

SCOTTISH LAW COMMISSION

(SCOT. LAW COM. No. 28)

**SEVENTH
ANNUAL REPORT
1971-72**

Laid before Parliament

*by the Secretary of State for Scotland and the Lord Advocate
under section 3(3) of the Law Commissions Act 1965*

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The Scottish Law Commission was set up by section 2 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law of Scotland. The Commissioners are:

The Honourable Lord Hunter, *Chairman*

Professor A. E. Anton

Professor J. M. Halliday, C.B.E.

Professor T. B. Smith, Q.C.

Mr. Ewan Stewart, M.C., Q.C.

The Secretary of the Commission is Mr. J. B. Allan. Its offices are at the Old College, University of Edinburgh, South Bridge, Edinburgh EH8 9BD.

SCOTTISH LAW COMMISSION
REPORT FOR THE YEAR ENDED 15th JUNE, 1972

TO: THE RIGHT HONOURABLE GORDON CAMPBELL, M.C., M.P.,
Her Majesty's Secretary of State for Scotland, and

THE RIGHT HONOURABLE NORMAN WYLIE, V.R.D., Q.C., M.P.,
Her Majesty's Advocate.

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

J. O. M. HUNTER,
Chairman of The Scottish Law Commission

19th December 1972

SEVENTH ANNUAL REPORT

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I. THE COMMISSION

1. The Scottish Law Commission, which was set up on 16th June, 1965, consists of a full-time Chairman, one full-time Commissioner and three part-time Commissioners. They are:

The Honourable Lord Hunter, Chairman	(Full-time)
Professor A. E. Anton	(Part-time)
Professor J. M. Halliday, C.B.E.	(Part-time)
Professor T. B. Smith, Q.C.	(Part-time) ¹
Mr. Ewan Stewart, M.C., Q.C.	(Full-time)

The Secretary of the Commission is Mr. J. B. Allan.

2. On 30th September 1971 the Honourable Lord Kilbrandon ceased to be Chairman of the Commission on taking up his appointment as a Lord of Appeal in Ordinary. Also on that date Mr. A. M. Johnston, Q.C., ceased to be a Commissioner on taking up his appointment as a Senator of the College of Justice with the judicial title of Lord Dunpark. We wish to express our indebtedness to them for their contribution to our work and, in particular, to Lord Kilbrandon who has guided our affairs from the beginning. We welcome in place of Lord Kilbrandon, Lord Hunter, a Senator of the College of Justice, and in place of Mr. A. M. Johnston, Mr. Ewan Stewart, M.C., Q.C., a former Solicitor-General for Scotland.

STAFF

3. Our legal staff consists of two Parliamentary draftsmen, one on a full-time basis and one employed part-time, our Secretary and five other qualified lawyers. While there has been no increase in the number of staff there have been changes in personnel. On 31st January 1972 Mr. A. G. Brand, Secretary, and on 31st March 1972 Mr. H. D. Glover, Assistant Secretary, left us on promotion. We wish to record our appreciation of the services rendered by these two gentlemen who were largely responsible for setting up our administrative organisation. Our permanent non-legal staff was increased from six to seven. We were assisted by four senior law students whom we employed during their summer vacation.

PREMISES

4. Our offices are still in the Old College of Edinburgh University. As in previous years we must record our thanks for the co-operation we have received from the University. We are also most grateful for the help which we continue to receive from the staffs of the University Law Library and the Centre of European Governmental Studies.

MEETINGS

5. We continue to hold meetings at regular intervals but because of the increase in our work more frequent meetings are becoming necessary. We have to bear in mind the commitments of our part-time Commissioners since their availability controls the number of meetings possible.

¹Professor T.B. Smith became a full-time member of the Commission on 1st October 1972.

II. GENERAL

6. A lesson which emerges very clearly from the experience which we have gained since our formation seven years ago is that the work of formulating proposals for the systematic reform of any large area of law, if it is to be done properly and to find the right solutions, is bound to be extremely time-consuming and cannot be hurried without serious disadvantage.

7. Bearing this lesson in mind we have continued to keep under review the Commission's methods of work in order that we may employ our limited resources to the best advantage. As a result we have reached two main conclusions. First, we should concentrate more on the large subjects in our statutory law reform programmes¹ and on the provision of advice to Government Departments and other bodies on formal references under section 3(1)(e) of the Law Commissions Act 1965². Second, we should plan carefully in advance the resources which should be devoted to each large subject in our Programmes and the order in which particular areas of the law should be considered. Consequently lower priority will have to be given to informal requests for advice and comment. Work on such requests has in the past involved interruption and delay in our programme subjects which are of greater long-term importance.

8. The activities of the Law Commission, with its considerably greater resources, and of European and other international bodies concerned with the making and reform of the law impose heavy demands on our resources mainly because we have to react to proposals made by them. These demands will be increased when the United Kingdom enters the Common Market because our responsibilities will extend to Community Law. Later in this Report² we comment on our relationship with these bodies. At this stage we would like to indicate *vis à vis* the activities of the Law Commission, two situations where our smaller resources work to our disadvantage. These are (1) where we, along with the Law Commission, are examining the same large area of law, and (2) where the Law Commission are considering a large area of law which is not on our Programmes. In the former situation, our main difficulty is to keep pace with the Law Commission. The latter situation however causes us more anxiety. For example, the Law Commission are at present engaged on the codification of the English Criminal Law. We continue to receive a series of Working Papers all of which contain implications which are more or less important for the Criminal Law of Scotland. We do not have the resources to enable us to allocate a Commissioner or a member of the legal staff to the specific consideration of these Papers. We have drawn the Lord Advocate's attention to this matter.

9. Another disadvantage is that on several occasions in the year under review we have been forced to work to a tight time-table. On these occasions the efforts of the Commissioner and member of legal staff concerned are necessarily concentrated on one subject to the detriment of their other work, and where the Commissioner concerned is part-time the consequences can be rather serious. We recognise that these disadvantages must be accepted as a matter of expediency in case opportunities for legislation are lost.

