

SCOTTISH LAW COMMISSION

(SCOT. LAW COM. No. 13)

FOURTH  
ANNUAL REPORT  
1968-69

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

The Hon. Lord Kilbrandon, LL.D., *Chairman*

Professor A. E. Anton, M.A., LL.B.

Professor J. M. Halliday, M.A., LL.B.

Mr. A. M. Johnston, Q.C., B.A., LL.B.

Professor T. B. Smith, Q.C., D.C.L., LL.D.

The Secretary of the Commission is Mr. A. G. Brand, M.B.E., M.A., LL.B. 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 1969

TO: THE RIGHT HONOURABLE WILLIAM ROSS, M.B.E., M.P.,  
*Her Majesty's Secretary of State for Scotland,* and

THE RIGHT HONOURABLE LORD WILSON OF LANGSIDE, QUEEN'S COUNSEL,  
*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 fourth Annual Report of the Scottish Law Commission.

C. J. D. SHAW,  
*Chairman.*

10th October 1969.

## THE COMMISSION

1. The Commission, which was set up on 16th June 1965, now consists of a full-time Chairman, the Hon. Lord Kilbrandon, LL.D., one full-time Commissioner, Mr. A. M. Johnston, Q.C., B.A., LL.B., and three part-time Commissioners, Professor A. E. Anton, M.A., LL.B., Professor J. M. Halliday, M.A., LL.B., and Professor T. B. Smith, Q.C., M.A., D.C.L., LL.D., F.B.A. Professors Halliday and Smith completed their original terms of office at 15th June 1969 and were re-appointed for a further five years.

### STAFF

2. There was no change during this year in our legal staff, which consisted of our Secretary, our Assistant Secretary and three other lawyers. Arrangements have, however, been made for two additional lawyers to join us this summer. Sir John Gibson, C.B., Q.C., on his retirement from the office of Legal Secretary to the Lord Advocate, has accepted an appointment with us for drafting work, and this will make a useful addition to the assistance which we already receive in this field from Mr. G. S. Douglas, Advocate. We are also glad to welcome Mr. A. J. F. Tannock, M.C., Solicitor, seconded to us from the office of the Solicitor to the Secretary of State. He will be concerned with Statute Law Repeals (see paragraph 29). Our non-legal staff of seven was also unchanged.

### PREMISES

3. Our offices in the Old College of the University of Edinburgh have proved adequate to cope with our small increase in professional staff. As in previous years we must record our appreciation of the co-operation of the University. We are also most grateful to the staff of the University Law Library, of which we make extensive use, for their helpfulness.

### MEETINGS

4. Our practice is still to hold meetings of the Commission at regular intervals, but we have found that the need for additional meetings for the exclusive discussion of particular subjects is increasing.

## PROPOSALS

5. We continue to receive from various sources proposals for examination of matters with a view to reform, and in accordance with our statutory duty all of these are given consideration. Except in the case of those which clearly raise matters outside our sphere, they are considered at full meetings of the Commission. Reference is made to several proposals in later paragraphs of this Report.

6. Some of these proposals relate to subjects on which we are currently working or will be working under our published Programmes. In the case of those raising other points we have to decide whether they are of sufficient urgency to justify our devoting to them resources at present deployed in our programme work. In cases where, after preliminary investigation, we decide that this would not be justified, we postpone consideration of the proposal until the time comes when we can deal with it. We would emphasise that the fact that no

immediate action is taken on a proposal does not indicate indifference on our part. A proposal, once made, is not forgotten, though it may be deferred. We hope that more people and organisations will join those who have contributed to the work of law reform in this way in the past, and that the flow of proposals will continue in the future.

## FIRST PROGRAMME

7. We have continued our work on the five branches of the law listed in our First Programme.

### EVIDENCE

8. On 5th July 1968 we published Memorandum No. 8 containing eight Chapters of our proposed Code of Evidence, with an Introduction setting out some of the problems of codification of the law. Comment and criticism on these problems, as well as on the substance of the Chapters themselves, were invited. Our invitation has had a substantial response—indeed, comments are still reaching us. The Memorandum has been the subject of exposition and discussion before professional and academic audiences; in the latter connection interest has, for example, been aroused outside Scotland in the Universities of Dublin, Durham, London and Oxford. It has also been studied and commented on by authorities in New Zealand and Ontario.

