

The Law Commission

(LAW COM. No. 190)

TWENTY-FOURTH ANNUAL REPORT

1989

INCLUDING

FOURTH ANNUAL REPORT OF THE CONVEYANCING STANDING COMMITTEE

*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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TWENTY-FOURTH ANNUAL REPORT: 1989

CONTENTS

	<i>Paragraph</i>	<i>Page</i>
PART I: THE PAST YEAR IN OUTLINE	1.1	1
PART II: THE YEAR UNDER REVIEW		
REPORTS AND WORKING PAPERS (OTHER THAN STATUTE LAW)	2.1	4
REPORT ON PROGRESS	2.3	4
Common Law	2.4	4
Contract Law		
Rights to goods in bulk	2.6	4
Contributory negligence in contract	2.7	5
Contracts for the benefit of third parties	2.8	5
Criminal Law		
Criminal code	2.9	5
Jurisdiction over fraud offences with a foreign element	2.10	5
Computer misuse	2.11	6
Binding over to keep the peace	2.13	6
Conspiracy to defraud	2.14	6
Corroboration	2.15	6
Assisting and encouraging crime	2.16	7
Select Committee on Murder and Life Imprisonment	2.17	7
Challenging and discharging jurors	2.18	7
Family Law		
Review of child law	2.19	7
Ground for divorce	2.21	8
Domestic violence and occupation of the family home	2.22	8
Distribution of property on intestacy	2.24	8
Adoption review	2.25	9
Hearsay	2.26	9
Mentally Incapacitated Adults	2.28	9
Private International Law		
Choice of law in tort and delict	2.30	10
Property Law (including Landlord and Tenant Law)		
Law of Property (Miscellaneous Provisions) Act 1989	2.31	10
Trusts of land	2.32	10
Overreaching: beneficiaries in occupation	2.33	10
Land mortgages	2.34	10
Implied covenants for title	2.35	10
Passing of risk from vendor to purchaser	2.36	10
Obsolete restrictive covenants	2.37	11
Title on death	2.38	11
Repairing obligations	2.39	11
Distress for rent	2.40	11
Forfeiture of tenancies	2.41	11
Compensation for tenants' improvements	2.42	11
"Commonhold" legislation	2.43	11
Part II of the Landlord and Tenant Act 1954	2.44	12
Conveyancing Standing Committee	2.45	12
Law of Trusts		
Use of powers of attorney by trustees	2.47	12
Rule against perpetuities	2.48	12
Relationship Breakdown Working Party	2.49	12

	<i>Paragraph</i>	<i>Page</i>
Statute Law		
Consolidation	2.50	12
Statute law revision	2.54	13
Local Legislation Working Party	2.56	13
Chronological table of local legislation	2.57	13
PART III: GENERAL		
Responsibilities for Commission projects	3.1	14
Lawyers	3.2	14
Consultants	3.4	14
<i>Law Under Review</i>	3.5	14
Library	3.6	14
Meetings	3.9	15
APPENDIX 1: Responsibilities for Commission projects		16
APPENDIX 2: Visitors from overseas		16
APPENDIX 3: List of the Law Commission's publications		17
A. Working Papers		17
B. Reports and Programmes		21
C. Joint Working Group Report		33
D. Periodicals		33
E. Other publications		33
APPENDIX 4: The cost of the Commission		34

THE LAW COMMISSION
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*To the Right Honourable the Lord Mackay of Clashfern,
Lord High Chancellor of Great Britain*

We have the honour to present, pursuant to section 3(3) of the Law Commissions Act 1965, our Twenty-Fourth Annual Report for the year 1989.

PART I

THE PAST YEAR IN OUTLINE

1.1 1989 has been for the Law Commission a year of achievement, a year of change and a year which has seen the foundations laid for future work. The achievement lies in the submission to you of thirteen reports, eight of them making recommendations for substantive law reform, and this despite the fact that for half the year we had only four Commissioners in post. The change derives from the fact that, of the five Commissioners signing this report, only two were in office at the end of 1988; from which it follows that much of the achievement is that of our predecessors. Finally, the submission to you of our Fourth Programme of Law Reform¹ highlights those areas of the law which are particularly in need of attention and shows the direction which much of our work will take.

1.2 A full list of the reports submitted to you in 1989 which make recommendations for law reform appears in paragraph 2.1 of this report. Of these the first is by far the longest and also arguably the most important: the Criminal Code.² We referred to this in some detail in our last annual report,³ and we further refer to it later in this report,⁴ but we would like to draw particular attention to the successful conclusion of this major project. We fully appreciate that, as the Minister of State at the Home Office (Earl Ferrers) said in the House of Lords on 22 May 1989,⁵ the Government will need time to study the proposals in the report and draft Bill. We also appreciate that the Parliamentary procedures appropriate for ordinary legislation may not necessarily be apt for a codification of the criminal law. We have however been impressed, since the publication of our report, by the wide range of support expressed for codification, and we remain convinced that legislation to that end is highly desirable to ensure a rational and accessible criminal law.

1.3 In our last annual report we referred⁶ to the fact that the Children Bill was then being debated in the House of Lords. As we explain in more detail in Part II of this report,⁷ much of this Bill was based on the Commission's comprehensive review of the law affecting children. Lawyers at the Commission have continued to advise on legal issues raised during the passage of this Bill through both Houses of Parliament until its enactment on 16 November 1989 as the Children Act 1989. We are happy to continue to assist with the considerable volume of work needed before this Act can be brought into force. The Judicial Studies Board has set up a Steering Committee on training for the Children Act, and Professor Hoggett is a member of this Committee.

1.4 With the departure of Professor Farrand at the end of 1988⁸ the Commission lost one of its two experts in the law of real property. Responsibility for land law projects was assumed by Mr Aldridge, who until then had been primarily responsible only for those projects dealing with the law of landlord and tenant. It was decided that the Commission should once again turn its attention to reform of the common law, a field in which major work had not been undertaken for some years. You appointed as a Law Commissioner from 3 July 1989 Mr Jack Beatson, a Fellow and Tutor in Law at Merton College, Oxford, and Lecturer at Oxford University. Since his appointment he has been consulting Government

¹ (1989) Law Com. No. 185.

² A Criminal Code for England and Wales, (1989) Law Com. No. 177.

³ Twenty-Third Annual Report 1987-1988, (1989) Law Com. No. 176, paras. 1.3 and 2.5-2.6.

⁴ See para. 2.9 below.

⁵ *Hansard* (H.L.), Vol. 508, col. 8.

⁶ Twenty-Third Annual Report 1987-1988, (1989) Law Com. No. 176, para. 1.2.

⁷ See paras. 2.19-2.20 below.

⁸ Twenty-Third Annual Report 1987-1988, (1989) Law Com. No. 176, para. 1.13.

departments and other interested bodies and persons on those areas where reform is most needed. Details of this are given in Part II of this report.⁹

1.5 It is unfortunate that Mr Beatson's appointment came too late for any further areas of law to be considered with you for inclusion in our Fourth Programme of Law Reform:¹⁰ you agreed this in draft on 20 July 1989, the Commissioners finally adopted it on 28 July, and it was laid before Parliament and published in September. We referred at some length in our previous annual report to the difficulties involved in the formulation of such a programme,¹¹ and we do not propose to repeat those matters here. We would however like to draw attention to the importance which we attach not only to this Programme, but to programmes of law reform generally. Section 3(1)(b) of the Law Commissions Act 1965 enjoins us:

“to prepare and submit to [you] 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 (whether the Commission or any other body) by which any such examination should be carried out”.

The first three Programmes of Law Reform were submitted to your predecessors in 1965, 1968 and 1973;¹² but a further 16 years elapsed before the Commission obtained the approval of the Lord Chancellor to a Fourth Programme.

1.6 One consequence is that, on 14 out of the 21 items in the first three Programmes, work had either already been successfully completed or was no longer required. In our Fourth Programme we therefore listed work on these 14 items in an appendix, leaving in the Programme itself only the seven wide-ranging items on which work is currently in progress or contemplated, and adding two new items dealing respectively with the law of trusts,¹³ and with mentally incapacitated adults.¹⁴

1.7 While the Fourth Programme thus provides, as we have said, a firm foundation for much of our future work, we are anxious that it should not be thought to be immutable. Although specific references may at times be an adequate basis for the examination of individual topics, we may well wish to seek your approval for the addition of new programme items covering further branches of the law, particularly in the light of the appointment of a new Commissioner with expertise in items not covered by the existing programme.

1.8 One other point should be noted. We referred in our previous annual report to the difficulties involved in the Law Commission planning its work for a period of up to three years ahead.¹⁵ The preparation of such a plan did indeed serve to emphasise these difficulties. An assessment of the timing of individual projects, and of the necessary resources, assists the Commission in deciding which new projects it will have the facilities to undertake, and in what order. But at the same time this work underlined the particular dangers of attempting to look too far ahead in the field of law reform. In some projects it is only after a considerable amount of work that it is possible to forecast with any degree of accuracy how much further work will be involved; and even then, unforeseen developments, and in particular points raised on consultation, may seriously affect the planned course of a project. But so long as these difficulties are recognised, there are undoubtedly benefits to be derived from the Commission planning its work as fully as possible.

1.9 We append the Fourth Annual Report of the Conveyancing Standing Committee. Towards the end of the year, we decided to suspend the work of the Committee in view of the imminent changes to conveyancing procedure which we foresee and the need for conveyancers to adjust to the recommendations already made by the Committee. This has also helped the reallocation of resources within the Commission, which the alteration in the balance of our work has necessitated. In the coming year or two conveyancing practice is likely to be heavily influenced by the introduction of authorised practitioners, foreshadowed in the Courts and Legal Services Bill, by the national conveyancing protocol which the Law

⁹ See paras. 2.4–2.5 below.

¹⁰ (1989) Law Com. No. 185.

¹¹ Twenty-Third Annual Report 1987–1988, (1989) Law Com. No. 176, paras. 1.5–1.11.

¹² First Programme of the Law Commission, (1965) Law Com. No. 1; Second Programme of Law Reform, (1968) Law Com. No. 14; Third Programme of Law Reform, (1973) Law Com. No. 54.

¹³ See paras. 2.46–2.48 below.

¹⁴ See paras. 2.28–2.29 below.

¹⁵ Twenty-Third Annual Report 1987–1988, (1989) Law Com. No. 176, paras. 1.8–1.9.

Society has announced and by the achievement of universal compulsory registration of title.¹⁶ Changes in the practice of estate agency continue, and reform proposals both from the Conveyancing Standing Committee and from other bodies remain to be assimilated. We take the view that before any further practice recommendations can usefully be made, the result of these changes must be seen and assessed. We hope it will then be clear whether more reform is needed, and by whom it would be appropriate that proposals should be made. Meanwhile, we should like to thank the members of the Committee, both past and present, for their work in evaluating conveyancing procedure and producing stimulating ideas for its reform.

1.10 To our delight, our Chairman, Sir Roy Beldam, was appointed a Lord Justice of Appeal on 3 October 1989. Since his appointment as Chairman of the Commission on 1 October 1985 he has presided over our deliberations with unfailing good humour, common sense and humanity. He has worked to promote law reform and the Law Commission in many different ways, but will be particularly remembered for developing our links with the judiciary and the Judicial Studies Board in the field of criminal law. He continued to give us his support during the inevitably difficult period between his joining the Court of Appeal and the expiry of his appointment as Chairman at the end of 1989. We are sorry to see him go.

1.11 His fellow Commissioners are most pleased to welcome as Chairman Sir Peter Gibson, the first judge from the Chancery Division of the High Court to be appointed to this post.

1.12 We should like once again to pay tribute to the work of the lawyers from the Government legal service who manage the various projects, to the work of our research assistants, and to the Commission's administrative and supporting staff. In a year which has seen the enactment of the Statute Law (Repeals) Act 1989 our particular thanks are due to Mr Frank Streeten and those who work with him on statute law revision. They carry out the Commission's duty to "repeal . . . obsolete and unnecessary enactments" with very little supervision from the Commissioners, and we know that you share our admiration for the quality of their work.

1.13 As a past member of the Scottish Law Commission you will, like us, have felt great sorrow on learning of the death on 7 January 1990 of Lord Gardiner. There have been, and still are, bodies other than the two Law Commissions which advise the Government on law reform; but it was ten years of service as a barrister member of the part-time Law Reform Committee which persuaded Lord Gardiner that nothing less than a body of eminent lawyers appointed full-time on a statutory basis and assisted by a permanent staff would suffice even to begin the mammoth task of putting English law on a clear and logical footing. When Parliament first met after the General Election of October 1964 the Government's aims, as stated in the Queen's Speech on 3 November 1964, included "the appointment of Law Commissioners to advance reform of the law". A White Paper in amplification of this aim rapidly followed. The Law Commissions Bill was introduced on 20 January 1965, and on 15 June 1965 it received the Royal Assent and entered into force; and so the Law Commissions were born.