¹See First Programme of Law Reform (1965), Scot. Law Com. No. 1, Second Programme of Law Reform (1968) Scot. Law Com. No. 8; considered at paras. 14-32 below.

²See paras. 58-61 and 62-66 below.

10. We have found it wasteful of resources to embark on the codification of any area of law before the defects in that area have been identified and corrected and the necessary decisions reached on questions of principle. Careful consideration must be given to the form and style of codification which should be adopted in any particular field of law. We venture to suggest that Parliamentary draftsmen in future may sometimes be called upon to alter radically their style of presentation where the subject matter is considered appropriate for codification.

11. We are satisfied that the availability of Parliamentary draftsmen to the Commission is of primary importance. The presentation of proposals in the form of draft Bills appended to Reports assists those wishing to sponsor legislation following on a Report. Less obviously but of no less value, the discipline of drafting a Bill invariably focusses policy issues whose existence, relevance or importance might otherwise have been overlooked by the Commission. Moreover, the publication of a Bill gives more time to interested persons to test the soundness of our proposals and to scrutinise their statutory formulation in sufficient depth and detail.

12. We recognise that in the coming years there will be stronger pressures to harmonise the laws of Scotland and England not only with one another but also with European systems. We believe that this is sensible in certain areas of law provided that Scots law is permitted to make its distinctive and valuable contribution. We view with disfavour ill-considered attempts to unify the laws of England and Scotland by the application of principles which are not consistent with Scots law. Our examination of the Crowther Report¹ on Consumer Credit to which we later refer² identified fairly numerous examples of this particular fault. We notice that this fault also occurs during the preliminaries to preparation of United Kingdom legislation when inadequate consideration has been given to the relevant areas of Scots law.

13. In concluding these general remarks, we mention two problems which we are attempting to solve. The first turns on the truism that the scale and speed of effective law reform depend directly on original research into Scots law. We are not satisfied that, as presently constituted, we do or can ourselves carry out that research as quickly as the public interest requires. The relative paucity of secondary legal literature in Scotland (as compared for example with England) makes the problem more acute. To ease the problem, we have on occasions set up working parties of experts in specific fields and we have also employed individual lawyers, usually university teachers of law, as *ad hoc* researchers or consultants. But the problem is not solved and we are now examining the feasibility of extending legal research on our behalf outside the Commission. The second problem concerns the extent to which, and the contexts in which, it is appropriate to underpin legal research with research in the social sciences. Social surveys and the like can entail considerable expenditure which must be balanced, first, against their relevance and utility to the cognate legal problems and second, against the importance of these problems. Where in a central field of law, a wide range of possible solutions can be narrowed by the provision of satisfactory

¹ (1971), Cmnd. 4596, (2 vols.)

² See para. 45 below.

evidence as to relevant social facts and attitudes, the expense may well be justified. We shall be exploring the possibility of utilising or securing the promotion of sociological research in relation to certain items of our Programmes.

III. LAW REFORM PROGRAMMES

1. FIRST PROGRAMME¹

Item 1: Evidence

14. In our First Programme¹ we recommended that the law of evidence should be examined with a view to its reform, to the consolidation of the relevant statutes, and ultimately to codification. Our initial exercise under this item was to publish for comment a Memorandum containing eight chapters of a proposed Code of Evidence². We have decided not to proceed with codification but in the meantime to concentrate on the reform of the law of evidence. With this in mind we have secured the services of an experienced advocate, and have asked him to identify the areas of the law of evidence which should be considered by us with a view to reform and to set out and tabulate the existing statutory provisions to facilitate future consolidation.

Item 2: Obligations

(a) *Exemption clauses.*

15. On 27th September 1971 we published, jointly with the Law Commission, a paper³ containing provisional proposals relating to (i) the exclusion of liability for negligence in the sale of goods, and (ii) exemption clauses in contracts for the supply of services and other contracts. A large number of comments have been received and these are being studied by the two Commissions, with a view to the issue of a Report in 1973.

(b) *Contract.*

16. We continue to receive from the Law Commission papers on the Codification of the Law of Contract. While recognising that considerable advances had been made by our participation in joint discussions on the Codification of the Law of Contract we were becoming increasingly concerned at the areas of disagreement that still existed on fundamental issues. Although a joint meeting was held in October 1971 to try to resolve the disagreements we continued to have reservations on the proposed structure of the Code, the method of its preparation and presentation and the consequences it would have on our aim to secure beneficial harmonisation for Scots law. We have withdrawn from this exercise and are not at present in a position to comment on the papers we have received, since we now deem it necessary to give higher priority to our own programme subject of Obligations progress on which has been very seriously interrupted by the joint exercise in a much narrower field of law. Despite the difficulties to which we have thought it proper to refer we consider that consultation between the two Commissions in the areas of law covered by their

¹ (1965) Scot. Law Com. 1.

² *Draft Evidence Code—First Part*, (1968) Memorandum No. 8.

³ Circulated as Scottish Law Commission Memorandum No. 15 and Law Commission Working Paper No. 39.

respective programme subjects will continue to be most valuable. Some of the preliminary work done with a view to codifying the law of contract is of obvious value to us in the wider context of Obligations.

Item 3: Prescription and Limitation of Actions

17. We understand that time may be found in the 1972–73 session of Parliament for legislation to give effect to most of the recommendations contained in our Report¹. Work is proceeding on the draft clauses of a Bill.

Item 5: Interpretation of Statutes

18. It may be recalled that a Working Party was set up by both Commissions to consider, having regard to the recommendations made in the Joint Report on *Interpretation of Statutes*,² whether any change is desirable in the law governing the interpretation of treaties. It has not proved possible during the current year to convene meetings of the Working Party concerned.

2. SECOND PROGRAMME³

Item 6: Insolvency, Bankruptcy and Liquidation

19. On 7th December 1971 we published Memorandum No. 16 on Insolvency, Bankruptcy and Liquidation in Scotland. Comment on and criticism of our provisional proposals were invited and we have received a large number of observations. These are now being studied and it is intended to commence the preparation of a Report early in 1973. In connection with our Report we shall be studying closely the draft Convention of the Commission of the European Communities relating to Bankruptcy Compositions and Analogous Proceedings.

