

# The Law Commission

(LAW COM. No. 155)

## TWENTIETH ANNUAL REPORT

1984–1985

*Laid before Parliament by the Lord High Chancellor  
pursuant to section 3(3) of the Law Commissions Act 1965*

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The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

The Commissioners are—

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**THE LAW COMMISSION**  
**TWENTIETH ANNUAL REPORT: 1984-1985**

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# THE LAW COMMISSION

## TWENTIETH ANNUAL REPORT: 1984-1985

*To the Right Honourable the Lord Hailsham of Saint Marylebone, C.H.,  
Lord High Chancellor of Great Britain*

We have the honour to present our Twentieth Annual Report pursuant to section 3(3) of the Law Commissions Act 1965. It covers the period from 1 November 1984 to 31 October 1985, but for convenience we mention some developments since then.

### PART I

#### TWENTY YEARS OF THE LAW COMMISSION

##### Introduction

1.1. A year which included the twentieth anniversary of the creation of the Law Commission provides the opportunity to reflect how far the Commission has kept faith with the aims of its founders.

1.2. The establishment of the Commission was in itself a significant achievement for its principal architect, Lord Gardiner. It has been described as "one of the best things invented in the field of law reform this century" and as: "The single most important event in this century's history in the field of reform of the law."<sup>1</sup> In creating the Commission, Parliament stressed that it was to take and keep *all* the law under review in pursuit of systematic development and reform. It pointed to codification in particular as a means by which the Commission could achieve simplification and modernisation of the law. To underline the comprehensive nature of the duty placed upon the Commission, it was required to prepare and submit programmes for the examination of different branches of the law with a view to reform and for approval by the Minister.<sup>2</sup> The Act also required the Commission to provide advice and information to Government departments concerned with proposals for the reform or amendment of any branch of the law.<sup>3</sup>

1.3. The Commission reacted promptly to the challenge it had been set. By 1968 it had submitted two programmes<sup>4</sup> which were approved. A third programme was approved in 1973.<sup>5</sup> The fact that the Commission's programmes required approval by the Minister<sup>6</sup> has been said to amount "to a power to

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<sup>1</sup> *Hansard* (H.L.), 12 February 1980, vol. 405, col. 150; Professor Michael Zander, L.S.E. Inaugural Lecture ((1979) 42 M.L.R. 489 at p. 502).

<sup>2</sup> Law Commissions Act 1965, s. 3(1)(b).

<sup>3</sup> Law Commissions Act 1965, s. 3(1)(e), and see Appendix 7.

<sup>4</sup> (1965) Law Com. No. 1 and (1968) Law Com. No. 14.

<sup>5</sup> (1973) Law Com. No. 54.

<sup>6</sup> Law Commissions Act 1965, s. 3(2).

veto which has occasionally been exercised".<sup>7</sup> The scope of these programmes was designed to provide a long-term strategy for the work of the Commission. Some of the specific matters which the Commission has been asked to undertake—arising from its programmes or referred to it for advice by Government departments—though more limited in scope, were often urgent. Since the resources of the Commission are limited, priority was given to these matters sometimes at the expense of the long-term work of the Commission. In a period of social development in which changes effected by new influences may in the future be seen as among the most extensive and varied in our history, an increase in the number of matters referred to the Commission for advice and information from time to time altered the balance of the work undertaken.<sup>8</sup>

1.4. Although in 1979 concern was expressed that if this tendency continued it could undermine the position of the Commission as "the watchdog of all the law",<sup>9</sup> this fear has proved to be unfounded.<sup>10</sup> Today the Commission's work is more evenly divided. Shorter-term projects and advice to Government departments concerned with law reform proposals are recognised as having increasing practical significance in contemporary problems of law reform.

1.5. Anxiety was also voiced that in important areas of the law requiring reform, no review had been undertaken by the Law Commission with a view to their systematic development, reform and simplification, (e.g. in the law of employment, the law relating to trade unions and taxation law), whilst in other fields review had been confined to advising only on procedural aspects, (e.g. administrative law).<sup>11</sup> Former Chairmen of the Commission have given different reasons for this and disagree on the desirability of the Commission becoming involved in topics of law which are politically sensitive.<sup>12</sup>

1.6. This anxiety has not been stilled. It would indeed be anomalous if the qualities of learning, integrity and independence so essential to the Commission's position had no contribution to make to the development and reform of the law in these important subjects.

1.7. It may be that the architects of the Commission underestimated the allotted tasks of simplifying and modernising the law and overestimated the contribution which particular techniques could make. In 1965 the technique of

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<sup>7</sup> Professor S. M. Cretney, *The Politics of Law Reform: a view from the inside* (1985) 48 M.L.R. 493. The exercise referred to may be a reference to the First Programme, item VI—personal injury litigation when, on the setting up of the Winn Commission, the Law Commission was asked and agreed not to pursue this item at that time, and to the Commission's report on administrative law, see n. 11 *infra*. See also *Civil Liability for Dangerous Things and Activities* (1970), Law Com. No. 32.

<sup>8</sup> See Thirteenth Annual Report 1977–1978 (1978), Law Com. No. 92, p. 1.

<sup>9</sup> Lord Scarman, *Law Reform: The British Experience*, The Jawaharlal Nehru Memorial Lectures (1979).

<sup>10</sup> It may well have been expressed after a substantial increase in references promoted by joining the E.E.C. (Thirteenth Annual Report, para. 1.5).

<sup>11</sup> See *Hansard* (H.L.), 4 December 1969, vol. 306, cols. 189–90.

<sup>12</sup> *Law Reform: The British Experience* (*supra*); and The Rt. Hon. Lord Justice Kerr, *Political Aspects of Law Reform in the U.K.* (Australian Law Reform Agencies Conference, 6th–8th, 1981–1983 [Minutes, Sydney, 1984] pp. 75–88 at p. 80.

codification was given particular emphasis.<sup>13</sup> Experience has shown that after the detailed examination necessary to prepare a particular subject for codification, a different approach may, in some cases, be more suitable to its state of development before an attempt is made at complete codification. This was found to be the case in the law of landlord and tenant.<sup>14</sup> Some aspects of family law have been given a coherent statutory form, but a complete codification remains a long-term aim. After considerable work, a complete codification of the law of contract was shown to be impracticable at that time.<sup>15</sup> The stage of development reached in the criminal law, however, after extensive restatement in statutory form of common law offences, suggested that the time was appropriate to attempt a codification of the general principles underlying that branch of the law.<sup>16</sup> Since the work of the Law Commission is directed to reform of the law by statute, codification would seem to be the ultimate result of the Commission's work.<sup>17</sup>

1.8. The Commission's long-term work itself may thus disclose a need for a change of emphasis or direction. Further, the announcement of a Royal Commission, such as the Pearson Commission on Civil Liability and Compensation for Personal Injury, may make it sensible for the Law Commission to suspend work until after the Royal Commission has reported and the fate of its recommendations is known.

1.9. To judge the success or the shortcoming of the Commission merely by the extent to which its recommendations have been implemented by Parliament would be to misunderstand the nature of the Commission's work. The truth of the aphorism of Lord Campbell that law reform is by consent or not at all, and that of Lord Haldane that it takes three successive Lord Chancellors to bring about a reform of the law, remains unaltered.<sup>18</sup>

1.10. Concern has been expressed that there has been a slowing down in the implementation of the Commission's proposals for legislation.<sup>19</sup> Many reasons have been advanced. The conservatism of the legal profession, the public and the press; the lack of Parliamentary time and resources; demands imposed by the detailed nature of our legislation; constraints set by the legislative programme of the Government with a natural preference for electoral policy; and the departmental structure of Government with reluctance on the part of the departments concerned to surrender responsibility for changes in the law affecting their department. Again differing views have been expressed by Commissioners whether a lack of implementation of Commission recommendations can be explained on these grounds.<sup>20</sup>

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<sup>13</sup> Law Commissions Act 1965, s. 3(1).

<sup>14</sup> Thirteenth Annual Report, para. 2.34.

<sup>15</sup> Eighth Annual Report 1972-1973 (1973), Law Com. No. 58, Introduction, paras. 3-5.

<sup>16</sup> Criminal Law: Codification of the Criminal Law. A Report to the Law Commission (1985), Law Com. No. 143.

<sup>17</sup> *Law Reform: The British Experience* (supra).

<sup>18</sup> Lord Hailsham, "Obstacles to Law Reform", *Current Legal Problems 1981*, (1981) pp. 281-2.

<sup>19</sup> Fifteenth Annual Report 1979-1980 (1981), Law Com. No. 107, para. 1.6; Sixteenth Annual Report 1980-1981 (1982), Law Com. No. 113, paras. 1.2-1.4.

<sup>20</sup> Professor S. M. Cretney, "The Politics of Law Reform: a view from the inside" (1985) 48 M.L.R. 493; Dr. Peter North "Law Reform; Processes and Problems" (1985) 101 L.Q.R. 338.



1.11. If it is the case that the tendency is for the Commission's recommendations to be less readily implemented, this may merely be due to disagreement by the Government of the day or the department concerned about the need for legislation at that time. Sometimes after considerable research and discussion, the Commission advises against reform.<sup>21</sup> Responsibility for the implementation of Law Commission proposals rests, and will always rest, with Parliament. With Parliament too must rest the responsibility for providing the time, procedure and resources necessary.

1.12. In judging the contribution which the Commission has made to law reform, other ways in which it has directly or indirectly influenced the development of the law should not be overlooked. For example, Commissioners have been appointed as members of Royal Commissions and of other Inquiries;<sup>22</sup> the Commission has sponsored important seminars<sup>23</sup> and its members have lectured both at home and abroad on law reform and the role of the Commission. In 1979, with the leave of the Registrar, the Commission prepared and submitted to the Court of Appeal Criminal Division a memorandum and schedule of cases on the mental element in attempted theft, burglary and similar cases which was described as "an admirable memorandum . . . [on] a question of law which is causing and has caused [the courts concerned] considerable confusion."<sup>24</sup>

1.13. But perhaps the Law Commission's main achievement has been to establish and maintain among informed opinion the reputation and status of an independent constitutional law reform body. This it has done by thorough research, extensive consultation, the ability to harness specialised academic and professional opinion and, notwithstanding the occasional dissenting opinion,<sup>25</sup> a capacity to agree on solutions which command the widest support.

1.14. We turn now to a short review of the contributions the Commission has made in particular fields of law.

### *Contract and Tort*

1.15. The Law Commission's first programme recommended the examination of the law of contract with a view to its codification. During work on this project, for reasons noted above,<sup>26</sup> the Commission ". . . changed [its] method without abandoning [its] objective",<sup>27</sup> deciding to devote its efforts to attracting public attention to particular aspects of the law of contract which it considered in need of reform.

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<sup>21</sup> See n. 115 *infra*.

<sup>22</sup> e.g. Mr. Norman Marsh, Q.C. on the Pearson Commission, Mr. W. A. B. Forbes, Q.C. on the Royal Commission on Criminal Procedure, and the Hon. Mr. Justice Cooke sat on the Committee chaired by Sir David Renton on The Preparation of Legislation.

<sup>23</sup> e.g. Civil Procedure Seminar, September 1984; Grounds for Divorce Seminar, December 1985; the series of seminars at All Souls, Oxford on Liability for Dangerous Things (1969), Contract (1971), Law Reform (1972), Inchoate Offences (1974), Breach of Confidence (1975), Conspiracy to Defraud (1976) and Illegitimacy (1979).

<sup>24</sup> Roskill L. J., *Re A. G's. Ref. (Nos. 1 and 2 of 1979)* [1979] 3 All E.R. 143.

<sup>25</sup> e.g. Law of Contract: Pecuniary Restitution on Breach of Contract (1983), Law Com. No. 121; Criminal Law: Offences against Religion and Public Worship (1985), Law Com. No. 145.

<sup>26</sup> See para. 1.7 and n. 15 (*supra*).

<sup>27</sup> *Law Reform: The British Experience* (*supra*).

1.16. With this aim it has published working papers and in some cases reports on contribution,<sup>28</sup> firm offers,<sup>29</sup> penalty clauses and forfeiture of monies paid,<sup>30</sup> pecuniary restitution on breach of contract,<sup>31</sup> the parol evidence rule,<sup>32</sup> implied terms in contracts for the supply of goods<sup>33</sup> and minors' contracts.<sup>34</sup> Recommendations contained in two of the four reports, with a draft Bill annexed, were given legislative effect in the Civil Liability (Contribution) Act 1978, and Part I of the Supply of Goods and Services Act 1982.

1.17. Jointly with the Scottish Law Commission, the Commission has published two papers on exemption clauses which led to major changes in the law.<sup>35</sup> The joint recommendations were implemented by the Supply of Goods (Implied Terms) Act 1973 and the Unfair Contract Terms Act 1977. Work on consideration and misrepresentation was interrupted in 1978 and has not so far been resumed.

1.18. In the law of tort, the Commission's report on civil liability for animals was implemented by the Animals Act 1971. The Defective Premises Act 1972 gave effect to the Commission's recommendations on civil liability of vendors and lessors for defective premises.<sup>36</sup> The Commission's work on personal injury litigation—assessment of damages (1973) and civil liability for dangerous things and activities (1977)—was acknowledged in the report of the Pearson Commission<sup>37</sup> whose recommendations followed broadly similar lines. Some of its proposals were implemented by the Administration of Justice Act 1982. We have already referred to the effect which the setting up of this Royal Commission and the uncertainty which attends the implementation of its recommendations, has had on our work in the field of tort.<sup>38</sup>

1.19. The Commission's more recent work on the law of contract and tort has been on subjects referred pursuant to section 3(1)(e) of the Law Commissions Act 1965. In contract, reports have been submitted on interest,<sup>39</sup> insurance law<sup>40</sup> and the proposed E.E.C. directive on the law relating to commercial agents.<sup>41</sup> In tort, the Commission's report on injuries to unborn children<sup>42</sup> received wide support from both Houses of Parliament; notwithstanding some doubts expressed by the Chairman of the Pearson Commission,<sup>43</sup> the Law

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<sup>28</sup> Law of Contract: Report on Contribution (1977), Law Com. No. 79.

<sup>29</sup> (1975) Working Paper No. 60.

<sup>30</sup> (1975) Working Paper No. 61.

<sup>31</sup> Law of Contract: Pecuniary Restitution on Breach of Contract (1983), Law Com. No. 121.

<sup>32</sup> (1976) Working Paper No. 70; (1986) Law Com. No. 154.

<sup>33</sup> Law of Contract: Implied Terms in Contracts for the Supply of Goods (1979), Law Com. No. 95.

<sup>34</sup> Law of Contract: Minors' Contracts (1984), Law Com. No. 134.

<sup>35</sup> (1969) Law Com. No. 24, Scot. Law Com. No. 12; (1975) Law Com. No. 69, Scot. Law Com. No. 39.

<sup>36</sup> (1970) Law Com. No. 40.

<sup>37</sup> Cmnd. 7054, paras. 758–9, 761 and Chap. 31.

<sup>38</sup> See para. 1.8 (supra).

<sup>39</sup> (1978) Law Com. No. 88; partly implemented by the Administration of Justice Act 1982, Rules of Supreme Court and County Court Rules.

<sup>40</sup> Insurance Law: Non-Disclosure and Breach of Warranty (1980), Law Com. No. 104.

<sup>41</sup> (1977) Law Com. No. 84.

<sup>42</sup> (1974) Law Com. No. 60.

<sup>43</sup> Report of the Royal Commission on Civil Liability and Compensation for Personal Injury (1978), H.M.S.O. (Cmnd. 7054-1), paras. 14.31–14.33.

Commission's Bill was passed and came into effect on 22 July 1976. The Occupiers' Liability Act 1984 gave effect to the recommendations of the Law Commission on the liability for damage or injury to trespassers and related questions of occupiers' liability.<sup>44</sup> Legislation is expected to be introduced within the next three years to implement the E.E.C. directive on liability for defective products which the Commission, together with the Scottish Law Commission, was asked to consider<sup>45</sup> to assist the Government in shaping United Kingdom policy, and in March 1985 the Home Secretary announced that the Government intended to introduce legislation based on the Commission's report on Breach of Confidence.<sup>46</sup>

### *Criminal Law*

1.20. In November 1967 the Law Commission, introducing its second programme, referred to the fact that it had become clear that there was a pressing need for a start to be made with the codification of the criminal law.<sup>47</sup> It was intended that the code should consist of four parts:

- Part I General Principles of Liability
- Part II Specific Offences
- Part III Evidence and Procedure
- Part IV Disposal of Offenders

1.21. The Commission recommended that the general principles of the criminal law should be examined by the Commission with the assistance of a working party. In 1968 the Commission published the results of the working party which had been examining the general principles of the criminal law as a first stage to its codification.<sup>48</sup> During the next five years, seven working papers<sup>49</sup> were produced on the general principles of criminal liability and three working papers<sup>50</sup> on specific offences. By 1974, however, there was an urgent need to consider some specific aspects of the criminal law, such as unlawful entry on premises and conspiracy. The Commission's work on the general part of the criminal code was held up, but by the beginning of 1981 few of the old common law offences remained in the criminal law.<sup>51</sup> By far the majority of offences had been restated in statutory form. Three reports of the Commission on General Principles of Liability had been given legislative effect: on imputed

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<sup>44</sup> (1976) Law Com. No. 75.

<sup>45</sup> (1977) Law Com. No. 82, Scot. Law Com. No. 45.

<sup>46</sup> (1981) Law Com. No. 110; *Hansard* (H.C.), 12 March 1985, vol. 75, col. 157.

<sup>47</sup> (1968) Law Com. No. 14.

<sup>48</sup> Codification of the Criminal Law: General Principles. The Field of Enquiry (1968), Working Paper No. 17.

<sup>49</sup> Territorial and Extra-Territorial Extent of the Criminal Law (1970), Working Paper No. 29; Strict Liability and Enforcement of the Factories Act 1961 (1970), Working Paper No. 30; The Mental Element in Crime (1970), Working Paper No. 31; Parties, Complicity and Liability for the Acts of Another (1972), Working Paper No. 43; Criminal Liability of Corporations (1972), Working Paper No. 44; Inchoate Offences: Conspiracy, Attempt and Incitement (1973), Working Paper No. 50; Defences of General Application (1974), Working Paper No. 55.

<sup>50</sup> Malicious Damage to Property (1969), Working Paper No. 23; Forgery (1970), Working Paper No. 26; Perjury and Kindred Offences (1970), Working Paper No. 33.

<sup>51</sup> The only common law offences now remaining to be worked on are public nuisance and various miscellaneous offences, such as interfering with the burial of a dead body.

criminal intent,<sup>52</sup> on conspiracy and criminal law reform,<sup>53</sup> and on attempt and impossibility in relation to attempt, conspiracy and incitement.<sup>54</sup>

1.22. The Commission has also produced reports on the mental element in crime,<sup>55</sup> defences of general application,<sup>56</sup> and territorial and extra-territorial extent of the criminal law.<sup>57</sup> Working papers had been produced on complicity and liability for the acts of another<sup>58</sup> and on the criminal liability of corporations.<sup>59</sup> It therefore seemed to the Commission that the time was ripe for work to proceed with the tāsk of codifying the general principles of criminal law. In March 1981 the Commission invited Professor J. C. Smith, C.B.E., Q.C., LL.D., F.B.A., to lead a team<sup>60</sup> to assist the Commission in studying and drafting the principles upon which the general part of the criminal code should be based. Over a period of more than three years, the members of Professor Smith's team gave freely of their spare time and jointly took a sabbatical term from their respective universities for the purpose of completing their task. As reported below, they delivered their report to the Commission in November 1984 and, with a short introduction by the Commission, it was published in March 1985.<sup>61</sup> The delivery of this report was a significant step forward in the long-term aim of the Commission to codify the criminal law.

1.23. Among the reports made by the Law Commission on specific criminal offences are those on criminal damage,<sup>62</sup> offences of entering and remaining on property<sup>63</sup> and forgery and counterfeiting.<sup>64</sup> This session the Government has introduced the Public Order Bill which gives effect to our report on the common law offences against public order.<sup>65</sup> In addition the Law Commission has reported on offences relating to interference with the course of justice,<sup>66</sup> offences against religion and public worship,<sup>67</sup> criminal libel<sup>68</sup> and poison-pen letters.<sup>69</sup>

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<sup>52</sup> (1967) Law Com. No. 10 (see Criminal Justice Act 1967).

