

Scottish Law Commission

(SCOT. LAW COM. No. 57)

REPORT ON LOST AND ABANDONED PROPERTY

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by the Lord Advocate
under section 3(2) of the Law Commissions Act 1965*

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The Scottish Law Commission was set up by section 2 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law of Scotland. The Commissioners are:

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SCOTTISH LAW COMMISSION

*To The Right Honourable the Lord Mackay of Clashfern, Q.C.,
Her Majesty's Advocate.*

In accordance with the provisions of section 3(1)(b) of the Law Commissions Act 1965, we submitted on 16th September 1965 our First Programme for the examination of several branches of the law of Scotland with a view to reform. Item No. 2 of that Programme requires us to proceed with an examination of the law of Obligations.

In pursuance of Item No. 2 we have examined the law relating to lost and abandoned property and to the disposal of uncollected goods. We have the honour to submit our proposals for the reform of this branch of the law.

J. O. M. HUNTER
Chairman of the Scottish Law Commission

9 October 1979

CONTENTS

| PARTS | <i>Paragraph</i> | <i>Page</i> |
|---------------------------------------------------------------------------------------------------------------------------------------------------|------------------|-------------|
| I INTRODUCTION | 1.1 | 1 |
| General legal background | 1.5 | 2 |
| Policy objectives | 1.13 | 6 |
| II THE CROWN'S RIGHTS | 2.1 | 6 |
| Recommendations | 2.17 | 11 |
| III THE ROLE OF THE CHIEF CONSTABLE | 3.1 | 12 |
| Recommendations | 3.6 | 14 |
| IV CARE AND DISPOSAL OF LOST PROPERTY | 4.1 | 14 |
| Tracing the owner | 4.1 | 14 |
| Informing the Crown for its interest | 4.2 | 15 |
| Claims by the owner | 4.3 | 15 |
| Disposal of unclaimed property | 4.7 | 16 |
| Recommendations | 4.13 | 18 |
| V RIGHTS AFTER DISPOSAL: THE ESTABLISHMENT OF A COMPENSATION FUND | 5.1 | 19 |
| Recommendations | 5.15 | 23 |
| VI THE FINDER | 6.1 | 23 |
| The obligations of the finder | 6.1 | 23 |
| The rights of the finder | 6.10 | 27 |
| Recommendations | 6.18 | 29 |
| VII UNCOLLECTED PROPERTY | 7.1 | 30 |
| Recommendations | 7.24 | 37 |
| VIII LIVING CREATURES | 8.1 | 39 |
| Recommendations | 8.6 | 41 |
| IX SUMMARY OF RECOMMENDATIONS | | 41 |
| Appendix | | |
| I Draft Lost and Uncollected Property (Scotland) Bill with Explanatory Notes | | 49 |
| II List of those who submitted comments on Memorandum No. 29 | | 84 |
| III Extracts from the Burgh Police (Scotland) Act 1892 and the local Acts | | 85 |
| IV Extracts from the British Airports Authority (Lost Property) Regulations 1972 and the Public Service Vehicles (Lost Property) Regulations 1934 | | 89 |

REPORT ON LOST AND ABANDONED PROPERTY

PART I INTRODUCTION

1.1 This report considers the rules of the law of Scotland concerning lost or abandoned property and the disposal of uncollected goods, examines the defects in these rules and makes proposals for their reform. Annexed to this report is a draft Bill giving effect to these proposals.

1.2 Our report has been prepared following extensive consultation based on our Memorandum No. 29.¹ We are grateful to those persons and organisations, specified in Appendix II, who submitted to us written and oral observations, and these have been of considerable assistance in formulating the final proposals contained in this report. We have also derived much assistance from a consultative document issued by the Working Party on Civic Government,² which contained a section on the disposal of lost property.

1.3 Our approach, however, has been somewhat broader than that of the Working Party on Civic Government. In relation to lost or abandoned property we have considered not merely the role of local authorities but the position of other public undertakings. We have also thought it right to consider the general law relating to the rights of a finder of lost or abandoned property, the rights of a subsequent acquirer, and the residual rights of the owner and of the Crown. The similarity between the position of the owner of lost or abandoned property and that of the owner of uncollected goods led us to consider also the problems, of considerable practical importance following the repeal of the Disposal of Uncollected Goods Act 1952, associated with the disposal of uncollected property.

1.4 Though we have been asked by you to expedite the preparation of this report in view of the possible introduction in the near future of a Government Bill for a code of civic government to replace the Burgh Police (Scotland) Acts and various local Acts, we would view with some concern the inclusion in that code of legislation of the subject matter of this report. The problems with which this report is concerned are problems less of civic government than of the general law relating to rights in corporeal moveable property, a branch of the law which we considered in a series of consultative memoranda published in August 1976.³ The inclusion of

¹Which we refer to subsequently as "the Memorandum".

²Published in April 1976.

³These memoranda, published under our programme subject Obligations (Item 2 of our First Programme (1965)), were as follows:

24: General introduction and summary of provisional proposals

25: Passing of risk and of ownership

26: Some problems of classification

27: Protection of the onerous *bona fide* acquirer of another's property

28: Mixing, union and creation

29: Lost and abandoned property

30: Usucapion, or acquisitive prescription

31: Remedies

statutory provisions relating to lost property in the Burgh Police (Scotland) Acts and in the local Acts was a matter of temporary legislative convenience and distorts the systematic presentation of the law. We suggest that the proposals contained in this report should be embodied in separate legislation which would eventually form part of a code relating to rights in corporeal moveable property.

General legal background

1.5 It is a general principle of Scots law—differing in this respect from many legal systems, including Roman and English law—that things which were once in ownership but have ceased to have any known owner become the property of the Crown. Once a thing has become the subject of ownership it can never be ownerless.⁴ It belongs to the person entitled to it until he loses his right by abandonment, prescription or statutory procedures, and at common law the thing vests in the Crown as soon as the private right is lost. The principle is stated succinctly by Bell:⁵

“Things already appropriated, but lost, forgotten, or abandoned, fall under a different rule from that which regulates things that have never been appropriated. The rule is *‘quod nullius est fit domini regis’*. The principle on which this rests is public expediency—to avoid fraud, contests, and litigation, together with some slight purpose of adding to the public revenue.”

If such property is handed over to another it is not as a matter of right but donation.⁶ Thus on failure of all next of kin the estate of a deceased falls to the Crown by caducuary right, and it is the duty of any possessor to hand it over to the Queen’s and Lord Treasurer’s Remembrancer.⁷ Similarly by statute⁸ the property of a dissolved company is deemed to be *bona vacantia* and belongs to the Crown.

