

# The Law Commission

(LAW COM. No. 159)

**TWENTY-FIRST ANNUAL REPORT**  
**INCLUDING**  
**FIRST ANNUAL REPORT**  
**OF THE CONVEYANCING STANDING COMMITTEE**  
**1985–1986**

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

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

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**THE LAW COMMISSION**  
**TWENTY-FIRST ANNUAL REPORT:1985-1986**

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## THE LAW COMMISSION

### TWENTY-FIRST ANNUAL REPORT: 1985-1986

*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 Twenty-First Annual Report pursuant to section 3(3) of the Law Commissions Act 1965. It covers the period from 1 November 1985 to 31 October 1986, but for convenience we mention some developments since then.

#### PART I

##### THE PAST YEAR IN OUTLINE

1.1 In a lecture<sup>1</sup> in November 1985 Lord Justice Ralph Gibson, the Commission's fourth Chairman, drew attention to the loss to the Commission, following a staff inspection review, of a number of skilled team leaders who provided the core staff of the Commission. It was his understanding that the Commission would have instead the resources to secure on secondment the services of academic lawyers of experience and learning (in particular subjects) and to employ a number of young lawyers of high promise for short terms as research assistants. This was also our understanding. He pointed out that the skills and experience of staff available to the Commission affected both in general and in particular what the Law Commission could do and how long it takes to do it. He said:

If this ability to recruit staff for specific projects on limited terms of engagement is used and developed as it should be, the Commission will have gained—or recovered—a most valuable resource and will be able to a greater extent than before to obtain for work on law reform the help of academic lawyers of special learning in particular parts of the law.

The Commission has been developing this method of working with some success. We have in addition been able to commission work in universities from academic lawyers who have such specialised knowledge. Without any increase in the resources which Parliament had made available to the Commission in the year under review, the Commission planned not only to continue its existing programme of work but also to ensure that it could respond effectively to the increased demands of the statutory functions entrusted to it.

1.2 The Commission was, therefore, disappointed to learn comparatively recently that the resources to be put at our disposal in the coming year may be inadequate to enable us to do this. To carry out an effective programme of systematic law reform by this method of working, it is necessary to be able to plan ahead and also to have available, when required, the resource of that detailed knowledge of a specialist subject which can only be acquired by extensive study, continued familiarity and long experience. It was this resource which the skilled team leaders of the core staff of the Commission used to provide. To replace these skills from academic or other sources for the periods needed, the Commission must be in a position to make arrangements in good time and to take advantage of any opportunity to engage such exceptional talents when they become available. Although therefore the Commission believes it has thus been working more efficiently, its work is clearly more vulnerable to unexpected and inopportune changes in the provision of resources.

1.3 In looking back over the first twenty years of the Law Commission last year, we noted the anxiety which had been voiced that the Commission had not been involved in certain areas of the law requiring reform and we referred to the contribution which the Commission felt that it could make to the development and reform of the law in these important subjects.

1.4 The White Paper containing the proposals for the English and Scottish Law Commissions<sup>2</sup> pointed out that there was at that time nobody charged with the duty of keeping the law as a whole under review and of making recommendations for its systematic reform. Each Government department was responsible for keeping under review the state of the law in its own field. From time to time Royal Commissions, independent committees or standing bodies such as the Law Reform Committee reviewed particular aspects of the law and well-deserved tribute was paid to the contribution which these bodies had made to the reform of the law. Nevertheless the work had been done piecemeal and the object of the Law Commissions was to ensure comprehensive and systematic reform.

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<sup>1</sup>"The Law Commission", *Current Legal Problems 1986*, (1986), pp. 57-83.

<sup>2</sup>(1965) Cmnd. 2573.

1.5 It was clearly intended that the Law Commission should not only make recommendations for reform of the law which in the past had been considered by Royal Commissions, independent committees and standing bodies, but also of those branches of the law which had been considered by Government departments. Resources were to be made available to the Commission which would be adequate to enable it to provide Government departments contemplating legislation with the research and advisory facilities necessary.

1.6 The Commission's First Annual Report considered the future of law reform. It stressed the need for research and consultation and emphasised the need for legal research to be undertaken by others as well as the Commission. It viewed the role of the Commission both as an advisory body and as a body possessing a right of initiative with a duty to think ahead about topics which were not necessarily included in the programmes of work. It was the duty of the Commission to watch out for anomalies and defects in the law revealed in day-to-day deliberations of Parliament, the decisions of the courts and the comments of the press as well as in representations made to the Commission.

1.7 In the lecture to which we have referred,<sup>3</sup> Lord Justice Ralph Gibson gave his view of the Commission's role. He said that while it did not have nor did it want a monopoly either in the planning of law reform or in the carrying out of law reform projects, nevertheless the purpose of the Commission was the promotion of the reform of the law. He thought it likely that more resources would in future be applied to projects of more limited scope than the programme items and which offered the prospect of useful reforms. He foresaw the Commission doing more of its work in response to Government references, in providing assistance to departmental projects and in working in close co-operation with the Government or departmental committees. One example of this is our continued work with the D.H.S.S. on the review of child care law.<sup>4</sup>

1.8 As part of our task of keeping the law under review and promoting systematic law reform, we have over the past year responded to several consultation documents issued by Government departments and others engaged in law reform projects. For example, in the field of family law we have commented on the D.H.S.S. Consultation Paper on Nurseries and Child Minders and on those aspects of the efficiency scrutiny report on the General Register Office which dealt with the solemnization of marriage. We also responded to your Department's Consultation Paper on Occupational Pension Rights on Divorce and to the Consultation Paper issued by the inter-departmental review of Family and Domestic Jurisdiction.<sup>5</sup> In the field of criminal law we commented upon the joint D.H.S.S./Home Office Consultation Document on Offenders Suffering from Psychopathic Disorder. We have also commented on the implications for property law of the Department of Trade and Industry's Consultation Paper on Security over Moveable Property.<sup>6</sup>

1.9 If the Commission is to discharge the duties entrusted to it in full measure, it must be in a position to co-ordinate the efforts of all concerned with reform of the law in whatever field. To do this it must be aware of all important changes under consideration in the different fields of law, whether by Government departments, independent committees or other bodies. The Commission of course seeks to monitor such changes through debates in Parliament, press reports, academic journals and other sources. Nevertheless it sometimes happens that the Commission is unaware of the setting up of an independent committee and of the nature of changes proposed until it is too late to give advice, co-ordinate research or consider the proposed recommendations. In some instances the Commission's views on proposed changes in the law are sought when there is inadequate time for proper research and consultation. Legislative changes in a particular branch of the law which may significantly affect other branches are not brought to the attention of, or considered with, the Commission.

1.10 At a time of financial stringency and increasing emphasis on cost-efficiency, the role of the Commission in promoting and co-ordinating systematic reform is of particular importance. Resources must not be wasted through duplication. Before any review of the law is mounted the anomalies and defects at which it is directed must be identified, analysed and evaluated, implications for other areas ascertained and the relevance of other reviews established.

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<sup>3</sup>See para. 1.1. above.

<sup>4</sup>See para. 2.28. below.

<sup>5</sup>See para. 2.32. below.

<sup>6</sup>See para. 2.44. below.

1.11 With these considerations in mind the Commission is exploring the possibility of publishing information about law under review by departments, Commissions and committees. It is also identifying areas of the law in need of simplification, modernisation and reform and drawing attention to them so that those planning and undertaking reviews can take account of them.

1.12 In this way we hope in future to be able to identify and bring to the attention of Government departments and other bodies actively involved in law reform, aspects of the law of concern to them which need consideration. We hope also to make such departments and bodies increasingly aware of the benefits to be gained by seeking the assistance and co-operation of the Commission.

## PART II:

### THE YEAR UNDER REVIEW

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

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

- (i) Law of Contract: Implied Terms in Contracts for the Supply of Services, Law Com. No. 156.
- (ii) Family Law: Illegitimacy (Second Report), Law Com. No. 157.

2.2 During the year we published the following working papers:

- (i) Landlord and Tenant: Privity of Contract and Estate: Duration of Liability of Parties to Leases, Working Paper No. 95.
- (ii) Family Law: Review of Child Law: Custody, Working Paper No. 96.
- (iii) Custody Law in Practice in the Divorce and Domestic Courts, Supplement to Working Paper No. 96.
- (iv) Distress for Rent, Working Paper No. 97.
- (v) Transfer of Land: The Rule in *Bain v. Fothergill*, Working Paper No. 98.
- (vi) Land Mortgages, Working Paper No. 99.

#### (b) REPORT ON PROGRESS

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

##### **Contract Law**

###### *Sale and Supply of Goods*

2.4 This is a venture undertaken jointly with the Scottish Law Commission. In 1983 the two Law Commissions published a consultative document.<sup>2</sup> The policy for the Commissions' final recommendations was considered at the annual joint meetings in April 1985 and April 1986. As has been noted in the latest annual report of the Scottish Law Commission, this project has occupied us for longer than we originally envisaged. It has proved more difficult than we expected to make discrete alterations to the Sale of Goods Act 1979 and to reconcile the different conceptual approaches of Scots and English law, without also making it necessary to propose widespread consequential amendments to the structure of the 1979 Act. However, work has now been substantially completed on the preparation of a report and draft Bill.

###### *Supply of Services*

2.5 We submitted our report<sup>3</sup> on this topic in March 1986. In it we reviewed the law governing contracts for the supply of services in the light of Part II of the Supply of Goods and Services Act 1982, which provides for certain terms to be implied in such contracts. We concluded that it would be premature to amend or add to the statutory implied terms, the rules which prohibit their exclusion and the remedies for their breach. The report therefore contains no recommendations for legislation.

###### *Title to Goods in Bulk*

2.6 One of the leading commodity trade associations has raised with the Commission the question whether the law relating to the title of goods in bulk is satisfactory. Trade associations in other countries, where English law is used as the basis of the contractual relationship

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<sup>1</sup>See Statute Law section (para 2.55 *et seq.*).

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

<sup>3</sup>(1986) Law Com. No. 156, Cmnd. 9773.



of their members, have also raised the matter with the Commission. Under section 16 of the Sale of Goods Act 1979 a person who buys goods which form part of a bulk cannot become the owner of those goods until his portion of the bulk is appropriated to him. This means that his rights against third parties, who may have damaged the goods, are very limited, and also that while the goods are still in bulk others may acquire, or claim to have acquired, an interest in the goods. The problem seems to arise principally, but not exclusively, in relation to the international carriage of goods by sea where merchants in some trades regularly buy bills of lading or delivery orders which relate to only a part of a larger bulk cargo.

2.7 It has long been a feature of English commercial law that it seeks to make possible what traders want, subject to any considerations of public policy to the contrary. The Commission therefore decided that it would carry out an investigation into the question of title to goods in bulk. It is concerned, in particular, to ascertain the extent of the problem, and to examine some of the many different answers to it which are provided by other legal systems. When it has concluded this examination, the Commission will decide what further step it can most usefully take in the matter. The Commission is glad to be able to acknowledge its gratitude for assistance on this project to Mr. Hugh Beale of Bristol University and Mrs. Ann Smart, of St. Hugh's College, Oxford.

## **Criminal Law**

### *Criminal Code*

2.8 The task of scrutinising the draft Criminal Code Bill attached to the report of Professor J. C. Smith's team on Codification of the Criminal Law<sup>4</sup> has continued throughout the past year both within the Commission and outside it. In the eighteen months since it was published the draft Code has stimulated a great deal of debate by way of lectures, conferences and articles in legal journals. In addition, we have received more than fifty responses from individuals and bodies to our general invitation for comments. In our last annual report<sup>5</sup> we referred to the establishment of groups of judges, practising lawyers, justices' clerks and others throughout the country to assist in scrutinising in detail some particular part of the draft Code and reporting back to the Commission with views both on the detail of its provisions and on the general principle of codification. We have since received reports from each one of the eight scrutiny groups and held meetings to discuss the contents of their reports with representatives of several of the groups. We also received a report from a special Committee headed by Lord Justice Lawton which considered the draft clauses intended to give effect to most of the recommendations of the Criminal Law Revision Committee's Fourteenth Report on Offences against the Person.<sup>6</sup>

2.9 The work of these groups proved to be of enormous value to us and we are extremely grateful to the chairmen and members for the enthusiastic way in which they set about their task. In order not to lose the benefits of having the cross-fertilised views of groups of lawyers with differing backgrounds on proposals for reform emanating from the Commission, we asked each of the circuit judges who headed the scrutiny groups whether they would agree to assist us in a similar fashion in future consultation exercises in the criminal law field. We are pleased to report that the responses were unanimously in favour and we are most grateful for this renewed offer of support for our work.

2.10 In the light of the substantial support from the scrutiny groups and many others for the principle of codification of the criminal law which publication of the draft Code has stimulated, we have decided that it is important, as the next stage in this project, to present to the public and Government a Bill which is sufficiently comprehensive to be recognisable as a Criminal Code. The Bill will only be seen as useful if judges, practitioners and all who might have to use the Code can see how advantageous it would be to have the criminal law in one coherent piece of legislation. To achieve this aim we believe that as many as possible of the indictable offences which regularly have to be considered in the Crown Court and in the Magistrates' Courts should be included in Part II. It is believed that with the addition to Part II (the existing draft of which already covers offences against the person and criminal damage) of sexual offences, offences under the Theft Acts 1968 and 1978 and the Forgery

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<sup>4</sup>Codification of the Criminal Law: A Report to the Law Commission (1985) Law Com. No. 143.

<sup>5</sup>Twentieth Annual Report 1984-1985 (1986), Law Com. No. 155, para. 2.10.

<sup>6</sup>(1980) Cmnd. 7844.

and Counterfeiting Act 1981, over 90 per cent of the work of these courts would be encompassed.

2.11 In order to accomplish this task and to keep up the momentum of the project, we were pleased to welcome Mr. Ian Dennis, Reader in Law at University College, London and a member of Professor Smith's Code team, who joined us in August 1986 to work full-time on this project during a sabbatical year. In addition, we have invited Professor Smith and Professor Edward Griew to assist with the redrafting of the existing draft Code Bill and with the drafting of the additional offences in Part II. We are very fortunate in being able to count on the continued assistance for this project of these three distinguished academic lawyers in their roles as both advisers and draftsmen. Our aim now is to publish a report together with a draft Criminal Code Bill during 1988.

