

The Law Commission

(LAW COM. No. 36)

FIFTH ANNUAL REPORT
1969-1970

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

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

The Honourable Mr. Justice Scarman, O.B.E., *Chairman*.

Mr. Claud Bicknell, O.B.E.

Mr. L. C. B. Gower.

Mr. Neil Lawson, Q.C.

Mr. N. S. Marsh, Q.C.

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**THE LAW COMMISSION
FIFTH ANNUAL REPORT: 1969-70**

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THE LAW COMMISSION

FIFTH ANNUAL REPORT: 1969-70

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

We have the honour to present our Fifth Annual Report pursuant to section 3(3) of the Law Commissions Act 1965. The Report relates to the year ended 15 June 1970, the fifth anniversary of our establishment, but, as in our last Annual Report, we have mentioned in footnotes matters of importance which have occurred between 15 June and today.

INTRODUCTION

1. Under the Law Commissions Act 1965 a Law Commissioner's term of appointment cannot exceed five years and accordingly fresh appointments have had to be made. The four of us who have been reappointed for further terms of varying length would like to express our indebtedness to Mr. Andrew Martin, who has elected to return to practice at the Bar on completion of his term of office, for all that he has contributed to our work. We welcome in his place Mr. Claud Bicknell, who was a solicitor in active practice until appointed. Although Mr. Arthur Stapleton Cotton's appointment as our Special Consultant did not cease until three weeks after the end of the period under review, we think that this is an appropriate place to record our appreciation of the help that he has given us during our first five years; we are indeed lucky to have his continuing help as part-time consultant in relation to our work on land law.

2. The Law Commission enters its second quinquennium at a time when there has been a change of Government. The combination of these two events offers an opportunity for a brief review of our working methods and the progress made with law reform.

Working Methods

3. The Law Commission is established by statute as an advisory body independent of either the Government or Parliament. In deciding what our advice to Parliament should be we are able to work in the open and fully to canvass legal and public opinion at all stages of our work. This we normally do by the wide circulation of a Working Paper which, in addition to indicating the nature of the problem, gives our provisional views on the solutions, thus enabling those we consult to see the lines on which our minds are working. This method of working in the open is, perhaps, the most useful contribution which we have made to the technique of law reform and it is interesting to note that it is beginning to be adopted by other law reform agencies.

4. However, once our Final Report has been submitted the picture changes. It is to be doubted whether those responsible for the Act of 1965 envisaged that the Commission would have any further function to perform once the Report was submitted; thereafter it was up to Parliament and the Government. In practice it has not worked out like that. If the Government decides to introduce legislation on the lines that we have recommended it may, and generally will, wish to consult us about possible amendments or additions. While the legislation is in process of enactment the promoter of the Bill may wish to seek our aid. And it would be absurd if at this stage Parliament and those responsible for the passage of the Bill were to be denied the assistance of the statutory body responsible for its provisions. In fact we have been called upon to assist in a variety of ways and have found it eminently desirable to respond. We have ensured, when requested, that members of our staff are present "in the box", together with civil servants of the government department concerned, especially at the Committee Stage when the details, as opposed to the general policy, of the Bill are under scrutiny. Thereby we have been able to help Parliament to ensure that piecemeal amendments do not destroy the cohesion of the draft Bills for which we initially were responsible and that the wording of the ultimate Act maintains the clarity of drafting to which we aspire—if not always with complete success. We believe that this role, although, as we have said, it may have been unforeseen, is valuable to Parliament, to the Government and to the public.

5. However, these methods of consultation during the legislative process may not suffice for mammoth measures of law reform, such as the codifications which are now beginning to show on the horizon. If a code's coherent structure is to be maintained and if Parliament is not to find it too indigestible, our assistance on a more formal basis may well be needed at all stages. The time has now come when thought should be given to this problem.

Progress Made with Law Reform

6. The first and most important point we would make is that during our first five years law reform has not suffered from lack of Parliamentary time as many feared that it would. A glance at Appendix 2 reveals the extent to which Parliament has implemented the recommendations contained in the final reports so far submitted.

7. The priorities of law reform are, subject to the Lord Chancellor's veto, a matter for us. Systematic law reform undertaken by a permanent advisory body is still in its infancy and there is accordingly no shortage of topics for consideration. However invidious the task, a choice has to be made: we have made and published ours in the two Law Reform Programmes¹ approved by the Lord Chancellor. If we are to achieve results, we must not allow our slender resources to be diverted from our programme.

8. One of the responsibilities placed upon the Commission by statute is the repeal of obsolete and unnecessary enactments and a reduction of the number of separate enactments. This work is necessary if we are to achieve the

¹ Law Com. Nos. 1 and 14.

simplification and modernisation of the statute law. Seen in this context, Bills such as the Wild Creatures and Forest Laws Bill are a necessary stage if one is to put right the unwieldy and ill-arranged condition of our statute law: the dead wood must be cleared away first.

9. If law reform is to be soundly conceived and assured of public support, it is important that we should consult widely and that those bodies whom we consult should have ample time in their turn to consult their own members. As a result the pace of our work is inevitably slow. None of our major projects of codification—of contract, criminal law, family law and the law of landlord and tenant—has yet reached the stage at which a complete draft code can be circulated for public comment and criticism. Nevertheless, as the body of this Report shows, substantial progress is being made and, notably in relation to family law, many of the reforms which must precede a consolidated code have already reached the Statute Book.

Arrangement of this Report

10. Part I of this Report contains a detailed progress report on the Items in our law reform programmes ; Part II gives an account of work done on law reform outside our programmes ; Part III reviews the work done in the field of consolidation and statute law revision ; and in Part IV we outline briefly the year's developments in the organisation and other activities of the Law Commission. In Appendix 1 we set out lists of the Commission's papers which have been (a) published by the Commission as Working Papers or (b) laid before or presented to Parliament. In Appendix 2 we summarise in tabular form the extent to which our legislative proposals have been implemented by Parliament, and in Appendix 3 we give the membership of advisory bodies set up during the year or set up during previous years and still functioning but with substantially altered membership.