1.6 The common law of Scotland regarding “treasure” is merely one aspect of this rule. This rule and Bell’s formulation of it were expressly approved in *Lord Advocate v. University of Aberdeen and Budge*⁹ when the Crown’s claim to buried “treasure” was upheld. The related proposition that the Crown’s claim to ownerless property is general and not restricted to “treasure” is supported by other institutional authority¹⁰ and by earlier case law.¹¹ In England, by contrast, there is a special law of “treasure trove” which is restricted to precious metals.

⁴On the other hand things which never had an owner can—subject to several exceptions—be appropriated into private ownership.

⁵*Principles* s.1291 (10th (Guthrie) edn.).

⁶*ibid* s.1287.

⁷*Rutherford v. Lord Advocate* 1932 S.C.674.

⁸Companies Act 1948, s.354.

⁹1963 S.C.533. See also T. B. Smith “The Law Relating to the Treasure” in *St. Ninian’s Isle and its Treasure* (Aberdeen University Studies Series No. 152 edn., Small, Thomas & Wilson 1973) p. 149 *et seq.*

¹⁰For fuller citation see references in *Lord Advocate v. University of Aberdeen and Budge*.

¹¹*Gentle v. Smith* (1788) 1 Bell Ill. 375; *Sands v. Bell and Balfour* May 22 1810 F.C.; cf. *Cleghorn v. Baird* (1696) Mor. 13522.

1.7 Superimposed upon the common law are a number of statutory provisions which have not been harmonised with it. Some of the statutes regulating disposal of property are limited in their application to Scotland or apply only to particular local authorities. Others, such as the British Airports Authority (Lost Property) Regulations 1972¹² and the Public Service Vehicles (Lost Property) Regulations 1934,¹³ apply throughout Britain.¹⁴ It is not clear whether the various statutes or statutory instruments, which make no references to the rights of the Crown, abrogate the Crown's claims altogether.¹⁵ In Scotland the interests of the Crown are now represented by the Queen's and Lord Treasurer's Remembrancer, but, while he is concerned with finds of archaeological interest and "treasure", we understand that there has been no case in which the interest which he represents has come into conflict with statutory procedures for disposal of lost property.¹⁶

1.8 The principal Scottish legislation relating to lost property is the Burgh Police (Scotland) Act 1892.¹⁷ Variants of this legislation appear in local Acts which apply to Aberdeen, Dundee, Edinburgh, Glasgow and Greenock.¹⁸ Power is conferred on local authorities throughout Great Britain to dispose of abandoned vehicles and other abandoned property.¹⁹ In broad terms it may be said that there is comprehensive statutory provision throughout Scotland requiring, under penalty, finders of lost property to deposit it with the police (unless some special procedure is appropriate), and providing for its disposal by an authorised public officer if it is not claimed by the owner

¹²S.I. 1972/1027. These regulations are made under s.56 of the Civil Aviation Act 1949.

¹³S.I. 1934/1268 (Rev. XX, p.436), which does not, however, apply to London, for which special provision has been made. These regulations extend to Scotland by virtue of s.30 of the Road Traffic Act 1934, which expressly disapplied s.412 of the Burgh Police (Scotland) Act 1892 and the corresponding provisions of the local Acts to property found in public service vehicles.

¹⁴The relevant excerpts from these regulations appear in Appendix IV.

¹⁵The common law rights of the Crown over found and abandoned property are not coextensive in Scotland and England, and there seems to be a difference between Scots and English law as to the extent to which the Crown is bound by statutory provisions—see J. D. B. Mitchell *Constitutional Law* (2nd edn.) p. 183. The rule that the Crown is not bound by statute unless it is otherwise provided appears to have been introduced into Scotland after the Union of 1707 by the Court of Exchequer (which in general applied principles of English law). Nevertheless there is authority for a modified version of the older Scottish doctrine that a statute binds the Crown when it has been passed for the benefit of the public as a whole—see e.g. *Magistrates of Edinburgh v. Lord Advocate* 1912 S.C.1085.

¹⁶We understand that if "treasure" is handed in to the police it is sent immediately to the procurator fiscal, who acts in this respect as agent for the Queen's and Lord Treasurer's Remembrancer.

¹⁷S.412, which was extended to landward areas by the Lost Property (Scotland) Act 1965. We refer to this Act subsequently as "the Burgh Police Act".

¹⁸Ss. 5 and 15 and Sch. 2 of the Burgh Police Act. The five local Acts are: Aberdeen Corporation (General Powers) Order Confirmation Act 1938 (s.199); Dundee Corporation (Consolidated Powers) Order Confirmation Act 1957 (ss.478 and 480); Edinburgh Corporation Order Confirmation Act 1967 (ss.497-503); Glasgow Corporation Consolidation (General Powers) Order Confirmation Act 1960 (s.152(10)); and Greenock Corporation Act 1893. The relevant statutory provisions appear in full in Appendix III. We refer to these Acts subsequently as "the Aberdeen Act", etc.

¹⁹Refuse Disposal (Amenity) Act 1978.

within six months. Special provision is made for expeditious disposal of perishable goods.²⁰ If the owner claims his property, he may have to pay a sum towards police expenses and a reward to the finder. If the owner does not claim his property, there is sometimes a discretion to award the property to the finder,²¹ and sometimes a direction to do so,²² subject to deduction of police expenses. The finder has no such expectation under the British Airports Authority (Lost Property) Regulations 1972 or the Public Service Vehicles (Lost Property) Regulations 1934.²³ Under these regulations, unclaimed lost property is disposed of for the benefit of the operator or the operator's employees.

1.9 Where the common law applies, a finder can only acquire by gift of the Crown; where statute law applies, authority to award unclaimed property to someone other than the owner is in general restricted to the finder.²⁴ Thus competition between the actual finder and other claimants, such as the finder's employer, or the owner or occupier of land on which the property was found, does not often arise, as it does in many civilian systems or in English law.²⁵ There is a dearth of authority on these questions in Scots law, and text writers have relied mainly on English common law rather than statutory authority.²⁶

1.10 We have considered the solutions of a number of other legal systems. In civilian systems, while special rules apply to objects of historic, archaeological or artistic value found buried in the ground, the general rule regarding buried "treasure" is to make equal division between landowner and finder. As regards other types of lost property, there is normally a general duty imposed on finders to notify or to hand over such property to a public authority. If the owner does not claim his property within a prescribed period, it is disposed of either to the finder or for the benefit of the community, a reward being paid to the finder. The general law is often overlaid by regulations governing the disposal of certain types of property. In some cases, after the sale of unclaimed property, the balance of the proceeds is retained to provide partial compensation for late claimants. While in Italian²⁷ and German²⁸ law the finder of unclaimed lost property may become owner a year after notifying his discovery, in French law the original owner may usually reclaim his property, even from an acquirer in good faith, within a period of three years from the time of the

²⁰e.g. s.500 of the Edinburgh Act.