1.14 Lord Gardiner foresaw the danger of the Law Commission's advice, however valuable it might be, remaining in reports which would gather dust on the shelves. It was his insistence that the Commission should have seconded to it a number of Parliamentary Counsel which enabled those reports which advocated law reform to have annexed to them draft Bills to implement those recommendations. Where the Government accepts the recommendations, implementation is not delayed by the objection that there is no time to draft the enabling legislation; and even if the Government does not itself have time to introduce the Bill, a Private Member may do so.

1.15 Lord Gardiner once said that, if there was anything in particular for which he would like to be remembered during his lifetime, it was the creation of the Law Commissions. Appendix 3 to this report lists the reports which this Commission has produced over nearly 25 years, and the legislation which has flowed from them. We hope that they may serve as a tribute to a far-sighted Lord Chancellor.

¹⁶ Registration of Title Order 1989, S.I. 1347.

PART II

THE YEAR UNDER REVIEW

REPORTS AND WORKING PAPERS (OTHER THAN STATUTE LAW)

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

- (i) Criminal Law: A Criminal Code for England and Wales, Law Com. No. 177.
- (ii) Landlord and Tenant Law: Compensation for Tenants' Improvements, Law Com. No. 178.
- (iii) Criminal Law: Jurisdiction over Offences of Fraud and Dishonesty with a Foreign Element, Law Com. No. 180.
- (iv) Transfer of Land: Trusts of Land, Law Com. No. 181.
- (v) Property Law: Title on Death, Law Com. No. 184.
- (vi) Fourth Programme of Law Reform, Law Com. No. 185.
- (vii) Criminal Law: Computer Misuse, Law Com. No. 186.
- (viii) Family Law: Distribution on Intestacy, Law Com. No. 187.
- (ix) Transfer of Land: Overreaching: Beneficiaries in Occupation, Law Com. No. 188.

2.2 Since our last annual report we have also published the following working papers:

- (i) Rights to Goods in Bulk, Working Paper No. 112.
- (ii) Domestic Violence and Occupation of the Family Home, Working Paper No. 113.
- (iii) Contributory Negligence as a Defence in Contract, Working Paper No. 114.

REPORT ON PROGRESS

2.3 There follows a description of the substance of these reports and working papers, together with a summary of current and future work.

Common Law

2.4 Following Mr Beatson's appointment in July 1989, some time has been devoted to considering several topics which have been brought to our attention as meriting reform. The field of common law covers a wide potential area, including contractual relationships, personal injury litigation, tort, civil evidence, restitution and public law, and we have been encouraged to note the awareness shown by many bodies and Government departments of the relevance of the Commission's contribution to law reform in this field.

2.5 Discussions have been initiated with those who have raised the various topics, and with Government departments, to help identify which topics afford the most tangible prospects of useful reform. In addition to continuing links, the course of investigating possible topics for reform has led to meetings with the Law Society's Company Law Committee, Lord Justice Neill, Chairman of the Supreme Court Procedure Committee, the Securities and Investments Board, and with Sir Gordon Borrie, Q.C., the Director General of Fair Trading. Consideration of other possible topics has been prompted following the publication of reports which have included recommendations for Law Commission investigation of certain issues, such as those contained in the Report of the Review Committee on Banking Services Law (Chairman, Professor R. B. Jack, C.B.E.),² and in the Report of the Study Teams on Professional Liability (Chairman, Professor Andrew Likierman).³

Contract Law

Rights to Goods in Bulk

2.6 In June 1989 we published our working paper concerning the rights of those who buy

¹ See Statute Law section (para. 2.50 *et seq.*).

² (1989) Cm. 622.

³ (1989) H.M.S.O.

goods which form part of a larger bulk.⁴ The problem arises principally but not exclusively in relation to the international carriage of goods by sea and was originally brought to our attention by representatives of an international commodity trade association. We sought views in particular on whether reform of the law is necessary and if so whether the preferable solution would be amendment of section 16 of the Sale of Goods Act 1979 or of section 1 of the Bills of Lading Act 1855. The consultation period has now ended and an analysis of comments received has been undertaken. We held a seminar on 15 January 1990 to consider the key points of difficulty identified through the consultation process. We were also assisted by a meeting organised by members of the chambers of Mr Anthony Diamond, Q.C., to discuss our working paper. We hope to produce a final report in 1990.

Contributory Negligence in Contract

2.7 As part of our work on contract law which now comes under Item 1 of our Fourth Programme of law reform, we have been continuing our consideration as to whether a plaintiff's damages for breach of contract should be reduced where his loss has been caused partly by the defendant, but also partly through his own conduct. The question whether the Law Reform (Contributory Negligence) Act 1945 enables a court to reduce the damages recoverable in an action for breach of contract has given rise to much academic discussion and has led to conflicting views being expressed by judges in this country and in the Commonwealth. We published a working paper on this topic on 19 January 1990.⁵

Contracts for the Benefit of Third Parties

2.8 We referred in relation to our programme item on contract law in the Fourth Programme⁶ to the decision, when the Commission suspended work on production of a contract code, to publish a series of working papers on particular aspects of the English law of contract. As the next topic in this series, we are examining the rules that non-parties may not bring claims on a contract made for their benefit and that where a contract for the benefit of a third party has been broken, the promisee cannot in general recover damages in respect of a loss suffered only by a third party. We hope to produce a working paper on these aspects of the privity rule during 1990.

Criminal Law

Criminal Code

2.9 At the time of our last annual report,⁷ work on the project to prepare a draft Criminal Code for England and Wales was almost complete. A summary of the project's history and of the content of the draft Criminal Code Bill, together with an acknowledgement of the substantial help that we had received from Professor J. C. Smith, C.B.E., Q.C., Professor Edward Griew and Professor Ian Dennis, was given in that report.⁸ Our final report on the project, together with the draft Criminal Code Bill, was submitted to you on 1 March 1989 and published on 18 April 1989.⁹

Jurisdiction over Fraud Offences with a Foreign Element

2.10 Our work on this project was also at an advanced stage at the time of our last annual report.¹⁰ As we noted at that time,¹¹ the project started life as a Criminal Law team consultation paper dealing with the possibilities for the reform of the jurisdiction rules in relation to offences of fraud. In view of the reaction of consultees, the overwhelming majority of whom not only endorsed most of the team's proposals but expressed the view that there was an urgent need for action, we agreed that the topic should become a full-scale Commission project. A further round of consultation having been undertaken, our final report, together with a draft Bill, was submitted to you on 11 April 1989 and published on 28 April 1989.¹² Our proposals are that in respect of offences of fraud and dishonesty it should in future be possible to prosecute a person in England and Wales if *any* event necessary for conviction took place there; and that artificial restrictions on the ability to

⁴ (1989) Working Paper No. 112.

⁵ (1990) Working Paper No. 114.

⁶ (1989) Law Com. No. 185, p. 3 and Appendix, p. 8.

⁷ Twenty-Third Annual Report 1987-1988, (1989) Law Com. No. 176.

⁸ *Ibid.*, paras. 1.3 and 2.5-2.6.

⁹ A Criminal Code for England and Wales (Volumes 1 and 2), (1989) Law Com. No. 177.

¹⁰ Twenty-Third Annual Report 1987-1988, (1989) Law Com. No. 176.

¹¹ *Ibid.*, para. 2.10.

¹² Jurisdiction over Offences of Fraud and Dishonesty with a Foreign Element, (1989) Law Com. No. 180.

prosecute conspiracies in England and Wales to commit offences abroad, or vice versa, should be removed. Since the publication of our report there has been renewed judicial and other comment on the unsatisfactory state of the present law, and we hope that Parliamentary time will be found for its reform in the not too distant future.

Computer Misuse

2.11 In our working paper,¹³ published in September 1988, we examined the application of the existing law of England and Wales to a range of activities which might be said to constitute computer misuse. We identified as the main issue whether the obtaining of unauthorised access to a computer (computer "hacking") should be made a criminal offence, and requested respondents to provide chapter and verse on the extent of the activity and the nature and scale of the problems to which it gave rise. The paper was widely circulated and elicited comments and suggestions from over one hundred individuals and organisations, the majority of whom urged the introduction of legislation. However, despite the length, detail and forcefulness of many of the replies, little hard evidence of the type we had sought was forthcoming. Accordingly, following the expiry at the end of February 1989 of the formal consultation period, we arranged a series of meetings with computer and software manufacturers, users in both the public and the private sector, and law enforcement agencies. We gained the greatest benefit from these further discussions, which increased our understanding of the facts underlying the issue of computer hacking, and we are very grateful to all those who went to considerable trouble to assist us. During this stage of our work it was represented to us that the problems associated with computer misuse were of very considerable urgency, and that it would be highly desirable for it to be possible to take decisions as to future legislation at an early stage. The Commission accordingly reallocated further resources to this project, with the result that we were able to submit our report to you by 26 September 1989. The report, which was published on 10 October 1989, recommended the creation of three completely new substantive offences of computer misuse: unauthorised access to computer material; such access with intent to facilitate the commission of a serious crime; and unauthorised modification of computer material. We are indebted to Mr Jeffrey Chapman, a former research assistant, for his assistance in the preparation of the report.

2.12 The report received considerable attention in the press and from Government and industry, and a wide range of commentators expressed, and continue to express, support for our recommendations. Amongst the immediate respondents were the Secretary of State for Trade and Industry, who welcomed our proposals, and the Confederation of British Industry, which gave its full backing to our conclusions. Mr Michael Colvin MP, who drew third place in the ballot for Private Members' Bills, is introducing a Bill drafted at the Law Commission which will give effect to the recommendations in our report. We understand that this Bill will receive full support from the Government.

Binding over to Keep the Peace

2.13 We are currently considering our policy in the light of responses to the Commission's working paper.¹⁴ It is hoped that we shall be able to submit our final report during the course of 1990.

Conspiracy to Defraud

2.14 Work on the policy decisions arising out of the responses to the Commission's working paper¹⁵ has not proceeded as rapidly as we would have wished, owing to the need to devote an increased level of resources to the computer misuse project. However, we are now able to devote more attention to Conspiracy to Defraud, and hope to submit our report during the course of this year.

Corroboration

2.15 On 7 November 1988, you made a reference to us under section 3(1)(e) of the Law Commissions Act 1965 in the following terms: "To review the law concerning the corroboration of evidence in criminal proceedings and to make recommendations". We

¹³ Computer Misuse, (1988) Working Paper No. 110.

¹⁴ Binding Over: The Issues, (1987) Working Paper No. 103. The paper is described in our Twenty-Second Annual Report 1986-1987, (1988) Law Com. No. 169, para. 2.15.

¹⁵ Conspiracy to Defraud, (1987) Working Paper No. 104. The paper is described in our Twenty-Second Annual Report 1986-1987, (1988) Law Com. No. 169, para. 2.14.

began our study of the law on this important topic, including a survey of the practice in other jurisdictions, in the early summer of 1989 and expect to publish a working paper in the spring of 1990. In addition to the usual process of consultation we will be discussing the issues raised by the working paper throughout the year at seminars of the Judicial Studies Board.

Assisting and Encouraging Crime

2.16 There are two broad respects in which the present law is open to criticism. First, the existing provisions as to helping or encouraging other people to commit crimes are spread over the law of aiding and abetting, accessory liability, conspiracy and incitement. There is significant overlapping, and some of the individual rules, in particular those relating to accessory liability, are excessively technical. Secondly, the law is unclear as to the extent to which some conduct, notably that involving the supply of equipment for use in crime, falls within the criminal law. We are of the view that these issues can only be addressed in the context of a general review of all the issues involved in assisting and encouraging crime. Work has now begun on this topic, with a view to publishing a working paper at the end of 1990.

Select Committee on Murder and Life Imprisonment

2.17 The Commission submitted detailed written evidence, including a comprehensive survey of the practice in other jurisdictions, to the Select Committee on Murder and Life Imprisonment established by the House of Lords in July 1988 under the Chairmanship of Lord Nathan. Our former Chairman and Mr Buxton gave oral evidence in February 1989. A Supplementary Memorandum, dealing with a question raised at the hearing in relation to certain sentencing proposals, was submitted to the Committee in March 1989. In its report, the Select Committee adopted as its preferred definition of "intention" the definition contained in the Commission's draft Criminal Code.¹⁶

Challenging and Discharging Jurors

2.18 This topic evoked considerable popular interest during the year, and was the subject of a number of decided cases.¹⁷ A substantial paper, prepared by the Criminal Law team at the request of the Judicial Studies Board, was presented at a seminar held by the Board at Roehampton in March 1989, and was subsequently reviewed in the light of points raised at the seminar and by individual judges. The revised paper was presented at further seminars in September 1989.