PART I

LAW REFORM PROGRAMMES : REPORT ON PROGRESS

11. Items I–XVII derive from our First Programme of Law Reform and Items XVIII–XX from our Second. In the progress report below, we omit Items that have been merged in others and those on which work has been completed.

Item 1. Codification of the Law of Contract

12. Preliminary drafts on Definitions and Formation, Content and Third Party Rights intended to form the basis of the relevant provisions of the code on those topics are to be discussed by the Advisory Panel² when it meets at All Souls at the end of September. Drafts on Performance, Breach, Assignments and Remedies have been prepared. Some preliminary work has been done on contracts which are defective by reason of mistake, incapacity, illegality and the like.

Item II. Exemption Clauses in Contracts

13. As we mentioned in our Fourth Annual Report³, the Law Commissions' First Report on Exemption Clauses in Contracts was submitted to Ministers in July and published on 18 September 1969. The Report was concerned with the conditions and warranties in favour of purchasers under sections 12–15 of the Sale of Goods Act 1893 and with the extent to which the sellers' rights to contract out of those conditions and warranties should be precluded or limited by legislation.

14. The Joint Working Party of the two Law Commissions⁴ has now completed its examination of exemption clauses which exclude or limit the liability in negligence of a seller of goods and of exemption clauses in contracts for the supply of services. We are considering the advice of the Working Party on these topics. Before long we shall formulate preliminary proposals on them and issue a Working Paper inviting comments and criticisms. We hope to hold a seminar at All Souls' College on this subject in the course of next year.

Item IV. Civil Liability for Dangerous Things and Activities

15. We have completed a critical analysis of the law covered by this Item, but, for reasons which we expect shortly to report to you⁵, it has not been possible to formulate positive recommendations for reform within the limitations affecting us in relation to this Programme Item.

Item V. Civil Liability for Animals

16. An Animals Bill to give effect, with some modifications, to the recommendations in our Report on this subject was introduced by your predecessor

² The constitution of this Panel is described in paragraph 31 and Appendix 2 of our Second Annual Report.

³ Paragraph 16, n. 6.

⁴ Its composition is set out in Appendix B to the First Report on Exemption Clauses (Law Com. No. 24).

⁵ Law Com. No. 32; submitted on 14 September 1970.

in the House of Lords in October 1969. The Bill completed its passage through the Upper House and was given a Second Reading in the House of Commons before Parliament was dissolved⁶.

Item VI. Personal Injury Litigation

(b) Assessment of damages

17. Our Working Paper No. 27⁷ was published in order to test whether there was support for certain changes in the present principles and practice relating to the itemisation of awards of damages; but our tentative recommendation that legislation should be passed to bring about these changes met with overwhelming opposition. The general view was that the recent decision of the Court of Appeal in *Jefford v. Gee*⁸ has brought about all the changes that are necessary. In the circumstances we do not intend to submit a formal report to you concerning the recommendations contained in Working Paper No. 27, but to discuss these issues in the context of a Working Paper, now in preparation, dealing comprehensively with the subjects covered by Item VI(b).

Item VII. Civil Liability of Vendors and Lessors for Defective Premises

18. We have now settled a draft of the Final Report with clauses attached and this document has been circulated, for an intensive short round of consultation in the course of this summer, to Government Departments, the professional organisations, representatives of the house building industry, insurance interests and local authorities' associations. These consultations have revealed some further problems which are now under investigation.

Item VIII. Codification of the Law of Landlord and Tenant

(a) Obligations of landlords and tenants

(b) Termination of tenancies

19. A Final Report covering these two subjects is still in course of preparation.

(c) Covenants against assignment, alterations and change of user

20. Our Working Paper No. 25 on this subject has attracted a good deal of comment, but some important expressions of view are still outstanding.

(d) Landlord and Tenant Act 1954, Part II

21. Our legislative proposals⁹ have been passed into law substantially as we framed them.

(e) Disclaimer of leases in bankruptcy

22. A draft Working Paper is being prepared for consideration by the Working Party.¹⁰

⁶ Another and substantially similar Animals Bill was introduced in the House of Lords in July.

⁷ For its history see n. 15 in our Fourth Annual Report.

⁸ [1970] 2 W.L.R. 702, C.A.

⁹ Put forward in Law Com. No. 17 and implemented by Part I of the Law of Property Act 1969.

¹⁰ For its present membership see Appendix 3.

(f) *Other topics considered by the Working Party*

23. The Working Party have considered other topics in this area of the law. Consideration of the projected scope and structure of the code of Landlord and Tenant has begun and these topics will be taken into the general work of preparing the code.

Item IX. Transfer of Land

(a) *Law of Property Act 1969*

24. Parts III and IV of the Law of Property Act 1969 gave effect to the proposals that we put forward in our Reports on Land Charges¹¹ and Root of Title¹² and some of those in our Report on Restrictive Covenants.¹³

(b) *Rights appurtenant to land*

25. In our last Annual Report¹⁴ we expressed the hope that we should be in a position to publish before long a Working Paper on Rights Appurtenant to Land. The draft Working Paper has been extensively revised and we hope to publish it within the coming year.

(c) *Rentcharges*

26. Our Working Paper on Rentcharges¹⁵ was published on 4 September 1969 and copies were sent not only to the relevant government departments and professional bodies having experience of the conveyancing and practical aspects of the topic, but also to bodies and individuals (including all the members of the House of Commons whose constituencies fell within the areas of the country most affected) likely to be able to indicate to us the views of rent owners and rent payers. We have already received a considerable body of evidence, from which it appears that our provisional proposal that legal rentcharges should no longer be capable of being created is a matter of controversy. The method of extinguishing existing rentcharges (if their abolition were thought desirable) remains a problem to which no wholly satisfactory solution has yet been put forward.