#### *Conspiracy to Defraud*

2.12 The Report of the Fraud Trials Committee under the Chairmanship of Lord Roskill<sup>7</sup> was published early in 1986. Much of the report was concerned with recommending changes in the practice and procedures relating to serious fraud cases from investigation through to trial. The Criminal Justice Bill gives effect, with some modifications, to many of its recommendations.<sup>8</sup> The Committee drew attention to several respects in which the substantive law of fraud had been considered by those who gave evidence to be unsatisfactory, and recommended that they be examined by an appropriate law reform agency.<sup>9</sup> Foremost among these was the widespread concern brought about by the case of *R. v. Ayres*<sup>10</sup> where the decision of the House of Lords had the effect of severely restricting the use of charges of conspiracy to defraud. The Home Secretary asked the Criminal Law Revision Committee to review the restrictions as a matter of urgency and in its Eighteenth Report,<sup>11</sup> published in September 1986, the Committee recommended that the law should be restored to what it was before the Criminal Law Act 1977, so that it would be open to prosecutors to charge conspiracy to defraud, notwithstanding that the defendant's conduct might also amount to, or involve, the commission of some other offence. The Criminal Justice Bill also includes provision to give effect to this recommendation and provides a maximum penalty for the common law offence of ten years' imprisonment.<sup>12</sup>

2.13 As was acknowledged in the Roskill Report, we ourselves have had conspiracy to defraud under review for some time. We have been considering whether a new statutory offence of fraud should be created or whether there should be a series of substantive offences to fill the gap that would be left by the abolition of the common law offence. During the debate on the Roskill Report in the House of Lords, you made it clear that, unlike the matter referred to the Criminal Law Revision Committee, a solution to the complex issues raised in our own review could be expected to take some time to complete.<sup>13</sup> During the year we have been able to make substantial progress towards the production of a new working paper which we now hope will be published in the summer of 1987.

#### *Binding Over to Keep the Peace*

2.14 In our last annual report<sup>14</sup> we noted that the Home Secretary's announcement of his intention to introduce legislation creating an offence of disorderly conduct had caused our work on this subject to be deferred again. The scope of the new offence has now been made clear following the passage of the Public Order Act 1986.<sup>15</sup> The effect which the new offence will have in practice on the exercise of binding over powers in the context of public order remains to be seen. It will undoubtedly penalise as criminal some of the conduct which at present may result in a binding over order. In May (while the Public Order Bill was still under discussion) Mr. Martin Wasik, a lecturer in law at Manchester University, agreed to work on this project and he prepared an outline of a new policy paper taking into account, among other things, the disorderly conduct offence. He is now preparing a further paper which will provide an analysis of this complex branch of the law (with particular regard to the many different contexts in which it is available) and put

<sup>7</sup>(1986) H.M.S.O.

<sup>8</sup>Part I (Fraud), Part II (Evidence) and cl. 83 (abolition of preemptory challenge).

<sup>9</sup>*Op. cit.*, Chap. 3, recommendation 13.

<sup>10</sup>[1984] A.C. 447.

<sup>11</sup>Conspiracy to Defraud, Cmnd. 9873. We were glad to be able to assist the Committee by making available to them a review of our work on conspiracy to defraud and of the case law since 1977.

<sup>12</sup>See cl. 12.

<sup>13</sup>*Hansard* (H.L.), 10 February 1986, vol. 471, col. 12.

<sup>14</sup>(1986) Law Com. No. 155, para. 2.20.

<sup>15</sup>See s. 5.

forward some suggestions as to the way in which the problems arising might be tackled, including the possibilities for reform of the law. We intend to publish this paper as a working paper in the latter half of 1987.

### *Computer-Related Crime*

2.15 We have been examining in the context of our project on conspiracy to defraud the adequacy of the existing criminal law to cover the misuse of computers for fraudulent purposes. Computer fraud is only one, albeit important, form of computer misuse which embraces a diversity of conduct, some of it already penalised by the criminal law. We have embarked upon a preliminary study of aspects of non-fraudulent computer misuse in order to see how far the present law makes such conduct criminal. A study paper has been prepared which includes consideration of two aspects of computer misuse in particular, namely the destruction or alteration of computer programs or data, and the obtaining of unauthorised access to a computer ("hacking"). Both types of conduct have been the subject of decisions of the courts during the past year. In one case the Divisional Court held that the deliberate erasure of a computer program from a printed circuit card used to operate a machine tool could constitute criminal damage within the meaning of the Criminal Damage Act 1971.<sup>16</sup> In the other case, a Crown Court judge directed a jury that the unauthorised accessing of British Telecom's Prestel computers by two defendants who used passwords that they were not entitled to use was capable of amounting to forgery under section 1 of the Forgery and Counterfeiting Act 1981.<sup>17</sup> The defendants' convictions in that case are currently under appeal. We shall then consider whether to publish a consultation paper seeking comments on the question whether reform of the criminal law of England and Wales<sup>18</sup> is required in this area.

### **Family Law**

#### *Second Report on Illegitimacy*

2.16 We have published a Second Report on Illegitimacy.<sup>19</sup> Apart from some minor changes aimed at further improving the law, it implements in substance the recommendations made in our first report.<sup>20</sup> We returned to the topic because of the intervening Scottish Law Commission Report on Illegitimacy<sup>21</sup> which recommended against the continued use of the terms legitimate and illegitimate and the substitutes proposed in our first report, "marital" and "non-marital".<sup>22</sup> They argued that the use of any adjective to describe the child was unnecessary and undesirable in that it would rarely be necessary to make the distinction in future<sup>23</sup> and that a new label might "rapidly take on old connotations."<sup>24</sup> We were convinced by these arguments and a new draft Bill was prepared accordingly.

2.17 Clause 1 of the draft Bill lays down a new rule of construction to the effect that references to family relationships are to be construed, unless a contrary intention appears, without regard to whether any person's parents were married at a particular time. That rule is applied to all future enactments and instruments<sup>25</sup> as well as to a number of existing enactments relating to parents and children and their rights.<sup>26</sup> Clause 30 would, moreover, enable the Lord Chancellor to apply clause 1 to the many provisions in existing legislation which provide for illegitimate children to be treated as legitimate, thus removing the offending adjective from them.

2.18 Where distinctions are thought necessary in future, the Bill makes it easy to draw them without using a label simply by defining references to a person's parents being or not being married at the time of his birth, in the same way that legitimacy and illegitimacy are defined at present.<sup>27</sup> At the same time, the opportunity was taken to recommend a few minor policy changes to carry even further the aim of removing discrimination against the children involved. The Bill attached to our second report is now before Parliament.

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<sup>16</sup>*Cox v. Riley* (1986) 83 Cr. App. R. 54.

<sup>17</sup>*R. v. Gold and Schifreen*, *The Times*, 26 April 1986 (Southwark Crown Court, Judge Butler).

<sup>18</sup>The Scottish Law Commission published Consultative Memorandum No. 68 on Computer Crime in March 1986 with proposals for reform of the law north of the Border.

<sup>19</sup>(1986) Law Com. No. 157.

<sup>20</sup>(1982) Law Com. No. 118.

<sup>21</sup>(1984) Scot. Law Com. No. 82.

<sup>22</sup>(1982) Law Com. No. 118, para. 4.51.

<sup>23</sup>(1984) Scot. Law Com. No. 82, para. 9.2.

<sup>24</sup>*Ibid.*

<sup>25</sup>Cls. 1(1) of draft Family Law Reform Bill annexed to (1986) Law Com. No. 157.

<sup>26</sup>Cls. 2, 18 and 19.

<sup>27</sup>Cl. 1(2).

## *Review of Child Law*

2.19 As we announced in last year's Annual Report<sup>28</sup> we have begun a review of the private law relating to the upbringing of children. The aim of this is to bring together into a single comprehensive code the many concepts and procedures used in private law to allocate responsibility for children amongst individuals. We have decided to conduct the review by a series of consultation papers on particular jurisdictions and because of the overlap between jurisdictions it may not be possible to form a clear view on some matters until the review is complete. So far, we have produced working papers on guardianship<sup>29</sup> and custody<sup>30</sup> and two more are in preparation. We are planning to deal with all the statutory jurisdictions together in a single comprehensive report and Bill.

### *Guardianship*

2.20 The first working paper in this review, on guardianship,<sup>31</sup> was published in September 1985 along with a shorter version aimed at the lay reader, entitled "Your Children Orphaned: Who Should Care?". Comments in response have been received and are being considered in the context of the review as a whole.

### *Custody*

2.21 The second working paper, on custody, was published in July 1986.<sup>32</sup> It analyses and identifies gaps, inconsistencies and anomalies in the twelve different provisions under which the courts are currently able to make orders for custody and access, along with the different effects of the various orders. It is suggested that the law should interfere as little as possible in the beneficial relationships established before a family separation occurs, while providing the child with a sufficiently secure home base. The paper outlines a possible new scheme to apply both to parents and non-parents. This assumes that, in practice, when a child's parents or those responsible for him do not live together, the child divides his time between them and decisions about his upbringing are made and put into effect by the parent or person by whom he is being looked after at the time. It is suggested that if the law were to recognise this it would be better than the current position, where responsibility for making decisions and looking after the child do not always go to the same parent. Custody and access would be replaced by care and control which would be shared by those responsible for a child but exercisable for different and perhaps specified periods of time. It is hoped that such a scheme would encourage both parents to continue being involved with the child's upbringing after divorce or separation.

2.22 It is also suggested that the courts should make orders only where it is necessary to do so and that the duty of divorce courts under section 41 of the Matrimonial Causes Act 1973 should be to determine whether an order needs to be made, rather than to satisfy itself that arrangements made are satisfactory. The paper also discusses whether in general non-parents should have similar open access to the courts as have parents to ask for orders relating to the upbringing of a child. It is suggested that all non-parents should be able to apply for guardianship, perhaps with leave of the court, and with some limitations when the child is in local authority care. Relatives wishing to maintain contact with a child should be able to apply for a visiting order.

2.23 Finally, the paper endorses the principle that the welfare of the child should be the paramount consideration for a court determining questions of custody and upbringing, but asks whether the courts might be assisted in reaching their decisions and achieve greater consistency if there were a statutory checklist of factors to take into account in deciding what would be best for the child. The paper asks how a court might best ascertain the child's wishes and feelings.

2.24 In addition to the main working paper we have produced a short summary of the issues and proposals, entitled "150,000 Children Divorced a Year: Who Cares?". As with the summary of the guardianship paper this has proved very popular and we have already distributed over 2,000 copies to interested individuals and organisations. We have also published a supplement to the working paper, entitled "Custody Law in Practice in the Divorce and Domestic Courts",<sup>33</sup> written by Mrs. J. A. Priest, a lecturer in law at Durham

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<sup>28</sup>(1986) Law Com. No. 155, para. 2.23.

<sup>29</sup>(1985) Working Paper No. 91.

<sup>30</sup>(1986) Working Paper No. 96.

<sup>31</sup>(1985) Working Paper No. 91.

<sup>32</sup>(1986) Working Paper No. 96.

<sup>33</sup>(1986) Working Paper No. 96 Supplement.

University, and Mr. J. C. Whybrow of the Law Commission. This gives an up-to-date picture of the orders made in the major custody jurisdictions and incorporates information collected from court returns and a number of interviews carried out with judges, magistrates and solicitors. It demonstrates some of the difficulties of the present law and also that substantial differences in practice have developed across the country. We are grateful to Mrs. Priest, her university and to all those who contributed to the project for their assistance.

#### *Care, Supervision and Interim Orders in Custody Proceedings*

2.25 We have also continued to work on a number of issues which were mentioned in our custody working paper<sup>34</sup> but had to be deferred until initiatives elsewhere were more advanced. These include several matters referred to us by the Review of Child Care Law,<sup>35</sup> which overlap with our review of the private law. A working paper<sup>36</sup> relating to the procedure in family proceedings when a committal to care is contemplated was published in February 1987.

#### *Wardship*

2.26 We have also just completed our final working paper in the review, on the wardship jurisdiction. The marked contrast between the wide scope of wardship and its relatively infrequent (though increasing) use has led us to try to identify the situations in which the jurisdiction is needed, to consider whether the present state of the law accurately reflects that need, and to discuss how far a broad residual jurisdiction can be justified alongside statutory jurisdictions of more limited scope. We are also considering what implications the jurisdiction has for our overall objective of producing a comprehensive code of provisions relating to the upbringing of children.

2.27 Our understanding of the working of the wardship jurisdiction has greatly benefited from individual discussions with a number of experienced judges and registrars, the Official Solicitor and legal practitioners. We are very grateful to the President of the Family Division for his help in promoting these discussions and to all those who have taken part in them.

#### *Review of Child Care Law*

2.28 We have continued to assist the Department of Health and Social Security with the review of Child Care Law.<sup>37</sup> In particular, we have been involved in analysing the response to the consultative paper<sup>38</sup> and in formulating proposals for change for inclusion in the Government's White Paper on the Law on Child Care and Family Services.<sup>39</sup>

#### *Ground for Divorce*

2.29 In conjunction with the University of Bristol Socio-Legal Centre for Family Studies we held a seminar in December 1985 as a result of which we were greatly encouraged to pursue this project further. In January 1986 we commissioned Mrs Rhona Schuz, a lecturer in law at the London School of Economics and Political Science, to prepare a paper analysing the defects in the present law in the light of experience over the fifteen years since it came into force, when judged against the objectives set for it by the architects of the Divorce Reform Act 1969. A most helpful paper was delivered to us in July 1986 and we are very grateful to Mrs Schuz and the London School of Economics for their assistance. We have also received a paper from Richard Ingleby, based at the University of Oxford Centre for Socio-Legal Studies, which draws on his researches into solicitors' files in divorce cases. This paper reveals some interesting information on why, when and how people seek to divorce, and the correlation between the facts relied upon and the circumstances of their case. We are grateful to Mr. Ingleby for his help and we hope that both he and Mrs. Schuz will continue to assist us with this project. Further information may become available from the O.P.C.S. study of the financial consequences of divorce and from our own studies of court files, and we hope to produce a discussion paper for publication in 1987.

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<sup>34</sup>(1986) Working Paper No. 96, paras. 7.41-7.42.

<sup>35</sup>*Review of Child Care Law*, Report to Ministers of an Interdepartmental Working Party (1985) HMSO. The content of that report and the reason for the Law Commission's involvement were explained in the Twentieth Annual Report 1984-1985 (1986), Law Com. No. 155, paras. 2.60-2.63. The Government's response to that report was published in January 1987; see n. 39 below.

<sup>36</sup>Family Law: Review of Child Law: Care, Supervision and Interim Orders in Custody Proceedings (1987), Working Paper No. 100

<sup>37</sup>See n. 35 above.

<sup>38</sup>*Ibid.*

<sup>39</sup>(1987) Cm. 62.