### OBLIGATIONS

9. Along with the Law Commission we have continued our work in connection with the possible codification of the law of contract. In particular we have been concerned on this side of the Border with the drafting of rules relating to gratuitous obligations, a subject which, although part of the larger field of obligations, is especially significant in the law of Scotland.

10. We have also devoted much time to the joint examination with the Law Commission of the law relating to Exemption Clauses in Contracts of Sale, especially standard form contracts; at the same time, at the request of the President of the Board of Trade, we have been considering amendments to sections 12 to 15 of the Sale of Goods Act 1893. This has involved a number of joint meetings, some held in England and some in Scotland, at which representations on the Joint Working Paper, to which we referred in our last Annual Report,<sup>1</sup> were considered and drafts prepared.<sup>2</sup>

11. We have now to complete an equivalent work on the subject of Exemption Clauses in Contracts for Services, and during the next year this will be done in the first instance by the Joint Working Party which has already been set up (see Appendix 1).

### PRESCRIPTION AND LIMITATION OF ACTIONS

12. In November 1968 we issued for comment and criticism a Memorandum (No. 9) embodying our preliminary recommendations for reform of this branch of the law. In response to our invitation, we received a considerable number of

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<sup>1</sup> Paragraph 11.

<sup>2</sup> Our Joint Report was submitted to Ministers on 20th July 1969 and published on 18th September 1969 (Scot. Law Com. No. 12, Law Com. No. 24).

most helpful observations, some of which have led to further consultation. We hope, however, to be able to make our final Report at an early date. This will have attached to it draft clauses giving effect to our recommendations, a practice which we were able to initiate in our Report on Floating Charges (see paragraph 30). The advantages of doing so, both from the point of view of the orderly presentation of the work, and also for the assistance of the reader, are obvious.

13. The Committee of Experts set up by the Council of Europe mentioned in paragraph 13 of our last Annual Report met again in March 1969, but has not yet completed its work. Another meeting will take place in April 1970. The United Kingdom delegation includes a member of our legal staff.

#### INTERPRETATION OF STATUTES

14. On this subject we submitted during the year a Report, prepared jointly with the Law Commission and dated 28th April 1969.<sup>1</sup>

### SECOND PROGRAMME

15. Our Second Programme of Law Reform was published<sup>2</sup> on 19th July 1968, and in the following paragraphs we make reference to the various branches of law included in it.

#### INSOLVENCY, BANKRUPTCY AND LIQUIDATION

16. As a preliminary to our examination of this branch of the law we have set up a small Working Party which includes representatives of legal, accountancy, banking and commercial interests. The Working Party are now studying the subject in detail in the light of Memoranda from professional and business sources which have already been submitted to us. A list of the members of the Working Party appears in Appendix 1.

#### SUCCESSION

17. One of the reasons for including this subject in our Second Programme was that we had already received a number of proposals relating to it and had noted certain difficulties in the working of the Succession (Scotland) Act 1964. We undertook the study of these within the Commission and the work has now been started.

#### DILIGENCE

18. Because of our commitments on other matters we have decided to postpone the examination of this subject for the present. It remains, however, in our Programme and we shall make a start as soon as we can.

#### RECIPROCAL ENFORCEMENT OF JUDGMENTS

19. During the year under review we have been preparing for circulation a Memorandum on the Judgments Extension Acts and have had the benefit of

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<sup>1</sup> This was subsequently published on 7th July 1969 (Scot. Law Com. No. 11, Law Com. No. 21).

<sup>2</sup> Scot. Law Com. No. 8.

consultation with the Law Commission and various Government Departments. We hope to have our Memorandum ready for circulation before the end of 1969.

#### DAMAGES ARISING FROM PERSONAL INJURIES AND DEATH

20. In response to our Memorandum No. 5 entitled "Damages for Injuries Causing Death" we continued to receive during the year the comments of individuals and organisations interested in this subject. As we indicated in our last Annual Report (page 12, paragraph 26(d)) this has proved to be a subject raising wide issues of fundamental legal, as well as of social, importance. Those who have submitted comments have obviously devoted much time to the consideration of the questions involved. In the coming year we shall continue our detailed examination of these and shall be in consultation with the Law Commission on the whole subject.

