



# THE LAW COMMISSION

**SECOND ANNUAL REPORT  
1966-1967**

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

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LAW COM. No. 12

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

- The Honourable Mr. Justice Scarman, O.B.E., *Chairman*.
- Mr. L. C. B. Gower, M.B.E.
- Mr. Neil Lawson, Q.C.
- Mr. N. S. Marsh, Q.C.
- Mr. Andrew Martin, Q.C.

Mr. Arthur Stapleton Cotton is a special consultant to the Commission. The Secretary of the Commission is Mr. H. Boggis-Rolfe, C.B.E., and its offices are at Lacon House, Theobald's Road, London, W.C.1.

THE LAW COMMISSION  
LAACON HOUSE, THEOBALD'S ROAD, LONDON, W.C.1

ANNUAL

REPORT OF THE LAW COMMISSION FOR THE YEAR 1965

1966

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**SECOND ANNUAL REPORT: 1966-67**

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**LAW COMMISSION**  
**SECOND ANNUAL REPORT : 1966-67**

*To the Right Honourable the Lord Gardiner,  
Lord High Chancellor of Great Britain*

My Lord,

We have the honour to present to your Lordship our Second Annual Report pursuant to section 3 (3) of the Law Commissions Act 1965.

**INTRODUCTORY**

1. The Commission was set up on 16th June 1965 and our First Annual Report covered the period between our establishment and 15th June 1966. Our present Report is for the year which ended on 15th June 1967 and is mainly concerned with describing the further progress that we have made with the work under our First Programmes of Law Reform and Consolidation and Statute Law Revision.

2. In Part I of this Report we deal with matters of organisation and working methods ; in Part II with the various items of our programmes ; in Part III with the public interest in law reform ; and in Part IV we deal with certain current questions of law reform which are particularly important for the future.

PART I  
**ORGANISATION AND WORKING METHODS**

**Accommodation**

3. Some increase in our staff, the growth of our library and the need for better arrangements for reproducing papers made it necessary for us to obtain additional accommodation during the year. We were able to secure suitable rooms adjacent to our others on the 8th floor of Lacon House.

**Library**

4. The improvement of our library and research facilities have been greatly assisted by the appointment of a professional librarian. The library now comprises a small but useful working collection of about 6,000 volumes. It already contains a great deal that we require from day to day so far as the English law is concerned, though we lack back numbers of certain English legal periodicals. The main shortages are in the Scottish, Irish and Northern Ireland Reports and in Commonwealth and foreign publications, especially the more important American journals.

5. We are grateful for the unfailing help which the law libraries of London University and the Inns of Court give us—lending us books as well as allowing us reading facilities. In particular, we would wish to express our thanks to the *Institute of Advanced Legal Studies* and its librarian, Mr. Howard Drake, who has so readily helped us on all occasions. Nevertheless, it is time-consuming to rely on others, apart from the inconvenience we reluctantly cause them. We are, therefore, doing our best to fill the gaps in our library in the sections where shortages most frequently impede our work.

6. Individuals and organisations in many parts of the world have again sent us generous presents of books and other documents. Among those who have been kind enough to send gifts for our library are:—

Centre of Criminology, University of Toronto  
Council of Europe  
Indian Law Commission  
Institute of Advanced Legal Studies  
Law Society  
Lincoln's Inn Library  
National Council for the Unmarried Mother and Her Child  
New York Law Revision Commission  
Ontario Law Reform Commission  
Professor Monrad G. Paulsen  
Quebec Civil Code Reform Commission

**Personnel**

7. We are greatly indebted to Mr. Arthur Stapleton Cotton, who has served as our Special Consultant from the earliest days of the Commission. His wise and practical advice and the constant help that he has given have been of inestimable value to us in our deliberations on all manner of questions.

8. In our First Annual Report we expressed the view that, though it is better for our legal staff to remain small, there was a need for some expansion. After a year's further experience we remain of the same opinion. Under our First Programme of Law Reform we are responsible for examining a number of major topics. As the complex process of research and consultation develops, the work-load increases. To carry it we require a legal staff combining experience, imagination and enthusiasm. Happily, both youth and experience have rallied to our cause. Our legal and administrative staff, increasing slightly in numbers, have shown real strength and quality.

9. Our policy of employing on the legal staff young lawyers, some of whom had only recently taken their degrees and had not been called to the Bar or admitted as solicitors, has been most successful. Their qualities have admirably complemented the experience of the senior staff. We have been able to offer these young men and women temporary appointments after which they may go on to Government service, practice, academic work—or remain with the Commission. We, also, can help them, giving them the opportunity to meet Judges, leading practitioners and academic lawyers. Thus they have a unique opportunity not only to see what is being done in the way of law reform, but also to play a constructive part in the formulation of proposals that we put forward. We intend in the years ahead to do all we can to attract young lawyers into the Commission's service and we hope that for them it will provide a good start for their careers.

10. We now have a staff of 43—the Secretary, 4 draftsmen, 13 other lawyers and 25 non-legal members of the staff.

### **Consultations**

11. In our last Report we explained our working methods. It is our usual practice not to ask for "evidence", but by the preparation of Working Papers, which we circulate, to pave the way for informed consultations. These Working Papers set out the existing state of the law, referring, when appropriate, to the position in other jurisdictions; they indicate the defects which we believe to require correction and our provisional proposals for reform.

12. We distribute our Working Papers to such organisations and individuals, both legal and non-legal, as we think it desirable to consult. In some cases it has sufficed to consult in a limited way; in other cases our consultations have been wide, necessitating the distribution of a large number of copies of our papers. On a number of occasions we have sent copies of a Working Paper to the legal press and in one case also to the national press and to the television and broadcasting services. We describe in Part II of the Report what kind of consultation we have thought it right to undertake on different topics.

### **Scottish Law Commission**

13. We attach the greatest importance to our collaboration with the Scottish Law Commission and to our joint efforts to secure a closer harmony between the Scots and English law. We are in constant touch by correspondence and telephone, and have had numerous meetings with members of the Scottish Law Commission and their staff, as well as a joint meeting of the two Commissions held in our office in London on 23rd and 24th February 1967.



14. We have exchanged ideas and sought information from one another in many different fields. Last year we reported that we were actively co-operating in our work on the law of contract. During the year there have been many meetings in that field convened by the two Commissions. We have also had the benefit and pleasure of having a Scottish Law Commissioner, Professor A. E. Anton, on the Working Party on the Hague Draft Convention on the Recognition of Foreign Decrees of Divorce and Legal Separation. Latterly we have also been jointly conducting an examination of the rules for interpreting statutes and have been in close touch regarding our respective examinations of family law.

#### **The Director of Law Reform in Northern Ireland**

15. We have been very glad to exchange information with the Director of Law Reform in Northern Ireland and to co-operate with him whenever either he or we had a problem of mutual interest.

#### **The Law Reform Committee and the Criminal Law Revision Committee**

16. By keeping in touch with the Chairmen and Secretaries of both Committees we each know of the progress that the other is making in any common field.

17. We were consulted by the Chairman of the Law Reform Committee upon subjects which might appropriately next be referred to that Committee. We suggested the possibility of an inquiry into the law on the limitation of actions and prepared a paper on that subject. As an alternative we suggested an examination of the law relating to conversion and detinue. When the latter (with an extension of the inquiry to cover the recaption of chattels) was eventually selected, we provided a paper in which we reviewed the different questions that we thought the Committee would wish to consider.

#### **Representative Organisations of the Legal Profession**

18. We have frequently sought views and information from the Bar Council and the Law Society and their Law Reform Committees and specialist sub-committees; and also from the specialist sub-committees of the Society of Public Teachers of Law, through their Law Reform Co-ordinating Committee. We are conscious that we have occasioned the members of these bodies a great burden of work, and we are grateful to them and to their secretaries, whom we particularly thank, for the way that they have responded to our many requests, especially when, as was sometimes necessary, we asked for quick replies.

19. Following the procedure adopted in our first year, we invited the Chairman of the Bar Council, the President of the Law Society and the President of the Society of Public Teachers of Law, accompanied by other representatives of those bodies, to meet us in November and December 1966 to talk about our collaboration.