### *Matrimonial Property*

2.30 We published a working paper in April 1985<sup>40</sup> on the law relating to transfer of money between spouses. Comments were invited by 31 July 1985. We completed analysis of those comments last year. Following consideration of our proposals in the light of the comments received, we asked those who had responded for their comments on revised proposals. We have now formulated our policy and we hope to publish a report during 1987. The report will review our previous work on matrimonial property law and make recommendations that go somewhat further than the transfer of money between spouses.

### *Spouse's Share on Intestacy*

2.31 The Lord Chancellor's Department has asked us to undertake an examination of the share of the estate which the surviving spouse receives. At present the spouse receives a lump sum and a life interest in half the residue if there are surviving issue, or a larger lump sum and half the residue if there are no surviving issue but other specified relatives. One particular problem is that although the amounts of the lump sums are raised periodically, they are not always enough for the spouse to retain the matrimonial home, especially if the deceased was the sole owner. We are making a preliminary study of the area with a view to deciding the precise scope of the project in 1987.

### *Responses to Other Family Law Initiatives*

2.32 In the course of the year we have responded to a number of initiatives taken by the Government in the field of family law. In particular, we commented on the Department of Health and Social Security's Consultation Paper on the Nurseries and Child Minders' Regulation Act 1948,<sup>41</sup> and on the Efficiency Scrutiny Report on the General Register Office<sup>42</sup> which touched on matters dealt with in our Report on the Solemnization of Marriage.<sup>43</sup> We also replied to your Department's Consultation Paper on Occupational Pension Rights on Divorce,<sup>44</sup> a matter which we had recommended for consideration in our Report on the Financial Consequences of Divorce.<sup>45</sup> Most recently we responded to the Consultation Paper on Family and Domestic Jurisdiction<sup>46</sup> published by your Department. In addition, the Family Law team responded to the Report of the Matrimonial Causes Procedure Committee,<sup>47</sup> and commented on the part of the draft Code of Practice prepared by the Mental Health Act Commission which dealt with consent to treatment by minors.

### **Property Law**

2.33 The First Programme of Law Reform: Item IX: Transfer of Land was extended to the simplification and modernisation of "the whole law relating to transfer of both registered and unregistered land".<sup>48</sup> We are now working on the following topics.

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

2.34 We published a working paper in September 1985<sup>49</sup> on which comments were invited by 31 January 1986. We have now analysed the comments we received and have formulated our policy, and we expect to publish a report in mid-1987.

#### *Formalities for Deeds and Escrows*

2.35 We published a working paper in September 1985<sup>50</sup> on which comments were invited by 31 January 1986. We have now considered the comments we received and have made decisions as to our policy, and we expect to publish a report in mid-1987.

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<sup>40</sup>(1985) Working Paper No. 90.

<sup>41</sup>Published September 1985.

<sup>42</sup>Published November 1985.

<sup>43</sup>(1973) Law Com. No. 53.

<sup>44</sup>Published July 1985.

<sup>45</sup>The Financial Consequences of Divorce. The Response to the Law Commission's Discussion Paper, and Recommendations on the Policy of the Law (1981), Law Com. No. 112 (H.C. 68).

<sup>46</sup>Published May 1986.

<sup>47</sup>Published July 1985.

<sup>48</sup>First Annual Report 1965-1966 (1966), Law Com. No. 4, para. 70.

<sup>49</sup>(1985) Working Paper No. 92.

<sup>50</sup>(1985) Working Paper No. 93.

### *Trusts of Land*

2.36 Following publication of the working paper<sup>51</sup> referred to in last year's annual report, we have received a number of interesting and detailed comments. We are now analysing these comments before deciding what our policy should be. We will also be looking at two additional areas not covered in the working paper. The important decision of *City of London Building Society v. Flegg*<sup>52</sup> has led us to look at the topic of over-reaching of equitable interests and we will be considering the impact of the Hague Convention on Trusts on the choice of law for trusts of land.

### *Title on Death*

2.37 Professor Alan Prichard of Nottingham University has prepared a draft working paper for us on the problems of dealing with land following the death of the owner. We are most grateful to Nottingham University for enabling him to spend a sabbatical term working on this. The draft has been presented to and discussed by Commissioners and it is hoped that, following revisions, it will be ready for publication during 1987.

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

2.38 The working paper<sup>53</sup> described in last year's annual report was published in August 1986 and comments were invited by 30 November 1986. The Court of Appeal has recently expressed approval<sup>54</sup> of the proposal in the working paper that the rule in *Bain v. Fothergill* should be abolished. We hope to publish the report during 1987.

### *Mortgages*

2.39 A working paper on the law of land mortgages<sup>55</sup> was published in October 1986. The paper covers all aspects of land mortgages from the formalities for creating them to protection of borrowers. We are most grateful to Alison Clarke, solicitor and lecturer in law at Southampton University, who has prepared and written the paper while on secondment to us. The paper has been published at a time when the issues of home ownership including mortgages are being widely discussed, and we hope to receive comments from a wide range of people and organisations.

### *Covenants for Title in Unregistered Land*

2.40 It has been suggested that the covenants for title in the Law of Property Act 1925 are drafted in an incomprehensible and outdated style. Accordingly, we have asked Professor John Adams of Queen Mary College, London University to draft for approval a new set of covenants which we hope to publish as a working paper during 1987.

### *Passing of Risk from Vendor to Purchaser*

2.41 Once a contract for the sale of land is made, the purchaser becomes subject to the risk that the land (including buildings) may suffer damage through fire or otherwise, even though legal ownership and the right to take possession do not pass until completion. He is, therefore, usually advised to insure the property straightaway. However, the vendor generally continues to insure the property also until completion, so that the same risks are insured twice. This seems to be an unnecessary duplication of expense. Incurred in many thousands of transactions each year, it adds greatly to the overall cost of conveyancing. Consideration of this particular issue has led us to believe that it is worth examining generally the position of vendor and purchaser between contract and completion. We have asked Mark Thompson, lecture in law at Leicester University to prepare a draft working paper for approval, which we hope will be published during 1987.

### *Land Registration*

2.42 Work continued on the third land registration report. This has now been submitted. It is in three parts, viz:

- (i) Overriding Interests;
- (ii) Rectification and Indemnity;
- (iii) Protection and Priority of Minor Interests (including mortgages and charges).

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<sup>51</sup>(1985) Working Paper No. 94.

<sup>52</sup>[1986] Ch. 605, C.A.; (pet. all.) [1986] 2 W.L.R. 627H, H.L.(E.).

<sup>53</sup>(1986) Working Paper No. 98.

<sup>54</sup>*Sharneyford Supplies Ltd v. Edge and Barrington Black & Co.*, (1986) *The Times*, 16 October 1986.

<sup>55</sup>(1986) Working Paper No. 99.

2.43 This substantial and significant report was submitted without clauses because work had started on new land registration legislation;<sup>56</sup> a first draft of a Bill has been prepared and will shortly be circulated for comment from H.M. Land Registry and elsewhere. The Bill will, we hope, be submitted in the course of 1987 together with a short explanatory report. In the light of the examination of the statutory implied covenants for title,<sup>57</sup> work has begun on adopting such covenants particularly for registered land. Effect will be given to any changes in the Bill.

#### *Security over Property Other than Land*

2.44 During the year the Commission responded to the Consultation Paper on Security over Moveable Property published by the Department of Trade and Industry. The paper is part of Professor Aubrey Diamond's review of the law regulating the rights and liabilities of lenders, borrowers and interested third parties in credit transactions on the security of property other than land. We were particularly interested in the relationship between this review and our own work on land mortgages. We look forward to seeing the results of Professor Diamond's review in due course.

### **Landlord and Tenant Law**

#### *Overview of Landlord and Tenant Law*

2.45 In exercising our general responsibility to keep the law under review, we have decided that it would be helpful to make a survey of landlord and tenant law. The objective is not to make a detailed study of the rules, nor to suggest changes to them, but rather to take an overall view of the current position. We shall record the progress of our reform recommendations so far, and assess where else reforms are needed. We expect to publish a report early in 1987.

#### *Privity of Contract and Estate*

2.46 In June we published a working paper<sup>58</sup> which considered possible changes to the rule under which the original parties to a lease continue to be responsible under the covenants contained in it after they have parted with their interests in the property. It examined a number of reform options, but concluded that none met all the criticisms of the present law. We provisionally recommended that the privity of contract principle should be abrogated, so that lease covenants would bind the parties only while they had an interest in the property. We are now analysing the replies received on consultation, and hope to publish our report during 1987.

#### *Distress for Rent*

2.47 Our working paper,<sup>59</sup> published in August, reviewed the unsatisfactory state of the ancient law of distress. It considered four possible directions for reform. We concluded that the defects were so widespread that mere re-statement of the existing rules in modern form would be unsatisfactory. The paper suggested that piecemeal reform might be helpful, but was not a satisfactory long-term solution, and that fundamental reform would demand resources out of proportion to the usefulness of the remedy. Our provisional conclusion was that distress for rent had no place in modern society, and should be abolished. Responses to the consultation are still coming in. After they have been analysed and considered, we expect to publish our report in late 1987.

#### *Compensation for Tenants' Improvements*

2.48 Tenants of business premises who improve their property become entitled to compensation from their landlords under Part I of the Landlord and Tenant Act 1927, when they quit the premises. The statutory procedure is cumbersome, and appears to be little used. We are reviewing this topic and hope to publish a working paper for general consultation early in 1987.

#### *Condominium (Strata Title) Legislation Working Group*

2.49 In our Report on The Law of Positive and Restrictive Covenants<sup>60</sup> we referred to the topic of condominiums, explaining that "some countries have legislation designed to provide

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<sup>56</sup>See Twentieth Annual Report 1984-1985 (1986), Law Com. No. 155, para. 2.37.

<sup>57</sup>See para. 2.40 above.

<sup>58</sup>(1986) Working Paper No. 95.

<sup>59</sup>(1986) Working Paper No. 97.

<sup>60</sup>(1984) Law Com. No. 127.



a full and detailed network of rights and obligations for the owners of units in blocks of flats and similar property developments".<sup>61</sup> We did not recommend any immediate legislation of that sort, saying, "Our own view is that condominium legislation has very great advantages, and we will certainly not rule out the desirability of such legislation in this country at some future time".<sup>62</sup> In May, a Working Group was established under the chairmanship of Trevor Aldridge "to put forward a scheme to regulate relations between the owners of separate properties which lie in close proximity to each other and are interdependent". This Working Group, composed of members from various Government departments, is meeting regularly to prepare proposals and is consulting interested representative outside bodies. The report will be submitted to you by the end of July 1987.

### *Business Tenancies*

2.50 Part II of the Landlord and Tenant Act 1954<sup>63</sup> gives security of tenure for business and professional tenants by providing for the continuation and renewal of such tenancies subject to certain conditions. A preliminary consultation carried out by the Department of the Environment convinced Ministers that there is broad agreement that the Act is still working satisfactorily, and that the balance of rights between landlords and business tenants is being maintained.<sup>64</sup> Accordingly, no reform of the legislation, which would affect the basic balance between landlord and business tenants, is being contemplated. However, following consultations with the Department of the Environment, we have recently commenced preliminary work to ascertain whether, and if so the ways in which, the provisions of Part II of the 1954 Act could usefully be reformed without undermining the basic balance of landlord and tenant interests enshrined in the legislation.

### **Private International Law**

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

2.51 In December 1984 we published a consultation paper on this subject jointly with the Scottish Law Commission.<sup>65</sup> The consultation paper was the work of a joint working party on private international law which was set up by ourselves and the Scottish Law Commission,<sup>66</sup> and was described in our Nineteenth Annual Report.<sup>67</sup> Although work on this subject has for long periods had to give way to work on more pressing matters, the help given us in response to the consultation paper has now been analysed in two sections: one by Miss Eva Lomnicka, lecturer in law at King's College, London, and the other by Miss Elizabeth Iyamabo of Merton College, Oxford. Some provisional decisions of principle on the main issues were taken at our annual joint meeting with the Scottish Law Commission in April 1986 with the assistance of a policy paper by our former colleague, Dr. Peter North. We are grateful to Miss Lomnicka and Miss Iyamabo for their help, and to Dr. North for continuing to take an active part in this project.

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

2.52 We published a consultation paper<sup>68</sup> on this subject jointly with the Scottish Law Commission in April 1985. The consultation paper is described in our last annual report.<sup>69</sup> Following the preparation of a detailed analysis of the comments received on consultation, the policy options for reform were re-assessed at a joint meeting of the two Commissions earlier this year. Work is proceeding on the preparation of a joint report, which we hope to submit in the first half of 1987. We are grateful to Dr. Peter North for continuing to take an active part in this exercise and in the project on domicile.

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<sup>61</sup>Para. 22.10.

<sup>62</sup>Para. 22.12.

<sup>63</sup>This Act was amended by Part I of the Law of Property Act 1969 which implemented the recommendations contained in our Report on the Landlord and Tenant Act 1954 Part II (1969), Law Com. No. 17.

<sup>64</sup>*Hansard* (H.C.) 20 November 1985, vol. 87, Written Answers, col. 245.

<sup>65</sup>(1984) Working Paper No. 87, Consultative Memorandum No. 62.

<sup>66</sup>See our Fourteenth Annual Report 1978-1979 (1979), Law Com. No. 97, para. 2.42.

<sup>67</sup>(1985) Law Com. No. 140, paras. 2.56 *et seq.*

<sup>68</sup>(1985) Working Paper No. 89, Consultative Memorandum No. 64.

<sup>69</sup>Twentieth Annual Report 1984-1985 (1986), Law Com. No. 155, paras. 2.52-2.53.

### *The Law of Domicile*

2.53 In April 1985 we published, jointly with the Scottish Law Commission, a consultative document<sup>70</sup> on this subject. The paper is described in our last annual report.<sup>71</sup> The analysis of consultation was completed last year and the policy for the report was considered at a joint meeting of the two Commissions earlier this year. Work is proceeding with a view to completion of the report in 1987.

#### (c) CONVEYANCING STANDING COMMITTEE

2.54 The First Annual Report of the Conveyancing Standing Committee to the Law Commission is published with this report.

#### (d) STATUTE LAW

##### *Consolidation*

2.55 The following consolidation Acts (other than consolidations relating to Scotland only) were passed during the 1985-86 Session of Parliament:

- Agricultural Holdings Act 1986
- Company Directors Disqualification Act 1986
- Insolvency Act 1986
- Parliamentary Constituencies Act 1986

2.56 The Agricultural Holdings Act 1986 incorporated a number of amendments recommended by the Law Commission.<sup>72</sup>

2.57 The consolidation which produced the Company Directors Disqualification Act 1986 and the Insolvency Act 1986 was secured in the same way as the consolidation of the Companies Acts, namely the employment on contract of a retired Parliamentary Counsel.