<sup>53</sup> (1976) Law Com. No. 76 (see Criminal Law Act 1977, ss. 1-5).

<sup>54</sup> (1980) Law Com. No. 102 (see Criminal Attempts Act 1981).

<sup>55</sup> (1978) Law Com. No. 89.

<sup>56</sup> (1977) Law Com. No. 83.

<sup>57</sup> (1978) Law Com. No. 91.

<sup>58</sup> (1972) Working Paper No. 43.

<sup>59</sup> (1972) Working Paper No. 44.

<sup>60</sup> The members are Professor J. C. Smith (Nottingham University) (Chairman), Professor Edward Griew (Leicester University) and Mr. Ian Dennis (University College, London). Mr. Peter Glazebrook (Jesus College, Cambridge) was a member until his resignation in January 1984.

<sup>61</sup> Criminal Law: Codification of the Criminal Law. A Report to the Law Commission (1985), Law Com. No. 143.

<sup>62</sup> Report on Offences of Damage to Property (1970), Law Com. No. 29 (see Criminal Damage Act 1971).

<sup>63</sup> Criminal Law: Report on Conspiracy and Criminal Law Reform (1976), Law Com. No. 76, Part II (see Criminal Law Act 1977).

<sup>64</sup> Criminal Law: Report on Forgery and Counterfeit Currency (1973), Law Com. No. 55 (see Forgery and Counterfeiting Act 1981).

<sup>65</sup> Criminal Law: Offences Relating to Public Order (1983), Law Com. No. 123.

<sup>66</sup> Criminal Law: Offences Relating to Interference with the Course of Justice (1979), Law Com. No. 96.

<sup>67</sup> Criminal Law: Offences against Religion and Public Worship (1985), Law Com. No. 145.

<sup>68</sup> Criminal Law: Report on Criminal Libel (1985), Law Com. No. 149.

<sup>69</sup> Criminal Law: Report on Poison-Pen Letters (1985), Law Com. No. 147.

1.24. A working paper on treason, sedition and allied offences<sup>70</sup> was also produced by the Commission.

### *Family Law*

1.25. The Commission's programme embraces not only the comprehensive examination of family law with a view to its systematic reform and eventual codification but also an examination of the jurisdiction of the courts dealing with family matters.<sup>71</sup> A great deal of systematic reform has already been achieved. In 1979 it was said that, "Only in the field of family law has anything resembling a general codification emerged."<sup>72</sup> The Commission's report on the grounds for divorce in 1966<sup>73</sup> led to the Divorce Reform Act 1969, which came into force in 1971. This was accompanied by the abolition of some outdated remedies for the enforcement of marital rights and contracts of engagement<sup>74</sup> and by major improvements in the courts' powers to re-allocate the resources of husband and wife following divorce, nullity or judicial separation.<sup>75</sup> Reform of the law of nullity also took place during 1971.<sup>76</sup> After the changes in the law of divorce, a review of the law applied by magistrates and other courts during the marriage was necessary. The Commission's report on this subject<sup>77</sup> was implemented by the Domestic Proceedings and Magistrates' Courts Act 1978.

1.26. Together, these reforms marked an important shift away from the concept of fault in matrimonial relief and aimed to reduce the bitterness in such proceedings. Recently some aspects have been re-examined in the light of experience during a period of rapid social change in the pattern of family relationships. In 1980 the Commission published a discussion paper on the financial consequences of divorce<sup>78</sup> and its report making recommendations in the light of the response to that paper<sup>79</sup> was largely implemented in the Matrimonial and Family Proceedings Act 1984. That Act also put into effect the Commission's proposals on Time Restrictions on the Presentation of Divorce and Nullity Petitions<sup>80</sup> and Financial Relief after Foreign Divorce.<sup>81</sup> The Commission has recently recommended a comprehensive new scheme for declarations in family matters<sup>82</sup> which will involve abolition of the ancient suit

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<sup>70</sup> (1977) Working Paper No. 72.

<sup>71</sup> Second Programme of Law Reform (1968), Law Com. No. 14, items X and XIX.

<sup>72</sup> *Law Reform: The British Experience* (supra).

<sup>73</sup> Reform of the Grounds of Divorce: The Field of Choice (1966), Law Com. No. 6.

<sup>74</sup> Law Reform (Miscellaneous Provisions) Act 1970, s. 1, following Breach of Promise of Marriage (1969), Law Com. No. 26.

<sup>75</sup> Matrimonial Proceedings and Property Act 1970, following Family Law: Report on Financial Provision in Matrimonial Proceedings (1969), Law Com. No. 25.

<sup>76</sup> Nullity of Marriage Act 1971, following Family Law: Report on Nullity of Marriage (1970), Law Com. No. 33.

<sup>77</sup> Family Law: Report on Matrimonial Proceedings in Magistrates' Courts (1976), Law Com. No. 77.

<sup>78</sup> Family Law: The Financial Consequences of Divorce: The Basic Policy. A Discussion Paper (1980), Law Com. No. 103.

<sup>79</sup> Family Law: The Financial Consequences of Divorce. The Response to the Law Commission's Discussion Paper, and Recommendations on the Policy of the Law (1981), Law Com. No. 112.

<sup>80</sup> (1982) Law Com. No. 116.

<sup>81</sup> (1982) Law Com. No. 117.

<sup>82</sup> Family Law: Declarations in Family Matters (1984), Law Com. No. 132.

for jactitation of marriage. Reconsideration of the ground for divorce in the light of experience since 1971 is now in progress.<sup>83</sup>

1.27. The Law Commission has been active in promoting reform of the law of marriage itself. The report on the solemnisation of marriage<sup>84</sup> has not yet been implemented, but we note that some of the same points have recently been considered in an efficiency scrutiny<sup>85</sup> and this could provide a suitable opportunity for more comprehensive reform. During the 1970s the Commission undertook a thorough examination of the whole field of family property law which concluded with two major recommendations: one, for improved powers to re-allocate resources to provide for the family after the death of one of its members, was enacted in the Inheritance (Provision for Family and Dependents) Act 1975<sup>86</sup> but the other, for automatic co-ownership of the matrimonial home and protection of the household goods, recommended in 1973,<sup>87</sup> 1978<sup>88</sup> and 1982,<sup>89</sup> has not commanded the support necessary for its enactment. As a result there may be more limited reforms of family property law which deserve consideration.

1.28. In the field of child law the Commission has published reports on proof of paternity,<sup>90</sup> illegitimacy<sup>91</sup> and, jointly with the Scottish Law Commission, jurisdiction and enforcement in custody cases in the United Kingdom.<sup>92</sup> We advocated a more comprehensive review of the private law of custody and guardianship and also of child care law. The latter was undertaken by the Department of Health and Social Security, with the assistance of members of the Commission's family law team, and was completed during the year under review.<sup>93</sup> At the same time we have embarked on our own review of the guardianship, custody and wardship jurisdictions<sup>94</sup> with a view to achieving a comprehensive re-examination of the whole field.

1.29. The Commission's examination of jurisdiction in family matters was suspended when the topic of family courts was taken up by the Committee on One-Parent Families.<sup>95</sup> Recently, the responsible Government departments

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<sup>83</sup> See para. 2.22 (infra).

<sup>84</sup> Family Law: Report on Solemnisation of Marriage in England and Wales (1973), Law Com. No. 53.

<sup>85</sup> Efficiency Scrutiny Report, *Registration of Births, Marriages and Deaths* (1985) O.P.C.S.

<sup>86</sup> See Family Law: Second Report on Family Property, Family Provision on Death (1974), Law Com. No. 61.

<sup>87</sup> Family Law: First Report on Family Property. A New Approach (1973), Law Com. No. 52.

<sup>88</sup> Family Law: Third Report on Family Property. The Matrimonial Home (Co-ownership and Occupation Rights) and Household Goods (1978), Law Com. No. 86.

<sup>89</sup> Property Law: The Implications of *Williams & Glyn's Bank Ltd. v. Boland* (1982), Law Com. No. 115.

<sup>90</sup> Blood Tests and the Proof of Paternity in Civil Proceedings (1968), Law Com. No. 16, implemented by Family Law Reform Act 1969, Part II.

<sup>91</sup> (1982) Law Com. No. 118.

<sup>92</sup> Family Law: Conflicts of Jurisdiction Affecting the Custody of Children (1985), Law Com. No. 138, Scot. Law Com. No. 91.

<sup>93</sup> Review of Child Care Law, Report to Ministers of an Interdepartmental Working Party (1985), H.M.S.O.; see paras. 2.60–2.63 (infra).

<sup>94</sup> Review of Child Law: Guardianship (1985), Working Paper No. 91; see paras. 2.23–2.27 (infra).

<sup>95</sup> Report of the Committee on One-Parent Families (Chairman: The Hon. Sir Morris Finer) (1974), Cmnd. 5629, Part 4, Sections 13 and 14.

have re-opened consideration of the possibility of a court with comprehensive jurisdiction in all matters of family law. If established, such a court could provide uniform remedies and procedures based on consistent principles which would help eliminate remaining anomalies and would simplify and modernise the law. Such an aim, essentially within the declared functions of the Commission,<sup>96</sup> is one we hope to be able to continue to promote.

### *Private International Law*

1.30. Review of this branch of the law was in the first two programmes confined to certain matters of family law. The third programme enlarged this review to include all matters of private international law when they were considered appropriate and particularly matters which might be the subject of negotiations or agreements between member states of the E.E.C. or of the Hague Conference on Private International Law.

1.31. The result has been reforming legislation on the jurisdiction of the courts to grant matrimonial relief,<sup>97</sup> including changes in the law relating to matrimonial relief in respect of polygamous marriages.<sup>98</sup> The rules for the recognition of foreign divorces and legal separation were, as a result of the Hague Convention of 1970 and a report of the two Law Commissions,<sup>99</sup> the subject of legislation in 1971.<sup>100</sup> A recent report of the Commissions<sup>101</sup> proposed amendment of that legislation in the light of ten years' experience of its working, coupled with the extension of amended legislation to the recognition of foreign nullity decrees. In 1985, choice of law rules relating to marriage was the subject of a consultation paper prepared by both Law Commissions<sup>102</sup> and further aspects of the law relating to polygamous marriages were the subject of a joint report.<sup>103</sup>

1.32. During the first decade of Britain's membership of the E.E.C., the Law Commission played a significant part in advising the Government and its departments on proposals from the European Commission and those from the Hague Conference on Private International Law. Together with the Scottish Law Commission, the Commission was responsible for advising and organising the United Kingdom delegation to the E.E.C. negotiations leading to the 1980 Convention on the law applicable to contractual obligations.

1.33. Other private international law rules reviewed by the Law Commission include the rules relating to foreign money liabilities,<sup>104</sup> classification in relation

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<sup>96</sup> See Law Commissions Act 1965, s. 3(1).

<sup>97</sup> Family Law: Report on Jurisdiction in Matrimonial Causes (1972), Law Com. No. 48; see also Third Programme (1973), Law Com. No. 54, Item XXI.

<sup>98</sup> Family Law: Report on Polygamous Marriages (1971), Law Com. No. 42; Matrimonial Causes Act 1973, s.47.

<sup>99</sup> (1970) Law Com. No. 34, Scot. Law Com. No. 16.

<sup>100</sup> Recognition of Divorces and Legal Separations Act 1971.

<sup>101</sup> Private International Law: Recognition of Foreign Nullity Decrees and Related Matters (1984), Law Com. No. 137, Scot. Law Com. No. 88.

<sup>102</sup> Private International Law: Choice of Law Rules in Marriage (1985), Working Paper No. 89, Consultative Memorandum No. 64.

<sup>103</sup> Private International Law: Polygamous Marriages, Capacity to Contract a Polygamous Marriage and Related Issues (1985), Law Com. No. 146, Scot. Law Com. No. 96.

<sup>104</sup> Private International Law: Foreign Money Liabilities (1983), Law Com. No. 124; and see (1981) Law Com. No. 109, Scot. Law Com. No. 66.

to periods of limitational prescription<sup>105</sup> and, most recently, the Law of Domicile.<sup>106</sup> Together the two Law Commissions have also published a consultation paper on Choice of Law in Tort and Delict.<sup>107</sup> A major Commission review concerned the choice of law in insurance contracts and its findings were published in a joint working group paper in 1979.<sup>108</sup>

### *Property Law*

1.34. The Commission's First Programme,<sup>109</sup> requiring examination of the system of conveying unregistered land, was extended to simplification and modernisation of land transfer generally, including registration of title. Changes of substantive law were needed. Accordingly, Part III of the Law of Property Act 1969 gave effect to the proposals contained in the Commission's report on land charges<sup>110</sup> and root of title.<sup>111</sup>

1.35. The latter report's proposals, by reducing the period of commencement of title from thirty years to fifteen years, achieved perhaps the greatest simplification of unregistered conveyancing since the 1925 legislation. The former report's proposals supported this, in effect, by insuring purchasers against undisclosed land charges registered against pre-root estate owners. In addition, some of the proposals in the report on restrictive covenants<sup>112</sup> were included in that statute.

1.36. The Rentcharges Act 1977 implemented the Law Commission's report on rentcharges.<sup>113</sup> The Local Land Charges Act 1975 was based on the Commission's report and draft Bill.<sup>114</sup> In 1975 the Commission reported on "subject to contract" agreements following a reference prompted by the practice known as "gazumping".<sup>115</sup> The Commission concluded that no change in the law was required. The 1983 report of the Commission on positive and restrictive covenants<sup>116</sup> has been favourably received, though not yet implemented. It was suggested in that report that a new system of registrable "land obligations" should be created.

1.37. In 1977 the problems which can arise when land ceases to be used for charitable purposes and reverts to the ownership of the grantor or his successors were referred to the Commission. A working party was set up which reported to the Commission in 1981.<sup>117</sup> Certain proposals for the registration of such

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<sup>105</sup> Classification of Limitation in Private International Law (1982), Law Com. No. 114; Foreign Limitation Periods Act 1984 (brought into force on 1 October 1985).

<sup>106</sup> (1985) Working Paper No. 88, Consultative Memorandum No. 63.

<sup>107</sup> (1984) Working Paper No. 87, Consultative Memorandum No. 62.

<sup>108</sup> Private International Law: Report on the Choice of Law Rules in the Draft Non-Life Insurance Services Directive, 11 April 1979.

<sup>109</sup> (1965) Law Com. No. 1, Item IX.

<sup>110</sup> Transfer of Land: Report on Land Charges Affecting Unregistered Land (1969), Law Com. No. 18.

<sup>111</sup> Transfer of Land: Interim Report on Root of Title to Freehold Land (1967), Law Com. No. 9.

<sup>112</sup> Transfer of Land: Report on Restrictive Covenants (1967), Law Com. No. 11.

<sup>113</sup> Transfer of Land: Report on Rentcharges (1975), Law Com. No. 68.

<sup>114</sup> Transfer of Land: Report on Local Land Charges (1974), Law Com. No. 62.

<sup>115</sup> Transfer of Land: Report on "Subject to Contract" Agreements (1975), Law Com. No. 65.

<sup>116</sup> Transfer of Land: The Law of Positive and Restrictive Covenants (1984), Law Com. No. 127.

<sup>117</sup> Property Law: Rights of Reverter (1981), Law Com. No. 111.



rights and, in default, their extinction within a three year period were made. These proposals have not as yet been enacted.

1.38. The decision in *Williams & Glyn's Bank Ltd v. Boland*<sup>118</sup> added urgency to the Commission's work on land registration. A report published in 1982<sup>119</sup> recognised that purchasers and mortgagees, as well as co-owners, needed adequate protection in relation to co-ownership interests and that married co-owners needed further protection in their enjoyment of the matrimonial home. The Commission recommended certain registration and consent requirements but these were not accepted, and the Law Commission is now looking afresh at the whole question of overriding interests, rectification and indemnity, together with the protection and priorities of minor interests.<sup>120</sup>

1.39. The Commission's first report on land registration in 1983<sup>121</sup> recommended that the general boundaries rule should be retained, that there should be a simplified scheme for conversion of titles, that there should be some changes in the treatment of leases of registered land and that the minor interests index should cease to be used to establish priorities where there are dealings with interests behind trusts. This year the Commission published a second report dealing with the right of the public to inspect the register of title.<sup>122</sup>

#### *Landlord and Tenant*

1.40. Codification of the law of landlord and tenant was a specific item in the Commission's first programme.<sup>123</sup> A preliminary draft of an outline code was prepared promptly by August 1965 and a working party was established which met regularly from 1966 until 1972 to consider the detailed content of the code. Their deliberations resulted in the publication of three working papers issued for consultation.<sup>124</sup> Other topics considered by the working party included disclaimer of leases in bankruptcy, fire insurance provisions in leases, provision for variable rents, the content and effect of repairing obligations and options for renewal and purchase contained in leases.

1.41. The Commission's work on the codification project was delayed because other topics were accorded greater priority. In 1975 the Commission published its report on obligations of landlords and tenants.<sup>125</sup> During the last year two further reports—on covenants restricting dispositions, alterations and change of user and on forfeiture of tenancies—have been published.<sup>126</sup>

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<sup>118</sup> [1981] A.C. 487.

<sup>119</sup> The Implications of *Williams & Glyn's Bank Ltd. v. Boland*, (1982), Law Com. No. 115.

<sup>120</sup> See para. 2.36 (infra).

<sup>121</sup> Property Law: Land Registration (1983), Law Com. No. 125.

<sup>122</sup> Property Law: Second Report on Land Registration: Inspection of the Register (1985), Law Com. No. 148.

<sup>123</sup> (1965) Law Com. No. 1, Item VIII.

<sup>124</sup> Provisional Proposals Relating to Obligations of Landlords and Tenants (1967), Working Paper No. 8; Provisional Proposals Relating to Termination of Tenancies (1968), Working Paper No. 16; Provisional Proposals Relating to Covenants Restricting Dispositions, Parting with Possession, Change of User and Alterations (1970), Working Paper No. 25.

<sup>125</sup> (1975) Law Com. No. 67.

<sup>126</sup> (1985) Law Com. No. 141 and (1985) Law Com. No. 142.

1.42. Other projects undertaken by the Commission in the landlord and tenant field resulted in the publication of our Interim Report on Distress for Rent<sup>127</sup> and a Report on the Landlord and Tenant Act 1954, Part II.<sup>128</sup>

1.43. While the contents of the substantial published reports are still being considered, the Commission does not yet regard it as appropriate to embark on further research with a view to major codification proposals; the Commission has decided to concentrate on more limited, but nevertheless useful, projects.<sup>129</sup>

#### *Powers of Attorney*

1.44. The law concerning powers of attorney has twice been referred to the Law Commission. In 1970 a report<sup>130</sup> recommended the adoption of a statutory standard form of power of attorney making it simpler to create a power, and a relaxation in the formalities of proving the contents of a power once granted. These and other recommended reforms were enacted by the Powers of Attorney Act 1971. In its second report, *The Incapacitated Principal*,<sup>131</sup> the Commission recommended that a power of attorney should remain valid subject to appropriate safeguards, even though the donor had ceased to have the mental capacity needed to grant a power. In 1985 the Enduring Powers of Attorney Act was passed into law embodying the Commission's recommendations.

#### *Administrative Law*

1.45. In the Preface to its First Programme, the Commission drew attention to the problems which arose from attempting to reconcile the rule of law with the administrative techniques of a highly developed industrial society.<sup>132</sup> Among the five main questions identified by the Commission were the extent to which changes in the form and procedure of existing judicial remedies were desirable, how far any such changes should be accompanied by changes in the scope of those remedies, and whether a more extensive right to damages for loss occasioned by wrongful administrative action should be given. Following a widely representative seminar on administrative law held at All Souls College, Oxford, in December 1966, the Commission published an exploratory working paper.<sup>133</sup> After consultation, the Commission concluded that the questions it had identified could not conveniently be separated and should be considered together. It suggested that for such a comprehensive review it would be appropriate to appoint a Royal Commission.<sup>134</sup> In December 1969 this recommendation was rejected,<sup>135</sup> but the Commission was requested to review the existing remedies for judicial control of administrative acts and omissions with a view to evolving a simpler and more effective procedure.