Family Law

Review of Child Law

2.19 The year has seen the culmination of our work on child law, undertaken under item XIX of our Second Programme of Law Reform,¹⁸ which requires us to undertake a comprehensive review of family law with a view to its systematic reform and eventual codification. To this end, we were pleased to be able to assist with the Interdepartmental Review of Child Care Law¹⁹ and to undertake a complementary review of the private law relating to the upbringing of children. We published working papers on Guardianship,²⁰ Custody,²¹ and Care, Supervision and Interim Orders in Custody Proceedings.²² As we said at the outset, our aim was to bring as much of the law as possible into a single comprehensive code. In July 1988 we published our Report on Guardianship and Custody²³ and we were pleased when our recommendations were so swiftly adopted and incorporated with the Government's proposals on the law relating to Child Care and Family Services²⁴ into the Children Bill. The Children Act 1989, which received the Royal Assent on 16 November 1989, is the most comprehensive and far-reaching reform of child law to take place this century and integrates virtually all the law relating to parental responsibility for bringing up children, court orders concerning them, and the social services to be provided for children and their families.

¹⁶ Clause 18(b).

¹⁷ See in particular *R v. Ford (Royston)* [1989] 3 W.L.R. 762.

¹⁸ Now item 6 of our Fourth Programme of Law Reform, (1989) Law Com. No. 185.

¹⁹ Review of Child Care Law: Report to Ministers of an Interdepartmental Working Party, (1985) H.M.S.O.

²⁰ (1985) Working Paper No. 91.

²¹ (1986) Working Paper No. 96.

²² (1987) Working Paper No. 100.

²³ (1988) Law Com. No. 172.

²⁴ The Law on Child Care and Family Services, (1987) Cm. 62.

2.20 Throughout the preparation of the legislation, there has been a great advantage in the close liaison and co-operation between the Commission and the Government departments concerned. During the passage of the Children Bill through Parliament we were able to provide assistance to your Department and the Department of Health in several areas. Further work is being carried out in at least three of these, namely: adoption,²⁵ hearsay evidence,²⁶ and ouster orders.²⁷

Ground for Divorce

2.21 We have examined the many responses that we received both to our Report Facing the Future—A Discussion Paper on the Ground for Divorce²⁸ and to a shorter paper summarising the issues contained in it. We have also commissioned a public opinion survey on aspects of the present law and proposals for reform. This survey, carried out alongside a survey on intestacy,²⁹ was conducted on our behalf by Public Attitude Surveys Ltd in December 1988 and January 1989. We have also made a small study of court records and are grateful to the Judges, Registrars and court officials who assisted our staff with this. Work is now under way on the preparation of our final report and a draft Bill which we aim to publish in 1990.

Domestic Violence and Occupation of the Family Home

2.22 We are continuing our review of the statutory jurisdictions relating to rights of occupation of the family home, domestic violence and other molestation, contained in the Matrimonial Homes Act 1983, the Domestic Violence and Matrimonial Proceedings Act 1976 and the Domestic Proceedings and Magistrates' Courts Act 1978, and of the courts' use of other legislation and their inherent powers in this field.

2.23 In August 1989 we published a Working Paper on Domestic Violence and Occupation of the Family Home,³⁰ dealing with the family law remedies in this field. A major proposal discussed in the paper was the provision of a single set of remedies that would be available in all courts which have power to deal with family cases. Other important issues addressed were the criteria for making orders, especially those excluding one party from the home; emergency applications; powers of arrest for breach of court orders; powers to remand people who have been arrested; and possible extensions to the courts' powers. Finally, a scheme for removing child abusers from the home rather than separating a child from his family was considered. Responses to the paper were invited by 30 November 1989 and are now under consideration.

Distribution of Property on Intestacy

2.24 This project, which began as a joint project with the Property Law team but falls within item 6 of our Fourth Programme,³¹ was undertaken when your Department asked us to examine the provisions governing the share of an estate which a surviving spouse receives when the deceased dies intestate. After a preliminary investigation, we decided that this topic could not be considered in isolation from the other rules governing distribution on intestacy and published a working paper on this subject in 1988.³² With the assistance of your Department we also commissioned a public opinion survey, which was conducted along with our survey on the ground for divorce³³ in December 1988 and January 1989. Our Report on Distribution on Intestacy³⁴ containing recommendations for reform and a draft Bill was published on 19 December 1989. It is apparent that the present rules have not kept pace with changes in the nature and ownership of property and in the age structure of the population. In particular they have failed to ensure adequate provision for a surviving spouse. It is agreed that intestacy rules should be certain, clear and simple. Our principal recommendation is that the surviving spouse should receive the whole estate which is not disposed of by will but that otherwise the basic structure of the rules should remain with

²⁵ See para. 2.25 below.

²⁶ See paras. 2.26–2.27 below.

²⁷ See para. 2.23 below.

²⁸ (1988) Law Com. No. 170.

²⁹ See para. 2.24 below.

³⁰ (1989) Working Paper No. 113.

³¹ (1989) Law Com. No. 185. Family inheritance originally came within item X of our First Programme, (1965) Law Com. No. 1, and subsequently within item XIX of our Second Programme, (1968) Law Com. No. 14.

³² (1988) Working Paper No. 108.

³³ See para. 2.21 above.

³⁴ (1989) Law Com. No. 187.

only minor changes. Those who wish to achieve a different result should be encouraged to make a will. The report of the public opinion survey, in which over 70% of respondents favoured this conclusion, is appended to our report.

Adoption Review

2.25 As part of its rolling programme of family law reform, the Government has established an interdepartmental review of the law and practice relating to adoption. This is being conducted in the same way as the Review of Child Care Law, with the Department of Health taking the lead. Professor Hoggett is a member of the working party, and the Family Law team is assisting with legal research and analysis. In this we are delighted to have with us as a consultant for six months Mrs Ellen France, of the New Zealand Department of Justice, who has extensive experience of law reform in this area. It is anticipated that discussion papers will be published for consultation in 1990.

Hearsay

2.26 The general rule that hearsay evidence is inadmissible has been eroded over recent years, both by statute (the Civil Evidence Acts) and by the practice of many courts. The Civil Evidence Acts have been criticised for their elaborate procedural requirements, and the rule against hearsay has been criticised by many for excluding otherwise relevant evidence. Following the recommendation contained in the Report of the Review Body on Civil Justice,³⁵ we have agreed at your request to undertake a review of the hearsay rule in civil proceedings. We shall be considering whether the rule against hearsay, as modified by the Civil Evidence Acts, should be retained, and whether any and if so what additional procedures are necessary in circumstances where the evidence sought to be adduced is of a hearsay nature.

2.27 Two other recent developments have also confirmed our view that this is an appropriate time to review the law on hearsay. First, following the decision of the Court of Appeal in *H. v. H., K. v. K. (Minor) (Child Abuse: Evidence)*³⁶ that the hearsay evidence of children was not admissible in access proceedings, the Children Act 1989³⁷ enables the Lord Chancellor to provide by order for the admissibility in any civil proceedings of otherwise inadmissible hearsay in connection with the upbringing, maintenance or welfare of a child. Secondly, the exclusionary rule has been abolished altogether in Scotland by the Civil Evidence (Scotland) Act 1988.

Mentally Incapacitated Adults

2.28 In December 1988 we were invited by the mental health sub-committee of the Law Society to accept a reference on decision-making on behalf of mentally incapacitated adults. We had been aware for some time of various concerns about the legal position of the increasing numbers of adults living in the community who are to some extent mentally incapacitated, whether because of deterioration in old age, congenital learning difficulties, accident, or mental illness. These concerns include day-to-day living arrangements, family disputes, protection from neglect or abuse, as well as medical treatment of all kinds. After discussions with your Department and the Department of Health, as well as with interested bodies and individuals, we took the view that this was a branch of the law which ought to be included in our new programme of law reform then under consideration.³⁸ We were pleased therefore when you approved the recommendation in our Fourth Programme of Law Reform in the following terms: that an investigation be carried out into the adequacy of legal and other procedures for the making of decisions on behalf of mentally incapacitated adults.³⁹

2.29 We are now planning, again in consultation with interested departments, bodies and individuals, the first stages of our inquiry. In this, we have already been greatly assisted by a Discussion Day, organised by the Law Society in May 1989, on decision-making and mental incapacity, and look forward to a seminar on guardianship laws, organised by the Faculty of Law at Southampton University, at the King's Fund Centre in March 1990. Our present aim is to produce an overview discussion paper during 1990.

³⁵ (1988) Cm. 394.

³⁶ [1989] 3 W.L.R. 933, [1989] 3 All E.R. 740.

³⁷ Section 96(3)-(7).

³⁸ See paras. 1.5-1.7 above.

³⁹ (1989) Law Com. No. 185, item 9.

Private International Law

Choice of Law in Tort and Delict

2.30 The history of this project (which is being undertaken jointly with the Scottish Law Commission) concerning the choice of law rules which should apply to tort or delict cases containing a foreign element has been referred to in our five previous annual reports.⁴⁰ Since the publication of our last annual report, we have made considerable progress in resolving certain issues which appeared to cause problems in both jurisdictions. One of the issues that caused particular difficulty related to the possible impact of reform on trans-national torts such as those involving environmental damage and defamatory statements. We have been greatly assisted in the resolution of outstanding points by Mr Lawrence Collins, the general editor of *Dicey & Morris on The Conflict of Laws* and a partner in Herbert Smith & Co. We hope to publish a final report in 1990.

Property Law (including Landlord and Tenant Law)

Law of Property (Miscellaneous Provisions) Act 1989

2.31 This Act⁴¹ gives effect to the recommendations in our Reports on Deeds and Escrows,⁴² Formalities for Contracts for Sale etc. of Land,⁴³ and the Rule in *Bain v. Fothergill*.⁴⁴

Trusts of Land

2.32 In June 1989 we published a report⁴⁵ on this subject together with a draft Bill to give effect to our recommendations. The main recommendation is that the present dual system of trusts for sale and strict settlements should be replaced by an entirely new system of trust conferring a power of sale, rather than a duty to sell, applicable to all land held on trust, except land affected by existing Settled Land Act settlements.

Overreaching: Beneficiaries in Occupation

2.33 Our report on this subject, together with a draft Bill, was published on 20 December 1989.⁴⁶ It makes two main recommendations. First, the interest of an adult beneficiary of full capacity who has a right to occupy trust land and is in actual occupation of it should not be overreached (so that his interest would be transferred to the proceeds of sale) unless he consents. Secondly, the principle of overreaching should extend to conveyances by bare trustees.

Land Mortgages

2.34 Work continues on this project which covers all aspects of land mortgages from the formalities for creating them to the protection of borrowers. A draft Bill has been prepared, and work is proceeding on the preparation of a report with a view to publication in 1990. We are grateful to Alison Clarke, Lecturer in Law at University College, London, for her continuing assistance with this project.

Implied Covenants for Title

2.35 Our working paper⁴⁷ proposed reform of the covenants for title (implied by the Law of Property Act 1925) upon the sale or other disposition of land. We have now analysed the comments received on consultation, and have decided our policy. Our aim is to submit a report during 1990.

Passing of Risk from Vendor to Purchaser

2.36 In sales of land the risk of damage to or destruction of the property prior to the completion of the contract of sale passes to the purchaser from the date of the contract. Our

⁴⁰ (1985) Law Com. No. 140, paras. 2.56–2.58; (1986) Law Com. No. 155, para. 2.50; (1987) Law Com. No. 159, para. 2.51; (1988) Law Com. No. 169, para. 2.59; (1989) Law Com. No. 176, para. 2.54.

⁴¹ The Act received the Royal Assent on 27 July 1989 and, with the exception of the provision relating to the execution of deeds, came into force on 27 September 1989. The latter provision will be brought into force on a day to be appointed.

⁴² (1987) Law Com. No. 163.

⁴³ (1987) Law Com. No. 164.

⁴⁴ (1987) Law Com. No. 166.

⁴⁵ (1989) Law Com. No. 181.

⁴⁶ (1989) Law Com. No. 188.

⁴⁷ (1988) Working Paper. No. 108.

working paper,⁴⁸ reviewing this rule, is described in last year's annual report.⁴⁹ The replies received on consultation have been analysed, and we are grateful to Mr S. A. Cotton, J.P., for his help in this connection. We have decided our policy with a view to publishing a report in 1990.

Obsolete Restrictive Covenants

2.37 Work on this project, described in our last annual report,⁵⁰ has had to give way to work on other Property Law projects. However, we have recently resumed work and are re-examining some aspects of the proposed scheme for dealing with the problem of obsolete restrictive covenants. The details of that scheme will need to be settled in the light of the provisions in the Commonhold Bill dealing with land obligations.⁵¹

Title on Death

2.38 Our report on this subject, with a draft Bill appended to give effect to our recommendations, was published in August 1989.⁵² The report recommends that land charges created or arising before a land-owner's death may, after his death, be registered in his name; that the concurrence of all personal representatives should be required to make a contract for the disposition of real estate; that the deceased's estate should vest in the Public Trustee where there is no executor who is entitled to obtain a grant of probate; and that additional ways to serve notices affecting land should be available following the death of the owner.