2.58 The number of pages of consolidation Acts for the year is (not surprisingly) not as high as the total for the previous year, in which substantial consolidation measures relating to companies and housing were enacted. Nevertheless over 500 pages of consolidation Acts were enacted and every effort is being made to maintain the overall pace of consolidation.

2.59 At present consolidation Bills have been or are being prepared on the following topics:

- Charitable Appeals and Collections
- Conveyancing Practitioners
- Coroners
- Income and Corporation Taxes
- Road Traffic
- Sea Fisheries
- Social Security

2.60 It is hoped that a Bill consolidating the Coroners Acts and related enactments will receive Royal Assent before the end of 1987, the year in which the last consolidation on this topic would otherwise enjoy its centenary.

2.61 Work is proceeding on two Bills which (taken together) will consolidate the Road Traffic Act 1972 and other road traffic legislation. This complex and much used body of statute law stands in great need of consolidation.

2.62 The work of re-consolidating the social security legislation is proceeding at a pace which should permit the introduction this Session of two, possibly three, Bills. This is an area of law in which a very substantial number of amendments have been made since the last consolidation in 1975.

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<sup>70</sup>(1985) Working Paper No. 88, Consultative Memorandum No. 63.

<sup>71</sup>Twentieth Annual Report 1984-1985 (1986), Law Com. No. 155, paras. 2.55-2.57.

<sup>72</sup>(1985) Law Com. No. 153.

2.63 The Income and Corporation Taxes consolidation is still on schedule and the Bill should be ready for introduction before the end of 1987.

#### *Statute Law Revision*

2.64 The Statute Law (Repeals) Act 1986, implementing a joint report<sup>73</sup> of the Law Commission and the Scottish Law Commission, was enacted into law on 2 May 1986. In accordance with arrangements agreed with the agricultural departments, a series of linked repeals provided for in Part II of Schedule 5 to the Agriculture Act 1970 were brought into effect by order<sup>74</sup> on 1 May 1986.

2.65 Whenever it is convenient to do so, proposals for the repeal of redundant statutory provisions are incorporated in Bills dealing with the topic concerned. During the year such proposals have been included in the Family Law Act 1986, the Patents, Designs and Marks Act 1986, the Public Order Act 1986, the Social Security Act 1986, the Building Societies Act 1986, the Plymouth City Council Act 1987 and the Criminal Justice Bill.

2.66 The current work of the statute law revision team includes a preliminary study of the statute law governing criminal procedure in England and Wales, with a view to the preparation of a comprehensive consolidation. The present statute law is widely dispersed and its arrangement is unhelpful to the user. If a consolidation proved to be practicable, it would be most useful to all concerned with the criminal process.

2.67 Work is in progress, in collaboration with the Scottish Law Commission, on the preparation of a further joint report and draft Statute Law (Repeals) Bill. This Bill is scheduled for introduction in the 1987-88 Session of Parliament. The projects include an examination of nineteenth century statutory codes of summary offences in England and Wales, proposals for the repeal and replacement of the Summary Jurisdiction Act 1857 and the Bankruptcy Acts 1883, 1890 and 1913 (so far as unrepealed by the Insolvency Act 1985 and the Bankruptcy (Scotland) Act 1985) and proposals for the repeal of unnecessary and outdated enactments relating to religious disabilities.

2.68 Work is proceeding separately on projects to rationalise the local legislation of South Yorkshire and Greater Manchester. This legislation has been inherited by successor district councils following the abolition on 1 April 1986 of the metropolitan counties. Each project is expected to culminate in a substantial Statute Law (Repeals) Bill. If consultation with the local authorities and statutory undertakers concerned can be finalised in time, it is hoped to have a Bill covering the South Yorkshire legislation ready for introduction towards the end of the 1986-87 Session of Parliament. Work on the legislation of Greater Manchester, which is being done by the Statute Law Research Unit of Manchester Polytechnic, is at an earlier stage. Research has been completed on a pilot exercise covering the legislation affecting Stockport and the legislation affecting Salford is now being examined.

#### *Local Legislation Working Party*

2.69 The Local Legislation Working Party,<sup>75</sup> which reports to the Statute Law Committee, is being reconvened to consider two main matters. The first is a proposal to phase out the Companies Clauses Consolidation Acts 1845 to 1888, which appear to have outlived their usefulness. This code of company law, originally introduced by Gladstone to shorten the statute book and make the law on companies "more accessible and intelligible to the public",<sup>76</sup> is out of date and has itself become a source of legislative bulk and complexity. The Local Legislation Working Party is also being asked to consider proposals for improving the local statutory instruments system. The system, which has remained virtually unchanged since 1890, creates formidable difficulties, even to specialists, in obtaining access to large areas of permanent law amending or replacing Acts of Parliament. The main problem is that the existing system does not distinguish effectively between instruments which are of a transitory nature and those which alter Acts of Parliament or make other permanent changes in the law.

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<sup>73</sup>Statute Law Revision: Twelfth Report (1985), Law Com. No. 150, Scot. Law Com. No.99.

<sup>74</sup>Hill Farming (Appointed Day for Repeals) Order 1986 (S.I. 1986/707) made jointly by the Minister of Agriculture, Fisheries and Food, the Secretary of State for Scotland and the Secretary of State for Wales.

<sup>75</sup>The present membership is listed in Appendix 2. Its terms of reference are: To examine the problems of the local statute law in England and Wales and in Scotland, to report on the options for advancing the process of rationalising and reforming it and to make recommendations for consideration by the Statute Law Committee.

<sup>76</sup>*Hansard* (3rd ser.), 5 August 1844, vol. 76, col. 1782.

### *Chronological Table of Local Legislation*

2.70 The detailed text of the first stage of the project<sup>77</sup> was distributed last year to those particularly concerned with the preparation of legislation or the operation of local statute law, and to selected libraries and record offices. Since our last annual report we have received comments, or detailed information for incorporation in the work, from the British Library, the House of Lords Record Office, The Law Society's Library, the Private Bill Office of the House of Lords, the British Railways Board, the British Waterways Board, the Association of County Councils, the Greater London Council, the City of London Remembrancer, the Cambridgeshire County Archivist and the Humberside County Archivist.

2.71 All commentators are agreed on the necessity for the work as a research tool and source of information, but the consultation has brought out the need to widen the scope of the table by recording the effects of permanent and important local statutory instruments. Accordingly, during the summer six law students under the supervision of a part-time researcher examined the effects of local Statutory Rules and Orders and local Statutory Instruments made between 1922 and 1973.<sup>78</sup> Their work has resulted in the retrieval of much valuable information which is now in the course of being processed. At the same time work has continued on the task of recording the effects of primary legislation passed since 1900.

2.72 The consultation also confirmed the desirability of amalgamating the information in the work, and the results of recent research, with that contained in Section 4 of the *Chronological Table of the Statutes*, which covers a later research period.<sup>79</sup> Work on this aspect has recently started.

### *Revision of Church of England Legislation*

2.73 The Legal Advisory Commission to the General Synod of the Church of England has recently set up a specialist Statute Law Revision Group consisting of Chancellor George Spafford (Chairman), Chancellor J. W. Bullimore, Chancellor T. A. C. Coningsby, Q.C., the Ven. Bernard Fernyhough and Lady Johnston (Standing Counsel to the General Synod). Its terms of reference are to examine Acts and Measures related to the Church of England with a view to the elimination of anomalies, the repeal of unnecessary enactments and the reduction of the number of separate enactments. We welcome the formation of the Group and the work it is doing to simplify and modernise this area of the statute law.

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<sup>77</sup>Chronological Table of Local Legislation (1985), 2 vols., 781pp.

<sup>78</sup>No comprehensive collection of the texts of local Statutory Rules and Orders for the period 1890-1921 has yet been found.

<sup>79</sup>1974 onwards. The Law Commissions' project covers all earlier periods.

## PART III

### GENERAL

#### Current Responsibilities for Commission Projects

3.1 The responsibilities for projects falling within particular fields of law are shown in Appendix 1. The Appendix reflects the position at the date of this report.

#### Lawyers

3.2 The Commission has a small permanent core of civil service lawyers complemented by lawyers drawn from elsewhere according to the requirements of the current programme of work.

3.3 Ten civil service lawyers comprise the permanent core. Six lawyers have been seconded from departments (four from Parliamentary Counsel Office, one from the Director of Public Prosecutions and one from H.M. Land Registry), two from universities (University College, London and Southampton University) and one from a polytechnic (Polytechnic of North London). Fourteen research assistants have been recruited for terms of up to three years from universities, polytechnics and the profession.

3.4 The Commission's early experience was that a combination of small full-time project teams supplemented by outside experts made the most economical use of scarce legal resources.<sup>1</sup> Arrangements permitting it lapsed in the 1970s, but the implementation of a management scrutiny report recommending the surrender of some permanent senior civil service posts in return for budget made it possible to revive them.

#### Consultants

3.5 During the year the work of the Commission has been greatly assisted by Professor J. E. Adams (Queen Mary College, London), Miss L. Anderson (Manchester University), Mr. Hugh Beale (Bristol University), Mrs. Margaret Brazier (Manchester University), Mr. R. Ingleby (Wolfson College, Oxford), Miss E. Iyamabo (Postgraduate at Merton College, Oxford), Miss E. Lomnicka (King's College, London), Dr. Peter North (Jesus College, Oxford), Mrs. J. A. Priest (Durham University), Professor Alan Prichard (Nottingham University), Dr. F. M. B. Reynolds (Worcester College, Oxford), Mrs. Rhona Schuz (London School of Economics), Mrs. Ann Smart (St Hugh's College, Oxford), Mr. R. J. Smith (Magdalen College, Oxford), Mr. V. W. Taylor (Oxford Polytechnic), Mr. Mark Thompson (Leicester University), Mr. M. Wasik (Manchester University) and the members of the Code Group of the Society of Public Teachers of Law (Professor J. C. Smith, Professor Edward Griew and Mr. Ian Dennis, who is currently working full-time for the Commission on a year's sabbatical). The Commission has also received valuable help from two retired civil servants: Sir Wilfrid Bourne, K.C.B., Q.C. and Mr. D. S. Gordon.

#### Secondments

3.6 The Commission is continuing to make use of the services of academic lawyers on a secondment basis. Alison Clarke, lecturer in law at Southampton University, continues to work on our mortgages project. Mr. Ian Dennis, reader in law at University College, London, is helping us with the next stage of our codification of the criminal law. Angela Sydenham, senior lecturer in law at the Polytechnic of North London, is working on condominium (strata title).

#### Library

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

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

#### Law Commission/Queen Mary College Colloquium

3.9 1986 was the twentieth anniversary of both the Commission and the Faculty of Laws, Queen Mary College, London. At Professor Zellick's suggestion we marked the occasion by

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<sup>1</sup>First Annual Report 1965-1966 (1966), Law Com. No. 4, paras. 9-12.

holding a joint colloquium: "Law reform: Can we do Better?" Lord Justice Ralph Gibson, Sir Patrick Mayhew, Q.C., M.P. (the Solicitor-General), Professor Stephen Cretney, Professor Aubrey Diamond and Mr. Gavin Drewry agreed to participate and the Worshipful Company of Drapers agreed to make their Hall available.<sup>2</sup>

3.10 The principal topics for discussion were: "The Programmes: Milestones or Millstones?"; "The Law Commission's Relationship with Government Departments"; "The Legislative Implementation of Law Reform Proposals" and "Machinery and Responsibilities for Law Reform". They provided a useful background for a discussion of the lessons learned in twenty years of law reform. We are most grateful to the Worshipful Company of Drapers and all who participated for their contribution to the success of the colloquium.

#### **Annual Meetings**

3.11 The Commission continues to work in close co-operation with the Scottish Law Commission, and we held our joint annual meeting on 7 and 8 April 1986. The Commission has also had meetings with other legal bodies in order to benefit from mutual exchange of views. This year as usual we had meetings with representatives of the Law Reform Committee of the Senate of the Inns of Court and the Bar, The Law Society and the Society of Public Teachers of Law.

#### **Commonwealth Law Conference**

3.12 The Chairman, Julian Farrand and Brenda Hoggett attended the Commonwealth Law Conference in Jamaica during the year. Brenda Hoggett presented a paper during a general session. These was also a day spent in special session concentrating on law reform, with particular reference to codification, which was found a valuable meeting point.

#### **Visitors from Overseas**

3.13 A list of visitors from overseas during the year can be found in Appendix 4.

#### **Criminal Law Revision Committee**

3.14 The Criminal Law Revision Committee has published two reports in the past year, the Seventeenth Report, Prostitution: Off-street Activities<sup>3</sup> and the Eighteenth Report, Conspiracy to Defraud.<sup>4</sup> The former deals with offences relating to prostitution (other than kerb-crawling which was the subject of an earlier report<sup>5</sup>) and recommends the creation of six new statutory offences replacing several existing offences, including the common law offence of keeping a brothel, as well as changes to a number of other offences.

3.15 This is an appropriate place to pay tribute to the outstanding contribution to the work of reform of the criminal law made by Lord Justice Lawton, who retired from the chairmanship of the Criminal Law Revision Committee in December. A member of the Committee since it was set up twenty-seven years ago, and its Chairman since 1977, he brought to the work of the Committee a knowledge and experience of the criminal law which was unrivalled. During his membership of the Committee it produced such outstanding reports as those on Theft (the Eighth Report) and Offences Against the Person (the Fourteenth Report). More recently, the Committee has produced reports on Sexual Offences and Conspiracy to Defraud. Because of the unique blend of learning and practical experience which Lord Justice Lawton brought to the work of the Committee, its reports have commanded respect and attention everywhere. During the past year Lord Justice Lawton has given invaluable assistance to the Commission's Criminal Code Project by chairing a Committee to examine the provisions relating to offences against the person in the draft Code Bill.

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

JOHN GASSON, *Secretary*  
26 March 1987

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<sup>2</sup>See Appendix 3 for the programme and list of those invited to participate.

<sup>3</sup>(1985) Cmnd. 9688.

<sup>4</sup>(1986) Cmnd. 9873; see para. 2.12 above.

<sup>5</sup>Sixteenth Report, Prostitution in the Street (1984), Cmnd. 9329.

## APPENDIX 1

### CURRENT RESPONSIBILITIES FOR COMMISSION PROJECTS

#### **Contract Law**

Mr. B. J. Davenport, Q.C., Mr. A. Akbar, Mr. A. Cope, Mr. P. De Val and Mr. R. J. Dormer.

#### **Criminal Law**

Chairman, Mr. B. J. Davenport, Q.C., Mr. J. P. Chapman, Mr. I. H. Dennis, Mr. P. De Val, Mr. M. N. Farmer and Miss S. Hatfield.