1.46. The Commission's report on Remedies in Administrative Law was presented in March 1976.<sup>136</sup> It recommended legislation to introduce a new

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<sup>127</sup> (1966) Law Com. No. 5.

<sup>128</sup> (1969) Law Com. No. 17.

<sup>129</sup> See Nineteenth Annual Report 1983-1984 (1985), Law Com. No. 140, para. 2.52.

<sup>130</sup> Powers of Attorney (1970), Law Com. No. 30.

<sup>131</sup> (1983) Law Com. No. 122.

<sup>132</sup> (1965) Law Com. No. 1, para. 5.

<sup>133</sup> (1967) Working Paper No. 13.

<sup>134</sup> (1969) Law Com. No. 20, para. 10.

<sup>135</sup> *Hansard* (H.L.), 4 December 1969, vol. 306, col. 189.

<sup>136</sup> (1976) Law Com. No. 73.

form of procedure entitled “an application for judicial review”. The aim of this procedure was to sweep away the technical procedural difficulties between the different kinds of remedy available to a litigant affected by an invalid or unlawful administrative act or omission, and to provide that, where appropriate, the remedies of declaration and injunction would be available in the same proceedings, together with other advantages such as discovery and interlocutory relief which would have been available in an ordinary action.

1.47. The Commission’s recommendations were effected by substituting a new Order 53 of the Rules of the Supreme Court for the old system of prerogative orders. Because the Commission wished to retain the simplicity, the protections against abuse and the speed of the former procedure and to avoid the complexity and opportunity for delay of an ordinary action, it decided that adoption of the new procedure should not preclude the claimant from proceeding by ordinary action in appropriate cases. Nor was the new procedure fully assimilated to that of ordinary actions. In some cases, therefore, a litigant might still have to choose which course of action to pursue and see his claim fail if the court held that he had chosen incorrectly.<sup>137</sup> This has led some commentators to criticise the Commission’s proposals.<sup>138</sup>

1.48. These procedural changes have been described as a “reform of great importance in the field of public law”,<sup>139</sup> though they left the substantive law unchanged and introduced no new grounds of relief.<sup>140</sup>

1.49. Important questions which remain to be considered are whether a subject should be indemnified against loss sustained by an invalid administrative action in circumstances in which he has at present no right to damages;<sup>141</sup> the nature and extent of an individual’s interest required to support a right to take proceedings,<sup>142</sup> and the nature and extent of interim relief which should be available against the Crown.<sup>143</sup>

1.50. In our Nineteenth Annual Report we drew attention to these and other outstanding questions in this branch of the law,<sup>144</sup> and we continue to hope that the report of the Review Committee established by Justice and All Souls College, Oxford, will soon provide stimulus to a renewed consideration of this branch of the law.

### *Statute Law*

1.51. At the outset, the consolidation and repeal of enactments were seen by the Commission as urgent and essential steps to achieving the simplification and modernisation of the law.<sup>145</sup> The Commission has produced two programmes of consolidation and statute law reform.<sup>146</sup>

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<sup>137</sup> *O’Reilly and Others v. Mackman and Others* [1983] 2 A.C. 237.

<sup>138</sup> [1984] C.L.J. 18; (1985) 101 L.Q.R. 180.

<sup>139</sup> *I.R.C. v. National Federation of Self-Employed and Small Businesses Ltd.* [1982] A.C. 617 at p.647.

<sup>140</sup> *R. v. I.R.C., ex parte Rossminster* [1980] A.C. 952 at p.1025.

<sup>141</sup> *Hoffman-La Roche v. Trade Secretary* [1975] A.C. 295.

<sup>142</sup> *I.R.C. v. National Federation of Self-Employed and Small Businesses Ltd.* (supra).

<sup>143</sup> *R. v. I.R.C., ex parte Rossminster* (supra).

<sup>144</sup> (1985) Law Com. No. 140, paras. 1.9–1.11.

<sup>145</sup> First Programme of Consolidation and Statute Law Revision (1966), Law Com. No. 2.

<sup>146</sup> (1966) Law Com. No. 2 and Second Programme on Consolidation and Statute Law Revision (1971), Law Com. No. 44.

1.52. Work under the Commission's programmes has been successfully pursued with the help of Parliamentary Counsel whose presence in the Commission is as essential in this branch of law reform as it is in enabling the Commission to include in its reports draft Bills to implement its proposals. The work has been divided between consolidation of statutory provisions in particular subjects and revision and repeal of obsolete and unnecessary provisions. Its size and importance are shown by the subjects chosen for consolidation<sup>147</sup> and by the recommendation of the Commission that, with a view to the repeal of all Acts which could no longer be shown to have a useful function, there should be an immediate review of all statutes in chronological order.

1.53. It soon became clear that if the work of the Commission in modernising the statute book was to be implemented, changes were necessary in parliamentary procedure. Although the Consolidation of Enactments (Procedure) Act 1949 had made it possible for certain minor changes to be made in the course of consolidation, this procedure was not sufficiently flexible and, soon after the establishment of the Law Commissions, the parliamentary procedure was changed so that Consolidation Bills could incorporate amendments to the law if the Law Commission had recommended that they were necessary or desirable for the purpose of consolidation.

1.54. In our report last year<sup>148</sup> a table was published showing the volume of Consolidation Acts and other public general Acts passed since 1965. Among the consolidations carried out during that period, those relating to the Income and Corporation Taxes Acts, Town and Country Planning Acts, the Rent Acts, the Housing Acts and the Companies Acts should be mentioned for their scope and significance.

1.55. The scope of Bills to repeal redundant legislation has also been widened significantly by a change in parliamentary practice. After the establishment of the Law Commissions, a parliamentary procedure<sup>149</sup> was devised which enables the Law Commissions to recommend enactments for repeal on the single ground that they are no longer of practical utility. A value judgment of the utility of old legislation under modern conditions is thus able to be made and a more vigorous approach to the pruning of redundant law is permitted. Bills dealt with under this procedure are called Statute Law (Repeals) Bills to distinguish them from conventional Statute Law Revision Bills.

1.56. Since 1969 ten reports recommending the enactment of Statute Law (Repeals) Bills<sup>150</sup> have been made by the Law Commission alone or jointly with the Scottish Law Commission.

1.57. Statute law revision is not done only through Bills promoted for that purpose. Three formal reports made by the Law Commission with the specific

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<sup>147</sup> See para. 1.54 (*infra*).

<sup>148</sup> Nineteenth Annual Report 1983-1984 (1985), Law Com. No. 140, para. 2.68.

<sup>149</sup> S.O. No. 102(1) (e) H.C.; S.O. No. 49 (v) H.L.

<sup>150</sup> Law Com. Nos. 22, 37, 49, 57, 63, 70, 80, 87 and 106 (Statute Law (Repeals) Acts 1969, 1971, 1973, 1974, 1975, 1976, 1977, 1978 and 1981). A further Bill is now before Parliament in respect of Law Com. No. 150.

objective of repealing redundant statutory provisions have been implemented by other legislation.<sup>151</sup> Many other obsolete and unnecessary enactments have been repealed by other Bills, when this method has been thought convenient. The Supreme Court Act 1981, the British Telecommunications Act 1981, and the Telecommunications Act 1984 contain examples of this process.

1.58. Local legislation has played an important part in our statutory system since the eighteenth century and still regulates the activities of public authorities. With the aim of rationalising the long neglected local statute book, we have undertaken jointly with the Scottish Law Commission the task of recording through research and consultation the extent to which the vast accumulation of local Acts continues to form part of the law of the land. We recently published the results of the first stages of our work on this project.<sup>152</sup>

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<sup>151</sup> See (1970) Law Com. No. 28 (Wild Creatures and Forest Laws Act 1971); (1975) Law Com. No. 72 (Administration of Justice Act 1977, s.23 and Sched. 4); (1984) Law Com. No. 135 (Companies Consolidation (Consequential Provisions) Act 1985, s.28).

<sup>152</sup> Chronological Table of Local Legislation, Part I: Local and Personal Acts 1797-1908; Part II: Local and Personal Acts 1909-1973, Private Acts 1539-1973.

## PART II

### THE YEAR UNDER REVIEW

#### (a) REPORTS AND WORKING PAPERS PUBLISHED IN THE YEAR UNDER REVIEW (OTHER THAN STATUTE LAW)

2.1. We list below the reports (other than those relating to consolidation or repeal of statutes)<sup>1</sup> which we have submitted during the year since our last annual report:

- (i) Codification of the Law of Landlord and Tenant: Covenants Restricting Dispositions, Alterations and Change of User, Law Com. No. 141.
- (ii) Codification of the Law of Landlord and Tenant: Forfeiture of Tenancies, Law Com. No. 142.
- (iii) Criminal Law: Codification of the Law: A Report to the Law Commission, Law Com. No. 143.
- (iv) Criminal Law: Offences against Religion and Public Worship, Law Com. No. 145.
- (v) Private International Law: Polygamous Marriages, Capacity to Contract a Polygamous Marriage and Related Issues, Law Com. No. 146, Scot. Law Com. No. 96.
- (vi) Criminal Law: Report on Poison-Pen Letters, Law Com. No. 147.
- (vii) Property Law: Second Report on Land Registration: Inspection of the Register, Law Com. No. 148.
- (viii) Criminal Law: Report on Criminal Libel, Law Com. No. 149.
- (ix) Rights of Access to Neighbouring Land, Law Com. No. 151.
- (x) Transfer of Land: Liability for Chancel Repairs, Law Com. No. 152.
- (xi) Law of Contract: The Parol Evidence Rule, Law Com. No. 154.

2.2. During the year we published the following working papers:

- (i) Private International Law: Choice of Law in Tort and Delict, Working Paper No. 87, Scottish Law Commission Consultative Memorandum No. 62.
- (ii) Private International Law: The Law of Domicile, Working Paper No. 88, Scottish Law Commission Consultative Memorandum No. 63.
- (iii) Private International Law: Choice of Law Rules in Marriage, Working Paper No. 89, Scottish Law Commission Consultative Memorandum No. 64.
- (iv) Transfer of Money Between Spouses: the Married Women's Property Act 1964, Working Paper No. 90.
- (v) Family Law: Review of Child Law: Guardianship, Working Paper No. 91.

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<sup>1</sup> See Statute Law Section (para. 2.65 et seq.).

- (vi) Transfer of Land: Formalities for Contracts for Sale etc. of Land, Working Paper No. 92.
- (vii) Transfer of Land: Formalities for Deeds and Escrows, Working Paper No. 93.
- (viii) Trusts of Land, Working Paper No. 94.

## (b) REPORT ON PROGRESS

2.3. A description of the substance of these reports and working papers, together with a resumé of current and future work follows.

### **Contract and Tort**

#### *Supply of Goods*

2.4. This is a venture undertaken jointly with the Scottish Law Commission. In 1983 the Law Commissions published a consultative document,<sup>2</sup> and analysis of consultation was completed in 1984. The policy for the report was considered at the Commissions' annual joint meeting<sup>3</sup> in April 1985, and work is proceeding with a view to completion of the report in 1986.

#### *Supply of Services*

2.5. The subject was referred to the Commission in July 1982, when the Supply of Goods and Services Act was passing through Parliament. It was made clear when the Commission received the reference that work could not start until after the working paper on the supply of goods project had been completed. Work on supply of services as a full project commenced in October 1984. A preliminary consideration of policy indicated that further work with a view to early legislation on this topic might be premature. We hope to submit our report in 1986.

#### *Parol Evidence Rule*

2.6. In 1976 our predecessors published a working paper<sup>4</sup> in which they examined what they considered to be a rule of law that "parol testimony cannot be received to contradict, vary, add to or subtract from the terms of a written contract, or the terms in which the parties have deliberately agreed to record any part of their contract".<sup>5</sup> The working paper said that:

The parol evidence rule forbids the proof of certain kinds of fact. The written contract may be an incomplete or inaccurate record of what the parties agreed, but the rule binds the parties to what was written: extrinsic evidence of terms which were agreed but which were, by accident or design, omitted from the written agreement, may not as a general rule be given; such evidence is shut out by the parol evidence rule.

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<sup>2</sup> Sale and Supply of Goods (1983), Working Paper No. 85, Consultative Memorandum No. 58.

<sup>3</sup> See para. 3.11.

<sup>4</sup> Law of Contract: The Parol Evidence Rule (1976), Working Paper No. 70.

<sup>5</sup> Cited from the speech of Lord Morris delivering the judgment of the Judicial Committee of the Privy Council in *Bank of Australasia v. Palmer* [1897] A.C. 540 at p. 545.

The working paper examined what it saw as the exceptions to the rule and said that these were "so numerous and so extensive that it may be wondered whether the rule itself has not been largely destroyed . . . The scope of the rule, if not its existence, is doubtful." The working paper provisionally concluded that in some cases the rule might prevent the parties from proving the terms of their agreement. Its abolition would produce the same result in many cases but in some cases it might lead to a different and more just result. The rule should therefore be abolished.

2.7. Many helpful comments on the working paper were received and in 1982 the Commission carried out a further limited round of consultation. The project could not be regarded as high on the Commission's list of priorities but we have now submitted our report on this subject.<sup>6</sup> We have reached the conclusion that in so far as there can be said to be a parol evidence rule, that rule does not have the effect of excluding evidence contrary to the intention of the parties. Rather, it is a proposition of law which is no more than a circular statement: when it is proved or admitted that the parties to a contract intended that all the express terms of their agreement should be as recorded in a particular document or documents, evidence will be inadmissible if it is tendered only for the purpose of adding to, varying, subtracting from or contradicting the express terms of that contract. In the report we recommend that no legislative action should be taken to try to reform or clarify the so-called "parol evidence rule".

## **Criminal Law**

### *Criminal Code*

2.8. In paragraph 1.22 above, we referred to the publication in March 1985 of the report of Professor J. C. Smith's team on Codification of the Criminal Law.<sup>7</sup> This contains the draft of Part I (general principles of liability) of a Criminal Code Bill. It consists of fifty-five clauses covering such matters as jurisdiction, proof, external elements of offences, fault, parties to offences, mental disorder and incapacity, defences and preliminary offences (e.g. incitement, conspiracy and attempts). In order to illustrate how the substantive law creating criminal offences might look when enacted as part of a criminal code, the report includes, as part of Part II of the draft Bill, twenty-six clauses setting out the offences against the person (derived from the Fourteenth Report of the Criminal Law Revision Committee)<sup>8</sup> and nine clauses relating to offences of damage to property (derived from the Criminal Damage Act 1971).

2.9. From this report it is possible to see, for the first time, what an English criminal code which sets out the general principles and the specific offences might look like. While some important general principles, such as conspiracy and criminal attempts, are already contained in statutes, other important matters, such as the standard of proof, the effect of intoxication and the criminal liability of corporations and their officers, depend upon the common law. The present division between statute and the common law is not based

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<sup>6</sup> Law of Contract: The Parol Evidence Rule (1986), Law Com. No. 154.

<sup>7</sup> Codification of the Criminal Law: A Report to the Law Commission (1985), Law Com. No. 143.

<sup>8</sup> Offences Against the Person (1980), Cmnd. 7844.



on logic but largely on historical accident, just as are the different ways in which our present statutes creating criminal offences deal with similar aspects of general principle.

2.10. The Commission decided that the report should be published without delay, not only to inform the profession and the public, but also to canvass the views of those with current, day-to-day, practical experience in the working of the criminal law. The first and most fundamental issue upon which these views were sought was whether codification was an objective which should continue to be pursued. The Commission's own enthusiasm for codification has been increased by publication of this report, but obviously if codification no longer commands substantial support, resources must be directed elsewhere. In addition, it is necessary for every part of the draft code to be examined in detail in order to see whether the policy which it embodies and the words chosen to embody that policy are the best which could be chosen. As soon as we received the report, steps were put in hand to establish groups of practising lawyers throughout the country who would be asked to scrutinise in detail some particular part of the draft code and report back to the Commission with views both on the detail and on the general principle of codification. Seven of these groups have been established, each headed by a circuit court judge and comprising representatives of those who would be likely to be professional users of a code. The Commission is extremely grateful to the many judges, barristers, solicitors, justices' clerks and others who have agreed to assist us by subjecting the draft code to their close scrutiny from the point of view of its use in practice. In addition, many judges who sit regularly in the Crown Court have agreed to assist by testing the code against actual cases. Some members of the public and those who would be affected by a criminal code have already written to us expressing their views on the principle of codification. We are most grateful to them and hope that others will also send us their views in due course.

#### *Offences Against Religion and Public Worship*

2.11. We submitted a report, together with a draft Bill,<sup>9</sup> on this subject in June. In it we considered whether the common law crimes of blasphemy and blasphemous libel had a useful role to play in contemporary society. We were all of the opinion that these offences cannot be justified in a modern system of criminal law and recommended their abolition. A majority of us recommended this abolition without replacement. A minority considered that a new and different offence should be created. We also concluded that further consideration should be given to the creation of new crimes to penalise offensive behaviour or disruption in places of religious worship.

2.12. The report examined the possible justifications in contemporary society for replacing the existing crimes by a new one that extended protection beyond Christianity to all religions. The view of the majority of us was that there was no reason sufficiently powerful to justify the limitation upon freedom of speech which any new offence would necessitate. It was also considered that the criminal law was not the appropriate means of protecting the feelings of those

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<sup>9</sup> (1985) Law Com. No. 145.

belonging to a particular part of a society both multi-religious and secular, in which non-religious beliefs might be as strongly and deeply felt as religious beliefs. Existing crimes in the field of public order, obscenity and indecency were in the view of the majority sufficient to protect the public peace and the interests of the community. In the view of the majority, any new crime which could be envisaged in place of the common law offence would be unacceptably wide in certain respects and difficult to operate in practice.

2.13. A minority considered that the common law offences should be replaced by a new crime penalising those who publish grossly abusive or insulting material relating to a religion for the purpose of outraging religious feelings. They felt that if the common law offences were abolished, the cases in which it would be possible for persons deliberately to outrage the religious feelings of others without committing a breach of the law would be sufficiently serious to justify the enactment of this proposed offence.

2.14. A separate part of the report examined offences penalising disturbances to religious worship. Several of these are contained in obsolete or archaic legislation, and we suggested that further consideration should be given to modernising this legislation to provide for a crime penalising offensive behaviour in places of religious worship and a second offence penalising the disruption of services of religious worship wherever held. Meanwhile, the report recommended the abolition of certain common law offences in this field which, if they exist at all, have apparently not been used for over two hundred years.

#### *Criminal Libel*

2.15. We submitted our report, together with a draft Bill, in August.<sup>10</sup> Criminal libel is an ancient common law offence, regulated to a limited extent by nineteenth-century legislation. Long ago criminal libel was used by Governments against their critics. Although the crime is rarely charged nowadays, its use has given rise to difficulties and has exposed some undesirable features of the offence. For example, a person accused of criminal libel cannot, unlike the position in a civil action, defend himself by proof that the statement in question was true; he must also prove that the publication was for the public benefit. Furthermore, proof of conviction of an offence is not conclusive proof that the person concerned committed the offence. These are but examples of the shortcomings and anomalies of the common law offence which we found so fundamental as to be unacceptable in modern conditions.

2.16. We next considered whether any new offence should be recommended by way of replacement. The civil action for defamation is, in effect, only of use to those who have sufficient money to bring an action. It is generally effective only against those with sufficient money to pay damages. Even an injunction does not punish a person for making a defamatory statement, only for repeating it after an injunction against repetition has already been ordered.

2.17. We reached the conclusion that in cases of deliberate character assassination, perhaps causing immense harm and suffering to the victim, the

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<sup>10</sup> (1985) Law Com. No. 149.

conduct was of a nature which, in the public interest, justified the intervention of the criminal law to punish and to deter. On the other hand, if a new statutory crime were to be created, it would have to conform to the generally accepted principles of the criminal law. In particular, proof of all the elements of the offence must lie upon the prosecution. In the report we recommended the creation of a new statutory offence, to be known as "criminal defamation", which would penalise anyone who communicated to any other person false information seriously defamatory of another, knowing or believing that it is seriously defamatory of that other and that the information is false. This offence would be very much narrower than the present common law offence. Prosecution would require the consent of the Attorney-General for the institution of proceedings. Cases would be triable on indictment in the Crown Court, with a maximum penalty of two years' imprisonment and a fine.