Repairing Obligations

2.39 Our report on the reform of the law on landlord and tenant⁵³ drew attention to the unsatisfactory state of the law relating to repairing obligations between landlord and tenant. Mention of this was made in our last annual report.⁵⁴ We are now examining this area of the law with a view to publishing a working paper for general consultation during 1990. We are grateful to Mr P. F. Smith, Lecturer in Law at Reading University, for his assistance with this project.

Distress for Rent

2.40 Our other commitments in the Property Law field have meant that this project has taken longer than originally envisaged. However, progress has been made towards the publication of a report in 1990. A draft Bill to give effect to our recommendations has been completed, and work on the preparation of a report is well advanced.

Forfeiture of Tenancies

2.41 A first draft of a Bill has been prepared to give effect to the scheme for landlord's termination orders, designed to replace the present law of forfeiture, as recommended in our Report on Forfeiture of Tenancies.⁵⁵ The draft Bill will, we hope, be ready for publication in the course of 1990 together with a short explanatory report.

Compensation for Tenants' Improvements

2.42 Our report, together with a draft Bill, was published in April 1989.⁵⁶ The main recommendation is that the little-used statutory scheme in Part I of the Landlord and Tenant Act 1927 for compensating tenants of business premises who have made improvements should be abolished.

"Commonhold" Legislation

2.43 Work is at an advanced stage on the preparation, at your request, of a draft Bill to

⁴⁸ (1988) Working Paper No. 109.

⁴⁹ Twenty-Third Annual Report 1987-88, (1989) Law Com. No. 176, para. 2.36.

⁵⁰ *Ibid.*, para. 2.37.

⁵¹ See para. 2.43 below.

⁵² (1989) Law Com. No. 184.

⁵³ (1987) Law Com. No. 162.

⁵⁴ Twenty-Third Annual Report 1987-88, (1989) Law Com. No. 176, para. 2.46.

⁵⁵ (1985) Law Com. No. 142. This report was published without a draft Bill.

⁵⁶ (1989) Law Com. No. 178.

implement the commonhold proposals for the freehold ownership and communal management of flats and other interdependent buildings.⁵⁷ The Bill will also include the scheme of "land obligations" for imposing positive and restrictive obligations on land proposed in the Law Commission's Report on the Law of Positive and Restrictive Covenants.⁵⁸

Part II of the Landlord and Tenant Act 1954

2.44 Our working paper⁵⁹ made proposals for improving the working of Part II of the 1954 Act, which gives business and professional tenants the right to renew their leases. We have received many helpful and well-informed comments from individuals and organisations with practical experience of the working of the Act. Following the preparation of a detailed analysis of these comments, we have decided our policy and commenced work on the preparation of a report.

Conveyancing Standing Committee

2.45 We have already referred⁶⁰ to the Fourth Annual Report to the Law Commission of the Conveyancing Standing Committee, which is published with this report.

Law of Trusts

2.46 Our Fourth Programme of Law Reform⁶¹ includes as item 8 the Law of Trusts, and refers in particular to the following two topics.

Use of Powers of Attorney by Trustees

2.47 As indicated in our Fourth Programme, both the effects of the decision in *Walia v. Michael Naughton Ltd*⁶² and the relationship between section 3(3) of the Enduring Powers of Attorney Act 1985 and the general law relating to the use of powers of attorney require overall consideration. Our aim is to publish a working paper on this subject during 1990.

Rule against Perpetuities

2.48 We hope to publish a working paper on this subject during 1990. The paper will examine the policy behind this rule, and also the policy on accumulations, to see whether they can any longer be justified and, if so, whether they could be simplified and brought up to date. We are grateful to Mr David Gwynn Morgan, Statutory Lecturer in Law at the University of Cork, for continuing to assist us with this project.

Relationship Breakdown Working Party

2.49 Professor Hoggett and Mr Aldridge are participating in the working party set up by the Department of the Environment to advise Ministers on the options for reform to deal with the difficulties which occur in the public housing sector when relationships break down.

Statute Law

Consolidation

2.50 Two consolidation Bills were enacted last year. The Extradition Act 1989 brings together in one Act all the enactments on extradition from the Extradition Act 1870 to Part I of the Criminal Justice Act 1988. It includes recommendations of the two Law Commissions.⁶³ The Opticians Act 1989 also included recommendations of the Law Commissions.⁶⁴

⁵⁷ These proposals are contained in the report of a Working Group under the chairmanship of Mr T. M. Aldridge—(1987) *Commonhold: Freehold Flats and Freehold Ownership of other Interdependent Buildings*, Cm. 179. The report recommends that a statutory scheme of "commonhold" ownership be introduced to enable people to buy flats (or subdivided parts of buildings put to other uses) on a permanent, freehold basis, with, co-operatively, ownership interests and responsibilities in relation to property and facilities used in common.

⁵⁸ (1984) Law Com. No. 127.

⁵⁹ (1988) Working Paper No. 111.

⁶⁰ See para. 1.9 above.

⁶¹ (1989) Law Com. No. 185; see paras. 1.5–1.7 above.

⁶² [1985] 1 W.L.R. 1115.

⁶³ Report on the Consolidation of Legislation Relating to Extradition, (1989) Law Com. No. 182, Scot. Law Com. No. 119.

⁶⁴ Report on the Consolidation of Legislation Relating to Opticians, (1989) Law Com. No. 183, Scot. Law Com. No. 121.

2.51 As part of our continuing consolidation of revenue legislation we have prepared a Capital Allowances Bill which you introduced into Parliament in December 1989. We hope that it may be possible shortly to begin work on consolidation of the legislation relating to capital gains tax.

2.52 Work is now complete on the consolidation of the law relating to town and country planning in four separate Bills: the Town and Country Planning Bill, the Planning (Hazardous Substances) Bill, the Planning (Listed Buildings and Conservation Areas) Bill, and the Planning (Consequential Provisions) Bill. This work has brought to light a number of matters which are the subject of recommendations in a report which we have recently submitted to you, and which will be laid before Parliament when the Bills are introduced.

2.53 Work is still proceeding on consolidation of the legislation relating to social security, and on consolidation of the Education Acts; and work has begun on a number of consolidations following the enactment of the Water Act 1989.

Statute Law Revision

2.54 During the year under review a substantial Statute Law (Repeals) Bill, recommended jointly by the Law Commission and the Scottish Law Commission,⁶⁵ was introduced and enacted. The Bill received the Royal Assent on 16 November 1989. The Act came into force then except for two repeals (relating to Malaysian appeals to the Judicial Committee of the Privy Council) which will be brought into force by order in due course. The Act effects some 500 repeals, including 257 whole Acts or Orders, and is an important contribution to the process of bringing the statute law up to date.

2.55 Work is in progress on proposals for inclusion in future Statute Law (Repeals) Bills, including projects to rationalise the local legislation of Greater Manchester, the City and County of Nottingham, Bedfordshire and Warwickshire. Manchester Polytechnic, who have been working on the Greater Manchester project, expect to be able to complete six of the ten draft repeal schedules concerned, and work on the remaining four schedules is being undertaken by Mr J. S. Phipps (Chief Executive of Leicester City Council, 1973-82). The Law Commission is most grateful to Manchester Polytechnic for the substantial contribution it has made to this difficult project, and much regrets that due to lack of resources it is unable to continue this work.

Local Legislation Working Party

2.56 The Statute Law (Repeals) Act 1989 has implemented the recommendations of the Working Party for rationalising the local legislation of South Yorkshire, and current work is implementing other recommendations of the Working Party. Because of the need to concentrate the available resources on this and other work, the Working Party has not been convened during the current year.

Chronological Table of Local Legislation

2.57 The first stage of the project (2 vols., 781 pp.), which covered the research period 1925-1973, was published in 1985. Further progress has been made towards completing the second stage. This covers the research period 1850-1925. It will be in the form of an amalgamated text including a complete list of all local Acts passed since 1797, together with the information contained in the first stage and in Section 4 of the *Chronological Table of the Statutes* (which covers the period 1974 onwards), and results gained from examination of the post-1850 primary and secondary legislation. The second stage will, therefore, provide an important work of reference from which to determine accurately how much of this vast body of statute law continues to form part of the law of the land.

2.58 In the course of 1989 the local and private Acts passed between 1850 and 1864 (approximately 2,900 Acts), and the public general Acts passed between 1850 and 1925, have been examined and their legislative effects recorded. Work is in progress on the examination of the printed general and local Statutory Rules and Orders made between 1890 and 1925. Work on the amalgamated text for the period 1797-1900, covering some 1,600 pages, has been completed. Copies of the first-stage text have been supplied at their request to particular firms of lawyers and the Law Commission continues to receive a regular flow of inquiries regarding particular Acts as lawyers and librarians recognise the value of the table as a research tool and source of legal information.

⁶⁵ Statute Law Revision: Thirteenth Report, (1989) Law Com. No. 179, Scot. Law Com. No. 117.

PART III
GENERAL

Responsibilities for Commission Projects

3.1 The responsibilities for projects falling within particular fields of law are shown in Appendix 1, which reflects the position at the end of December.

Lawyers

3.2 The Commission at present has 16 civil service lawyers from the Government legal service, two of them working on a part-time basis. In addition it has five draftsmen serving on secondment from the Office of the Parliamentary Counsel.

3.3 A further important section of the Commission's staff are the 15 research assistants who work with us on a temporary basis. We have been fortunate in maintaining a high standard of recruitment, mainly, we believe, because the able young lawyers from amongst whom we recruit welcome the challenge of responsible and demanding work in law reform, and recognise the benefit that a period at the Law Commission can be to them in their future careers in the law. We regret, however, that the financial terms that we are obliged to offer make it difficult for assistants to decide to stay with us for more than one year. Because of the importance in the conduct of law reform work of experience of what is specialised activity, and the genuine commitment that most assistants develop to their work here, we would like, if resources permitted, to offer salary levels that encouraged assistants to remain in post for a period longer than 12 months.

Consultants

3.4 During 1989 the work of the Commission has been greatly assisted by Mr Jeffrey Chapman, Alison Clarke (University College, London), Mr Lawrence Collins (Herbert Smith & Co.), Mr S. A. Cotton, J.P., Mr David Gwynn Morgan (University of Cork), Dr Francis Reynolds (Worcester College, Oxford), Mr Peter F. Smith (Reading University), and members of the Code Group of the Society of Public Teachers of Law (Professor J. C. Smith, C.B.E., Q.C., Professor Edward Griew and Professor Ian Dennis). In the consolidation of statute law we have had the assistance of Miss Lesley Furlonger, formerly a deputy Parliamentary Counsel, who drafted the Capital Allowances Bill,¹ and of Mrs Jennifer Davies-Bennett, a solicitor with long experience of drafting in Commonwealth jurisdictions. The Commission has also, as so often in previous years, received valuable help from Sir Wilfrid Bourne, K.C.B., Q.C., formerly Permanent Secretary of your Department, and from Mr J. S. Phipps, formerly Chief Executive of Leicester City Council.

Law Under Review

3.5 We continue to publish this quarterly bulletin, which gives details of law reform projects initiated by or at the instance of Government departments. Its circulation is not confined to Whitehall: we have over 90 other subscribers including academic libraries, firms of solicitors, and libraries in Australia, Canada, New Zealand and the United States of America.

Library

3.6 Our Librarian, Mrs Sally Phillips, left in August after seven years at the Law Commission. She will be remembered by all who worked with her both for her professional help and for her unfailing cheerfulness. We wish her well in her new post as Librarian at the Supreme Court. Our new Librarian is Mr David Baines.

3.7 The Library staff continue to provide valuable assistance to the Commissioners and legal staff in current research and in bringing new material to their attention. They are co-operating with your Department's Headquarters Library in the introduction of a computerised cataloguing and acquisitions system for all departmental libraries. The conversion of the Library catalogue to the system is now well advanced. When it is completed the catalogues of both the Law Commission and Headquarters libraries will be available on a single database.

¹ See para. 2.51 above.

3.8 We are grateful to many libraries for loans and copies of items not available in our own Library, and in particular to the Institute of Advanced Legal Studies who continue to allow our legal staff and research assistants access to their own library.

Meetings

3.9 The Commission continues to work in close co-operation with the Scottish Law Commission. However at present our only joint law reform exercise is the project on Choice of Law in Tort and Delict.² Mr Beatson, the Commissioner in charge of this project at the Law Commission, visited Edinburgh shortly after his appointment in July 1989 to discuss outstanding problems, but we held no joint meeting with the Scottish Law Commission in 1989.

3.10 We held our annual meeting with the Society of Public Teachers of Law on 14 June 1989, and a meeting with the Law Reform Committee of the General Council of the Bar on 26 October 1989. The Commission has had no formal meeting with the Law Society, but individual Commissioners have again had useful meetings with representatives of the Law Society. There have also been meetings with other legal bodies, and with visitors from overseas, a list of whom can be found in Appendix 2.