#### PRESUMPTION OF DEATH

21. During the year we undertook research and consultation on the presumptions in Scots law relating to survivorship and death, publishing a Memorandum for comment and criticism.<sup>1</sup>

#### LEGAL CAPACITY OF MINORS AND PUPILS

22. As a preliminary step in our examination of this branch of the law, we communicated with many individuals and professional bodies having particular knowledge of the subject. To these we sent a provisional list of the topics which we proposed to examine and requested comments on them and suggestions as to other related topics which we might examine. As a result of the valuable comments received from various sources we decided that, although we had originally proposed to examine the subject ourselves, we would benefit greatly from having the assistance of experts in other than legal fields. Accordingly, we took steps to set up a widely based Working Party which we hope will be able to commence work by the autumn of 1969. A list of the members of this Working Party appears in Appendix 1.

#### CRIMINAL PROCEDURE

23. In our Second Programme, which was approved on 25th June 1968, we proposed that Scottish criminal procedure should be examined by a Departmental Committee, largely in consequence of representations made to us by one of Her Majesty's Commissioners of Justiciary. We had hoped that this Committee would have been appointed by now but, despite pressure from us, this has not yet been done. We understand that preliminary work has begun in the Crown Office with a view to facilitating the Committee's examination of the subject, but we trust that this will not further delay the appointment of the Committee, which we regard as of some urgency.

#### FAMILY LAW

24. We have been working with the Law Commission on the reformulation of common jurisdictional rules for divorce in courts in the United Kingdom. We expect that this work will be completed in the course of the next few months.

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<sup>1</sup> The Memorandum (No. 11) was published on 8th September 1969.

The two Commissions intend to issue separate Papers with common recommendations for consideration within their respective jurisdictions. We have examined two of the Law Commission's Published Working Papers, namely, No. 20 on Nullity of Marriage and No. 21 on Polygamous Marriages, and done some preliminary work in the examination of our own law relating to nullity of marriage. We have also begun to review the law relating to matrimonial property, with particular reference to financial provision on dissolution of marriage, in order that we may be in a position to advise on this topic in the event of steps being taken to introduce "breakdown of the marriage", in whatever form, as a ground of divorce in Scotland. We take this opportunity publicly of reiterating an opinion which we have several times expressed in official correspondence, that some reform of the Scottish law of divorce is urgently called for. As our Report "The Grounds Considered"<sup>1</sup> makes clear, we do not mean by this that the provisions now made for England should necessarily be uncritically adopted in Scotland. We are convinced, however, that the laying of draft legislation before Parliament is overdue. The English Bill<sup>2</sup> does not take effect until January 1971. It is essential, in our opinion, that by that date a law of divorce suitable for Scotland today should have been settled.

#### FIRST PROGRAMME OF CONSOLIDATION AND STATUTE LAW REVISION

25. We regret that little progress has yet been made in the consolidation of statutes applying to Scotland only, for the reason we have stressed before, namely, lack of sufficient numbers of Parliamentary Draftsmen to do the work. Although there will be much competition for his services, we hope that our additional draftsman will be able to improve the rate of progress on this work in the coming year (see paragraph 2 above).

26. The following is the present position with regard to the work on consolidation of statutes under our First Programme of Consolidation and Statute Law Revision.

(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) *Rents (Scotland)*—Work on the Rent Acts in their application to Scotland has proceeded and a draft Bill has been prepared.
- (2) *Roads and Bridges (Scotland)*—Further work on this subject has been postponed in view of the preparation of an amending Highways Bill, which, we are informed, will be presented as soon as Parliamentary time permits.
- (3) *Court of Session*—This topic was included in our Programme because we understood that work on it was already (in 1965) going on. We believe that a draft Bill was prepared, but that amendment going far beyond the permissible scope of a consolidation Act was found to be called for. This is not surprising, since the relevant statutes go back to 1808. For this

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<sup>1</sup> Cmnd. 3256.

<sup>2</sup> This Bill received the Royal Assent on 22nd October 1969.



reason the Statute Law Committee, to whom our Chairman makes an annual report on the progress of consolidation, have been informed that the subject should be removed from the consolidation list, and that we shall not be reporting on it under this head in future. A complete re-examination of the procedure of the Court of Session, which should be entrusted to a body of wider than merely legal interests, obviously cannot be carried out by us. It is for consideration whether a Royal Commission or some other body is the appropriate examining authority.

- (4) *Lands Clauses (Scotland)*—The examination of the Lands Clauses (Scotland) legislation with a view to deciding what amendment is required has proved to be a more time-consuming task than we had anticipated, and we can say no more than that the work on this subject is continuing.
- (5) *Town and Country Planning (Scotland)*—Now that the amending Town and Country Planning (Scotland) Bill<sup>1</sup> has been passed, work on the preparation of a consolidation Bill has started.

