

The Law Commission

(LAW COM. No. 113)

SIXTEENTH ANNUAL REPORT 1980-1981

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pursuant to section 3(3) of the Law Commissioners 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 Ralph Gibson, *Chairman*.

Mr. Stephen M. Cretney.

Mr. Brian Davenport, Q.C.

Mr. Stephen Edell.

Dr. Peter North.

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**THE LAW COMMISSION
SIXTEENTH ANNUAL REPORT: 1980-1981**

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THE LAW COMMISSION

SIXTEENTH ANNUAL REPORT: 1980-1981

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

We have the honour to present our Sixteenth Annual Report pursuant to section 3(3) of the Law Commissions Act 1965. It deals with the period from 14 November 1980 to 30 October 1981, when the 1980-1981 Session of Parliament ended, but for convenience we mention some developments since then.

PART I

THE PAST YEAR IN OUTLINE

Reports

1.1. Since our last annual report¹ we have submitted to you four reports dealing with substantive law reform, and one report² in connection with a consolidation Bill, which became the Trustee Savings Bank Act 1981. The law reform reports were as follows:

- (i) *Breach of Confidence*: Our report³ on this subject proposes replacement of the common law by statutory provisions set out in a draft Bill. Our recommendations include the creation of a new tort of breach of confidence, in which public interest in publication of information will be of wider relevance than it is under the existing law; and in which, with reference to information improperly obtained (for example, by use of an electronic "bug"), liability would be imposed on a person who uses or discloses information which he has acquired improperly. Furthermore, liability would be imposed on any person who uses or discloses information knowing that it has been obtained in breach of confidence or by improper means.
- (ii) *The Financial Consequences of Divorce*: In this short report⁴ we describe the response from the public and from professional and academic experts to our discussion paper⁵ published in 1980. The report was brought out quickly, and without a draft Bill, because of public concern over this issue, and general interest in the topic which was increased by publication of the Scottish Law Commission's report on *Family Law: Aliment and Financial Provision*.⁶ Our recommendations include amendments to section 25 of the Matrimonial Causes Act 1973 which would result in greater emphasis being placed upon the needs of children as an overriding priority, and

¹*Fifteenth Annual Report 1979-1980* Law Com. No. 107.

²(1981) Law Com. No. 108; Scot. Law Com. No. 65.

³(1981) Law Com. No. 110. See paras. 2.2-2.10 below.

⁴(1981) Law Com. No. 112. See para. 2.36 below.

⁵*Family Law: The Financial Consequences of Divorce: The Basic Policy. A Discussion Paper* (1980) Law Com. No. 103.

⁶(1981) Scot. Law Com. No. 67.

upon achieving, where fairly possible, self-sufficiency by divorced spouses.

- (iii) *Council of Europe Conventions on Foreign Money Liabilities (1967) and on the Place of Payment of Money Liabilities (1972)*: This report⁷ was made jointly with the Scottish Law Commission. Our joint recommendation is that the United Kingdom should not become a party to either convention.
- (iv) *Property Law: Rights of Reverter*: This report⁸ deals with statutory rights of reverter to land, in particular under the School Sites Act 1841, where the use for which the land was originally granted has come to an end. The report was prepared for the Law Commission by a working party and proposes reforms which would facilitate sales by trustees of land affected by such rights.

Working Papers

1.2. During the last year we published three working papers for comment and criticism:

- (i) *Rights of Access to Neighbouring Land*: This paper⁹ considers the legal difficulties of those who, lacking a legal right to do so, need to enter upon another's land in order to inspect or to do work upon their own land or buildings. The provisional conclusion is that landowners should have some general but limited means of obtaining access. A detailed scheme is set out as a basis for discussion.
- (ii) *Offences Against Religion and Public Worship*: The provisional proposals in this paper¹⁰ include abolition of the common law offence of blasphemy and other related offences and the creation of a new statutory offence of threatening, abusive or insulting behaviour in places of worship or in cemeteries.
- (iii) *Private International Law: Foreign Money Liabilities*: The work to produce this paper¹¹ was done against a background of continuous judicial development following the *Miliangos* decision of the House of Lords in 1975.¹² The provisional conclusion reached is that legislation in this field of law is undesirable but that some procedural matters would be improved or clarified by practice directions or rules of court.

The Report of the Royal Commission on Legal Services: Civil Procedure

1.3. In our last annual report¹³ we referred to two important suggestions made in the Benson Report¹⁴ which fell outside the terms of reference of that

⁷(1981) Law Com. No. 109. See para. 2.71 below.

⁸(1981) Law Com. No. 111. See para. 2.61–2.62 below.

⁹(1980) Working Paper No. 78. See para. 2.55 below.

¹⁰(1981) Working Paper No. 79. See para. 2.26 below.

¹¹(1981) Working Paper No. 80. See para. 2.72 below.

¹²*Miliangos v. George Frank (Textiles) Ltd.* [1976] A.C. 443.

¹³Para. 1.3.

¹⁴*The Royal Commission on Legal Services: Final Report* (1979) Cmnd. 7648.

Royal Commission but which were of direct relevance to our statutory functions. The first suggestion was that civil procedure should be kept under continuous review and that the Law Commission (suitably expanded) might perform this duty. Our comment on that suggestion was as follows:

“We are conscious of the fact that we have only been able to deal with questions of procedure to the extent that they were incidental to our work on the substantive law and we welcome the Royal Commission’s suggestion in principle. A review of civil procedure is indeed overdue. However, there appears to be no early prospect of the Law Commission being expanded and we cannot realistically envisage the possibility of our undertaking this task ourselves. If a review of civil procedure were included in a programme of law reform, it would fall to us to make a recommendation as to the agency by which that branch of the law should be examined; but it does not seem to us that there is any other official body now in existence which is in a position to undertake this far-reaching assignment. The task obviously calls for the setting up of a new body designed for the purpose. We would be very willing to take part in any discussions relating to the composition of such a body and its terms of reference. However, civil procedure is potentially a subject of almost limitless scope and it would first be necessary for considerable preliminary work to be carried out in order to form a clear view about the nature and scale of the reforms which might be aimed at.”

1.4. Over the last year there has been considerable public interest in and comment upon the working of civil procedure and upon what are seen by many as the side effects of the present rules and their working, namely delay and expense. Some criticism has been intemperate and ill-informed but much has been fair, moderate and accurate. We are aware that work has been done by various professional and academic bodies towards defining the nature and scale of the reforms which should be aimed at and as to the sort of body which might be given the task of considering the proposed reforms.

1.5. It seems to us that there are two aspects of the work which needs to be done by any new body which is to take civil procedure under review, and to keep it, as the Royal Commission suggested, under continuous review. The first is a general re-appraisal of our whole system of civil procedure, of the various assumptions upon which it rests and of the rules under which it operates. That task must take any committee a long time and require extensive consultation and study of comparable systems. A second, and much more urgent, aspect of the work is the identification of those parts of the present system which are causing avoidable delay and unnecessary expense, and the making, with the help of consultation with both lawyers and other users of law, of proposals for immediate improvements, and even for radical experiments, aimed at the removal of waste in time and money. For this purpose valuable help might be obtained from those skilled in the analysis of working methods and administration in commerce so that any such review body could obtain more information on the way in which our entire procedural system actually works, and why it works as it does. We express the hope that it will be found possible to set up a new body to carry out this work.

Codification of the Criminal Law

1.6. As we noted in our last annual report,¹⁵ our limited resources have prevented us making as much progress as we would have wished on the general principles of liability in the criminal law. Consequently we greatly welcomed the initiative of the Criminal Law Group of the Society of Public Teachers of Law in proposing that a team of its members should consider and make proposals to us in relation to a criminal code. The Commission has invited Professor J. C. Smith, QC to chair the project and in consultation with us he has chosen as the other members of his team Professor Edward Griew (University of Leicester), Mr Peter Glazebrook (Jesus College, Cambridge) and Mr. Ian Dennis (University College, London). The establishment of this team was announced in March 1981. The breadth of the project may be gauged from the team's terms of reference which we quote in full:

- “(1) to consider and make proposals in relation to—
(a) the aims and objects of a criminal code for England and Wales;
(b) its nature and scope;
(c) its contents, structure, layout and the interrelation of its parts;
(d) the method and style of its drafting;
and
(2) to formulate, in a manner appropriate to such a code—
(a) the general principles which should govern liability under it;
(b) a standard terminology to be used in it;
(c) the rules which should govern its interpretation.”

1.7. Work on the project is expected to last several years. In due course we intend to publish the results in order to produce the basis for an informed debate on the structure and contents of a code and to renew public consciousness of the need for one. A modern and comprehensive statement of the principles which should govern criminal liability, in code form and with a consistent terminology, will also provide Parliament and the public with the necessary framework within which codification of the principal criminal offences can be considered.

1.8. We take this opportunity to report the progress that has been made generally towards the codification of criminal law. The Law Commission has been working towards codification not by trying initially to produce a single code of the entire corpus of criminal law but by a step-by-step advance. Our principle has been that as a first step all common law and antique statutory criminal offences should either be restated in modern statutes, with or without alterations, or be expressly abolished by statute. This work has been carried out partly by the Law Commission, partly by the Criminal Law Revision Committee and partly by the Home Office. Apart from theft,¹⁶ conspiracy¹⁷ and criminal damage,¹⁸ areas of the criminal law which have been recently moder-

¹⁵Para. 1.4.

¹⁶Theft Act 1968.

¹⁷Criminal Law Act 1977.

¹⁸Criminal Damage Act 1971.

nised include criminal attempts,¹⁹ forgery and counterfeiting²⁰ and offences of entering and remaining on property.²¹

1.9. The Law Commission is now working on the following offences: treason, sedition and allied offences; offences against religion and public worship; criminal libel; offences against public order; and conspiracy to defraud. Our report on *Offences relating to Interference with the Course of Justice*,²² to which a draft Bill was appended, remains unimplemented. The Criminal Law Revision Committee²³ have produced a report on offences against the person and a working paper on sexual offences. They are currently working on the law relating to prostitution. The common law offences which still remain to be worked on are public nuisance and some miscellaneous offences such as interfering with the burial of a dead body.

1.10. Before the Society of Public Teachers of Law project was started, certain work had been done on topics which would fall within the general part of a criminal code. For example, the Law Commission had reported on the mental element in crime²⁴ and on defences of general application.²⁵ The Butler Committee had reported²⁶ on mentally abnormal offenders. The results of this earlier work are being taken into account in the project.

1.11. If the work towards codification continues at its present pace and implementation is carried out with the normal and necessary lapse of time between report and enactment, it might be expected that in five to seven years' time virtually all indictable criminal offences which are not of a specialised nature would have been restated in modern statutory form. Our criminal law team, accordingly, have started to give some thought to what should happen then. It is already apparent that several problems will have to be faced if, following the precedent of criminal codes elsewhere, there is to be one great Criminal Law Act setting out all the indictable offences to be found in statutes concerned primarily with the creation of serious crimes as well as the general principles of criminal liability. One problem will be that of harmonising the existing criminal offences with the general principles of criminal liability. Another problem will be that of harmonising material drawn from many statutes drafted over a period of years. A third problem is whether specialised categories of offence, such as firearms offences, dangerous drugs offences and road traffic offences, should be included: it is arguable that it would be more convenient if these offences, or some of them, were located within the framework of the statute on the topic. These and other problems will call for detailed research and consultation. However, we believe that the end of our work on the restatement and modernisation of common law and antique statutory offences is in sight. It is for that reason that we have started to plan for what should happen when we reach that end.

¹⁹Criminal Attempts Act 1981.

²⁰Forgery and Counterfeiting Act 1981.

²¹Criminal Law Act 1977.

²²(1979) Law Com. No. 96.

²³See paras. 2.33–2.34 below.

²⁴*Criminal Law: Report on the Mental Element in Crime* (1978) Law Com. No. 89.

²⁵*Criminal Law: Report on Defences of General Application* (1977) Law Com. No. 83.

²⁶Report of the Committee on Mentally Abnormal Offenders (1975) Cmnd. 6244.

The Consideration and Implementation of Law Reform Recommendations

1.12. There are a number of separate aspects of the difficulties which stand in the way of implementation of law reform proposals. We have in the past made reference to them in our annual reports. In our last report²⁷ we referred to the difficulty of securing the necessary consideration of proposals, many of which deal with areas of law in which the consequences of change may be complicated and uncertain, by officials in government departments who are burdened with other important work. We referred also to the difficulty of securing parliamentary time for reform measures which have been considered and found acceptable to the Government. These and other matters were discussed at the Sunningdale Seminar on Law Reform²⁸ held in October 1980 and much was learned from this discussion.

1.13. So far as concerns consideration of our proposals by departments, a useful method of work, which was given emphasis at the Seminar, is that of informal discussion and consultation with government departments interested in any particular proposals. By such means those who are working on proposals for law reform may learn of the practical difficulties with which the departments have to deal, and may then consider how far allowance can be made for those difficulties in the formulation of proposals. We mention in more detail later in this report²⁹ some of the meetings which we have had with government departments in the past year and we are grateful for the help given to us.

1.14. For the rest, it is an obvious part of our task, which we happily recognise, to work within the confines which are the necessary consequences of parliamentary democracy. We wish, however, to mention here one aspect of the consideration of, and response to, law reform proposals which we consider merits further thought. We refer to the finding of some suitable and flexible system for causing the Government, when it can, to state in principle and within a reasonable time its general view of the acceptability and/or financial practicability of at least major proposals made by the Law Commission or other official bodies. If the making of such a statement could be done in Parliament in circumstances in which opportunity could be given for expression of views, either against or in support of the proposals, then information of great value would be made available for all concerned. If support existed, it would be revealed. Further, the statement of grounds of opposition or rejection would greatly assist those who prepare such proposals to know what further work they should do with reference to the particular proposals or in the same field of law.

Empirical Research

1.15. We have in previous annual reports³⁰ referred to the desirability of making greater use of the social sciences both in determining law reform priorities and in the preparation of proposals. The importance of this matter

²⁷Paras. 1.6 and 1.7.

²⁸The Seminar, which was organised by the Civil Service College, is described in our last annual report, para. 1.7 and Appendix 2.

²⁹See paras. 2.14, 2.18, 2.20, 2.66 below.

³⁰See e.g. *Eleventh Annual Report 1975-1976*, Law Com. No. 78, para. 6.

has been reiterated by Lord McGregor both in his 1979 Hamlyn lectures³¹ and in his address at the Sunningdale Seminar on Law Reform in 1980.