(Signed) PETER GIBSON, *Chairman*
TREVOR M. ALDRIDGE
JACK BEATSON
RICHARD BUXTON
BRENDA HOGGETT

MICHAEL COLLON, *Secretary*
30 January 1990

² See para. 2.30 above.

APPENDIX 1

RESPONSIBILITIES FOR COMMISSION PROJECTS

Common Law, Hearsay and Private International Law

Mr J. Beatson, Mrs M. Hodgson, Mr J.J. Cooper, Mr G.C. Davies, Mr R.A. Furniss, Miss J.A. Lee.

Criminal Law

Chairman, Mr R.J. Buxton, Q.C., Miss J.A. Nicholson, Mr A. Cope, Mr M.O. Barden, Mr S.H. Bronitt, Miss M.T. Murphy, Miss J.A. Sohrab.

Family Law and Mentally Incapacitated Adults

Professor B.M. Hoggett, Q.C., Mrs S. Hutcheson, Mrs J.M. Jenkins, Mrs J. Brown, Mrs K. Holding, Miss J.M. Kent, Mr M.A. Nicholson, Mr W.G. Simmonds.

Property Law (including Landlord and Tenant Law)

Mr T.M. Aldridge, Mr A. Akbar, Mr J.M. Davis, Mrs S.A. Jones, Mr T. Strouts, Miss S.P. Anderson-Morshead, Miss J.M. Sulek, Mr N. Taggart.

Statute Law

Consolidation: Chairman, Mr J.D.M. Rennie, C.B., Miss S.P. Burns, C.B., Mr S. Laws, Mr J.R. Jones, Miss S.C. Grundy, Miss P.J. Durston.

Statute Law Revision (including Local Legislation): Chairman, Mr R.H. Streeten, Mr R.D. Maitland, Mr A.M. Rowland, Mr M.J.R. Burgess, Miss S.M. McGillian.

APPENDIX 2

VISITORS FROM OVERSEAS

Among the visitors to the Law Commission during 1989 were:

- Mrs Rebecca Bailey-Harris (Senior Lecturer in Law, University of Adelaide)
- Mr Richard Braddock (Consultant Economist, Law Reform Commission of Australia)
- Professor Jay Carlisle (Professor of Law, Pace University, New York)
- Professor S. Dando (Emeritus Professor of Criminal Law, University of Tokyo)
- Mr Vincent M. Del Buono (The Society for the Reform of Criminal Law, Ottawa)
- Professor John Goldring (Commissioner, Law Reform Commission of Australia)
- Professor David Hambly (Professor of Law, Australian National University)
- Dr P.R. Handford (Director of Research, Law Reform Commission of Western Australia)
- Judge B.D. Inglis, Q.C. (Family Court, Wellington, New Zealand)
- Mr Justice Allen M. Linden (President, Law Reform Commission of Canada)
- Miss J.E. Lowe (Chief Legal Adviser, Department of Justice, New Zealand)
- Mr Alun A. Preece (Commissioner, Queensland Law Reform Commission)
- Professor Ludwig Salgo (Johan-Wolfgang Goethe University, Frankfurt)
- Mr Justice H.J.O. van Heerden (Chairman, South African Law Commission)
- Professor Tan Sook Yee (Faculty of Law, National University of Singapore and member of the Law Reform Committee of the Singapore Academy of Law)

APPENDIX 3

List of the Law Commission's Publications

A. Working Papers

<i>Working Paper No.</i>	<i>Title</i>	<i>Resulting Report</i>
1966		
1	Transfer of Land: Root of Title to Freehold Land	Law Com. No. 9.
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.
3	Restrictive Covenants	Law Com. No. 11.
4	Should English Wills be Registrable?	
5	Liability of Trade Vendors of New Dwelling Houses to First and Subsequent Purchasers (First Paper)	Law Com. No. 40.
6	Liability of Vendors and Lessors for Defective Premises (Second Paper)	Law Com. No. 40.
1967		
7	Provisional Proposals for Amendments to the Landlord and Tenant Act 1954, Part II (Business Tenancies)	Law Com. No. 17.
8	Provisional Proposals Relating to Obligations of Landlords and Tenants	Law Com. No. 67.
9	Family Law: Matrimonial and Related Proceedings—Financial Relief	Law Com. No. 25.
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.
11	Powers of Attorney	Law Com. No. 30.
12	Proof of Paternity in Civil Proceedings	Law Com. No. 16.
13	Exploratory Working Paper on Administrative Law	Law Com. No. 20.
14	Interpretation of Statutes (Joint Working Paper—Scottish Law Commission Memorandum No. 6)	Law Com. No. 21.
1968		
15	Family Law: Arrangements for the Care and Upbringing of Children	
16	Provisional Proposals Relating to Termination of Tenancies	Law Com. No. 142.
17	Codification of the Criminal Law: General Principles. The Field of Enquiry (See Law Com. No. 143)	
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.
19	Loss of Services	Law Com. Nos. 25 and 56.
20	Nullity of Marriage	Law Com. No. 33.
21	Polygamous Marriages	Law Com. No. 42.
1969		
22	Restitution of Conjugal Rights	Law Com. No. 23.
23	Malicious Damage to Property	Law Com. No. 29.
24	Transfer of Land: Rentcharges (See also Working Paper No. 49)	Law Com. No. 68.

<i>Working Paper No.</i>	<i>Title</i>	<i>Resulting Report</i>
1970		
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.
26	Criminal Law: Forgery	Law Com. No. 55.
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.
28	Family Law: Jurisdiction in Matrimonial Causes (other than Nullity)	Law Com. No. 48.
29	Codification of the Criminal Law: Subject III. Territorial and Extra-Territorial Extent of the Criminal Law	Law Com. No. 91.
30	Codification of the Criminal Law; Strict Liability and the Enforcement of the Factories Act 1961	
31	Codification of the Criminal Law: General Principles. The Mental Element in Crime	Law Com. No. 89.
32	Transfer of Land: Land Registration (First Paper)	Law Com. No. 125.
33	Criminal Law: Perjury and Kindred Offences	Law Com. No. 96.
1971		
34	Family Law: Jactitation of Marriage (See also Working Paper No. 48)	Law Com. No. 132.
35	Family Law: Solemnisation of Marriage	Law Com. No. 53.
36	Transfer of Land: Appurtenant Rights	Law Com. No. 127.
37	Transfer of Land: Land Registration (Second Paper)	Law Com. No. 125.
38	Family Law: Jurisdiction in Suits for Nullity of Marriage	Law Com. No. 48.
39	Exemption Clauses in Contracts for Services (Joint Working Paper—Scottish Law Commission Memorandum No. 15)	Law Com. No. 69.
40	Administrative Law	Law Com. No. 73.
41	Personal Injury Litigation: Assessment of Damages	Law Com. No. 56.
42	Family Law: Family Property Law	Law Com. Nos. 52, 61 and 86.
1972		
43	Codification of the Criminal Law: General Principles, Parties, Complicity and Liability for the Acts of Another (See Law Com. No. 143)	
44	Codification of the Criminal Law: General Principles. Criminal Liability of Corporations (See Law Com. No. 143)	
45	Transfer of Land: Land Registration (Third Paper)	Law Com. No. 125.
46	Charging Orders on Land	Law Com. No. 74.
1973		
47	Injuries to Unborn Children	Law Com. No. 60.
48	Family Law: Declarations in Family Matters	Law Com. No. 132.
49	Transfer of Land: Rentcharges	Law Com. No. 68.
50	Codification of the Criminal Law: General Principles. Inchoate Offences: Conspiracy, Attempt and Incitement	Law Com. Nos. 76 and 102.
51	Transfer of Land: "Subject to Contract" Agreements	Law Com. No. 65.
52	Liability for Damage or Injury to Trespassers and Related Questions of Occupiers' Liability	Law Com. No. 75.
53	Family Law: Matrimonial Proceedings in Magistrates' Courts	Law Com. No. 77.

<i>Working Paper No.</i>	<i>Title</i>	<i>Resulting Report</i>
1974		
54	Criminal Law: Offences of Entering and Remaining on Property	Law Com. No. 76.
55	Codification of the Criminal Law: General Principles. Defences of General Application	Law Com. No. 83.
56	Criminal Law: Conspiracy to Defraud	
57	Codification of the Criminal Law: Conspiracies Relating to Morals and Decency	Law Com. No. 76.
58	Breach of Confidence	Law Com. No. 110.
1975		
59	Contribution	Law Com. No. 79.
60	Firm Offers	
61	Penalty Clauses and Forfeiture Of Monies Paid	
62	Criminal Law: Offences Relating to the Administration of Justice	Law Com. No. 96.
63	Codification of the Criminal Law: Conspiracies to Effect a Public Mischief and to Commit a Civil Wrong	Law Com. No. 76.
64	Liability for Defective Products (Joint Working Paper—Scottish Law Commission Memorandum No. 20)	Law Com. No. 82.
65	Law of Contract: Pecuniary Restitution on Breach of Contract	Law Com. No. 121.
1976		
66	Interest	Law Com. No. 88.
67	Transfer of Land: Land Registration (Fourth Paper)	
68	Custody of Children: Jurisdiction and Enforcement within the United Kingdom (Joint Working Paper—Scottish Law Commission Memorandum No. 23)	Law Com. No. 138.
69	The Incapacitated Principal	Law Com. No. 122.
70	Law of Contract: The Parol Evidence Rule	Law Com. No. 154.
1977		
71	Law of Contract: Implied Terms in Contracts for the Supply of Goods	Law Com. No. 95.
72	Codification of the Criminal Law: Treason, Sedition and Allied Offences	
1979		
73	Insurance Law: Non-Disclosure and Breach of Warranty	Law Com. No. 104.
74	Family Law: Illegitimacy	Law Com. No. 118.
1980		
75	Classification of Limitation in Private International Law	Law Com. No. 114.
76	Time Restrictions on Presentation of Divorce and Nullity Petitions	Law Com. No. 116.
77	Family Law: Financial Relief after Foreign Divorce	Law Com. No. 117.
78	Rights of Access to Neighbouring Land	Law Com. No. 151.
1981		
79	Offences against Religion and Public Worship	Law Com. No. 145.
80	Private International Law: Foreign Money Liabilities	Law Com. No. 124.
1982		
81	Minors' Contracts	Law Com. No. 134.
82	Offences against Public Order	Law Com. No. 123.

<i>Working Paper No.</i>	<i>Title</i>	<i>Resulting Report</i>
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.
84	Criminal Libel	Law Com. Nos. 147 and 149.
1983		
85	Sale and Supply of Goods (Joint Working Paper—Scottish Law Commission Consultative Memorandum No. 58)	Law Com. No. 160.
86	Transfer of Land: Liability for Chancel Repairs	Law Com. No. 152.
1984		
87	Private International Law: Choice of Law in Tort and Delict (Joint Working Paper—Scottish Law Commission Consultative Memorandum No. 62)	
1985		
88	Private International Law: The Law of Domicile (Joint Working Paper—Scottish Law Commission Consultative Memorandum No. 63)	Law Com. No. 168.
89	Private International Law: Choice of Law Rules in Marriage (Joint Working Paper—Scottish Law Commission Consultative Memorandum No. 64)	Law Com. No. 165.
90	Transfer of Money between Spouses: the Married Women's Property Act 1964	Law Com. No. 175.
91	Family Law: Review of Child Law: Guardianship	Law Com. No. 172.
92	Transfer of Land: Formalities for Contracts for Sale etc. of Land	Law Com. No. 164.
93	Transfer of Land: Formalities for Deeds and Escrows	Law Com. No. 163.
94	Trusts of Land	Law Com. No. 181.
1986		
95	Landlord and Tenant: Privity of Contract and Estate: Duration of Liability of Parties to Leases	Law Com. No. 174.
96	Family Law: Review of Child Law: Custody (Supplement) Custody Law in Practice in the Divorce and Domestic Courts	Law Com. No. 172.
97	Distress for Rent	
98	Transfer of Land: The Rule in <i>Bain v. Fothergill</i>	Law Com. No. 166.
99	Land Mortgages	
1987		
100	Family Law: Review of Child Law: Care, Supervision and Interim Orders in Custody Proceedings	Law Com. No. 172.
101	Family Law: Review of Child Law: Wards of Court	
102	Compensation for Tenants' Improvements	Law Com. No. 178.
103	Criminal Law: Binding Over: The Issues	
104	Criminal Law: Conspiracy to Defraud	
105	Transfer of Land: Title on Death	Law Com. No. 184.
106	Trusts of Land: Overreaching	Law Com. No. 188.
1988		
107	Transfer of Land: Implied Covenants for Title	
108	Distribution on Intestacy	Law Com. No. 187.
109	Transfer of Land: Passing of Risk from Vendor to Purchaser	
110	Computer Misuse	Law Com. No. 186.
111	Part II of the Landlord and Tenant Act 1954	

<i>Working Paper No.</i>	<i>Title</i>	<i>Resulting Report</i>
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1989

112	Rights to Goods in Bulk	
113	Domestic Violence and Occupation of the Family Home	

1990

114	Contributory Negligence as a Defence in Contract	
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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 + are the result of a specific reference. Those marked * contain a draft Bill or draft clauses. Those marked -- do not call for legislation.