#### **Outside Assistance**

20. We have continued to commission specific research projects from outside experts. We have also taken part in a number of conferences and seminars. Two seminars were held on family law, one organised by the

Institute of Advanced Legal Studies and the Society of Public Teachers of Law, and the other by All Souls College, Oxford, which also held a seminar on administrative law, a subject which we hope to include in a future programme. We would like to thank the Warden and Fellows of the College for their hospitality not only on those occasions, but also when they acted as hosts at the first meeting of the advisory panel on the codification of contract. The Cambridge Law Faculty arranged a seminar for us on land law at St. John's College, and we are grateful to the Master and Fellows of the College for their hospitality. We are also indebted to the United Kingdom Committee on Comparative Law for inviting members of our staff to take part in a colloquium at the University of Southampton on the assessment of damages in personal injury cases.

21. Commissioners and members of the legal staff have held many discussions on the work of the Law Commission with students and staff of a number of universities and with members of local law societies and legal associations. We place great reliance on these methods of maintaining our lines of communication with academic and practising lawyers and law students.

22. In addition we have been greatly helped by consultations with social scientists; we are acutely conscious that as lawyers we cannot adequately discharge our duties without the help of experts in other disciplines.

23. In the course of routine consultations we have taken advice from many individuals and bodies and we refer to some of them when reporting in Part II below on different Items in our Programme. We should like to thank all who have guided us and given their time so willingly, including many members of the public service.

#### **Information Regarding Legal Systems of Other Countries**

24. Section 3 (1) (f) of the Act imposes on us the duty "to obtain such information as to the legal systems of other countries as appears to the Commissioners likely to facilitate the performance of any of their functions". In discharging this duty we have received great help from the British Institute of International and Comparative Law, the Institute of Advanced Legal Studies, the Ministry of Justice or Attorney General's Department of a number of foreign and Commonwealth countries, the Indian Law Commission, the Law Council of Australia, the Law Revision Commission of New Zealand, the New South Wales Law Reform Commission, the New York Law Revision Commission, the Ontario Law Commission, the Quebec Civil Code Reform Commission, and a number of overseas universities, institutes and Bar associations. We are equally grateful to many individual experts who have helped us.

25. Two of the Commissioners attended the Nordic Conference on Privacy held in Stockholm under the auspices of the International Commission of Jurists; this is another subject to be discussed at a seminar at All Souls College, with a view to its possible inclusion in a future Programme. A member of the staff participated in an Anglo-French conference in Paris on administrative law under the auspices of the Société de Législation Comparée, and, through the courtesy of the Vice-President of the Conseil d'Etat, was given the opportunity of seeing that body at work.

## PART II

### THE FIRST PROGRAMMES : REPORT ON PROGRESS

#### The First Programme of Law Reform

26. It will, perhaps, be convenient to recall that we are required by section 3 (1) (b) of our Act to prepare from time to time

“programmes for the examination of different branches of the law with a view to reform, including recommendations as to the agency . . . by which any such examination should be carried out”.

In a note with our First Programme of Law Reform we mentioned the considerations that led us to include in it 17 different items, for 13 of which and part of one other the Commission is the examining agency.

#### Working Procedures

27. We described our working procedures in our First Annual Report and explained how we allocate each item in our Programme for which we are the examining agency to a team comprising one or more Commissioners and one or more members of the legal staff. It is not necessary to repeat in any detail the description of these arrangements that we gave last year.

28. We include in Appendix I lists of the Commission's papers that have been laid before Parliament under section 3 (2) and (3) of our Act, presented to Parliament as White Papers or produced by the Commission as Published Working Papers.

#### Item I. Codification of the Law of Contract

29. Work has proceeded steadily with the laying of the foundations of a code of contract. After preliminary studies of the differences between the Scottish and English law and of the general structure of a contract code, we started to produce tentative drafts of a number of parts of a code, together with a commentary on each. In this work we have been mindful of the importance of achieving harmonisation with continental systems, the relevance of which has been enhanced by the Government's application to join the Common Market.

30. It has been agreed between the Commission and the Scottish Law Commission that we would best move towards a contract code which would, so far as possible, be common to England and Scotland if the team concerned with the work were representative of both Commissions. Accordingly the team responsible for this work consists of representatives of the two Commissions and the tentative drafts referred to in the last paragraph have been prepared on the basis that they will apply both in England and in Scotland.

31. In February of this year the Commissions set up an advisory panel, consisting of a number of Her Majesty's Judges and of practising and academic lawyers, to advise each Commission on matters of common concern relating to the code, with English and Scottish members available

to advise separately on any problems which may be special to English or Scottish law. A list of the members of the advisory panel is given in Appendix II.

32. In a number of civil law jurisdictions (and to some extent in Scotland) the law of contract places reliance on the concept of good faith. We wish to find out more about the practical consequences than we can discover from published sources. We have accordingly commissioned a comparative study from Professor A. N. Yiannopoulos of Louisiana State University, a recognised expert in this field.

33. In April of this year a meeting was held at All Souls College, Oxford, between the advisory panel and the Commissions' contract team. We had a fruitful discussion both on a number of fundamental matters relating to the code and to any commentary which might accompany it and on certain matters of importance arising from the tentative drafts referred to above. We intend to keep in close touch with members of the panel and arrange similar meetings in the future. Whilst those who have agreed to serve on the panel do not undertake responsibility either for the policy of codification or for the nature or quality of the draft code which will eventually be produced, they provide the Commissions, during the progress of the work, with informal criticism and advice. It is not, of course, intended that this professional advice should replace the wider consultations which the Commissions will set on foot when a draft code is ready to be published for more general criticism and comment.

34. We do not underestimate the difficulties of the task which we have undertaken, especially the problems to be overcome in producing a common code for Great Britain. But we believe that in the past two years a good beginning has been made. This is largely due to Mr Harvey McGregor, our consultant on the law of contract, to whom we are greatly indebted.

#### **International Agency**

35. This is a convenient point at which to recall that your Lordship requested the Commission to advise upon two draft Conventions, prepared by the International Institute for the Unification of Private Law, upon which the United Kingdom Government has been invited to comment. Both Conventions concern agency in contracts of an international character, the one relating to agency in general and the other relating to commission agencies on sales of goods. The Scottish Law Commission have received a similar request, and the two Commissions have appointed a joint Working Party to advise on the draft Conventions. The names of the members who have generously agreed to undertake this task are set out in Appendix II. Mrs. Hazel Fox has prepared a preliminary survey of both draft Conventions which will be of great help to the Working Party.

#### **Item II. Exemption by Contract from Common Law Liabilities**

36. The meetings of the joint Working Party of the Law Commission and the Scottish Law Commission dealing with this topic have been largely devoted to the problems of exemption clauses in contracts of sale of goods, and in particular to contracting out of the conditions and warranties implied by the Sale of Goods Act 1893. Priority has been given to these problems not only because of the paramount importance of contracts of sale, but also

because of the important questions relating to consumer protection to which attention was drawn in the Final Report of the Committee on Consumer Protection<sup>1</sup> (the Molony Committee Report). Moreover, since August 1966 (when the President of the Board of Trade asked the two Commissions for advice under section 3 (1) (e) of our Act) it has been part of the Working Party's task to consider the Molony Committee's recommendations on the amendment of the Sale of Goods Act.

37. Apart from a general invitation to submit memoranda which was published in the national and legal Press, a number of representative and other bodies in Great Britain were specifically invited to submit their views to the Working Party. As a result we have received much valuable information from Government departments, representative organisations of many kinds, national and private undertakings and individuals. We take the opportunity of expressing our gratitude to all those who have assisted the Working Party in this way. We are grateful also to the British Insurance Association, who were good enough to arrange for experts in the field of product liability insurance to meet the Working Party.

38. In due course we propose to formulate some preliminary proposals on the sale of goods and send them for comment to bodies representing a wide range of interests and different points of view.

39. In February 1967 one of the members of the Working Party, Mrs. Beryl Diamond, had to resign for personal reasons. We are grateful for the valuable advice and assistance which she has given us. After consultation with the Consumer Council, we were fortunate to secure in her place the membership of Mrs. L. E. Vickers, a practising solicitor. We also welcome Mr. M. R. E. Kerr, Q.C., and Mr. S. W. T. Mitchelmore; the latter replaced Mrs. E. L. K. Sinclair as one of the Board of Trade representatives. Their experience will be of great help to the Working Party.<sup>2</sup>

### **Item III. Consideration, Third Party Rights in Contract and Contracts under Seal**

40. Work on this Item has for all practical purposes been merged with the work on Item I (Codification of Contract).

### **Item IV. Civil Liability for Dangerous Things and Activities**

41. In our last Annual Report we said that a preliminary survey had been made of the respective roles of negligence and strict liability in the light of the needs of modern society and the experience of other countries. Further progress with this Item has to a large extent been made possible through the assistance we have had from Master J. B. Elton, one of the Masters of the Queen's Bench Division, to whom we are very grateful. He prepared for us a preliminary report summarising the legal and social problems involved, suggesting general lines of reform and raising a number of questions requiring consideration. In the light of this report, our provisional view is that a comprehensive enactment or series of enactments should be prepared specifying the circumstances in which the specially dangerous character of

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<sup>1</sup> 1962 Cmnd. 1781.