### *Poison-Pen Letters*

2.18. The Commission decided to treat criminal libel and poison-pen letters separately,<sup>11</sup> because the typical poison-pen letter was often not defamatory.

2.19. In June 1985 we presented our report on poison-pen letters.<sup>12</sup> This recommended that there should be a new summary offence penalising a person who, without reasonable excuse, sent to another any article which (a) was, in whole or part, of an indecent or grossly offensive nature; or (b) conveyed (i) a message which was of such a nature; (ii) a threat which was not warranted; or (iii) information which was false and known or believed to be false by the sender; if it was his purpose (or among his purposes) that the article concerned should cause the person to whom he sent it distress or anxiety. For the purposes of the offence a threat would be "warranted" in the same circumstances as are provided in relation to the crime of blackmail. Our recommendation was that a person guilty of the offence should be liable to imprisonment for a term not exceeding six months or to a fine not exceeding level five on the standard scale. We recommended power to imprison, both because we could conceive of circumstances in very serious cases in which a sentence of imprisonment might be the only suitable form of punishment, and because the availability of certain types of sentence in magistrates' courts (e.g. a hospital order under section 37 of the Mental Health Act 1983) depends upon the existence of the power to imprison in relation to the particular offence of which the defendant has been convicted.

### *Binding Over to Keep the Peace*

2.20. In our last annual report we referred to the research upon this subject carried out with the assistance of the Lord Chancellor's Department and with the co-operation of the Magistrates' Association, the Justices Clerks' Society and the Society of Magisterial Officers.<sup>13</sup> The need to complete and submit our reports on poison-pen letters, offences against religion and public worship and criminal libel, coupled with staff shortages, delayed this project, but a detailed policy paper was in course of preparation when the announcement by the Home Secretary that he intended to introduce legislation into Parliament

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<sup>11</sup> See Eighteenth Annual Report 1982-1983 (1984), Law Com. No. 131, para. 2.19.

<sup>12</sup> (1985) Law Com. No. 147.

<sup>13</sup> Nineteenth Annual Report 1983-1984 (1985), Law Com. No. 140, paras. 2.16 and 2.17.

creating an offence of disorderly conduct<sup>14</sup> caused our work to be deferred again. Such an offence would seem likely to penalise as criminal some of the conduct which at present may result in a binding-over order. The Commission will, no doubt, wish to consider the power to bind over in the light of the proposed new offence. It is our present intention to produce a working paper asking whether reform of this area of the law is desirable and setting various possible options.

### *Conspiracy to Defraud*

2.21. Staff shortages and the need to complete reports on other aspects of the criminal law (albeit on subjects of less intrinsic importance than conspiracy to defraud) have delayed our work for much of this year. The first draft of a policy paper has, however, been prepared and further consideration has been given, in particular, to computer-related crimes.

## **Family Law**

### *The Ground for Divorce*

2.22. In the course of the Commission's work in previous years on this subject, we have already assembled a good deal of information with a view to analysing the legal issues and formulating options for reform. During the past year, priority has been given to our work on child law, both public<sup>15</sup> and private.<sup>16</sup> However, the year has also seen the publication of the report of the Matrimonial Causes Procedure Committee under the chairmanship of The Honourable Mrs. Justice Booth.<sup>17</sup> This not only recommends extensive procedural reforms but also draws attention to several respects in which the substantive law may be unsatisfactory.<sup>18</sup> Accordingly, we invited the University of Bristol Socio-Legal Centre for Family Studies to hold a seminar in December 1985, in order to seek further information and canvass views which will be most helpful in enabling us to formulate a consultation paper.

### *Review of Child Law*

2.23. A seminar was held at the Commission in October 1984 to assist us in planning the scope and content of the review of the private law relating to the upbringing of children, which is complementary to our work on the review of child care law.<sup>19</sup> We have decided that the best way forward is to publish consultation papers on the various jurisdictions dealing with guardianship, custody and wardship. Our object is primarily to simplify the law and remove any technical deficiencies, but we have in mind throughout that the welfare of the children involved must be the "first and paramount consideration".<sup>20</sup> Because of the overlap between the various jurisdictions, it may not be possible to make firm proposals until all have been reviewed.

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<sup>14</sup> See clause 5 of the Public Order Bill.

<sup>15</sup> See paras. 2.60–2.63 (infra).

<sup>16</sup> See paras. 2.23–2.27 (infra).

<sup>17</sup> The Matrimonial Causes Procedure Committee (1985) H.M.S.O.

<sup>18</sup> *Ibid.*, e.g., paras. 2.9–2.10 and 2.26.

<sup>19</sup> See Nineteenth Annual Report 1983–1984 (1985), Law Com. No. 140, para. 2.28 and para. 2.60 (infra).

<sup>20</sup> Guardianship of Minors Act 1971, s.1.

2.24. In September 1985 we published the first working paper in the series, on guardianship.<sup>21</sup> In this we proposed that parents should no longer be classified as guardians, and we made numerous suggestions for improving and clarifying the provisions whereby third parties may act in place of parents who have died, on appointment by a court or by deed or will of the deceased parent. We suggested that testamentary appointments should remain possible, but perhaps be subject to some safeguards in the interests of the child. We also suggested that the present provisions might be extended in two ways. First, the system of private appointments might be used to enable widows and other lone parents to share their parental responsibilities with another person, such as a step-parent or the father of an illegitimate child. Secondly, the courts might be able to use guardianship as an alternative to making a custody order or committing a child to the care of a local authority.

2.25. Alongside the working paper, we also produced a short pamphlet, entitled "Your Children Orphaned: Who Should Care?" This covered the main issues in a style designed for people who might have a direct interest in its subject-matter. Nearly 1,200 copies have been distributed, mainly with the help of organisations concerned with the welfare of children and one-parent families, but also in response to publicity on the radio. We are most grateful to those who helped us in circulating the paper and are encouraged by the interest so far shown in a subject which is clearly still of concern to many families with young children.

2.26. We are now preparing a working paper on the various custody jurisdictions, in which we shall consider the circumstances in which custody orders can be made, whether in favour of parents, spouses, or third parties; the meaning and content of those orders; the other orders, such as access and supervision orders, which may be made at the same time; and the criteria governing the exercise of the court's discretion. We are taking a particular interest in the subject of joint custody orders following divorce and the recommendations of the Matrimonial Causes Procedure Committee<sup>22</sup> on that subject.

2.27. We have been greatly helped in our work both on guardianship and on custody by research into the practice of magistrates' domestic courts, and the views of solicitors in two parts of England, which has been carried out for us by Mrs. J. A. Priest, lecturer in law at the University of Durham, during her sabbatical year. We are most grateful to Mrs. Priest and to her university for this help and we hope to continue to make similar arrangements with other academic or practising lawyers in the future.

#### *Transfer of Money between Spouses*

2.28. In 1984 the Scottish Law Commission recommended certain changes to the Married Women's Property Act 1964.<sup>23</sup> This Act is concerned with the effect of housekeeping allowances made by husbands to their wives. In our own review, we decided not to confine ourselves to the Act itself, but to cover

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<sup>21</sup> Family Law: Review of Child Law: Guardianship (1985), Working Paper No. 91.

<sup>22</sup> See also para. 2.22 (supra).

<sup>23</sup> (1984) Scot. Law Com. No. 86, para. 4.16; see now Family Law (Scotland) Act 1985, s.26.

the whole question of the effect of the transfer of money between spouses on the ownership of that money and property acquired with it. Questions both of property law and family law were therefore involved, so the project was undertaken jointly by those two teams. A working paper was published in April 1985<sup>24</sup> and we asked for views by the end of July. We are very grateful for the interesting and varied responses we have received, both from experts in the field and from the public. We are now discussing what our policy should be in the light of these comments and hope to prepare a report during the course of 1986.

## **Property Law**

### *Formalities for Contracts for Sale etc. of Land*

2.29. A working paper was published in September 1985<sup>25</sup> which set out five possible approaches to the reform of section 40 of the Law of Property Act 1925: that there should be no substantial change in the present law (which requires at least written evidence); that in future no formalities should be required; that all such contracts should actually have to be in writing; that contracts for the sale of land should be in a prescribed form; or that there should be a "cooling off" period after an oral or written contract during which either party can withdraw. We invited comments by 31 January 1986, and we hope that a report will be published during 1986.

### *Formalities for Deeds and Escrows*

2.30. In September 1985 we published a working paper<sup>26</sup> which examined the formalities required for the execution of a deed and the law relating to escrows. We have provisionally proposed that sealing and delivery should be abolished and replaced with requirements as to signature and attestation. A document should make it clear on its face that it is intended to be a deed. The law relating to escrows would in consequence be changed so that instead of the document being deliverable subject to unexpressed conditions, it would only be possible to make the operation of the deed subject to expressed conditions. We invited comments by 31 January 1986 and we hope that a report will be published during 1986.

### *Trusts of Land*

2.31. The work described in last year's annual report<sup>27</sup> has been continued, and a working paper has been published,<sup>28</sup> seeking views on a range of possible reforms: the creation of a new trust of land, with a power, not a duty, to sell and the abolition of the present systems of trusts for sale and settled land; conversion of all settlements into trusts for sale; making all settlements exist behind a trust for sale unless expressly made under the Settled Land Act 1925;

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<sup>24</sup> Transfer of Money Between Spouses: The Married Women's Property Act 1964 (1985), Working Paper No. 90.

<sup>25</sup> Transfer of Land: Formalities for Contracts for Sale etc. of Land (1985), Working Paper No. 92.

<sup>26</sup> Transfer of Land: Formalities for Deeds and Escrows (1985), Working Paper No. 93.

<sup>27</sup> Nineteenth Annual Report 1983-1984 (1985), Law Com. No. 140, para. 2.41.

<sup>28</sup> (1985) Working Paper No. 94.

the development of a new form of co-ownership which would not involve a trust; and a series of miscellaneous reforms, including reform of the law of severance. We are inviting comments by 30 June 1986.

### *Title on Death*

2.32. Work has also continued concerning the problems of dealing with land following a death, for example the chain of representation and the efficacy of assents.<sup>29</sup> We have been fortunate in persuading Professor Alan Prichard of Nottingham University to devote part at least of a sabbatical term to a re-examination of this topic. It is hoped that a consultation paper can be drafted and approved for publication during 1986.

### *The Rule in Bain v. Fothergill*

2.33. Recent cases involving a consideration of the rule in *Bain v. Fothergill*<sup>30</sup> have given rise to renewed concern. The effect of this rule is that damages for loss of bargain cannot normally be recovered by a purchaser where a vendor of land fails to make a good title. The question arising is whether this rule still has any justifiable part to play in the assessment of damages for breach of a contract for the sale of land but not of other property. Accordingly we have decided to review this area and have asked Mr. Mark Thompson, a lecturer in law at the University of Leicester, to draft for approval a working paper which will examine the problems caused by the rule and consider possible reforms including outright abolition. It is hoped that the paper will be ready for publication by the middle of 1986.

### *Mortgages*

2.34. We are beginning a review of the whole of the law of mortgages, with a view to producing a working paper within the next year. In this we are much assisted by the presence at the Law Commission of Alison Clarke, solicitor and lecturer in law, who is on secondment from Southampton University, and who will devote most of her time here to this project. To be worthwhile, any reformed mortgage law must be considerably simpler than the existing law, while preserving sufficient flexibility to accommodate the use and development of different methods of finance. In addition, anachronisms and uncertainties in the present law could be removed.

### *Land Registration*

2.35. The Commission's second report on land registration (with draft Bill appended)<sup>31</sup> examined the rule that only the registered proprietor and persons authorised by him could have access to the register. The arguments for and against an open register were collected and examined and the concluding recommendation was that the general rule preserving the secrecy of the register should not be supported. The Government is at present considering whether to implement our report.<sup>32</sup>

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<sup>29</sup> Nineteenth Annual Report, para. 2.39.

<sup>30</sup> (1874) L.R. 7 H.L. 158; *Sharneyford Supplies v. Edge* [1985] 3 W.L.R. 1; *Ray v. Druce* [1985] 1 Ch. 437.

<sup>31</sup> Property Law: Second Report on Land Registration: Inspection of the Register (1985), Law Com. No. 148.

<sup>32</sup> *Hansard* (H.L.), 25 November 1985, vol. 468, Written Answers, col. 785.

2.36. In October a seminar on land registration was held at Conquest House, chaired by Julian Farrand. The Chief Land Registrar attended, as did representatives from both branches of the legal profession, the building societies, the banks, the academic world and the Lord Chancellor's Department.<sup>33</sup> At the seminar, a draft report on overriding interests, rectification and indemnity was considered. The report's policy differed substantially from the working paper on this area. Many of those present appeared not to favour the radical approach provisionally proposed in the report, and expressed a more or less resigned acceptance that the present overriding interest protection should continue, albeit subject to a number of fairly major amendments. Some, however, did support the comprehensive policy of the report. The meeting also made some useful comments on a redrafted report on protection and priority of minor interests (including mortgages and charges). Revised reports on all these aspects of registration have been prepared for consideration at the beginning of 1986 and publication is expected by the middle of the year.

2.37. Also during 1986 attention will be focussed, with the assistance of Parliamentary Counsel, upon the form and working of the Land Registration Acts 1925-1971. The drafting of the principal statute is clearly far from satisfactory. As a leading textbook has said: "It is indeed replete with obscurities, defective definitions, and unsuitable rules".<sup>34</sup> Accordingly the intention is to undertake a complete redrafting (and consolidation) of the Acts with a view to producing clarity and simplification for this important statutory code. This work would incorporate the substantive amendments attributable to the reports referred to in paragraphs 2.35 and 2.36 and also any other such amendments regarded as desirable. Consultation with the Chief Land Registrar and other affected persons and bodies is envisaged and in due course publication would be accompanied by an explanatory report.

#### *Rights of Access to Neighbouring Land*

2.38. In December we submitted our report on this topic.<sup>35</sup> The report included a draft Access to Neighbouring Land Bill. Our work on this subject resulted from a reference requesting us to consider the legal difficulties of those who need to enter land belonging to someone else but who have no legal right to do so. The report pointed out that the general rule is that a person who enters neighbouring land without authority does so as a trespasser and that there is no general right of access even for those who cannot satisfactorily repair buildings on their own land in any other way. The report concluded that the present rule is not satisfactory. While a balance certainly had to be drawn between the interest of a landowner in keeping other people off his land and the interest of his neighbour in properly looking after his buildings, preservation of the nation's housing stock required that an inability to gain necessary access should not be a reason why that stock should deteriorate.

2.39. The report recommended that a property owner should have the right to apply to a county court for an access order, which would enable him to enter his neighbour's land for the limited purpose of carrying out repair and

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<sup>33</sup> See Appendix 4 for list of seminar participants.

<sup>34</sup> Megarry and Wade, *The Law of Real Property*, 5th ed. (1984) p. 1153, see also *ibid.* pp. 196-7.

<sup>35</sup> (1985) Law Com. No. 151.



maintenance work to his own property. The jurisdiction would relate only to works of preservation which could not, without substantially more difficulty or expense, be done without entering the neighbouring property. The court would have to grant the order unless the neighbouring landowner could show that, despite any conditions which might be imposed by the order, the hardship it would cause him would render it unreasonable to make such an order. The owner authorised to enter would be liable for damage done in consequence of entry, and could be required to insure his liability and be ordered to pay compensation where appropriate. The report envisaged that by placing the burden of opposing the order on the person whose property it was sought to enter, the result was likely to be that in almost all cases the parties would negotiate and agree terms of entry rather than actually go to court.

2.40. The report also considered, but did not formally recommend, a possible additional form of statutory authority to enter a neighbour's property. Where the owner of a building to be repaired served formal notice on his neighbour who agreed or did not object, statutory authority to enter would arise. Such a scheme would be limited to work that was likely to be minor, the authority would not extend for more than forty-eight hours, work would only be permitted during limited hours and there would be no authority to enter any building.

#### *Liability for Chancel Repairs*

2.41. We submitted our report on this topic in October.<sup>36</sup> The report examined the liability, which is of medieval origin, to repair the chancels of some parish churches of the Church of England and the Church in Wales. It recommended that the liability which affects the owners of certain land in England and Wales should be abolished at the end of ten years. This time lag is intended to permit those parishes which have relied on the liability of others to pay for chancel repairs to make a final inspection and undertake any necessary repairs before the liability is terminated. A draft Bill to implement this recommendation is annexed to the report.

2.42. In case abolition of liability for chancel repairs was not acceptable, an alternative solution was also considered, involving registration and apportionment of liability. The report also identified the separate chancel repair liability affecting certain ecclesiastical and educational foundations who enjoyed the benefit of tithe rentcharges, which was not cancelled when those rentcharges were redeemed. The report made no recommendation for the abolition of this form of chancel repair liability, although the draft Bill may be readily adapted to do so.

#### **Landlord and Tenant**

##### *Covenants Restricting Dispositions, Alterations and Change of User*

2.43. Our report on this topic,<sup>37</sup> as part of our work on the codification of the law of landlord and tenant, was published in March. The report contained a comprehensive review of the law, but its main conclusions fall into three

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<sup>36</sup> (1985) Law Com. No. 152.

<sup>37</sup> (1985) Law Com. No. 141.

parts: the nature of covenants restricting dispositions, the effect of fully qualified covenants and the tenants' remedies, and judicial relief against alteration and user covenants.

2.44. The report recommended that a qualified covenant restricting disposition, alteration or user (i.e. restricting what the tenant may do unless the landlord consents) should, in future tenancies, take effect as a fully qualified covenant (i.e. one under which the landlord's consent may not unreasonably be withheld). In the case of disposition covenants, the report recommended that only in a limited number of exceptional cases should an absolute bar on dispositions be effective. In other cases, an absolute covenant would take effect as a fully qualified covenant. The report discussed problems arising from the need to judge whether a landlord who has withheld consent has done so reasonably, and recommended that a landlord who withholds consent when not entitled to do so should be liable to pay damages. The report also proposed the broadening of statutory provisions which permit a modification of restrictive covenants contained in leases.

#### *Forfeiture of Tenancies*

2.45. Our report on this topic,<sup>38</sup> which is also part of our work on the codification of the law of landlord and tenant, was published in March. It comprehensively examined the law relating to forfeiture. It recommended that the present unsatisfactory and confusing powers of landlords be replaced by a scheme of termination orders for which landlords could apply, and further that it be supplemented by a parallel scheme of termination orders for which tenants could apply. Although part of the codification project, this report identifies an unsatisfactory area of the law of landlord and tenant which could usefully be reformed independently, and in advance of a major codification. To implement the recommendations of the report would not necessitate changes in other parts of this branch of law.

2.46. The replacement of the right to forfeit a tenancy by a termination order would mean that in default of agreement, a lease could only be brought to an end by a court order. A termination order could be made against a tenant in breach of covenant or when a tenant became insolvent. There would no longer be separate rules relating to the consequences of the non-payment of rent on the one hand and breaches of other covenants on the other. The present rule under which a landlord can be debarred from forfeiting a tenancy by waiver would be replaced. He would not be able to obtain a termination order if his conduct was such as to lead a reasonable tenant to believe that he was not going to seek one. The scheme for tenants' termination orders would allow a tenant to apply to end a lease on the ground of breach of covenant by the landlord. In addition, a tenant whose tenancy was ended by a termination order would have a right to damages from the landlord.

#### *Privity of Contract*

2.47. Work has now begun on this topic, examining the principle under which the original parties to a lease continue to be responsible for the performance of their covenants even after they have parted with all interest in

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<sup>38</sup> (1985) Law Com. No. 142.

the property. We convened a working party<sup>39</sup> which considered the practical implications of this principle, and was helpful in establishing possible lines of reform. Work has begun on a working paper which we hope to issue for general consultation in mid-1986.

#### *Distress for Rent*

2.48. Preliminary work is being carried out to determine whether, and if so the ways in which, the ancient law of distress for rent can be reformed, clarified or restated to make it more-readily accessible.