²¹e.g. s.412 of the Burgh Police Act.

²²e.g. s.499 of the Edinburgh Act.

²³Or, where applicable, British Rail's Conditions of Carriage of Passengers and their Luggage (May 1978).

²⁴However, under earlier legislation in Glasgow (the Glasgow Police Act 1866, ss.101 and 103) property might be disposed of otherwise than to the finder, though we understand that a Corporation minute authorised the handing over of unclaimed property to a finder.

²⁵See para. 1.11.

²⁶See Gloag and Henderson. 7th edn. p. 501; Bell, *Principles*, 10th (Guthrie) edn. s.1291; Walker, *Principles of Scottish Private Law*, 2nd edn. p.1550; *Cleghorn v. Baird* (1696) Mor. 13522; *Corporation of Glasgow v. Northcote* (1922) 38 Sh. Ct. Rep. 76.

²⁷Codice Civile Arts. 927 *et seq.*

²⁸B.G.B. Arts. 965-984.

loss.²⁹ The Czechoslovak solution³⁰ is to distinguish between unclaimed lost property of small and of substantial value. If the property is of small value it is awarded to the finder; if it is of substantial value, it is appropriated to the state and a reward is paid to the finder.

1.11 While the law of England,³¹ and systems derived from it in the United States³² and Canada,³³ are rich in illustrations, the English common law background is so different from Scots law that it would not be profitable to analyse it in detail. In English common law there is no general duty imposed on finders of property to notify the police or other public authority. There has been considerable controversy in English law as to the relative rights of a finder in competition with the occupier of land or premises, or the owner of a chattel (such as a safe) in which the lost object was found, or the finder's employer. Except in the special case of "treasure trove", the better right to unclaimed property is linked to the doctrine of possession, and accordingly the occupier of land or the owner of a chattel is deemed to possess objects found therein, even if he was unaware of their existence. The element of trespass on land may also be relevant. Where the articles are found unattached on the surface of land the law is particularly complex.³⁴ We note, too, that though distinguished jurists have written extensively on this branch of the English common law, they are dissatisfied with its theoretical basis, and we are not therefore inclined to recommend its grafting on to Scots law. In certain American states statute law provides for escheat³⁵ of unclaimed and lost property, but in general American law seems less preoccupied by the factor of possession of land and premises than English law;³⁶ public opinion appears to favour the finder rather than an occupier.³⁷

1.12 Statutory provisions in England contrast strikingly with the favour shown by the English common law to the person with the better right to possess unclaimed property: the public interest is preferred to the private windfall. An early example³⁸ required drivers under sanction of fine or imprisonment to hand in at a police station property left in a hackney

²⁹Code Civil Art. 2279. See also Carbonnier, *Droit Civil* Vol. 3—*Les Biens* p. 285.

³⁰Code (1950) Art. 119, cited by Carbonnier, p. 285.

³¹The relevant English authorities are collected in Crossley Vaines' *Personal Property* 5th edn. (1973), Chapter 17 p. 419 *et seq*; see also D. R. Harris "The Concept of Possession in English Law" *Oxford Essays in Jurisprudence* (First Series) p. 69; O. R. Marshall "The Problem of Finding" (1949) 2 *Current Legal Problems* p. 68.

³²See D. Riesman "Possession and the Law of Finders" (1939) 52 *Harv. L.R.* 1105 for a comprehensive survey of the law in the United States.

³³e.g. E. C. E. Todd (1957) 35 *Can. Bar. Rev.* 962; S. F. Sommerfeld (1958) 36 *Can. Bar. Rev.* 558.

³⁴See Crossley Vaines' *Personal Property*, 5th edn. (1973), Chapter 17 p. 426:

"The most that can be said is that a finder only acquires a good title as against all but the true owner when he finds the goods in a public place, leaving open the question of what is a public place, or in circumstances where there can be no *animus possidendi* or intention to exclude on the part of some person other than the true owner."

³⁵i.e. the property falls to the state.

³⁶See D. Riesman "Possession and the Law of Finders" (1939) 52 *Harv. L.R.* 1105.

³⁷e.g. *Keron v. Cashman* 33 *Atl.* 1055 (N.J. Eq. 1896), (1896) 10 *Harv. L.R.* 63.

³⁸Hackney Carriages (London) Act 1853, s.11.

carriage, and provided that, if the property was unclaimed after one year, it was to be disposed of and, after deduction of expenses and of such reasonable reward as the commissioners determined, the proceeds were to be paid over to the public account. This policy of English statute law has influenced subsequent United Kingdom and British legislation.

Policy objectives

1.13 Finally we set out the broad principles which have influenced our thinking in formulating a modern and consistent scheme for the administration of lost and abandoned property (including uncollected property):

- (i) The principal objective of the law should be to encourage and assist the owner to recover his property.
- (ii) The owner should be given a reasonable time within which to recover his property.
- (iii) Where the owner does not claim his property within a reasonable period, the law should regulate clearly how the property is to be disposed of, and the nature of the title of the person to whom the property is ultimately delivered.
- (iv) As a matter not only of law but also of practical expediency, a finder should be encouraged to restore lost property either to the owner or to some person in authority.
- (v) There should be some reasonable incentive, by means of reward or otherwise, to encourage finders to hand in or report the discovery of lost property.
- (vi) There should be criminal sanctions to deter dishonest finders from misappropriating lost property.
- (vii) The owner of lost property should know where to direct his enquiries in order to attempt retrieval.
- (viii) Public administrators of lost property should be relieved of the burden of storage after a reasonable time.
- (ix) The law should seek to avoid conflicts between the Crown and those who are entrusted by statute with the custody of lost and abandoned property.
- (x) The law should seek to avoid conflicts between the Crown, local authorities and other bodies which are financed either wholly or partly out of public funds.
- (xi) The law should protect property of historical, antiquarian or cultural importance.

PART II THE CROWN'S RIGHTS

2.1 In the Memorandum we stated, as one of the objectives of the law, that conflicts should be avoided between the Crown and those who are entrusted by statute with the custody of lost and abandoned property;¹ and

¹Proposition (x), para. 13; see also para. 1.13(ix) of this report.

between the Crown, local authorities and other bodies who are financed either wholly or partly out of public funds.² We understand that conflicts between the Crown and the police do not in practice arise: both are dealing with different kinds of lost or abandoned property in the public interest.³ There is, we understand, a standing arrangement whereby anything which falls within the general category of “treasure” is sent by the police, as soon as they receive it, to the procurator fiscal (who acts for this purpose as the agent of the Queen’s and Lord Treasurer’s Remembrancer). The procurator fiscal prepares a report for the Queen’s and Lord Treasurer’s Remembrancer, whose function is to decide what should be done with the property.