1.16. The extent to which we are able to commission empirical research has been limited. Nevertheless it is a matter to which we continue to attach importance and in the year under review we have been able to take advantage of the willingness of Mrs. S. Maidment of Keele University and Mrs. P. A. Garlick (in co-operation with Professor P. M. Bromley) of Manchester University to undertake research for us into the use made of judicial separation proceedings.³² These projects, which seek to explain the reasons for the increased use of such proceedings, are now complete. They will not only be of great assistance to us in preparing a report,³³ but will be of wider interest to your Department and the Home Office (to whom we will send copies) as the studies examine the availability of other matrimonial reliefs, for example in the magistrates' courts, and the use of legal aid. The research includes detailed examination of the records of the local courts from which have been extracted considerable data on judicial separation petitions. The researchers also interviewed a large number of local practitioners in an attempt to ascertain their opinions and reasons for advising clients to petition for judicial separation. The studies are restricted to their respective areas of Stafford and Stoke-on-Trent and Manchester but both include a comparison of local and national statistics. The analysis of these figures provides a great deal of useful information in graph or tabular form.

1.17. Briefly, it can be seen from these studies that the vast majority of petitioners for judicial separation are women and that they start proceedings as a short-term measure pending divorce rather than as an end in itself. In the light of this Mrs. Maidment suggests a new procedure whereby a judicial separation decree should be automatically convertible into divorce. Her main conclusion is, however, that the remedy of judicial separation is now used predominantly by women within their first three years of marriage; not in order to formalise the status of separation, but in order to seek the exercise of the courts' wide powers to award ancillary financial relief. Mrs. Garlick's researches noted a number of other factors which have led to the increase in judicial separation petitions, for example, the public's increased awareness of the reliefs which are available.

Consolidation of Statutes

1.18. Among the items of work of consolidation now in hand, one is of unusual size and complexity, namely consolidation of the Companies Acts. The statute law relating to companies was last consolidated in the Companies Act 1948. Since then four major Acts³⁴ have been passed which have added to the statutory law. The size of the task is indicated by the facts that the present

³¹O. R. McGregor, *Social History and Law Reform* (1981).

³²The results of Mrs. Maidment's research will, we understand, be published by the Oxford Centre for Socio-Legal Studies early in 1982.

³³See para. 2.47 below.

³⁴Companies Act 1967; Companies Act 1976; Companies Act 1980; Companies Act 1981.

statutory provisions extend in all to 781 sections and 34 schedules on 929 pages of print. The work is bound to take several years to complete.³⁵

1.19. We reported last year³⁶ upon the unfortunate loss of an opportunity to consolidate the legislation on civil aviation and drew attention to the importance of prior enactment of necessary but uncontroversial amendments in order to enable consolidation Bills, incorporating such amendments, to proceed through Parliament under the special procedure of the Joint Committee. As we report below,³⁷ progress of the consolidating measure, the Civil Aviation Bill, should now be secured since the necessary pre-consolidation amendments are to be made by the Civil Aviation (Amendment) Bill which is before Parliament. We hope that increased facilities will be made available for the inclusion of uncontroversial preconsolidation amendments in programme Bills.

1.20. We welcome also the devising of another method for the effecting of necessary and uncontroversial amendments to consolidation measures, namely by amendment of the consolidation Bill itself on the floor in the Lords or Commons.³⁸ It is to be hoped that this method will be found to be useful and effective in practice.

1.21. During the 1979–1980 Session of Parliament a Bill to consolidate the statutory provisions relating to the chronically sick and disabled failed to be enacted because of opposition to the consolidation of any of the provisions of the Chronically Sick and Disabled Persons Act 1970. Objection was taken before the Joint Committee on behalf of organisations for the sick and disabled. No statutory provision in favour of the sick and disabled was to be lost or altered but objection was taken to any interference with the original Act of 1970. We gave an account of this matter in our last annual report.³⁹

1.22. This incident has made us consider what part the process of consultation should play in our work of consolidation. The process of consolidation (but not the selection of topics) had been regarded by us as a wholly technical task for the skilled draftsman. His aim is to reduce into one Act all the provisions which affect a particular subject matter and which, after the passage of years, may be scattered among a large number of amended statutes. That remains our view. Consultation can clearly play no part in the technical work of reducing, without alteration, the statutory provisions relating to a particular matter into one statute. It is, however, relevant to the process of selecting topics for consolidation and in determining the boundaries of them. It does not seem likely to us that there would be any large response in most cases if we set out to invite comments on our proposed work on consolidation. In the rare cases of very large consolidations, such as company or revenue statutes, consultation may be appropriate with reference to the intended form and structure of the consolidation Bill or Bills: such action has in fact been taken with reference to

³⁵See para. 2.85 below.

³⁶Paras. 1.10 and 2.47.

³⁷Para. 2.79 below.

³⁸See para. 2.79 below.

³⁹Para. 2.47. See also para. 2.80 below.

the Companies Acts.⁴⁰ We hope that by making reference to the matter here sufficient notice will be given of the fact that we will be glad to consider any comments or proposals which those interested in any particular consolidation may wish to send to us, and that to any inquiry we will provide information as to the extent of the consolidation and the statutes included within it. We also wish it to be known that we will be grateful to receive suggestions for consolidation projects.

Commissioners

1.23. The sudden and tragic death on 4 May 1981 of Mr. W. A. B. Forbes, QC, was a severe blow to the Commission. He had been a Law Commissioner since October 1977 and had carried a heavy burden of work both here in the field of criminal law and as a member of the Royal Commission on Criminal Procedure from February 1978, when the Royal Commission was appointed, until their report in November 1980. He was a distinguished lawyer; an immensely hardworking and respected colleague; and the trusted friend of those with whom he worked.

1.24. Mr. Brian Davenport, QC, was appointed a Law Commissioner from 14 September 1981.

1.25. On 1 October 1981 Sir Michael Kerr, who has been Chairman of the Law Commission since May 1978, took up his appointment as a Lord Justice of Appeal. Sir Michael Kerr's time as Chairman was notable in many ways. He brought to the task wide knowledge of commercial and international law. He enjoyed the gift, rare in an English judge, of being fluent in both French and German. The product of his time here can be seen from the list of reports and working papers which the Law Commission published under his chairmanship; and he contributed much to reports prepared before but published after he went to the Court of Appeal. In addition, he was Chairman of your Working Party on Foreign Judgments, and he represented the Law Commission with great distinction at many meetings overseas of lawyers and law reformers. He acquired a mastery of the technical problems and procedures of law reform, expressed in a number of well-known lectures and articles, notably "Law Reform in Changing Times".⁴¹ The Law Commission is indebted to him for his energetic and distinguished leadership.

1.26. On 1 October 1981 Mr. Justice Ralph Gibson, a judge of the Queen's Bench Division, succeeded Sir Michael Kerr as Chairman.

Secretary

1.27. Mr. B. M. F. O'Brien, who had been Secretary since July 1980 and a member of the Law Commission staff since 1970, left us in April 1981 on his appointment as a Special Commissioner of Income Tax. We are greatly indebted to Mr. O'Brien for his sterling work as Secretary, as Chairman of the

⁴⁰See para. 2.85 below.

⁴¹(1980) 96 L.Q.R. 515.

Working Party on Rights of Reverter⁴² and as the Assistant Solicitor successively in charge of our work on property law and family law. Mr. R. H. Streeten, the Assistant Solicitor in charge of our statute law revision work, is acting as Secretary.

⁴²See para. 2.61 below.

PART II

LAW REFORM PROJECTS—REPORT ON PROGRESS

CONTRACT AND TORT

General

2.1. The most significant activity this year has been the completion of our report and draft Bill on breach of confidence to which we refer below. In the field of contract law, we have made progress with three topics: minors' contracts; pecuniary restitution on breach of contract;¹ and the law relating to the supply of goods. We have been unable to make any further progress with the preparation of reports on the parol evidence rule,² or on penalty clauses and forfeiture of moneys paid,³ nor have we done any further work on consideration or misrepresentation. Professor G. H. Treitel (Vinerian Professor of English Law, Oxford University) and Mr. F. M. B. Reynolds (Fellow of Worcester College, Oxford) are continuing to assist us as consultants on certain outstanding topics in the law of contract.

Breach of Confidence

2.2. Our report on *Breach of Confidence*, with a draft Bill appended to give effect to our recommendations, was submitted to you on 30 July 1981. It was published on 29 October 1981.⁴

2.3. The report contains comprehensive recommendations for the replacement of the common law relating to the law of confidence with a statute in the terms of the draft Bill annexed to the report. At present there exists a substantial body of law, developed by the courts, for the protection of information received under an obligation of confidence. Much of this law concerns trade secrets, such as inventions and secret processes, but it extends also to information of a wholly personal character. As our report explains, the scope and content of the present law is unclear and the law is inadequate in several respects. For example, the present law relates only to information entrusted by one person to another and subsequently used or disclosed in breach of that trust: it does not cover information improperly taken from another, an aspect of the law of confidence which we were specifically required to consider by the second limb of our terms of reference.⁵ Furthermore, the present remedies are inadequate and lack the necessary measure of flexibility for the purpose of doing justice between the parties in a great variety of

¹The subject of Working Paper No. 65 (1975).

²The subject of Working Paper No. 70 (1976).

³The subject of Working Paper No. 61 (1975).

⁴(1981) Law Com. No. 110.

⁵Our terms of reference were "(a) to consider the law of England and Wales relating to the disclosure, or use of information in breach of confidence and to advise what statutory provisions, if any, are required to clarify or improve it; and (b) to consider and advise what remedies, if any, should be provided in the law of England and Wales for persons who have suffered loss or damage in consequence of the disclosure or use of information unlawfully obtained and in what circumstances such remedies should be available."

situations. The draft Bill accompanying the report is intended to provide a complete code of civil liability for the misuse of information which has been acquired in confidence or obtained improperly.

2.4. In our report we recommend the creation of a new tort of breach of confidence, specifying in general terms the types of situation in which an obligation of confidence should arise. The primary case is where the obligation is undertaken voluntarily, either expressly or by inference from the nature of the relationship (for instance, doctor and patient) which exists between the parties. We also recommend that an obligation of confidence should arise in connection with certain aspects of legal proceedings, such as evidence given to a court which has decided to sit *in camera*. In regard to information improperly obtained, we recommend that an obligation of confidence should arise where information is obtained by one of a carefully defined list of means which can reasonably be regarded as improper even if they do not involve the commission of a criminal offence or a civil wrong: the list includes, for example, not only the acquisition of information by means of violence or deception but also, in certain circumstances, acquisition by the use of a surreptitious surveillance device such as an electronic "bug". Liability under our proposals would be imposed also on any third party who uses or discloses information, knowing that it has been obtained in breach of confidence or by improper means.

2.5. One issue that caused us considerable concern was that of the position of the police and security authorities in relation to the use or disclosure of information improperly obtained. For the reasons which we explain in the report we recommend that a member of the police or of the security services should in this respect be in the same position as a member of the public, except where the information has been acquired by him in the course of the lawful exercise of his official functions; and that even in that case the information he has acquired may be used only for those purposes or for related legal proceedings.

2.6. There would be no liability under our proposals for the use or disclosure of information which is in the public domain. Once information becomes generally available the obligation of confidence would come to an end. However, this principle would not affect the liability of a party who in breach of confidence himself places the information in the public domain.

2.7. A central feature of the new tort would be the part to be played by considerations of the public interest. We have been very conscious that in a free society there is a difficult balance to be struck, having regard to the need to preserve confidences and also to the need to ensure that true information is not suppressed if it is in the public interest for it to be disclosed. The effect of our recommendations would be to widen the circumstances in which the use or disclosure of information in breach of confidence is justified: under the present law it is permitted only if the information relates to "iniquity" (fraud, crime or other misconduct), a limitation confirmed by the House of Lords last year in *British Steel Corporation v. Granada Television*.⁶

⁶[1980] 3 W.L.R. 774.

2.8. The range of remedies which we recommend includes a new power for the court to make adjustment orders: this power would, for instance, enable the court to grant relief to a third party who has incurred expenditure in preparation for the development of an industrial process without knowing that the information he has used was subject to an obligation of confidence. We also recommend that the court should have power to award damages for distress in appropriate cases.

2.9. We would emphasise that our solutions have necessarily been formulated in broad terms in order to provide a framework of law within which detailed solutions can be worked out by the courts. We would also stress that our recommendations are confined to those which are necessary to clarify and improve the law of confidence, which is quite distinct from the much broader fields of privacy and unjust enrichment.

2.10. We would like to acknowledge our very real indebtedness to Mr. Norman S. Marsh, CBE, QC, a former Law Commissioner, who has since his retirement in 1978 acted as a consultant in our work on breach of confidence. He has played a major role in the preparation of our report and we are most grateful for his assistance and expertise.

Minors' Contracts

2.11. We have made considerable progress with the preparation of a working paper on minors' contracts. Decisions on the main policy issues were taken earlier in the year and the Commission has now considered a full draft working paper. It is expected that the working paper will be published early in 1982. It will contain detailed proposals for reform of the present law of minors' contracts. These involve the repeal of the Infants Relief Act 1874 whilst maintaining the policies of the present law of protecting the minor against inexperience and immaturity, avoiding unnecessary prejudice to adults who deal with minors and ensuring that adults are not deterred from entering into certain types of contract with minors. The working paper will also put forward for consideration the more radical alternative of lowering the age of contractual capacity to 16.

Pecuniary Restitution on Breach of Contract

2.12. We have been able to start work on the preparation of a report on this topic and we have made some progress. We have analysed and considered the consultation which we received in response to our working paper⁷ and we have considered many of the questions of policy which face us. In our working paper we dealt with three separate problems: the problem where, in the present state of the law, a party who partially performs an "entire contract" is not entitled to any payment under the contract for benefit conferred because he has failed to perform the contract completely; the problem that arises because of the legal position that, where a party to a contract has received the contract price but

⁷(1975) Working Paper No. 65.

has only partially performed his obligation, the other party may not rely on that failure to perform the contract completely as a ground for recovering the money paid, nor a proportion of it; and the problem that arises because a seller who, in breach of contract, sells and delivers goods which he has no right to sell, is liable to return the full price to the buyer even where the buyer has benefited from having had the use of the goods. We have made substantial progress towards solutions concerning the first problem and we are in the process of finalising our policy in regard to the third problem. The proposals in our working paper on the second problem were the subject of substantial criticism on consultation and this is a factor to which we shall have to give careful consideration in determining whether to make any recommendations concerning this problem. We hope to be able to report on pecuniary restitution on breach of contract in the early part of 1982.

Supply of Goods

2.13. In our *Fourteenth Annual Report 1978-1979*⁸ we pointed out that our other commitments in the contract field were such that it would be some time before detailed work on the reference on supply of goods could begin. Essential background work has been continuing throughout but this year we have been able to start the detailed work. It is becoming clear that many other common law jurisdictions have experienced similar problems in this field to those experienced in the United Kingdom and much recent work has been done on this subject (for example, in Ontario and the Republic of Ireland). It is also becoming clear that a considerable variety of solutions have been adopted to meet these problems and that there is a wide field of choice available.