#### *Condominiums*

2.49. In connection with its general consultation on the implementation of the Commission's recommendations in its report, *The Law of Positive and Restrictive Covenants*,<sup>40</sup> the Lord Chancellor's Department asked for the Commission's assistance in assessing the relevance of systems established elsewhere in the world which facilitate the freehold ownership of separate parts of a building (known in Australia as "strata titles" and in most other common law jurisdictions as "condominiums"). In order to study these systems at first hand, and to discuss their operation with those concerned in a wide range of capacities—owners, managers, professional advisers, mortgagees, insurers, land registrars and administrators—Trevor Aldridge visited Sydney, Melbourne, Toronto, Los Angeles, Chicago and New York. The success of the visits was greatly assisted by the help readily given in organising them by the Law Society of New South Wales, the Law Department of Victoria and the Ontario Law Reform Commission. Discussions with the department are continuing to determine how best the results of this study can be used in their consultations.

### **Private International Law**

#### *Choice of Law in Tort and Delict*

2.50. We published a consultation paper on this subject jointly with the Scottish Law Commission in December 1984. The consultation paper was the work of the joint working party on private international law which was set up by ourselves and the Scottish Law Commission.<sup>41</sup> The consultation paper is described in our last annual report.<sup>42</sup> With the Scottish Law Commission we hope to start work in the coming year on the preparation of a report on this subject; and we are grateful to our former colleague Dr. Peter North for continuing to take an active part in the exercise and in the projects on choice of law rules in marriage and domicile.

#### *Choice of Law Rules in Marriage*

2.51. In April 1985 we published, with the Scottish Law Commission, a consultative document<sup>43</sup> examining the rules for determining which law should govern the validity of marriages in relation to which another legal system is

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<sup>39</sup> Members of the working party are listed in Appendix 2.

<sup>40</sup> (1984) Law Com. No. 127.

<sup>41</sup> (1984) Working Paper No. 87, Consultative Memorandum No. 62. See Fourteenth Annual Report 1978-1979 (1979), Law Com. No. 97, para. 2.42.

<sup>42</sup> Nineteenth Annual Report 1983-1984 (1985), Law Com. No. 140, paras. 2.56 et seq.

<sup>43</sup> (1985) Working Paper No. 89, Consultative Memorandum No. 64.

relevant. We were assisted by a joint working party,<sup>44</sup> set up by ourselves and the Scottish Law Commission, and we are grateful for their advice.

2.52. An increasing number of marriages have some foreign links because of the widespread mobility of people today. Such links can arise in a number of ways: for example, the marriage may take place abroad, or one or both of the parties may be domiciled or habitually resident in, or nationals of, a foreign country at the date of the ceremony. It is particularly important for people to be able to say with certainty whether or not their marriage is valid. Matters as diverse as immigration and citizenship, tax liability and social security benefits may depend on the validity of the marriage. For its validation, two conditions must be satisfied: the parties must comply with the formal requirements prescribed by the appropriate law and they must have capacity by the appropriate law to marry each other. In general, the law governing the formal validity<sup>45</sup> of a marriage is the law of the country of celebration and the law governing the issue of legal capacity<sup>46</sup> is the law of the parties' domicile. The consultation paper pointed out that, while these principles are well established in our law, their detailed application has resulted in a complex and, in a number of respects, uncertain body of rules. For instance, there is some uncertainty as to the precise test for determining the law governing the issue of legal capacity where the parties are domiciled in different countries at the time of the ceremony or propose to acquire a fresh domicile immediately afterwards; and it is also not clear whether, in addition to having capacity by the law of the domicile, the parties must also have capacity by the law of the country of celebration.

2.53. The consultation paper proposed that formal validity of a marriage should continue to be governed by the law of the country of celebration; and that issues of legal capacity should be governed by the law of each party's domicile before marriage. It also proposed that a marriage, whether celebrated in the United Kingdom or abroad, should not be regarded as valid in the United Kingdom if either party lacks capacity under the law of the country of celebration; and that the rule in *Sottomayer v. De Barros (No. 2)*<sup>47</sup> should be abolished. The paper also proposed reform of the rules for determining which law should govern the question whether a marriage can be annulled on such grounds as lack of consent or physical incapacity.

### *The Law of Domicile*

2.54. A consultation paper<sup>48</sup> on this subject was published jointly by ourselves and the Scottish Law Commission in April 1985. We are grateful for the assistance we have received from the joint working party,<sup>49</sup> which we and the Scottish Law Commission set up.

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<sup>44</sup> The members of the working party are listed in Appendix 2.

<sup>45</sup> Formal validity relates to the actual ceremony itself and the legal preliminaries to marriage. It covers a wide range of matters such as the nature of the ceremony, method of giving consent, and the need for witnesses or registration.

<sup>46</sup> Legal capacity to marry covers issues such as the minimum age for marriage, existence of a prior subsisting marriage and a published degree of relationship.

<sup>47</sup> (1879) 5 P.D. 94. This rule provides that the validity of a marriage celebrated in England between parties, one of whom is domiciled in England and the other in a foreign country, is not affected by an incapacity which though existing under the law of the foreign domicile, does not exist under English law.

<sup>48</sup> (1985) Working Paper No. 88, Consultative Memorandum No. 63.

<sup>49</sup> The membership of the joint working party is listed in Appendix 2.

2.55. Under United Kingdom law, a variety of questions relating to a person's civil status (such as marriage, divorce, and legitimacy) and to some aspects of his property (such as the inheritance of property on intestacy) are governed by the law of his country of domicile. The essential feature of domicile is that it tries to connect a person, so far as is possible, with the country in which he has his permanent home.

2.56. The consultation paper proposed that domicile should continue to be used as a connecting factor and that it should not be replaced by a different factor, such as nationality or habitual residence. It concluded, however, that the rules for determining a person's domicile have become complicated, technical and often artificial. A major complaint concerns the difficulty and expense caused by the need to establish the intention of a person who may have been dead for some years. This may require a detailed investigation of the person's life history. Another problem identified by the consultation paper is the technical rule whereby a person's "domicile of origin", i.e. the domicile automatically acquired at birth, revives whenever one domicile has been abandoned and a new one not yet acquired. This rule (the "revival rule") can produce unsatisfactory results when he has never had any real connection with the country of his domicile of origin, which is determined at birth from the domicile of his parents.

2.57. Changes in the existing law for determining a person's domicile are proposed. These, it is hoped, will more closely reflect the reality of a person's connections with a particular system of law. In particular, the paper proposed that:

- (a) The domicile of a child at birth should be determined by a new set of rules and accordingly the domicile of origin as a separate type of domicile should be abolished.
- (b) The "revival" rule should be abolished and replaced by a new rule to the effect that an established domicile continues until a new domicile is acquired.
- (c) An adult should be able to establish a new domicile by going to a new country and showing an intention to make a home there indefinitely. An important change from the present law would be that a rebuttable presumption of such an intention would be raised by a continuous period of seven years' habitual residence in that country.

#### *Polygamous Marriages: Capacity to Contract a Polygamous Marriage and Related Issues*

2.58. We submitted a joint report with the Scottish Law Commission on the subject in August, and are grateful for the assistance of Dr. Peter North on this project.<sup>50</sup> The report made recommendations, which are accompanied by a draft Bill, relating to the recognition in this country of marriages which, though in fact monogamous, are celebrated abroad in a polygamous form of ceremony. The proposals in the report do not concern marriages celebrated in the United Kingdom or marriages in which a man actually has more than one wife.

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<sup>50</sup> (1985) Law Com. No. 146, Scot. Law Com. No. 96.

2.59. In English law the validity of such a marriage depends on whether the marriage was celebrated before August 1971 and on whether the person permanently settled here is the man or the woman: only marriages celebrated on or after 1 August 1971 with the man permanently settled here are regarded as valid. In our report we took the view that all such marriages should be put on the same legal basis. The Bill therefore provided that a marriage entered into by a man or woman domiciled (i.e. permanently settled) in England and Wales which was in fact monogamous should not be treated as invalid here merely because it was entered into by "a polygamous ceremony". This provision is retrospective. It extends to marriages which have taken place at any time before the Bill comes into force, subject however to qualifications and exceptions in relation to such marriages for the purpose, among others, of preserving existing property rights. The Bill leaves unaffected the second marriage of a person who, having learned that his or her first marriage was not regarded as valid in this country because it was celebrated in polygamous form, has then married someone else in, say, a register office in the United Kingdom.

### (c) REVIEW OF CHILD CARE LAW

2.60. During the year, the family law team has devoted most of its time to the review of the child care law. In July 1984, the Secretary of State for Social Services established an inter-departmental Working Party,<sup>51</sup> whose members were officials from his department, the Home Office, the Lord Chancellor's Department and Brenda Hoggett from the Law Commission. Lawyers from the Commission have been working with officials from the Department of Health and Social Security in researching the relevant law, formulating options for reform and drafting the Report to Ministers. This was published by the Government as a consultative document in September 1985.<sup>52</sup>

2.61. The report dealt with the whole range of local authority responsibilities towards children (whether in care or not) and their families, and with the many different legal procedures whereby children may be admitted to care. It also considered the emergency procedures for protecting children who are at risk. The proposals of the working party were wide-ranging and detailed. A brief summary will serve to demonstrate, not only the scope of the task upon which the team has been engaged, but also its inter-relationship with the Commission's own review of the private law relating to children.<sup>53</sup>

2.62. A major recommendation was to unify the statutory provisions relating to the child care service with those relating to local authority social services for other children in need, such as disabled or handicapped children. It proposed a simple short-term form of "respite care" and a longer term system of "shared care", to promote a genuine partnership between local authorities and parents of the children for whom they are caring. Where

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<sup>51</sup> *Hansard* (H.C.), 19 July 1984, vol. 64, Written Answers, cols. 325-6.

<sup>52</sup> Review of Child Care Law, Report to Ministers of an Interdepartmental Working Party (1985), H.M.S.O.

<sup>53</sup> See para. 2.23 (supra).

compulsory intervention was necessary, the report recommended a single procedure to replace both the present form of care proceedings and the assumption of parental rights by local authority resolution over children already in their care. The grounds for such proceedings would require first, actual or likely harm to the child resulting from problems in the home, and second, that the order proposed would be the most effective means of safeguarding and promoting the welfare of the child. The specific criteria relating to the behaviour of the child or the unfitness of the parents should be abolished. The effect of a committal to care should be as close as possible to that of a custody order made in divorce or similar proceedings, and in particular there should be a presumption of reasonable access by parents to their children in care, which might be denied or defined by order in the courts. The procedure in care proceedings should also be much more like that in ordinary custody disputes; in particular, the parents should automatically be full parties; as much as possible of the applicant's case should be disclosed before the hearing; the evidence relating to all issues should be heard together and the Civil Evidence Acts should apply, and all parties should have rights of appeal to the Family Division of the High Court. In view of this, the report concluded that the magistrates' domestic court is as suitable to hear such proceedings as is the juvenile court and should have concurrent jurisdiction. There should also be power to transfer cases concerning children between different magistrates' courts and between those courts and superior courts, in order to ensure that all matters concerning the upbringing of the same child may be heard together.

2.63. One overall aim was that, so far as was possible, the systems of private and public law relating to the upbringing of children should be made compatible and consistent. The report therefore made various proposals: for custody orders to be made in care proceedings, for local authorities to be appointed guardians of children already in care, and for amendment of the present provisions for making care and supervision orders in private law proceedings. Some of these will require more detailed consideration in the context of our review of the private law. We are also continuing to assist the Department of Health and Social Security in considering further proposals for the reform of child care law and the response to the consultative document.

#### (d) CONVEYANCING STANDING COMMITTEE

2.64. The Government's Committee on Conveyancing recommended in its second report<sup>54</sup> the establishment of the Conveyancing Standing Committee under the auspices of the Law Commission. This recommendation was accepted<sup>55</sup> and the membership of the Committee, with Julian Farrand as Chairman, was announced on 28 October.<sup>56</sup> The Committee is to consider matters relating to conveyancing practice and procedure, to advise the Law Commission on reform of conveyancing law, and to promote changes in

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<sup>54</sup> The Second Report of the Conveyancing Committee: Conveyancing Simplifications (1985), H.M.S.O.

<sup>55</sup> Lord Hailsham, *Hansard* (H.L.), 31 July 1985, vol. 467, Written Answers, col. 329.

<sup>56</sup> For list of members, see Appendix 3.

practice and procedure necessary to create and maintain a cheap, simple and effective conveyancing system for those buying and selling land. It is hoped that improvements apparent to ordinary housebuyers and sellers can be achieved within the next two years.

#### (e) STATUTE LAW

2.65. The volume of consolidation measures enacted during the year has been greater than ever before. This is due primarily to the completion of two major projects—the consolidations of the Companies Acts and the Housing Acts. Work has been completed, in conjunction with the Scottish Law Commission, on a major statute law revision report. We have published the *Chronological Table of Local Legislation*, which incorporates the detailed research on the first stage of the project to determine authoritatively the extent to which local legislation continues to form part of the law of Great Britain.

##### *Consolidation*

2.66. The following consolidation Acts (other than Acts relating to Scotland only) were passed during the period 1 November 1984 to 31 October 1985, when the 1984–85 Session of Parliament ended:

- Business Names Act 1985
- Cinemas Act 1985
- Companies Act 1985
- Companies Consolidation (Consequential Provisions) Act 1985
- Company Securities (Insider Dealing) Act 1985
- Housing Act 1985
- Housing Associations Act 1985
- Housing (Consequential Provisions) Act 1985
- Landlord and Tenant Act 1985
- Reserve Forces (Safeguard of Employment) Act 1985
- Weights and Measures Act 1985.

2.67. The Acts relating to companies and housing are the result of two of the largest consolidation exercises undertaken by the Law Commission. In each case, the law has been reproduced by four Acts, the total length of which is 668 pages in the case of companies and 595 pages in the case of housing.

2.68. Work on the consolidation of the Companies Acts began in 1979. It has involved consultation with many organisations and individuals concerned with this area of the law and we are most grateful for their assistance. Section 116 of the Companies Act 1981 made it possible for amendments of the Companies Acts to be made by Order in Council where the Law Commissions had recommended that the amendments were desirable for enabling a satisfactory consolidation to be produced. The Law Commissions submitted two



reports under section 116, and two Orders in Council followed.<sup>57</sup> The Companies Consolidation (Consequential Provisions) Act 1985 included a number of repeals recommended in a separate report<sup>58</sup> in which we considered the provisions in the Companies Act 1948 dealing with cost book companies.

2.69. The history of the consolidation of the Housing Acts is even longer. Work has, over the years, been suspended on a number of occasions because of the prospect or passage of amending legislation making fundamental changes to the law. A fresh start was made in 1982 and amendments designed to facilitate the consolidation were proposed in a report by the two Law Commissions in the spring of 1985.<sup>59</sup>

2.70. The Cinemas Act 1985 also incorporated an amendment recommended by the Law Commission.<sup>60</sup>

2.71. At present work is being carried out on the following topics—agricultural holdings,<sup>61</sup> charitable collections, clean air, fisheries, income and corporation taxes, opticians, parliamentary constituencies, sewerage, social security. The principal newcomer in this list is social security: the legislation was last consolidated in 1975, but many amendments to the law have been made since then. The consolidation will incorporate any further changes enacted to carry out the reforms recently proposed by the Government.

2.72. Preparation of the income and corporation taxes consolidation is on schedule, and it is still intended that the legislation should be ready for introduction before the end of 1987.

### *Statute Law Revision*

2.73. A further joint report on statute law revision<sup>62</sup> was submitted by the Law Commission and the Scottish Law Commission on 27 September 1985. It recommended the enactment of a Statute Law (Repeals) Bill to remove numerous statutory provisions which we have identified, following detailed research and consultation, as being obsolete or unnecessary or as having otherwise ceased to be of modern practical utility.

2.74. The recommendations in this report covered a wide spectrum of topics, including the administration of justice, agriculture, finance, imports and exports, industrial relations, intellectual property, local government, medicine and health services, overseas jurisdiction, shipping, harbours and fisheries and subordinate legislation procedure. A number of the proposals related to research projects undertaken in connection with recent or projected consolidations of the law relating to medical practitioners, dentists, county courts, pilotage, fisheries and parliamentary constituencies. The report contained recommendations

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<sup>57</sup> (1983) Law Com. No. 126, Scot. Law Com. No. 83; (1984) Law Com. No. 136, Scot. Law Com. No. 87.

<sup>58</sup> (1984) Law Com. No. 135.

<sup>59</sup> (1985) Law Com. No. 144, Scot. Law Com. No. 94.

<sup>60</sup> (1985) Law Com. No. 139.

<sup>61</sup> A Bill was introduced in the House of Lords on 3 December 1985.

<sup>62</sup> Statute Law Revision, Twelfth Report (1985), Law Com. No. 150, Scot. Law Com. No. 99.

implementing the results of a review, in conjunction with the Treasury and the Bank of England, of the widely dispersed legislation relating to government stock enacted since 1870. It also implemented the results of a preliminary examination of the legislation relating to the administration of the Metropolitan Police Force, which reaches back to 1829.

2.75. Work is in progress on further proposals for the repeal of redundant statute law, either by a Statute Law (Repeals) Bill or, in cases where it is convenient, by other legislation. The work includes an examination, in conjunction with the Chief Land Registrar, of the utility of the remaining provisions of the Land Registry Act 1862. The registration of titles to land under this Act ceased in 1875<sup>63</sup> and most of the 3,300 titles originally registered under it have since been re-registered under the Land Registration Act 1925.

#### *Local Legislation Working Party*

2.76. In our last annual report<sup>64</sup> we gave an account of the work of the Local Legislation Working Party<sup>65</sup> which has the following terms of reference:

To examine the problems of the local statute law in England and Wales and in Scotland, to report on the options for advancing the process of rationalising and reforming it and to make recommendations for consideration by the Statute Law Committee.

2.77. The working party concentrated its attention initially on particular problems in connection with the important schemes for rationalising local authority legislation in Great Britain which were initiated by the cesser provisions of section 262(9) of the Local Government Act 1972 and section 225(6) of the Local Government (Scotland) Act 1973. The Statute Law Committee, at its meeting on 7 December 1984, adopted the recommendation of the working party that future legislation promoted by local authorities to implement these schemes should include comprehensive repeal schedules identifying the statutory provisions enacted before 1974 (or in Scotland before 1975) which cease to have effect. If this is not done, one form of uncertainty is substituted for another and a serious trap is created for users of the statute law, including local authorities themselves.

2.78. The Statute Law Committee also adopted the recommendation of the working party that steps should be taken to formulate and enact comprehensive repeal schedules covering the local legislation of South Yorkshire and Greater Manchester.<sup>66</sup> These substantial bodies of legislation were not rationalised by the South Yorkshire Act 1980 or the Greater Manchester Act 1981 and fall to be inherited by the district councils concerned on the abolition of the metropolitan authorities.<sup>67</sup> Work is in progress to implement the recommendation. The research on the South Yorkshire legislation is being undertaken by Mr. J. S. Phipps, a retired Chief Executive of Leicester City Council, with

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<sup>63</sup> Land Transfer Act 1875, s.125. See now Land Registration Act 1925, s.137.

<sup>64</sup> (1985) Law Com. No. 140, paras. 2.80-2.84.

<sup>65</sup> Present membership is listed in Appendix 2.

<sup>66</sup> These are the only metropolitan counties whose pre-1974 local legislation remains to be rationalised.

<sup>67</sup> Local Government Act 1985, s.17.

the co-operation of the local authorities concerned. The Department of Law of Manchester Polytechnic have offered to undertake the research needed on the Greater Manchester legislation and a Statute Law Research Unit has been set up under the direction of Mr. Eric L. Newsome. The unit is carrying out a pilot exercise as a first step in the project. We are grateful for the help we are receiving on both projects, which will make a very significant contribution to the simplification of the local statute book. There is a substantial overlap between the legislation of local authorities and statutory undertakers, and the opportunity is being taken to review, so far as it is practicable to do so, the related legislation of statutory undertakers in the areas concerned. When the research and consultation necessary have been completed, the results are expected to be embodied in a Statute Law (Repeals) Bill.

2.79. During the course of the coming year, the working party will consider further detailed proposals aimed at rationalising and reforming the local statute law.