Item 7: Succession

20. Our initial examination was confined to possible changes in the Succession (Scotland) Act 1964 with a view to ironing out certain difficulties that have arisen since that Act came into operation. Our examination suggested the desirability of more radical changes. We shall shortly have to decide whether we should confine our study to minor changes to the Succession (Scotland) Act 1964 or extend our examination to the possibility of major changes.

Item 8: Diligence

21. As we indicated in our last Annual Report⁴ we set up a Working Party⁵ to examine the Scots Law of Diligence. The Working Party circulated a list of topics which seemed to them to require examination and invited a very wide range of individuals and organisations to express views. The comments received are to be considered by the Working Party.

¹ *Reform of the Law Relating to Prescription and Limitation of Actions* (1970) Scot. Law Com. No. 15.

² (1969) Scot. Law Com. No. 11; Law Com. No. 21.

³ (1968) Scot. Law Com. No. 8.

⁴ (1971) Scot. Law Com. No. 23, para. 14.

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

Item 9: Reciprocal Enforcement of Judgments

22. As we indicated in our last Annual Report¹, further consideration of this topic was deferred because, if the United Kingdom were to enter into the European Economic Community, it would require to accede to the E.E.C. Convention on Jurisdiction and the Enforcement of Civil and Commercial Judgments concluded on 27th September 1968. The United Kingdom is to enter the Community and a Committee has been set up by the Secretary of State and the Lord Chancellor under the Chairmanship of the Rt. Hon. Lord Kilbrandon to advise on:

- (a) any adjustments which it may be necessary or desirable to negotiate with the Member States of the European Economic Community with a view to enabling the United Kingdom to accede to the Convention, and
- (b) any matters which might arise in the course of such negotiations.

Professor Anton is this Commission's representative on that Committee and Chairman of its Scottish Sub-Committee.

Item 10: Damages arising from Personal Injuries and Death

23. On 10th April 1972 we published Memorandum No. 17 referred to in our last Annual Report², on *Damages for Injuries Causing Death*³. We are at present considering the comments we have received on this Memorandum and we hope to submit our Report to Ministers before the middle of 1973.

Item 11: Presumption of Death

24. We have not been able to have our Report on *Presumption of Survivorship and Death*⁴ ready for submission to Ministers before the end of 1971 as was indicated in our last Annual Report.⁵ The draft Report is now reasonably well advanced and work is proceeding on the preparation of the Bill to be appended to that Report.

Item 12: Legal Capacity of Minors and Pupils

25. Due to priority being given to other subjects it was not possible to proceed with the preparation of a Memorandum following upon the Working Party's Report. It is hoped to commence the drafting of such a Memorandum with a view to circulation in 1973.

Item 13: Criminal Procedure

26. We continue to keep in touch with the proceedings of the Departmental Committee under the chairmanship of Lord Thompson examining Scottish criminal procedure. Mr. Stewart is this Commission's representative on that Committee which was set up following upon a recommendation in our Second Programme.⁶

¹ (1971) Scot. Law Com. No. 23, para. 15.

² (1971) Scot. Law Com. No. 23, para. 16.

³ (1972) Memorandum No. 17.

⁴ (1969) Memorandum No. 11.

⁵ (1971) Scot. Law Com. No. 23, para 17.

⁶ (1968) Scot. Law Com. No. 8.

Item 14: Family Law

(a) *General*

27. We continue to experience difficulty in work on Family Law because of our uncertainty as to the future pattern of the grounds of divorce. We reiterate the statement in our last Annual Report¹ that much of our work on family law depends upon the shape of our divorce laws. In particular, the grounds of divorce affect the law relating to family property, financial provision on breakdown of marriage, and financial and other obligations between spouses during the subsistence of marriage.

(b) *Jurisdiction of Scottish courts in matrimonial cases*

28. As we indicated in our last Annual Report², we had received comments on our Memorandum No. 13 on jurisdiction in divorce, separation and dissolution of marriage on presumed death. Our conclusions on jurisdiction in actions of nullity of marriage were similar to those of the Law Commission and to elicit comments on these, we circulated to professional bodies the Law Commission's Working Paper No. 38 on *Jurisdiction in suits for nullity of marriage*³. We expanded the range of our proposals to cover certain other topics, including actions of declarator of marriage, the Sheriff Court's jurisdiction in separation, ancillary jurisdiction affecting children and financial obligations, and actions of reduction of consistorial decrees. Our Report⁴, with a draft Bill appended, is almost ready for submission and publication. It will be complementary to a Report and Bill prepared by the Law Commission.

(c) *Domicile of Married Women*

29. We think it appropriate to mention at this stage our involvement in a Working Party considering the domicile of married women. We should make it clear that this item was not dealt with by us as part of our examination of family law and the conclusions reached by that Working Party do not necessarily represent the views of this Commission.

30. In December 1971 we were asked by the Chairman of the Law Commission to provide assistance to a Working Party which had been informally set up by the Lord Chancellor in May 1971 to consider the proposal that a married woman's domicile should no longer be dependent on that of her husband and to advise on any consequential legislation that might be necessary if such a proposal were to be accepted. As it appeared that changes of importance to the law of Scotland as well as that of England were in contemplation we agreed to provide the assistance of Mr. Stewart and of Mr. Whitty, a member of our legal staff. They attended meetings of this Working Party and, in April 1972, accepted an invitation to join it when it was arranged that its Report should be submitted to the Secretary of State for Scotland and the Lord Advocate as well as the Lord Chancellor. The Working Party has not yet completed its deliberations⁵.

¹ (1971) Scot. Law Com. No. 23, para. 22.

² (1971) Scot. Law Com. No. 23, para. 20.

³ Published 28th July 1971.

⁴ This Report was published on 29th September 1972 (Scot. Law Com. No. 25).

⁵ The Working Party reported to Ministers on 16th October 1972. The Report was not intended for publication but for the guidance of Ministers.