<sup>2</sup> The names of the other members of the Working Party are given in Appendix I to the Commission's Report for 1965-66.

things or activities should give rise to a strict liability, and indicating the persons who should be respectively subject to and protected by that liability. The conditions of liability and the limited range of defences to be permitted should, so far as possible, be made uniform and should be defined in the same legislation.

42. As soon as the Commission's resources allow, a Working Paper will be prepared, outlining the principles on which such legislation might be based. Meanwhile, much of the groundwork for this Working Paper is already being laid in a series of studies which Master Elton is kindly producing for us ; so far the topics of independent contractors, highways and fire have been covered in this way.

#### **Item V. Civil Liability for Animals**

43. Following the consultations, referred to in our First Annual Report, with Government departments, practitioners with special experience of this branch of the law and insurance interests, we made extensive inquiries to ascertain the views of local authorities, of organisations representing those who keep animals, whether for business or for pleasure, and for those, such as road users, who are especially liable to suffer damage from animals. We also consulted with the Torts Sub-Committee of the Law Reform Committee of the Society of Public Teachers of Law, and from them and many lay organisations we received detailed replies to our questionnaire.

44. Our consultations have been of great help and we are grateful for the care and time devoted by those who have answered our inquiries, including a number of police authorities who helped us by supplying statistics relating to accidents involving animals.

45. Now that consultations have been completed, we are engaged in preparing a Report and a draft Bill. The task has been rendered the more difficult by the need to keep in mind the repercussions of our proposals for change upon the law of tort in general.

#### **Item VI. Personal Injury Litigation**

##### *(a) Jurisdiction and procedure*

46. As mentioned in paragraph 50 of our First Annual Report an *ad hoc* committee on the jurisdiction and procedure in personal injuries cases was appointed by your Lordship on 12th January 1966 under the chairmanship of Lord Justice Winn. We keep in close touch with the Committee, whose Secretary is a member of our own staff. We are interested to note that, as a means of consultation, the Committee have followed the Commission's practice of circulating Working Papers and that these have received very good publicity in the legal press.

##### *(b) Assessment of damages*

47. We indicated in our First Annual Report that this complex topic required prolonged study in depth. We envisaged that in the year now under review progress would be made in two directions:

- (i) the preliminary series of papers prepared in the previous year would be developed by the incorporation of fresh material resulting from further research (including comparative studies) and further discussion ;

- (ii) through a survey conducted in close co-operation with the Social Survey Division of the Central Office of Information, information of a kind not hitherto available would be obtained concerning the economic and social effects of awards in personal injury cases.

48. We have made considerable progress with the preparation of a comprehensive Working Paper constructed from the preliminary papers mentioned above and this serves as the basis of our further consultations.

49. Owing to other pressing commitments the Central Office of Information have had to withdraw from the project of a social survey. We have not, however, abandoned this plan, which we continue to regard as important. We are currently engaged in studying alternative ways in which a social survey could be carried out.

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

50. By the beginning of this year we had already completed a preliminary study of the law in this field and for the purpose of consultation we published two papers<sup>3</sup> which we circulated widely.

51. In our Published Working Paper No. 5 (September 1966) we dealt with the contractual liability of trade vendors of new houses. That the present law is unsatisfactory had for some time been widely recognised, not only by the general public but by the building industry itself. In recent years there have been several Private Member's Bills aimed at protecting purchasers of new houses and such a Bill was before Parliament early in the year under review. Moreover, the previous year had seen the rapid growth of the Ten Year Protection Scheme introduced by the National House-Builders Registration Council.

52. We dealt with the remaining aspects of Item VII in Published Working Paper No. 6 (October 1966); they relate to—

- (a) trade sales of old houses,
- (b) private sales of houses,
- (c) vendors' liability in tort, and
- (d) lessors' liability in tort.<sup>4</sup>

53. The two papers were sent not only to Government departments, professional bodies and associations and to individuals, whom we wished to consult as representative of a specific sector of opinion, but also to professional journals, so that their readers might be informed of the lines on which the project was developing and given the opportunity of commenting upon our provisional proposals. Such publicity has ensured that we are in touch with a wide range of professional and lay opinion, and we would like to thank, in particular, the editors of the journals which have given space to our papers.

54. Our consultations are nearing completion, and we are considering the views expressed. In preparing a Report we shall take into account the rapid increase in the number of builders registered with the National House-Builders Registration Council, and consequently the increased percentage of

<sup>3</sup> Now called Published Working Papers Nos. 5 and 6.

<sup>4</sup> As we reported in paragraph 61 of our First Annual Report, we decided to consider the contractual liability of lessors under Item VIII (Landlord and Tenant). We shall do so in due course.

houses now being built which will carry their Ten Year Certificate. The Council has kept us in close touch with the progress being made in this respect, and we have seen the form of agreement between builder and purchaser, which has been revised at our request.

### **Item VIII. Codification of the Law of Landlord and Tenant**

55. With the help of the Working Party<sup>5</sup> referred to in paragraph 67 of our last Report, to whose members we are greatly indebted, we have pressed on with the major project of codification. The Working Party, as its work has proceeded, has recommended steps to deal with some anomalies or defects in the present law of landlord and tenant which it was felt should be remedied without waiting for the completion of the codification project as a whole, and these are referred to in paragraphs 62 to 66 inclusive.

56. The monthly meetings have been continued during the year and the Working Party has considered a number of topics in detail, with a view to the formulation of provisional proposals on which we will consult with professional and other bodies.

#### *(a) Waste and distress*

57. These matters are incidental to the main codification. They were separately mentioned in our Programme and work on them was started before the Working Party was set up. The general examination of the law of waste, which was mentioned in paragraph 64 of last year's Report, has led us to the conclusion that it should not be dealt with in all its aspects in one study. We think it preferable to take each aspect of waste separately in the course of studying the main subject to which it relates. Accordingly, our proposals on waste as between landlord and tenant have been considered by the Working Party on the codification and they are included in the paper on Obligations of Landlords and Tenants, referred to in paragraph 59 below.

58. Our Interim Report on Distress for Rent<sup>6</sup> was laid before Parliament on 6th October 1966; we recommended that, pending the provision of more efficient remedies for non-payment of rent or a uniform debt enforcement system,<sup>7</sup> the remedy of distress for rent should be retained, but that in the case of all residential lettings its exercise should be subject to the leave of the county court; and that on leave to distrain being granted, the landlord should be entitled to distrain not only for the arrears accrued when the application was lodged, but also for such further arrears as may have accrued between that date and the date of the order. In February 1967 we submitted to you a draft clause giving effect to these recommendations.

#### *(b) Obligations of landlords and tenants*

59. This was the first substantial topic tackled as part of the codification. In March 1967 we published the Working Party's paper<sup>8</sup> suggesting a scheme

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<sup>5</sup> The membership of the Working Party is given in Appendix I to the First Annual Report. Four additional members are to be appointed, two of them representing the Chartered Land Societies Committee and the others representing the Lord Chancellor's Office and the Ministry of Housing and Local Government.

<sup>6</sup> Now called LAW COM. No. 5.

<sup>7</sup> At present under consideration by the Payne Committee on the Enforcement of Judgment Debts.

<sup>8</sup> Published Working Paper No. 8.



of obligations to be imposed by the code upon landlords and tenants. These obligations are divided into three classes :

- A. obligations which cannot be varied or excluded ;
- B. obligations imposed upon one party unless transferred to the other party by agreement in writing ; and
- C. obligations which can be varied or excluded by agreement in writing.

60. This paper has been circulated widely amongst Government departments and professional bodies and associations for comment and criticism, and our provisional proposals have been reported in several professional journals. But for publicity of this kind, we would have missed much of the valuable comment that we have received from members of different professions all over the country.

(c) *Termination of tenancies, etc.*

61. This is the second substantial topic related to codification. The Working Party is now considering notices to quit, including uniform rules for the service of notices and other related matters arising on the termination of tenancies. We hope soon to be able to publish Working Papers on these topics.