2.2 The second potential conflict arose in the St. Ninian’s Isle Treasure case⁴ to which we have already referred. Excavations had been carried out under the auspices of Aberdeen University, who understandably were anxious (quite apart from any question of ownership) to exercise some control over the place where the treasure would be kept and exhibited. In response to the conflict of interest which arose in that case we understand that in 1969 a committee was set up under the auspices of the Queen’s and Lord Treasurer’s Remembrancer, and that this committee makes recommendations for the disposal of items of historic, archaeological or cultural value which become the property of the Crown. The committee considers the disposal of any such property, whether it has been handed in to the police, to a museum or to any other person.

2.3 In the Memorandum⁵ we suggested the retention of the principle that the Crown should, as at present, become the owner of abandoned property. We referred to doubts as to whether the general rule applies when the original owner intended to abandon his property but his identity is known. We indicated two possible approaches in those circumstances, on which we solicited comment: either to re-assert the general right of the Crown; or to permit an appropriator of deliberately abandoned property to become owner. In the latter case we suggested that the onus of proof that the item had been abandoned should rest on the appropriator. A majority of those who commented favoured some derogation from the Crown’s rights: we were urged to consider limiting the Crown’s right to the types of property in which the Crown has in the past expressed an interest.

2.4 We have concluded that there are advantages in expressing the Crown’s right to the ownership of abandoned property in very wide terms. First, the statutory clarification of the Crown’s rights will remove any ambiguity over the scope of property which the Crown is entitled to claim. We have already indicated⁶ that in our view the Crown’s claim to abandoned

²Proposition (xi), para. 13; see also para. 1.13(x) of this report.

³See e.g. Lord Hunter (Ordinary) in *Lord Advocate v. University of Aberdeen and Budge* 1963 S.C. 533 at p. 549: “Things lost, if they were not precious, were of little interest to the Crown and . . . in modern times it has been found convenient as a practical matter to deal with lost property under the relevant police statutes.”

⁴*Lord Advocate v. University of Aberdeen and Budge* 1963 S.C. 533.

⁵Paras. 54-55.

⁶Para. 1.6.

property under the present law is general and not restricted to treasure. We regard a category of “treasure”—that is, of objects made of precious metals, and whether or not deliberately abandoned—as obsolete, and we believe that the law should permit the Crown to lay claim to any objects of archaeological, historic or cultural interest and to distribute them through the machinery described above.⁷ We regard as irrelevant the fact that the original owner may or may not have deliberately abandoned his property: the only relevant criterion should be that there is no longer an owner to whom the property can be restored.

2.5 The second reason is that the principal objective of the law should be to encourage and assist the owner to recover his property.⁸ All other potential interests, including that of the finder, should be regarded as subordinate ones. It is often quite impossible for a finder or for the persons to whom the finding of an article is reported to determine whether the article has been abandoned, lost or stolen. This suggests that immediate appropriation by a finder should not be permitted, irrespective of the characteristics of the object, but that the finder should be obliged to hand in the article to the authorities, as he is obliged to do in the case of lost property. There can be little doubt that a departure from such a rule would in many cases exacerbate the difficulties encountered by the police in dealing with stolen property; and that, moreover, if it were permissible to acquire an item believed to be abandoned which was in fact lost or stolen, the original owner’s prospects of recovering his property would be seriously diminished. The fact that the Crown may be deemed in certain circumstances to be the owner of abandoned property does not, of course, mean that the Crown will wish to exercise its rights of property in every case; nor is it always possible to regard an owner who has parted with his property as having abandoned it.⁹

2.6 Thirdly, our approach does not prejudice the interest of finders. Irrespective of whether widespread rights are conferred on finders of lost property generally,¹⁰ the expectations of a finder of “treasure” are in practice very high. It is the policy of the Crown to pay, in most cases, the full market value of an article to the finder. This policy was succinctly explained to us by the Council of the Society of Antiquaries of Scotland:

“The *ex gratia* character of the rewards for what the Scottish Exchequer Office conveniently though incorrectly calls in all cases ‘treasure trove’, allows recognition of merit within a wide range of circumstances. The basic premise is that rewards are not simply due in fairness for recovery, proper looking after, and reporting, what is claimed by the Crown, but are necessary to ensure this. Experience over the last century and a half has shown, first that lack of reward drove everyone to concealment, then that payment of full intrinsic

⁷Para. 2.2.

⁸See para. 1.13(i).

⁹e.g. the traditional, albeit now rare, practice of a bridegroom scattering coins, which is properly to be regarded as a gift to the first takers, or at least those present at the occasion. This was classified in Roman law as *traditio incertae personae*.

¹⁰A view which we reject in paras. 6.11 to 6.15.

or bullion value (introduced 1859) was insufficient to meet collectors' prices; so that since 1929 the standard set in consultation with the Treasury by the British Museum (which administers for England) has been 'full market value'. (This is currently defined as what a knowledgeable and reputable dealer would pay for the objects as found, which can often at best be a reasonable estimate; and the Treasury might effectively impose an upper limit. The Crown recovers the rewards from the museums to which the objects are allocated, an ordinary (purchase-fund) or special grant being normally now available from the Government.) . . . The Council recommends payment of full market value.

A deterrent to concealing and to damaging 'treasure trove' is provided by rewards being reduced or withheld in such circumstances; in one well publicised case in England in recent years this was fiercely punitive."

We ourselves have no cause to criticise this practice.¹¹

2.7 Finally, to give the Crown a central role in relation to lost and abandoned property assists in the devising of a satisfactory scheme to deal with a special category of abandoned property, that of uncollected goods. Following the repeal of the Disposal of Uncollected Goods Act 1952, the rights of the depositor and depositary have been governed, failing other provisions in the contract of deposit, by the common law, but that law leaves uncertain when the property may truly be said to be abandoned and so presents considerable problems for depositaries. Our proposals, while ultimately asserting the Crown's caducary rights in such property, do so within a scheme which clarifies the position of the depositor and depositary, and protects the ultimate purchaser of the goods.¹²

2.8 The essence of the decision in *Lord Advocate v. University of Aberdeen and Budge*¹³ is that the Crown's right to treasure is a right belonging to the sovereign by virtue of his royal prerogative and as head of a national community rather than by virtue of his position as universal landlord.¹⁴ Accordingly, it does not matter whether the land on which treasure is found is udal or feudal: the Crown's rights will be the same. In the Memorandum¹⁵ we expressed the view that any doubts regarding the Crown's rights in Orkney and Shetland should be removed. Standing the present state of the law, we can see no reason why our recommendations on the extent of the Crown's rights—and indeed the other recommendations contained in this report—should be disappplied to these islands.