Supply of Services

2.14. In October 1981 the National Consumer Council published a report⁹ which catalogues consumer dissatisfaction with the provision of a wide range of services. It concludes with two main legislative proposals, both of which concern us, though in different ways. The first is that there should, without delay, be statutory codification of the common law implied terms as to quality, timing and cost of services and that the implied term as to quality should be mandatory in contracts with consumers. It was suggested in the report that the most appropriate legislative vehicle for this might be the draft Bill appended to our report on *Implied Terms in Contracts for the Supply of Goods*.¹⁰ The second proposal made by the National Consumer Council was that there should be a longer term comprehensive review of the law relating to the provision of services and that this should be undertaken by ourselves and the Scottish Law

⁸Law Com. No. 97, para. 2.3.

⁹*Service Please: Services and the Law. A Consumer View* (1981).

¹⁰(1979) Law Com. No. 95. A private member's Bill to implement that report (see para. 2.20 below), includes clauses to implement this proposal by the National Consumer Council.

Commission. As soon as this report was published we started discussions of both proposals with officials in your Department and in the Department of Trade.

Unimplemented Reports: The Present Position

(i) *Personal Injury Litigation: Assessment of Damages*

2.15. We are pleased to note that the Government intends¹¹ to implement some of the recommendations relating to assessment of damages made by the Pearson Commission, which reported in 1978.¹² Many of these recommendations are broadly similar to recommendations made in 1973 in our report on *Personal Injury Litigation—Assessment of Damages*.¹³ One of the effects of implementation of these recommendations will be the reversal of the decision of the House of Lords in *Gammell v. Wilson*.¹⁴ As a result, a claim for pecuniary loss in respect of the “lost years” will no longer survive for the benefit of the deceased’s estate.

(ii) *Trespassers: Civil Liability of Occupiers*

2.16. We reported in 1976 on *Liability for Damage or Injury to Trespassers and Related Questions of Occupiers’ Liability*.¹⁵ The main recommendation in that report was that new statutory provisions should be introduced regulating the duty owed by an occupier to trespassers and other “uninvited entrants” and that the duty should be one to take such care as is reasonable in all the circumstances of the case to see that the uninvited entrant does not suffer personal injury or death by reason of a danger due to the state of the occupier’s premises. A private member’s Bill was introduced in autumn 1976 to implement our recommendations but it failed to get a second reading in the House of Commons.¹⁶ No further legislative steps to implement this report have been taken.

(iii) *Liability for Defective Products*

2.17. We have been informed by the Department of Trade that negotiations with other Member States on the draft E.E.C. Directive relating to liability for defective products are proceeding but that these negotiations are likely to take some time. It appears that the decision whether to introduce domestic legislation will be deferred until the outcome of the negotiations on the draft Directive is known. We understand that the question of implementing our report on *Liability for Defective Products*,¹⁷ made jointly with the Scottish Law Commission in 1977, will also depend on the outcome of those negotiations.

¹¹Hansard (H.C.) 16 February 1981, Vol. 999, Written Answers, col. 1.

¹²Report of the Royal Commission on Civil Liability and Compensation for Personal Injury (1978) Cmnd. 7054.

¹³(1973) Law Com. No. 56.

¹⁴[1981] 2 W.L.R. 248.

¹⁵(1976) Law Com. No. 75.

¹⁶See our *Twelfth Annual Report 1976–1977*, Law Com. No. 85, para. 48.

¹⁷(1977) Law Com. No. 82; Scot. Law Com. No. 45.

(iv) *Interest*

2.18. Although we are naturally disappointed with the decision not to implement the main recommendation in our report on *Interest*,¹⁸ we appreciated the fact that the Parliamentary Under Secretary at the Department of Trade came to explain to us the reasons for this decision. We were told that the Department had embarked on further consultation, including wide consultation with industrial interests, and that there had appeared to them to be no body of general support for our main recommendation.

2.19. However, we welcome the decision of the Government¹⁹ to introduce legislation to implement our recommendation that the scope of the Law Reform (Miscellaneous Provisions) Act 1934 should be enlarged. This would enable interest to be awarded, at the court's discretion, where judgment has been obtained by default or where payment has been made without judgment. We also expressed the hope in our report on *Interest* that further consideration might be given to the proposal of the Payne Committee²⁰ that some county court judgments should carry interest. We welcome the provision in the Supreme Court Act 1981²¹ which, by addition to the County Courts Act 1959, confers a power on the Lord Chancellor to provide for county court judgments to carry interest.²²

(v) *Implied Terms in Contracts for the Supply of Goods*

2.20. We reported in 1979 on *Implied Terms in Contracts for the Supply of Goods*.²³ We recommended that there should be statutory implied terms, similar to those found in sections 12 to 15 of the Sale of Goods Act 1979, in all contracts for the supply of goods. Our proposals related primarily to contracts of hire and to barter and to the supply of materials element in contracts for work and materials. We have had discussions over the past year with officials in the Department of Trade on various aspects of our proposals and on the draft Bill appended to our report. We were pleased to see that a private member's Bill²⁴ to implement our proposals was introduced on 2 December 1981.

(vi) *Insurance Law*

2.21. After publication in 1980 of our report on *Insurance Law: Non-disclosure and Breach of Warranty*²⁵ the Department of Trade issued a consultative document giving its initial views, which included agreement on the

¹⁸(1978) Law Com. No. 88. The main recommendation was that it should be made a general rule that contract debts should carry the right to interest at a statutory rate save where the parties have agreed otherwise.

¹⁹*Hansard* (H.L.) 18 December 1980, Vol. 415, Written Answers, col. 1278.

²⁰*Report of the Committee on the Enforcement of Judgment Debts* (1969) Cmnd. 3909, para. 1170.

²¹Schedule 3, para. 11.

²²A consultation paper was published by your Department on 20 October 1981 inviting views on a proposed scheme providing that certain judgments and orders of county courts should carry interest.

²³(1979) Law Com. No. 95.

²⁴Supply of Goods and Services Bill.

²⁵(1980) Law Com. No. 104.

need for reform. We understand that the Department has since received substantial written comments from the insurance industry, consumer interests, organisations and individuals with legal experience in insurance, and trade unions. These consultations have, we understand, confirmed the wide divergence of opinion between consumers and others, who want legislative reform, and insurers, who see no call for radical or urgent changes in the present law and practice of insurance. We have been informed that further discussion will probably be needed before the Government can reach firm conclusions on our report.

CRIMINAL LAW

General

2.22. The principal developments during the past year in our work on the criminal law have been the public launching under the Commission's aegis of a new scheme for the codification of the criminal law,²⁶ the implementation and enactment of two major law reform Bills based on Law Commission reports, and the publication of a working paper on *Offences against Religion and Public Worship*.²⁷

2.23. Following the submission of our report on *Attempt, and Impossibility in relation to Attempt, Conspiracy and Incitement*²⁸ the Government introduced the Criminal Attempts Bill to give effect, with some amendments, to the recommendations of that report, and to repeal and replace the offence of loitering with intent to commit an arrestable offence ("sus") under section 4 of the Vagrancy Act 1824 by a new offence of interference with motor vehicles. The Bill was selected as the first to be subject to the new procedure whereby a Special Standing Committee of the House of Commons considers evidence from bodies with a particular interest in a Bill prior to its detailed scrutiny in committee. The written and oral evidence given on behalf of the Law Commission early in 1981 concerned certain aspects of the law relating to "impossible" attempts and conspiracies which under the Government's Bill would have differed from the recommendations made in our report. Our views, together with similar evidence from leading academic lawyers and a judge nominated by the Lord Chief Justice, found support in the Committee and led to the Government tabling amendments at the committee stage reinstating the policy recommended in our report. The Bill has now been enacted in this form.²⁹

2.24. The Forgery and Counterfeiting Act 1981, which received the Royal Assent in July 1981, implements with some modifications the recommendations of our report on *Forgery and Counterfeit Currency*.³⁰ This was a

²⁶This is discussed in paras. 1.6 and 1.7 above.

²⁷(1981) Working Paper No. 79.

²⁸(1980) Law Com. No. 102.

²⁹Criminal Attempts Act 1981.

³⁰(1973) Law Com. No. 55.

private member's Bill which received Government backing, and we were consulted by the Home Office upon it when it was introduced.

2.25. We have noted³¹ that the new Criminal Code of Belize has with appropriate modifications incorporated (in its sections 5 to 9) the greater part of the draft Criminal Liability (Mental Element) Bill appended to our report on the *Mental Element in Crime*.³² This report has not yet been implemented in England and Wales.

Offences against Religion and Public Worship

2.26. Our working paper on this subject,³³ which is concerned principally with the common law offences of blasphemy and blasphemous libel, was published in April 1981. It provisionally proposes the abolition of these offences and the creation of a new statutory offence penalising threatening, abusive or insulting behaviour in places of worship or cemeteries. It received considerable publicity and has evoked a wide range of comment which we are now assessing.

Criminal Libel

2.27. The final draft of a working paper on criminal libel is now being prepared with a view to publication early in 1982.

Common Law Offences of Public Order

2.28. A detailed study paper on common law offences of public order and certain related statutory provisions has been prepared, and we expect to publish a working paper containing provisional proposals for reform in 1982. As we noted in our last annual report,³⁴ we have consulted the Home Office with regard to the scope of our work, since they are carrying out their own review of the Public Order Act 1936.³⁵ Those consultations are continuing in the light of the Government's commitment³⁶ to a wider review of the law after the street disturbances during the summer of 1981.

Binding Over to Keep the Peace

2.29. After receiving from you a reference last year under section 3(1)(e) of the Law Commissions Act 1965 to enable us to deal comprehensively with the subject of binding over to keep the peace, we issued a press notice announcing our intention to produce a working paper on the subject. We also invited those with an interest in the subject, in particular the Magistrates' Association and the Justices' Clerks' Society, to assist us by providing some up-to-date information about the variety of situations in which the power is

³¹See *Commonwealth Law Bulletin* (1981) vol. 7, No. 3 pp. 850-851.

³²(1978) Law Com. No. 89, Appendix A.

³³(1981) Working Paper No. 79.

³⁴Para. 2.14.

³⁵See *Review of the Public Order Act 1936 and Related Legislation* (1980) Cmnd. 7891.

³⁶*Hansard* (H.C.), 16 July 1981, vol. 8. col. 1404.

currently exercised. Both these and other organisations and individuals have responded most helpfully to our request. A preliminary paper examining the options for reform has been completed and we hope to issue a working paper in the coming year.

Conspiracy to Defraud

2.30. The sudden death of Mr. W. A. B. Forbes, QC, the Commissioner closely responsible for our work on conspiracy to defraud, has prevented us from making the progress for which we hoped this year. Nevertheless, study of and production of papers on certain aspects of the subject has continued during the period, and we expect to make more substantial progress towards the production of a report in the coming year.

Treason, Sedition and Allied Offences

2.31. Work is continuing on the preparation of a report on this subject, but we do not expect this to be completed in the coming year.

Complicity and Vicarious Liability

Criminal Liability of Corporations

2.32. Neither of these subjects has in the past year raised problems suggesting the need for urgent attention. It is now some years since our working papers were published,³⁷ and although the subjects are in need of clarification and restatement with a view to codification, we do not think our resources would be best used in further substantive work on them for the purpose of producing reports. Both subjects fall naturally within the programme of work upon codification to be undertaken by the team of distinguished academic lawyers drawn from the members of the Society of Public Teachers of Law.³⁸ The character of the subject matter and the absence of pressing need for major reform to meet apparent shortcomings in the law have persuaded us that it would be preferable formally to set aside work upon reports, so leaving further examination of the subjects to be undertaken by Professor Smith's team. Our papers on the subjects are being made available to the team for their assistance.

Criminal Law Revision Committee

2.33. In our *Second Programme of Law Reform*³⁹ we recommended that the Criminal Law Revision Committee should examine sexual offences. Their *Working Paper on Sexual Offences* (apart from the laws relating to prostitution) was issued in October 1980. The Law Commission offered comments on certain aspects of the subject upon which our work has had a bearing, in particular on the common law offences of conspiracy to corrupt public morals and conspiracy to outrage public decency, the abolition of which was recom-

³⁷Working Papers Nos. 43 and 44, which were published in 1972.

³⁸See paras. 1.6 and 1.7 above.

³⁹(1968) Law Com. No. 14, Item XVIII.

mended in our report on *Conspiracy and Criminal Law Reform*.⁴⁰ The recent use of conspiracy charges in this area⁴¹ has again focussed attention upon the existence of the offences and the submission to the Criminal Law Revision Committee made suggestions for reform.

2.34. The Criminal Law Revision Committee is continuing its work on the production of a working paper on the laws relating to prostitution.

FAMILY LAW

Financial Consequences of Divorce: The Basic Policy

2.35. In order to focus public attention and debate on the fundamental issues governing the financial consequences of divorce we submitted to you in July 1980 our discussion paper, *The Financial Consequences of Divorce: The Basic Policy*,⁴² which was published in October 1980. This paper was widely discussed in the press and on radio and television and we received over 500 communications about it.

2.36. On 26 October 1981 we submitted a report on *The Financial Consequences of Divorce: The Response to the Law Commission's Discussion Paper, and Recommendations on the Policy of the Law*.⁴³ The report recommends that the provisions of section 25 of the Matrimonial Causes Act 1973 should be amended in the following respects:

- (i) To seek to place the parties in the financial position in which they would have been had the marriage not broken down should no longer be the statutory objective.
- (ii) The guidelines contained in section 25(1) of the Matrimonial Causes Act 1973 should be revised, to give greater emphasis to the following matters:
 - (a) the provision of adequate financial support for children should be an overriding priority. (Administrative steps should also be taken to ensure that the courts have adequate and reliable information about the current cost of maintaining children);
 - (b) the importance of each party doing everything possible to become self-sufficient should be formulated in terms of a positive principle; and weight should be given to the view that, in appropriate cases, periodical financial provision should be primarily concerned to secure a smooth transition from the status of marriage to the status of independence.

⁴⁰(1976) Law Com. No. 76, Part III. While many of this report's recommendations were implemented by the Criminal Law Act 1977, s. 5(3) preserved these common law offences pending further examination.

⁴¹See *R. v. O'Carroll, Parratt and Dagnall* (unrep.), Central Criminal Court, 13 March 1981, where the first defendant was convicted on one of two counts of statutory conspiracy under s. 1 of the Criminal Law Act 1977 to commit the common law offence of corrupting public morals.

⁴²(1980) Law Com. No. 103.

⁴³(1981) Law Com. No. 112. The report was published on 15 December 1981.

2.37. The report also proposes that (whether or not legislation is introduced to give effect to the policy set out above) the court should be given power in appropriate cases to dismiss a wife's claim for periodical payments without her consent.

2.38. The report draws attention to the lack of adequate information about the working of the present law, and recommends that any future legislation dealing with the financial consequences of divorce should be subject to continuous monitoring, and periodical reports to Parliament. It also suggests that the Government consider making an investigation into the overall cost of supporting those affected by divorce by means of welfare benefit payments and tax relief, so that the cost of any changes in the private law of financial obligations could properly be estimated.