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

- (1) During this year the Customs Duties (Dumping and Subsidies) Act 1969 was passed. The Trustee Savings Bank Bill was also presented.<sup>2</sup> The reason why consolidation enactment was so limited this year was that draftsmen were engaged not only on work of law reform but also on the very important task of preparing the consolidation of tax legislation. As a result of the efforts made in this field it is hoped to introduce an Income and Corporation Tax Bill and a Taxes Management Bill in the next parliamentary session.
- (2) Work is also proceeding on consolidation of Estate Duty legislation. This is an involved and difficult undertaking and we cannot yet forecast when the consolidating legislation will be ready for introduction.
- (3) The Sea Fish Industry Bill which incorporated the provisions of the Sea Fish Industry (Grants and Subsidies) Bill was introduced but there was not time for it to be considered by the Joint Committee on Consolidation during the current session and it will be reintroduced at the beginning of next session. Consolidation of the Friendly Societies Acts has run into difficulties and it may be that amending legislation will be necessary before consolidation can proceed. So far it has not been possible owing to other commitments to proceed with the Monopolies and Restrictive Practices Bill.
- (4) We are informed that preparatory work for further consolidation of Road Traffic legislation, Vehicles (Excise) legislation and the enactments relating to Hydrocarbon Oil Duties is being done.

27. We have received a number of proposals for the consolidation of series of enactments relating to various subjects, and these are being considered with a view to their inclusion in our next Consolidation Programme.

28. The Statute Law (Repeals) Bill<sup>3</sup>, which was introduced in May 1969 was

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<sup>1</sup> This Bill received the Royal Assent on 25th June 1969.

<sup>2</sup> This Bill received the Royal Assent on 25th July 1969.

<sup>3</sup> This Bill received the Royal Assent on 22nd October 1969.

prepared by the Law Commission since it deals mainly with statutes which do not apply to Scotland. With our concurrence, however, the Bill contains references to four Scottish statutes repealing provisions which are obsolete, spent or unnecessary.

29. Because we have not had the staff to carry out the considerable research and consultation involved we have not been able to play our full part with the Law Commission in this work; that situation will be remedied by the special appointment of a lawyer to take on this work (see paragraph 2 above) and we hope to be able to report in positive terms next year. We have already received a number of proposals relating to enactments which appear to require examination in this connection and we shall be glad to have our attention drawn to others.

#### ADVICE, ETC.

30. We have continued to give advice to Government Departments and others as required by section 3(1)(e) of the Law Commissions Act 1965.

31. In 1967 we set up a Working Party, whose names are listed in Appendix 1, to assist us in the preparation of advice requested by the President of the Board of Trade as to what amendments might be made to the Companies (Floating Charges) (Scotland) Act 1961. During the year the Working Party reported to us and their Report formed the basis of our Memorandum No. 10 which we circulated for comment on, and criticism of, the tentative proposals made therein. The comments and criticisms received have been of great help to us, and after further consultation with the Working Party we hope to present our advice to the President before the end of this year. As we pointed out in paragraph 12 above, this was the first time we were able to attach to our report the draft clauses which could give legislative effect to our proposals.

32. At the request of the Foreign and Commonwealth Office we have expressed our views in relation to certain draft International Conventions, and we have been consulted by other Government Departments on various matters concerned with law reform which did not arise out of proposals made to or by us. Examples of these are the proposals made by the Scottish Home and Health Department relating to changes in the law of land tenure and of heritable securities, dangerous drugs, and resealing of confirmations, probates and letters of administration.

33. In conjunction with the Law Commission we are examining the possibility of improving the form and arrangement of tax legislation, so as to make the law easier both to find and to understand. With the assistance of the Board of Inland Revenue, the two Law Commissions have formed a small consulting group, under the chairmanship of Professor J. M. Halliday, to study in this context the taxes on income and gains derived from land. The names of the members of this group for the purposes of this particular study are listed in Appendix No. 1.