2.9 We referred in Part I¹⁶ to the principle of our law that things which were once in ownership but have ceased to have any known owner become the property of the Crown; and that once a thing has become the subject

¹¹However, we reach somewhat different conclusions in relation to "ordinary" lost property—see paras. 6.11 to 6.15.

¹²See Part VII.

¹³1963 S.C. 533.

¹⁴See Lord Hunter (Ordinary) at p. 543; Stair II.i.5; III.iii.27.

¹⁵Para. 68.

¹⁶Para. 1.5.

of ownership it can never be ownerless. This principle must, however, be qualified in the case of a wild creature: it is regarded as belonging to no-one, not even to the Crown, until it is reduced to captivity.

2.10 The institutional writers were careful to distinguish between genuinely wild creatures and those creatures which, while having apparent liberty, were subject to ownership. Thus Bell¹⁷ commented as follows:

“Things which may be appropriated by occupancy are not capable of being so acquired while the possession of the first holder continues; as in the case of wild animals confined (deer in a forest, rabbits in a warren, pigeons in a dovecot, bees in a hive), or tame and domesticated animals, though not confined. When wild animals confined and appropriated have regained their natural liberty, they are again free to be acquired by occupancy. But a different rule prevails in respect to such animals as have *animus revertendi*; as pigeons, hawks in pursuit of prey, bees hiving while pursued by the owner; and also as to such as are marked for private property, as deer and swans with collars.”

Thus a creature will remain the property of its owner after escaping until, in effect, the owner gives up the quest for it and can be regarded as having abandoned it.

2.11 The policy of the law in former times appears to stem from the ease with which wild creatures can move from place to place and the difficulty of establishing ownership of unmarked creatures. We have considered whether this policy remains sound, especially in view of the emergence of commercial enterprises such as deer-farming and fish-farming, and have concluded that it does. A change in the law, so as to confer rights on the Crown, would in many cases serve little purpose, because there would be no means of establishing whether a creature had had a previous owner. It would, moreover, derogate from the normal incidents of landownership, one of which is the right of appropriating deer and game birds which may be found on one's land. Above all, the owner of a wild creature must not be deprived of the opportunity to recover his property, an opportunity which is permitted by the existing law.

2.12 In the Memorandum¹⁸ we considered, without indicating any support for the idea, the possibility that there should be a duty to report the discovery of (or perhaps, in appropriate circumstances, to take possession of) a limited category of corporeal moveables, where a criterion such as historical, cultural or antiquarian importance was satisfied. There was no support for this idea on consultation, mainly on practical grounds. Apart from the problem of defining this category with sufficient precision, specialised knowledge would be required to recognise items within it. Nor would there be any effective sanction against failure to discharge such an obligation. We agree with these observations, and make no recommendation.

2.13 In the Memorandum we raised a number of other matters, all of which relate to the protection of items of archaeological, etc., interest.

¹⁷*Principles*, s.1290 (10th (Guthrie) edn.).

¹⁸Provisional proposal 2 and para. 17.

Some of these we have already discussed—for instance the extent of the Crown's interest,¹⁹ the payment of compensation to the finders of such articles if they are claimed by the Crown,²⁰ and the possibility that there should be a duty to report finds to the appropriate authorities.²¹ A wide range of problems was brought to our attention on consultation, most of which concerned administrative matters which we regard as falling out-with the scope of our examination of the law. There were, however, a few matters which merit discussion in this Part of the report.

2.14 The Council for British Archaeology, Scottish Group, referred to a case in 1879 which has cast doubt on the Crown's right to reclaim objects from *bona fide* third party purchasers. We dealt more generally with the problem of good faith acquisition of corporeal moveables in Memorandum No. 27, and will consider this particular problem in a subsequent report.

2.15 The same organisation also questioned whether skeletons and property buried with a dead person could be regarded as ownerless and therefore ultimately the property of the Crown. It may be a matter of some speculation as to who, after the death of a person, becomes the owner of the remains or property buried with it. This is mainly a problem for the criminal law, which regards the removal of a body from a grave not as theft but as the separate crime of violation of sepulchres.²² From the point of view of the civil law, we do not think that any useful purpose would be served by attempting to legislate specifically on these matters.²³ Archaeologists are naturally concerned to know how long an interval should elapse after an interment before excavation should be permissible, but this seems to us to be a matter regulated as much by good taste and good sense as by any particular rule of law.

2.16 Finally, the general opinion on consultation was that it would be undesirable to place further restrictions on the use, disposal or destruction of privately owned corporeal moveable property in the preservation of which there may be thought to be a public interest. In any case the regulation of such matters is not wholly germane to the subject matter of this report.

2.17 Recommendations

1. The principle that the Crown's right to abandoned property is general, and is not restricted to "treasure", should be expressly stated in legislation (paragraphs 2.1 to 2.8).

2. Recommendation 1 does not affect any rights which the Crown may have to the ownership of wild creatures (paragraphs 2.9 to 2.11).

¹⁹Paras. 2.1 to 2.11.

²⁰Para. 2.6.

²¹Para. 2.12.

²²For a commentary on the criminal law, see Gordon, *Criminal Law*, 2nd edn. para. 14-44.

²³It follows, however, from recommendation 1 in para. 2.17 that if the Crown's right to abandoned property is reasserted in legislation, a charge of theft will become competent in circumstances where it is the present practice to bring a charge of violation of sepulchres.

PART III THE ROLE OF THE CHIEF CONSTABLE

3.1 We enquired in the Memorandum¹ whether the administrator of lost property should continue to be the chief constable. We expressed the belief that the public have confidence that the police administer satisfactorily the present law relating to the disposal of lost or abandoned property. The unanimous view which emerged on consultation was that the responsibility for dealing with lost property should remain with the police, principally for the two reasons advanced in the Memorandum: the close link between lost and stolen property; and public satisfaction with the existing role of the police. The police themselves are anxious to retain this function. We therefore recommend that the office of administrator of lost property should be held by the chief constable.²

3.2 A more complex question is whether the chief constable should alone perform this function.³ We have already referred to the fact that certain transport undertakings in Scotland are at present permitted to operate under special schemes.⁴ In the Memorandum we observed that if there was to be a single public administrator, the continued existence of these special schemes would be called into question. The question now arises whether the responsibilities of the chief constable should be extended.

3.3 It is difficult to resist the conclusion that schemes which enable certain transport undertakings to apply different rules of law should not survive in this branch of the law. It is hard to justify an exception or a series of exceptions simply because certain undertakings, which may operate on both sides of the Border, wish to apply a common set of rules. Not even this ostensible justification can be urged in the case of those Scottish transport concerns to which the Public Service Vehicles (Lost Property) Regulations 1934 apply. The overriding principle should in our view be to apply the same regime of law to all property found in Scotland unless sound reasons can be adduced to the contrary, and this approach was almost universally welcomed on consultation.