(d) *Landlord and Tenant Act 1954, Part II*

62. In this and the next three paragraphs we mention the anomalies to which we referred in paragraph 55. The Working Party formulated provisional proposals for amendments to Part II of the 1954 Act, which were published<sup>9</sup> in February 1967. This paper too has been circulated widely, in particular to trade associations and local Chambers of Commerce, many of whose members are concerned. Consultation is now almost complete, and the views expressed on our provisional proposals are generally favourable. A considerable number of additional points have, however, been raised ; for these we are grateful and we are considering them.

63. The Working Party also drew attention to certain unsatisfactory aspects of the High Court procedure governing applications under Part II of the Act, which involve unnecessary cost and delay. In November 1966 the Commission submitted a memorandum recommending improvements in this procedure.

(e) *Notices to quit as a pre-requisite of variation of rent in periodic tenancies*

64. Arising out of a parliamentary question on 21st December 1965, the Minister of Housing and Local Government asked the Law Commission in June 1966 to consider, in the course of its current examination of the law of landlord and tenant, the procedure under which, in certain cases, a landlord must serve a notice to quit before he can raise the rent. We were informed that this procedure causes unnecessary alarm to Council tenants, who think that the Council is trying to evict them, whereas the real object of the notice is to enable the rent to be increased.

65. After consulting the Working Party we have decided that, in so far as this reference involves the general question of variation of the terms of a tenancy, it must be dealt with as part of the codification project. It seems

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<sup>9</sup> Published Working Paper No. 7.

to us, however, that the position of local authorities, which have a statutory duty to adjust the rents of their houses as circumstances may require, may justify the introduction of special provisions. We have accordingly advised the Minister that in this limited field we see no objection if legislation should be introduced to enable a notice of increase of rent to be given without first giving notice to quit.

(f) *Rights and obligations pending litigation*

66. This matter was raised by your Office in February 1967. Our attention was drawn to the absence of any power in the courts to order a defendant in an action for possession of land or similar proceedings to pay into court rent or mesne profits accruing before proceedings are heard. The Working Party's provisional proposals on forfeiture will deal with the problems that attend forfeiture proceedings. The Commission is considering the position in other cases.

**Item IX. Transfer of Land**

67. We have submitted three Reports during the year:—

- (a) It had been suggested to us that the decision to extend compulsory registration of title to the whole country has made it appropriate to close the Yorkshire Deeds Registries. Having considered the matter, we submitted our conclusions on 1st July 1966. We agreed that the gradual extension of compulsory registration to the three Ridings will at some point make it unnecessary to maintain the local deeds registries, but we have not recommended their immediate closure. It seems to us that the proper time at which to close each deeds register should be determined, in consultation with its registrar, when a substantial part of the area is subject to compulsory registration of title. We think that the Land Registry's "8-year plan" should, so far as possible, be arranged with this point in mind, and we understand that discussions have been held with the Chief Land Registrar and the registrars of the Yorkshire Deeds Registries.
- (b) A Report on Root of Title to Freehold Land<sup>10</sup> was laid before Parliament on 14th February 1967. It contained the proposal that the statutory minimum period for commencement of title under an open contract should be reduced from 30 to 15 years. We suggested that our recommendation should be put into effect as soon as possible without waiting for other changes in the law relating to transfer of land and we attached a draft clause which could be used for that purpose.
- (c) In accordance with your Lordship's request, we had given special priority to the subject of restrictive covenants, with a view to advising whether any changes in the law relating to such covenants could be dealt with in the same Bill as that covering the recommendations of the Wilberforce Committee on Positive Covenants.<sup>11</sup> We submitted most of our propositions by the end of August 1966. Our final Report,<sup>12</sup> in which we suggested that a common code could and should be devised for restrictive and positive covenants, was laid before Parliament on 22nd March 1967.

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<sup>10</sup> LAW COM. No. 9.

<sup>11</sup> 1965 Cmnd. 2719.

<sup>12</sup> LAW COM. No. 11.

68. Since the announcement in February 1966 that our inquiry was extended to cover the transfer of registered, as well as unregistered, land, we have received a number of comments on land registration. While it is generally acknowledged that the present system is most efficiently operated by the Chief Land Registrar and his staff, the law itself is said to be defective in some respects. We have, therefore, decided to review the basic principles of the law relating to land registration in the context of conveyancing.

69. We have received two further memoranda on conveyancing reform from the Council of the Law Society and we are most grateful to their members and to those of their Working Party on Conveyancing who have helped us in our discussions. These memoranda, together with the Council's first memorandum, which we received in the previous year, covered a wide range of topics and have assisted us in planning our progress through this subject. We have accordingly started on a number of detailed studies:—

- (a) Improvements in the law relating to land charges and local land charges are, in our opinion, overdue. Taking into account the recommendations of the Roxburgh<sup>13</sup> and Stainton<sup>14</sup> Committees, and the views expressed in the Law Society's memoranda, we have formulated some provisional proposals<sup>15</sup> upon which we are consulting with those principally concerned.
- (b) Confusion and difficulty are caused by the uncertainty and complexity of the law which governs the mutual rights of adjoining landowners. We have, therefore, embarked on a comprehensive review of rights appurtenant to land.
- (c) We are also engaged on a study of miscellaneous matters arising from the Law Society's memoranda and other proposals which have been put to us. These include such matters as covenants for title, the vendor's duties of disclosure and the doctrine of delivery in escrow.

70. In October 1966 the Fourteenth Report of the Law Reform Committee<sup>16</sup> was published, in which the majority recommended that acquisition by prescription of easements and profits should be abolished. We have advised your Lordship that in principle this recommendation conforms to our aims of producing clarity and certainty in the creation of rights over land. Decisions on this Report will have a bearing on our study of the law on appurtenant rights.

71. Difficulty in obtaining expert help with our examination of the law on rentcharges prevented us until very recently from making progress with this subject. Fortunately, thanks to a generous further offer of help from Mr. Humphrey Easton, we have now been able to resume this study.

72. It was suggested to us that, since the right to apply for voluntary registration of title had been curtailed by section 1 (2) of the Land Registration Act 1966, there might be an increase in the number of vendor and purchaser summonses which needed to be heard quickly. Following representations which we made, the Chief Master of the Chancery Division issued a Practice Direction on 6th February 1967, introducing an improved procedure for such cases.

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<sup>13</sup> 1956 Cmd. 9825.

<sup>15</sup> Published Working Paper No. 10.

<sup>14</sup> 1952 Cmd. 8440.

<sup>16</sup> 1966 Cmnd. 3100.

73. Our work on transfer of land has inevitably caused us to think about the basic structure of the land law in the light of the criticisms that we have received. We decided, therefore, to seek the views of the legal profession to help us to decide whether we should at some time in the future undertake a review of the basic principles of the law. The Law Faculty of Cambridge University kindly arranged for us to hold a seminar at Cambridge on 7th and 8th April, at which all branches of the legal profession were represented and for which we had prepared a paper. It is too early to reach any firm conclusions as to the case for a general review, but the discussion was both stimulating and helpful, and it seems likely that we shall, at least, initiate studies on specific subjects such as trusts and settlements of land and security interests in land.

#### **Item X. Family Law**

74. Whilst we were engaged on the preliminary survey under our First Programme it became obvious that before long our views were likely to be sought on the grounds of divorce and its economic consequences for the family. We therefore concentrated our attention on these problems.

##### *(a) Matrimonial law*

75. When the Report of the Archbishop's Group on Divorce, *Putting Asunder*,<sup>17</sup> was issued at the end of July last, you referred it forthwith to us to give our comments as soon as possible. Our Report<sup>18</sup> was laid before Parliament in November and on 23rd November both Reports were debated by the House of Lords. In the course of the debate it was suggested that the Archbishop's Group and the Law Commission should start discussions to see if the gap between their approach and ours could be bridged. This suggestion was taken up. The discussions have now been completed and we are satisfied that the gap can be bridged. As we said in our Report, it is for Parliament, not the Law Commission, to decide whether divorce law reform is desired and the nature of any such reform. Our concern is with "those arguments which involve questions of practical feasibility".<sup>19</sup> We are satisfied that, if Parliament were to accept the principle of breakdown as the basis of divorce, practical and feasible proposals, making use of the "separation ground", could be prepared for the consideration of Parliament.

76. Following upon the publication of the Report of the Scottish Law Commission, *Divorce: The Grounds Considered*,<sup>20</sup> the two Commissions have jointly examined law reform problems associated with the existence of the two different systems of law in this field.