2.39. The report emphasises that reform of the substantive law is, by itself, likely to have only a marginal impact on the feelings of bitterness, distress and humiliation still widespread amongst those involved in divorce. It recommends that the availability and scope of conciliation and similar services should be systematically investigated; and that everything possible be done to encourage recourse to conciliation rather than litigation. It also proposes that the procedures of the courts handling matrimonial cases should be systematically considered with a view to reform.

2.40. Finally, it suggests that fresh consideration be given to empowering the court to make orders reallocating the rights of former spouses under an occupational pension scheme.

2.41. This short report deals with general matters of policy; it does not contain a draft Bill. We thought it right, in view of the public interest aroused, not to delay publication of our general conclusions on the policy of the law, particularly in the light of the publication of the Scottish Law Commission's report on *Aliment and Financial Provision*⁴⁴ on 5 November 1981.

Orders for Sale of Property

2.42. The recommendation made in our report on *Orders for Sale of Property under the Matrimonial Causes Act 1973*,⁴⁵ that there should be an express power to order sale of property in divorce and similar proceedings, has been implemented by the Matrimonial Homes and Property Act 1981, which received Royal Assent on 2 July 1981. The relevant provisions came into force on 1 October 1981.

Illegitimacy

2.43. We hope to submit to you our report and draft Bill on this subject in the spring of 1982. As stated in our last annual report,⁴⁶ we have reconsidered

⁴⁴(1981) Scot. Law Com. No. 67.

⁴⁵(1980) Law Com. No. 99.

⁴⁶Para. 2.20.

the provisional proposal in our working paper⁴⁷ that the concepts of legitimacy and illegitimacy should be removed altogether from the law of family relations, since this raises difficult questions about the parental "rights" of the father of the child born outside marriage. We have continued to receive views on this matter well after the closing date for comments.

2.44. We have had discussions with the Home Office on the difficult subject of the citizenship of the child born outside marriage. We can make proposals only with respect to England and Wales but citizenship is, of course, a matter which affects the whole of the United Kingdom.

2.45. We have noted that on 25 May 1981 the United Kingdom ratified⁴⁸ (with certain reservations) the Council of Europe Convention on the Legal Status of Children Born Out of Wedlock (1975) which seeks to reduce legal differences between children born out of wedlock and other children.

Declarations as to Status

2.46. It is hoped to resume work on the topics covered in our working paper on *Declarations in Family Matters*⁴⁹ when resources permit. One of the topics discussed in the working paper, the lack of any power to make a declaration of paternity⁵⁰ (as opposed to a declaration of legitimacy) will be dealt with in our forthcoming report on illegitimacy.

Time Restrictions on the Presentation of Divorce and Nullity Petitions

2.47. The consultation period on our working paper on *Time Restrictions on the Presentation of Divorce and Nullity Petitions*⁵¹ has ended. We are now analysing the response to the paper with a view to preparing a report. We have already referred⁵² to the research projects which have been undertaken by Mrs. P. A. Garlick of Manchester University and by Mrs. S. Maidment of Keele University. These will be of major assistance in the preparation of our report.

The Ground for Divorce

2.48. Detailed work has not yet started on this subject although we are continuing to watch developments in this country and overseas. When resources permit we envisage that we shall prepare a paper analysing the operation of the present law and presenting a field of choice for reform. As we indicated in our last annual report,⁵³ it will be necessary to give serious attention to the question of how far changes in the procedural aspects of divorce (notably the scope for conciliation) should be examined in conjunction with work on the substantive law.

⁴⁷(1979) Working Paper No. 74.

⁴⁸The United Kingdom signed the Convention in 1975.

⁴⁹(1973) Working Paper No. 48.

⁵⁰See *Re J. S. (a Minor)* [1981] Fam. 22.

⁵¹(1980) Working Paper No. 76.

⁵²Paras. 1.16 and 1.17 above.

⁵³Para. 2.23.

Financial Relief after Foreign Divorce

2.49. The consultation period on our working paper on *Financial Relief after Foreign Divorce*⁵⁴ has ended and we are analysing the points made with a view to preparing a report. We are aware of the desirability, here as elsewhere in the field of divorce, of harmonising the law within the United Kingdom. To this end we sent copies of the comments we received to the Scottish Law Commission who issued their own consultative paper on 1 July 1981 and supplied us with copies of the comments they received. We expect to discuss our recommendations with the Scottish Law Commission.

Other Reforms of the Matrimonial Causes Act 1973

2.50. During the year we have received three particular proposals for reform of the Matrimonial Causes Act 1973. The first is that there should be power on divorce to vary a settlement of property⁵⁵ originally made on a child of the family by one of the parties to the marriage. The second seeks a change in the rule under which proceedings for ancillary relief (including capital provision) abate on the respondent's death; hardship could be caused to an applicant who, having started proceedings, remarried and could not continue with proceedings under the divorce legislation nor proceed under the Inheritance (Provision for Family and Dependents) Act 1975. On both these topics we have had discussions with those professionally concerned; the precise scope of any further work is a matter for discussion in the light of all the circumstances, including our own resources. The third proposal, that there should be power to make interim lump sum orders,⁵⁶ has been under consideration by your Department.

Conflicts of Jurisdiction affecting Children

2.51. We said in our last annual report⁵⁷ that a joint report by us and the Scottish Law Commission to cover jurisdiction and enforcement in child custody cases throughout the United Kingdom would shortly be put in hand. Pressure of other work has prevented us from starting on the preparation of a report, but we have now arranged for this to be started in 1982. The preparation of the report will also involve discussion of administrative procedures for enforcement of orders which will take time but we propose to give this work priority.

2.52. In the international arena we understand that when resources permit consideration will be given to whether the United Kingdom should ratify the Council of Europe Convention on the Recognition and Enforcement of Child Custody Decisions (which the United Kingdom signed in May 1980) and to the United Kingdom's position regarding the Convention on the Civil Aspects of

⁵⁴(1980) Working Paper No. 77.

⁵⁵The power to vary ante-nuptial and post-nuptial settlements of property is contained in s. 24(1)(c) of the Matrimonial Causes Act 1973 but does not include power to vary a settlement made originally on a child.

⁵⁶See Matrimonial Causes Act 1973, s. 23(3)(a) and (b).

⁵⁷Para. 2.26.

International Child Abduction whose terms were settled at the Fourteenth Session of The Hague Conference on Private International Law in October 1980.

Children in Care

2.53. In our last annual report⁵⁸ we drew attention to the need to simplify and rationalise the law relating to the circumstances in which a child is received or taken into care. The lack of consistency between the provisions of the Child Care Act 1980 and those of the Children and Young Persons Act 1969 has been the subject of increasing judicial comment.⁵⁹ The discussions with the Department of Health and Social Security on certain comparatively uncontroversial areas of law to which we referred in our last annual report resulted in a measure of agreement on minor changes in the law but legislation to give effect to those changes has not yet been introduced. Departmental resources still do not permit the comprehensive review which we believe to be desirable.

PROPERTY LAW (APART FROM LANDLORD AND TENANT)

Rights Appurtenant to Land

2.54. As we have mentioned in previous annual reports,⁶⁰ we have decided that our first report on the subject of appurtenant rights will deal with positive and restrictive covenants. We have made substantial progress during the year with our work on this subject and the preparation of a draft Bill is already well advanced. We expect our report, incorporating the draft Bill, to be ready for submission in the period covered by our next annual report. The Bill is drafted on the basis that the place in the law which is now occupied by covenants (other than those between landlord and tenant) will in future be taken by a new species of legal interest in land to be known as a "land obligation". Besides rationalising and clarifying the law, the changes which are envisaged will include several important and far-reaching reforms. In particular all land obligations, whether restrictive or positive in character, would continue to exist as between successive owners of the benefited and the burdened land, thus reversing the present rule that the burden of a positive covenant does not run with the land affected. The draft Bill also provides for the creation of a special type of land obligation to facilitate freehold flat, estate and other developments. The papers at present under preparation do not contemplate the creation of a strata title scheme or a statutory model scheme for freehold flats as suggested in the Wilberforce Report.⁶¹

⁵⁸Para. 2.28.

⁵⁹Notably in the recent case of *Re W*, *The Times*, 15 June 1981, per Ormrod L.J.

⁶⁰See e.g. our *Thirteenth Annual Report 1977-1978*, Law Com. No. 92, para. 2.30.

⁶¹*Report of the Committee on Positive Covenants Affecting Land* (1965) Cmnd. 2719.

Rights of Access to Neighbouring Land

2.55. Our working paper on this subject⁶² was published in December 1980, and a pamphlet summarising the issues raised in the working paper was published at the same time. We produced the summary because we took the view that the questions at issue—whether one landowner should be able to obtain access to his neighbour's land in order to repair his own building and, if so, in what circumstances and on what terms—were such that a wide consultation including members of the public was particularly desirable. In the result an extensive and helpful consultation has taken place and the views expressed are now being carefully analysed. We shall complete our report on this subject as soon as possible, but the relevant team is engaged on other work which must for the moment take priority.

Family Property

2.56. Our *Third Report on Family Property: the Matrimonial Home (Co-ownership and Occupation Rights) and Household Goods*,⁶³ published in June 1978, was divided into three books, to each of which a separate draft Bill was appended. There have been no developments in regard to Book Three ("Use and Enjoyment of the Household Goods").

2.57. The implementation of recommendations made in Book Two ("Rights in Respect of Occupation of the Matrimonial Home"), of which several had found a place in the Housing Act 1980, has now been completed by the enactment of the Matrimonial Homes and Property Act 1981. This Act received Royal Assent on 2 July 1981. It gives effect also to the recommendations made in our report on *Orders for Sale of Property Under the Matrimonial Causes Act 1973*.⁶⁴

2.58. As to Book One ("Co-ownership of the Matrimonial Home"), we recorded in our last annual report⁶⁵ that some aspects of our recommendations had been called in question by the decision of the House of Lords in *Williams & Glyn's Bank Ltd. v. Boland* and *Williams & Glyn's Bank Ltd. v. Brown*⁶⁶ and that you had therefore asked us to consider them in the light of that decision. The decision has important implications also in connection with our work on land registration and we deal with our reactions to it in more detail in that context.

Land Registration

2.59. In the course of the year we completed our consultation on the practical problems arising from the decision of the House of Lords in *Williams & Glyn's Bank Ltd. v. Boland*⁶⁷ as a result of which the interest of a co-owner of registered land can bind a purchaser, even where the co-owner is not on the

⁶²(1980) Working Paper No. 78.

⁶³(1978) Law Com. No. 86.

⁶⁴(1980) Law Com. No. 99. See para. 2.42 above.

⁶⁵Para. 2.31.

⁶⁶[1981] A.C. 487.

⁶⁷[1981] A.C. 487.

title and the purchaser has no notice of the co-owner's interest. The law in this field is in an uncertain and unsatisfactory state, both for purchasers and for co-owners (particularly wives who are co-owners of the matrimonial home). We are convinced that changes are needed, in order to achieve the twin objectives of strengthening the position of wives in regard to their interests in the matrimonial home and eliminating from the conveyancing system the risks, delays and expense which are resulting from the state of the law as declared in the *Boland* case. We have accordingly decided to prepare a separate report dealing with the consequences of the *Boland* decision. A draft of this report is at an advanced stage of preparation and we hope to complete it in the near future.

2.60. The preparation of our main report on aspects of land registration is well advanced, but the concentration of our resources on the problems created by the *Boland* decision has meant that we shall not be able to submit the report as soon as we had hoped.

Statutory Provisions for Reverter

2.61. We have received and considered the report of a Working Party on Rights of Reverter⁶⁸ which was set up to consider the operation of certain statutory rights of reverter, notably under the Schools Sites Act 1841. The report, which takes account of comments received as a result of consultation on a draft report circulated in 1980,⁶⁹ contains numerous recommendations for the simplification of the law on this topic; these differ in some respects from those contained in the draft. Most notably, the report recommends that the relevant legislation should be repealed, that existing rights of reverter should be registrable (possibly in the Land Registry) and that failure to register within a three-year period should bar the revertee's claim. The report also recommends that existing reverters should no longer be capable of taking effect where the grantor of the land received consideration for the grant or where the land was given for use as a church or chapel.

2.62. In July 1981 we submitted this report to you, commending it as a major step towards the promotion of reform on this topic and expressing the hope that those matters which called for policy decisions by the Government would be speedily tackled by the departments concerned. Our submission, together with the report of the Working Party, was published on 19 November 1981.⁷⁰

LANDLORD AND TENANT

General

2.63. We would again refer, at the outset, to our *Thirteenth Annual Report 1977-1978*,⁷¹ in which we reviewed our work in the landlord and tenant field

⁶⁸The membership of the Working Party is set out in Appendix 4 to our last annual report.

⁶⁹The recommendations of this draft are summarised in para. 2.33 of our last annual report.
⁷⁰(1981) Law Com. No. 111.

⁷¹Law Com. No. 92, para. 2.34.

and explained some of the problems affecting our original project for the codification of the basic law. We said we would reconsider our work in the light of parliamentary and other reactions to our report on *Obligations of Landlords and Tenants*,⁷² published in 1975, and to the two outstanding reports mentioned below.

Covenants Restricting Dispositions, Alterations and Change of User

2.64. The situation in regard to our proposed report on this subject is again unchanged. In the summer of 1979 we sent a full draft report without clauses to your Department, to the Department of the Environment and to other government departments for the purposes of consultation. We are awaiting the reactions of the Department of the Environment.

Termination of Tenancies

2.65. A full draft of our report on this subject, without clauses, was sent to the same consultees in April 1981. As in the case of the other draft report, we are awaiting the views of the Department of the Environment.

The Next Steps

2.66. We had a very helpful meeting in October 1981 with the Permanent Secretary and other officials of the Department of the Environment. They told us that they hoped to be able to let us have the Department's reactions to the draft report on *Covenants Restricting Dispositions, Alterations and Change of User* fairly early in 1982 and to let us have their comments on *Termination of Tenancies* later in the year. Discussion about the published report on *Obligations of Landlords and Tenants* could then follow. By this time next year, therefore, we hope to have a much clearer picture of the likely outcome of our work in the landlord and tenant field.

PRIVATE INTERNATIONAL LAW

Contractual Obligations

2.67. The E.E.C. Convention on the Law applicable to Contractual Obligations⁷³ was, as was indicated in our last annual report,⁷⁴ opened for signature in Rome on 19 June 1980. It has now been signed by all the Member States that negotiated it,⁷⁵ though not yet by Greece. During the year under review, we have provided advice on the question as to whether the United Kingdom should sign this Convention and whether either of the reservations possible under Article 22 should be made. We indicated in our last annual report that

⁷²(1975) Law Com. No. 67.

⁷³The text of the Convention has now been published in the Official Journal No. L 266 of 9 October 1980 and the report on it by Professor Giuliano and Professor Lagarde has been published in the Official Journal No. C 281 of 31 October 1980.

⁷⁴Para. 2.38.