(d) *Land registration*

27. We have made progress during the year in our review of the law relating to land registration and the first of a series of Working Papers will be published in the near future.¹⁶ In this paper we shall deal with the registrability of leasehold titles, certain other questions in relation to leasehold interests and the extent to which the register should be open to public inspection.

(e) *Chancel repairs*

28. Our attention has been drawn to the old problem which arises when a purchaser of land discovers that he has taken on a liability to pay for the repair of the chancel of the parish church. Such a liability may not appear on the title to the land purchased, but successive purchasers are

¹¹ Law Com. No. 18.

¹² Law Com. No. 9.

¹³ Law Com. No. 11.

¹⁴ Para. 31.

¹⁵ Working Paper No. 24.

¹⁶ Published as Working Paper No. 32 on 3 September 1970.

nevertheless bound by it. We have held discussions with representative diocesan registrars on the feasibility of introducing a system of registration of this liability as a local land charge and a paper and questionnaire have been sent to all diocesan registrars seeking their views.

(f) *Local land charges*

29. Work on this subject had been suspended since the issue of our Working Paper¹⁷ devoted partly to this subject. Work has now been resumed and a small official Working Party set up which includes a representative of the Lord Chancellor's Office and of the Land Registry, together with members of our legal staff. Further consultations will be necessary before we shall be in a position to prepare a Final Report.

(g) *Attempted acquisition of land by adverse possession*

30. We conducted an inquiry into the prevalence of attempts, particularly in South East Essex, to acquire "squatters' titles" to land. We have been considering with the Chief Land Registrar what precautions are desirable in dealing with applications for first registration of title to the land affected. The results of our inquiry are not yet quite complete, but we expect to conclude our study of this problem during the coming year.

Item XIV. Common Law Misdemeanours : Crime of Conspiracy

31. There is nothing further to report this year on these topics.

Item XV. Miscellaneous Matters involving Anomalies, Obsolete Principles or Archaic Procedures

(a) *Actions for loss of services, loss of consortium, seduction and enticement*

32. The Law Reform (Miscellaneous Provisions) Act 1970 has abolished actions for seduction and enticement in relation to the family in accordance with the recommendations contained in our Report on Financial Provision in Matrimonial Proceedings.¹⁸ It seems prudent to postpone further work on such remaining aspects of this subject as family loss, loss of services by employers, etc. until the comprehensive Working Paper on Damages¹⁹ has been published.

(b) *Breach of promise of marriage*

33. The issue of our Report on Breach of Promise of Marriage²⁰ and the passage of the Law Reform (Miscellaneous Provisions) Act 1970 complete work on this topic.

(c) *Actions for pound-breach, rescous and replevin*

34. Consideration of these questions remains in abeyance and may not need to be revived if it is decided that distress for rent should be abolished in accordance with the recommendations of the Payne Committee.²¹

Item XVI. Judicature Act (Northern Ireland)

35. Lord MacDermott's Committee submitted its Final Report in March.²²

¹⁷ Working Paper No. 10.

¹⁸ Law Com. No. 25, paras. 101, 102.

¹⁹ See para. 17 above.

²⁰ Law Com. No. 26.

²¹ *Report of the Committee on the Enforcement of Judgment Debts* (1969); Cmnd. 3909.

²² 1970; Cmnd. 4292.

Item XVII. Interpretation of Statutes

36. We have started, jointly with the Scottish Law Commission and in consultation with the Lord Chancellor's Office and the Foreign and Commonwealth Office, an examination of the special problems connected with the interpretation of treaties. We are particularly concerned with the problems which, pending the preparation of the Vienna Convention²³ by the United Nations Conference on the Law of Treaties, were not dealt with in the Joint Report of the Commissions on the Interpretation of Statutes.²⁴

Item XVIII. Codification of the Criminal Law

(a) General principles of the criminal law

37. Following the outline sketched in our Working Paper²⁵ on General Principles and with the assistance of a Working Party²⁶ which meets each month, we continue our examination of selected subjects relating to the general principles of the criminal law. The Working Party is now engaged on a study of complicity, vicarious liability and liability of corporations.

38. A Working Paper²⁷ has been published setting out the provisional views of the Working Party on general principles relating to the mental element in crime.

39. On a closely related subject, a research team from the University of Kent, under the direction of Professor Fitzgerald and Dr. Hadden, volunteered to investigate the operation of strict liability under the Factories Act 1961. Their work has been published as a Working Paper²⁸ with a foreword by the Law Commission. We should like to thank the University and, in particular, those individuals who conducted the research and prepared the Report. We are also grateful to H.M. Chief Inspector of Factories for the co-operation of his Department.

40. In May we published a Working Paper²⁹ on the territorial extent of the criminal law, setting out provisional proposals for reform.

(b) Certain specific offences

41. Our consultations on our Working Paper³⁰ on offences of damage to property are now complete, and we hope to submit our Report shortly.³¹

42. In March we published a Working Paper³² on Forgery and comments are being received.

43. We have almost completed the preparation of a Working Paper on Perjury.³³

²³ 1969; Cmnd. 4140.

²⁴ Law Com. No. 21; Scot. Law Com. No. 11.

²⁵ Working Paper No. 17 "Codification of the Criminal Law—General Principles—The Field of Enquiry."

²⁶ The membership is set out in Appendix 3.

²⁷ Working Paper No. 31.

²⁸ Working Paper No. 30.

²⁹ Working Paper No. 29.

³⁰ Working Paper No. 23.

³¹ This Report was submitted on 24 July and published on 16 September 1970 as Law Com. No. 29.

³² Working Paper No. 26.

³³ This was published as Working Paper No. 33 on 14 October 1970.

44. Work on bigamy and offences against the marriage laws must wait until further progress is made by the Working Party on the Marriage Laws.³⁴

45. The Criminal Law Revision Committee has begun its examination of offences against the person.

(c) Other matters

46. Following the publication of our Working Paper³⁵ on the Operation of Strict Liability under the Factories Act 1961, we have initiated consultations with some of the major Government Departments responsible for regulatory legislation.