3.4 The advantage of such a solution does not, however, depend solely on principle. It was made abundantly clear to us that lack of uniformity can and does cause inconvenience both to the police and to members of the public who have lost their property. If, for example, a person finds an article on a bus and hands it to the police, not only is the finder (technically speaking) in breach of the Public Service Vehicles (Lost Property) Regula-

¹Paras. 36-37.

²We envisage a continuation of the present practice whereby the day-to-day administrative functions are carried out by other members of the police force.

³Subject to the role of the Queen's and Lord Treasurer's Remembrancer—see generally Part II, especially paras. 2.1, 2.2 and 2.6.

⁴Para. 1.7. See Appendix IV for the relevant statutory provisions. The Crown itself operates special rules in relation to certain buildings—e.g. the Palace of Holyroodhouse—but we understand that the volume of lost property handled in these buildings is insignificant and that in some cases any item remaining unclaimed is handed to the police.

tions by failing to hand the item to the conductor,⁵ but the police are obliged under the same Regulations to pass the article on to the relevant transport undertaking. The owner of the property may not recall where he lost it. If he has arrived in Scotland at an airport, and has continued his journey by other forms of transport, he may have to make enquiries in several places in the same city before he traces his property. This strikes us as being absurd.⁶ Moreover, if our conclusions on rights to ownership of lost property are accepted, it would be inconsistent to confer qualified confiscatory rights by statute on certain selected public undertakings only,⁷ while denying such rights to private concerns and to members of the public. Above all, if our proposals to set up a compensation fund are accepted,⁸ a substantial injustice would be caused to certain owners who may have had the misfortune to mislay their property during the course of travel. Indeed, the continuation of the present exceptions to the authority of the chief constable might strengthen the claims of others to special treatment—including, perhaps, department stores wishing to operate similar rules in all their branches throughout the United Kingdom. We recommend, therefore, the abolition of these special privileges.⁹

3.5 We appreciate that one factor which may have weighed heavily in the past in favour of allowing transport undertakings to apply a uniform system of law throughout the United Kingdom is that lost property may be found in transit. A common solution within the United Kingdom does not, of course, resolve similar problems which may arise increasingly in the course of international travel. We argued in the Memorandum that it was important to devise a simple test and suggested that if property is discovered on a form of transport whose destination is in Scotland, the substantive law of Scotland should apply to the property from the time when it is found.¹⁰ In reviewing the matter it seems to us that the law of Scotland has no concern with the custody and disposal of lost property unless the property is brought into Scotland, either by the finder, or by a person in authority to whom it has been entrusted by the finder. We therefore recommend that any legislation following on this report should apply to property situated in Scotland.¹¹ The effect of this recommendation is that if an article found on a train or an aircraft were handed by the finder

⁵Regulation 4 provides: "Any person who finds property accidentally left in a vehicle shall immediately hand it in the state in which he finds it to the conductor . . ."

⁶We understand that a significant proportion of lost property which remains unclaimed for a long period appears to have been lost by tourists.

⁷This seems to be the practical consequence of the British Airports Authority (Lost Property) Regulations if the owner presents a claim more than a year after his loss. The authority is entitled to sell after 3 months, and the loser's right to the net proceeds will effectively be extinguished after a year because the authority is not obliged to keep records after this time.

⁸See Part V.

⁹The implementation of this recommendation requires the repeal of s.56 of the Civil Aviation Act 1949 and s.16 of the Airports Authority Act 1975. The draft Bill annexed to this report precludes (except where indicated) the possibility of contracting out of any new statutory provisions.

¹⁰Provisional proposal 11, para. 33.

¹¹This recommendation is given effect in the draft Bill in the definition of "chief constable" in clause 16. "Chief constable" is defined to mean "the chief constable of the region or islands area in which lost or abandoned or uncollected property is situated".

to a competent official at a railway station or an airport in Scotland, the relevant authorities would be under an obligation to transmit the property, without unreasonable delay,¹² to the local police authorities. The same would apply if the article were handed to an official in transit furth of Scotland and subsequently brought into Scotland by him. In these circumstances it would not be permissible for the relevant transport authorities to remove the article from the jurisdiction.

3.6 Recommendations

3. The office of administrator of lost property shall be held by the chief constable (paragraph 3.1).

4. His responsibilities shall extend to property found in premises such as railway stations, ports, airports and bus stations and in vehicles such as trains, ships, aircraft and buses (paragraphs 3.2 to 3.4).

5. It shall not be permissible to contract out of any new statutory code (paragraph 3.4).

6. Any legislation following on this report shall apply to all property situated in Scotland (paragraph 3.5).

PART IV CARE AND DISPOSAL OF LOST PROPERTY

Tracing the owner

4.1 Except where the chief constable is to inform the Queen's and Lord Treasurer's Remembrancer for the Crown's interest,¹ his principal task is to try to trace the owner.² In the Memorandum we made a number of specific proposals, which were generally approved on consultation.³ On reconsidering this question we have concluded that it is unnecessary in legislation to describe the chief constable's duties in detail. The existing statutory codes do not make any reference to the chief constable's duties, and this has not prevented a sensible practice from emerging in the light of experience gained over a period of many years. If any problems were to arise in relation to the chief constable's functions they could be resolved by administrative direction. We therefore recommend only that the chief constable shall take reasonable steps to trace the owner or person entitled to possession.

¹²See recommendation 25: Part VI, para. 6.18.

¹See para. 4.2.

²The police will take appropriate action whether or not they have natural (i.e. physical) possession of an article: i.e. where the discovery of property is reported to them, but the property itself is not handed in. See Part VI, paras. 6.2 to 6.7.

³Paras. 38-41. These included a duty to communicate with the owner if his identity could be ascertained; or, if the article or its contents indicated the name and address of a person who might be able to trace the owner, to inform that person. Property such as a passport or a credit card would be returned to the issuing authority. The possibility was also discussed of excluding some or all of these duties where the ostensible value of the property was small.

Informing the Crown for its interest

4.2 In the Memorandum we enquired whether the chief constable should be obliged to inform the Crown, for such interest as it might have, before arranging for the disposal of property which appeared to be worth, say, £2,000 or more, or property of archaeological, historical or artistic value.⁴ It is already the duty of the police, at common law, to send to the procurator fiscal any "treasure", the procurator fiscal acting for this purpose as the agent of the Queen's and Lord Treasurer's Remembrancer.⁵ The information which we have received suggests that this arrangement works well in practice, and that very few problems arise in the border area between "treasure" and other lost property. Nevertheless, we think it advisable to give the present arrangement the stamp of legislative approval in order to forestall any possible conflict of interest between the Crown and a chief constable.⁶ We accordingly recommend that the chief constable should be under an obligation to observe the instructions of the Crown in respect of the Crown's rights in any property. In making this recommendation, we have modified our original proposal, omitting the specific reference to items worth over £2,000. In view of our earlier recommendation⁷ that the Crown's right to abandoned property should be stated in general terms, it should be left to the Crown to decide which items it wishes to claim.