⁷⁵It was signed by the United Kingdom on 7 December 1981.

consideration might be given in the year under review to the question whether choice of law rules relating to arbitration agreements and agreements conferring jurisdiction on courts should be included in a protocol to the Convention. No such examination took place and it seems unlikely that this issue will be considered further in Brussels. We also indicated that further examination would be made of the question whether jurisdiction in relation to the Convention should be conferred on the European Court of Justice of the European Communities. No agreement on this matter has yet been reached.

Choice of Law Rules in Tort

2.68. Following the decision not to proceed, at least for the present, with the formulation within the E.E.C. of a convention on the law applicable to non-contractual obligations, we and the Scottish Law Commission have agreed to prepare a joint consultative paper which will examine the choice of law rules in tort and delict in the United Kingdom. The Joint Working Party⁷⁶ which was set up by us and the Scottish Law Commission⁷⁷ will consider the reform of this area of the law, but owing to the commitment of resources elsewhere it has not been possible to make significant progress in this area during the year under review. Some preliminary work has, however, already been done and work on this project is now under way again.

Classification of Limitation of Actions

2.69. Our working paper⁷⁸ on this topic was published on 15 May 1980 with a request for comments by 31 October 1980. The main provisional proposal is that statutes of limitation should be classified as substantive rather than as procedural for choice of law purposes. This would have the effect that in the case of a claim with a foreign element the period within which the claim may be brought would be determined by the law of the country which governs the claim generally, and not by reference to English law as the law of the forum.

2.70. We have now analysed the comments which we received. We have also had the benefit of seeing the consultative memorandum on this subject prepared by the Scottish Law Commission together with their own consultation. In the course of our analysis a number of further problems have emerged but we expect to be able to report to you in the course of 1982.

Foreign Money Liabilities

2.71. On 24 June 1981, together with the Scottish Law Commission, we submitted to you and to the Lord Advocate a report on the *Council of Europe Conventions on Foreign Money Liabilities (1967) and on the Place of Payment of Money Liabilities (1972)*.⁷⁹ This report, which was published on 28 July 1981, was prepared in response to a request for advice under section 3(1)(e) of the Law Commissions Act 1965 made by the Foreign and Commonwealth Office.

⁷⁶The membership is shown in Appendix 2 below.

⁷⁷See our *Fourteenth Annual Report 1978-1979*, Law Com. No. 97, para. 2.42.

⁷⁸(1980) Working Paper No. 75.

⁷⁹(1981) Law Com. No. 109; Scot. Law Com. No. 66.

The Joint Working Part on Foreign Money Liabilities,⁸⁰ set up by the Scottish Law Commission and ourselves, provided advice on the subject of the Council of Europe Convention on Foreign Money Liabilities (1967). Consideration of the Council of Europe Convention on the Place of Payment of Money Liabilities (1972) took place exclusively within the two Commissions, since this Convention is not directly concerned with the law on foreign money liabilities. We jointly recommended in the report that the United Kingdom should not become a party to either Convention.

2.72. On 22 October 1981, we published a working paper on *Foreign Money Liabilities*.⁸¹ This paper is intended to survey the law and procedure over the whole field of foreign money liabilities in the light of the decision of the House of Lords in *Miliangos v. George Frank (Textiles) Ltd.*⁸² The Joint Working Party referred to in paragraph 2.71 above also considered the field of foreign money liabilities generally. We are very grateful to those who assisted us by serving as members of the Working Party; the advice it provided was most helpful in the preparation of our working paper. The provisional conclusion expressed in our working paper is that the aspects of the law and procedure which it would in our view be desirable to clarify or reform are relatively insignificant, and that even in respect of those matters legislative intervention would be inappropriate. We have therefore proposed no legislation. We have invited comments on our provisional views by 1 March 1982 and after analysing those comments we shall start work on the preparation of a report. Unless the comments we receive require us to reconsider our provisional conclusions, we at present envisage that the report will be relatively short, in view of the detailed and comprehensive nature of our working paper and our provisional view that legislation would be inappropriate.

Recognition of Foreign Nullity Decrees

2.73. During the year we have made some progress with the preparation of a joint working paper with the Scottish Law Commission, but this progress has been limited owing to the fact that priority has had to be given to other projects. We hope to be able to complete this work and issue the working paper for consultation in the course of 1982.

Polygamous Marriages

2.74. In our last annual report⁸³ we recorded our decision to include the reform of this area of the law in our work in the fields of family law and private international law. Owing to the pressure of work in other areas we have not yet been able to start detailed work upon this project.

Insurance Services Directive: E.E.C. Draft

2.75. Negotiations are still continuing in Brussels on the draft Directive and they have increased in intensity during the United Kingdom's presidency

⁸⁰The membership of the Joint Working Party as at the time of its last meeting in 1980 is set out in Appendix 4 to our last annual report.

⁸¹(1981) Working Paper No. 80.

⁸²[1976] A.C. 443.

⁸³Para. 2.44.

of the Council of Ministers in the second half of 1981. One of the outstanding issues in these negotiations is the provision of appropriate choice of law rules in the draft Directive. Dr. North has continued to give advice on this matter and has provided assistance in the actual negotiations as a member of the United Kingdom delegation.

International Administration of Estates

2.76. The position as recorded in our last annual report⁸⁴ is unchanged. We have accordingly done no further work on this project.

STATUTE LAW

General

2.77. In our last annual report,⁸⁵ we said that we were preparing a report concerning the methods of modernising and simplifying the existing body of statute law. Work on the report as a whole has had to be suspended owing to the lack of resources.⁸⁶ We did, however, submit a detailed paper to the Statute Law Committee⁸⁷ concerning proposals made to it which would have curtailed severely the use of programme Bills to remove dead wood from the statute law. Our paper discussed the existing practice and pointed out that the continued use of programme Bills was central to any statutory modernisation programme. At their meeting in December 1980 the Statute Law Committee supported our conclusion that the existing practice in this regard should be continued.

Interpretation of Legislation Bill

2.78. Our report, made jointly with the Scottish Law Commission, on *The Interpretation of Statutes*⁸⁸ had draft clauses appended to it. The Renton Committee in 1975 recommended⁸⁹ "the early enactment of a suitably modified version of the Commissions' draft clauses". An Interpretation of Legislation Bill, which would have implemented the draft clauses, was introduced in the House of Lords in 1980 by Lord Scarman. It was withdrawn. During this year the Bill in modified form was introduced again and was passed by the Lords but it failed to proceed in the Commons.

Consolidation

2.79. In our last annual report⁹⁰ we referred to the problem of obtaining pre-consolidation amendments necessary in order to make possible the introduction of certain consolidation Bills. The case in point was a draft Bill to consolidate the legislation on civil aviation. As a result of our comments, you

⁸⁴Para. 2.45.

⁸⁵Para. 2.46.

⁸⁶The Assistant Solicitor in charge of our statute law revision work is also acting as Secretary.

⁸⁷The Statute Law Committee is appointed by the Lord Chancellor and the names of its members are published in *Vacher's Parliamentary Companion* and *Whitaker's Almanack*.

⁸⁸(1969) Law Com. No. 21; Scot. Law Com. No. 11.

⁸⁹*The Preparation of Legislation* (1975) Cmnd. 6053, para. 19.31.

⁹⁰Paras. 1.10 and 2.47. See also para. 1.19 above.

wrote to the Leader of the House of Commons, the Lord President and the Chairman of the Joint Committee on Consolidation Bills commending a proposal contained in a memorandum from the Law Commission. The memorandum proposes the more extensive use of the type of Law Commission recommendations to which effect is given, not in a consolidation Bill as introduced, but by amendment on the floor in the Lords or Commons. So far as the consolidation of the legislation on civil aviation is concerned, the necessary pre-consolidation amendments are to be made in the Civil Aviation (Amendment) Bill which is before Parliament. But we are sure that this facility will prove to be of great assistance to us in dealing with some problems which have hitherto made it impossible or difficult satisfactorily to consolidate other areas of the statute law.

2.80. In our last annual report we also referred to the fact that the Social Welfare (Local Services) Bill had been lost as a result of pressure from groups representing the interests of the disabled. Regrettably, little progress has been possible with this matter during the past year. The conflict arises between the need to consolidate Part III of the National Assistance Act 1948, which is now a legislative disgrace, and the strongly held feeling of those concerned with the welfare of the disabled that no provision of the Chronically Sick and Disabled Persons Act 1970 should be repealed and re-enacted in another Act. There is of course no question of the repeal without re-enactment of any of the provisions concerned.

2.81. The following consolidation Acts (other than consolidation Acts relating to Scotland only) were passed in the 1980-81 Session of Parliament:

- Acquisition of Land (Authorisation Procedure) Act 1981
- Animal Health Act 1981
- Betting and Gaming Duties Act 1981
- Broadcasting Act 1981
- Compulsory Purchase (Vesting Declarations) Act 1981
- English Industrial Estates Corporation Act 1981
- Film Levy Finance Act 1981
- Judicial Pensions Act 1981
- National Film Finance Corporation Act 1981
- New Towns Act 1981
- Public Passenger Vehicles Act 1981
- Trustee Savings Banks Act 1981

The major consolidations were the Judicial Pensions Act 1981, the Public Passenger Vehicles Act 1981 and the Trustee Savings Banks Act 1981.

2.82. Work on an Industrial Training Bill and an Agricultural Training Board Bill has been completed and the Bills are before Parliament.

2.83. Bills are in preparation on the following topics:

- Civil Aviation
- County Courts
- Housing
- Industrial Development

Insurance Companies
Litter
Medical Profession
Mental Health
Pilotage
Representation of the People
Reserve Forces (Protection of Civil Interests)
Road Traffic Regulation
Weights and Measures.

2.84. Work on the Social Work (Education and Training) Bill, which was listed in our last annual report as one then in course of preparation, has been put into abeyance because of Government proposals to reconstitute the Council to which that Bill related. So far as the consolidation of the Housing Acts is concerned, we hope that it may be possible to continue to make progress over some part of this field but the prospect of achieving an early consolidation of the whole of the statute law on this subject is receding. The consolidation can make little progress without the assistance of the officials in the Department of the Environment who have expertise in the housing field. Unfortunately, they are now so pressed on departmental work that they are unable to devote time to the consolidation.

2.85. Work has also begun on the preparation of a consolidation of the Companies Acts. This major topic is the second item in the Law Commission's *Second Programme on Consolidation and Statute Law Revision*.⁹¹ The work is being undertaken by a recently retired member of the Parliamentary Counsel Office and is expected to take two to three years. In order to deal with the several problems which are known or expected to arise in the course of the preparation of this consolidation, the Government moved into the Bill for the Act which became the Companies Act 1981 a provision (section 116) under which pre-consolidation amendments which are recommended by the Law Commission and the Scottish Law Commission to be desirable to secure a satisfactory consolidation can be effected by Order in Council. This procedure is, however, to be regarded as exceptional and does not affect the prospective use of the procedure outlined above for securing pre-consolidation amendments in relation to other consolidation Bills. The other exceptional step which has been taken in relation to this consolidation is the circulation jointly by the Law Commission and the Department of Trade of a consultative paper⁹² seeking views on the structure of the consolidation: in particular the paper canvasses the question of whether the legislation should be divided between several Acts and, if so, what the most convenient division would be.

Statute Law Revision

2.86. The Statute Law (Repeals) Act 1981 came into force on 21 May 1981. This Act, in conjunction with other legislation,⁹³ implemented the report

⁹¹(1971) Law Com. No. 44.

⁹²*Consolidation of the Companies Acts: A Consultative Document* (1981).

⁹³The Supreme Court Act 1981 implemented our proposal for the repeal of the Attorneys' and Solicitors' Act 1870. The British Telecommunications Act 1981 implemented our proposals for the repeal of spent or obsolete enactments relating to the Post Office.

on statute law revision⁹⁴ which we and the Scottish Law Commission jointly submitted on 20 November 1980.

2.87. The Supreme Court Act 1981 implemented other proposals for the repeal of obsolete enactments⁹⁵ which we had formulated in the course of our work on statute law revision but on which we have not made a formal report.

2.88. During the course of the year, our statute law revision team has undertaken detailed research and consultation on the archaic Telegraph Acts (the first of which dates from 1863) with a view to facilitating their modernisation. The work has been concentrated on a series of obscure provisions relating to 19th century agreements with telegraph, railway and canal companies. It is necessary to deal with these provisions before any consolidation of the Telegraph Acts can be undertaken.

2.89. Material is being assembled for inclusion in a further joint report on statute law revision to be submitted to you and the Lord Advocate by both Law Commissions.

Chronological Table of Local and Personal Acts

2.90. The first stage of this project will show the effect of all local and personal legislation enacted during the years 1925–1973 on earlier legislation and will supplement the existing Table of Local and Personal Acts⁹⁶ maintained by the Statutory Publications Office (which shows the effect of local and personal legislation passed from 1974 onwards).

2.91. Research on the first stage of the project has been completed and the detailed work of preparing a final text for publication is in progress. Some 1,000 pages of this text have so far been completed, showing the effect of legislation within the first stage on Acts passed earlier than 1925: the first entry is for an Act of 1627 which was amended in 1948 and 1956.

2.92. We are exploring the possibility of using a word processor to produce the published text. This would enable additional material obtained as a result of research on further stages of the project to be incorporated with the minimum use of resources.

Statutes in Force

2.93. This year has seen the completion of *Statutes in Force*, the official revised edition of the statutes. The last group of titles was published in October 1981. Work is now proceeding on the revision of Acts previously published and on bringing up to date the supplements to the published groups.

⁹⁴ *Statute Law Revision: Tenth Report* (1980) Law Com. No. 106; Scot. Law Com. No. 63.

⁹⁵ The Crown Debts Act 1541, the Execution Act 1844, the Evidence Act 1851, s. 6, the Naval Prize Act 1864, ss. 10 to 12, 14, 15 and 45, the Parliamentary Elections Act 1868, s. 11, the Parliamentary Elections and Corrupt Practices Act 1879, the Corrupt and Illegal Practices Act 1883, s. 42 and the Prize Courts Acts 1915, s. 4.

⁹⁶ This table is appended to the *Chronological Table of the Statutes 1235–1979* published by H.M.S.O.

2.94. *Statutes in Force* replaces the previous publication, *Statutes Revised*, the third and last edition of which was published some thirty years ago. A notable feature of the new work is that it is published in separate parts in binders. This enables a continuing revision of the text to be undertaken and removes the necessity for completely new editions which may be separated—as *Statutes Revised* and *Statutes in Force* have been—by long periods of time. It also means that it is possible to subscribe separately to the Acts in force in the different constituent parts of the United Kingdom or to particular groups of titles dealing with specialist topics.

2.95. We welcomed the first volumes of this official edition of the statutes in 1972⁹⁷ and we now welcome the completion of this part of the unending work of maintaining an up-to-date edition of the statutes. We salute the effort and skill that have gone into it. Now that the complete edition is available it is to be hoped that financial resources will enable it, and its continuing supplements, to be available to public libraries in many places throughout the country so that the statute law will be accessible to any who want to look it up.