#### **Family Law**

Professor B. M. Hoggett, Miss T. Amodu, Mr. L. Bently, Miss K. Brody, Mrs. C. M. Hand, Mr. P. G. Harris and Mr. J. C. Whybrow.

#### **Property Law**

Professor J. T. Farrand, Miss T. Amodu, Mr. L. Bently, Alison Clarke, Miss S. Gilding, Mrs. C. M. Hand, Mrs. P. C. Linsey, Miss C. A. Lonsdale and Mr. M. Wear.

#### **Landlord and Tenant Law**

Mr. T. M. Aldridge, Mr. A. Akbar, Mr. A. Cope, Mr. P. De Val, Miss S. F. Finn, Mrs. A. Sydenham and Miss S. A. Weston.

#### **Private International Law**

Mr. B. J. Davenport, Q.C., Professor B. M. Hoggett, Mr. A. Akbar and Mr. R. J. Dormer.

#### **Statute Law**

*Consolidation:* Chairman, Mr. D. W. Saunders, Mr. E. G. Caldwell, Mr. E. R. Sutherland, Mr. R. S. Parker and Miss J. B. Linney.

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

## APPENDIX 2

### MEMBERSHIP OF WORKING PARTIES

#### Local Legislation Working Party

The Hon. Mr. Justice Beldam, <i>Chairman</i>	Law Commission
The Hon. Lord Maxwell	Scottish Law Commission
Mr. B. J. Davenport, Q.C.	Law Commission
Mr. H. W. Gamon, C.B.E., M.C.	Society of Parliamentary Agents
Mr. J. G. S. Maclean (as alternate for Lord Maxwell)	Scottish Law Commission
Mr. D. Rippengal, C.B., Q.C.	Counsel to Chairman of Committees
Mr. R. H. Streeten	Law Commission
Mr. M. J. Ware	Solicitor, Department of the Environment
Mr. A. M. Rowland, <i>Secretary</i>	Law Commission

#### Commonhold/Land Obligations Working Group

Mr. T. M. Aldridge, <i>Chairman</i>	Law Commission
Mr. J. Cane	Department of the Environment
Mr. R. Favier	Department of Trade and Industry
Mr. A. Hermon	Lord Chancellor's Department
Mr. I. Lewis	Treasury Solicitor's Department
Miss J. Liesching	Department of Trade and Industry
Mr. J. Walker	Department of Trade and Industry
Mr. M. Wood	H.M. Land Registry
Mrs. A. Sydenham, <i>Secretary</i>	Law Commission
Mr. W. Jones	Law Commission
Miss S. Weston	Law Commission



### APPENDIX 3

#### LAW COMMISSION/QUEEN MARY COLLEGE COLLOQUIUM

##### “LAW REFORM: CAN WE DO BETTER?”

##### PROGRAMME

<i>Introduction and Welcome</i>	The Hon. Mr. Justice Beldam Professor G. J. Zellick
<i>The Programmes: Milestones or Millstones?</i>	The Hon. Mr. Justice Beldam (Chairman) Professor S. M. Cretney
<i>The Law Commission's Relationship with Government Departments</i>	Professor F. R. Crane (Chairman) Professor A. L. Diamond Additional comments: Sir Patrick Mayhew, Q.C., M.P., Henry Knorpel, C.B.
<i>The Legislative Implementation of Law Reform Proposals</i>	Professor G. J. Zellick (Chairman) Gavin Drewry Additional comment: Francis Bennion
<i>Machinery and Responsibilities for Law Reform</i>	Brian Davenport, Q.C. (Chairman) The Rt. Hon. Lord Justice Ralph Gibson Additional comment: Michael C. Blair

##### Those invited to Participate

Professor J. E. Adams	A. Akbar	T. M. Aldridge
Francis Bennion	M. C. Blair	Sir Gordon Borrie, Q.C.
Sir Wilfred Bourne, K.C.B., Q.C.	A. E. Boyle	Professor A. J. Boyle
R. C. Briggs	J. St. L. Brockman	Dr. M. W. Bryan
Alison Clarke	R. Cooper	A. Cope
Professor F. R. Crane	Professor S. M. Cretney	Brian Davenport, Q.C.
Arthur Davidson, Q.C.	Ian Dennis	P. De Val
Professor A. L. Diamond	R. J. Dormer	Gavin Drewry
S. B. Edell	Sir George Engle, K.C.B., Q.C.	M. N. Farmer
Professor J. T. Farrand	Miss S. F. Finn	H. Gamon
J. G. H. Gasson	Ms. H. Genn	The Rt. Hon. Lord Justice Ralph Gibson
Professor R. M. Goode	D. S. Gordon	Professor L. C. B. Gower
Professor E. J. Griew	Miss I. D. Gurney	P. G. Harris
Miss J. C. Hern	Professor B. M. Hoggett	Professor Sir Jack Jacob, Q.C.
J. C. Jenkins	Henry Knorpel, C.B.	Mrs. S. M. Lane
Mrs. P. C. Linsey	Miss C. A. Lonsdale	R. D. Maitland
Norman S. Marsh, C.B.E., Q.C.	Sir Patrick Mayhew, Q.C., M.P.	G. E. McClelland
The Rt. Hon. Sir Robert Megarry	R. Merkin	J. Nursaw, C.B.
Richard Nzerem	Professor Martin Partington	Miss M. A. R. Peto
A. Phillips	Dr. J. J. Phillips	M. H. Potter, Q.C.
Professor A. R. Prichard	Mrs. A. Reid	F. M. B. Reynolds
Professor Bernard Rudden	Alec Samuels	I. A. Saunders
Mrs. R. Schuz	C. R. Seaton	Paul Sieghart
The Rt. Hon. Lord Silkin of Dulwich, Q.C.	Professor J. C. Smith, C.B.E., Q.C.	R. H. Streeten
Ms. J. Temkin	M. Thompson	Miss C. K. Troy
The Hon. Mr. Justice Vinelott	M. J. Ware	M. Wear
J. Whybrow	Professor Michael Zander	

## APPENDIX 4

### VISITORS FROM OVERSEAS

Among the visitors to the Law Commission from overseas in the period 1 November 1985 to 31 October 1986 were:

- Mr. B. R. Aryal (Associate Member, Nepal Law Reform Commission)
- Mrs. R. Bailey-Harris (Senior Lecturer in Law, University of Adelaide, South Australia)
- Dr. V. Belykh (Sverdlovsk Institute of Law, USSR)
- Professor P. Butt (Sydney University)
- Professor D. Clifford (University of North Carolina School of Law)
- Dr. C. Croft (Secretary of the Law Department of the Northern Territory, Australia)
- Mr. D. K. Dabee (Acting Senior Crown Counsel, Attorney-General's Office, Mauritius)
- Mr. El Kholy (Ministry of Foreign Affairs, Egypt)
- Mrs. B. A. Faridah (Senior Assistant Parliamentary Draftsman, Attorney-General's Chambers, Malaysia)
- Dr. L. Feher (Hungarian Academy's Institute for Legal and Administrative Sciences)
- Mr. R. Ikosi (Legal Officer, Department of Provincial Affairs, Papua New Guinea)
- Mr. H. B. Jallow (Attorney-General and Minister of Justice for the Gambia)
- Professor K. J. Keith (New Zealand Law Commissioner)
- Mr. E. Koh (Solicitor-General, Singapore)
- Mr. G. K. Kolts (First Parliamentary Counsel, Commonwealth of Australia, Canberra)
- Mr. W. S. Mandia (Senior Law Research Officer, Law Reform Commission, Tanzania)
- Professor Y. Matsuhima (University of Tokyo)
- Mr. G. R. Mrugaruga (Legislation and Certification Officer, Ministry of Labour and Manpower Development, Tanzania)
- Chief Justice Francis Nyalali (United Republic of Tanzania)
- Mr. Justice Peter Nygh (a judge of the Family Court of Australia)
- Mr. H. A. Ramatlap (Senior Legal Officer, Office of Legislative Counsel, Papua New Guinea)
- Mr. S. K. Sharma (Research Officer, Lok Sabha Secretariat, India)
- Mrs. L. Skene (Victoria Law Reform Commission)
- The Hon. Mr. B. Upadhyay (Chairman, Nepal Law Reform Commission)
- Mr. K. Wijeyewardene (consultant to the Law Reform Commission of New South Wales)
- Mrs. B. Zulu (Resident Magistrate, Judicial Department, Zambia)

## APPENDIX 5

### List of the Law Commission's Publications

#### A. Working Papers

<i>Working Paper</i>	<i>Title</i>	<i>Resulting Report</i>
<b>1966</b>		
No. 1	Transfer of Land: Root of Title to Freehold Land	Law Com. No. 9.
No. 2	Draft Proposals on Powers of the Court of Appeal to Sit in Private and Restrictions upon Publicity in Legitimacy Proceedings	Law Com. No. 8.
No. 3	Restrictive Covenants	Law Com. No. 11.
No. 4	Should English Wills be Registrable?	
No. 5	Liability of Trade Vendors of New Dwelling Houses to First and Subsequent Purchasers (First Paper)	Law Com. No. 40.
No. 6	Liability of Vendors and Lessors for Defective Premises (Second Paper)	Law Com. No. 40.
<b>1967</b>		
No. 7	Provisional Proposals for Amendments to the Landlord and Tenant Act 1954, Part II (Business Tenancies)	Law Com. No. 17.
No. 8	Provisional Proposals Relating to Obligations of Landlords and Tenants	Law Com. No. 67.
No. 9	Family Law: Matrimonial and Related Proceedings Financial Relief	Law Com. No. 25.
No. 10	Proposals for Changes in the Law Relating to Land Charges affecting Unregistered Land and to Local Land Charges	Law Com. Nos. 18 and 62.
No. 11	Powers of Attorney	Law Com. No. 30.
No. 12	Proof of Paternity in Civil Proceedings	Law Com. No. 16.
No. 13	Exploratory Working Paper on Administrative Law	Law Com. No. 20.
No. 14	Interpretation of Statutes (Joint Working Paper-Scottish Law Commission Memorandum No. 6)	Law Com. No. 21.
<b>1968</b>		
No. 15	Family Law: Arrangements for the Care and Upbringing of Children	
No. 16	Provisional Proposals Relating to Termination of Tenancies	Law Com. No. 142.
No. 17	Codification of the Criminal Law: General Principles. The Field of Enquiry (See Law Com. No. 143)	
No. 18	Provisional Proposals Relating to Amendments to sections 12-15 of the Sale of Goods Act 1893 and Contracting Out of the Conditions and Warranties implied by those sections (Joint Working Paper-Scottish Law Commission Memorandum No.7)	Law Com. No. 24.
No. 19	Loss of Services	Law Com. Nos. 25 and 56.
No. 20	Nullity of Marriage	Law Com. No. 33.
No. 21	Polygamous Marriages	Law Com. No. 42.
<b>1969</b>		
No. 22	Restitution of Conjugal Rights	Law Com. No. 23.
No. 23	Malicious Damage to Property	Law Com. No. 29.
No. 24	Transfer of Land: Rentcharges (the subject of a further Working Paper No. 49)	Law Com. No. 68.
<b>1970</b>		
No. 25	The Law of Landlord and Tenant: Working Party's Provisional Proposals Relating to Covenants Restricting Dispositions, Parting with Possession, Change of User and Alterations	Law Com. No. 141.
No. 26	Criminal Law: Forgery	Law Com. No. 55.

<i>Working Paper</i>	<i>Title</i>	<i>Resulting Report</i>
No. 27	Personal Injury Litigation: Assessment of Damages, Itemisation of Pecuniary Loss and the Use of Actuarial Tables as an Aid to Assessment	Law Com. No. 56.
No. 28	Family Law: Jurisdiction in Matrimonial Causes (other than Nullity)	Law Com. No. 48.
No. 29	Codification of the Criminal Law: Subject III. Territorial and Extra-Territorial Extent of the Criminal Law	Law Com. No. 91.
No. 30	Codification of the Criminal Law: Strict Liability and the Enforcement of the Factories Act 1961	
No. 31	Codification of the Criminal Law: General Principles. The Mental Element in Crime	Law Com. No. 89.
No. 32	Transfer of Land: Land Registration (First Paper)	Law Com. No. 125.
No. 33	Criminal Law: Perjury and Kindred Offences	Law Com. No. 96.
<b>1971</b>		
No. 34	Family Law: Jactitation of Marriage (the subject of a further Working Paper No. 48)	Law Com. No. 132.
No. 35	Family Law: Solemnisation of Marriage	Law Com. No. 53.
No. 36	Transfer of Land: Appurtenant Rights	Law Com. No. 127.
No. 37	Transfer of Land: Land Registration (Second Paper)	Law Com. No. 125.
No. 38	Family Law: Jurisdiction in Suits for Nullity of Marriage	Law Com. No. 48.
No. 39	Exemption Clauses in Contracts for Services (Joint Working Paper—Scottish Law Commission Memorandum No. 15)	Law Com. No. 69.
No. 40	Administrative Law	Law Com. No. 73.
No. 41	Personal Injury Litigation: Assessment of Damages	Law Com. No. 56.
No. 42	Family Law: Family Property Law	Law Com. Nos. 52, 61 and 86.
<b>1972</b>		
No. 43	Codification of the Criminal Law: General Principles. Parties, Complicity and Liability for the Acts of Another (See Law Com. No. 143)	
No. 44	Codification of the Criminal Law: General Principles. Criminal Liability of Corporations (See Law Com. No. 143)	
No. 45	Transfer of Land: Land Registration (Third Paper)	Law Com. No. 125.
No. 46	Charging Orders on Land	Law Com. No. 74.
<b>1973</b>		
No. 47	Injuries to Unborn Children	Law Com. No. 60.
No. 48	Family Law: Declarations in Family Matters	Law Com. No. 132.
No. 49	Transfer of Land: Rentcharges	Law Com. No. 68.
No. 50	Codification of the Criminal Law: General Principles. Inchoate Offences: Conspiracy, Attempt and Incitement	Law Com. Nos. 76 and 102.
No. 51	Transfer of Land: "Subject to Contract" Agreements	Law Com. No. 65.
No. 52	Liability for Damage or Injury to Trespassers and Related Questions of Occupiers' Liability	Law Com. No. 75.
No. 53	Family Law: Matrimonial Proceedings in Magistrates' Courts	Law Com. No. 77.
<b>1974</b>		
No. 54	Criminal Law: Offences of Entering and Remaining on Property	Law Com. No. 76.
No. 55	Codification of the Criminal Law: General Principles. Defences of General Application	Law Com. No. 83.
No. 56	Criminal Law: Conspiracy to Defraud	
**	Private International Law: E.E.C. Preliminary Draft Convention of the Law Applicable to Contractual and Non-Contractual Obligations (prepared jointly with the Scottish Law Commission)	