#### ANOMALIES AND DEFECTS

34. In addition to our work under formal Programmes, it is part of our duty under the Law Commissions Act 1965 to examine the law for anomalies or

defects which appear to us to call for changes in the law. We give the following examples which have come to our notice during the year—

- (a) In our last Annual Report we referred to the question whether resealing in Scotland of English probates and letters of administration and in England of Scottish confirmations could be abolished. This question was examined by a working party, under the chairmanship of Mr. Registrar Kenworthy, who unanimously recommended abolition of resealing. We support that recommendation and hope that legislation to give effect to it will not be long delayed.
- (b) We have prepared a Paper on the Married Women's Policies of Assurance (Scotland) Act 1880 which we initially issued for consideration by those who proposed amendment of this Act. On receipt of their views, *inter alia* as to the use which is likely to be made of the 1880 Act since the enactment of the Finance Act 1968, we shall consider what further action, if any, we should take.
- (c) In connection with the subject of liquor licensing we considered the representations made to us by various interested organisations with reference to the case of *Noble v. Heatly* 1967 S.L.T. 26. We decided, however, in the light of these representations (which seemed to indicate that the specific difficulties referred to had cured themselves) not to make any recommendation for changing the law at present. We did, however, again draw the attention of the Scottish Home and Health Department to the comparatively large number of proposals in connection with liquor licensing that we continued to receive. While most of these raised matters of social rather than legal policy, we expressed the hope that, as this field of legislation seemed to be a source of considerable discontent, a review of the Licensing Acts, which would take into account these proposals, might not be too long delayed.
- (d) In our last Annual Report we referred to the need for reduction of confirmation fees, and we are pleased to note that this has now been effected.<sup>1</sup>
- (e) The proposals we have received relating to town and country planning have generally involved social or administrative rather than legal considerations, but we have referred these to the appropriate Government Department, and are keeping in touch with developments. We note that one of the matters on which we issued a Memorandum (No. 4) relating to the giving of notice of application for planning permission is being dealt with in the Town and Country Planning (Scotland) Bill.<sup>2</sup>
- (f) We have considered several problems arising in connection with insurance law. Reference has already been made to proposals for reform of the Married Women's Policies of Assurance Act 1880 (see sub-paragraph (b) above) and there have been insurance problems incidental to our other studies (e.g. Presumptions of Survivorship and Death). There were, however, two other matters in this field which might be mentioned. First, as a result of proposals received, we considered whether compulsory insurance of passengers in all motor vehicles should be imposed by statute.

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<sup>1</sup> See Act of Sederunt (Alteration of Sheriff Court Fees) 1969, S.I. 1969/464.

<sup>2</sup> This Bill received the Royal Assent on 25th June 1969.

We took this matter up with the Ministry of Transport indicating our opinion in the affirmative. We are glad to note that the Minister hopes to introduce legislation to this effect as soon as there is a suitable opportunity. Second, we considered questions relating to "group insurance policies" and the Life Assurance Act 1774, which were put to us by the Law Commission. We are continuing to study this matter along with the Law Commission.

- (g) It was brought to our notice some time ago that registrars of companies whose registered offices are in England or Wales do not recognise, for the purpose of altering their registers, decrees of the Court of Session removing or appointing trustees. We have been investigating this question and that of the practice of Scottish company registrars in relation to similar decrees pronounced by English Courts and we are pursuing the matter in conjunction with the Law Commission.
- (h) Questions concerning the law relating to the acquisition of title to moveable property arose in the course of our examination of the subject of Prescription. We decided, however, that these questions should be studied separately and this we are now doing. This is one of the topics upon which it is necessary to take account of certain International Conventions, to which our attention has been directed by the Foreign and Commonwealth Office.
- (i) We were pleased to note that an apparent error in section 24 of the Finance Act 1965 relating to proper liferenters which we drew to the attention of the Board of Inland Revenue was put right by provisions in the Finance Act 1968.

#### LAW REFORM (MISCELLANEOUS PROVISIONS) (SCOTLAND) ACT 1968

35. We are pleased to record that the following matters on which we made recommendations were included in the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968—

- The rights of illegitimate children under conventional provisions.
- Corroboration in certain civil actions.
- Restrictions on the creation of liferents.
- Prorogation of jurisdiction in moneylending agreements.
- Removal of a restriction on the acquisition of land by Trade Unions.

36. As we indicated in our last Annual Report (paragraph 17) we recognise the usefulness of "Miscellaneous Provisions" Bills to deal with minor defects in the law. We wish, however, to take this opportunity again to emphasise that the nature of such Bills is not conducive to the orderly development of our statute law. Whilst lack of Parliamentary time may be a difficulty, we would suggest that, wherever possible, there should be a separate Bill for any subject which makes more than a very minor change in the law.