47. We were consulted and gave advice on the following matters :

(a) the Bill which became law as the Road Traffic (Disqualification) Act 1970 ;

(b) the preparation of the Misuse of Drugs Bill ;

(c) offences in the Merchant Shipping Acts ;

(d) offences to be included in legislation on fire precautions ;

(e) the modernisation of the old law of piracy ; and

(f) offences to be included in a new model extradition treaty.

Item XIX. Family Law

Legislation

48. The Matrimonial Proceedings and Property Act and the Law Reform (Miscellaneous Provisions) Act received the Royal Assent before Parliament was dissolved in May 1970. They and the Divorce Reform Act 1969 will all come fully into force on 1 January 1971.

Family property

49. A comprehensive paper has been prepared and dispatched to all those participating in a Seminar to be held at Manchester University on 23/24 September which will be attended by judges, legal practitioners, academic lawyers and sociologists, drawn from England, Wales and Scotland. It is hoped thereafter to put in hand the preparation of a Working Paper or Working Papers for general publication. It is also hoped to mount a social survey to ascertain more facts about the present practices and attitudes of married couples in relation to their property.

Nullity

50. A draft Bill dealing with Nullity has been prepared and we shall soon deliver our Final Report on this subject.³⁶

Marriage

51. As foreshadowed in our last Annual Report,³⁷ we and the Registrar General set up last December a small Working Party to inquire into the formal requirements for the solemnisation and registration of marriages

³⁴ See para. 51 below.

³⁵ Working Paper No. 30.

³⁶ Law Com. No. 33 was submitted on 23 October 1970.

³⁷ See para. 51 of our Fourth Annual Report.

in England and Wales in order to recommend improvements. This Working Party have held a number of meetings. They are now preparing a draft Working Paper for general circulation.

Polygamous marriages

52. Our draft Report has been revised and we hope to have it ready before the end of 1970.

Recognition of foreign decrees of divorce and legal separation

53. H.M. Government announced on 19 May 1970 its intention to ratify the Convention on Recognition of Foreign Divorces and Legal Separations signed at the Hague in October 1968. The Law Commission and the Scottish Law Commission have in an advanced stage of preparation a Report³⁸ detailing the legislative provisions necessary and desirable in implementation of the Convention.

Jurisdiction of English courts to grant divorces, etc.

54. In April we published a Working Paper³⁹ setting out our provisional proposals for changes in this part of the law and asking for comments by the end of the year.

Restitution of conjugal rights

55. Our Report recommending the abolition of this matrimonial remedy was published⁴⁰ on 26 August 1969. The Matrimonial Proceedings and Property Act 1970 implemented our recommendation.

Proof of foreign marriages

56. We have proposed a change in the Matrimonial Causes Rules which will facilitate the proof of foreign marriages in matrimonial proceedings.⁴¹ This proposal disposes of an unimplemented recommendation of the Royal Commission on Marriage and Divorce.⁴²

Family law affecting children

57. Part III of the Family Law Reform Act (which received the Royal Assent on 25 July 1969) will give effect to the recommendations of our Report on Blood Tests and the Proof of Paternity in Civil Proceedings⁴³ when the necessary subordinate legislation has been prepared and this part of the Act is brought into operation. Our main proposals for the amendment of section 33 of the Matrimonial Causes Act 1965 were carried out by the Matrimonial Proceedings and Property Act 1970. Others are being implemented by amendments proposed to the Matrimonial Causes Rules.⁴⁴

³⁸ Law Com. No. 34; Scot. Law Com. No. 16 was submitted to Ministers on 26 October 1970.

³⁹ Working Paper No. 28 on Jurisdiction in Matrimonial Causes (other than Nullity).

⁴⁰ As Law Com. No. 23.

⁴¹ The Matrimonial Causes (Amendment No. 3) Rules made by the Matrimonial Causes Rule Committee on 27 July 1970 achieve this purpose (S.I. 1970/1349 Rule 22(5)).

⁴² The Morton Commission (1956); Cmd. 9678.

⁴³ Law Com. No. 16.

⁴⁴ See Matrimonial Causes (Amendment No. 3) Rules 1970 (S.I. 1970/1349 Rules 8, 11 and 25-27) made on 27 July 1970.

Conflict of laws : miscellaneous problems

58. A Working Paper is being prepared to gather up outstanding problems in conflicts of laws arising in matrimonial proceedings. Such questions as the recognition of foreign marriages and decrees of nullity and also the jurisdiction of our own courts to grant decrees of nullity and to make declarations of status will be covered.

Item XX. Interpretation of Wills

59. Mr. Justice Megarry's Sub-Committee of the Law Reform Committee⁴⁵ is now considering the evidence it has received.

⁴⁵ See para. 62 of our Fourth Annual Report.

PART II

LAW REFORM OUTSIDE THE PROGRAMMES

Administration Bonds

60. The completion of our study of the proposal to limit the requirement for the giving of administration bonds and for sureties to such bonds has taken longer than we had foretold in our last Annual Report,⁴⁶ but we expect to submit our Report very shortly.⁴⁷

Administrative Law

61. As we pointed out in our last Annual Report,⁴⁸ we recommended to your predecessor in May 1969⁴⁹ that a Royal Commission or a body of similar status should be appointed to carry out a comprehensive review of the principles and procedures of this branch of the law. The Government of the day decided,⁵⁰ however, that it was not the right time to set up a Royal Commission to conduct such a wide-ranging inquiry as we had suggested. Lord Chancellor Gardiner, however, asked us to review the existing remedies for the judicial control of administrative acts and omissions with a view to evolving a simpler and more effective procedure. To assist us in this task we have set up a Consultative Panel consisting of one of Her Majesty's Judges and of others with special experience in this field. A list of the members of this Panel is given in Appendix 3.⁵¹

Insurable Interests

62. We regret that we have been unable to make progress with this study in the past year.

Interest on Arrears of Annuities

63. Our study of the suggested abrogation of the rule that arrears of an annuity given by will do not carry interest⁵² is complete.⁵³ Consultations have revealed a strong body of informed opinion against the abolition of this rule. The view is taken that there is a valid distinction between legacies and annuities and that, moreover, the abolition of the rule, even if justified as a matter of principle, would create a disproportionate amount of work and expense. It is in any event probable that, if the rule were altered so that arrears of a testamentary annuity carried interest, most professionally drawn wills would provide to the contrary.