OTHER MATTERS

Benefits Conferred under a Mistake of Law

2.96. We have been considering whether to seek a reference from you under section 3(1)(e) of the Law Commission Act 1965 to examine the law relating to benefits conferred under a mistake of law. At the end of 1980, the Law Reform Commission of British Columbia published a very helpful and informative working paper⁹⁸ on this topic. We decided to seek advice on the question whether the areas of law examined in that working paper were the source of practical difficulty in this country. To that end we consulted The Law Society and Senate of the Inns of Court and the Bar and a number of academic lawyers. We are grateful to them for their assistance and, in particular, to those local law societies and others who responded to The Law Society's wider enquiries in *The Law Society's Gazette* and elsewhere. We are now considering the replies we have received in order to decide whether there is a need for law reform activity in this field and, if so, with what priority.

The Incapacitated Principal

2.97. During the year further progress has been made in preparing a scheme to enable certain powers of attorney to survive the supervening incapacity of the donor. We have discussed and decided the general policy of the scheme which is designed to achieve an acceptable balance between the need to protect the interests of the donor on the one hand and the need to provide a simpler, cheaper and generally more attractive alternative to receivership on the other. Following the donor's incapacity the power would only be operable once registered at the Court of Protection. Whilst registration

⁹⁷See our *Seventh Annual Report, 1971-1972*, Law Com. No. 50, para. 4.

⁹⁸(1980) Working Paper No. 30: *Benefits Conferred under a Mistake of Law* (Law Reform Commission of British Columbia).

would be primarily an administrative procedure it would involve the notification of the donor's relatives who would then have the opportunity to object, on specified grounds, to the continued operation of the power. We had hoped to be in a position to submit a report on the matter during the year. Because, however, of the pressure of other work on those directly concerned with this project we have not been able to progress as quickly as we would have liked.

Advice to Government Departments, etc.

2.98. We have continued to be asked for advice on a variety of matters during the year under review. We include here some of those matters on which we have given advice, other than in a report or on which a formal reference has been made to us under section 3(1)(e) of the Law Commissions Act 1965.

(i) Hague Conference on Private International Law

2.99. The Fifteenth Session of The Hague Conference will take place in 1984. We have provided advice to the Government on the selection of topics for inclusion on the agenda of the Conference for the Fifteenth Session and on the preparation of material for that Session. One of the most important items on the agenda is that of the validity and recognition of trusts. We understand that the United Kingdom hopes to be able to submit proposals on this topic as part of the preparatory work for the Fifteenth Session.

(ii) UNCITRAL: Convention on Contracts for the International Sale of Goods

2.100. We were invited by the Department of Trade in December 1980 to comment on the UNCITRAL Convention on Contracts for the International Sale of Goods which was concluded in Vienna in April 1980. We had commented on the private international law aspects of the Convention during its draft stages but concluded that it was not possible for the Commission as such to provide detailed comments on the merits of the Convention as a whole. However, we did provide the Department of Trade with an analysis of some of the main differences between the Convention and our present law. We understand that, in the light of the comments received by the Department of Trade on consultation, the Government decided not to sign the Convention before 30 September 1980, the date fixed for signatures. Although that date has now passed, it would still be possible for the United Kingdom to accede to the Convention and we understand that the question of such accession may be reconsidered at a later date in the light, for example, of the support which the Convention attracts from other States.

(iii) Draft E.E.C. Convention on Bankruptcy, Winding-Up, Arrangements, Compositions and Similar Proceedings

2.101. Early in 1981 advice was sought from us, both by your Department and the Department of Trade, on the provisions in the draft E.E.C. Bankruptcy Convention relating to jurisdiction of the courts and matters of private international law generally. We indicated that it was probably inappropriate for these matters to be the subject of a formal reference to us. In the event Dr. North provided a number of detailed comments on, and criticisms of, the draft

Convention. We were pleased to note that they were of assistance to the Government.⁹⁹

Law Reform Committee

2.102. Legislation to implement the Law Reform Committee's main recommendations in relation to wills¹⁰⁰ is expected to be introduced during this Session of Parliament.

2.103. The Committee is currently working on two topics:

(i) *The Powers and Duties of Trustees*

Consideration of the evidence submitted to the Committee has been completed and a draft report is in preparation.

(ii) *Latent Damage*

A consultative document¹⁰¹ was issued in July 1981. It includes a review of the present law relating to the operation of the limitation period in negligence cases (other than personal injuries) involving latent damage, for example in the field of professional negligence. The consultative document invites comments on the present law and the possibilities for reform.

Administrative Law

2.104. In 1978 JUSTICE, in association with All Souls College, Oxford, set up a Review Committee under the chairmanship of Mr. F. P. Neill, QC¹⁰² to undertake a review of administrative law in the United Kingdom. The Review Committee issued a discussion paper in April 1981 with the purpose of eliciting comment and criticism. Our own work on administrative law ended with the publication of our report on *Remedies in Administrative Law*.¹⁰³ The central recommendation in that report that there should be a new form of procedure to be known as an application for judicial review was implemented by rules of court in 1977¹⁰⁴ and the procedure is now provided for by section 31 of the Supreme Court Act 1981. However, before undertaking our work on remedies in administrative law we reported¹⁰⁵ that, in the light of comments and views we had received, we had reached the conclusion that an inquiry into substantive administrative law was necessary. We suggested then that the inquiry should be carried out by a Royal Commission or other similar body. We have therefore read the Review Committee's discussion paper with great interest and welcome it as a positive contribution to the continuing debate on the problems of administrative law.

⁹⁹Hansard (H.L.) 22 October 1981, Vol. 424, col. 876.

¹⁰⁰19th Report: *Interpretation of Wills* (1973) Cmnd. 5301; and 22nd Report: *The Making and Revocation of Wills* (1980) Cmnd. 7902.

¹⁰¹*Latent Damage* (1981), a consultative document published by the Law Reform Committee.

¹⁰²The other members of the Review Committee are Sir John Boynton, MC, Professor A. W. Bradley, The Lord Croham of Croydon, GCB, The Lord Crowther-Hunt of Ecclehill, Professor Aubrey Diamond, Mr. Percy Everett, DSC, Professor A. S. Finer, Professor J. F. Garner, Professor The Lord McGregor of Durris, Sir Lou Sherman, OBE, JP, Mr. Paul Sieghart, Mr. David Widdicombe, QC (Vice-Chairman) and Mr. D. G. T. Williams. The Secretary is Mr. R. C. H. Briggs.

¹⁰³(1976) Law Com. No. 73.

¹⁰⁴Rules of the Supreme Court (Amendment No. 3) 1977: S.I. 1977 No. 1955.

¹⁰⁵*Administrative Law* (1969) Law Com. No. 20.

PART III

GENERAL

Staff

3.1. Our full-time legal staff at present numbers 23: the Secretary, 4 draftsmen and 18 other lawyers. We also have 19 full-time non-legal staff. Seven lawyers (including 4 draftsmen), an additional librarian and 2 personal secretaries assist us part-time.

Library

3.2. With a stock of over 22,000 items our library satisfies most of our demands. Inter-library co-operation continues with other law libraries and libraries of government departments.

3.3. Mr. Donald Raistrick, who has been our Librarian since 1969, leaves us at the end of the period under review on his appointment as Librarian, Supreme Court Library. In 1979 Mr. Raistrick prepared a much-needed *Law Commission Digest* summarising the law reform recommendations made by the Law Commission and he has been Advisory Editor of reprinted editions of Law Commission working papers and reports; he is the author of other publications in the specialised field of law librarianship¹; and since 1977 he has been the editor of *The Law Librarian*, the journal of the British and Irish Association of Law Librarians. We warmly acknowledge the unique and enthusiastic contribution he has made to the work of the Law Commission in responding to many and varied requests to assemble source materials for law reform projects, in advising on publication problems and in building up the library.

Co-operation with the Scottish Law Commission

3.4. Our annual joint meeting with the Scottish Law Commission was held on 7 and 8 May 1981. This year we met in Cardiff, which gave us the opportunity of meeting leading lawyers and university teachers in the Principality. The Lord Chancellor and the Lord Advocate, to whom the Law Commissions respectively report, and the Secretary of State for Wales were able to be present for part of the time. We are most grateful for the generous hospitality extended to us by University College, Cardiff.

3.5. We continue to co-operate closely with the Scottish Law Commission on matters of mutual interest, with particular emphasis on topics concerning private international law.

3.6. During the course of the year, Lord Hunter, VRD and Professor Emeritus Sir Thomas Smith, QC, retired from membership of the Scottish Law

¹*Lawyers' Law Books: A Practical Index to Legal Literature* (1977) (with C. J. Rees); *Index to Legal Citations and Abbreviations* (1981).

Commission after long distinguished service in the capacity of Chairman and Commissioner respectively. We welcome their successors, Lord Maxwell and Dr. E. M. Clive.

Co-operation with Other Lawyers

3.7. In our last annual report² we said that, in order to promote fuller exchanges of views, we had decided to hold "open days" to which law teachers specialising in certain topics would be invited and at which our teams concerned with those topics would act as hosts. The series of such meetings begun in 1979-80 was continued in 1980-81 by an open day on land law and landlord and tenant law. This event followed the pattern established in the previous year and began with a welcome by the Chairman followed by a general talk about our work in the relevant fields by the Commissioner most closely concerned with them. After lunch there followed two talks on more specialised topics given respectively by a senior Parliamentary Counsel and the Commissioner in charge of our work on *Boland*.³ The day finished with a period for discussion.

3.8. We have been glad to hear that a number of law teachers felt that their knowledge of our functions and methods of working had been much improved. We therefore intend to hold further open days on other topics. The comments on matters of detail which we have received will be very helpful in planning future meetings.

3.9. We have had meetings during the course of the year with representatives of the Society of Public Teachers of Law and The Law Society. A meeting with the Law Reform Committee of the Senate of the Inns of Court and the Bar is to be held early in 1982. We attach great importance to our relations with these bodies and we find these meetings most helpful in assisting us to keep in touch with the thinking of practising and academic lawyers. We are making regular contributions of news concerning our own work to the *Newsletter* published by the Society of Public Teachers of Law.

3.10. We continue to exchange publications and maintain contact with law reform agencies established overseas and especially in the Commonwealth.

Consultation with The Law Society

3.11. Our working paper on *Rights of Access to Neighbouring Land*⁴ was thought not only to be of particular interest to practising solicitors but also to require the consideration of solicitors in all parts of the country. At the suggestion of Sir Jonathan Clarke, President of The Law Society, copies of a pamphlet summarising our working paper were sent to local law societies throughout England and Wales for distribution by them to practitioners interested in the subject and with experience of the problems arising. This form of consultation, aided by the support and authority of local law societies, was effective in producing a large amount of useful information and comment. We

²Para. 1.9.

³See para. 2.59 above.

⁴(1980) Working Paper No. 78.

are grateful for this initiative and are confident that this method of reaching the knowledge and experience of practising solicitors throughout the country will prove very useful.

3.12. We received valuable assistance from The Law Society in a similar manner with reference to our work on land obligations.⁵ We wished to know to what extent and in what parts of the country flats have already been sold on a freehold basis. The Law Society inserted a request for information in their *Gazette* and they have passed to us the replies received.

3.13. A further example of this sort of assistance occurred with reference to the topic of benefits conferred under a mistake of law.⁶ The Law Society not only inserted a request for information in their *Gazette* but they also sent our request to selected local law societies for comment.

Visitors from Overseas

3.14. In October 1981 we received a visit from the Nigerian Law Reform Commission, headed by their Chairman, Sir Darnley Alexander, CBE, CFR, who was formerly Chief Justice of the Federal Republic of Nigeria. The other visitors were:

Dr. S. N. C. Obi, Dr. A. B. Yusuf, Mrs. T. M. Osindero,
Dr. A. Abubakar, Professor R. O. Ekundare and
Dr. E. E. J. Okereke (Commissioners)
Mr. T. N. Nnadi (Secretary/Director)

The Nigerian Law Reform Commission was established in 1979 and is undertaking a series of working tours to study the law reform techniques of other law reform bodies. We welcomed the opportunity their visit afforded of discussing methods of work and of meeting the members of the Commission.

3.15. Other visitors from overseas in the past year included the following:

Judge R. Screvens (Cour de Cassation) and nine other members of the higher judiciary of Belgium.

The Hon. R. Roy McMurtry (Attorney General, Ontario, Canada)

Mr. Archie Campbell (Assistant Deputy Minister, Policy and Planning, Ontario)

Mr. Glenn Carter (General Manager, Attorney General's Department, Ontario)

Mr. Lucien Beaulieu (Senior Judge, Provincial Court Family Division, Ontario)

Mr. John Rowsome (Executive Assistant, Attorney General's Department, Ontario)

Judge T. O. Elias (Vice-President, International Court of Justice, The Hague, Netherlands)

⁵See para. 2.54 above.

⁶See para. 2.96 above.

Dr. W. Hauschild (Directorate-General for the Internal Market, EEC Commission, Brussels)

Mrs. U. T. Güven (State Planning Organisation, Turkey)

Mr. Encik Sanusi (Deputy Minister of Home Affairs, Malaysia)

Mr. Dennis Robinson (University of Zimbabwe)

Mr. M. Sehu (Attorney General, Ethiopia)

Mr. T. Rajapakse (Law Commission of Sri Lanka)

Professor Patrick Fitzgerald (Canadian Law Reform Commission)

Professor Bhada Ranchod (Head, Department of Private Law, University of Durban-Westville, South Africa)

Senator Peter Durack (Attorney General, Australia)

Mr. G. Kolts, OBE (First Parliamentary Counsel, Australia)

Mr. P. Brazil (Deputy Secretary, Attorney General's Department, Australia)

Mr. Colin I. Patterson (Chairman, Securities Commission, Wellington, New Zealand)

Mr. Justice B. Goldin (Zimbabwe)

Professor Friedrich K. Juenger (University of California, Davis, U.S.A.)

Senator Alan Missen (Parliament of Australia)

Professor Boggiano (University of Buenos Aires, Argentina)

Mr. David Lawumi (Secretary, Law Revision Commission, Oyo State, Nigeria)

Mr. G. P. Nazareth, O.B.E., Q.C. (Law Draftsman, Hong Kong)

Mr. Justice J. C. R. Fieldsend (Chief Justice, Zimbabwe)

Mr. Andrew Hiller (Senior Lecturer in Law, University of Queensland, Australia)

Sir Timoci Tuivaga (Chief Justice, Fiji)

Mr. Justice, G. L. Lamptey (Ghana)

(Signed) RALPH GIBSON, *Chairman.*
STEPHEN M. CRETNEY.
BRIAN J. DAVENPORT.
STEPHEN EDELL.
PETER NORTH.