#### COMPUTERS

37. As we have indicated in previous Annual Reports, both Law Commissions watch for developments in the technology and application of computers

which may ultimately prove useful in the field of law. In the course of the year we have been represented at discussions, initiated by the Lord Chancellor's Office, to consider the possibility of "storing" the statutes in a computer for typesetting purposes and eventually for legal information retrieval. These discussions are still at an early stage.

## CONSULTATION

### THE LAW COMMISSION

38. We have maintained our close co-operation with the Law Commission. Apart from the annual joint meeting of the two Commissions on 19th and 20th February 1969, we have had several meetings attended by the majority of Commissioners from both sides of the Border and consultation between us continues. Such consultation is particularly important in cases where one of the two Commissions issues proposals for reforms which would, or should, affect the law on both sides of the Border. A good example of this is the Law Commission's Report on Administrative Law.<sup>1</sup>

### OTHER LAW REFORM ORGANISATIONS

39. Our liaison on matters of common interest with the Directorate of Law Reform in Northern Ireland continues, and we have contacts with twenty-seven law reform organisations in other parts of the world,<sup>2</sup> the exchange of papers and information being most useful to us and, we hope, to them. In addition we are in communication with University Law Faculties and other similar bodies overseas. Lawyers from several countries where there are law reform organisations or where the setting up of a law reform organisation is being considered have visited us and have expressed great interest in our Commission and its methods. Among those were—

Professor W. F. Bowker, Director of the Institute of Law Research and Reform, University of Alberta, Canada

Mr. Justice Manning, Chairman of the Law Reform Commission of New South Wales, Australia

Sir Denis Blundell, High Commissioner for New Zealand

Mr. T. C. Marshall, Messrs. Meredith, Marshall, McConnell & Scott, Barristers and Solicitors, Vancouver, Canada

The Honourable Judge Ketcham, Juvenile Court of the District of Columbia, U.S.A.

Miss D. M. Priestly, Law Librarian, York University, Toronto, Canada

Mr. C. P. Hutchinson, M.B.E., Q.C., Auckland, New Zealand

Professor Geoffrey Sawyer, Australia

Judge H. E. Baker, President, District Court, Jerusalem, Israel

The Honourable V. Lorne Stewart, Juvenile and Family Court of Metropolitan Toronto, Canada

The Honourable Mr. Justice Walsh, Supreme Court, Dublin

Professor E. A. Tollefson, University of Saskatchewan, Canada

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<sup>1</sup> Law Com. No. 20 (Cmnd. 4059).

<sup>2</sup> These organisations are listed in Appendix 3.

## THE LEGAL PROFESSION IN SCOTLAND

40. In a different context we must mention the consultation which we have had with the leading organisations of the legal and other professions in Scotland on the details of our tentative proposals for changes in the law which are set out in the Memoranda which we publish from time to time. We realise that a great deal of time and effort is devoted to giving us views on these matters. We value these very highly and greatly appreciate the help we have received.

## OTHER BODIES AND PERSONS

41. The composition of the various working parties to be found in Appendix 1 provides an example of the valuable help we have been getting from other professions and individuals. This is a minor but important aspect of what we have always considered to be an ideal, namely, the involvement of as many outside interests as possible in the actual process of law reform.

## SEMINARS, COLLOQUIA, ETC.

42. The Commission has been represented at the following colloquia, etc. during this year—

The Law Society of Scotland Study Weekend, University of St. Andrews,  
21st–24th June 1968

International Bar Association Conference, Dublin, 8th–12th July 1968

Tax Legislation Conference, London School of Economics, 22nd–23rd  
July 1968

Council of Europe Symposium on Human Rights, Salzburg, 9th–12th  
September 1968

Sheriffs Substitute Association's Conference, Dunblane, Prevention of  
Crime, 27th–29th September 1968

Symposium on Organ Transplantation, St. Bartholomew's Hospital  
Medical College, London, 19th November 1968

Seminar at All Souls College, Oxford, Family Courts, 6th–7th December  
1968

Glasgow Bar Association's Study Conference on the Evidence Code,  
Rothesay, 11th–13th April 1969

British Institute of International and Comparative Law, Windsor,  
Confessions in Criminal Cases, 18th–21st April 1969

## FOREIGN LEGAL SYSTEMS AND INTERNATIONAL LAW

43. One of the duties imposed upon us by section 3(1)(f) of the Law Commissions Act 1965 is "to obtain such information as to the legal systems of other countries" as appears likely to facilitate the performance of our other functions. It is here that our contacts with law reform organisations abroad are of considerable assistance to us. We are pleased to record that we have been able to make consultative arrangements with the United Kingdom National Committee of Comparative Law.