(d) Actions of declarator as to matrimonial status

31. We have begun work on certain problems which have arisen in relation to jurisdiction in actions of declarator relating to matrimonial status.

(e) Polygamous Marriages

32. We gave assistance in the preparation of provisions extending the Matrimonial Proceedings (Polygamous Marriages) Bill¹ to Scotland.

IV. CONSOLIDATION AND STATUTE LAW REVISION

1. CONSOLIDATION

33. We have almost completed the preparation of a Second Programme of Consolidation and Statute Law Revision².

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

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

(1) Roads and Bridges in Scotland

Existing legislation on the subject is contained amongst a large number of Acts some of which are very out of date in their style, terminology and details. This means that a substantial degree of rewriting as distinct from ordinary consolidation will be required. Since such rewriting would not be consistent with what we are permitted to do under either the Consolidation of Enactments (Procedure) Act 1949 or within the relatively narrow limits of our authority to recommend for inclusion in a consolidation bill provisions that amount to a change of law we have decided not to proceed with a consolidation bill.

(2) Lands Clauses (Scotland)—It has been decided not to proceed with consolidation of the Lands Clauses Acts in the meantime because existing difficulties cannot be removed either by straightforward consolidation or consolidation with amendments recommended by us. Examination of these enactments is continuing with a view to identifying which provisions may need particular amendment.

(3) Town and Country Planning (Scotland)—The Consolidation Bill on this subject is at present before Parliament³.

(b) Consolidation of Enactments applying to other parts of the United Kingdom as well as to Scotland.

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

Prevention of Oil Pollution Act 1971
Tribunals and Inquiries Act 1971

¹ This Bill received the Royal Assent on 29th June 1972.

² This programme was submitted to the Secretary of State and Lord Advocate on 27th October 1972.

³ This Bill received the Royal Assent on 27th July 1972.

Local Employment Act 1972
Summer Time Act 1972
Road Traffic Act 1972
Betting and Gaming Duties Act 1972

- (2) Bills on the following subjects are before Parliament:
Contracts of Employment Bill¹
National Debt Bill²
Poisons Bill

- (3) Work has been suspended on the draft Bills to consolidate enactments relating to Clean Air, and Friendly Societies because of the pressure of current legislation. Work on the consolidation of Estate Duty legislation has also been suspended until it is known whether the proposals contained in the Government Green Paper *Taxation of Capital on Death: A possible Inheritance Tax in place of Estate Duty*³ are accepted.

2. STATUTE LAW REVISION

34. All the proposals for repeals which we have received have been or are in course of being examined and consultations are being conducted with various bodies and Government Departments.

During the past year the Scottish Law Commission has co-operated with the Law Commission in the preparation of the Statute Law (Repeals) Bill which contains an increased proportion of purely Scottish repeals. We hope to submit shortly to Ministers a Report⁴ with a draft Bill appended with a view to its presentation in the next session of Parliament.

35. Assistance continues to be given to the Secretary of the Editorial Board⁵ in connection with the arrangement and indexing of statutes being prepared for the new perpetually renewable edition of the *Statutes in Force*. This edition will be arranged in groups and sub-groups by reference to subject matter. It is expected that groups of statutes on "Agriculture" and "Compulsory Acquisition" will be published shortly.⁶

V. OTHER STATUTORY FUNCTIONS

1. ADVICE TO GOVERNMENT DEPARTMENTS AND OTHER BODIES

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

¹ This Bill received the Royal Assent on 27th July 1972.

² This Bill received the Royal Assent on 9th August 1972.

³ (1972) Cmnd. 4930.

⁴ This Report was published on 28th September 1972 (Scot. Law Com. No. 26, Law Com. No. 49).

⁵ A list of members of the Board appears in Appendix I to this Report.

⁶ The Groups on "Agriculture" and "Compulsory Acquisition" were published in July 1972.

(1) *Administrative Law*

37. On 23rd August 1971 we issued Memorandum No. 14 on Remedies in Administrative Law. This Memorandum consists of a paper prepared by Professor Bradley, Professor of Constitutional Law in the University of Edinburgh, who has acted as special consultant, along with a series of questions prepared by the Consultative Committee¹ which was set up to assist us in the examination of this subject. Comment on and criticism of our provisional proposals was invited. Comments are awaited from Government Departments before further progress can be made.

(2) *Foreign Money Liabilities*

38. On 25th February 1972 we, along with the Law Commission, were asked to advise the Foreign and Commonwealth Office and other interested Departments on the problems which may arise if a sum of money is due in a currency other than that of the place of payment or the place where payment is sought. Professor Anton is to act as a Scottish Consultant to the Joint Working Party² set up to examine this subject.

(3) *Conflicts of Jurisdiction affecting the custody of children*

39. In May 1972 we and the Law Commission were asked by Ministers to review (1) the basis of the jurisdiction of courts in the British Isles to make orders for the custody and wardship of pupils and minors, (2) the recognition and enforcement of such orders in other parts of the British Isles, (3) the recognition and enforcement of custody and similar orders made outside the British Isles, and (4) the administrative problems involved in the enforcement in any jurisdiction in the British Isles of a custody or similar order made in any other jurisdiction whether in the British Isles or elsewhere. A Joint Working Party³ under the Chairman of the Law Commission has been set up for this purpose. Professor Anton and Mr. Whitty are our representatives on this Working Party.

(4) *Mental Element in Crime*

40. In October 1970 we were asked by Scottish Office to consider the proposals contained in the Law Commission's Working Paper No. 31 on *The Mental Element in Crime*, and advise on the appropriateness of the application of these proposals to Scotland. We have not yet completed our examination of the Working Paper.

(5) *Products Liability*

41. In October 1971 we were asked by you "to consider whether the existing law governing compensation for personal injury, damage to property or any other loss caused by defective products is adequate, and to recommend what improvements, if any, in the law are needed to ensure that additional remedies are provided and against whom such remedies should be made available".

Since the Law Commission also received a similar request from the Lord Chancellor we have agreed with them that our examination should be a joint

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

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

³ A list of members of this Working Party appears in Appendix 1 to this Report.

exercise. A Joint Working Party¹ has been set up and is seeking evidence from interested parties by means of a questionnaire.