#### *Chronological Table of Local Legislation*

2.80. The first stage of this project,<sup>68</sup> which covers the effects of legislation passed during the period 1925–1973,<sup>69</sup> has been completed and during the year under review a limited edition of the detailed text<sup>70</sup> has been distributed to those particularly concerned with the preparation of legislation or the operation of local statute law, and to selected libraries and record offices. The purpose of the distribution has been to make the work done so far available to specialist recipients, and to seek comments and information concerning the detailed operation of particular Acts or categories of Acts. Local authority and statutory undertakers associations,<sup>71</sup> and the British and Irish Association of Law Librarians, have circulated the work, or information about it, to their members.

2.81. Consultation on the first stage of the table is not yet complete but the initial results have been encouraging. Commentators have endorsed the need for a research tool of this nature and librarians in particular have stressed the value of such a work as a source of information which they are frequently called upon to give.<sup>72</sup> Several commentators, notably Associated British Ports, the Greater London Council, the Marine Directorate of the Department of Transport and the Water Companies Association, have contributed most useful information on the operation of particular Acts for incorporation in the work. Consultation has brought out the need to include the effects of local statutory instruments and has confirmed the need to amalgamate the information in the work with that contained in Section 4 of the *Chronological Table of the Statutes*. We gratefully acknowledge the co-operation and help of the many bodies who

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<sup>68</sup> For a full description of the project, see Eighteenth Annual Report 1982–1983 (1984), Law Com. No. 131, paras. 2.82–2.87.

<sup>69</sup> The effects of local and personal legislation passed from 1974 onwards are recorded in Section 4 of the *Chronological Table of the Statutes 1235–1983*, H.M.S.O.

<sup>70</sup> *Chronological Table of Local Legislation* (1985), 2 vols. 781 pp.

<sup>71</sup> In England and Wales the Association of Metropolitan Authorities, British Ports Association, Electricity Council, London Boroughs Association, Water Authorities Association, Water Companies Association.

<sup>72</sup> E.g. the House of Commons Public Information Office which deals with some 200–300 inquiries each year about local Acts.

have supplied us with information and suggestions in connection with the project or have assisted in distributing information about it.

2.82. Work on the next phase of the project, which will include the effects of all legislation passed since 1900, is continuing. We have been able to secure the services of a number of part-time researchers to replace our full-time researcher and they have each worked on the project for about three months. The effects of much local government, water supply and land drainage legislation passed since 1900 have been recorded, together with the repeal or expiry of some 2,500 Acts passed during the nineteenth century. In consequence of our consultation, work has started on the task of recording the permanent effects of local statutory instruments.

## PART III

### GENERAL

#### Chairman

3.1. On 1 October 1985, Sir Ralph Gibson, who had been chairman of the Commission since October 1981, was appointed a Lord Justice of Appeal and was succeeded by Sir Roy Beldam.

3.2. Sir Ralph Gibson's chairmanship was significant both for law reform and for the Commission itself. His period of office saw the reorganisation of the Commission, as well as the establishment of the review of civil procedure,<sup>1</sup> the publication of the report on the Codification of the Criminal Law,<sup>2</sup> and a growing number of law reform reports, to all of which he made substantial contributions.

#### Senior Staff

3.3. On 1 October 1985 Christopher Dymont, one of our Assistant Solicitors, was transferred to the Courts Administration Division of the Lord Chancellor's Department. He started work at the Commission on 1 July 1969 and had for many years been the senior staff member concerned with criminal law. His contribution to the progress of the criminal code has been unique and we shall greatly miss his experience, his meticulous scholarship and the high standards which he set himself and inspired others to follow.

#### Responsibilities of Commissioners and Legal Staff

3.4. The responsibilities of Commissioners and legal staff for law reform projects falling within particular fields of law are shown in Appendix 1. The appendix reflects the position at the date of this report.

#### Staff

3.5. Our legal staff number twenty-seven: the Secretary, six Parliamentary Counsel (two of them part-time) and twenty other lawyers. We have the services of twenty-two full-time non-legal staff. One Parliamentary Counsel also assists us on a contract basis.

#### Consultants

3.6. During the year the work of the Commission has been greatly assisted by Dr. Peter North (Principal of Jesus College, Oxford), Mr. F. M. B. Reynolds (Fellow of Worcester College, Oxford and Reader in Law, Oxford University), Mr. Hugh Beale (Reader in Law, Bristol University), Mrs. J. A. Priest (Lecturer in Law, Durham University) and Mr. Mark Thompson (Lecturer in Law,

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<sup>1</sup> Lord Hailsham, *Hansard* (H.L.), 6 February 1985, Vol. 459, Written Answers, col. 1201. See also para. 1.12 (*supra*).

<sup>2</sup> (1985) Law Com. No. 143.

Leicester University). Members of the S. P. T. L. code group (Professor J. C. Smith, Professor Edward Griew and Mr. Ian Dennis) have continued to assist us with aspects of their report. The Commission has also received valuable help from retired civil servants: Sir Wilfrid Bourne, K.C.B., Q.C., Mr. K. A. T. Davey, C.B. and Mr. R. L. Jones.

### **Secondments from Universities**

3.7. The Commission is making increased use of the services of academic lawyers on a secondment basis. Alison Clarke, Lecturer in Law at Southampton University, is working on our mortgages project, and it has been arranged that Mr. Ian Dennis, Reader in Law at University College, London, will be with us next year to help with the next stage of our codification of the criminal law.

### **Exchange of Staff**

3.8. At the Seventh Commonwealth Conference held in Hong Kong in September 1983 it was suggested that the exchange of Law Commission Staff might be mutually beneficial. This year Miss Victoria Mucai of the Kenya Law Commission worked with us for six weeks. She joined a family law project team, saw something of the work of Parliamentary Counsel and studied the organisation of the Commission. We enjoyed her visit and we hope that it will be possible to arrange further secondments. Arrangements are also being made for a member of Parliamentary Counsel's Office in Canberra to join the Commission for a year in 1987-1988.

### **Library**

3.9. In addition to the maintenance of the library itself, the Librarian and her staff continue to provide valuable assistance to the Commissioners and legal staff both in current research and in bringing new and relevant material to their attention. Considerable use is made of the computer assisted retrieval system, LEXIS, through the Supreme Court Library.

3.10. Liaison is maintained with other law librarians and we are grateful to the many other libraries, in particular that of the Institute of Advanced Legal Studies, for loans and photocopies of items not available in Conquest House. We also assist many other libraries in this way.

### **Annual Meetings**

3.11. The Commission continues to work in close co-operation with the Scottish Law Commission, and we held our joint annual meeting on 2 and 3 April. This year there were four joint reports<sup>3</sup> and three joint working papers

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<sup>3</sup> Family Law: Conflicts of Jurisdiction Affecting the Custody of Children (1985), Law Com. No. 138, Scot. Law Com. No. 91; Report on the Consolidation of the Housing Acts, Law Com. No. 144, Scot. Law Com. No. 94; Private International Law: Polygamous Marriages, Capacity to Contract a Polygamous Marriage and Related Issues (1985), Law Com. No. 146, Scot. Law Com. No. 96; Statute Law Revision: Twelfth Report, Law Com. No. 150, Scot. Law Com. No. 99.

and consultative memoranda.<sup>4</sup> The Commission also has meetings with other legal bodies in order to benefit from mutual exchange of views. This year, as usual, we had meetings with representatives of the Law Reform Committee of the Senate of the Inns of Court and the Bar, The Law Society and the Society of Public Teachers.

### Visitors to the Law Commission

3.12. On 20 February this year the Commissioners and staff were privileged to have the opportunity of an informal meeting with the Lord Chancellor at Conquest House. Another distinguished visitor was Lord Denning who on 23 May addressed us on law reform.

3.13. A group from Stockholm University led by Professor Jan Hellner came in October to discuss matters of family and property law with Mrs. Hoggett, Mr. Aldridge, Professor Farrand and the Secretary.

3.14. We were also visited by a group from the Kenya Law Reform Commission and were pleased to welcome many individual overseas visitors to the Commission. A list of visitors from overseas can be found in Appendix 5.

*(Signed)* ROY BELDAM, *Chairman*  
TREVOR M. ALDRIDGE  
BRIAN DAVENPORT  
JULIAN FARRAND  
BRENDA HOGGETT

JOHN GASSON, *Secretary*  
20 December 1985

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<sup>4</sup> Private International Law: Choice of Law in Tort and Delict (1985), Working Paper No. 87, Consultative Memorandum No. 62; Private International Law: The Law of Domicile (1985), Working Paper No. 88, Consultative Memorandum No. 63; Private International Law: Choice of Law Rules in Marriage (1985), Working Paper No. 89, Consultative Memorandum No. 64.

## APPENDIX 1

### RESPONSIBILITIES OF COMMISSIONERS AND LEGAL STAFF

#### CONTRACT AND TORT

Mr. B. J. Davenport, Q.C., Mr. T. M. Aldridge, Mr. A. Akbar, Mr. R. J. Dormer, Mr. A. Cope, Mr. O. J. Parker (until September 1985), Mr. P. De Val and Miss K. M. Reid (until January 1985).

#### CRIMINAL LAW

Mr. B. J. Davenport, Q.C., Chairman, Mr. C. W. Dymont (until September 1985) and Miss I. Gurney.

#### FAMILY LAW

Mrs. B. M. Hoggett, Mr. D. S. Gordon with Mr. R. L. Jones (until December 1984), Mr. P. G. Harris, Miss J. C. Hern, Mr. J. C. Whybrow and Mr. R. V. Hawkings.

#### PROPERTY LAW (INCLUDING LANDLORD AND TENANT)

Professor J. T. Farrand, Mr. T. M. Aldridge, Mr. J. D. Saunders (until October 1985), Mr. M. Wear, Mrs. C. Hand, Miss D. B. Hughes (until September 1985), Miss C. A. Lonsdale, Mrs. A. C. Clarke, Mr. S. C. Smith, Miss S. F. Finn, Mr. P. De Val and Miss P. Monahan.

#### PRIVATE INTERNATIONAL LAW

Mr. A. Akbar, Mr. A. Cope, Mr. R. J. Dormer, Mr. P. G. Harris and Miss J. C. Hern.

#### STATUTE LAW

*Consolidation:* Chairman, Mr. J. C. Jenkins, Mr. E. R. Sutherland, Mr. R. S. Parker, Miss M. A. R. Peto, Miss M. S. Christie,\* Mr. T. R. F. Skemp,\* Mr. G. B. Sellers (until August 1985), Miss C. E. Johnston (until July 1985) and Miss S. C. Grundy (until July 1985).

*Statute Law Revision (including Local Legislation):* Chairman, Mr. R. H. Streeten, Mr. A. M. Rowland and Mr. R. Maitland.

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\* Part-time member of the legal staff.



## APPENDIX 2

### MEMBERSHIP OF WORKING PARTIES

#### Privity of Contract Working Party

Mr. T. M. Aldridge, <i>Chairman</i>	Law Commission
Mr. C. Edwards, F.R.I.C.S.	Barclays Property Investment Management Ltd.
Mr. S. Fogel	Messrs. Titmus Sainer & Webb
Mr. J. Offen, F.R.I.C.S.	Private practice
Miss D. Phillips	Solicitor, Department of the Environment
Miss L. Birch	Administrative Division, Department of the Environment
Mr. T. Prendergast, F.R.I.C.S.	W. H. Smith & Son Ltd.
Dr. C. F. Kolbert	Lecturer, Department of Land Economy, University of Cambridge
Mr. C. Harrison, F.R.I.C.S.	Estates Surveyor, Legal and General Insurance Company
Mr. P. De Val, <i>Secretary</i>	Law Commission

#### Joint Working Party on the Law of Domicile

Dr. P. M. North } <i>Joint</i>	Law Commission
Dr. E. M. Clive } <i>Chairmen</i>	Scottish Law Commission
Professor A. E. Anton, C.B.E.	Consultant, Scottish Law Commission
Mr. R. Bland	Scottish Courts Administration
Mr. P. G. Harris	Law Commission
Mr. P. M. Harris	Lord Chancellor's Department
Mr. J. Hill	Foreign and Commonwealth Office
Professor J. D. McClean	University of Sheffield
Mr. J. V. Ribbins	General Register Office
Miss J. C. Hern, <i>Secretary</i>	Law Commission

#### Joint Working Party on Choice of Law Rules in Marriage

Dr. P. M. North } <i>Joint</i>	Law Commission
Dr. E. M. Clive } <i>Chairmen</i>	Scottish Law Commission
Mr. A. Akbar	Law Commission
Miss S. M. J. Brooks	Foreign and Commonwealth Office
Mr. M. Carpenter	Lord Chancellor's Department
Mr. I. G. Dewar	General Register Office, Scotland
Mr. G. Duke	Solicitor's Office, Scotland
Mr. J. V. Ribbins	General Register Office
Miss J. C. Hern, <i>Secretary</i>	Law Commission

**Local Legislation Working Party**

The Hon. Mr. Justice Beldam

*Chairman*

The Hon. Lord Maxwell

Mr. B. J. Davenport, Q.C.

Mr. H. W. Gamon, C.B.E., M.C.

Mr. J. G. S. Maclean (as alternate  
for Lord Maxwell)

Mr. D. Rippengal, C.B., Q.C.

Mr. R. H. Streeten

Mr. M. J. Ware

Mr. A. M. Rowland, *Secretary*

Law Commission

Scottish Law Commission

Law Commission

Society of Parliamentary Agents

Scottish Law Commission

Counsel to Chairman of Committees

Law Commission

Solicitor, Department of the  
Environment

Law Commission

### APPENDIX 3

#### CONVEYANCING STANDING COMMITTEE: LIST OF MEMBERS

Professor J. T. Farrand, <i>Chairman</i>	Law Commission
Mr. T. M. Aldridge	Law Commission
Mr. J. D. Bolton, T.D., D.L., B.A.	Solicitor, Chairman of The Law Society's Non-Contentious Business Committee
Miss C. M. Dent, J.P., M. Phil., B.Sc., F.R.I.C.S., M.R.T.P.I.	Assistant Director, Planning and Communications, London Borough of Camden
Mrs. K. Foss	Chairman, Council of the Insurance Ombudsman Bureau
Mr. J. R. Humber, B.Sc. (Econ.)	Director, Home Builders Federation
Mr. P. M. Leigh, M.A., F.N.A.E.A.	Partner, Messrs. Dennis Reed & Co., Harrow
Mr. G. Osbaldeston	General Manager (Milton Keynes), Abbey National Building Society
Mr. J. A. L. Pegg, A.I.B.	National Westminster Home Loans Ltd., Birmingham
Mr. L. I. Raven-Hill, M.B.E., F. Inst. L. Ex., M.B.I.M.	Legal Executive & Branch Manager, Messrs. Dixon Ward & Co., Richmond
Mr. J. R. Thomas, J.P., F.R.I.C.S., F.R.S.A.	Deputy Chairman, Anglia Building Society; Member of the Land Registration Rule Committee
Mr. P. W. E. Taylor, Q.C.	Former Conveyancing Counsel of the Court

## APPENDIX 4

### LIST OF THOSE ATTENDING THE LAND REGISTRATION SEMINAR

Professor J. T. Farrand	Law Commission
Mrs. B. M. Hoggett	Law Commission
Mr. T. M. Aldridge	Law Commission
Mr J. Gasson	Secretary to the Law Commission
Mr. M. Wear	Law Commission
Mrs. C. Hand	Law Commission
Mr. S. Smith	Law Commission
Mr. J. Pryer	Chief Land Registrar
Mr. M. L. Wood	Land Registry
Mrs. J. Totty	Land Registry
Mr. C. J. West	Land Registry
Professor S. Cretney	University of Bristol
Dr. D. J. Hayton	Jesus College, Cambridge
Professor D. G. Barnsley	University of Leicester
Dr. H. W. Wilkinson	<i>The Conveyancer</i>
Mr. R. G. Armstrong	Building Societies Association
Professor A. M. Prichard	Society of Public Teachers of Law
Mr. N. P. Gravells	Society of Public Teachers of Law
Mr. D. W. Saunders	Parliamentary Counsel
Mr. C. Payton	London Clearing Banks
Mr. M. Collon	Lord Chancellor's Department
Professor J. E. Adams	Law Society's Land Law and Conveyancing Committee
Mr. R. W. Castle	Law Society's Land Law and Conveyancing Committee
Professor G. Battersby	University of Sheffield
Miss D. C. S. Phillips	Department of Environment
Mr. J. D. Saunders	Lord Chancellor's Department
Mrs. J. Deakin	Building Societies Association
Mr. D. Levy, Q.C.	Chancery Bar Association

## APPENDIX 5

### VISITORS FROM OVERSEAS

Among the visitors to the Law Commission from overseas in the past year were:

Mrs. R. Bailey-Harris (Senior Lecturer in Law, University of Adelaide, South Australia)

Dr. C. Croft (Law Department, State of Victoria)

Mr. Del Buono (Canadian Department of Justice)

Mr. L. M. Fox (Law Reform Commission of Ontario)

Mrs. U. T. Guven (Vice-President, Project Board on Administration and Reform of the Turkish Legislation)

Mr. R. Hamer (Commissioner, Australian Law Reform Commission)

Professor J. Hellner with a group of fellow professors and students from Stockholm University

Mr. N. Johnson (Legal Adviser, Department of Social Welfare, Christchurch and Auckland, New Zealand)

Mr. D. Kruger (Secretary, South African Law Commission)

The Honourable Mr. Justice Miller, Chairman, and members of the Law Reform Commission of Kenya

Senator S. Pastor and Senator A. Nogues (Chairman and Deputy Chairman, Senate Foreign Affairs Committee, Paraguay)

Mr. J. B. Piggott (Chairman, Law Reform Commission of Tasmania)

Ms. V. Pursell (Librarian, Australian Law Reform Commission)

Professor B. G. Ranchod (Head of Department of Private Law, University of Durban-Westville)

Professor A. Shapira (Dean of Faculty of Law, Tel-Aviv University)

Mrs. M. Tan (Attorney-General's Chambers, Singapore)

## APPENDIX 6

### LIST OF THE LAW COMMISSION'S PUBLICATIONS

#### A. Working Papers

<i>Working Paper</i>	<i>Title</i>	<i>Resulting Report</i>
<b>1966</b>		
No. 1	Transfer of Land: Root of Title to Freehold Land	Law Com. No. 9.
No. 2	Draft Proposals on Powers of the Court of Appeal to Sit in Private and Restrictions upon Publicity in Legitimacy Proceedings	Law Com. No. 8.
No. 3	Restrictive Covenants	Law Com. No. 11.
No. 4	Should English Wills be Registrable?	
No. 5	Liability of Trade Vendors of New Dwelling Houses to First and Subsequent Purchasers (First Paper)	Law Com. No. 40.
No. 6	Liability of Vendors and Lessors for Defective Premises (Second Paper)	Law Com. No. 40.
<b>1967</b>		
No. 7	Provisional Proposals for Amendments to the Landlord and Tenant Act 1954, Part II (Business Tenancies)	Law Com. No. 17.
No. 8	Provisional Proposals Relating to Obligations of Landlords and Tenants	Law Com. No. 67.
No. 9	Family Law: Matrimonial and Related Proceedings. Financial Relief	Law Com. No. 25.
No. 10	Proposals for Changes in the Law Relating to Land Charges affecting Unregistered Land and to Local Land Charges	Law Com. Nos. 18 and 62.
No. 11	Powers of Attorney	Law Com. No. 30.
No. 12	Proof of Paternity in Civil Proceedings	Law Com. No. 16.
No. 13	Exploratory Working Paper on Administrative Law	Law Com. No. 20.
No. 14	Interpretation of Statutes (Joint Working Paper—Scottish Law Commission Memorandum No. 6)	Law Com. No. 21.
<b>1968</b>		
No. 15	Family Law: Arrangements for the Care and Upbringing of Children	
No. 16	Provisional Proposals Relating to Termination of Tenancies	Law Com. No. 142.

<i>Working Paper</i>	<i>Title</i>	<i>Resulting Report</i>
No. 17	Codification of the Criminal Law: General Principles. The Field of Enquiry (See Law Com. No. 143)	
No. 18	Provisional Proposals Relating to Amendments to sections 12-15 of the Sale of Goods Act 1893 and Contracting Out of the Conditions and Warranties implied by those sections (Joint Working Paper— Scottish Law Commission Memorandum No. 7)	Law Com. No. 24.
No. 19	Loss of Services	Law Com. Nos. 25 and 56.
No. 20	Nullity of Marriage	Law Com. No. 33.
No. 21	Polygamous Marriages	Law Com. No. 42.