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

<i>Working Paper</i>	<i>Title</i>	<i>Resulting Report</i>
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.
<b>1975</b>		
No. 59	Contribution	Law Com. No. 79.
No. 60	Firm Offers	
No. 61	Penalty Clauses and Forfeiture of Monies Paid	
No. 62	Criminal Law: Offences Relating to the Administration of Justice	Law Com. No. 96.
No. 63	Codification of the Criminal Law: Conspiracies to Effect a Public Mischief and to Commit a Civil Wrong	Law Com. No. 76.
No. 64	Liability for Defective Products (Joint Working Party—Scottish Law Commission Memorandum No. 20)	Law Com. No. 82.
No. 65	Law of Contract: Pecuniary Restitution on Breach of Contract	Law Com. No. 121.
<b>1976</b>		
No. 66	Interest	Law Com. No. 88.
No. 67	Transfer of Land: Land Registration (Fourth Paper)	
No. 68	Custody of Children: Jurisdiction and Enforcement within the United Kingdom (Joint Working Paper—Scottish Law Commission Memorandum No. 23)	Law Com. No. 138.
No. 69	The Incapacitated Principal	Law Com. No. 122.
No. 70	Law of Contract: The Parol Evidence Rule	Law Com. No. 154.
<b>1977</b>		
No. 71	Law of Contract: Implied Terms in Contracts for the Supply of Goods	Law Com. No. 95.
No. 72	Codification of the Criminal Law: Treason, Sedition and Allied Offences	
<b>1979</b>		
No. 73	Insurance Law: Non-Disclosure and Breach of Warranty	Law Com. No. 104.
No. 74	Family Law: Illegitimacy	Law Com. No. 118.
<b>1980</b>		
No. 75	Classification of Limitation in Private International Law	Law Com. No. 114.
No. 76	Time Restrictions on Presentation of Divorce and Nullity Petitions	Law Com. No. 116.
No. 77	Family Law: Financial Relief after Foreign Divorce	Law Com. No. 117.
No. 78	Rights of Access to Neighbouring Land	Law Com. No. 151.
<b>1981</b>		
No. 79	Offences against Religion and Public Worship	Law Com. No. 145.
No. 80	Private International Law: Foreign Money Liabilities	Law Com. No. 124.
<b>1982</b>		
No. 81	Minors' Contracts	Law Com. No. 134.
No. 82	Offences against Public Order	Law Com. No. 123.
No. 83	Polygamous Marriages: Capacity to Contract a Polygamous Marriage and the Concept of the Potentially Polygamous Marriage (Joint Working Paper—Scottish Law Commission Consultative Memorandum No. 56)	Law Com. No. 146.
No. 84	Criminal Libel	Law Com. No. 149.

<i>Working Paper</i>	<i>Title</i>	<i>Resulting Report</i>
<b>1983</b>		
No. 85	Sale and Supply of Goods (Joint Working Paper—Scottish Law Commission Consultative Memorandum No. 58)	
No. 86	Transfer of Land: Liability for Chancel Repairs	Law Com. No. 152.
<b>1984</b>		
No. 87	Private International Law: Choice of Law in Tort and Delict (Joint Working Paper—Scottish Law Commission Consultative Memorandum No. 62)	
<b>1985</b>		
No. 88	Private International Law: The Law of Domicile (Joint Working Paper—Scottish Law Commission Consultative Memorandum No. 63)	
No. 89	Private International Law: Choice of Law Rules in Marriage (Joint Working Paper—Scottish Law Commission Consultative Memorandum No. 64)	
No. 90	Transfer of Money between Spouses: the Married Women's Property Act 1964	
No. 91	Family Law: Review of Child Law: Guardianship	
No. 92	Transfer of Land: Formalities for Contracts for Sale etc. of Land	
No. 93	Transfer of Land: Formalities for Deeds and Escrows	
No. 94	Trusts of Land	
<b>1986</b>		
No. 95	Landlord and Tenant: Privity of Contract and Estate: Duration of Liability of Parties to Leases	
No. 96	Family Law: Review of Child Law: Custody	
No. 96	(Supplement) Custody Law in Practice in the Divorce and Domestic Courts	
No. 97	Distress for Rent	
No. 98	Transfer of Land: The Rule in <i>Bain v. Fothergill</i>	
No. 99	Land Mortgages	
<b>1987</b>		
No. 100	Family Law: Review of Child Law: Care, Supervision and Interim Orders in Custody Proceedings	
No. 101	Family Law: Review of Child Law: Wards of Court	

*Bound volumes of an unabridged reprint of Law Commission working papers are published by Professional Books, Milton Trading Estate, Abingdon, Oxon, OX14 4SY.*

## **B. Reports and Programmes**

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

<i>Report</i>	<i>Title</i>	<i>Related Legislation</i>
<b>1965</b>		
Law Com. No. 1	First Programme of the Law Commission	—
<b>1966</b>		
Law Com. No. 2	First Programme on Consolidation and Statute Law Revision	—
Law Com. No. 3*	Proposals to Abolish Certain Ancient Criminal Offences	Criminal Law Act 1967 (c. 58).
Law Com. No. 4	First Annual Report 1965–66	—
Law Com. No. 5	Landlord and Tenant: Interim Report on Distress for Rent	—

<i>Report</i>	<i>Title</i>	<i>Related Legislation</i>
Law Com. No. 6	Reform of the Grounds of Divorce: The Field of Choice (Cmnd. 3123)	Divorce Reform Act 1969 (c. 55), now Matrimonial Causes Act 1973 (c. 18).
Law Com. No. 7*	Proposals for Reform of the Law Relating to Maintenance and Champerty	Criminal Law Act 1967 (c. 58).
Law Com. No. 8*	Report on the Powers of Appeal Courts to Sit in Private and the Restrictions upon Publicity in Domestic Proceedings (Cmnd. 3149)	Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968 (c. 63).
<b>1967</b>		
Law Com. No. 9*	Transfer of Land: Interim report on Root of Title to Freehold Land	Law of Property Act 1969 (c. 59).
Law Com. No. 10*	Imputed Criminal Intent ( <i>Director of Public Prosecutions v. Smith</i> )	In part by section 8 of the Criminal Justice Act 1967 (c. 80).
Law Com. No. 11	Transfer of Land: Report on Restrictive Covenants	In part by Law of Property Act 1969 (c. 59).
Law Com. No. 11A	Sea Fisheries (Shellfish) Bill: Report by the two Commissions on the Consolidation of Certain Enactments relating to Shellfish Fisheries and Shellfish (Scot. Law Com. No. 6A) (Cmnd. 3267)	Sea Fisheries (Shellfish) Act 1967 (c. 83).
Law Com. No. 12	Second Annual Report 1966-1967	—
Law Com. No. 13*	Civil Liability for Animals	Animals Act 1971 (c. 22).
<b>1968</b>		
Law Com. No. 14	Second Programme of Law Reform	—
Law Com. No. 15	Third Annual Report 1967-1968 (H.C. 312)	—
Law Com. No. 16*	Blood Tests and the Proof of Paternity in Civil Proceedings (H.C. 2)	Family Law Reform Act 1969 (c. 46).
<b>1969</b>		
Law Com. No. 17*	Landlord and Tenant: Report on the Landlord and Tenant Act 1954, Part II (H.C. 38)	Law of Property Act 1969 (c. 59).
Law Com. No. 18*	Transfer of Land: Report on Land Charges Affecting Unregistered Land (H.C. 125)	Law of Property Act 1969 (c. 59).
Law Com. No. 18A	Trustee Savings Banks Bill: Report by the two Commissions on the Consolidation of the Trustee Savings Banks Acts 1954 to 1968 (Scot. Law Com. No. 10) (Cmnd. 4004)	Trustee Savings Banks Act 1969 (c. 50).
Law Com. No. 19*	Proceedings against Estates (Cmnd. 4010)	Proceedings against Estates Act 1970 (c. 17).
Law Com. No. 20	Administrative Law (Cmnd. 4059)	See Law Com. No. 73.
Law Com. No. 21*	Interpretation of Statutes: Report by the two Commissions (Scot. Law Com. No. 11) (H.C. 256)	None.
Law Com. No. 22*	Statute Law Revision: First Report (Cmnd. 4052)	Statute Law (Repeals) Act 1969 (c. 52).
Law Com. No. 23*	Proposal for the Abolition of the Matrimonial Remedy of Restitution of Conjugal Rights (H.C. 369)	Matrimonial Proceedings and Property Act 1970 (c. 45).
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).

<i>Report</i>	<i>Title</i>	<i>Related Legislation</i>
Law Com. No. 25*	Family Law: Report on Financial Provision in Matrimonial Proceedings (H.C. 448)	Matrimonial Proceedings and Property Act 1970 (c. 45), now largely Matrimonial Causes Act 1973 (c. 18); 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)	—
<b>1970</b>		
Law Com. No. 28*	Statute Law Revision: Second Report. Draft Wild Creatures and Forest Laws Bill (Cmnd. 4433)	Wild Creatures and Forest Laws Act 1971 (c. 47).
Law Com. No. 29*	Criminal Law: Report on Offences of Damage to Property (H.C. 91)	Criminal Damage Act 1971 (c. 48).
Law Com. No. 30*	Powers of Attorney (Cmnd. 4473)	Powers of Attorney Act 1971 (c. 27).
Law Com. No. 31*	Administration Bonds, Personal Representatives' Rights of Retainer and Preference and Related Matters (Cmnd. 4497)	Administration of Estates Act 1971 (c. 25).
Law Com. No. 32	Civil Liability for Dangerous Things and Activities (H.C. 142)	—
Law Com. No. 33*	Family Law: Report on Nullity of Marriage (H.C. 164)	Nullity of Marriage Act 1971 (c. 44), now Matrimonial Causes Act 1973 (c. 18).
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).
<b>1971</b>		
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>Related Legislation</i>
Law Com. No. 42*	Family Law: Report on Polygamous Marriages (H.C. 227)	Matrimonial Proceedings (Polygamous Marriages) Act 1972 (c. 38), now Matrimonial Causes Act 1973 (c. 18).
Law Com. No. 43	Taxation of Income and Gains Derived from Land: Report by the two Commissions (Scot. Law Com. No. 21) (Cmnd. 4654)	In part by section 82 of the Finance Act 1972 (c. 41).
Law Com. No. 44	Second Programme of Consolidation and Statute Law Revision (H.C. 338)	—
Law Com. No. 45	Town and Country Planning Bill: Report on the Consolidation of Certain Enactments Relating to Town and Country Planning (Cmnd. 4684)	Town and Country Planning Act 1971 (c. 78).
Law Com. No. 46	Road Traffic Bill: Report by the two Commissions on the Consolidation of Certain Enactments Relating to Road Traffic (Scot. Law Com. No. 22) (Cmnd. 4731)	Road Traffic Act 1972 (c. 20).
Law Com. No. 47	Sixth Annual Report 1970-1971 (H.C. 32)	—
<b>1972</b>		
Law Com. No. 48*	Family Law: Report on Jurisdiction in Matrimonial Causes (H.C. 464)	Domicile and Matrimonial Proceedings Act 1973 (c. 45).
Law Com. No. 49*	Statute Law Revision: Fourth Report by the two Commissions (Scot. Law Com. No. 26) (Cmnd. 5108)	Statute Law (Repeals) Act 1973 (c. 39).
Law Com. No. 50	Seventh Annual Report 1971-1972 (H.C. 35)	—
Law Com. No. 51	Matrimonial Causes Bill: Report on the Consolidation of Certain Enactments Relating to matrimonial Proceedings, Maintenance Agreements, and Declarations of Legitimacy, Validity of Marriage and British Nationality (Cmnd. 5167)	Matrimonial Causes Act 1973 (c. 18).
<b>1973</b>		
Law Com. No. 52	Family Law: First Report on Family Property. A New Approach (H.C. 274)	—
Law Com. No. 53	Family Law: Report on Solemnisation of Marriage in England and Wales (H.C. 250)	None.
Law Com. No. 54	Third Programme of Law Reform (H.C. 293)	—
Law Com. No. 55*	Criminal Law: Report on Forgery and Counterfeit Currency (H.C. 320)	Forgery and Counterfeiting Act 1981 (c. 45).
Law Com. No. 56*	Report on Personal Injury Litigation-Assessment of Damages (H.C. 373)	Administration of Justice Act 1982 (c. 53).
Law Com. No. 57*	Statute Law Revision: Fifth Report by the two Commissions (Scot. Law Com. No. 32) (Cmnd. 5493)	Statute Law (Repeals) Act 1974 (c. 22).
Law Com. No. 58	Eighth Annual Report 1972-1973 (H.C. 34)	—
<b>1974</b>		
Law Com. No. 59	Friendly Societies Bill: Report by the two Commissions on the Consolidation of the Friendly Societies Acts 1896 to 1971 and Certain Other Enactments Relating to the Societies to which those Acts Apply (Scot. Law Com. No. 35) (Cmnd. 5634)	Friendly Societies Act 1974 (c. 46).

<i>Report</i>	<i>Title</i>	<i>Related Legislation</i>
Law Com. No. 60*	Report on Injuries to Unborn Children (Cmnd. 5709)	Congenital Disabilities (Civil Liability) Act 1976 (c. 28).
Law Com. No. 61*	Family Law: Second Report on Family Property. Family Provision on Death (H.C. 324)	Inheritance (Provision for Family and Dependants) Act 1975 (c. 63).
Law Com. No. 62*	Transfer of Land: Report on Local Land Charges (H.C. 71)	Local Land Charges Act 1975 (c. 76).
Law Com. No. 63*	Statute Law Revision: Sixth Report by the two Commissions (Scot. Law Com. No. 36) (Cmnd. 5792)	Statute Law (Repeals) Act 1975 (c. 10).
Law Com. No. 64	Ninth Annual Report 1973–1974 (H.C. 40)	—

#### 1975

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

#### 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; Supreme Court Act 1981 (c. 54).
Law Com. No. 74*	Charging Orders (Cmnd. 6412)	Charging Orders Act 1979 (c. 53).
Law Com. No. 75*	Report on Liability for Damage or Injury to Trespassers and Related Questions of Occupiers’ Liability (Cmnd. 6428)	Occupiers’ Liability Act 1984 (c. 3).
Law Com. No. 76*	Criminal Law: Report on Conspiracy and Criminal Law Reform (H.C. 176)	In part by Criminal Law Act 1977 (c. 45).
Law Com. No. 77*	Family Law: Report on Matrimonial Proceedings in Magistrates’ Courts (H.C. 637)	Domestic Proceedings and Magistrates’ Courts Act 1978 (c. 22).