(6) *Administration of Justice (Scotland) Bill*

42. We submitted to the Scottish Office our comments on the clauses in the Administration of Justice (Scotland) Bill which was introduced in this session of Parliament².

(7) *Aircraft Mortgages*

43. We have considered a draft Order in Council³ to be made under section 16 of the Civil Aviation Act 1968 establishing a public record of aircraft mortgages in the United Kingdom and providing for priorities as between different mortgages of the same aircraft. We submitted to the Lord Advocate's Department a revised Schedule dealing with the application of the proposed Order in Council to Scotland and providing a style of aircraft mortgage, transfer of mortgage and discharge of mortgage for use in Scotland.

(8) *Companies (Floating Charges and Receivers) (Scotland) Bill*

44. We were pleased to note the introduction in this session of Parliament of the Companies (Floating Charges and Receivers) (Scotland) Bill⁴. This Bill implements, with certain minor changes to take account of the Conveyancing and Feudal Reform (Scotland) Act 1970, the recommendations contained in our Report on the *Companies (Floating Charges) (Scotland) Act 1961* which was submitted to the President of the Board of Trade and published on 22nd April 1970.⁵

(9) *Crowther Report on Consumer Credit*

45. We have submitted our comments to the Department of Trade and Industry on the Crowther Committee's Report⁶ on Consumer Credit. In the course of our examination of that Report we realised that any legislation implementing the proposals of the Report would have serious consequences on the law of Scotland. We consider it essential that account must be taken of the fundamental differences between Scots law and English law in relation to moveables. It is, therefore, necessary that someone with a knowledge of Scots law be closely concerned with any future legislation. In our comments we drew the Department's attention to the far reaching effects on Scots law that the adoption of many of the proposals in the Report would entail. If legislation for the United Kingdom as a whole is contemplated on lines which take account of Scottish legal principles we favour a United Kingdom statute expressed in neutral language avoiding technicalities of Scottish and English legal terminology.

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

² This Bill received the Royal Assent on 9th August 1972.

³ This order, now cited as the Mortgaging of Aircraft Order 1972, was made on 14th August 1972 and came into operation on 1st October 1972.

⁴ This Bill received the Royal Assent on 17th October 1972.

⁵ (1970) Cmnd. 4336; Scot. Law Com. No. 14.

⁶ (1971) Cmnd. 4596, (2 vols.).

(10) *Dean of Guild Court*

46. The Report¹ of the Royal Commission on Local Government in Scotland recommended that Dean of Guild Courts in their present form should be discontinued. In view of the possibility of legislation following upon that Report we have deferred our study of questions relating to Dean of Guild Courts and Building Authorities which were raised by the Law Society of Scotland and the Society of Town Clerks of Scotland.

(11) *Estate Duty*

47. Professor Halliday is our representative on the Consultative Group² set up by both Law Commissions to examine certain proposed changes in the Estate Duty Law and to report what changes are necessary to facilitate consolidation of Estate Duty legislation. The publication by the Government of their Green Paper entitled *Taxation of Capital on Death: A possible Inheritance Tax in place of Estate Duty*³ may influence future policy but the Group's Report on the existing estate-duty legislation will still be of value.

(12) *Maintenance Orders (Reciprocal Enforcement) Bill*

48. We submitted to the Scottish Office our comments on the clauses in the Maintenance Orders (Reciprocal Enforcement) Bill which received the Royal Assent on 23 March 1972.

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

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

(1) *Proposals*

50. We have considered the proposals which have been received during the year. As we indicated in our last Annual Report⁴ the number of individual proposals submitted to us is diminishing. Since the Commission started we have received 381 proposals. During the last year we received only seven, (four of those are being considered along with our existing Programme subjects two having been overtaken by recent legislation and one requiring no action by us because of forthcoming legislation).

(2) *Acquisition of Title to Corporeal Moveables*

51. Our study of the law relating to the acquisition of title to moveable property should shortly be available for comment and criticism. However, certain aspects of the study cannot proceed until the Government's intentions concerning the Crowther Committee's Report⁵ on Consumer Credit are known.

¹ (1969) Cmnd. 4150, para. 1104.

² A list of members of the Consultative Group appears in Appendix I to this Report.

³ (1972) Cmnd. 4930.

⁴ (1971) Scot. Law Com. No. 23, para. 5.

⁵ (1971) Cmnd. 4596, (2 vols.).

(3) *Company Registers*

52. We are still investigating the question relating to the alteration of English company registers following upon removal from office of a trustee by order of the Court of Session.

(4) *Citation of Witnesses*

53. In our last Annual Report¹ we referred to a proposal which we had received that a warrant to cite witnesses by any of the High Courts or Supreme Courts of any of the countries comprising the United Kingdom of Great Britain and Northern Ireland should have effect in any part of the United Kingdom. We have decided to deal with this matter in conjunction with our work on Evidence.

(5) *Mental Health (Scotland) Act 1960*

54. In our last Annual Report² we referred to proposals which we had received for amendment of Part V of the Mental Health (Scotland) Act 1960 which deals with cases of persons found insane or mentally disordered in the course of criminal proceedings. We referred those proposals which related to criminal procedure to the Departmental Committee examining Scottish Criminal Procedure. As regards the other proposals we considered the comments we received from the Crown Office, the Mental Welfare Commission for Scotland, the Scottish Home and Health Department and the Law Society of Scotland and decided to take no action as the points raised were criticisms of the administration of the Act which was not a matter for us.

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

55. We are postponing the issue of our Memorandum containing our tentative proposals for the amendment of the Married Women's Policies of Assurance (Scotland) Act 1880 until such time as the courts have considered the question of estate duty claims arising under section 2(1)(b)(iv) of the Finance Act 1894 as substituted by the Finance Act 1969.

(7) *Powers of Attorney*

56. We have received a proposal that the subject of Powers of Attorney should be examined and we have decided to study the subject with a view to circulating in due course a Memorandum containing tentative proposals for amendment of the law.