#### 1969

No. 22	Restitution of Conjugal Rights	Law Com. No. 23.
No. 23	Malicious Damage to Property	Law Com. No. 29.
No. 24	Transfer of Land: Rentcharges (the subject of a further Working Paper No. 49)	Law Com. No. 68.

#### 1970

No. 25	The Law of Landlord and Tenant: Working Party's Provisional Proposals Relating to Covenants Restricting Dispositions, Parting with Possession, Change of User and Alterations	Law Com. No. 141.
No. 26	Criminal Law: Forgery	Law Com. No. 55.
No. 27	Personal Injury Litigation: Assessment of Damages, Itemisation of Pecuniary Loss and the Use of Actuarial Tables as an Aid to Assessment	Law Com. No. 56.
No. 28	Family Law: Jurisdiction in Matrimonial Causes (other than Nullity)	Law Com. No. 48.
No. 29	Codification of the Criminal Law: Subject III. Territorial and Extra-Territorial Extent of the Criminal Law	Law Com. No. 91.
No. 30	Codification of the Criminal Law: Strict Liability and the Enforcement of the Factories Act 1961	
No. 31	Codification of the Criminal Law: General Principles. The Mental Element in Crime	Law Com. No. 89.
No. 32	Transfer of Land: Land Registration (First Paper)	Law Com. No. 125.

<i>Working Paper</i>	<i>Title</i>	<i>Resulting Report</i>
No. 33	Criminal Law: Perjury and Kindred Offences	Law Com. No. 96.

#### 1971

No. 34	Family Law: Jactitation of Marriage (the subject of a further Working Paper No. 48)	Law Com. No. 132.
No. 35	Family Law: Solemnisation of Marriage	Law Com. No. 53.
No. 36	Transfer of Land: Appurtenant Rights	Law Com. No. 127.
No. 37	Transfer of Land: Land Registration (Second Paper)	Law Com. No. 125.
No. 38	Family Law: Jurisdiction in Suits for Nullity of Marriage	Law Com. No. 48.
No. 39	Exemption Clauses in Contracts for Services (Joint Working Paper—Scottish Law Commission Memorandum No. 15)	Law Com. No. 69.
No. 40	Administrative Law	Law Com. No. 73.
No. 41	Personal Injury Litigation: Assessment of Damages	Law Com. No. 56.
No. 42	Family Law: Family Property Law	Law Com. Nos. 52, 61 and 86.

#### 1972

No. 43	Codification of the Criminal Law: General Principles. Parties, Complicity and Liability for the Acts of Another (See Law Com. No. 143)	
No. 44	Codification of the Criminal Law: General Principles. Criminal Liability of Corporations (See Law Com. No. 143)	
No. 45	Transfer of Land: Land Registration (Third Paper)	Law Com. No. 125.
No. 46	Charging Orders on Land	Law Com. No. 74.

#### 1973

No. 47	Injuries to Unborn Children	Law Com. No. 60.
No. 48	Family Law: Declarations in Family Matters	Law Com. No. 132.
No. 49	Transfer of Land: Rentcharges	Law Com. No. 68.



<i>Working Paper</i>	<i>Title</i>	<i>Resulting Report</i>
No. 50	Codification of the Criminal Law: General Principles. Inchoate Offences: Conspiracy, Attempt and Incitement	Law Com. Nos. 76 and 102.
No. 51	Transfer of Land: "Subject to Contract" Agreements	Law Com. No. 65.
No. 52	Liability for Damage or Injury to Trespassers and Related Questions of Occupiers' Liability	Law Com. No. 75.
No. 53	Family Law: Matrimonial Proceedings in Magistrates' Courts	Law Com. No. 77.

### 1974

No. 54	Criminal Law: Offences of Entering and Remaining on Property	Law Com. No. 76.
No. 55	Codification of the Criminal Law: General Principles. Defences of General Application	Law Com. No. 83.
No. 56	Criminal Law: Conspiracy to Defraud **Private International Law: E.E.C. Preliminary Draft Convention of the Law Applicable to Contractual and Non-Contractual Obligations (prepared jointly with the Scottish Law Commission)	
No. 57	Codification of the Criminal Law: Conspiracies Relating to Morals and Decency	Law Com. No. 76.
No. 58	Breach of Confidence	Law Com. No. 110.

### 1975

No. 59	Contribution	Law Com. No. 79.
No. 60	Firm Offers	
No. 61	Penalty Clauses and Forfeiture of Monies Paid	
No. 62	Criminal Law: Offences Relating to the Administration of Justice	Law Com. No. 96.
No. 63	Codification of the Criminal Law: Conspiracies to Effect a Public Mischief and to Commit a Civil Wrong	Law Com. No. 76.
No. 64	Liability for Defective Products (Joint Working Party—Scottish Law Commission Memorandum No. 20)	Law Com. No. 82.
No. 65	Law of Contract: Pecuniary Restitution on Breach of Contract	Law Com. No. 121.

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\*\* This consultative document received a wide circulation but was not put on sale at H. M. Stationery Office and was not given a number in the series.

<i>Working Paper</i>	<i>Title</i>	<i>Resulting Report</i>
<b>1976</b>		
No. 66	Interest	Law Com. No. 88.
No. 67	Transfer of Land: Land Registration (Fourth Paper)	
No. 68	Custody of Children: Jurisdiction and Enforcement within the United Kingdom (Joint Working Paper—Scottish Law Commission Memorandum No. 23)	Law Com. No. 138.
No. 69	The Incapacitated Principal	Law Com. No. 122.
No. 70	Law of Contract: The Parol Evidence Rule	
<b>1977</b>		
No. 71	Law of Contract: Implied Terms in Contracts for the Supply of Goods	Law Com. No. 95.
No. 72	Codification of the Criminal Law: Treason, Seditious and Allied Offences	
<b>1979</b>		
No. 73	Insurance Law: Non-Disclosure and Breach of Warranty	Law Com. No. 104.
No. 74	Family Law: Illegitimacy	Law Com. No. 118.
<b>1980</b>		
No. 75	Classification of Limitation in Private International Law	Law Com. No. 114.
No. 76	Time Restrictions on Presentation of Divorce and Nullity Petitions	Law Com. No. 116.
No. 77	Family Law: Financial Relief after Foreign Divorce	Law Com. No. 117.
No. 78	Rights of Access to Neighbouring Land	Law Com. No. 151.
<b>1981</b>		
No. 79	Offences against Religion and Public Worship	Law Com. No. 145.
No. 80	Private International Law: Foreign Money Liabilities	Law Com. No. 124.
<b>1982</b>		
No. 81	Minors' Contracts	Law Com. No. 134.
No. 82	Offences against Public Order	Law Com. No. 123.

<i>Working Paper</i>	<i>Title</i>	<i>Resulting Report</i>
No. 83	Polygamous Marriages: Capacity to Contract a Polygamous Marriage and the Concept of the Potentially Polygamous Marriage (Joint Working Paper—Scottish Law Commission Consultative Memorandum No. 56)	Law Com. No. 146.
No. 84	Criminal Libel	Law Com. No. 149.

### 1983

No. 85	Sale and Supply of Goods (Joint Working Paper—Scottish Law Commission Consultative Memorandum No. 58)	
No. 86	Transfer of Land: Liability for Chancel Repairs	Law Com. No. 152.

### 1984

No. 87	Private International Law: Choice of Law in Tort and Delict (Joint Working Paper—Scottish Law Commission Consultative Memorandum No. 62)	
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### 1985

No. 88	Private International Law: The Law of Domicile (Joint Working Paper—Scottish Law Commission Consultative Memorandum No. 63)	
No. 89	Private International Law: Choice of Law Rules in Marriage (Joint Working Paper—Scottish Law Commission Consultative Memorandum No. 64)	
No. 90	Transfer of Money between Spouses: the Married Women's Property Act 1964	
No. 91	Family Law: Review of Child Law: Guardianship	
No. 92	Transfer of Land: Formalities for Contracts for Sale etc. of Land	
No. 93	Transfer of Land: Formalities for Deeds and Escrows	
No. 94	Trusts of Land	

*Law Commission Working Papers Nos. 58, and 60 to 86 are on sale at H.M. Stationery Office and may be ordered through booksellers.*

*An unabridged reprint of Law Commission Working Papers Nos. 1-84, bound in eleven volumes, is published by Professional Books, Milton Trading Estate, Abingdon Oxon, OX14 4SY.*

## B. Reports and Programmes

Publications which have been laid before Parliament under section 3(2) or (3) of the Law Commissions Act 1965 and publications which have been presented to Parliament as Command Papers showing implementation. Those marked \* do not call for legislation. Those marked \*\* contain a draft Bill or draft clauses.

<i>Report</i>	<i>Title</i>	<i>Related Legislation</i>
<b>1965</b>		
Law Com. No. 1	First Programme of the Law Commission	*
<b>1966</b>		
Law Com. No. 2	First Programme on Consolidation and Statute Law Revision	*
**Law Com. No. 3	Proposals to Abolish Certain Ancient Criminal Offences	Criminal Law Act 1967 (c.58).
Law Com. No. 4	First Annual Report 1965-1966	*
Law Com. No. 5	Landlord and Tenant: Interim Report on Distress for Rent	*
Law Com. No. 6	Reform of the Grounds of Divorce: The Field of Choice (Cmnd. 3123)	Divorce Reform Act 1969, now Matrimonial Causes Act 1973.
**Law Com. No. 7	Proposals for Reform of the Law Relating to Maintenance and Champerty	Criminal Law Act 1967 (c.58).
**Law Com. No. 8	Report on the Powers of Appeal Courts to Sit in Private and the Restrictions upon Publicity in Domestic Proceedings (Cmnd. 3149)	Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968 (c.63).
<b>1967</b>		
**Law Com. No. 9	Transfer of Land: Interim Report on Root of Title to Freehold Land	Law of Property Act 1969 (c.59).
**Law Com. No. 10	Imputed Criminal Intent ( <i>Director of Public Prosecutions v. Smith</i> )	In part by section 8 of the Criminal Justice Act 1967 (c.80).
Law Com. No. 11	Transfer of Land: Report on Restrictive Covenants	In part by Law of Property Act 1969 (c.59).

<i>Report</i>	<i>Title</i>	<i>Related Legislation</i>
Law Com. No. 11A	Sea Fisheries (Shellfish) Bill: Report by the two Commissions on the Consolidation of Certain Enactments relating to Shellfish Fisheries and Shellfish (Scot. Law Com. No. 6A) (Cmnd. 3267)	Sea Fisheries (Shellfish) Act 1967 (c.83).
Law Com. No. 12	Second Annual Report 1966-1967	*
**Law Com. No. 13	Civil Liability for Animals	Animals Act 1971 (c.22).
<b>1968</b>		
Law Com. No. 14	Second Programme of Law Reform	*
Law Com. No. 15	Third Annual Report 1967-1968 (H.C. 312)	*
**Law Com. No. 16	Blood Tests and the Proof of Paternity in Civil Proceedings (H.C. 2)	Family Law Reform Act 1969 (c.46).
<b>1969</b>		
**Law Com. No. 17	Landlord and Tenant: Report on the Landlord and Tenant Act 1954, Part II (H.C. 38)	Law of Property Act 1969 (c.59).
**Law Com. No. 18	Transfer of Land: Report on Land Charges Affecting Unregistered Land (H.C. 125)	Law of Property Act 1969 (c.59).
Law Com. No. 18A	Trustee Savings Banks Bill: Report by the two Commissions on the Consolidation of the Trustee Savings Banks Acts 1954 to 1968 (Scot. Law Com. No. 10) (Cmnd. 4004)	Trustee Savings Banks Act 1969 (c.50).
**Law Com. No. 19	Proceedings against Estates (Cmnd. 4010)	Proceedings against Estates Act 1970 (c.17).
Law Com. No. 20	Administrative Law (Cmnd. 4059)	See Law Com. No. 73.
**Law Com. No. 21	Intepretation of Statutes: Report by the two Commissions (Scot. Law Com. No. 11) (H.C. 256)	None.
**Law Com. No. 22	Statute Law Revision: First Report (Cmnd. 4052)	Statute Law (Repeals) Act 1969 (c.52).
**Law Com. No. 23	Proposal for the Abolition of the Matrimonial Remedy of Restitution of Conjugal Rights (H.C. 369)	Matrimonial Proceedings and Property Act 1970 (c.45).

<i>Report</i>	<i>Title</i>	<i>Related Legislation</i>
**Law Com. No. 24	Exemption Clauses in Contracts: First Report. Amendments to the Sale of Goods Act 1893; Report by the two Commissions (Scot. Law Com. No. 12) (H.C. 403)	Supply of Goods (Implied Terms) Act 1973 (c.13).
**Law Com. No. 25	Family Law: Report on Financial Provision in Matrimonial Proceedings (H.C. 448)	Matrimonial Proceedings and Property Act 1970 (c.45), now largely Matrimonial Causes Act 1973; Law Reform (Miscellaneous Provisions) Act 1970 (c.33).
**Law Com. No. 26	Breach of Promise of Marriage (H.C. 453)	Law Reform (Miscellaneous Provisions) Act 1970 (c.33).
Law Com. No. 27	Fourth Annual Report 1968-1969 (H.C. 27)	*

### 1970

**Law Com. No. 28	Statute Law Revision: Second Report. Draft Wild Creatures and Forest Laws Bill (Cmnd. 4433)	Wild Creatures and Forest Laws Act 1971 (c.47).
**Law Com. No. 29	Criminal Law: Report on Offences of Damage to Property (H.C. 91)	Criminal Damage Act 1971 (c.48).
**Law Com. No. 30	Powers of Attorney (Cmnd. 4473)	Powers of Attorney Act 1971 (c.27).
**Law Com. No. 31	Administration Bonds, Personal Representatives' Rights of Retainer and Preference and Related Matters (Cmnd. 4497)	Administration of Estates Act 1971 (c.25).
Law Com. No. 32	Civil Liability for Dangerous Things and Activities (H.C. 142)	*
**Law Com. No. 33	Family Law: Report on Nullity of Marriage (H.C. 164)	Nullity of Marriage Act 1971 (c.44), now Matrimonial Causes Act 1973.
**Law Com. No. 34	Hague Convention on Recognition of Divorces and Legal Separations: Report by the two Commissions (Scot. Law Com. No. 16) (Cmnd. 4542)	Recognition of Divorces and Legal Separations Act 1971 (c.53).
Law Com. No. 35	Limitation Act 1963 (Cmnd. 4532)	Law Reform (Miscellaneous Provisions) Act 1971 (c.43).

<i>Report</i>	<i>Title</i>	<i>Related Legislation</i>
Law Com. No. 36	Fifth Annual Report 1969–1970 (H.C. 170)	*
**Law Com. No. 37	Statute Law Revision: Third Report (Cmnd. 4546)	Statute Law (Repeals) Act 1971 (c.52).
Law Com. No. 38	Coinage Bill: Report by the two Commissions on the Consolidation of Certain Enactments Relating to Coinage (Scot. Law Com. No. 18) (Cmnd. 4544)	Coinage Act 1971 (c.24).
Law Com. No. 39	Vehicles (Excise) Bill: Report by the two Commissions on the Consolidation of Certain Enactments Relating to Excise Duties on Mechanically Propelled Vehicles, and to the Licensing and Registration of such Vehicles (Scot. Law Com. No. 19) (Cmnd. 4547)	Vehicles (Excise) Act 1971 (c.10).
**Law Com. No. 40	Civil Liability of Vendors and Lessors for Defective Premises (H.C. 184)	Defective Premises Act 1972 (c.35).

### 1971

Law Com. No. 41	National Savings Bank Bill: Report by the two Commissions on the Consolidation of Enactments Relating to the National Savings Bank (Scot. Law Com. No. 20) (Cmnd. 4574)	National Savings Bank Act 1971 (c.29).
**Law Com. No. 42	Family Law: Report on Polygamous Marriages (H.C. 227)	Matrimonial Proceedings (Polygamous Marriages) Act 1972 (c.38), now Matrimonial Causes Act 1973.
Law Com. No. 43	Taxation of Income and Gains Derived from Land: Report by the two Commissions (Scot. Law Com. No. 21) (Cmnd. 4654)	In part by section 82 of the Finance Act 1972 (c.41).
Law Com. No. 44	Second Programme of Consolidation and Statute Law Revision (H.C. 338)	*
Law Com. No. 45	Town and Country Planning Bill: Report on the Consolidation of Certain Enactments Relating to Town and Country Planning (Cmnd. 4684)	Town and Country Planning Act 1971 (c.78).

<i>Report</i>	<i>Title</i>	<i>Related Legislation</i>
Law Com. No. 46	Road Traffic Bill: Report by the two Commissions on the Consolidation of Certain Enactments Relating to Road Traffic (Scot. Law Com. No. 22) (Cmnd. 4731)	Road Traffic Act 1972 (c.20).
Law Com. No. 47	Sixth Annual Report 1970-1971 (H.C. 32)	*
<b>1972</b>		
**Law Com. No. 48	Family Law: Report on Jurisdiction in Matrimonial Causes (H.C. 464)	Domicile and Matrimonial Proceedings Act 1973 (c.45).
**Law Com. No. 49	Statute Law Revision: Fourth Report by the two Commissions (Scot. Law Com. No. 26) (Cmnd. 5108)	Statute Law (Repeals) Act 1973 (c.39).
Law Com. No. 50	Seventh Annual Report 1971-1972 (H.C. 35)	*
Law Com. No. 51	Matrimonial Causes Bill: Report on the Consolidation of Certain Enactments Relating to Matrimonial Proceedings, Maintenance Agreements, and Declarations of Legitimacy, Validity of Marriage and British Nationality (Cmnd. 5167)	Matrimonial Causes Act 1973 (c.18).
<b>1973</b>		
Law Com. No. 52	Family Law: First Report on Family Property. A New Approach (H.C. 274)	*
Law Com. No. 53	Family Law: Report on Solemnisation of Marriage in England and Wales (H.C. 250)	None.
Law Com. No. 54	Third Programme of Law Reform (H.C. 293)	*
**Law Com. No. 55	Criminal Law: Report on Forgery and Counterfeit Currency (H.C. 320)	Forgery and Counterfeiting Act 1981 (c.45).
**Law Com. No. 56	Report on Personal Injury Litigation—Assessment of Damages (H.C. 373)	Administration of Justice Act 1982 (c.53).
**Law Com. No. 57	Statute Law Revision: Fifth Report by the two Commissions (Scot. Law Com. No. 32) (Cmnd. 5493)	Statute Law (Repeals) Act 1974 (c.22).
Law Com. No. 58	Eighth Annual Report 1972-1973 (H.C. 34)	*



<i>Report</i>	<i>Title</i>	<i>Related Legislation</i>
<b>1974</b>		
Law Com. No. 59	Friendly Societies Bill: Report by the two Commissions on the Consolidation of the Friendly Societies Acts 1896 to 1971 and Certain Other Enactments Relating to the Societies to which those Acts Apply (Scot. Law Com. No. 35) (Cmnd. 5634)	Friendly Societies Act 1974 (c.46).
**Law Com. No. 60	Report on Injuries to Unborn Children (Cmnd. 5709)	Congenital Disabilities (Civil Liability) Act 1976 (c.28).
**Law Com. No. 61	Family Law: Second Report on Family Property. Family Provision on Death (H.C. 324)	Inheritance (Provision for Family and Dependants) Act 1975 (c.63).
**Law Com. No. 62	Transfer of Land: Report on Local Land Charges (H.C. 71)	Local Land Charges Act 1975 (c.76).
**Law Com. No. 63	Statute Law Revision: Sixth Report by the two Commissions (Scot. Law Com. No. 36) (Cmnd. 5792)	Statute Law (Repeals) Act 1975 (c.10).
Law Com. No. 64	Ninth Annual Report 1973-1974 (H.C. 40)	*