44. Professor Anton was a member of the United Kingdom delegation to the Eleventh Session of the Hague Conference on Private International Law, from 7th to 26th October 1968. He acted principally as United Kingdom representative in Commission I, which prepared a draft Convention designed to facilitate the recognition of United Kingdom divorces and legal separations abroad and of foreign divorces and legal separations in the United Kingdom.

45. Professor Anton has been appointed a member of a Committee set up by the Lord Chancellor and the Secretary of State for Scotland to advise on the choice of law to be applied where a foreign element is involved in civil proceedings arising out of wrongful acts or omissions.

46. We have given advice on two draft Conventions on Agency in Contracts of an International Character, and we have also expressed views on the Convention on the Recognition of Foreign Divorces and Legal Separations.

### SCRUTINY OF BILLS

47. As our work on other matters has built up we have found it more difficult to find time to scrutinise Bills in Parliament, but we are continuing to do this so far as our resources permit.

### STATUTE LAW COMMITTEE

48. Our Chairman continues to serve on the Statute Law Committee; he is also a member of the Editorial Board set up by the Lord Chancellor to supervise the production of a new publication comprising the statutes in force as amended from time to time.

### COMMITTEE ON MARRIAGE LAW

49. Our Chairman was also Chairman of the Departmental Committee which reported this year on the Marriage Law of Scotland.<sup>1</sup> As envisaged when the Committee was appointed, it kept in close touch with us in the course of its work and we were glad to be able from time to time to provide advice on various matters on which we were consulted.

### LIST OF PAPERS

50. A list of papers which have been prepared by the Commission and made public appears in Appendix 2 to this Report.

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<sup>1</sup> Cmnd. 4011.

APPENDIX 1

MEMBERSHIP OF WORKING PARTIES

Para. 11 *Joint Working Party on Exemption by Contract from Common Law and Statutory Liabilities*

The Hon. Lord Kilbrandon and Mr. Andrew Martin, Q.C. (Joint Chairmen).  
Members, other than representatives of the Law Commission and Scottish Law Commission—

|                          |   |
|--------------------------|---|
| Mr. J. A. Beaton         | Scottish Office                             |
| Mr. W. E. Bennett        | The Confederation of British Industry       |
| Professor G. J. Borrie   | The Consumer Council                        |
| Mr. M. R. E. Kerr, Q.C.  | The Bar Council                             |
| Mr. P. Maxwell, Q.C.     | The Faculty of Advocates                    |
| Mr. S. W. T. Mitchelmore | Board of Trade                              |
| Mr. G. R. H. Reid        | The Law Society of Scotland                 |
| Mr. R. G. Scriven        | Association of British Chambers of Commerce |
| Mr. J. B. Sweetman       | Treasury Procurement Policy Committee       |
| Mr. S. Terrell, Q.C.     | The Bar Council                             |
| Mrs. L. E. Vickers       | The Consumer Council                        |
| Mr. J. H. Walford        | The Law Society                             |
| Mr. M. J. Ware           | Board of Trade                              |

Secretary: Mr. R. G. Greene, Law Commission.

Para. 16 *Working Party on Insolvency, Bankruptcy and Liquidation*

The Hon. Lord Kilbrandon (Chairman).  
Professor J. M. Halliday (Vice Chairman).

|                        |  |
|------------------------|--|
| Mr R. A. Bennett, Q.C. | The Faculty of Advocates                           |
| Mr. W. A. Cook, C.B.E. | The Law Society of Scotland                        |
| Mr. R. D. Gould        | Sheriff Clerk, Edinburgh                           |
| Mr. R. McWhirter       | Committee of Scottish Bank General Managers        |
| Mr. C. R. Munro        | The Council of Scottish Chambers of Commerce       |
| Mr D. G. Slidders      | The Institute of Chartered Accountants of Scotland |
| Mr. G. Wallace         | The Confederation of British Industry              |

Secretary: Mr. R. Brodie, Scottish Law Commission.