⁴⁶ See para. 64 of our Fourth Annual Report.

⁴⁷ Law Com. No. 31; submitted on 3 September and published on 15 October 1970.

⁴⁸ See para. 65 of our Fourth Annual Report.

⁴⁹ See Report on Administrative Law (Law Com. No. 20) para. 10.

⁵⁰ The view of the Government was stated by Lord Chancellor Gardiner on 4 December 1969 (House of Lords, Official Report, Cols. 189-190) in answer to a question by Lord Wade.

⁵¹ A study paper was sent out to the Panel for their comments on 13 July 1970.

⁵² The suggestion was made by Cross J. in *Re Berkeley dec'd* [1968] Ch. 154 at p. 166; see Fourth Annual Report at para. 69.

⁵³ On 7 July 1970 the Lord Chancellor was informed that the Law Commission advised that no action should be taken on the proposal.

International Agency

64. The two UNIDROIT Conventions are to be discussed at a meeting of governmental experts in Rome at the end of June.⁵⁴

Judgments Extension Acts

65. Memorandum No. 12 published by the Scottish Law Commission on 1 December 1969 has attracted many comments. We hope to begin studying these before long as these topics concern all parts of the United Kingdom.

Limitation of Actions

(i) Limitation of actions against deceaseds' estates

66. Our proposals⁵⁵ for reform of this branch of the law have been implemented by a Private Member's Bill, which became law as the Proceedings Against Estates Act 1970.

(ii) Limitation Act 1963

67. We were requested by your predecessor in office to advise on two questions:

- (a) whether amendments are required in the light of the decision of the Court of Appeal in *Lucy v. Henleys, etc., Ltd.*,⁵⁶ and
- (b) whether the twelve-month period of limitation laid down by section 1 should be extended in the light of experience of its operation.

We are in consultation with the bodies most likely to be familiar with the working of these provisions and we expect to submit our Report to you before long.⁵⁷

Powers of Attorney

68. Our Final Report is nearly ready.⁵⁸

Privacy

69. In our Fourth Annual Report⁵⁹ we suggested that the law relating to privacy required early examination by a widely based committee or commission. Following the introduction of a Private Member's Bill on this subject by Mr. Brian Walden, M.P., the then Home Secretary announced in the House of Commons on 23 January 1970 that he was setting up a committee under the chairmanship of the Rt. Hon. Kenneth Younger to consider whether reforming legislation was needed in this field. The membership of the Committee was announced on 16 April 1970 and includes one of our number, Mr. N. S. Marsh.

Tax Law

70. Following the setting-up of the consultative group⁶⁰ a number of professional and other interested bodies in England and Scotland were asked

⁵⁴ The meeting was attended on behalf of both Law Commissions by Professor Anton of the Scottish Law Commission.

⁵⁵ Law Com. No. 19.

⁵⁶ [1970] 1 Q.B. 393.

⁵⁷ Law Com. No. 35 submitted on 27 October 1970.

⁵⁸ Law Com. No. 30 submitted on 7 August and published on 23 September 1970.

⁵⁹ Law Com. No. 27, para. 76.

⁶⁰ See Appendix 3 for present membership.

for their observations on six selected topics and for their suggestions as to other points deserving examination relating to the taxation of income and gains from land. During the year under review five meetings of the group have been held at which the replies received from those bodies and papers submitted by members of the group themselves (including in particular papers prepared by Mr. McNairn and his successor, Mr. D. A. Smith, of the Board of Inland Revenue) have been the subjects of wide-ranging discussion. The group has almost completed its consideration of points of principle and hopes to present a report to us and the Scottish Law Commission early in 1971.

Uncertainty in relation to Trusts and Powers

71. This matter is being studied by a Working Party of members of the Bar and solicitors set up at our request by the General Council of the Bar and the Council of The Law Society.⁶¹ The nature of the problem has been radically altered in the light of the majority decision of the House of Lords in *McPhail v. Doulton*,⁶² which overruled the controversial decision of the Court of Appeal in *Inland Revenue Commissioners v. Broadway Cottages Trust*.⁶³

⁶¹ See Fourth Annual Report at para. 81.

⁶² [1970] 2 W.L.R. 1110 (on appeal from *Re Baden's Deed Trusts* [1969] 2 Ch. 388).

⁶³ [1955] Ch. 20.

PART III

CONSOLIDATION AND STATUTE LAW REVISION

Consolidation

72. This year saw the passage into law of the Income and Corporation Taxes Bill and the Taxes Management Bill totalling together some 750 pages in the Statute Book.

73. The consolidation of the estate duty legislation has reached an advanced stage, but a satisfactory result cannot be achieved unless a number of amendments are made to the existing law. Further progress depends on the passage of legislation for this purpose.

74. The Sea Fish Industry Bill was reintroduced⁶⁴ and passed.

75. An Attachment of Earnings Bill and a Guardianship of Minors Bill are ready for introduction.⁶⁵

76. A Vehicles (Excise) Bill is nearly ready and is expected to be introduced in the autumn. The next instalment of the consolidation of Road Traffic legislation is well advanced and should be ready by Christmas.

77. A Magistrates' Courts Bill was ready for introduction just before the Dissolution but must now await the passing of legislation to give effect to the recommendations of the Beeching Commission.⁶⁶

78. A Friendly Societies Bill which contained amendments to make a satisfactory consolidation of these Acts possible was introduced in the last session of Parliament, but lapsed with the Dissolution.

79. Work has been done on a consolidation of statutory provisions dealing with oil pollution in navigable waters, but further progress must await the reintroduction and passage of the Oil in Navigable Waters Bill which was introduced last session but lapsed at the Dissolution.⁶⁷ A Bill to consolidate the Local Employment Acts 1960-1970 was ready for introduction when Parliament was dissolved.

