	Unfair Contract Terms Act 1977 (c. 50).
Statute Law Revision—Seventh Report: Draft Statute Law (Repeals) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 40) (Cmnd. 6303)	8.12.75	Statute Law Repeals Act 1976 (c. 16).
Family Law—Report on Liability for Adultery and Enticement of a Spouse (Scot. Law Com. No. 42)	23.6.76	In part by section 10 of the Divorce (Scotland) Act 1976 (c. 39).
Statute Law Revision—Eighth Report: Draft Statute Law (Repeals) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 44) (Cmnd. 6719)	6.1.77	Statute Law (Repeals) Act 1977 (c. 18).
Liability for Defective Products (Joint Report with the Law Commission) (Scot. Law Com. No. 45) (Cmnd. 6831)	15.6.77	None.
Statute Law Revision—Ninth Report: Draft Statute Law (Repeals) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 48) (Cmnd. 7189)	11.5.78	Statute Law (Repeals) Act 1978 (c. 45).
Electricity (Scotland) Bill (Scot. Law Com. No. 49) (Cmnd. 7178)	23.5.78	Electricity (Scotland) Act 1979 (c. 11).
Adoption (Scotland) Bill (Scot. Law Com. No. 50) (Cmnd. 7187)	3.5.78	Adoption (Scotland) Act 1978 (c. 28).
Damages for Personal Injuries: Report on (1) Admissibility of Claims for Services (2) Admissible Deductions (Scot. Law Com. No. 51)	18.7.78	None.
Report on the Married Women's Policies of Assurance (Scotland) Act 1880 (Scot. Law Com. No. 52) (Cmnd. 7245)	27.7.78	None.
Interpretation Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 53) (Cmnd. 7235)	8.6.78	Interpretation Act 1978 (c. 30).
Customs and Excise Management Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 54) (Cmnd. 7418)	7.12.78	Customs and Excise Management Act 1979 (c. 2).

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