R. H. STREETEN, *Secretary.*
22 December 1981.

APPENDIX 1

RESPONSIBILITIES OF COMMISSIONERS AND LEGAL STAFF

(as at the date of this report)

CONTRACT AND TORT

Generally: Dr. P. M. North, Mr. M. W. Parkington with Mr. I. H. Maxwell and Mr. P. Jacob.

Supply of Goods: Mr. B. J. Davenport, QC, Mr. M. W. Parkington with Mr. P. Jacob and Mr. O. J. Parker.

CRIMINAL LAW

Chairman, Mr. B. J. Davenport, QC, Mr. C. W. Dymont with Mrs. B. Hindley and Mr. M. N. Farmer.

FAMILY LAW

Mr. S. M. Cretney, Mr. D. S. Gordon with Mr. T. L. Rees, Mr. M. Hatcher and Miss J. C. Hern.

PROPERTY LAW (APART FROM LANDLORD AND TENANT)

Generally: Mr. S. B. Edell, Mr. R. T. Oerton with Mr. A. J. Tuck and Mr. J. Saunders.

Land Registration: Mr. S. M. Cretney and Mr. D. S. Gordon and (in relation to work on the *Boland* project) Mr. S. B. Edell, Mr. R. T. Oerton with Mr. A. J. Tuck and Mr. J. Saunders.

LANDLORD AND TENANT

Mr. S. B. Edell, Mr. R. T. Oerton with Mr. A. J. Tuck.

PRIVATE INTERNATIONAL LAW

Dr. P. M. North with Mr. A. Cope, Mr. R. J. Dormer and Mr. M. Hatcher.

STATUTE LAW

Consolidation: Chairman, Mr. J. S. Mason with Miss M. S. Christie,* Lady Johnston,* Sir Stanley Krusin, CB,* Mr. S. C. Laws, Mrs. M. Leates and Mr. D. H. S. Robson.

Statute Law Revision: Chairman, Mr. R. H. Streeten with Mr. G. F. Aronson, CB* and Mr. A. M. Rowland.

OTHER MATTERS

The Incapacitated Principal: Mr. S. B. Edell with Mr. J. Saunders.

*Part-time legal staff.

APPENDIX 2

MEMBERSHIP OF WORKING PARTIES

Joint Working Party on Private International Law*

Chairman: Professor A. L. Diamond (Institute of Advanced Legal Studies)
Mr. A. E. Anton, CBE (Scottish Law Commission)
Mr. T. N. Biggart, WS (Messrs. Biggart, Baillie and Gifford, Glasgow)
Mr. L. Collins (Herbert Smith & Co.)
Mr. H. F. Macdiarmid (Scottish Courts Administration)
Mr. C. G. J. Morse (King's College, London)
Dr. P. M. North (Law Commission)
Secretary: Mr. R. J. Dormer (Law Commission)

Joint Working Party on Recognition of Foreign Nullity Decrees†

Joint Chairmen {Dr. P. M. North (Law Commission)
{Mr. A. E. Anton, CBE (Scottish Law Commission)
Mr. J. Clarkson (Scottish Law Commission)
Mr. S. M. Cretney (Law Commission)
The Hon. Lord Dunpark (Court of Session)
Mr. J. Siddle (Foreign and Commonwealth Office)
Secretary: Mr. M. Hatcher (Law Commission)

*See para. 2.68 above.

†See para. 2.73 above.

APPENDIX 3

LIST OF THE LAW COMMISSION'S PUBLICATIONS

A. Working Papers

<i>Working Paper</i>	<i>Title</i>	<i>Resulting Report</i>
1966		
No. 1	Transfer of Land: Root of Title to Freehold Land	Law Com. No. 9.
No. 2	Draft Proposals on Powers of the Court of Appeal to Sit in Private and Restrictions upon Publicity in Legitimacy Proceedings	Law Com. No. 8.
No. 3	Restrictive Covenants	Law Com. No. 11.
No. 4	Should English Wills be Registrable?	
No. 5	Liability of Trade Vendors of New Dwelling Houses to First and Subsequent Purchasers (First Paper)	Law Com. No. 40.
No. 6	Liability of Vendors and Lessors for Defective Premises (Second Paper)	Law Com. No. 40.
1967		
No. 7	Provisional Proposals for Amendments to the Landlord and Tenant Act 1954, Part II (Business Tenancies)	Law Com. No. 17.
No. 8	Provisional Proposals Relating to Obligations of Landlords and Tenants	Law Com. No. 67.
No. 9	Family Law: Matrimonial and Related Proceedings. Financial Relief	Law Com. No. 25.
No. 10	Proposals for Changes in the Law Relating to Land Charges affecting Unregistered Land and to Local Land Charges	Law Com. Nos. 18 and 62.
No. 11	Powers of Attorney	Law Com. No. 30.
No. 12	Proof of Paternity in Civil Proceedings	Law Com. No. 16.
No. 13	Exploratory Working Paper on Administrative Law	Law Com. No. 20.
No. 14	Interpretation of Statutes (Joint Working Paper—Scottish Law Commission Memorandum No. 6)	Law Com. No. 21.
1968		
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)	Law Com. No. 24.

<i>Working Paper</i>	<i>Title</i>	<i>Resulting Report</i>
No. 19	Loss of Services	Law Com. Nos. 25 and 56.
No. 20	Nullity of Marriage	Law Com. No. 33.
No. 21	Polygamous Marriages	Law Com. No. 42.
1969		
No. 22	Restitution of Conjugal Rights	Law Com. No. 23.
No. 23	Malicious Damage to Property	Law Com. No. 29.
No. 24	Transfer of Land: Rentcharges (the subject of a further Working Paper No. 49).	
1970		
No. 25	The Law of Landlord and Tenant: Working Party's Provisional Proposals Relating to Covenants Restricting Dispositions, Parting with Possession, Change of User and Alterations.	
No. 26	Criminal Law: Forgery	Law Com. No. 55.
No. 27	Personal Injury Litigation: Assessment of Damages, Itemization of Pecuniary Loss and the Use of Actuarial Tables as an Aid to Assessment	Law Com. No. 56.
No. 28	Family Law: Jurisdiction in Matrimonial Causes (other than Nullity)	Law Com. No. 48.
No. 29	Codification of the Criminal Law: Subject III. Territorial and Extra-Territorial Extent of the Criminal Law	Law Com. No. 91.
No. 30	Codification of the Criminal Law: Strict Liability and the Enforcement of the Factories Act 1961.	
No. 31	Codification of the Criminal Law: General Principles. The Mental Element in Crime	Law Com. No. 89.
No. 32	Transfer of Land: Land Registration (First Paper).	
No. 33	Criminal Law: Perjury and Kindred Offences.	
1971		
No. 34	Family Law: Jactitation of Marriage (the subject of a further Working Paper No. 48).	
No. 35	Family Law: Solemnisation of Marriage	Law Com. No. 53.
No. 36	Transfer of Land: Appurtenant Rights.	
No. 37	Transfer of Land: Land Registration (Second Paper).	
No. 38	Family Law: Jurisdiction in Suits for Nullity of Marriage	Law Com. No. 48.
No. 39	Exemption Clauses in Contracts for Services (Joint Working Paper—Scottish Law Commission Memorandum No. 15)	Law Com. No. 69.
No. 40	Administrative Law	Law Com. No. 73.
No. 41	Personal Injury Litigation: Assessment of Damages.	Law Com. No. 56.
No. 42	Family Law: Family Property Law	Law Com. Nos. 52, 61 and 86.

<i>Working Paper</i>	<i>Title</i>	<i>Resulting Report</i>
1972		
No. 43	Codification of the Criminal Law: General Principles. Parties, Complicity and Liability for the Acts of Another.	
No. 44	Codification of the Criminal Law: General Principles. Criminal Liability of Corporations.	
No. 45	Transfer of Land: Land Registration (Third Paper).	
No. 46	Charging Orders on Land	Law Com. No. 74.
1973		
No. 47	Injuries to Unborn Children	Law Com. No. 60.
No. 48	Family Law: Declarations in Family Matters.	
No. 49	Transfer of Land: Rentcharges	Law Com. No. 68.
*No. 50	Codification of the Criminal Law: General Principles. Inchoate Offences: Conspiracy, Attempt and Incitement	Law Com. No. 76.
No. 51	Transfer of Land: "Subject to Contract" Agreements	Law Com. No. 65.
*No. 52	Liability for Damage or Injury to Trespassers and Related Questions of Occupiers' Liability	Law Com. No. 75.
*No. 53	Family Law: Matrimonial Proceedings in Magistrates' Courts	Law Com. No. 77.
1974		
No. 54	Criminal Law: Offences of Entering and Remaining on Property	Law Com. No. 76.
No. 55	Codification of the Criminal Law: General Principles. Defences of General Application	Law Com. No. 83.
No. 56	Criminal Law: Conspiracy to Defraud.	
†August 1974	Private International Law: E.E.C. Preliminary Draft Convention on the Law Applicable to Contractual and Non-Contractual Obligations (prepared jointly with the Scottish Law Commission).	
*No. 57	Codification of the Criminal Law: Conspiracies Relating to Morals and Decency	Law Com. No. 76.
*No. 58	Breach of Confidence	Law Com. No. 110.
1975		
*No. 59	Contribution	Law Com. No. 79.
*No. 60	Firm Offers.	
*No. 61	Penalty Clauses and Forfeiture of Monies Paid.	
*No. 62	Criminal Law: Offences Relating to the Administration of Justice	Law Com. No. 96.

*On sale at H.M. Stationery Office.

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

<i>Working Paper</i>	<i>Title</i>	<i>Resulting Report</i>
*No. 63	Codification of the Criminal Law: Conspiracies to Effect a Public Mischief and to Commit a Civil Wrong	Law Com. No. 76.
*No. 64	Liability for Defective Products (Joint Working Paper—Scottish Law Commission Memorandum No. 20)	Law Com. No. 82.
*No. 65	Pecuniary Restitution on Breach of Contract.	
1976		
*No. 66	Interest	Law Com. No. 88.
*No. 67	Transfer of Land: Land Registration (Fourth Paper).	
*No. 68	Custody of Children—Jurisdiction and Enforcement within the United Kingdom (Joint Working Paper—Scottish Law Commission Memorandum No. 23).	
*No. 69	The Incapacitated Principal.	
*No. 70	Law of Contract: the Parol Evidence Rule.	
1977		
*No. 71	Law of Contract: Implied Terms in Contracts for the Supply of Goods	Law Com. No. 95.
*No. 72	Codification of the Criminal Law: Treason, Sedition and Allied Offences.	
1979		
*No. 73	Insurance Law: Non-Disclosure and Breach of Warranty.	Law Com. No. 104.
*No. 74	Family Law: Illegitimacy.	
1980		
*No. 75	Classification of Limitation in Private International Law.	
*No. 76	Time Restrictions on Presentation of Divorce and Nullity Petitions.	
*No. 77	Family Law: Financial Relief after Foreign Divorce.	
*No. 78	Rights of Access to Neighbouring Land.	
1981		
*No. 79	Offences against Religion and Public Worship.	
*No. 80	Private International Law: Foreign Money Liabilities.	

An unabridged reprint of Law Commission Working Papers Nos. 1-74, bound in nine volumes, is published by Professional Books, Milton Trading Estate, Abingdon, Oxon. OX14 4SY at £180. Vol. 8 (Nos. 65-70) and Vol. 9 (Nos. 71-74) are available separately at £30 each.

*On sale at H.M. Stationery Office.

B. Reports

Publications which have been laid before Parliament under sections 3(2) and (3) of the Law Commissions Act 1965 and publications which have been presented to Parliament as Command Papers showing implementation. Those marked with an asterisk do not call for legislation.

<i>Report</i>	<i>Title</i>	<i>Implementation</i>
1965		
Law Com. No. 1	First Programme of the Law Commission	*
1966		
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	Criminal Law Act 1967 (c. 58).
Law Com. No. 4	First Annual Report 1965-1966	*
Law Com. No. 5	Landlord and Tenant: Interim Report on Distress for Rent	No
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	Criminal Law Act 1967 (c. 58).
Law Com. No. 8	Report on the Powers of Appeal Courts to Sit in Private and the Restrictions upon Publicity in Domestic Proceedings (Cmnd. 3149)	Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968 (c. 63).
1967		
Law Com. No. 9	Transfer of Land: Interim Report on Root of Title to Freehold Land	Law of Property Act 1969 (c. 59).
Law Com. No. 10	Imputed Criminal Intent (<i>Director of Public Prosecutions v. Smith</i>)	In part by section 8 of the Criminal Justice Act 1967 (c. 80).
Law Com. No. 11	Transfer of Land: Report on Restrictive Covenants	In part by Law of Property Act 1969 (c. 59).
Law Com. No. 11A	Sea Fisheries (Shellfish) Bill: Report by the two Commissions on the Consolidation of Certain Enactments Relating to Shellfish Fisheries and Shellfish (Scot. Law Com. No. 6A) (Cmnd. 3267)	Sea Fisheries (Shellfish) Act 1967 (c. 83).
Law Com. No. 12	Second Annual Report 1966-1967	*
Law Com. No. 13	Civil Liability for Animals	Animals Act 1971 (c. 22).