### 1975

Law Com. No. 65	Transfer of Land: Report on "Subject to Contract" Agreements (H.C. 119)	*
Law Com. No. 66	Supply Powers Bill: Report by the two Commissions on the Consolidation of Certain Enactments Relating to Supply Powers (Scot. Law Com. No. 38) (Cmnd. 5850)	Supply Powers Act 1975 (c.9).
**Law Com. No. 67	Codification of the Law of Landlord and Tenant: Report on Obligations of Landlords and Tenants (H.C. 377)	None.
**Law Com. No. 68	Transfer of Land: Report on Rentcharges (H.C. 602)	Rentcharges Act 1977 (c.30).
**Law Com. No. 69	Exemption Clauses: Second Report by the two Commissions (Scot. Law Com. No. 39) (H.C. 605)	Unfair Contract Terms Act 1977 (c.50).
**Law Com. No. 70	Statute Law Revision: Seventh Report by the two Commissions (Scot. Law Com. No. 40) (Cmnd. 6303)	Statute Law (Repeals) Act 1976 (c.16).
Law Com. No. 71	Tenth Annual Report 1974-1975 (H.C. 51)	*

<i>Report</i>	<i>Title</i>	<i>Related Legislation</i>
<b>1976</b>		
**Law Com. No. 72	Jurisdiction of Certain Ancient Courts (Cmnd. 6385)	Administration of Justice Act 1977 (c.38).
**Law Com. No. 73	Report on Remedies in Administrative Law (Cmnd. 6407)	Rules of Supreme Court (Amendment No. 3) 1977; Supreme Court Act 1981 (c.54).
**Law Com. No. 74	Charging Orders (Cmnd. 6412)	Charging Orders Act 1979 (c.53).
**Law Com. No. 75	Report on Liability for Damage or Injury to Trespassers and Related Questions of Occupiers' Liability (Cmnd. 6428)	Occupiers' Liability Act 1984 (c.3).
**Law Com. No. 76	Criminal Law: Report on Conspiracy and Criminal Law Reform (H.C. 176)	In part by Criminal Law Act 1977 (c.45).
**Law Com. No. 77	Family Law: Report on Matrimonial Proceedings in Magistrates' Courts (H.C. 637)	Domestic Proceedings and Magistrates' Courts Act 1978 (c.22).
<b>1977</b>		
Law Com. No. 78	Eleventh Annual Report 1975-1976 (H.C. 94)	*
**Law Com. No. 79	Law of Contract: Report on Contribution (H.C. 181)	Civil Liability (Contribution) Act 1978 (c.47).
**Law Com. No. 80	Statute Law Revision: Eighth Report by the two Commissions (Scot. Law Com. No. 44) (Cmnd. 6719)	Statute Law (Repeals) Act 1977 (c.18).
Law Com. No. 81	Rent Bill: Report on the Consolidation of the Rent Act 1968, Parts III, IV and VIII of the Housing Finance Act 1972, the Rent Act 1974, sections 7 to 10 of the Housing Rents and Subsidies Act 1975 and Certain Related Enactments (Cmnd. 6751)	Rent Act 1977 (c.42).
Law Com. No. 82	Liability for Defective Products: Report by the two Commissions (Scot. Law Com. No. 45) (Cmnd. 6831)	*
**Law Com. No. 83	Criminal Law: Report on Defences of General Application (H.C. 566)	None.
Law Com. No. 84	Law of Contract: Report on the Proposed E.E.C. Directive on the Law Relating to Commercial Agents (Cmnd. 6948)	*

<i>Report</i>	<i>Title</i>	<i>Related Legislation</i>
Law Com. No. 85	Twelfth Annual Report 1976-1977 (H.C. 96)	*
<b>1978</b>		
**Law Com. No. 86	Family Law: Third Report on Family Property. The Matrimonial Home (Co-ownership and Occupation Rights) and Household Goods (H.C. 450)	Housing Act 1980 (c.51); Matrimonial Homes and Property Act 1981 (c.24).
**Law Com. No. 87	Statute Law Revision: Ninth Report by the two Commissions (Scot. Law Com. No. 48) (Cmnd. 7189)	Statute Law (Repeals) Act 1978 (c.45).
**Law Com. No. 88	Law of Contract: Report on Interest (Cmnd. 7229)	In part by Administration of Justice Act 1982 (c.53); Rules of the Supreme Court (Amendment No. 2) 1980.
**Law Com. No. 89	Criminal Law: Report on the Mental Element in Crime (H.C. 499)	None.
Law Com. No. 90	Interpretation Bill: Report by the two Commissions on the Interpretation Act 1889 and Certain Other Enactments Relating to the Construction and Operation of Acts of Parliament and Other Instruments (Scot. Law Com. No. 53) (Cmnd. 7235)	Interpretation Act 1978 (c.30).
**Law Com. No. 91	Criminal Law: Report on the Territorial and Extra-territorial Extent of the Criminal Law (H.C. 75)	None.
Law Com. No. 92	Thirteenth Annual Report 1977-1978 (H.C. 87)	*
Law Com. No. 93	Customs and Excise Management Bill: Report by the two Commissions on the Consolidation of the Enactments Relating to the Collection and Management of the Revenues of Customs and Excise (Scot. Law Com. No. 54) (Cmnd. 7418)	Customs and Excise Management Act 1979 (c.2).

<i>Report</i>	<i>Title</i>	<i>Related Legislation</i>
<b>1979</b>		
Law Com. No. 94	Justices of the Peace Bill: Report on the Consolidation of Certain Enactments Relating to Justices of the Peace (including Stipendiary Magistrates), Justices' Clerks and the Administrative and Financial Arrangements for Magistrates' Courts and to Matters connected therewith (Cmnd. 7583)	Justices of the Peace Act 1979 (c.55).
**Law Com. No. 95	Law of Contract: Implied Terms in Contracts for the Supply of Goods (H.C. 142)	Supply of Goods and Services Act 1982 (c.29).
**Law Com. No. 96	Criminal Law: Offences Relating to Interference with the Course of Justice (H.C. 213)	None.
Law Com. No. 97	Fourteenth Annual Report 1978-1979 (H.C. 322)	*
Law Com. No. 98	Reserve Forces Bill: Report on the Consolidation of Certain Enactments Relating to the Reserve and Auxiliary Forces (Cmnd. 7757)	Reserve Forces Act 1980 (c.9).
<b>1980</b>		
**Law Com. No. 99	Family Law: Orders for Sale of Property under the Matrimonial Causes Act 1973 (H.C. 369)	Matrimonial Homes and Property Act 1981 (c.24).
Law Com. No. 100	Highways Bill: Report on the Consolidation of the Highways Acts 1959 to 1971 and Related Enactments (Cmnd. 7828)	Highways Act 1980 (c.66).
Law Com. No. 101	Magistrates' Courts Bill: Report on the Consolidation of Certain Enactments Relating to the Jurisdiction of, and the Practice and Procedure before, Magistrates' Courts and the Functions of Justices' Clerks, and to Matters connected therewith (Cmnd. 7887)	Magistrates' Courts Act 1980 (c.43).
**Law Com. No. 102	Criminal Law: Attempt, and Impossibility in relation to Attempt, Conspiracy and Incitement (H.C. 646)	Criminal Attempts Act 1981 (c.47).
Law Com. No. 103	Family Law: The Financial Consequences of Divorce: The Basic Policy. A Discussion Paper (Cmnd. 8041)	See Law Com. No. 112.
**Law Com. No. 104	Insurance Law: Non-Disclosure and Breach of Warranty (Cmnd. 8064)	None.

<i>Report</i>	<i>Title</i>	<i>Related Legislation</i>
Law Com. No. 105	Judicial Pensions Bill: Report by the two Commissions on the Consolidation of Certain Enactments Relating to Pensions and Other Benefits payable in respect of service in Judicial Office (Scot. Law Com. No. 62) (Cmnd. 8097)	Judicial Pensions Act 1981 (c.20).
**Law Com. No. 106	Statute Law Revision: Tenth Report by the two Commissions (Scot. Law Com. No. 63) (Cmnd. 8089)	Statute Law (Repeals) Act 1981 (c.19); Supreme Court Act 1981 (c.54); British Telecommunications Act 1981 (c.38).

### 1981

Law Com. No. 107	Fifteenth Annual Report 1979–1980 (H.C. 161)	*
Law Com. No. 108	Trustee Savings Bank Bill: Report by the two Commissions on the Consolidation of the Trustee Savings Banks Acts 1969 to 1978 (Scot. Law Com. No. 65) (Cmnd. 8257)	Trustee Savings Banks Act 1981 (c.65).
Law Com. No. 109	Private International Law: Council of Europe Conventions on Foreign Money Liabilities (1967) and on the Place of Payment of Money Liabilities (1972) (Joint Report— Scot. Law Com. No. 66) (Cmnd. 8318)	*
**Law Com. No. 110	Breach of Confidence (Cmnd. 8388)	None.
Law Com. No. 111	Property Law: Rights of Reverter (Cmnd. 8410)	None.
Law Com. No. 112	Family Law: The Financial Consequences of Divorce. The Response to the Law Commission's Discussion Paper, and Recommendations on the Policy of the Law (H.C. 68)	Matrimonial and Family Proceedings Act 1984 (c.42).

### 1982

Law Com. No. 113	Sixteenth Annual Report 1980–1981 (H.C. 161)	*
**Law Com. No. 114	Classification of Limitation in Private International Law (Cmnd. 8570)	Foreign Limitation Periods Act 1984 (c.16).
Law Com. No. 115	Property Law: The Implications of <i>Williams &amp; Glyn's Bank Ltd. v. Boland</i> (Cmnd. 8636)	None.

<i>Report</i>	<i>Title</i>	<i>Related Legislation</i>
**Law Com. No. 116	Family Law: Time Restrictions on Presentation of Divorce and Nullity Petitions (H.C. 513)	Matrimonial and Family Proceedings Act 1984 (c.42).
**Law Com. No. 117	Family Law: Financial Relief after Foreign Divorce (H.C. 514)	Matrimonial and Family Proceedings Act 1984 (c.42).
**Law Com. No. 118	Family Law: Illegitimacy (H.C. 98)	None.

### 1983

Law Com. No. 119	Seventeenth Annual Report 1981–1982 (H.C. 203)	*
Law Com. No. 120	Medical Bill: Report by the two Commissions on the Consolidation of the Medical Acts 1956 to 1978 and Certain Related Provisions (Scot. Law Com. No. 77) (Cmnd. 8839)	Medical Act 1983 (c.54).
**Law Com. No. 121	Law of Contract: Pecuniary Restitution on Breach of Contract (H.C. 34)	None.
**Law Com. No. 122	The Incapacitated Principal (Cmnd. 8977)	Enduring Powers of Attorney Act 1985 (c.29).
**Law Com. No. 123	Criminal Law: Offences Relating to Public Order (H.C. 85)	Public Order Bill.
**Law Com. No. 124	Private International Law: Foreign Money Liabilities (Cmnd. 9064)	None.
**Law Com. No. 125	Property Law: Land Registration (H.C. 86)	None.
Law Com. No. 126	Amendment of the Companies Acts 1948–1983: Report by the two Commissions under section 116 of the Companies Act 1981 (Scot. Law Com. No. 83) (Cmnd. 9114)	Companies Act 1985 (c.6).

### 1984

**Law Com. No. 127	Transfer of Land: The Law of Positive and Restrictive Covenants (H.C. 201)	None.
Law Com. No. 128	Registered Homes Bill: Report on the Consolidation of Certain Enactments Relating to Residential Care Homes and Nursing Homes and Registered Homes Tribunals (Cmnd. 9115)	Registered Homes Act 1984 (c.23).
Law Com. No. 129	Dentists Bill: Report by the two Commissions on the Consolidation of the Dentists Acts 1957 to 1983 (Scot. Law Com. No. 84) (Cmnd. 9119)	Dentists Act 1984 (c.24).

<i>Report</i>	<i>Title</i>	<i>Related Legislation</i>
Law Com. No. 130	Public Health (Control of Disease) Bill: Report on the Consolidation of Certain Enactments Relating to the Control of Disease (Cmnd. 9128)	Public Health (Control of Disease) Act 1984 (c.22).
Law Com. No. 131	Eighteenth Annual Report 1982–1983 (H.C. 266)	*
**Law Com. No. 132	Family Law: Declarations in Family Matters (H.C. 263)	
Law Com. No. 133	Road Traffic Regulation Bill (Joint Report—Scot. Law Com. No. 85) (Cmnd. 9162)	Road Traffic Regulation Act 1984 (c.27).
**Law Com. No. 134	Law of Contract: Minors' Contracts (H.C. 494)	None.
Law Com. No. 135	Statute Law Revision: Eleventh Report: Obsolete Provisions in the Companies Act 1948 (Cmnd. 9236)	Companies Consolidation (Consequential Amendments) Act 1985 (c.9).
Law Com. No. 136	Further Amendments of the Companies Acts 1948–1983: Report by the two Commissions under section 116 of the Companies Act 1981 (Scot. Law Com. No. 87) (Cmnd. 9272)	Companies Act 1985 (c.6).
**Law Com. No. 137	Private International Law: Recognition of Foreign Nullity Decrees and Related Matters (Joint Report—Scot. Law Com. No. 88) (Cmnd. 9347)	

### 1985

**Law Com. No. 138	Family Law: Conflicts of Jurisdiction Affecting the Custody of Children (Joint Report—Scot. Law Com. No. 91) (Cmnd. 9419)	
Law Com. No. 139	Cinemas Bill (Cmnd. 9425)	Cinemas Act 1985 (c.13).
Law Com. No. 140	Nineteenth Annual Report 1983–1984 (H.C. 214)	*
Law Com. No. 141	Codification of the Law of Landlord and Tenant: Covenants Restricting Dispositions, Alterations and Change of User (H.C. 278)	None.
Law Com. No. 142	Codification of the Law of Landlord and Tenant: Forfeiture of Tenancies (H.C. 279)	None.
Law Com. No. 143	Criminal Law: Codification of the Criminal Law: A Report to the Law Commission (H.C. 270)	*

<i>Report</i>	<i>Title</i>	<i>Related Legislation</i>
Law Com. No. 144	Housing Bill, Housing Associations Bill, Landlord and Tenant Bill (Joint Report—Scot. Law Com. No. 94) (Cmnd. 9515)	Housing Act 1985 (c.68); Housing Associations Act 1985 (c.69); Landlord and Tenant Act 1985 (c.70); Housing Consequential Provisions Act 1985 (c.71).
**Law Com. No. 145	Criminal Law: Offences against Religion and Public Worship (H.C. 442)	None.
**Law Com. No. 146	Private International Law: Polygamous Marriages, Capacity to Contract a Polygamous Marriage and Related Issues (Joint Report—Scot. Law Com. No. 96) (Cmnd. 9595)	None.
**Law Com. No. 147	Criminal Law: Report on Poison-Pen Letters (H.C. 519)	None.
**Law Com. No. 148	Property Law: Second Report on Land Registration: Inspection of the Register (H.C. 551)	None.
**Law Com. No. 149	Criminal Law: Report on Criminal Libel (Cmnd. 9618)	None.
**Law Com. No. 150	Statute Law Revision: Twelfth Report (Joint Report—Scot. Law Com. No. 99) (Cmnd. 9648)	Statute Law (Repeals) Bill.
**Law Com. No. 151	Rights of Access to Neighbouring Land (Cmnd. 9692)	None.
**Law Com. No. 152	Property Law: Liability for Chancel Repairs (H.C. 39)	None.
Law Com. No. 153	Agricultural Holdings Bill: Report on the Consolidation of Certain Enactments Relating to Agricultural Holdings (Cmnd. 9665)	Agricultural Holdings Bill.

#### 1986

Law Com. No. 154	Law of Contract: The Parol Evidence Rule (Cmnd. 9700)	*
Law Com. No. 155	Twentieth Annual Report 1984–1985	*



### C. Joint Working Group Report

11 April 1979 Private International Law: Report on the choice of law rules in the Draft Non-Life Insurance Services Directive by a Joint Working Group of the Law Commission and Scottish Law Commission.

### D. Other Publications

Land Registration: "Who Owns That House?"

Statute Law Revision: *Chronological Table of Local Legislation* (Joint Consultative Document with the Scottish Law Commission).

*An unabridged reprint of Law Commission Reports Nos. 1-120, bound in thirteen volumes, is published by Professional Books, Milton Trading Estate, Abingdon, Oxon. OX14 4SY.*

## APPENDIX 7

### REPORTS RESULTING FROM REFERENCES

<i>Report</i>	<i>Title</i>
Law Com. No. 6	Reform of the Grounds of Divorce: the Field of Choice (Cmnd. 3123)
Law Com. No. 8	Report on the Powers of Appeal Courts to Sit in Private and the Restrictions upon Publicity in Domestic Proceedings (Cmnd. 3149)
Law Com. No. 19	Proceedings against Estates (Cmnd. 4010)
Law Com. No. 20	Administrative Law (Cmnd. 4059)
Law Com. No. 30	Powers of Attorney (Cmnd. 4473)
Law Com. No. 31	Administration Bonds, Personal Representatives' Rights of Retainer and Preference and Related Matters (Cmnd. 4497)
Law Com. No. 34	Hague Convention on Recognition of Divorces and Legal Separations: Report by the two Commissions (Scot. Law Com. No. 16) (Cmnd. 4542)
Law Com. No. 35	Limitation Act 1963 (Cmnd. 4532)
Law Com. No. 43	Taxation of Income and Gains Derived from Land: Report by the two Commissions (Scot. Law Com. No. 21) (Cmnd. 4654)
Law Com. No. 60	Report on Injuries to Unborn Children (Cmnd. 5709)
Law Com. No. 65	Transfer of Land: Report on "Subject to Contract" Agreements (H.C. 119)
Law Com. No. 73	Report on Remedies in Administrative Law (Cmnd. 6407)
Law Com. No. 74	Charging Orders (Cmnd. 6412)
Law Com. No. 75	Report on Liability for Damage or Injury to Trespassers and Related Questions of Occupiers' Liability (Cmnd. 6428)
Law Com. No. 82	Liability for Defective Products: Report by the two Commissions (Scot. Law Com. No. 45) (Cmnd. 6831)
Law Com. No. 84	Law of Contract: Report on the Proposed E.E.C. Directive on the Law Relating to Commercial Agents (Cmnd. 6948)
Law Com. No. 88	Law of Contract: Report on Interest (Cmnd. 7229)
Law Com. No. 103	Family Law: The Financial Consequences of Divorce: The Basic Policy: A Discussion Paper (Cmnd 8041)
Law Com. No. 104	Insurance Law: Non-Disclosure and Breach of Warranty (Cmnd. 8064)
Law Com. No. 109	Private International Law: Council of Europe Conventions on Foreign Money Liabilities (1967) and on the Place of Payment of Money Liabilities (1972) (Joint Report—Scot. Law Com. No. 66) (Cmnd. 8318)
Law Com. No. 110	Breach of Confidence (Cmnd. 8388)
Law Com. No. 111	Property Law: Rights of Reverter (Cmnd. 8410)
Law Com. No. 114	Classification of Limitation in Private International Law (Cmnd. 8570)

*Report*

*Title*

Law Com. No. 115	Property Law: The Implications of <i>Williams &amp; Glyn's Bank Ltd. v. Boland</i> (Cmnd. 8636)
Law Com. No. 122	The Incapacitated Principal (Cmnd. 8977)
Law Com. No. 124	Private International Law: Foreign Money Liabilities (Cmnd. 9604)
Law Com. No. 138	Family Law: Conflicts of Jurisdiction Affecting the Custody of Children (Joint Report—Scot. Law Com. No. 91) (Cmnd. 9419)
Law Com. No. 151	Rights of Access to Neighbouring Land (Cmnd. 9692)

## APPENDIX 8

### THE COST OF THE COMMISSION

For the period 1 November 1984 to 31 October 1985  
(Last year's figures appear in brackets)

	£	£
Travel and Subsistence	6,600	(9,200)
Entertainment	500	(400)
Telephone/Postage	21,600	(16,800)
Accommodation Charges	400,400	(340,500)
Printing of Bills, Working Papers and Consultative Documents, Supply of office equipment and books	217,000	(272,490)
Commissioners' Salaries (including ERNIC and superannuation)	200,200	(203,100)
Draftsmen, Legal Staff and Consultants (including ERNIC)	537,600	(533,000)
Non-Legal Staff Salaries (including ERNIC)	264,100	(245,300)
Superannuation	174,100	(201,500)
Miscellaneous	3,000	(2,610)
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