77. As the outcome of our critical study of the present law on the financial rights and obligations arising out of marriage and its termination, we published at the end of April a paper entitled *Financial Relief in Matrimonial and Related Proceedings*.<sup>21</sup> This was circulated to a large number of lay and legal persons and bodies. The paper owes much to the suggestions of the

<sup>17</sup> *Putting Asunder: A Divorce Law for Contemporary Society*, S.P.C.K. 1966.

<sup>18</sup> *Reform of the Grounds of Divorce—The Field of Choice*, 1966 Cmnd. 3123 (LAW COM. No. 6).

<sup>19</sup> *Ibid*, para. 59.

<sup>20</sup> 1967 Cmnd. 3256.

<sup>21</sup> Published Working Paper No. 9.

many busy people whom we had already consulted, and we are particularly grateful to the registrars and other officers of the Principal Probate Registry for the information and advice that they have given us on many occasions. It contains a considerable number of provisional recommendations designed to pave the way for the improvement of the important statutory provisions applicable to the Divorce Court. Reform of this part of the law is clearly of great importance at a time when consideration is being given to proposals for the reform of the law relating to grounds of divorce. But it also has a significant impact upon the matrimonial jurisdiction of magistrates. We hope, therefore, to set up a Working Party including representatives of the Home Office, the Ministry of Social Security and clerks to justices to study the implications for magistrates' courts of the proposed reforms.

78. At the same time, we have put in hand studies on two matters which we expect to lead to legislative proposals. One of these is an important investigation being carried out by Dr. J. C. Hall of St. John's College and members of the Cambridge Law Faculty into the working of the arrangements sanctioned by the court for the care and upbringing of children of dissolved marriages. The other, on which we hope shortly to consult doctors and lawyers both here and abroad, concerns reform of the law governing the proof of paternity in civil proceedings with special reference to the use of blood tests.

*(b) Family inheritance and property law*

79. We welcome the prospect of the Matrimonial Homes Bill becoming law before the end of this Session and attach great importance to the protection that it will give to the economically weaker party in divorce proceedings. Since the matrimonial home is frequently the only important item of property that families have, we consider that the passage of this Bill, together with our proposals on financial relief mentioned above, should diminish the injustices and economic hardships associated with marriage breakdown and so enable the divorce laws to be reformed. The Matrimonial Homes Bill is, of course, no more than a staging post on the way to a comprehensive reform of the general law of family property. This must necessarily be a lengthy and difficult task since it involves the examination of features in other systems which are unfamiliar to English lawyers.

80. The Family Law Sub-Committee of the Society of Public Teachers of Law have put in hand an inquiry for us into the whole problem of the legal status of illegitimate children. The Report<sup>22</sup> of the Committee, under the chairmanship of Lord Justice Russell, on the Law of Succession in Relation to Illegitimate Persons was published last July and has a bearing both on this subject and on our study of the proof of paternity in civil proceedings mentioned in paragraph 78 above.

81. The Family Provision Bill referred to in paragraph 82 of our First Annual Report received the Royal Assent in November 1966 and has now been brought into force.

82. Representations were made to us early this year by a member of the Chancery Bar who pointed out that fears about the incidence of estate duty often prevent the compromise of proceedings under the Inheritance (Family

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<sup>22</sup> 1966 Cmnd. 3051.

Provision) Act 1938 (or under section 26 or 27 of the Matrimonial Causes Act 1965), with the result that costs are incurred by a hearing in court, notwithstanding that all the parties are in agreement about the order that should be made. As a result of discussions between the Board of Inland Revenue and ourselves, the Board issued a press statement on 2nd March 1967 making it known that it is not their practice to claim estate duty where there has been a settlement by way of genuine compromise of a *bona fide* claim under these Acts.

(c) *Jurisdiction in family matters*

83. In view of the difficulties mentioned in paragraph 83 of our First Annual Report and because we consider it advisable to await the Report of the Royal Commission on Assizes and Quarter Sessions under the chairmanship of Lord Beeching, we have not yet undertaken a detailed study of family courts and other possible solutions to the problems of the trial of family proceedings.

(d) *Powers of the courts to sit in private in family matters*

84. As a result of the inquiry, referred to in paragraph 85 of our First Annual Report, we made a Report<sup>23</sup> (incorporating draft clauses for a Bill) which was presented to Parliament in November last. Earlier our provisional proposals had been communicated to the legal press and had also been sent to the Press Council, who informed us that they saw no objection to them.

**Item XI. Financial Limits on Magistrates' Orders in Domestic and Affiliation Proceedings**

85. Since we last reported, the Home Secretary has appointed a Committee, which is investigating this matter under the chairmanship of Miss Jean Graham Hall.

**Item XII. Recognition of Foreign Divorces, Nullity Decrees and Adoptions**

86. Our First Annual Report recorded the setting up of a Working Party to advise Her Majesty's Government on the draft Convention on Recognition of Foreign Divorces and Legal Separations prepared by the Special Commission of The Hague Conference on Private International Law. Mr. K. J. Chamberlain replaced Mr. H. V. Richardson as the representative of the Foreign Office. The composition of the Working Party is otherwise as shown in Appendix I to that Report.

87. The First Report of the Working Party, examining the scope of the draft Convention and providing a detailed commentary on its contents, was submitted in July 1966 and formed the basis of the United Kingdom's official comments made to The Hague Conference in August. A Second Report was submitted at the beginning of May 1967. In this the Working Party gave further consideration to a number of issues arising directly from the draft Convention. It also considered the extension of the scope of the draft Convention to deal with original jurisdiction and choice of law, as well as the

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<sup>23</sup> 1966 Cmnd. 3149 (LAW COM. No. 8).

recognition of foreign decrees, and made recommendations regarding a Convention expanded to embrace these further topics. The two Reports formed the basis of the instructions to the United Kingdom delegation which attended a further session of the Special Commission at the end of May 1967.

88. The completion of the Working Party's task enables our own team to resume its work on Item XII of our First Programme. It can do so with the benefit of much relevant information gathered and digested by the Working Party with reference to the problems of jurisdiction and recognition in the field of divorce and separation.

#### **Item XIII. Imputed Criminal Intent (D.P.P. v. Smith)**

89. We completed our study of the implications of the decision in *Director of Public Prosecutions v. Smith* [1961] A.C. 290, and our final proposals were contained in a Report,<sup>24</sup> together with draft clauses for a Bill, laid before Parliament on 28th February 1967.

90. Our proposals were two-fold. First, we recommended that a "subjective" and not an "objective" test should be applied in ascertaining the intent required in murder; that is to say, a jury should be free to infer an intent to kill or to inflict grievous bodily harm (if the intent to inflict grievous bodily harm be retained as an alternative form of the "*mens rea*" of murder) from the fact that death or grievous bodily harm was the natural and probable consequence of the accused's actions, but should not be bound to draw such an inference. A similar "subjective" test should be applied wherever the accused's intent or foresight is relevant in the criminal law. An amendment to give effect to the recommendation has been made in the Criminal Justice Bill, now before Parliament.

91. Secondly, we recommended that the intent to inflict grievous bodily harm should no longer be retained as an alternative to the intent to kill in the law of murder. The intent required in murder should be the intent to kill. However, we made it clear that a person should be regarded as having the "intent to kill" if he is willing for his actions, though meant for some other purpose, to kill in accomplishing that purpose.

#### **Item XIV. Common Law Misdemeanours: Crime of Conspiracy**

92. As we proposed in our First Programme, this matter is being considered by the Criminal Law Revision Committee.

#### **Item XV. Miscellaneous Matters involving Anomalies, Obsolescent Principles or Archaic Procedures**

93. The miscellaneous matters that we were required to examine under this Item of our Programme were chosen as instances in the law which appeared to us to rest on social assumptions which are no longer valid or which involve archaic procedures. They were:—

(a) *Actions for loss of services, loss of consortium, seduction and enticement.* We are not able to report the completion of our investigation. Two difficult questions require further study:

- (i) whether an employer should have a remedy against a tortfeasor in respect of wages paid to the victim of the tort, his employee, during the period of incapacity, and the scope of any such remedy;

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<sup>24</sup> *Imputed Criminal Intent (Director of Public Prosecutions v. Smith)*, LAW COM. No. 10.

- (ii) what provision the law should make to give a remedy against the tortfeasor to members of the victim's family or others who incur expense or suffer loss in aiding or comforting him while incapacitated.

Our provisional opinion is that the ancient common law remedies, though they are inadequate and in some respects clearly do reflect social assumptions which are no longer acceptable, cannot safely be swept away until these two questions are satisfactorily answered.