<i>Report Law Com. No.</i>	<i>Title</i>	<i>Related Legislation</i>
1965		
1	First Programme of the Law Commission	--
1966		
2	First Programme on Consolidation and Statute Law Revision	--
3*	Proposals to Abolish Certain Ancient Criminal Offences	Criminal Law Act 1967 (c.58).
4	First Annual Report 1965-66	--
5	Landlord and Tenant: Interim Report on Distress for Rent	--
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).
7*	Proposals for Reform of the Law Relating to Maintenance and Champerty	Criminal Law Act 1967 (c.58).
8+*	Report on the Powers of Appeal Courts to Sit in Private and the Restrictions upon Publicity in Domestic Proceedings (Cmnd.3149)	Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968 (c.63).
1967		
9*	Transfer of Land: Interim Report on Root of Title to Freehold Land	Law of Property Act 1969 (c.59).
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).
11	Transfer of Land: Report on Restrictive Covenants	In part by Law of Property Act 1969 (c.59).
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)

<i>Report Law Com. No.</i>	<i>Title</i>	<i>Related Legislation</i>
12	Second Annual Report 1966-1967	--
13	Civil Liability for Animals	Animals Act 1971 (c.22).
1968		
14	Second Programme of Law Reform	--
15	Third Annual Report 1967-1968 (H.C.312)	--
16*	Blood Tests and the Proof of Paternity in Civil Proceedings (H.C.2).	Family Law Reform Act 1969 (c.46).
1969		
17*	Landlord and Tenant: Report on the Landlord and Tenant Act 1954, Part II (H.C.38)	Law of Property Act 1969 (c.59).
18*	Transfer of Land: Report on Land Charges Affecting Unregistered Land (H.C.125).	Law of Property Act 1969 (c.59).
18A	Trustee Savings Bank Bill: Report by the two Commissions on the Consolidation of the Trustee Savings Bank Acts 1954 to 1968 (Scot. Law Com. No. 10) (Cmnd.4004)	Trustee Savings Bank Act 1969 (c.50).
19+*	Proceedings Against Estates (Cmnd.4010)	Proceedings against Estates Act 1970 (c.17).
20+	Administrative Law (Cmnd.4059)	See Law Com. No. 73.
21*	Interpretation of Statutes: Report by the two Commissions (Scot. Law Com. No. 11) (H.C.256)	None.
22*	Statute Law Revision: First Report (Cmnd.4052)	Statute Law (Repeals) Act 1969 (c.52).
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).
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).
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).
26*	Breach of Promise of Marriage (H.C.453)	Law Reform (Miscellaneous Provisions) Act 1970 (c.33).
27	Fourth Annual Report 1968-1969 (H.C.27)	--
22		

<i>Report Law Com. No.</i>	<i>Title</i>	<i>Related Legislation</i>
1970		
28*	Statute Law Revision: Second Report. Draft Wild Creatures and Forest Laws Bill (Cmnd.4433)	Wild Creatures and Forest Laws Act 1971 (c.47)
29*	Criminal Law: Report on Offences of Damage to Property (H.C.91)	Criminal Damage Act 1971 (c.48).
30+*	Powers of Attorney (Cmnd.4473)	Powers of Attorney Act 1971 (c.27)
31+*	Administration Bonds, Personal Representatives' Rights of Retainer and Preference and Related Matters (Cmnd.4497)	Administration of Estates Act 1971 (c.25).
32	Civil Liability for Dangerous Things and Activities	--
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).
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), now Part II of Family Law Act 1986 (c.55).
35+	Limitation Act 1963 (Cmnd.4532)	Law Reform (Miscellaneous Provisions) Act 1971 (c.43).
36	Fifth Annual Report 1969-1970 (H.C.170)	--
37*	Statute Law Revision: Third Report (Cmnd.4546)	Statute Law (Repeals) Act 1971 (c.52).
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)
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).
40*	Civil Liability of Vendors and Lessors for Defective Premises (H.C.184)	Defective Premises Act 1972 (c.35).
1971		
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 Law Com. No.</i>	<i>Title</i>	<i>Related Legislation</i>
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).
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).
44	Second Programme of Consolidation and Statute Law Revision (H.C.338)	--
45	Town and Country Planning Bill: Report on the Consolidation of Certain Enactments Relating to Town and Country Planning (Cmnd.4684)	Town and Country Act 1971 (c.78).
46	Road Traffic Bill: Report by the two Commissions on the Consolidation of Certain Enactments Relating to Road Traffic (Scott. Law Com. No. 22) (Cmnd.4731)	Road Traffic Act 1972 (c.20)
47	Sixth Annual Report 1970-1971 (H.C.32)	--
1972		
48*	Family Law: Report on Jurisdiction in Matrimonial Causes (H.C.464)	Domicile and Matrimonial Proceedings Act 1973 (c.45).
49*	Statute Law Revision: Fourth Report by the two Commissions (Scot. Law Com. No. 26) (Cmnd.5108)	Statute Law (Repeals) Act 1973 (c.39).
50	Seventh Annual Report 1971-1972 (H.C.35)	--
51	Matrimonial Causes Bill: Report on the consolidation of Certain Enactments Relating to Matrimonial Proceedings, Maintenance Agreements, and Declarations of Legitimacy, Validity of Marriage and British Nationality (Cmnd.5167)	Matrimonial Causes Act 1973 (c.18).
1973		
52	Family Law: First Report on Family Property. A New Approach (H.C.274)	--
53	Family Law: Report on Solemnisation of Marriage in England and Wales (H.C.250)	None.
54	Third Programme of Law Reform (H.C.293)	--
55*	Criminal Law: Report on Forgery and Counterfeit Currency (H.C.320)	Forgery and Counterfeiting Act 1981 (c.45).
56*	Report on Personal Injury Litigation—Assessment of Damages (H.C.373)	Administration of Justice Act 1982 (c.53).
57*	Statute Law Revision: Fifth Report by the two Commissions (Scot. Law Com. No. 32) (Cmnd.5493)	Statute Law (Repeals) Act 1974 (c.22).

<i>Report Law Com. No.</i>	<i>Title</i>	<i>Related Legislation</i>
58	Eighth Annual Report 1972-1973 (H.C.34)	--
1974		
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).
60+*	Report on Injuries to Unborn Children (Cmnd.5709)	Congenital Disabilities (Civil Liability) Act 1976 (c.28).
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).
62*	Transfer of Land: Report on Local Land Charges (H.C.71)	Local Land Charges Act 1975 (c.76)
63*	Statute Law Revision: Sixth Report by the two Commissions (Scot. Law Com. No. 36) (Cmnd.5792)	Statute Law (Repeals) Act 1975 (c.10).
64	Ninth Annual Report 1973-1974 (H.C.40)	--
1975		
65	Transfer of Land: Report on "Subject to Contract" Agreements (H.C.119)	--
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).
67*	Codification of the Law of Landlord and Tenant: Report on Obligations of Landlords and Tenants (H.C.377)	None.
68*	Transfer of Land: Report on Rentcharges (H.C.602)	Rentcharges Act 1977 (c.30).
69*	Exemption Clauses: Second Report by the two Commissions (Scot. Law Com. No. 39) (H.C.605)	Unfair Contract Terms Act 1977 (c.50).
70*	Statute Law Revision: Seventh Report by the two Commissions (Scot. Law Com. No. 40) (Cmnd.6303)	Statute Law (Repeals) Act 1976 (c.16).
71	Tenth Annual Report 1974-1975	--
1976		
72*	Jurisdiction of Certain Ancient Courts (Cmnd.6385)	Administration of Justice Act 1977 (c.38).
73+*	Report on Remedies in Administrative Law (Cmnd.6407)	Rules of Supreme Court (Amendment No. 3) 1977; Supreme Court Act 1981 (c.54).

<i>Report Law Com. No.</i>	<i>Title</i>	<i>Related Legislation</i>
74+*	Charging Orders (Cmnd.6412)	Charging Orders Act 1979 (c.53).
75+*	Report on Liability for Damage or Injury to Trespassers and Related Questions of Occupiers' Liability (Cmnd.6428)	Occupiers' Liability Act 1984 (c.3).
76*	Criminal Law: Report on Conspiracy and Criminal Law Reform (H.C.176)	In part by Criminal Law Act 1977 (c.45).
77*	Family Law: Report on Matrimonial Proceedings in Magistrates' Courts (H.C.176)	Domestic Proceedings and Magistrates' Courts Act 1978 (c.22).
1977		
78	Eleventh Annual Report 1975-1976 (H.C.94)	--
79*	Law of Contract: Report on Contribution (H.C.181)	Civil Liability (Contribution) Act 1978 (c.47).
80*	Statute Law Revision: Eighth Report by the two Commissions (Scot. Law Com. No. 44) (Cmnd.6719)	Statute Law (Repeals) Act 1977 (c.18)
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).
82+	Liability for Defective Products: Report by the two Commissions (Scot. Law Com. No. 45) (Cmnd.6831)	Consumer Protection Act 1987 (c.43).
83*	Criminal Law: Report on Defences of General Application (H.C.566)	None.
84+	Law of Contract: Report on the Proposed E.E.C. Directive on the Law Relating to Commercial Agents (Cmnd.6948)	--
85	Twelfth Annual Report 1976-1977 (H.C.96)	--
1978		
86*	Family Law: Third Report on Family Property. The Matrimonial Home (Co-Ownership and Occupation Rights) and Household Goods (H.C.450)	Housing Act 1980 (c.51); Matrimonial Homes and Property Act 1981 (c.24).
87*	Statute Law Revision: Ninth Report by the two Commissions (Scot. Law Com. No. 48) (Cmnd.7189)	Statute Law (Repeals) Act 1978 (c.45)
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.

<i>Report Law Com. No.</i>	<i>Title</i>	<i>Related Legislation</i>
89*	Criminal Law: Report on the Mental Element in Crime (H.C.499)	None.
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 in Parliament and Other Instruments (Scot. Law Com. No. 53) (Cmnd.7235)	Interpretation Act 1978 (c.30)
91*	Criminal Law: Report on the Territorial and Extra-Territorial Extent of the Criminal Law (H.C.75)	In part by Territorial Sea Act 1987 (c.49).
92	Thirteenth Annual Report 1977-1978 (H.C.87)	--
93	Customs and Excise Management Bill: Report by the two Commissions on the Consolidation of the Enactments Relating to the Collection and Management of the Revenues of Customs and Excise (Scot. Law Com. No. 54) (Cmnd.7418)	Customs and Excise Management Act 1979 (c.2).
1979		
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).
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).
96*	Criminal Law: Offences Relating to Interference with the Course of Justice (H.C.213)	None.
97	Fourteenth Annual Report 1978-1979 (H.C.322)	--
98	Reserve Forces Bill: Report on the Consolidation of Certain Enactments Relating to the Reserve and Auxiliary Forces (Cmnd.7757)	Reserve Forces Act 1980 (c.9).
1980		
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).
100	Highways Bill: Report on the Consolidation of the Highways Acts 1959 to 1971 and Related Enactments (Cmnd.7828)	Highways Act 1980 (c.66).
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).
102*	Criminal Law: Attempt, and Impossibility in Relation to Attempt, Conspiracy and Incitement (H.C.646)	Criminal Attempts Act 1981 (c.47).

<i>Report Law Com. No.</i>	<i>Title</i>	<i>Related Legislation</i>
103+	Family Law: The Financial Consequences of Divorce: The Basic Policy. A Discussion Paper (Cmnd.8041)	See Law Com. No. 112.
104+*	Insurance Law: Non-Disclosure and Breach of Warranty (Cmnd.8064)	None.
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).
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).
1981		
107	Fifteenth Annual Report 1979-1980	--
108	Trustee Savings Banks 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)	Trustee Savings Banks Act 1981 (c.65).
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)	--
110+*	Breach of Confidence (Cmnd.8388)	Government regards recommendations as restatement of common law, and does not give implementation high priority (see <i>Hansard</i> (H.C.), 2 March 1989, vol. 148, Written Answers, col.257).
111+	Property Law: Rights of Reverter (Cmnd.8410)	Reverter of Sites Act 1987 (c.15).
112	Family Law: The Financial Consequences of Divorce. The Reponse to the Law Commission's Discussion Paper, and Recommendations on the Policy of the Law (H.C.68)	Matrimonial and Family Proceedings Act 1984 (c.42).
1982		
113	Sixteenth Annual Report 1980-1981 (H.C.161)	--
114+*	Classification of Limitation in Private International Law (Cmnd.8570)	Foreign Limitation Periods Act 1984 (c.16)
115+	Property Law: The Implications of <i>Williams and Glyn's Bank Ltd. v. Boland</i> (Cmnd.8636)	None.