80. Bills to consolidate the legislation on hydrocarbon oil duties and the coinage are far advanced and should be ready for introduction in the autumn.

81. Considerable progress has been made with the consolidation of the town and country planning legislation.⁶⁸

⁶⁴ See Fourth Annual Report p. 19 n. 67.

⁶⁵ They were introduced on 23 July 1970.

⁶⁶ The Royal Commission on Assizes and Quarter Sessions (1969) Cmnd. 4153.

⁶⁷ The Oil in Navigable Waters Bill was reintroduced on 6 July 1970.

⁶⁸ The prospects of introducing this Bill in the present session depend on whether or not there is amending legislation.

82. Work has not been taken up again on the Monopolies and Restrictive Practices Bill because the last Government announced their intention of merging the Monopolies Commission with another body.⁶⁹

83. Work has started on the consolidation of the legislation on the three following subjects :

National Savings Banks ;

Cinematograph films ;

Poisons.

Statute Law Revision

84. The Statute Law (Repeals) Act 1969⁷⁰ received the Royal Assent on 22 October 1969 and came into force on 1 January 1970.

85. At the end of the year under review we were on the point of submitting our Second Report on Statute Law Revision⁷¹ putting forward the draft Wild Creatures and Forest Laws Bill which we had prepared in performance of the duty imposed on us by section 3(1) of the Law Commissions Act 1965 of promoting the repeal of obsolete and unnecessary enactments and of simplifying and modernising the law. We included this Bill in our statute law revision series because it was prepared pursuant to that part of our statutory functions. But in order to found the repeal of many of the enactments relating to forests and the forest law, it was necessary to include in the Bill a provision abolishing the forest law itself and any royal prerogative right to wild creatures. The inclusion of such a provision abrogating the common law would take the draft Bill outside the terms of reference of the Joint Committee to which Consolidation and Statute Law Revision Bills are referred. Therefore the Bill was turned into an ordinary Law Reform Bill.

86. Work is almost complete on the preparation of a new Statute Law (Repeals) Bill.

⁶⁹ The present Government has since announced its intention of setting-up a Commission for Competition which will take over the functions of the Monopolies Commission.

⁷⁰ See Fourth Annual Report paras. 90 and 91.

⁷¹ Law Com. No. 28 submitted on 27 June 1970.

PART IV

MISCELLANEOUS

Accommodation

87. The eighth floor at Lacon House was required for occupation by others and we were moved in April of this year to our present address: Conquest House, 37-38 John Street, Theobald's Road, London, WC1N 2BQ.

Staff

88. Our full-time staff numbers 48 (if one disregards a temporary vacancy in a draftsman's post at the end of the year under report):⁷² the Secretary, 4 draftsmen and 16 other lawyers, together with 27 non-legal staff. We also have the help of draftsmen in the office of the parliamentary counsel in Whitehall and the part-time services of 4 other lawyers. The Editor of the new Official Edition of the Public General Statutes in Force has his office here.

89. Since September 1969 our Chairman has given about half his time to his duties as chairman of a tribunal enquiring into disturbances in Northern Ireland. His absences on this public duty have inevitably impeded the progress of our work.

Library

90. The removal of our library to Conquest House has given us more space for books and readers in quiet and agreeable surroundings. We now have nearly 10,000 volumes and hope to acquire important source materials for which we had no room before. We have again found ourselves indebted for numerous kindnesses to other law libraries and, above all, to the Institute of Advanced Legal Studies.

Relations with lawyers in the United Kingdom

91. Our close co-operation with the Scottish Law Commission, especially in our major studies of Contract and Family Law as well as many lesser topics such as the interpretation of treaties, the modernisation of the Judgments Extension Acts and the growing volume of work arising in connection with international conventions on legal subjects, necessitates a continuous exchange of correspondence and frequent meetings. We were most hospitably received in Edinburgh at our annual joint meeting in April 1970.

92. During the year we have maintained our contacts with the Director of Law Reform and others concerned in Northern Ireland particularly in relation to the MacDermott Committee⁷³ and to certain aspects of the land law, the Judgments Extension Acts, the resealing of grants of representation, administration bonds and powers of attorney.

⁷² This post was filled on 1 September 1970.

⁷³ See para. 35 above.

93. Last winter we held as usual our annual and indispensable meetings with representatives of the Bar Council, The Law Society and the Society of Public Teachers of Law. We are, of course, continually in touch with numerous members of all branches of the profession in connection with particular studies.

94. During the year one seminar was held under our auspices. This was at All Souls College, Oxford at the end of September on the subject of Dangerous Things and Activities. Two of our number and members of the legal staff attended a conference on the subject of Classification at Birmingham University organised by the Society of Public Teachers of Law in July 1969 and some of those working on the codification of the law of landlord and tenant were present at a colloquium held at Durham organised by the United Kingdom National Committee of Comparative Law.

Relations with lawyers overseas

95. During the year we have welcomed a number of visitors from Commonwealth and other countries and some of our number have paid similar visits abroad.

Social Research

96. Some of our number have participated in discussions which it is hoped will lead to two developments of paramount importance. The first of these relates to the establishment of a centre to promote and co-ordinate social research into legal problems. The existence of such a centre would be invaluable to us in our work and we are grateful for the interest which the Social Service Research Council has shown in this project. The other relates to the research to test the extent of the unmet need for legal advice and the efficacy of the various methods which have been advocated for meeting it. Your Advisory Committee on the Legal Aid and Advice Scheme in their latest Report⁷⁴ stressed the need for research in this field and expressed the hope that it might be supported by some of the charitable foundations. Already some steps in this direction have been taken and there is every likelihood that before long a number of pilot schemes will be in operation with provision for co-ordinated research into their working.

(Signed) LESLIE SCARMAN, *Chairman.*

CLAUD BICKNELL.

L. C. B. GOWER.

NEIL LAWSON.