(8) *Small Debt Decrees*

57. As we indicated in our last Annual Report³ we consulted various bodies, including the Law Society of Scotland, the Scottish Branch of the International Commission of Jurists, and representative finance houses about a proposal which we had received for the introduction in Scotland of procedure to enable a debtor officially to clear his name once the debt which has been the subject of a small debt decree has been settled. As there was no support for such a change from the individuals and organisations consulted we decided to take no action.

¹ (1971) Scot. Law Com. No. 23, para. 27(j).

² (1971) Scot. Law Com. No. 23, para. 27(b).

³ (1971) Scot. Law Com. No. 23, para. 27(i).

VI. FOREIGN LEGAL SYSTEMS AND INTERNATIONAL LAW

58. In the course of our work we endeavour to take fully into account European and other legal developments. We welcome the employment of our Commissioners and legal staff on Government Working Parties and Committees and on the operations of the European and International Bodies such as UNIDROIT, the Council of Europe and the Commission of the European Communities. Our presence on these Working Parties and Committees ensures that the Law of Scotland can make its contribution to United Kingdom, European and other International developments and that we can obtain valuable information about the course of legal events and thinking outside Scotland. We do notice, however, that there is a tendency for the law of England to be presented to and by such bodies as if it were the law of the United Kingdom.

59. We submitted to the Lord Advocate's Department comments on the Report of the Working Group of the United Nations Commission on International Trade Law on Time Limits and Limitations (Prescription) in the International Sale of Goods.

60. Professor Anton attended a meeting in Rome from 27th September to 2nd October 1971 of the Committee of governmental representatives appointed to consider the UNIDROIT draft Convention on Agency of an International Character in the Sale and Purchase of Goods.

61. A member of our legal staff attended a seminar in London on 15th June on the subject of the draft Convention of the Commission of the European Communities relating to Bankruptcy, Compositions and Analogous Proceedings.

VII. CONSULTATION

THE LAW COMMISSION

62. While we have maintained our close co-operation with the Law Commission we have looked again at the way in which this co-operation can be achieved in order to ensure that the time of our Commissioners and legal staff is put to the most profitable use. For instance our joint exercises with the Law Commission can consume a substantial amount of time and effort on the part of the Commissioners and staff. We recognise that in certain areas of law such joint exercises are both appropriate and useful. However, we think that in other areas it will be more advantageous for both Commissions after close consultation with the other, to produce separate papers contemporaneously. This was done in the preparation of our Report¹ on *Jurisdiction in Consistorial Causes affecting Matrimonial Status*.

63. Our annual joint meeting was held in Edinburgh on 10–11th April 1972. We wish to record our appreciation of the hospitality provided by Edinburgh University on the occasion of this Joint Meeting.

¹ (1972) Scot. Law Com. No. 25.

64. We have provided the Law Commission with comments which we have received from legal and other bodies in Scotland consulted by us about the possible effects of applying to Scotland proposals contained in the following Law Commission Working Papers:

- (a) Working Paper No. 25—*The Law of Landlord and Tenant*, and
- (b) Working Paper No. 31—*The Mental Element in Crime*.

65. The Law Commission's Working Paper No. 32 on Land Registration included a proposal that English Land Registers should be made public. After consultations with the Keeper of the Registers of Scotland we provided the Law Commission with a note showing them the Scottish experience of public registers.

66. Apart from consultations with the Law Commission on matters of common interest we have submitted observations on the following Working Papers issued by them:

- (a) Working Paper No. 33—*Perjury and Kindred Offences*, and
- (b) Working Paper No. 34—*Jactitation of Marriage*.

OTHER LAW REFORM ORGANISATIONS

67. We continue to inform the Director of Law Reform in Northern Ireland on matters of common interest and to maintain our contacts with law reform organisations in other parts of the world. During the year we have been pleased to receive visits from Mr. Justice Reynolds, Chairman, New South Wales Law Reform Commission, Mr. Justice Kelsick, Chairman, Law Reform Commission of Trinidad and Tobago and Professor Muller-Freienfels of Freiburg University, West Germany.

THE LEGAL AND OTHER PROFESSIONS IN SCOTLAND

68. We continue to consult with the leading organisations of the legal and other professions in Scotland and with other bodies on the details of our tentative proposals for changes in the law as set out in our memoranda which we publish from time to time. As in previous years we must record our appreciation of the valuable assistance afforded by those whom we have invited to act as consultants or advisers and by others, mainly of the legal profession, who have without remuneration and at considerable expenditure of time and effort reinforced us on Working Parties and advisory bodies as well as by offering comments on our Memoranda and other papers.

VIII. MISCELLANEOUS

COMPUTERS

69. Professor Halliday continues as a Trustee of the Scottish Legal Computer Research Trust but we are no longer represented on the Executive Committee. We have noted the decision by Stationery Office to set up the new *Statutes in Force* by computer thus providing a record of the statutes on magnetic tape which would be available for information retrieval by the computer. While we

are favourably disposed to the development of modern techniques for legal purposes, we do not have the resources to undertake any research project in relation to the use or exploitation of such techniques.

SCRUTINY OF BILLS

70. It is becoming more difficult to find the time to scrutinise Bills in Parliament because of the increase in the amount of other work. However we do attempt to scrutinise Bills so far as our resources permit.

APPENDICES

71. Membership of the various Working Parties etc. appears in Appendix I. A list of papers which have been prepared by the Commission and made public appears in Appendix II. The extent to which our proposals have been incorporated in legislation is given in Appendix III.

APPENDIX I

MEMBERSHIP OF WORKING PARTIES ETC.