(b) *Breach of promise of marriage and damages for adultery.* Damages for adultery is a topic now being considered under Item X (Family Law) of our Programme: it is dealt with in Published Working Paper No. 9. Our study of the action for damages for breach of promise is not completed—and for much the same sort of reasons as have delayed completion of our study of the action for loss of services. We believe it would be wrong to recommend the abolition of the action without formulating an alternative which, while free of the socially undesirable features of the action, meets the case of the man or woman who has suffered financial loss because the contemplated marriage has not come about. There is also a problem of property distribution between a couple whose engagement has ended, but who, while engaged, accepted commitments or acquired property in contemplation of marriage.

(c) *Actions for pound-breach, rescous and replevin.* We reported to your Lordship on 27th July 1966 that we had come to the conclusion that we should not at this stage propose any change in the law, but that the modernisation of the old law should await the result of our inquiries into the law of landlord and tenant (Item VIII) and civil liability for animals (Item V).

(d) *The tort and crime of maintenance.* In a Report called *Proposals for Reform of the Law relating to Maintenance and Champerty*,<sup>25</sup> which was laid before Parliament and published in November 1966, we proposed: the abolition of the common law and statutory misdemeanours of maintenance and champerty; that maintenance and champerty should cease to be actionable wrongs; but that champertous agreements (including "contingency fee" arrangements between solicitor and client) should, for the present, continue to remain unlawful. We proposed that further study of the question of "contingency fee" arrangements should be undertaken in consultation with the Law Society. The Criminal Law Bill gives effect to our recommendations to abolish the common law and statutory misdemeanours and the torts of maintenance and champerty.

(e) *Obsolete crimes.* The Criminal Law Bill includes provisions giving effect to our proposals<sup>26</sup> to abolish certain obsolete criminal offences.

#### **Item XVI. Judicature Act (Northern Ireland)**

94. The Committee, to which we referred in paragraph 106 of our First Annual Report, is working on this Item under Lord MacDermott, the Lord Chief Justice of Northern Ireland.

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<sup>25</sup> LAW COM. No. 7.

<sup>26</sup> *Proposals to Abolish Certain Ancient Criminal Offences*, presented to Parliament and published on 22nd June 1966; LAW COM. No. 3.



## **Item XVII. Interpretation of Statutes**

95. We are now nearing the completion of our preliminary studies of this topic, after considering the experience of our own courts and that of courts of other countries. We have continued to receive generous help from distinguished foreign lawyers, and valuable observations and material from the Ministries of Justice of Denmark and Sweden. We also record our indebtedness to Senator Fred S. Farr of California for valuable material on the subject.

96. We are co-operating with the Scottish Law Commission in the preparation of a joint Working Paper which we hope will serve as a basis for consultation.

97. The problems posed by the interpretation of statutes are closely related to the problems of legislative drafting and of the form of the Statute Book. We return to these topics later.

## **MISCELLANEOUS QUESTIONS CONSIDERED BY THE COMMISSION OUTSIDE THE FIRST PROGRAMME OF LAW REFORM**

98. In the course of the year we have considered in some detail many law reform proposals that have reached us from different quarters. We give in Part III of this Report and in Appendix III some information about their provenance, subject-matter and quantity. Proposals that relate to Items of our Programme have already been mentioned in their context above ; but there are some others, not related to our Programme, to which we now refer :—

### *(a) Bail*

As a result of representations that the Commission made to the Home Office, the Criminal Justice Bill has been amended to clarify the powers of the High Court to grant bail.

### *(b) Powers of attorney*

The Holborn Law Society drew our attention to the cumbersome and expensive procedure required in connection with the filing at the Central Office of powers of attorney made by trustees under section 25 of the Trustee Act 1925. After consultation, we drafted amendments to the rules, designed to simplify the procedure. These amendments were passed by the Supreme Court Rule Committee on 25th May and are to come into operation on 1st July in the Rules of the Supreme Court (Amendment No. 1) 1967. Although this should result in a material saving of time and costs, our investigation of the statutory law relating to powers of attorney had convinced us that more needs to be done if this branch of the law is to be made properly intelligible and brought up to date. Accordingly, at your request, we have completed a more comprehensive review and are about to circulate a Working Paper on this subject.

(c) *Registration of wills*

A Working Paper<sup>27</sup> raising the question whether English wills should be made registrable was circulated last July, to a large number of persons and bodies, including the legal press. Most but not all of those whom we have consulted have sent us their comments and we hope to consider this question again before the end of this year.

(d) *Royal Commission on Tribunals of Inquiry*

The Law Commission provided the Royal Commission with a comparative study of the Australian, Canadian and Indian law on tribunals of inquiry, and our Chairman gave oral evidence to the Royal Commission.

(e) *Submission of no case*

In September 1965 the then Minister without Portfolio referred to us a complaint which he had received regarding the operation of the rules governing a submission of no case. In the course of our consideration of this subject, a number of difficulties were brought to light which we feel can only properly be dealt with in the context of an examination of the whole question of civil procedure. We have decided, therefore, to postpone our investigation into this subject until such time as a general review of civil procedure is undertaken.

(f) *Transfer of title to chattels*

The Law Reform Committee's Report on Transfer of Title to Chattels<sup>28</sup> was published in April 1966. If either the majority or minority recommendations were carried out, this would have a bearing on the contract items in our Programme.

(g) *Civil Judicial Statistics*

As considerable users of judicial statistics, we welcomed the appointment in March 1966 of a Committee to consider the information contained in the Civil Judicial Statistics. We realise the labour and cost involved in the preparation of the figures; but the scope and speed of law reform depend in no small measure on having more details of the working of the machinery of justice. In particular, it is necessary to have a breakdown of the different causes of action and data to show the extent to which they are used.

## THE FIRST PROGRAMME ON CONSOLIDATION AND STATUTE LAW REVISION

### **Consolidation**

99. In our First Annual Report we explained the reason for some temporary slowing-down of consolidation at the moment when we assumed responsibility for it. We were then able to report the passage into law of only one Bill and the introduction of four others.

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<sup>27</sup> Published Working Paper No. 4.

<sup>28</sup> 1966 Cmnd. 2958.

100. Since then 8 consolidation Bills have reached the Statute Book as the Sea Fisheries Regulation Act 1966, the Air Corporations Act 1967, the Development of Inventions Act 1967, the Forestry Act 1967, the General Rate Act 1967, the Industrial Injuries and Diseases (Old Cases) Act 1967, the Plant Health Act 1967 and the Teachers' Superannuation Act 1967, and it is hoped that 4 more Bills will do so this Session, viz. the Advertisements (Hire-Purchase) Bill, the Road Traffic Regulation Bill, the Sea Fish (Conservation) Bill and the Sea Fisheries (Shellfish) Bill.

101. The Sea Fisheries (Shellfish) Bill incorporates amendments to give effect to some recommendations which we and the Scottish Law Commission made in a joint Report to our Ministers.<sup>29</sup> Some of these amendments could not be fairly brought within the terms of the Consolidation of Enactments (Procedure) Act 1949, but appeared to us desirable and uncontroversial. The Bill was therefore prepared in the hope, which we expressed in our First Programme on Consolidation and Statute Law Revision, that Parliament would nevertheless be prepared to give it largely the same treatment as a strict consolidation Bill. We shall be watching its progress with interest and its reception will determine whether similar amendments can be included in some future consolidation Bills as a small contribution to the improvement of the Statute Book.

102. As mentioned in our First Annual Report, the consolidation of the Income Tax Acts was taken in hand, with the agreement of the First Parliamentary Counsel and the Inland Revenue, by the draftsmen currently handling income tax in Finance Bills. The work was carefully planned so as to achieve a consolidation of part of the subject at an early date and then proceed to the consolidation of the rest. To carry out this plan it was hoped to introduce a Capital Allowances Bill in time for it to receive the Royal Assent before the introduction of the Finance Bill. In the face of great difficulties work on the Bill was pursued with the utmost energy, which we greatly appreciated, and the Bill was introduced on 25th January; it was considered by the Joint Committee on Consolidation Bills and given priority. Unfortunately, the difficulties in the way of consolidation proved too great; the Committee came to the conclusion that consolidation was impossible without amending legislation and the Bill could not proceed. However, the opportunity of the Finance Bill has been taken to put before Parliament provisions designed to remove all remaining obstacles to the consolidation of that part of the Income Tax Acts and we hope that the Capital Allowances Bill will be re-introduced early next Session.