Claims by the owner

4.3 Under the Burgh Police Act,⁸ where a person seeks to recover lost property, he must establish his ownership "to the satisfaction of the district court."⁹ In practice, it may be sufficient for the owner to establish a right of possession, as where the property is being acquired on hire-purchase. We doubt whether it would serve any useful purpose to spell out, in detail, the required standard of proof. We understand that the police already take stringent precautions to ensure that spurious claims are not successfully presented. We have received no evidence to suggest that this is a matter which requires detailed statutory regulation. We propose, therefore, that it should be sufficient for the claimant of lost property to establish to the satisfaction of the chief constable that he is the owner of the property or has a right to possession of it.

4.4 However satisfactory the present procedure, an aggrieved claimant ought in our view to have a right of appeal to the sheriff (by summary application). We do not expect that such appeals would be very common, and indeed the evidence suggests that disputes between unsuccessful claimants and the police very seldom find their way to the courts. The power of the sheriff should be confined to an order to deliver the property to the claimant. This is an important qualification, because the issue before the sheriff concerns only the chief constable and the claimant, and should

⁴Provisional proposal 26, para. 47.

⁵See paras. 1.7 and 2.1.

⁶See para. 1.13(ix).

⁷Recommendation 1, para. 2.17.

⁸S.412 as amended.

⁹There are equivalent provisions in s.478(3) of the Dundee Act and s.498(1) of the Edinburgh Act.

not be seen as a means of pre-empting subsequent disputes between the claimant and third parties concerning rights to ownership or possession.

4.5 We proposed in the Memorandum¹⁰ that the chief constable should have power to make a charge for reasonable expenses, which might be waived at his discretion. Although this was the former practice it is now seldom enforced. Nonetheless we think it right that the chief constable should have power to make a reasonable charge for expenses incurred which might be waived at his discretion. The owner, on successfully claiming his property, should have a right of appeal to the sheriff by summary application against the chief constable's decision.

4.6 We also considered whether provision might be made for storing unclaimed valuable property under special centralised arrangements.¹¹ We understand from the police, however, that they do not consider that there is a need for special storage arrangements, because appropriate facilities already exist in most police stations. We do not, therefore, make any recommendation on this point.

Disposal of unclaimed property

4.7 In relation to the disposal of unclaimed property, the existing statutory provisions in force in Scotland, unlike equivalent legislation in other systems, apply whatever the value of the property. Section 412 of the Burgh Police Act, section 478(3) of the Dundee Act and section 499(1) of the Edinburgh Act allow the owner 6 months to claim his property, irrespective of value. By contrast the New York Personal Property Law 1958 provided for police retention of lost property for the space of six months if its value was up to \$500, one year if the value was between \$500 and \$5,000, and three years if the value exceeded \$5,000. Some modern British legislative and other provisions give the owner less than six months to claim his property and do not normally take into account a scale of values in prescribing minimum periods of custody. The British Airports Authority (Lost Property) Regulations 1972 and the Public Service Vehicles (Lost Property) Regulations 1934 allow three months. The London Transport (Lost Property) Regulations 1960 allow only one month.¹²

4.8 We referred in the Memorandum to the suggestion that there might be different periods depending on the value of the property:¹³ we did, however, draw attention to the practical difficulties of valuation.¹⁴ There was

¹⁰Provisional proposal 24, para. 47.

¹¹Provisional proposal 25, para. 47.

¹²S.I. 1960/2396, Reg. 9.

¹³As a basis for comment we put forward the following scheme: three months for property valued at £50 or less; six months for property valued at between £50 and £250; and one year if the value of the property exceeded £250. See para. 47 of the Memorandum.

¹⁴Regulation 9 of the Public Service Vehicles (Lost Property) Regulations 1934 and Regulation 8 of the London Transport (Lost Property) Regulations 1960 provide for valuation of lost property with the object of fixing appropriate charges to be paid by the claimant of lost property. The value is deemed to be that agreed or, failing agreement, such sum as may be fixed by an independent valuer for whose fee the claimant is liable.

considerable opposition to this suggestion on consultation, on the grounds that it would not serve any useful purpose and might rather lead to increased administrative inconvenience and expense. Moreover, the greater the value of the property, the greater is the likelihood that the owner will claim it within a short period.

4.9 We have therefore come to the conclusion that the chief constable should have the power to dispose of unclaimed property after a period of three months has elapsed, regardless of its value. No useful purpose, in our view, would be served by extending this period in any particular case. Relatively few claims, it seems, are made between three and six months, especially if the property is valuable.¹⁵ Moreover, the adoption of a shorter period would represent a considerable saving of storage space in police stations, the importance of which we do not seek to minimise. It is inherent in our proposal that the chief constable would not be obliged to sell or otherwise dispose of property as soon as the three-month period had expired; he would have a discretion to retain any item for as long as he thought reasonable. This consideration should go some way towards meeting objections that a three-month period might, in certain circumstances, be regarded as too short. Moreover, the owner's interests would be further protected by the implementation of our proposal to allow him compensation if his claim to the property is made after disposal.¹⁶

4.10 The next question is from what time the three-month period should be calculated. We propose that the period should begin with the time when the chief constable is effectively in a position to discharge his functions: that is, at the time when the property is handed in, or its discovery is reported to him (if earlier).¹⁷

4.11 We adhere to the proposal in the Memorandum¹⁸ that the chief constable should have power to dispose of perishables within a shorter period. Such power is already expressly conferred by the Edinburgh Act and the Burgh Police Act as amended,¹⁹ and the Working Party made a similar proposal.²⁰ We are informed that police practice is to dispose of perishables, where possible, to someone unconnected with the police—for example a shop or a canteen—and we would not wish to make any recommendation which would interfere with this practice, which strikes us as a sound one.

¹⁵We are, indeed, informed that a very high proportion of lost property is claimed within one month.

¹⁶See generally Part V, especially paras. 5.2 and 5.3.

¹⁷We propose in Part VI that the finder should be permitted to discharge his obligation in a number of ways, including reporting the discovery of lost property to the police: see paras. 6.2 to 6.7.

¹⁸Para. 47.