NORMAN S. MARSH.

J. M. CARTWRIGHT SHARP, *Secretary.*

27 October 1970

⁷⁴ (1970) Cmnd. 4249 paras. 36, 40(a).

APPENDIX 1

LIST OF THE LAW COMMISSION'S PUBLICATIONS up to and including Fifth Annual Report

(1) Working Papers published:

- No. 1. Transfer of Land: Root of Title to Freehold Land (this is the subject of Law Com. No. 9)
- No. 2. Draft Proposals on Powers of the Court of Appeal to Sit in Private and Restrictions upon Publicity in Legitimacy Proceedings (this subject was covered by Law Com. No. 8)
- No. 3. Restrictive Covenants (this is the subject of Law Com. No. 11)
- No. 4. Should English Wills be Registrable?
- No. 5. Liability of Trade Vendors of New Dwelling Houses to First and Subsequent Purchasers (First Paper)
- No. 6. Liability of Vendors and Lessors for Defective Premises (Second Paper)
- No. 7. Provisional Proposals for Amendments to the Landlord and Tenant Act 1954, Part II (Business Tenancies) (this is the subject of Law Com. No. 17)
- No. 8. Provisional Proposals Relating to Obligations of Landlords and Tenants
- No. 9. Family Law: Matrimonial and Related Proceedings—Financial Relief (this is the subject of Law Com. No. 25)
- No. 10. Proposals for Changes in the Law Relating to Land Charges Affecting Unregistered Land and to Local Land Charges (partly covered by Law Com. No. 18)
- No. 11. Powers of Attorney (this is the subject of Law Com. No. 30)
- No. 12. Proof of Paternity in Civil Proceedings (this is the subject of Law Com. No. 16)
- No. 13. Exploratory Working Paper on Administrative Law (this is the subject of Law Com. No. 20)
- No. 14. Interpretation of Statutes (Joint Working Paper—Scottish Law Commission Memorandum No. 6) (this is the subject of Law Com. No. 21)
- No. 15. Family Law: Arrangements for the Care and Upbringing of Children
- No. 16. Provisional Proposals Relating to Termination of Tenancies
- No. 17. Codification of the Criminal Law—General Principles—The Field of Enquiry
- No. 18. Provisional Proposals Relating to Amendments to Sections 12–15 of the Sale of Goods Act 1893 and Contracting out of the Conditions and Warranties Implied by those Sections (Joint Working Paper—Scottish Law Commission Memorandum No. 7) (this is the subject of Law Com. No. 24)
- No. 19. Loss of Services
- No. 20. Nullity of Marriage (this is the subject of Law Com. No. 33)
- No. 21. Polygamous Marriages
- No. 22. Restitution of Conjugal Rights (this is the subject of Law Com. No. 23)
- No. 23. Malicious Damage to Property (this is the subject of Law Com. No. 29)
- No. 24. Transfer of Land—Rentcharges
- No. 25. The Law of Landlord and Tenant: Working Party's Provisional Proposals Relating to Covenants Restricting Dispositions, Parting with Possession, Change of User and Alterations

- No. 26. Criminal Law—Forgery
- No. 27. Personal Injury Litigation: Assessment of Damages, Itemisation of Pecuniary Loss and the Use of Actuarial Tables as an Aid to Assessment
- No. 28. Family Law: Jurisdiction in Matrimonial Causes (other than Nullity)
- No. 29. Codification of the Criminal Law: Subject III: Territorial and Extra-territorial Extent of the Criminal Law
- No. 30. Codification of the Criminal Law: Strict Liability and the Enforcement of the Factories Act 1961
- No. 31. Codification of the Criminal Law: General Principles—the Mental Element in Crime
- No. 32. Transfer of Land: Land Registration (First Paper)
- No. 33. Criminal Law: Perjury and Kindred Offences

(2) Publications which have been laid before Parliament under section 3(2) and (3) of the Law Commissions Act 1965 and publications which have been presented to Parliament as Command Papers:

- Law Com. No. 1. First Programme of the Law Commission.
- Law Com. No. 2. Law Commission's First Programme on Consolidation and Statute Law Revision.
- Law Com. No. 3. Proposals to abolish Certain Ancient Criminal Offences.
- Law Com. No. 4. First Annual Report 1965–66.
- Law Com. No. 5. Landlord and Tenant: Interim Report on Distress for Rent.
- Law Com. No. 6. Reform of the Grounds of Divorce: The Field of Choice (Cmnd. 3123)
- Law Com. No. 7. Proposals for Reform of the Law Relating to Maintenance and Champerty.
- Law Com. No. 8. Report on the Powers of Appeal Courts to Sit in Private and the Restrictions upon Publicity in Domestic Proceedings (Cmnd. 3149).
- Law Com. No. 9. Transfer of Land: Interim Report on Root of Title to Freehold Land.
- Law Com. No. 10. Imputed Criminal Intent (*Director of Public Prosecutions v. Smith*).
- Law Com. No. 11. Transfer of Land: Report on Restrictive Covenants.
- Law Com. No. 11A. Sea Fisheries (Shellfish) Bill. Report by the Law Commission and the Scottish Law Commission on the Consolidation of Certain Enactments Relating to Shellfish Fisheries and Shellfish (Cmnd. 3267).
- Law Com. No. 12. Second Annual Report 1966–67.
- Law Com. No. 13. Civil Liability for Animals.
- Law Com. No. 14. Second Programme of Law Reform.
- Law Com. No. 15. Third Annual Report 1967–68.
- Law Com. No. 16. Blood Tests and the Proof of Paternity in Civil Proceedings.
- Law Com. No. 17. Landlord and Tenant: Report on the Landlord and Tenant Act 1954, Part II.
- Law Com. No. 18. Transfer of Land: Report on Land Charges Affecting Unregistered Land.
- Law Com. No. 18A. Trustee Savings Bank Bill. Report by the Law Commission and the Scottish Law Commission on the Consolidation of the Trustee Savings Banks Acts 1954 to 1968 (Cmnd. 4004).