103. Consolidation of the Rent Acts has made further good progress, but the introduction of a Bill must await the passage of the Leasehold Reform Bill, in which it is proposed to make some amendments in the enactments to be consolidated. It is hoped, however, to have the consolidation Bill ready for introduction at the beginning of next Session.

104. Work on a Bill to consolidate the Acts relating to moneylenders and pawnbrokers has revealed so many archaisms and anomalies in the Acts that we doubt whether consolidation without previous amending legislation would be possible or desirable.

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<sup>29</sup> 1967 Cmnd. 3267.

105. The current Criminal Justice Bill makes a number of amendments in the law relating to criminal appeals. Three Bills to consolidate the law on this subject are in draft, viz. the Criminal Appeal Bill, the Courts-Martial (Appeals) Bill and the Criminal Justice Bill (Northern Ireland) and it is hoped to introduce them early next Session. The last-mentioned Bill is being prepared with the co-operation of the Parliamentary draftsmen in Northern Ireland. The Firearms Bill, which is also in draft, is being revised to take account of the amending provisions of the Criminal Justice Bill and we hope that it will also be ready for introduction fairly early next Session.

106. The Road Traffic Regulation Bill, which is mentioned in paragraph 100 above, consolidates only one part of the vast body of law relating to road traffic. Work on consolidating the remainder is proceeding, but it is too early to say whether it will result in one or more Bills or whether the Bill or Bills will be ready for introduction next Session. Work has also been started on the consolidation of the Monopolies and Mergers Acts 1948 and 1965, the enactments relating to refreshment houses and the Export Guarantees Acts 1949 to 1967. It is hoped to introduce Bills on all these subjects in the next Session.

107. Some work is being done by the Board of Inland Revenue on the consolidation of the estate duty enactments; but it is not expected that a Bill will be ready for introduction next Session. As soon as our resources allow, we also hope to make a start on the consolidation of the Stamp Acts.

#### **Statute Law Revision**

108. Little progress has been made this year. It is unfortunate that this important task has suffered from the lack of skilled resources available to do the work.

109. While we wish to encourage repeal provisions wherever possible in current legislation, our approach, as indicated in our First Programme on Consolidation and Statute Law Revision is to work through the Statute Book from the beginning and prepare statute law revision Bills on a chronological basis. Our basic principle is simple—to advocate the repeal of all ancient and apparently obsolete legislation unless it can be demonstrated that it is currently serving a useful purpose.

## PART III

### THE LAW COMMISSION AND THE PUBLIC

110. We have a duty under section 3 (1) of the Act to receive and consider proposals for the reform of the law, and we like it to be known that we do so regardless of the subject-matter or the source from which they reach us. We should now like to say something about the interest in law reform that has been shown by the lay public and lawyers alike.

#### Law Reform Proposals

111. We give some statistical information in Appendix III to show what action we have taken on the proposals we have received, the main subjects to which they related and their provenance.

112. This year we received 379 law reform proposals, compared with 632 in our first year. We do not think, however, that these figures indicate a lessening interest in law reform. On the contrary, there are frequent references to matters of law reform in the press, in sound broadcasting and on television, and we should like to thank the legal and the national press and the radio and television services for the considerable help that they have given us by making the Commission's existence better known to the public and by giving publicity to many of our proposals.

113. We have deliberately not issued a formal invitation to the public at large to submit proposals regardless of their subject-matter. It is more useful to let it be known that we are working on a particular branch of the law and invite proposals relating to it and comments and criticisms on our own provisional proposals.

114. No doubt in consequence of this policy, we received a larger proportion of proposals relating to items in our First Law Reform Programme than was the case last year. This year the proportion of proposals relating to our Programme was 48 per cent compared with 38 per cent last year. The remaining 52 per cent were dealt with in the following way: 37 per cent (compared with 40 per cent last year) were examined and the consideration of them deferred until later when they can be studied more conveniently in their context; 13 per cent (compared with 17 per cent last year) were referred to Government departments or other bodies which we considered to have a more immediate interest in the problems raised; we decided to take no action on only 2 per cent (5 per cent last year).

115. In our first year the topics in which most interest was displayed were land law, family law, and jurisdiction and procedure of the courts, in that order. This year these are, as one would expect, still the subjects that aroused most interest, though the order of preference has changed. Family law now heads the list, jurisdiction and procedure is second and land law third.

116. The legal profession supplied nearly half the proposals, apart altogether from those supplied by the legal press, and the general public about a quarter of them.

### **Informing the Public**

117. The Chairman and other members of the Commission and legal members of the staff have received many invitations during the year to speak about the Commission's work, and have gladly undertaken to do so whenever possible.

118. We welcome the publication of a pamphlet called "*Looking Up The Laws*", that has been produced by the Statutory Publications Office, at the Commission's suggestion, to tell users how to find Acts and subordinate legislation. The pamphlet describes the official publications now available to find the Acts and subordinate legislation on different topics and the extent to and manner in which earlier provisions have been repealed, amended or elaborated by later enactments.

### **Overseas Interest in the Law Commission**

119. Considerable interest in the Commission's work has been shown by the many visitors whom we have welcomed from abroad. Written requests about our work have come from a number of countries including France, Germany, Israel, the Netherlands, Sweden, the U.S.A., the U.S.S.R., Australia, Canada, Cyprus, Malaysia, and Hong Kong. Our Chairman headed an official delegation of lawyers to the U.S.S.R., and a number of invitations to visit foreign and Commonwealth countries have been accepted by other Commissioners.

## PART IV

### PERSPECTIVES IN LAW REFORM

120. In paragraph 135 of our First Annual Report we pointed to the lesson that law reform must be directed not merely to the substance of the law, but also—and with no less energy—to legal procedure and to the form and arrangement of the law.

#### **Legal Procedure : Its Costs and Delays**

121. We are not yet in a position to attempt a comprehensive answer to what, in our last Report, we described as the layman's call for a review of English procedure and his lament over its costs and delays. However, the absence of progress by us on a broad front does not mean either that no work is being done on procedural questions, or that we under-rate their importance. For instance, our study of family law embraces a number of procedural questions (some of which are discussed in our Published Working Paper No. 9 on Financial Relief in Matrimonial Proceedings). Again, the procedure involved in the transfer of land is being studied under Item IX; and, as mentioned in paragraph 84, we have submitted a report on the powers of courts to sit in private in certain cases. Moreover, procedure in personal injury litigation is under investigation by the Winn Committee, which was established upon the recommendation contained in Item VI of our First Programme.

122. A number of inquiries are at present being conducted by other bodies into matters which have a bearing on procedure, for example, the Committee on the Enforcement of Judgment Debts (the Payne Committee), the Prices and Incomes Board with regard to the charges of solicitors and the Monopolies Commission in respect of restrictive practices in the legal profession. We await with especial interest the findings of the Royal Commission on Assizes and Quarter Sessions on that part of their work which concerns the trial of civil cases outside London. This touches directly on what we ourselves can do to improve procedure. Indeed, it would be premature for us to formulate proposals on family courts before we know what recommendations the Royal Commission will be making. These recommendations are likely to have a significant impact on the procedural aspects of a number of other topics in our Programme.

#### **The Form and Arrangement of the Law : The Statute Book**

123. Whatever may be said of the content of English law, it must be a major aim of law reform to reduce the overwhelming bulk of its case law and the multitude of its statutes. Codification of large areas of case and statute law, the consolidation of enactments and the cutting out of dead wood by a bold and systematic use of statute law revision are the essential means whereby this task can be carried out. If success is to be achieved in this large undertaking it will require much greater resources of skilled manpower than are at present allotted to it. It will also require the concerted efforts

of all concerned with the legislative process ; this means the backing of Parliament and the Government and close co-operation between the Law Commissions, Government departments and Parliamentary draftsmen.

124. It is not possible to determine what arrangement, form or language is desirable without regard to the related questions of drafting techniques and statutory interpretation. Questions to which thought has been given by the Law Commission and others during the year include—

- (1) the style of drafting—the degree of detail required of enacted law ;
- (2) the manner of amendment—would increasing use of “textual” amendments make the statute law easier to find and understand?
- (3) should there be a general statutory authority for the reprinting of statutes as amended?
- (4) what material should be made available to the courts to aid them in the interpretation of statute law?

This short list of some of the problems suffices to show that the reform of the Statute Book—for that is, surely, the objective—is a task that calls for the co-operation of many. The Law Commission, though vitally interested, has limited powers and responsibilities: ultimately Parliament must choose the kind of Statute Book it wants.