<i>Report Law Com. No.</i>	<i>Title</i>	<i>Related Legislation</i>
116*	Family Law: Time Restrictions on Presentation of Divorce and Nullity Petitions (H.C.513)	Matrimonial and Family Proceedings Act 1984 (c.42).
117*	Family Law: Financial Relief after Foreign Divorce (H.C.514)	Matrimonial and Family Proceedings Act 1984 (c.42).
118*	Family Law: Illegitimacy (H.C.98)	Family Law Reform Act 1987 (c.42).
1983		
119	Seventeenth Annual Report 1981-1982 (H.C.203)	--
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).
121*	Law of Contract: Pecuniary Restitution on Breach of Contract (H.C.34)	None.
122+*	The Incapacitated Principal (Cmnd.8977)	Enduring Powers of Attorney Act 1985 (c.29).
123*	Criminal Law: Offences Relating to Public Order (H.C.85)	Public Order Act 1986 (c.64).
124+*	Private International Law: Foreign Money Liabilities (Cmnd.9064)	None.
125*	Property Law: Land Registration (H.C.86)	Land Registration Act 1986 (c.26).
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).
1984		
127*	Transfer of Land: The Law of Positive and Restrictive Covenants (H.C.201)	None.
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).
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)
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).
131	Eighteenth Annual Report 1982-1983 (H.C.266)	--

<i>Report Law Com. No.</i>	<i>Title</i>	<i>Related Legislation</i>
132*	Family Law: Declarations in Family Matters (H.C.263)	Family Law Act 1986 (c.55), Part III.
133	Road Traffic Regulation Bill (Joint Report—Scot. Law Com. No. 85) (Cmnd.9162)	Road Traffic Regulation Act 1984 (c.27).
134*	Law of Contract: Minors' Contracts (H.C.494)	Minors' Contracts Act 1987 (c.13).
135	Statute Law Revision: Eleventh Report: Obsolete Provisions in the Companies Act 1948 (Cmnd.9236)	Companies Consolidation (Consequential Provisions) Act 1985 (c.9).
136	Further Amendments to 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).
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), Part II.
1985		
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), Part I.
139	Cinemas Bill (Cmnd.9425)	Cinemas Act 1985 (c.13).
140	Nineteenth Annual Report 1983–1984 (H.C.214)	--
141	Codification of the Law of Landlord and Tenant: Covenants Restricting Dispositions, Alteration and Change of User (H.C.278)	None.
142	Codification of the Law of Landlord and Tenant: Forfeiture of Tenancies (H.C.279)	None.
143	Criminal Law: Codification of the Criminal Law: A Report to the Law Commission (H.C.270)	See also Law Com. No. 177.
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).
145*	Criminal Law: Offences against Religion and Public Worship (H.C.442)	None.
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.
147*	Criminal Law: Report on Poison-Pen Letters (H.C.519)	Malicious Communications Act 1988 (c.27).

<i>Report Law Com. No.</i>	<i>Title</i>	<i>Related Legislation</i>
148*	Property Law: Second Report on Land Registration: Inspection of the Register	Land Registration Act 1988 (c.3).
149*	Criminal Law: Report on Criminal Libel (Cmnd.9618)	None.
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).
151+*	Rights of Access to Neighbouring Land (Cmnd.9692)	None.
152*	Property Law: Liability for Chancel Repairs (H.C.39)	None.
153	Agricultural Holdings Bill: Report on the Consolidation of Certain Enactments Relating to Agricultural Holdings (Cmnd.9665)	Agricultural Holdings Act 1986 (c.5).
1986		
154	Law of Contract: The Parol Evidence Rule (Cmnd.9700)	--
155	Twentieth Annual Report 1984–1985 (H.C.247)	--
156+	Law of Contract: Implied Terms in Contracts for the Supply of Services (Cmnd.9773)	--
157*	Family Law: Illegitimacy (Second Report) (Cmnd.9913)	Family Law Reform Act 1987 (c.42).
1987		
158	Property Law: Third Report on Land Registration. A. Overriding Interests: B. Rectification and Indemnity: C. Minor Interests (H.C.269)	--
159	Twenty-First Annual Report 1985–1986 (H.C.342)	--
160+*	Sale and Supply of Goods (Joint Report—Scot. Law Com. No. 104) (Cm.137)	Consumer Guarantees Bill
161*	Leasehold Conveyancing (H.C.360)	Landlord and Tenant Act 1988 (c.26).
162	Landlord and Tenant: Reform of the Law (Cm.145)	--
163*	Deeds and Escrows (H.C.1)	Law of Property (Miscellaneous Provisions) Act 1989 (c.34).
164*	Transfer of Land: Formalities for Contracts for Sale etc. of Land (H.C.2)	Law of Property (Miscellaneous Provisions) Act 1989 (c.34).

<i>Report Law Com. No.</i>	<i>Title</i>	<i>Related Legislation</i>
165*	Private International Law: Choice of Law Rules in Marriage (Joint Report—Scot. Law Com. No. 105) (H.C.3)	Foreign Marriage (Amendment) Act 1988 (c.44).
166*	Transfer of Land: The Rule in <i>Bain v. Fothergill</i> (Cm.192)	Law of Property (Miscellaneous Provisions) Act 1989 (c.34).
167	Coroners Bill: Report on the Consolidation of the Coroners Acts 1887 to 1980 and Certain Related Enactments (Cm.178)	Coroners Act 1988 (c.13).
168*	Private International Law: The Law of Domicile (Joint Report—Scot. Law Com. No. 107) (Cm.200)	None.
1988		
169	Twenty-Second Annual Report 1986–1987 (H.C.319)	--
170	Facing the Future: A Discussion Paper on the Ground for Divorce (H.C.479)	--
171	Road Traffic Bill: Road Traffic Offenders Bill; Road Traffic (Consequential Provisions) Bill: Report on the Consolidation of Certain Enactments Relating to Road Traffic (Joint Report—Scot. Law Com. No. 113) (Cm.390)	Road Traffic Act 1988 (c.52); Road Traffic Offenders Act 1988 (c.53); Road Traffic (Consequential Provisions) Act 1988 (c.54)
172*	Family Law: Review of Child Law: Guardianship and Custody (H.C.594)	Children Act 1989 (c.41).
173*	Property Law: Fourth Report on Land Registration (H.C.680)	None.
174*	Landlord and Tenant Law: Privity of Contract and Estate (H.C.8)	None.
175*	Family Law: Matrimonial Property (H.C.9)	None.
1989		
176	Twenty-Third Annual Report 1987–1988 (H.C.227)	--
177*	Criminal Law: A Criminal Code for England and Wales (Two Volumes) (H.C.299)	None.
178	Landlord and Tenant Law: Compensation for Tenants' Improvements (H.C.291)	None.
179*	Statute Law Revision: Thirteenth Report (Joint Report—Scot. Law Com. No. 117) (Cm.671)	Statute Law (Repeals) Act 1989 (c.43).
180*	Criminal Law: Jurisdiction over Offences of Fraud and Dishonesty with a Foreign Element (H.C.318)	None.
181*	Transfer of Land: Trusts of Land (H.C.391)	None.

<i>Report Law Com. No.</i>	<i>Title</i>	<i>Related Legislation</i>
182	Extradition Bill: Report on the Consolidation of Legislation Relating to Extradition (Joint Report—Scot. Law Com. No. 119) (Cm.712)	Extradition Act 1989 (c.33).
183	Opticians Bill: Report on the consolidation of Legislation Relating to Opticians (Joint Report—Scot. Law Com. No. 121) (Cm.738)	Opticians Act 1989 (c.44).
184*	Property Law: Title on Death (Cm.777)	None.
185	Fourth Programme of Law Reform (Cm.800)	--
186	Criminal Law: Computer Misuse (Cm.819)	Computer Misuse Bill
187*	Family Law: Distribution on Intestacy (H.C.60)	None.
188*	Transfer of Land: Overreaching: Beneficiaries in Occupation (H.C.61)	None.
1990		
189	Town and Country Planning Bill; Planning (Listed Buildings and Conservation Areas) Bill; Planning (Hazardous Substances) Bill; Planning (Consequential Provisions) Bill: Report on the Consolidation of Certain Enactments Relating to Town and Country Planning (Cm.958)	Town and Country Planning Bill; Planning (Listed Buildings and Conservation Areas) Bill; Planning (Hazardous Substances) Bill; Planning (Consequential Provisions) Bill
190	Twenty-Fourth Annual Report 1989 (H.C.215)	--

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. Periodicals

Law Under Review: A Quarterly Bulletin of Law Reform Projects (Nos. 1 to 12).

E. Other Publications

Private International Law: E.E.C. Preliminary Draft Convention on the Law Applicable to Contractual and Non-Contractual Obligations (prepared jointly with the Scottish Law Commission) (August 1974)**

Commonhold: Freehold Flats and Freehold Ownership of Other Interdependent Buildings: Report of a Working Group, Cm.179, July 1987.

Treasure Trove: Law Reform Issues (September 1987).

The Fourth Annual Report of the Conveyancing Standing Committee, which is published with this report, includes a list of that Committee's publications.

Bound volumes of unabridged reprints of Law Commission working papers and reports are published by Professional Books, Milton Trading Estate, Abingdon, Oxon OX14 4SY.

A list of Law Commission publications is available free of charge from the Law Commission Registry.

** The E.E.C. Convention on the Law Applicable to Contractual Obligations was opened for signature in Rome on 19 June 1980. It is not yet in force for the United Kingdom, but on 28 November 1989 the Lord Chancellor introduced in the House of Lords the Contracts (Applicable Law) Bill which, if enacted, will enable the United Kingdom to ratify the Convention.

APPENDIX 4

THE COST OF THE COMMISSION

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 (in particular accommodation, salaries, superannuation and headquarters overheads) is not determined by the Commission. The figures given are those for a calendar year and cannot be related to those in Supply Estimates and Appropriation Accounts.

	1989	1988
	£000	£000
Accommodation charges ¹	355.2	354.7
Headquarters overheads ²	168.5	145.7
Printing and publishing; supply of information technology, office equipment and books	137.3	114.3
Salaries of Commissioners (including ERNIC) ³	204.5	225.2
Salaries of draftsmen, legal staff, secondees and consultants (including ERNIC)	826.9	756.9
Salaries of non-legal staff (including ERNIC)	316.5	298.4
Superannuation	213.5	196.0
Telephone/Postage	17.7	19.2
Travel and subsistence	4.5	8.5
Entertainment	0.3	0.2
Miscellaneous	3.3	4.4
	<u>2,248.2</u>	<u>2,123.5</u>

¹ Component relating to ground rent, rates and major works supplied by the Lord Chancellor's Department.

² Portion of the total cost of Lord Chancellor's Department headquarters attributed to the Law Commission.

³ There was a vacancy during the first half of 1989; see para. 1.4.

CONVEYANCING STANDING COMMITTEE

FOURTH ANNUAL REPORT

1989

MEMBERSHIP*
(as at 31 December 1989)

Trevor Aldridge, M.A., <i>Chairman</i>	Law Commissioner
Brian Bluett, F.Inst. L. Ex., M.B.I.M.	Licensed conveyancer; Fellow of the Institute of Legal Executives
Hugh Dunsmore-Hardy, F.N.A.E.	Regional Director, Hamptons Estate Agents; President-elect National Association of Estate Agents
Kenneth Edwards	Senior Partner, Burt, Brill and Cardens, solicitors
Sir William Goodhart, Q.C.	
Tamara Goriely	National Consumer Council
Chris Jowett	Solicitor to Halifax Building Society
Peter North	Solicitor, London Borough of Tower Hamlets; Bethnal Green Neighbourhood Solicitor
Anthony Sacker	Partner, Kingsley Napley, solicitors; President, City of Westminster Law Society 1987-88
Richard Saunders	Solicitor, Legal Services Conveyancing Department, National Westminster Bank plc
John Thomas, J.P., F.R.I.C.S, F.R.S.A.	Chairman, Nationwide Anglia Estate Agents; Director, Nationwide Anglia Building Society; Consultant to Baxter, Payne & Lepper; Member of H.M. Land Registry Rule Committee
Liaison Officer from H.M. Land Registry: Michael Croker	
Secretariat: Caroline Wehlau (until November) Anne Jones Nife Okusanya	

* Jayne Herbert and David Yearsley served on the Committee until April 1989. Iain Cheyne and Hugh Jones served on the Committee until May 1989.