Working Party on Diligence

The Hon. Lord Hunter (Chairman)	Scottish Law Commission
Professor J. M. Halliday, C.B.E. (Vice-Chairman)	Scottish Law Commission
Sheriff J. A. Dick, M.C. Q.C. ¹	
Mr. J. M. Bell	Society of Messengers-at-Arms and Sheriff Officers
Mr. J. R. Cowie	Sheriff-Clerk, Dumbarton
Mr. J. Donald	Society of Messengers-at-Arms and Sheriff Officers
Mr. J. G. Gray	Scottish Chamber of Commerce
Mr. A. Lothian ²	Faculty of Advocates
Mr. A. McLean ³	Law Society of Scotland
Mr. A. C. Macpherson	Solicitor, Glasgow
Secretary: Mr. J. B. S. Lewis, Scottish Law Commission.	

Consultative Committee on Administrative Law

The Hon. Lord Hunter (Chairman)	Scottish Law Commission
The Hon. Lord Fraser	
Mr. A. L. Bushnell, C.B.E.	County Clerk, Perth
Mr. J. S. Dalgetty	formerly Solicitor to the Secretary of State for Scotland
Mr. C. E. Jauncey, Q.C.	Faculty of Advocates
Mr. J. Mellick, O.B.E.	Solicitor, Glasgow
Professor J. Bennett Miller	University of Glasgow
Mr. Ewan Stewart, M.C., Q.C.	Scottish Law Commission
Secretary: Mr. H. R. M. Macdonald, Scottish Law Commission.	

Consultative Group on Tax Law (Estate Duty)

Mr. M. C. Nourse, Q.C. (Chairman)	
Mr. John C. Craig	Institute of Chartered Accountants of Scotland
Professor J. M. Halliday, C.B.E.	Scottish Law Commission
Mr. W. H. B. Johnson	Board of Inland Revenue
Mr. J. P. Lawton	Barrister
Mr. A. K. Tavaré	Solicitor's Office, Inland Revenue
Secretary: Mr. B. M. F. O'Brien, Law Commission	
Assistant Secretary: Mr. H. D. Brown, Law Commission.	

Editorial Board of the Statutes in Force (Official Revised Edition)⁴

The Hon. Mr. Justice Scarman, O.B.E. (Chairman)	Law Commission
The Hon. Lord Hunter	Scottish Law Commission
Sir Henry Ware, K.C.B.	Treasury Solicitor
Sir Derek Hilton, M.B.E.	Past President, The Law Society
Sir John Gibson, C.B., Q.C.	Lord Advocate's Department
Mr. A. B. Lyons	Statutory Publications Office
Editorial Director and Secretary: Mr. M. L. Dunlap, Law Commission.	

¹ Sheriff J. A. Dick resigned from the Working Party on 29th June 1972 and was succeeded by Mr. J. A. D. Hope, Advocate.

² Mr. A. Lothian, Advocate, resigned from the Working Party on 6th May 1972.

³ Mr. A. McLean resigned from the Working Party on 12th September 1972 and was succeeded by Mr. J. A. Anderson, Solicitor, Oban.

⁴ Mr. A. N. Stainton, C. B., First Parliamentary Counsel joined the Editorial Board in October 1972.

Working Party on Foreign Money Liabilities

Mr. A. L. Diamond (Chairman)	Law Commission
Mr. M. Abrahams	Law Commission
Mr. R. K. Batstone	Foreign and Commonwealth Office
Mr. R. Cassels	The Royal Bank of Scotland
Mr. L. Gretton	Department of Trade and Industry
Mr. R. J. Holmes	Lord Chancellor's Office
Mr. M. W. Parkington	Law Commission

Secretary: Mr. R. C. Allcock, Law Commission

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

The Hon. Mr. Justice Scarman, O.B.E. (Chairman)	Law Commission
Professor A. E. Anton	Scottish Law Commission
Mr. G. P. H. Aitken	Scottish Courts Administration
Mr. R. K. Batstone	Foreign and Commonwealth Office
Mr. D. A. Bennett	Scottish Office
Mr. M. C. Blair	Lord Chancellor's Office
Dr. A. G. Donaldson	Director of Law Reform for Northern Ireland
Mr. R. W. Mott	Home Office
Miss V. Plowman	Lord Chancellor's Office
Mrs. E. Southan	Law Commission
Mr. N. R. Whitty	Scottish Law Commission
Mr. J. W. Wilson	Assistant Secretary to the Supreme Court of Northern Ireland

Secretary: Mr. A. Akbar, Law Commission

Joint Working Party on Products Liability

Mr. A. L. Diamond (Chairman)	Law Commission
The Hon. Lord Hunter	Scottish Law Commission
Mr. M. Abrahams	Law Commission
Mr. J. A. E. Davies	Solicitor, the Department of Trade and Industry
Mr. R. G. Greene	Law Commission
Mr. P. N. Legh-Jones	Barrister
Mr. H. R. M. Macdonald	Scottish Law Commission
Mr. M. Parkington	Law Commission
Mr. T. N. Risk	Solicitor, Glasgow
Mr. M. J. Rogers	Chief Executive, Common Market Secretariat, Lloyds

Secretary: Mr. R. C. Allcock, Law Commission.

APPENDIX II

1 SCOTTISH LAW COMMISSION—PAPERS PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE

Commission No.

- 1965 1 First Programme of Law Reform
-
- 1966 2 First Programme of Consolidation and Statute Law Revision
3 First Annual Report 1965–66
-
- 1967 4 Proposals for Reform of the Law of Evidence relating to Corroboration
5 Reform of the Law Relating to Legitimation *per subsequens matrimonium*
(Cmnd. 3223)
6 Divorce—The Grounds Considered (Cmnd. 3256)
6A *Report on the Consolidation of Certain Enactments relating to Shellfish
Fisheries and Shellfish—Sea Fisheries (Shellfish) Bill (Cmnd. 3267)
7 Second Annual Report 1966–67
-
- 1968 8 Second Programme of Law Reform
9 Third Annual Report 1967–68
-
- 1969 10 *Report on the Consolidation of the Trustee Savings Banks Acts 1954 to 1968—
Trustee Savings Banks Bill (Cmnd. 4004)
11 *Report on the Interpretation of Statutes
12 *Report on Exemption Clauses in Contracts—First Report: Amendments to
the Sale of Goods Act 1893
13 Fourth Annual Report 1968–69
-
- 1970 14 Report on the Companies (Floating Charges) (Scotland) Act 1961 (Cmnd. 4336)
15 Reform of the Law Relating to Prescription and Limitation of Actions
16 *Report on the Hague Convention on Recognition of Divorces and Legal
Separations (Cmnd. 4542)
17 Fifth Annual Report 1969–70
18 *Report on the Consolidation of Certain Enactments relating to Coinage
(Cmnd. 4544)
19 *Report on the Consolidation of Certain Enactments Relating to Excise Duties
on Mechanically Propelled Vehicles, and to the Licensing and Registration of
such Vehicles (Cmnd. 4547)
-
- 1971 20 *Report on the Consolidation of Enactments Relating to the National Savings
Bank (Cmnd. 4574)
21 *Report on the Taxation of Income and Gains derived from Land (Cmnd. 4654)
22 *Report on the Consolidation of Certain Enactments relating to Road Traffic—
Road Traffic Bill (Cmnd. 4731)
23 Sixth Annual Report 1970–71
-