<i>Report</i>	<i>Title</i>	<i>Implementation</i>
1968		
Law Com. No. 14	Second Programme of Law Reform	*
Law Com. No. 15	Third Annual Report 1967-1968 (H.C. 312)	*
Law Com. No. 16	Blood Tests and the Proof of Paternity in Civil Proceedings (H.C. 2)	Family Law Reform Act 1969 (c. 46).
1969		
Law Com. No. 17	Landlord and Tenant: Report on the Landlord and Tenant Act 1954, Part II (H.C. 38)	Law of Property Act 1969 (c. 59).
Law Com. No. 18	Transfer of Land: Report on Land Charges Affecting Unregistered Land (H.C. 125)	Law of Property Act 1969 (c. 59).
Law Com. No. 18A	Trustee Savings Banks Bill: Report by the two Commissions on the Consolidation of the Trustee Savings Banks Acts 1954 to 1968 (Scot. Law Com. No. 10) (Cmnd. 4004)	Trustee Savings Banks Act 1969 (c. 50).
Law Com. No. 19	Proceedings against Estates (Cmnd. 4010)	Proceedings against Estates Act 1970 (c. 17).
Law Com. No. 20	Administrative Law (Cmnd. 4059)	*
Law Com. No. 21	Interpretation of Statutes: Report by the two Commissions (Scot. Law Com. No. 11) (H.C. 256)	No
Law Com. No. 22	Statute Law Revision: First Report (Cmnd. 4052)	Statute Law (Repeals) Act 1969 (c. 52).
Law Com. No. 23	Proposal for the Abolition of the Matrimonial Remedy of Restitution of Conjugal Rights (H.C. 369)	Matrimonial Proceedings and Property Act 1970 (c. 45).
Law Com. No. 24	Exemption Clauses in Contracts: First Report. Amendments to the Sale of Goods Act 1893; Report by the two Commissions (Scot. Law Com. No. 12) (H.C. 403)	Supply of Goods (Implied Terms) Act 1973 (c. 13).
Law Com. No. 25	Family Law: Report on Financial Provision in Matrimonial Proceedings (H.C. 448)	Matrimonial Proceedings and Property Act 1970 (c. 45); Law Reform (Miscellaneous Provisions) Act 1970 (c. 33).
Law Com. No. 26	Breach of Promise of Marriage (H.C. 453)	Law Reform (Miscellaneous Provisions) Act 1970 (c. 33).
Law Com. No. 27	Fourth Annual Report 1968-1969 (H.C. 27)	*

<i>Report</i>	<i>Title</i>	<i>Implementation</i>
1970		
Law Com. No. 28	Statute Law Revision: Second Report. Draft Wild Creatures and Forest Laws Bill (Cmnd. 4433)	Wild Creatures and Forest Laws Act 1971 (c. 47).
Law Com. No. 29	Criminal Law: Report on Offences of Damages to Property (H.C. 91)	Criminal Damage Act 1971 (c. 48).
Law Com. No. 30	Powers of Attorney (Cmnd. 4473)	Powers of Attorney Act 1971 (c. 27).
Law Com. No. 31	Administration Bonds, Personal Represen- tatives' Rights of Retainer and Preference and Related Matters (Cmnd. 4497)	Administration of Estates Act 1971 (c. 25).
Law Com. No. 32	Civil Liability for Dangerous Things and Activities (H.C. 142)	*
Law Com. No. 33	Family Law: Report on Nullity of Marriage (H.C. 164)	Nullity of Marriage Act 1971 (c. 44).
Law Com. No. 34	Hague Convention on Recognition of Divorces and Legal Separations: Report by the two Commissions (Scot. Law Com. No. 16) (Cmnd. 4542)	Recognition of Divorces and Legal Separations Act 1971 (c. 53).
Law Com. No. 35	Limitation Act 1963 (Cmnd. 4532)	Law Reform (Miscellaneous Provisions) Act 1971 (c. 43).
Law Com. No. 36	Fifth Annual Report 1969-1970 (H.C. 170)	*
Law Com. No. 37	Statute Law Revision: Third Report (Cmnd. 4546)	Statute Law (Repeals) Act 1971 (c. 52).
Law Com. No. 38	Coinage Bill: Report by the two Commissions on the Consolidation of Certain Enactments Relating to Coinage (Scot. Law Com. No. 18) (Cmnd. 4544)	Coinage Act 1971 (c. 24).
Law Com. No. 39	Vehicles (Excise) Bill: Report by the two Commissions on the Consolidation of Certain Enactments Relating to Excise Duties on Mechanically Propelled Vehicles, and to the Licensing and Registration of such Vehicles (Scot. Law Com. No. 19) (Cmnd. 4547)	Vehicles (Excise) Act 1971 (c. 10).
Law Com. No. 40	Civil Liability of Vendors and Lessors for Defective Premises (H.C. 184)	Defective Premises Act 1972 (c. 35).
1971		
Law Com. No. 41	National Savings Bank Bill: Report by the two Commissions on the Consolidation of Enactments Relating to the National Savings Bank (Scot. Law Com. No. 20) (Cmnd. 4574)	National Savings Bank Act 1971 (c. 29).

<i>Report</i>	<i>Title</i>	<i>Implementation</i>
Law Com. No. 42	Family Law: Report on Polygamous Marriages (H.C. 227)	Matrimonial Proceedings (Polygamous Marriages) Act 1972 (c. 38).
Law Com. No. 43	Taxation of Income and Gains Derived from Land: Report by the two Commissions (Scot. Law Com. No. 21) (Cmnd. 4654)	In part by section 82 of the Finance Act 1972 (c. 41).
Law Com. No. 44	Law Commission's Second Programme on Consolidation and Statute Law Revision (H.C. 338)	*
Law Com. No. 45	Town and Country Planning Bill: Report on the Consolidation of Certain Enactments Relating to Town and Country Planning (Cmnd. 4684)	Town and Country Planning Act 1971 (c. 78).
Law Com. No. 46	Road Traffic Bill: Report by the two Commissions on the Consolidation of Certain Enactments Relating to Road Traffic (Scot. Law Com. No. 22) (Cmnd. 4731)	Road Traffic Act 1972 (c. 20).
Law Com. No. 47	Sixth Annual Report 1970-1971 (H.C. 32)	*

1972

Law Com. No. 48	Family Law: Report on Jurisdiction in Matrimonial Causes (H.C. 464)	Domicile and Matrimonial Proceedings Act 1973 (c. 45).
Law Com. No. 49	Statute Law Revision: Fourth Report by the two Commissions (Scot. Law Com. No. 26) (Cmnd. 5108)	Statute Law (Repeals) Act 1973 (c. 39).
Law Com. No. 50	Seventh Annual Report 1971-1972 (H.C. 35)	*
Law Com. No. 51	Matrimonial Causes Bill: Report on the Consolidation of Certain Enactments Relating to Matrimonial Proceedings, Maintenance Agreements, and Declarations of Legitimacy, Validity of Marriage and British Nationality (Cmnd. 5167)	Matrimonial Causes Act 1973 (c. 18).

1973

Law Com. No. 52	Family Law: First Report on Family Property. A New Approach (H.C. 274)	Legislative proposals deferred until later reports.
Law Com. No. 53	Family Law: Report on Solemnisation of Marriage in England and Wales (H.C. 250)	No
Law Com. No. 54	Third Programme of Law Reform (H.C. 293)	*
Law Com. No. 55	Criminal Law: Report on Forgery and Counterfeit Currency (H.C. 320)	Forgery and Counterfeiting Act 1981 (c. 45).

<i>Report</i>	<i>Title</i>	<i>Implementation</i>
Law Com. No. 56	Report on Personal Injury Litigation— Assessment of Damages (H.C. 373)	No
Law Com. No. 57	Statute Law Revision: Fifth Report by the two Commissions (Scot. Law Com. No. 32) (Cmnd. 5493)	Statute Law (Repeals) Act 1974 (c. 22).
Law Com. No. 58	Eighth Annual Report 1972–1973 (H.C. 34)	*

1974

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

1975

Law Com. No. 65	Transfer of Land: Report on “Subject to Contract” Agreements (H.C. 119)	*
Law Com. No. 66	Supply Powers Bill: Report by the two Com- missions on the Consolidation of Certain Enactments Relating to Supply Powers (Scot. Law Com. No. 38) (Cmnd. 5850)	Supply Powers Act 1975 (c. 9).
Law Com. No. 67	Codification of the Law of Landlord and Tenant: Report on Obligations of Landlords and Tenants (H.C. 377)	No
Law Com. No. 68	Transfer of Land: Report on Rentcharges (H.C. 602)	Rentcharges Act 1977 (c. 30).
Law Com. No. 69	Exemption Clauses: Second Report by the two Commissions (Scot. Law Com. No. 39) (H.C. 605)	Unfair Contract Terms Act 1977 (c. 50).
Law Com. No. 70	Statute Law Revision: Seventh Report by the two Commissions (Scot. Law Com. No. 40) (Cmnd. 6303)	Statute Law (Repeals) Act 1976 (c. 16).

<i>Report</i>	<i>Title</i>	<i>Implementation</i>
Law Com. No. 71	Tenth Annual Report 1974-1975 (H.C. 51)	*
1976		
Law Com. No. 72	Jurisdiction of Certain Ancient Courts (Cmnd. 6385)	Administration of Justice Act 1977 (c. 38).
Law Com. No. 73	Report on Remedies in Administrative Law (Cmnd. 6407)	Rules of Supreme Court (Amendment No. 3) 1977, (S.I. 1977 No. 1955).
Law Com. No. 74	Charging Orders (Cmnd. 6412)	Charging Orders Act 1979 (c. 53).
Law Com. No. 75	Report on Liability for Damage or Injury to Trespassers and Related Questions of Occupiers' Liability (Cmnd. 6428)	No
Law Com. No. 76	Criminal Law: Report on Conspiracy and Criminal Law Reform (H.C. 176)	In part by Criminal Law Act 1977 (c. 45).
Law Com. No. 77	Matrimonial Proceedings in Magistrates' Courts (H.C. 637)	Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22).
Law Com. No. 78	Eleventh Annual Report 1975-1976 (H.C. 94)	*
1977		
Law Com. No. 79	Law of Contract: Report on Contribution (H.C. 181)	Civil Liability (Contribution) Act 1978 (c. 47).
Law Com. No. 80	Statute Law Revision: Eighth Report by the two Commissions (Scot. Law Com. No. 44) (Cmnd. 6719)	Statute Law (Repeals) Act 1977 (c. 18).
Law Com. No. 81	Rent Bill: Report on the Consolidation of the Rent Act 1968, Parts III, IV and VIII of the Housing Finance Act 1972, the Rent Act 1974, sections 7 to 10 of the Housing Rents and Subsidies Act 1975 and Certain Related Enactments (Cmnd. 6751)	Rent Act 1977 (c. 42).
Law Com. No. 82	Liability for Defective Products: Report by the two Commissions (Scot. Law Com. No. 45) (Cmnd. 6831)	No
Law Com. No. 83	Criminal Law: Report on Defences of General Application (H.C. 556)	No
Law Com. No. 84	Law of Contract: Report on the Proposed E.E.C. Directive on the Law Relating to Commercial Agents (Cmnd. 6948)	*
Law Com. No. 85	Twelfth Annual Report 1976-1977 (H.C. 96)	*

<i>Report</i>	<i>Title</i>	<i>Implementation</i>
1978		
Law Com. No. 86	Family Law: Third Report on Family Property. The Matrimonial Home (Co-ownership and Occupation Rights) and Household Goods (H.C. 450)	In part by the Matrimonial Homes and Property Act 1981 (c. 24).
Law Com. No. 87	Statute Law Revision: Ninth Report by the two Commissions (Scot. Law Com. No. 48) (Cmnd. 7189)	Statute Law (Repeals) Act 1978 (c. 45).
Law Com. No. 88	Law of Contract: Report on Interest (Cmnd. 7229)	In small part by The Rules of the Supreme Court (Amendment No. 2) 1980 (S.I. 1980 No. 1010).
Law Com. No. 89	Criminal Law: Report on the Mental Element in Crime (H.C. 499)	No
Law Com. No. 90	Interpretation Bill: Report by the two Commissions on the Interpretation Act 1889 and Certain Other Enactments relating to the Construction and Operation of Acts of Parliament and Other Instruments (Scot. Law Com. No. 53) (Cmnd. 7235)	Interpretation Act 1978 (c. 30).
Law Com. No. 91	Codification of the Criminal Law: Territorial and Extra-territorial Extent of the Criminal Law	No
Law Com. No. 92	Thirteenth Annual Report 1977-1978 (H.C. 87)	*
Law Com. No. 93	Customs and Excise Management Bill: Report by the two Commissions on the Consolidation of the Enactments relating to the Collection and Management of the Revenues of Customs and Excise (Scot. Law Com. No. 54) (Cmnd. 7418)	Customs and Excise Management Act 1979 (c. 2).
1979		
Law Com. No. 94	Justices of the Peace Bill: Report on the Consolidation of Certain Enactments relating to Justices of the Peace (including Stipendiary Magistrates), Justices' Clerks and the Administrative and Financial Arrangements for Magistrates' Courts and to Matters connected therewith (Cmnd. 7583)	Justices of the Peace Act 1979 (c. 55).
Law Com. No. 95	Law of Contract: Report on Implied Terms in Contracts for the Supply of Goods (H.C. 142)	No
Law Com. No. 96	Criminal Law: Report on Offences relating to Interference with the Course of Justice (H.C. 213)	No
Law Com. No. 97	Fourteenth Annual Report 1978-1979 (H.C. 322)	*

<i>Report</i>	<i>Title</i>	<i>Implementation</i>
Law Com. No. 98	Reserve Forces Bill: Report on the Consolidation of Certain Enactments relating to the Reserve and Auxiliary Forces (Cmnd. 7757)	Reserve Forces Act 1980 (c. 9).
1980		
Law Com. No. 99	Family Law: Orders for Sale of Property under the Matrimonial Causes Act 1973 (H.C. 369)	Matrimonial Homes and Property Act 1981 (c. 24).
Law Com. No. 100	Highways Bill: Report on the Consolidation of the Highways Acts 1959 to 1971 and Related Enactments (Cmnd. 7828)	Highways Act 1980 (c. 66).
Law Com. No. 101	Magistrates' Courts Bill: Report on the Consolidation of Certain Enactments relating to the Jurisdiction of, and the Practice and Procedure before, Magistrates' Courts and the Functions of Justices' Clerks, and to Matters connected therewith (Cmnd. 7887)	Magistrates' Courts Act 1980 (c. 43).
Law Com. No. 102	Criminal Law: Attempt, and Impossibility in relation to Attempt, Conspiracy and Incitement (H.C. 646)	Criminal Attempts Act 1981 (c. 47).
Law Com. No. 103	Family Law: The Financial Consequences of Divorce: The Basic Policy. A Discussion Paper (Cmnd. 8041)	*
Law Com. No. 104	Insurance Law: Non-Disclosure and Breach of Warranty (Cmnd. 8064)	No
Law Com. No. 105	Judicial Pensions Bill: Report by the two Commissions on the Consolidation of Certain Enactments relating to Pensions and Other Benefits payable in respect of service in Judicial Office (Scot. Law Com. No. 62) Cmnd. 8097)	Judicial Pensions Act 1981 (c. 20).
Law Com. No. 106	Statute Law Revision: Tenth Report by the two Commissions (Scot. Law Com. No. 63) (Cmnd. 8089)	Statute Law (Repeals) Act 1981 (c. 19); Supreme Court Act 1981 (c. 54); British Telecommunications Act 1981 (c. 38).
Law Com. No. 107	Fifteenth Annual Report 1979-1980 (H.C. 161)	*
1981		
Law Com. No. 108	Trustee Savings Banks Bill: Report on the Consolidation of the Trustee Savings Banks Acts 1969 to 1978 (Cmnd. 8257)	Trustee Savings Banks Act 1981 (c. 65).
Law Com. No. 109	Private International Law: Council of Europe Conventions on Foreign Money Liabilities (1967) and on the Place and Payment of Money Liabilities (1972) (Cmnd. 8318)	*

<i>Report</i>	<i>Title</i>	<i>Implementation</i>
Law Com. No. 110	Breach of Confidence (Cmnd. 8388)	No
Law Com. No. 111	Property Law: Rights of Reverter (Cmnd. 8410)	No
Law Com. No. 112	The Financial Consequences of Divorce: The Reponse to the Law Commission's Discussion Paper, and Recommendations on the Policy of the Law (H.C. 68)	No
Law Com. No. 113	Sixteenth Annual Report 1980-1981	*

C. Joint Working Group Report

11 April 1979

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

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