CONVEYANCING STANDING COMMITTEE

FOURTH ANNUAL REPORT 1989

CONTENTS

	<i>Paragraph</i>	<i>Page</i>
PART I: INTRODUCTION	1.1	1
Membership	1.7	2
PART II: WORK IN PROGRESS		
Flexi-Mortgages	2.2	2
Deposits	2.6	3
Duty of Disclosure by Vendors	2.8	3
The Transfer of Money on Completion	2.10	3
Local Authorities Drains and Sewers	2.13	3
PART III: REFORM OF CONVEYANCING LAW		
Evidence submitted to Government Departments	3.1	4
Reports considered by the Committee	3.2	4
PART IV: LIST OF PUBLICATIONS BY THE CONVEYANCING STANDING COMMITTEE		4

CONVEYANCING STANDING COMMITTEE

FOURTH ANNUAL REPORT 1989

Part I: Introduction

1.1 We are pleased to present to the Commission our Fourth Annual Report, in which we give an account of our work during the period from 1 January to 31 December 1989.

1.2 At our meeting on 13 December we learned that the work of the Committee was to be suspended, because of the Law Commission's need to reallocate its resources. We do not consider that conveyancing procedure yet approaches a level at which it satisfies the demands of its users, but we recognise that this may be an appropriate moment at which to take stock of conveyancing reform and to reappraise the best approach to it.

1.3 The four years during which the Committee has been working¹ have been an active period for proposals to improve conveyancing law and procedure. The work of the Committee is recorded in this and its previous Annual Reports.² In addition, others have been active. The Inter-professional Working Party appointed by the Royal Institution of Chartered Surveyors reported,³ recommending the introduction of "property inspection certificates", and the National Association of Estate Agents advocated the adoption of conditional sale and purchase contracts.⁴ Many local law societies introduced regional conveyancing protocols, and this movement is to result in the launch of the Law Society's National Conveyancing Protocol in 1990. The inconvenience, in chains of conveyancing transactions, of having two separate widely-used forms of contract has been alleviated, by the Law Society and the publishers of the National Conditions of Sale agreeing to publish a single new set of General Conditions. We have also to look forward, at the end of 1990, to the extension of compulsory registration of title to the whole country and to the opening of the land register to public inspection.

1.4 In addition, the extension to authorised practitioners of the right to perform conveyancing services for reward, proposed in the Government's Courts and Legal Services Bill now before Parliament, is likely to bring major financial institutions into the market as professional conveyancers. Their approach to the work may be novel, and will almost certainly be assisted by technology on a scale hitherto unknown, and this may have a considerable impact.

1.5 With all these reform proposals made but not adopted and major developments pending, there may well be a need for a period of assimilation and reflection. We would, however, urge that the outcome be assessed from the point of view of the users of conveyancing against the criteria which the Committee has always used for its own work: conveyancing needs to be simpler, quicker, cheaper and easier to understand. We recommend to the Law Commission that they should institute a review some 12 months after the new authorised practitioners become active providers of conveyancing services. This task could appropriately be carried out by us, or some other body, perhaps convened for the purpose, might be asked to undertake it. What we feel is important is that there should be a re-assessment of the services available to the public made by an independent, expert body with broad representation of the interested parties.

1.6 There has been one factor which has developed during the last four years and which has made it more difficult to obtain acceptance of reform proposals. Competition has become a feature, or a more dominant feature, of all areas of conveyancing. Licensed conveyancers⁵ started to compete with solicitors. The building societies' dominance as residential lenders was challenged by the banks and by new mortgage companies. Many estate agents have been reorganised into major national chains. In some cases, competition has produced major benefits for consumers in reduced prices. It has, however, made it more difficult for the professionals to accept suggestions for improvement from a central body, where the change carried no apparent commercial advantage. Individual practitioners, or

¹ The Committee first met on 19 November 1985.

² *First Annual Report 1985-1986* (HC 347), *Second Annual Report 1986-1987* (HC 319), *Third Annual Report 1988* (HC 227).

³ *Towards Easier Buying and Selling—Taking the Trauma out of Moving House*.

⁴ *Moving Without Tears*.

⁵ See Administration of Justice Act 1985.

professional organisations, have been anxious to gain cachet and advantage from being seen to introduce improvements, particularly those not available from their rivals. However, in an activity like conveyancing, which must essentially be co-operative, fragmented reform effort is never the best, and is frequently unsuccessful. Paradoxically, therefore, competition which helps the consumer in one way is detrimental to him in another.

Membership

1.7 There have been a number of changes in the membership of the Committee during the year. The appointments of Iain Cheyne, Jayne Herbert, Hugh Jones and David Yearsley come to an end. We are extremely grateful to them for their contributions to the Committee's work. In their places, we were pleased to welcome Richard Saunders, Solicitor to the Legal Services Conveyancing Department of National Westminster Bank plc; Hugh Dunsmore-Hardy, Regional Director of Hamptons Estate Agents; Kenneth Edwards, senior partner in the Brighton firm of solicitors Burt, Brill and Cardens; and Brian Bluett, licensed conveyancer and fellow of the Institute of Legal Executives.

1.8 From December 1985 until November 1989, Caroline Wehlau served as Secretary of the Committee. We all owe a great deal to her for her efficiency and cheerfulness, which has added much to the pleasure of our work and to the achievements of the Committee. We express our gratitude, and wish her well in her new appointment in the Lord Chancellor's Department. Caroline Wehlau was succeeded by Anne Jones.

Part II: Work in Progress

2.1 We met as a Committee on five occasions, and below we give a brief account of the main areas of our work. In Part IV of the report we record our publications during the year, as well as giving a full list of all the Committee's publications to date.

Flexi-mortgages

2.2 In March 1989 we published a consultation document⁶ suggesting the use of a new form of mortgage called a flexi-mortgage as a means of avoiding chains, cutting out delays and defeating gazumping. Its unique feature is that for a limited time it gives the borrower the right to extend the period of the mortgage on a property he is buying and increase the amount he borrows to cover the cost of an overlapping sale and purchase. Payments under his old mortgage are suspended. This allows the houseowner to agree to buy a new property before selling his own by incurring only a small increase in mortgage interest and without increasing his capital repayments.

2.3 Our proposals elicited a lively and largely sympathetic response from a range of bodies and individuals concerned with conveyancing, and particularly from financial institutions. There was support for our view that the elimination of chains of transactions was a way to speed up conveyancing, although some of those who responded lay the blame for delays elsewhere. However, the specific flexi-mortgage proposal was directly supported only by 35 per cent of our correspondents.

2.4 Amongst the reservations expressed were that reducing chains could have the effect of facilitating gazumping—a view we do not share, that the scheme might be difficult to explain to house buyers, that it might be unsuitable in certain phases of the market cycle and that any bridging finance must necessarily add to the cost of selling and buying.

2.5 We accept that our proposal would not be suitable for adoption in every case, and we did not put it forward on that basis. Rather, we saw it, and we still see it, as a useful addition to the armoury of weapons available to tackle a major impediment from which the market suffers. Some institutions who wrote to us suggested that they already offered, or would shortly offer, financial packages giving the same advantages as flexi-mortgages. We hope that they will help in reducing the impact of chains. For others, the flexi-mortgage scheme remains available for adoption. We did not receive any suggestions that variations to it would result in major improvements. We therefore continue to commend it for use where it would be helpful and when market conditions permit the launching of new financing schemes.

⁶ *Conveyancing Chains: One Way to Throw Them Off* (1989) available free from the Law Commission.

Deposits

2.6 The joint report by the Law Society and the Committee entitled "Deposits—No Time for a Change" was published in July following careful consideration of all the responses to the joint consultation paper. Our main conclusion was that payment of a deposit is desirable and legislation abolishing them seems an unnecessary interference with freedom of contract. If changes in market conditions rendered deposits unnecessary and undesirable the existing system of contract is sufficiently flexible to accommodate abolition without legislation. We also reached a number of other conclusions regarding deposits generally.

2.7 The consultation revealed some confusion as to the law relating to forfeiture of a deposit which has been passed on in a chain transaction and we therefore included an examination of the law in this area in one of our appendices to clarify the position.

Duty of Disclosure to Vendors

2.8 We published two consultation papers on the subject of the vendor's duty to disclose facts about the property he is selling in November 1988⁷ provisionally suggesting the reversal of the caveat emptor rule. Our Report was published in January 1990,⁸ having been prepared during 1989.

2.9 After analysing and taking into account the considerable number of responses to the consultation papers we have rejected our earlier suggestion and put forward a series of reform proposals designed to promote greater candour on the part of the vendor and availability of information to the purchaser without unnecessary trouble, delay and expense. The proposed reforms are: standard items of basic information being given in estate agents' particulars backed by the threat of prosecution for mis-statements, the centralisation of information in public registers, searches being carried out by sellers and preliminary enquiries before contract being confined to essentials as we previously recommended.⁹

The Transfer of Money on Completion

2.10 Our last annual report referred to the problems which can occur in connection with the transfer of money along "chains" of conveyancing transactions. We consulted specialists in this area and in December published our report¹⁰ recommending the adoption of a system of undertakings to avoid delay on the completion day. We looked at other alternative solutions but decided that this system is closest to the practical position at the moment and would require only a small modification of that practice.

2.11 The principle of the system is that instead of completion taking place when the funds are received by the seller's conveyancer, it occurs when the seller's conveyancer accepts an undertaking from the purchaser's conveyancer addressed to him and his bank stating that instructions have been given to the purchaser's bank to remit completion monies to him that day and that the instructions will not be revoked. In the event of the funds not arriving as promised losses are borne by the conveyancers and not the vendor or purchaser.

2.12 We are urging the Law Society and the Council of Licensed Conveyancers to encourage the use of this system and to amend the appropriate Accounts Rules to ensure that its use does not constitute a breach of them.

Local Authority Enquiries: Sewers

2.13 Following our examination of the provision of information by local authorities to house purchasers,¹¹ the Committee made representations during the passage through Parliament of the Bill leading to the Water Act 1989. The representations advocated the need for a requirement for all information relating to drains and sewers relevant to conveyancing transactions to be passed by privatised water companies to local authorities. Unfortunately this suggestion was not implemented.

⁷ *Caveat Emptor in Sales of Land and Honesty and Suspicion in Conveyancing* (1988) both available free from the Law Commission.

⁸ *Let the Buyer be Well Informed* (1990) available free from the Law Commission.

⁹ *Preliminary Enquiries: House Purchase—A Practice Recommendation, Guidance from the Conveyancing Standing Committee of the Law Commission*, (1987) Longman.

¹⁰ *Getting the Money to Move—Avoiding Completion Delays* (1989) available free from the Law Commission.

¹¹ *Local Authority Enquiries in Defeating Delays* (1988) available free from the Law Commission.

Part III: Reform of Conveyancing Law

Evidence submitted to other bodies

- 3.1 During the year we considered and responded to the following papers:
- Green Paper: Conveyancing by Authorised Practitioners
 - The Review of the Estate Agents Act 1979 by the Office of Fair Trading
 - Estate Agency: A consultation document by the Director General of Fair Trading

Reports considered by the Committee

3.2 We also considered "Moving Without Tears" by the National Association of Estate Agents and the Report of the Inter-professional Working Party on the Transfer of Residential Property. A response was submitted to the National Association of Estate Agents but no detailed response was made to the Working Party as the Committee thought this would be inappropriate due to our representation on the Working Party by our previous Chairman and Secretary.

3.3 The Law Society gave us the opportunity to comment on the Property Information Form, which was intended to form part of the documentation for its national conveyancing protocol. We were pleased to note, and to confirm to the Law Society, that the questions on the Form followed our published recommendations.¹²

Part IV: List of Publications by the Conveyancing Standing Committee

1990

January 1990 Let the Buyer be Well Informed (see paragraph 2.8 above).

1989

March 1989 Conveyancing Chains: One Way to Throw Them Off.
July 1989 Deposits on Exchange of Contracts in Residential Conveyancing—
No Time for a Change—Joint Report with The Law Society.
December 1989 Getting the Money to Move: Avoiding Completion Delays

Earlier publications

24 April 1986 What Should We Do About Old Restrictive Covenants?—A
Consultation Paper.
14 January 1987 Pre-Contract Deposits—A Practice Recommendation.
25 March 1987 Preliminary Enquiries: House Purchase—A Practice Recommendation.
15 September 1987 House Selling the Scottish Way for England and Wales—An
Explanatory Guide.
11 December 1987 Local Authority Enquiries: How Can We Eliminate Delays?—A
Consultation Paper.
22 March 1988 Deposits on Exchange of Contracts in Residential Conveyancing—
Time for a Change?—A Consultation Paper.
15 November 1988 Caveat Emptor in Sales of Land—A Consultation Paper. (Summary
—Honesty or Suspicion in Conveyancing?)
16 December 1988 Local Authority Enquiries: Defeating Delays—Recommendations.

¹² *Preliminary Enquiries: House Purchase—A Practice Recommendation, Guidance from the Conveyancing Standing Committee of the Law Commission, (1987) Longman.*

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