*Produced jointly with the Law Commission.

*Commission
No.*

1972 24 Report on the Consolidation of Certain Enactments relating to Town and Country Planning in Scotland—Town and Country Planning (Scotland) Bill (Cmnd. 4949)

2 SCOTTISH LAW COMMISSION—MEMORANDA CIRCULATED FOR COMMENT AND CRITICISM

1966 Memorandum No. 1—Probates or Letters of Administration as Links in Title to Heritable Property under the Succession (Scotland) Act 1964

Memorandum No. 2—Expenses in Criminal Cases

1967 Memorandum No. 3—Restrictions on the Creation of Liferents

Memorandum No. 4—Applications for Planning Permission

Memorandum No. 5—Damages for Injuries Causing Death

*Memorandum No. 6—Interpretation of Statutes

1968 *Memorandum No. 7—Provisional Proposals Relating to Sale of Goods

Memorandum No. 8—Draft Evidence Code—First Part

1969 Memorandum No. 9—Prescription and Limitation of Actions

Memorandum No. 10—Examination of the Companies (Floating Charges) (Scotland) Act 1961

Memorandum No. 11—Presumptions of Survivorship and Death

Memorandum No. 12—Judgments Extension Acts

1970 Memorandum No. 13—Jurisdiction in Divorce

1971 Memorandum No. 14—Remedies in Administrative Law

*Memorandum No. 15—The Exclusion of Liability for Negligence in the Sale of Goods and Exemption Clauses in Contracts for the Supply of Services and other Contracts

Memorandum No. 16—Insolvency, Bankruptcy and Liquidation in Scotland

1972 Memorandum No. 17—Damages for Injuries Causing Death

*Produced jointly with the Law Commission.

APPENDIX III

STATUTORY PROVISIONS RELATING TO THE SCOTTISH LAW COMMISSION'S PROPOSALS

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
<i>(a) Memoranda</i>		
Restriction on the Creation of Life-rents (Memorandum No. 3)	5.5.67	Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c.70), section 18.
Applications for Planning Permission (Memorandum No. 4)	11.5.67	Town and Country Planning (Scotland) Act 1969 (c.30), section 79.
<i>(b) Reports</i>		
Proposals for Reform of the Law of Evidence Relating to Corroboration. (Scot. Law Com. No. 4)	20.4.67	Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c.70), section 9.
Reform of the Law Relating to Legitimation <i>per subsequens matrimonium</i> (Scot. Law Com. No. 5) (Cmnd. 3256)	20.4.67	Legitimation (Scotland) Act 1968 (c.22): Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c.70) section 5.
Divorce—The Grounds Considered (Scot. Law Com. No. 6) (Cmnd. 3256)	12.5.67	No.
Sea Fisheries (Shellfish) Bill (Joint Report with Law Commission) (Scot. Law Com. No. 6A) (Cmnd. 3267)	11.5.67	Sea Fisheries (Shellfish) Act 1967 (c.83).
Trustee Savings Banks Bill (Joint Report with the Law Commission) (Scot. Law Com. (No. 10) (Cmnd. 4004)	17.4.69	Trustee Savings Banks Act 1969 (c.50).
Interpretation of Statutes (Joint Report with the Law Commission) (Scot. Law Com. No. 11)	11.6.69	No.
Exemption clauses in Contracts. First Report: Amendments to the Sale of Goods Act 1899 (Joint Report with the Law Commission) (Scot. Law Com. No. 12) ¹	18.9.69	No.
The Companies (Floating Charges) (Scotland) Act 1961 (Scot. Law Com. No. 14) (Cmnd. 4336)	22.4.70	The Companies (Floating Charges and Receivers) (Scotland) Bill ²
Reform of the Law Relating to Prescription and Limitation of Actions (Scot. Law Com. No. 15)	27.11.70	No.
Hague Convention on Recognition of Divorces and Legal Separations (Joint Report with the Law Commission) (Scot. Law Com. No. 16) (Cmnd. 4542)	1.12.70	Recognition of Divorces and Legal Separations Act 1971 (c.53).
Coinage Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 18) (Cmnd. 4544)	26.11.70	Coinage Act 1971 (c.24).
Vehicles (Excise) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 19) (Cmnd. 4547)	2.12.70	Vehicles (Excise) Act 1971 (c.10).

¹ The Supply of Goods (Implied Terms) Bill, which was introduced in the House of Lords on 6th November 1972, gives effect, with some modifications, to the recommendations in this Report.

² This Bill received the Royal Assent on 17th October 1972.

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
National Savings Bank Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 20) (Cmnd. 4574)	13.1.71	National Savings Bank Act 1971 (c.29).
Taxation of Income and Gains derived from Land. (Joint Report with the Law Commission) (Scot. Law Com. No. 21) (Cmnd. 4654)	23.4.71	No.
Road Traffic Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 22) (Cmnd. 4731)	26.7.71	Road Traffic Act 1972 (c.20).
Town and Country Planning (Scotland) Bill (Scot. Law Com. No. 24) (Cmnd. 4949)	20.4.72	Town and Country Planning (Scotland) Act 1972 (c.52).

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