Para. 22 *Working Party on the Legal Capacity of Minors and Pupils*

The Hon. Lord Kilbrandon (Chairman).

|                              |  |
|------------------------------|--|
| Professor T. B. Smith        |  |
| Professor D. M. Walker, Q.C. | Faculty of Law, University of Glasgow              |
| Miss E. M. Houston           | Solicitor, Edinburgh                               |
| Mr. Farquhar Gillanders      | Assistant Registrar, University of Glasgow         |
| Mr. K. Sweeney               | The Institute of Chartered Accountants of Scotland |

Secretary: Miss P. J. McDermott, Scottish Law Commission.

Para. 31 *Working Party on Companies (Floating Charges) (Scotland) Act 1961*

Professor J. M. Halliday (Chairman).

|                        |   |
|------------------------|---|
| Mr. D. G. Antonio      | British Linen Bank, Edinburgh           |
| Mr. W. A. Cook, C.B.E. | Solicitor, Glasgow                      |
| Mr. A. G. M. Duncan    | Faculty of Law, University of Edinburgh |
| Mr. A. I. Mackenzie    | Chartered Accountant, Glasgow           |
| Mr. G. R. H. Reid      | Solicitor, Glasgow                      |

Secretary: Mr. R. Brodie, Scottish Law Commission.



Para. 33 *Consultative Group on Tax Law*

Professor J. M. Halliday (Chairman).

|                          |  |
|--------------------------|--|
| Mr. H. M. Begg           | The Institute of Chartered Accountants of<br>Scotland          |
| Mr. E. I. Goulding, Q.C. | The Bar Council  |
| Mr. J. P. Lawton         | The Law Society  |
| Mr. E. S. McNairn, C.B.  | Board of Inland Revenue  |
| Mr. D. S. Morpeth        | The Institute of Chartered Accountants of<br>England and Wales |

Secretary: Mr. R. H. Widdows, Law Commission.

Asst. Secretary: Mr. J. T. P. Roberts, Law Commission.

APPENDIX 2

*Scottish Law Commission papers published by H.M. Stationery Office*

First Programme of Law Reform

First Programme of Consolidation and Statute Law Revision

First Annual Report 1965-66

Reform of the Law Relating to Legitimation *per subsequens matrimonium*  
(Cmnd. 3223)

Proposal for Reform of the Law of Evidence relating to Corroboration

Divorce—The Grounds Considered (Cmnd. 3256)

Report by the Law Commission and the Scottish Law Commission on the Con-  
solidation of Certain Enactments relating to Shellfish Fisheries and Shellfish—  
Sea Fisheries (Shellfish) Bill (Cmnd. 3267)

Second Annual Report 1966-67

Second Programme of Law Reform

Third Annual Report 1967-68

Report by the Law Commission and the Scottish Law Commission on the Con-  
solidation of the Trustee Savings Banks Acts 1954 to 1968 (Cmnd. 4004)

Report by the Law Commission and the Scottish Law Commission on the  
Interpretation of Statutes

First Report by the Law Commission and the Scottish Law Commission on  
Exemption Clauses in Contracts and Amendments to the Sale of Goods Act  
1893

*Scottish Law Commission Memoranda circulated for comment and criticism*

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

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

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

Memorandum No. 8—Draft Evidence Code Part I

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

\*Produced jointly with the Law Commission.

## APPENDIX 3

### OTHER LAW REFORM ORGANISATIONS

#### AUSTRALIA

Law Reform Commission of New South Wales  
Law Reform Committee of Victoria  
Law Reform Committee of Western Australia  
Queensland Law Reform Commission

#### CANADA

Civil Code Revision Office, Quebec  
Institute of Law Research and Reform, Alberta  
Law Reform Commission of British Columbia  
Legal Research Institute of the University of Manitoba  
Ontario Law Reform Commission

#### CEYLON

Law Commission, Ceylon

#### GHANA

Law Reform Commission, Ghana

#### HONG KONG

Law Reform Committee, Hong Kong

#### INDIA

Law Commission of India

#### JAMAICA

Law Reform Committee, Jamaica

#### MALAYSIA

Commissioner of Law Revision, Malaysia

#### NEW ZEALAND

New Zealand Law Revision Commission

#### PAKISTAN

Pakistan Law Reform Commission

#### SOUTH AFRICA

Law Revision Committee, South Africa

#### UNITED STATES OF AMERICA

California Law Revision Commission  
Florida Law Revision Commission  
Law Revision Center, Colorado  
Louisiana State Law Institute  
Michigan Law Revision Commission  
National Conference of Commissioners on Uniform State Laws  
New York Law Revision Commission  
Oregon Law Improvement Committee  
Tennessee Law Revision Commission