- Law Com. No. 19. Proceedings against Estates (Cmnd. 4010).
- Law Com. No. 20. Administrative Law (Cmnd. 4059).
- Law Com. No. 21. Interpretation of Statutes. Report by the Law Commission and the Scottish Law Commission: Scot. Law Com. No. 11.
- Law Com. No. 22. Statute Law Revision: First Report (Cmnd. 4052).
- Law Com. No. 23. Proposal for the Abolition of the Matrimonial Remedy of Restitution of Conjugal Rights.
- Law Com. No. 24. Exemption Clauses in Contracts. First Report: Amendments to the Sale of Goods Act 1893. Report by the Law Commission and the Scottish Law Commission: Scot. Law Com. No. 12.
- Law Com. No. 25. Family Law. Report on Financial Provision in Matrimonial Proceedings.
- Law Com. No. 26. Breach of Promise of Marriage.
- Law Com. No. 27. Fourth Annual Report 1968-69.
- Law Com. No. 28. Statute Law Revision: Second Report. Draft Wild Creatures and Forest Laws Bill (Cmnd. 4433).
- Law Com. No. 29. Criminal Law: Report on Offences of Damage to Property.
- Law Com. No. 30. Powers of Attorney (Cmnd. 4473).
- Law Com. No. 31. Administration Bonds, Personal Representatives' Rights of Retainer and Preference and Related Matters (Cmnd. 4497).
- Law Com. No. 32. Civil Liability for Dangerous Things and Activities.
- Law Com. No. 33. Nullity of Marriage.
- Law Com. No. 34. Hague Convention on Recognition of Divorces and Legal Separations. Report by the Law Commission and the Scottish Law Commission: Scot. Law Com. No. 16 (Cmnd. 4542).
- Law Com. No. 35. Limitation Act 1963 (Cmnd. 4532).
- Law Com. No. 36. Fifth Annual Report 1969-70.

APPENDIX 2

IMPLEMENTATION OF THE LAW COMMISSION'S PROPOSALS

<i>Titles of relevant Reports</i>	<i>Date of Publication</i>	<i>Whether implemented</i>
Proposals to abolish certain ancient criminal offences (Law Com. No. 3)	22.6.66	Criminal Law Act 1967
Proposals for reform of the law relating to maintenance and champerty (Law Com. No. 7)	22.11.66	Criminal Law Act 1967
Report on the powers of appeal courts to sit in private and the restrictions upon publicity in domestic proceedings (Law Com. No. 8: Cmnd. 3149)	23.11.66	Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968
Transfer of Land: Interim report on root of title to freehold land (Law Com. No. 9)	14.2.67	Law of Property Act 1969
Imputed criminal intent (<i>Director of Public Prosecutions v. Smith</i>), (Law Com. No. 10)	28.2.67	In part by section 8 of the Criminal Justice Act 1967
Transfer of Land: Report on restrictive covenants (Law Com. No. 11)	22.3.67	In part by Law of Property Act 1969
Civil Liability for animals (Law Com. No. 13)	21.12.67	No ¹
Blood tests and the proof of paternity in civil proceedings (Law Com. No. 16)	31.10.68	Family Law Reform Act 1969
Landlord and Tenant: Report on the Landlord and Tenant Act 1954, Part II (Law Com. No. 17)	22.1.69	Law of Property Act 1969
Transfer of Land: Report on land charges affecting unregistered land (Law Com. No. 18)	20.3.69	Law of Property Act 1969
Proceedings against estates (Law Com. No. 19)	2.5.69	Proceedings against Estates Act 1970
Interpretation of Statutes (Joint Report with Scottish Law Commission) (Law Com. No. 21)	11.6.69	No
Statute Law Revision: First Report (Law Com. No. 22)	8.7.69	Statute Law (Repeals) Act 1969
Proposal for the abolition of the matrimonial remedy of restitution of conjugal rights (Law Com. No. 23)	26.8.69	Matrimonial Proceedings and Property Act 1970
Exemption clauses in contracts. First Report: amendments to the Sale of Goods Act 1893 (Joint Report with Scottish Law Commission) (Law Com. No. 24)	18.9.69	No
Financial provision in matrimonial proceedings (Law Com. No. 25)	23.9.69	Matrimonial Proceedings and Property Act 1970: Law Reform (Miscellaneous Provisions) Act 1970

¹ Last session's Animals Bill lapsed at the Dissolution. A new Animals Bill was introduced in July.

<i>Titles of relevant Reports</i>	<i>Date of Publication</i>	<i>Whether implemented</i>
Breach of promise of marriage (Law Com. No. 26)	15.10.69	Law Reform (Miscellaneous Provisions) Act 1970
Statute Law Revision: Second Report. Draft Wild Creatures and Forest Laws Bill (Law Com. No. 28)	4.8.70	No
Criminal Law: Offences of damage to property (Law Com. No. 29)	16.9.70	No
Powers of attorney (Law-Com. No. 30)	23.9.70	No
Administration bonds, personal representatives' rights of retainer and preference and related matters (Law Com. No. 31)	15.10.70	No
Nullity of Marriage (Law Com. No. 33)	4.12.70	No
Hague Convention on Recognition of Divorces and Legal Separations (Joint Report with Scottish Law Commission) (Law Com. No. 34)	1.12.70	No
Limitation Act 1963 (Law Com. No. 35)	25.11.70	No

(4) Consultative Group on Tax Legislation (see paragraph 70)

Chairman:	Professor J. M. Halliday (Scottish Law Commission)
	Mr. H. M. Begg (Institute of Chartered Accountants, Scotland)
	Mr. E. I. Goulding, Q.C.
	Mr. J. P. Lawton (Law Society)
	Mr. D. S. Morpeth (Institute of Chartered Accountants, England and Wales)
	Mr. D. A. Smith (Board of Inland Revenue)
Secretary:	Mr. B. M. F. O'Brien (Law Commission)
Assistant Secretary:	Mr. H. D. Brown (Law Commission)

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