#### 1977

Law Com. No. 78	Eleventh Annual Report 1975–1976 (H.C. 94)	—
Law Com. No. 79*	Law of Contract: Report on Contribution (H.C. 181)	Civil Liability (Contribution) Act 1978 (c. 47).
Law Com. No. 80*	Statute Law Revision: Eighth Report by the two Commissions (Scot. Law Com. No. 44) (Cmnd. 6719)	Statute Law (Repeals) Act 1977 (c. 18).

<i>Report</i>	<i>Title</i>	<i>Related Legislation</i>
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)	Consumer Protection Bill.
Law Com. No. 83*	Criminal Law: Report on Defences of General Application (H.C. 566)	None.
Law Com. No. 84	Law of Contract: Report on the Proposed E.E.C. Directive on the Law Relating to Commercial Agents (Cmnd. 6948)	—
Law Com. No. 85	Twelfth Annual Report 1976–1977 (H.C. 96)	—
<b>1978</b>		
Law Com. No. 86*	Family Law: Third Report on Family Property. The Matrimonial Home (Co-ownership and Occupation Rights) and Households Goods (H.C. 450)	Housing Act 1980 (c. 51); Matrimonial Homes and Property Act 1981 (c. 24).
Law Com. No. 87*	Statute Law Revision: Ninth Report by the two Commissions (Scot. Law Com. No. 48) (Cmnd. 7189)	Statute Law (Repeals) Act 1978 (c. 45).
Law Com. No. 88*	Law of Contract: Report on Interest (Cmnd. 7229)	In part by Administration of Justice Act 1982 (c. 53); Rules of the Supreme Court (Amendment No. 2) 1980.
Law Com. No. 89*	Criminal Law: Report on the Mental Element in Crime (H.C. 499)	None.
Law Com. No. 90	Interpretation Bill: Report by the two Commissions on the Interpretation Act 1889 and Certain Other Enactments Relating to the Construction and Operation of Acts of Parliament and Other Instruments (Scot. Law Com. No. 53) (Cmnd. 7235)	Interpretation Act 1978 (c. 30).
Law Com. No. 91*	Criminal Law: Report on the Territorial and Extra-territorial Extent of the Criminal Law (H.C. 75)	None.
Law Com. No. 92	Thirteenth Annual Report 1977–1978 (H.C. 87)	—
Law Com. No. 93	Customs and Excise Management Bill: Report by the two Commissions on the Consolidation of the Enactments Relating to the Collection and Management of the Revenues of Customs and Excise (Scot. Law Com. No. 54) (Cmnd. 7418)	Customs and Excise Management Act 1979 (c. 2).
<b>1979</b>		
Law Com. No. 94	Justices of the Peace Bill: Report on the Consolidation of Certain Enactments Relating to Justices of the Peace (including Stipendiary Magistrates), Justices' Clerks and the Administrative and Financial Arrangements for Magistrates' Courts and to Matters connected therewith (Cmnd. 7583)	Justices of the Peace Act 1979 (c. 55).
Law Com. No. 95*	Law of Contract: Implied Terms in Contracts for the Supply of Goods (H.C. 142)	Supply of Goods and Services Act 1982 (c. 29).

<i>Report</i>	<i>Title</i>	<i>Related Legislation</i>
Law Com. No. 96*	Criminal Law: Offences Relating to Interference with the Course of Justice (H.C. 213)	None.
Law Com. No. 97	Fourteenth Annual Report 1978–1979 (H.C. 322)	—
Law Com. No. 98	Reserve Forces Bill: Report on the Consolidation of Certain Enactments Relating to the Reserve and Auxiliary Forces (Cmnd. 7757)	Reserve Forces Act 1980 (c. 9).
<b>1980</b>		
Law Com. No. 99*	Family Law: Orders for Sale of Property under the Matrimonial Causes Act 1973 (H.C. 369)	Matrimonial Homes and Property Act 1981 (c. 24).
Law Com. No. 100	Highways Bill: Report on the Consolidation of the Highways Acts 1959 to 1971 and Related Enactments (Cmnd. 7828)	Highways Act 1980 (c. 66).
Law Com. No. 101	Magistrates' Courts Bill: Report on the Consolidation of Certain Enactments Relating to the Jurisdiction of, and the Practice and Procedure before, Magistrates' Courts and the Functions of Justices' Clerks, and to Matters connected therewith (Cmnd. 7887)	Magistrates' Courts Act 1980 (c. 43).
Law Com. No. 102*	Criminal Law: Attempt, and Impossibility in relation to Attempt, Conspiracy and Incitement (H.C. 646)	Criminal Attempts Act 1981 (c. 47).
Law Com. No. 103	Family Law: The Financial Consequences of Divorce: The Basic Policy. A Discussion Paper (Cmnd. 8041)	See Law Com. No. 112.
Law Com. No. 104*	Insurance Law: Non-Disclosure and Breach of Warranty (Cmnd. 8064)	None.
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).
<b>1981</b>		
Law Com. No. 107	Fifteenth Annual Report 1979-1980 (H.C. 161)	—
Law Com. No. 108	Trustee Savings Bank Bill: Report by the two Commissions on the Consolidation of the Trustee Savings Banks Acts 1969 to 1978 (Scot. Law Com. No. 65) (Cmnd. 8257)	Trustees Savings Banks Act 1981 (c. 65).
Law Com. No. 109	Private International Law: Council of Europe Conventions on Foreign Money Liabilities (1967) and on the Place of Payment of Money Liabilities (1972) (Joint Report—Scot. Law Com. No. 66) (Cmnd. 8318)	—

<i>Report</i>	<i>Title</i>	<i>Related Legislation</i>
Law Com. No. 110*	Breach of Confidence (Cmnd. 8388)	Recommendations have been accepted, but legislation has not been given priority (see <i>Hansard</i> (H.C.), 2 February 1987, vol. 109, Written Answers, col. 513).
Law Com. No. 111	Property Law: Rights of Reverter (Cmnd. 8410)	Reverter of Sites Bill
Law Com. No. 112	Family Law: The Financial Consequences of Divorce. The Response to the Law Commission's Discussion Paper, and Recommendations on the Policy of the Law (H.C. 68)	Matrimonial and Family Proceedings Act 1984 (c. 42).
<b>1982</b>		
Law Com. No. 113	Sixteenth Annual Report 1980-1981 (H.C. 161)	—
Law Com. No. 114*	Classification of Limitation in Private International Law (Cmnd. 8570)	Foreign Limitation Periods Act 1984 (c. 16).
Law Com. No. 115	Property Law: The Implications of <i>Williams &amp; Glyn's Bank Ltd. v. Boland</i> (Cmnd. 8636)	None.
Law Com. No. 116*	Family Law: Time Restrictions on Presentation of Divorce and Nullity Petitions (H.C. 513)	Matrimonial and Family Proceedings Act 1984 (c. 42).
Law Com. No. 117*	Family Law: Financial Relief after Foreign Divorce (H.C. 514)	Matrimonial and Family Proceedings Act 1984 (c. 42).
Law Com. No. 118*	Family Law: Illegitimacy (H.C. 98)	Family Law Reform Bill.
<b>1983</b>		
Law Com. No. 119	Seventeenth Annual Report 1981-1982 (H.C. 203)	—
Law Com. No. 120	Medical Bill: Report by the two Commissions on the Consolidation of the Medical Acts 1956 to 1978 and Certain Related Provisions (Scot. Law Com. No. 77) (Cmnd. 8839)	Medical Act 1983 (c. 54).
Law Com. No. 121*	Law of Contract: Pecuniary Restitution on Breach of Contract (H.C. 34)	None.
Law Com. No. 122*	The Incapacitated Principal (Cmnd. 8977)	Enduring Powers of Attorney Act 1985 (c. 29).
Law Com. No. 123*	Criminal Law: Offences Relating to Public Order (H.C. 85)	Public Order Act 1986 (c. 64).
Law Com. No. 124*	Private International Law: Foreign Money Liabilities (Cmnd. 9064)	None.
Law Com. No. 125*	Property Law: Land Registration (H.C. 86)	Land Registration Act 1986 (c. 26).
Law Com. No. 126	Amendment of the Companies Acts 1948-1983: Report by the two Commissions under section 116 of the Companies Act 1981 (Scot. Law Com. No. 83) (Cmnd. 9114)	Companies Consolidation (Consequential Provisions) Act 1985 (c. 9).
<b>1984</b>		
Law Com. No. 127*	Transfer of Land: The Law of Positive and Restrictive Covenants (H.C. 201)	None.
Law Com. No. 128	Registered Homes Bill: Report on the Consolidation of Certain Enactments Relating to Residential Care Homes and Nursing Homes and Registered Homes Tribunals (Cmnd. 9115)	Registered Homes Act 1984 (c. 23).

<i>Report</i>	<i>Title</i>	<i>Related Legislation</i>
Law Com. No. 129	Dentists Bill: Report by the two Commissions on the Consolidation of the Dentists Acts 1957 to 1983 (Scot. Law Com. No. 84) (Cmnd. 9119)	Dentists Act 1984 (c. 24).
Law Com. No. 130	Public Health (Control of Disease) Bill: Report on the Consolidation of Certain Enactments Relating to the Control of Disease (Cmnd. 9128)	Public Health (Control of Disease) Act 1984 (c. 22).
Law Com. No. 131	Eighteenth Annual Report 1982–1983 (H.C. 266)	—
Law Com. No. 132*	Family Law: Declarations in Family Matters (H.C. 263)	Family Law Act 1986 (c. 55).
Law Com. No. 133	Road Traffic Regulation Bill (Joint Report—Scot. Law Com. No. 85) (Cmnd. 9162)	Road Traffic Regulation Act 1984 (c. 27).
Law Com. No. 134*	Law of Contract: Minors' Contracts (H.C. 494)	Minors' Contracts Bill.
Law Com. No. 135	Statute Law Revision: Eleventh Report: Obsolete Provisions in the Companies Act 1948 (Cmnd. 9236)	Companies Consolidation (Consequential Provisions) Act 1985 (c. 9).
Law Com. No. 136	Further Amendment of the Companies Acts 1948–1983: Report by the two Commissions under section 116 of the Companies Act 1981 (Scot. Law Com. No. 87) (Cmnd. 9272)	Companies Consolidation (Consequential Provisions) Act 1985 (c. 9).
Law Com. No. 137*	Private International Law: Recognition of Foreign Nullity Decrees and Related Matters (Joint report—Scot. Law Com. No. 88) (Cmnd. 9347)	Family Law Act 1986 (c. 55).

#### 1985

Law Com. No. 138*	Family Law: Conflicts of Jurisdiction Affecting the Custody of Children (Joint Report—Scot. Law Com. No. 91) (Cmnd. 9419)	Family Law Act 1986 (c. 55).
Law Com. No. 139	Cinemas Bill (Cmnd. 9425)	Cinemas Act 1985 (c. 13)
Law Com. No. 140	Nineteenth Annual Report 1983–1984 (H.C. 214)	—
Law Com. No. 141	Codification of the Law of Landlord and Tenant: Covenants Restricting Dispositions, Alterations and Change of User (H.C. 278)	None.
Law Com. No. 142	Codification of the Law of Landlord and Tenant: Forfeiture of Tenancies (H.C. 279)	None.
Law Com. No. 143	Criminal Law: Codification of the Criminal Law: A Report to the Law Commission (H.C. 270)	—
Law Com. No. 144	Housing Bill, Housing Associations Bill, Landlord and Tenant Bill (Joint Report—Scot. Law Com. No. 94) (Cmnd. 9515)	Housing Act 1985 (c. 68); Housing Associations Act 1985 (c. 69); Landlord and Tenant Act 1985 (c. 70); Housing (Consequential Provisions) Act 1985 (c. 71).
Law Com. No. 145*	Criminal Law: Offences against Religion and Public Worship (H.C. 442)	None.
Law Com. No. 146*	Private International Law: Polygamous Marriages. Capacity to Contract a Polygamous Marriage and Related Issues (Joint Report—Scot. Law Com. No. 96) (Cmnd. 9595)	None.
Law Com. No. 147*	Criminal Law: Report on Poison-Pen Letters (H.C. 519)	None.

<i>Report</i>	<i>Title</i>	<i>Related Legislation</i>
Law Com. No. 148*	Property Law: Second Report on Land Registration: Inspection of the Register (H.C. 551)	None.
Law Com. No. 149*	Criminal Law: Report on Criminal Libel (Cmnd. 9618)	None.
Law Com. No. 150*	Statute Law Revision: Twelfth Report (Joint Report—Scot. Law Com. No. 99) (Cmnd. 9648)	Statute Law (Repeals) Act 1986 (c. 12); Patents, Designs and Marks Act 1986 (c. 39).
Law Com. No. 151*	Rights of Access to Neighbouring Land (Cmnd. 9692)	None.
Law Com. No. 152*	Property Law: Liability for Chancel Repairs (H.C. 39)	None.
Law Com. No. 153	Agricultural Holdings Bill: Report on the Consolidation of Certain Enactments Relating to Agricultural Holdings (Cmnd. 9665)	Agricultural Holdings Act 1986 (c. 5).

#### 1986

Law Com. No. 154	Law of Contract: The Parol Evidence Rule (Cmnd. 9700)	—
Law Com. No. 155	Twentieth Annual Report 1984–1985 (H.C. 247)	—
Law Com. No. 156	Law of Contract: Implied Terms in Contracts for the Supply of Services (Cmnd. 9773)	—
Law Com. No. 157	Family Law: Illegitimacy (Second Report) (Cmnd. 9913)	Family Law Reform Bill.

#### 1987

Law Com. No. 158	Property Law: Third Report on Land Registration. A. Overriding Interests: B. Rectification and Indemnity: C. Minor Interests (H.C. 269)	—
Law Com. No. 159	Twenty-First Annual Report 1985–1986	—

### C. Joint Working Group Report

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

### D. Conveyancing Standing Committee

What Should We Do About Old Restrictive Covenants?

*Bound volumes of an unabridged reprint of Law Commission reports are published by Professional Books, Milton Trading Estate, Abingdon, Oxon, OX14 4SY.*

## APPENDIX 6

### THE COST OF THE COMMISSION

For the period 1 November 1985 to 31 October 1986<sup>1</sup>

The Commission's resources are made available through the Lord Chancellor's Department in accordance with section 5 of the Law Commissions Act 1965. The figures given below represent its cost not its budget. The cost of most items, e.g. accommodation, salaries, superannuation and headquarters overheads, is not determined by the Commission.