125. There are plenty of indications of Parliamentary and Governmental activity in this enterprise. It is encouraging to note that the Statute Law Committee has appointed a sub-committee, whose terms of reference are—

“To consider what improvements should be made in the form and arrangement of the Statute Book, for example

- (a) by the official publication of a loose-leaf edition of ‘Statutes Revised’, or
- (b) by the publication of an official edition, loose-leaf or otherwise, of Acts arranged by subjects.”

The Chairmen of the two Commissions are members of the Committee and the sub-committee.

126. We are conscious that what we have here said about the form and arrangement of the law is the language of ambition, that the task will take many years, even if greater resources are devoted to it and that, as yet, our actions do not match our aspirations. But unless the goal, however distant it be, is seen clearly, the intervening difficulties will overwhelm our efforts. Roscoe Pound once said:

“Attempts to reshape the law by judicial over-ruling of leading cases is no substitute for well-drawn, comprehensive legislation”<sup>30</sup>

The ultimate goal should in our view be a Statute Book containing—and containing *only*—“well-drawn, comprehensive legislation”, clearly arranged and capable of growth with the minimum disturbance of its coherence and order.

127. To sum up, real progress, although inevitably uneven, is being made with the reform of those parts of the law covered by our First Programme.

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<sup>30</sup> Symposium on the Code Napoleon and the Common Law World, p. 287: published by New York University.



Comprehensive proposals for the cheapening of the legal process cannot be immediately expected as they depend on a number of inquiries now in progress. A beginning has been made with the reform of the Statute Book: but this work, for which many others besides the Law Commission bear great responsibilities, will take time.

128. In so vast a project as the systematic development and reform of the law, some years must elapse before a coherent structure, which is our aim, begins to appear. Our contribution in the year under review may be assessed by reference to our published papers listed in Appendix I. As we said in our First Annual Report, we must build brick by brick and we hope that in this process the foundations are being well laid.

(Signed) LESLIE SCARMAN, *Chairman*.  
L. C. B. GOWER.  
NEIL LAWSON.  
NORMAN S. MARSH.  
ANDREW MARTIN.

HUME BOGGIS-ROLFE, *Secretary*.

16th June 1967

## APPENDIX I

### LIST OF THE LAW COMMISSION'S PUBLICATIONS

#### (1) Published Working Papers

- No. 1. Transfer of Land: Root of Title to Freehold Land (this is the subject of LAW COM. No. 9)
- No. 2. Draft Proposals on Powers of the Court of Appeal to Sit in Private and Restrictions upon Publicity in Legitimacy Proceedings (this subject was covered by LAW COM. No. 8)
- No. 3. Restrictive Covenants (this is the subject of LAW COM. No. 11)
- No. 4. Should English Wills be Registrable?
- No. 5. Liability of Trade Vendors of New Dwelling Houses to First and Subsequent Purchasers (First Paper)
- No. 6. Liability of Vendors and Lessors for Defective Premises (Second Paper)
- No. 7. Provisional Proposals for Amendments to the Landlord and Tenant Act 1954, Part II (Business Tenancies)
- No. 8. Provisional Proposals Relating to Obligations of Landlords and Tenants
- No. 9. Family Law: Matrimonial and Related Proceedings—Financial Relief
- No. 10. Proposals for Changes in the Law Relating to Land Charges Affecting Unregistered Land and to Local Land Charges

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

- LAW COM. No. 1. First Programme of the Law Commission
- LAW COM. No. 2. Law Commission's First Programme on Consolidation and Statute Law Revision
- LAW COM. No. 3. Proposals to Abolish Certain Ancient Criminal Offences
- LAW COM. No. 4. First Annual Report, 1965-66
- LAW COM. No. 5. Landlord and Tenant: Interim Report on Distress for Rent
- LAW COM. No. 6. Reform of the Grounds of Divorce: The Field of Choice
- LAW COM. No. 7. Proposals for Reform of the Law Relating to Maintenance and Champerty
- LAW COM. No. 8. Report on the Powers of Appeal Courts to Sit in Private and The Restrictions upon Publicity in Domestic Proceedings
- LAW COM. No. 9. Transfer of Land: Interim Report on Root of Title to Freehold Land
- LAW COM. No. 10. Imputed Criminal Intent (Director of Public Prosecutions v. Smith)
- LAW COM. No. 11. Transfer of Land: Report on Restrictive Covenants
- Cmnd. 3267. Sea Fisheries (Shellfish) Bill. Report by the Law Commission and the Scottish Law Commission on the Consolidation of Certain Enactments Relating to Shellfish Fisheries and Shellfish

## APPENDIX II

### MEMBERSHIP OF ADVISORY BODIES

(1) Advisory panel on the codification of the law of contract (see paragraph 31)

The Rt. Hon. Lord Devlin  
The Rt. Hon. Lord Justice Diplock  
The Hon. Mr. Justice Megaw, C.B.E., T.D.

\*The Hon. Lord Robertson  
The Hon. Mr. Justice Roskill  
The Hon. Mr. Justice Donaldson  
Mr. P. S. Atiyah  
Mr. A. R. Barrowclough  
Mr. G. J. Borrie  
Mr. L. A. Duffield  
Professor A. G. Guest

\*Mr. I. R. Guild, W.S.  
Mr. Mark Littman, Q.C.  
Mr. R. A. Lynex  
\*Mr. A. J. Mackenzie Stuart, Q.C.  
Mr. R. A. MacCrimdale, Q.C.  
Dr. F. A. Mann  
Professor F. J. Odgers  
Dr. L. S. Sealy  
Mr. Mark H. Sheldon  
Mr. G. H. Treitel  
Mr. P. E. Webster, Q.C.  
Professor K. W. Wedderburn  
Professor J. F. Wilson

\* Scottish members.

(2) Working Party on Draft Conventions relating to Contracts of Agency of an International Character (see paragraph 35). Members other than representatives of the Law Commission and the Scottish Law Commission:—

Mr. R. A. MacCrimdale, Q.C.  
Mr. C. McFadyean  
Mr. T. N. Risk

APPENDIX III

LAW REFORM PROPOSALS

RECEIVED UP TO 15TH JUNE 1967

(A) Summary of action taken on proposals received

Proposals under study within the First Programme . . . . .	182
Proposals examined and deferred for later consideration . . . . .	141
Proposals referred to other departments, committees, etc. . . . .	49
Proposals discussed by the Commission on which it is agreed no further action should be taken . . . . .	7
Total . . . . .	<u>379</u>

(B) Breakdown of proposals by main subject heads

Family law . . . . .	79
Jurisdiction and procedure of the courts . . . . .	55
Land law . . . . .	39
Criminal law . . . . .	35
Ranging over 35 various subjects . . . . .	171
Total . . . . .	<u>379</u>

(C) Summary of sources of proposals received

Lawyers and legal organisations . . . . .	187 (see note (i))
The general public . . . . .	85
Organisations outside the legal profession . . . . .	52 (see note (i))
The legal and general press . . . . .	52 (see note (ii))
Miscellaneous sources . . . . .	3
Total . . . . .	<u>379</u>

Note (i): In addition to individual members of the Bench, practising and academic lawyers and Government departments, the following are the bodies who submitted proposals:—

- Family Law Association
- General Council of the Bar
- Holborn Law Society
- “ Justice ”
- Justices’ Clerks’ Society
- Kent County Quarter Sessions
- Law Society
- Scottish Law Commission
- The Bar Association for Commerce, Finance and Industry
- The Institute of Legal Executives
- The Joint Committee of the Law Society and The British Academy of Forensic Sciences
- The Mid-Surrey Law Society
- The Society of Labour Lawyers

Amalgamated Engineering Union  
Association of British Chambers of Commerce  
Association of Municipal Corporations  
County Councils Association  
Country Landowners' Association  
Craven Water Board  
Harrow House Owners' Society  
High Court Journalists' Association  
International Computers & Tabulators Limited  
Kent County Council  
Married Women's Association  
National Federation of Business and Professional Women's Clubs of  
Great Britain and Northern Ireland  
Solihull Juvenile Court Justices  
The Federation of Soroptomist Clubs of Great Britain and Ireland  
The National Council of Women of Great Britain  
The National Farmers' Union  
The National Union of Conservative and Unionist Associations  
The Women's Group on Public Welfare  
Trades Union Congress  
Wesleyan and General Assurance Society

Note (ii): The total number of proposals put forward or referred to in organs of the press is very substantially higher than the figures in Table (C), which comprise only proposals mentioned in the press with express reference to the Law Commission or proposals which the Commission has already considered.

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