	1985-86	1984-85
	£000	£000
Accommodation Charges	364.2	400.4
Headquarters Overheads <sup>2</sup>	133.3	78.7
Printing of Bills, Reports, Working Papers and Consultative Documents: Supply of Office Equipment and Books	190.6	217
Commissioners' Salaries (including ERNIC)	203.7	182.6
Draftsmen, Legal Staff, Secondees and Consultants <sup>3</sup> (including ERNIC)	623.1	537.6
Non-Legal Staff Salaries (including ERNIC)	276	264.1
Superannuation	171.3	174.1
Telephone/Postage	12.4	21.6
Travel and Subsistence	10.4	6.6
Entertainment	0.2	0.5
Miscellaneous	1.4	3
	<u>1,986.6</u>	<u>1,886.2</u>

(Source: Lord Chancellor's Department).

<sup>1</sup>This is a "parliamentary year" and figures cannot be related to those in Supply Estimates and Appropriation Accounts. Changes in structure mean that the latter are not a consistent basis for comparison over the years, e.g. accommodation and printing costs were shown elsewhere until 1984-85.

<sup>2</sup>Portion of headquarters overheads attributed to the Commission by L.C.D.

<sup>3</sup>The Commission's "lawyer power" was below strength in 1984-85 while arrangements for research assistants and secondees were developed and implemented (see para. 3.4 above). Part of the increase reflects the fact that it is being brought back to full strength.



**CONVEYANCING STANDING COMMITTEE**

**FIRST ANNUAL REPORT  
1985-1986**

## MEMBERSHIP\*

Professor Julian Farrand, LL.D., <i>Chairman</i>	Law Commissioner
Trevor Aldridge, M.A.	Law Commissioner
James Bolton, T.D., D.L., B.A.	Solicitor, Chairman of The Law Society's Non-Contentious Business Committee
Mary Dent, J.P., M.Phil., B.Sc., F.R.I.C.S., M.R.T.P.I.	Assistant Director, Planning and Communications, London Borough of Camden
Kate Foss	Chairman, Council of the Insurance Ombudsman Bureau; Member of the Council for Licensed Conveyancers
Roger Humber, B.Sc. (Econ.)	Director, House Builders Federation
Philip Leigh, M.A., F.N.A.E.A.	Partner, Messrs. Dennis Reed & Co., Harrow
Geoffrey Osbaldeston	Assistant General Manager, Abbey National Building Society
John Pegg, A.I.B.	Deputy Managing Director, National Westminster Home Loans Ltd., Birmingham
Tod Raven-Hill, M.B.E., F.Inst.L.Ex., M.B.I.M.	Legal Executive and Branch Manager for Dixon Ward and Co., Solicitors, Kew Gardens and Richmond
William Taylor, Q.C.	Formerly Conveyancing Counsel of the Court and Member of the Land Registration Rule Committee
John Thomas, J.P., F.R.I.C.S., F.P.S.A.	Senior Partner, Baxter, Payne and Lepper; Deputy Chairman, Anglia Building Society; Member of the Land Registration Rule Committee
Liaison Officer from H.M. Land Registry: Martin Wood	
<i>Secretariat**:</i> Caroline Lonsdale Sally Gilding	

\*David Evans, then a partner in Deloitte, Haskins and Sells Management Consultancy Division, served on the Committee from February to May 1986.

\*\*Catherine Hand was secretary until December 1985. The Committee was further assisted during the year by Patricia Monahan and Hooi-Min Toh.

# CONVEYANCING STANDING COMMITTEE

## FIRST ANNUAL REPORT:1985-1986

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# CONVEYANCING STANDING COMMITTEE

## FIRST ANNUAL REPORT 1985-1986

### Part I: Introduction

1.1 In their Twentieth Annual Report, published last year, the Law Commission reported the establishment of the Conveyancing Standing Committee.<sup>1</sup> It is just over a year since we first met as a Committee in November 1985 and we now present our first annual report to the Commission. In this report, we give an account of our work during the last thirteen months. Our work on the majority of the subjects mentioned is continuing, and this report does not put forward our conclusions in any respect.

#### *Appointment and terms of reference*

1.2 The appointment of a Conveyancing Standing Committee was initially suggested by the Report of the Royal Commission on Legal Services,<sup>2</sup> but at that time the Law Commission felt unable to pursue the suggestion due to their commitment to other land law projects.<sup>3</sup> In January 1985 the Government Conveyancing Committee published its second report, entitled "Conveyancing Simplifications".<sup>4</sup> The Conveyancing Committee's primary recommendation was the establishment of a Conveyancing Standing Committee<sup>5</sup> and the report set out a number of possible functions of the proposed Committee.<sup>6</sup>

1.3 On 31 July 1985 the Lord Chancellor announced that he had invited the Law Commission to appoint a Conveyancing Standing Committee with the following terms of reference:

to consider matters relating to conveyancing practice and procedure, to advise the Law Commission on reform of conveyancing law, and to promote changes in practice and procedure necessary to create and maintain a cheap, simple and effective conveyancing system from the point of view of buyers and sellers of land. The Committee's first objective will be to bring about within two years improvements which will be apparent to ordinary housebuyers and sellers.<sup>7</sup>

The Law Commission consequently announced the membership of the Committee on 28 October 1985. The appointments were initially for a period of two years. In addition, the Chief Land Registrar at our request has made available a liaison officer<sup>8</sup> to advise us so far as necessary upon matters concerning the practice and procedure of registration of titles.

#### *Method of working*

1.4 At our first meeting we resolved that our proceedings and work would not ordinarily be confidential. We were anxious for the issues under consideration to be widely and openly discussed, and accordingly accepted that our work in hand should receive all appropriate publicity so as to stimulate the interest and views of all involved. This is particularly important where our recommendations would affect the practices currently adopted by conveyancers and others employed in the conveyancing process.

1.5 In view of our set objective to achieve real improvements within two years, we decided initially to concentrate our attention on matters which would not require legislation, but which could be adopted in practice by ordinary house buyers and sellers and their professional advisers. However, we also began work on a number of longer term projects which may eventually require changes to the present law.

### Part II: Work in Progress

2.1 We have met as a Committee on eleven occasions and below we give a brief account of our work.

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<sup>1</sup>(1986) Law Com. No. 155, para. 2.64.

<sup>2</sup>(1979) Cmnd. 7648, Annex 21.1, para 2.

<sup>3</sup>(1981) Law Com. No. 107, para. 1.3(b).

<sup>4</sup>"The Second Report of the Conveyancing Committee: Conveyancing Simplifications" (H.M.S.O.).

<sup>5</sup>Para. 9.3.

<sup>6</sup>Para. 9.40.

<sup>7</sup>*Hansard* (H.L.) 31 July 1985, vol. 467, Written Answers, col. 329.

<sup>8</sup>Currently Martin Wood.

### *Pre-contract deposits*

2.2 We are aware that one of the most frequently voiced complaints about the conveyancing system in England and Wales is the delay and uncertainty that exist before contracts are exchanged. The frustration is sometimes aggravated by purchasers or vendors who lack genuine commitment to the transaction and withdraw after the other party has expended both time and money.

2.3 Early in the new year we will be publishing a practice recommendation proposing a new procedure for dealing with some of these delays and uncertainties. We will be recommending a pre-contract deposit agreement, and the report accompanying the agreement will explain our proposal in detail.

2.4 We believe that our pre-contract deposit proposal will make a significant contribution to alleviating some of the problems caused by the uncertainty that still exists after an agreement "subject to contract". We recognise, however, that these problems may be thought an inevitable consequence of the delays that can arise during the numerous investigations and arrangements that one or other of the parties must have performed before they are ready to exchange contracts. We have often been told, for example, that there is no point in enabling purchasers to arrange their mortgage finance in advance if local authorities take many weeks to reply to searches and enquiries. Similarly, we are told that there is no advantage in a vendor supplying local authority searches until the problems of "chains" have been solved. Nevertheless we take the view that small improvements to the many different elements of a conveyancing transaction, which individually may not seem significant, will, when taken together, produce a genuine overall benefit.

### *Mortgage certificates*

2.5 The suggestion that a purchaser should be able to obtain, in advance of "house-hunting", the offer of a mortgage loan from a building society or other lender, subject only to a valuation of the particular property, was strongly recommended by the Government's Conveyancing Committee.<sup>9</sup> We understand that one or two lending institutions previously offered the facility, and that others subsequently took up the recommendation. However the use of mortgage certificates was not widespread amongst the major lending institutions.

2.6 In addition to providing a purchaser with a clear idea of his creditworthiness and consequently which properties are within his price range, a mortgage certificate provides evidence to a vendor of a purchaser's financial status. We therefore considered the suggestion worth pursuing.

2.7 Through one of our members, Geoffrey Osbaldeston, we provided the impetus for the launch of a pilot scheme by the Abbey National Building Society. Under that scheme, mortgage certificates are issued guaranteeing a mortgage advance up to a specified limit for a period of three months, subject only to a satisfactory valuation of the property to be purchased.

2.8 As a result of Abbey National's lead and the resultant publicity, mortgage certificate schemes were soon introduced by other leading financial institutions. Subsequently the Building Societies Association issued a circular for the guidance of member-societies about the operation of such schemes.

### *Local authority searches and enquiries*

2.9 One of our major concerns is the length of time some local authorities take to respond to requisitions for official searches of the local land charges register<sup>10</sup> and additional enquiries submitted on the appropriate CON 29 form. We recently sought the advice and assistance of Jeff Davies and Ron Tweed, President and immediate past President of the Association of District Secretaries respectively, and also of Peter North, Borough Solicitor of Waltham Forest. As a result of a useful introduction to possible ways of improving the service, ranging from computerisation to simply how to complain effectively, we propose to undertake a detailed examination of this subject, with a view to making recommendations in due course.

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<sup>9</sup>"Conveyancing Simplification", paras. 2.26-2.31 and para. 9.5.

<sup>10</sup>Under the Local Land Charges Act 1975.

### *Conveyancing protocols*

2.10 A recent development in conveyancing is the growth of protocols operated by groups of solicitors, usually within the geographical area of a local law society. Signatories agree to adopt the standard procedure set out in the protocol (or conveyancing guide-lines as they are sometimes more informally called). In view of the growth of local protocols we intend to examine the possibility of recommending national guide-lines for adoption by solicitors and, shortly, licensed conveyancers.

### *Preliminary enquiries*

2.11 We are in the process of concluding an examination of standard preliminary enquiries currently used by solicitors. A large amount of time, and consequently money, is spent by solicitors answering enquiries before contract that could more appropriately be asked either of the vendor personally or, for example, of a surveyor or estate agent. In March we hope to publish our practice recommendations on this subject.

### *Restrictive covenants*

2.12 In April we published a consultation paper entitled "What Should We Do About Old Restrictive Covenants?" The paper examined the problems caused by obsolete restrictive covenants and put forward five options - do nothing; abolish restrictive covenants; limit the life of restrictive covenants; cancel restrictive covenants after a fixed period unless they are renewed; discretionary cancellation plus compensation. Options 2 to 5 would require legislation. We have received over two hundred responses from the judiciary, the legal profession, academics, pigeon fanciers, public bodies, organisations and the general public. These responses are currently being analysed. We will subsequently consider and publish our recommendations in the light of consultation.

### *Deposits*

2.13 We decided to undertake a survey to find out the present practice on taking deposits on exchange of contracts. We are particularly interested in whether the standard 10% is still the norm, or whether a lower percentage is frequently accepted. We also wish to ascertain the capacity in which the majority of solicitors hold the deposit, as agent for the vendor or as stakeholder. We conducted a pilot survey amongst a hundred firms of solicitors. Despite some delay, we are proposing to carry out an extended survey of the solicitors' profession early in the new year.

2.14 In addition, we have examined a number of insurance schemes that have recently appeared on the market. Under the schemes, on receipt of a premium from the purchaser, the insurer undertakes to pay to the vendor an amount equal to deposit in the event of the purchaser failing to complete the contract. We will be giving further consideration to the question of deposits in the coming year.

### *Computerisation*

2.15 We recognise that computerisation will play an increasingly important role in conveyancing, for example through linking solicitors' firms, local authorities, H.M. Land Registry, banks, building societies and estate agents. We therefore thought it desirable for the Committee to contain expertise in the field of computers with special reference to their role in the future of conveyancing. In February, David Evans, then a partner in Deloitte, Haskins & Sells Management Consultancy Division, was appointed as the Committee's "computer expert". Unfortunately, for personal reasons, he resigned from the Committee in May.

2.16 Before his resignation, we arranged visits both to H.M. Land Registry's digital mapping project and to the District Land Registry at Plymouth to examine closely their proposals to computerise the Land Register.

2.17 As mentioned earlier,<sup>11</sup> computerisation is also being examined in relation to local authority searches and enquiries.

2.18 In addition to the matters outlined above, we are examining the question of disclosure by vendors including vendors' surveys, and the development of "chain-breaking" schemes. Work in these areas will continue.

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<sup>11</sup>Para 2.9.

### **Part III: Reform of Conveyancing Law**

#### *Law Commission working papers and reports*

3.1 During the year, we considered and responded to the following working papers published by the Commission:

Transfer of Land: Formalities for Contracts for the Sale etc. of Land.<sup>12</sup>

Transfer of Land: Formalities for Deeds and Escrows.<sup>13</sup>

Trusts of Land.<sup>14</sup>

Transfer of Land: the Rule in *Bain v. Fothergill*.<sup>15</sup>

3.2 We discussed the Commission's Second Report on Land Registration: Inspection of the Register,<sup>16</sup> and we expressed agreement with the Commission's recommendation that the register of title should be open to public inspection.

3.3 Earlier in the year we recommended to the Commission that a Bill should be drafted to implement their recommendation that landlords should have a duty to reply within a reasonable time to a request for permission to assign or sublet a lease.<sup>17</sup> We understand that a Bill is currently being drafted within the Law Commission.

#### *Committee on the Future of the Legal Profession*

3.4 At their request, we submitted evidence to the Committee on the Future of the Legal Profession on the future role of solicitors and barristers in conveyancing.

### **Part IV: In Conclusion**

4.1 We have outlined the work we have undertaken during the last year. Before our second annual report, in view of our terms of reference,<sup>18</sup> it will be necessary to reappraise the work of the Committee, so far and in hand, in the light of the surrounding circumstances.

*December 1986*

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<sup>12</sup>(1985) Working Paper No. 92.

<sup>13</sup>(1985) Working Paper No. 93.

<sup>14</sup>(1985) Working Paper No. 94.

<sup>15</sup>(1986) Working Paper No. 98.

<sup>16</sup>(1985) Law Com. No. 148.

<sup>17</sup>Recommended in *Codification of the Law of Landlord and Tenant: Covenants restricting Dispositions, Alterations and Change of User (1985)*, Law Com. No. 141.

<sup>18</sup>See para. 1.3 above

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