¹⁹S.500 of the Edinburgh Act provides: "The Chief Constable may cause any lost property of a perishable nature to be sold or to be destroyed, and in the case of any sale, the proceeds shall be deemed to be lost property . . ." S.412 of the Burgh Police Act, as amended by s.2(1) of the Lost Property (Scotland) Act 1965, contains a similar provision: "Perishable articles deposited with a chief constable or other officer . . . may, if unclaimed by the owner, be sold or disposed of after the expiration of such period as the chief constable or other officer thinks fit."

²⁰Para. VI.3.(iv) of the Working Party's report.

The chief constable's power should not, however, be confined to perishables as such: we consider that there should be power to dispose of any property within the three-month period if, in the opinion of the chief constable, it cannot be safely or conveniently retained in his possession. Thus there would be power to destroy property which is dangerous.

4.12 There should also, in our view, be a residual power to destroy or dispose of, in any manner, after the expiry of the three-month period, any article which is unclaimed, unwanted by the finder or, in the opinion of the chief constable, of such small value that it is not worth selling. In making this recommendation we are conscious of the need to provide some practical means of keeping within reasonable bounds the volume of lost property to be retained by the police. An express reference to a residual power of this nature in legislation would afford a measure of protection to the police if the disposal of a worthless object were subsequently challenged by the owner.

4.13 Recommendations

(i) *Tracing the owner*

7. The chief constable shall take reasonable steps to trace the owner or person entitled to possession (paragraph 4.1).

(ii) *Informing the Crown for its interest*

8. The chief constable shall observe the instructions of the Crown in respect of the Crown's rights in any property (paragraph 4.2).

(iii) *Claims by the owner*

9. A claimant shall be entitled to recover possession of property on establishing to the satisfaction of the chief constable that he is the owner or has a right to possession of it (paragraph 4.3).

10. Any person who fails so to satisfy the chief constable shall have a right of appeal by summary application to the sheriff. The sheriff's jurisdiction under this procedure shall be confined to an order to transfer possession of the article from the chief constable to the claimant: it shall not pre-empt wider questions of rights to ownership and possession which may involve third parties (paragraph 4.4).

11. The chief constable shall have power to make a reasonable charge for expenses incurred, which may be waived at his discretion (paragraph 4.5).

12. A claimant shall have a right of appeal to the sheriff by summary application against a decision by the chief constable to make such a charge (paragraph 4.5).

(iv) *Disposal of unclaimed property*

13. The chief constable shall retain possession of unclaimed property—subject to recommendation 16 below—for a period of at least three months from the date when it was delivered to him, or (if earlier) when its discovery was reported to him (paragraphs 4.7 to 4.10).

14. During this period he shall make such arrangements as he thinks appropriate for the care and custody of the property (paragraphs 4.7 to 4.10).

15. On the expiry of this period the chief constable shall have the power—but not the duty—to dispose of unclaimed property (paragraph 4.9).

16. As an exception to recommendation 13 above, if the property cannot, in the opinion of the chief constable, be safely or conveniently retained in his possession, he shall have the power to dispose of it, in any manner he thinks fit, within a shorter period (paragraph 4.11).

17. The chief constable shall have power to dispose of, in any manner, after the expiry of the three-month period, any article which is unclaimed, unwanted by the finder or, in his opinion, of such small value that it is not worth selling (paragraph 4.12).

PART V RIGHTS AFTER DISPOSAL: THE ESTABLISHMENT OF A COMPENSATION FUND

5.1 If unclaimed lost property is handed over to the finder, it is far from clear under the present statutory provisions what right he acquires in competition with the original owner. The expressions “deliver”¹ and “award”² could be construed to imply the transfer of a right of ownership or merely a right of possession. The question is, of course, wider than one of competition between finder and owner: it concerns the rights of anyone, not just the finder, who may lawfully come into possession of property which has previously been lost by its owner and handed in to the appropriate authorities.³

5.2 In the Memorandum⁴ we stressed that any such doubts must be removed in any reform of this area of the law. We proposed that public sale, and possibly also delivery by the chief constable to the finder, should confer ownership. We also proposed the establishment of a compensation fund from which the original owner might be entitled to claim compensation. This entitlement would arise if it was no longer possible for the owner to recover possession of his property. We contemplated a limited access to this fund—only where the property had raised more than, say, £250 at a public sale.

5.3 With few exceptions the possibility of establishing a compensation fund attracted support on consultation. Some commentators questioned the need for a minimum figure such as £250, and on re-examining this aspect of the problem we are disposed to agree. The establishment of a compensation fund would represent a means of avoiding or at least reducing the material con-

¹In s.499(1) of the Edinburgh Act.

²In s.412 of the Burgh Police Act and s.478(3) of the Dundee Act.

³e.g. a third party purchaser from the finder, a legatee or a donee.

⁴Paras. 48-50.

flicts of interest between the original owner and a subsequent acquirer, and we concede that to impose any minimum figure would substantially diminish the advantages of introducing such a fund. The amount of compensation should be the sale price, less the amount of any reward paid to the finder (together with any reasonable incidental expenses incurred by the chief constable).⁵

5.4 There are many uncertainties in the general law concerning the respective rights of the original owner and a subsequent acquirer of moveable property (whether or not he is acting in good faith, and whether or not he acquires for value), uncertainties which make it essential that any subsequent legislation should specify what rights are retained or arise on the disposal of unclaimed lost property. It was put to us on consultation that if there is to be a general right to compensation, the rights of third party acquirers should be the same irrespective of the method of disposal. It would, we think, be hard to justify such an approach where the acquirer had paid nothing for an item: in these circumstances the original owner would not even have a claim to compensation. Our first conclusion, therefore, is that a distinction falls to be made between cases where the third party is a purchaser for value, and other cases.

5.5 The next question is whether the fact that the property had at some time been stolen should make any difference to the rights of a third party acquirer. In Memorandum No. 27, we discussed the place of the *vitium reale* in our law—the common law doctrine that theft constitutes a radical defect of title which attaches to the moveables stolen and which cannot be purged by sale even in a public market.⁶ The balance of support on consultation was against abolition of the *vitium reale* and in favour of some restriction on its operation. There was unanimous support for a proposal that judicial sale, properly conducted and after advertisement, should extinguish previous ownership.⁷ Our approach to this problem in the more limited context of unclaimed lost property starts from the recognition that the nearest equivalent to judicial sale is a public sale carried out under the authority of the chief constable. We consider that such a sale should have the effect of divesting the original owner and conferring an immediate clear title on a good faith purchaser. This was the provisional proposal in the Memorandum and it received unanimous support on consultation.

5.6 We next consider what is meant by a public sale. The notion of a “public sale” is not necessarily confined to public roup—a term synonymous with public auction. It might be thought to apply to any sale which takes place on private premises, provided that the public are admitted to such premises—a description which would apply to any sale in a shop to any member of the public by a seller acting in the course of a business. A public roup can be held on private premises.

5.7 It would, no doubt, be possible to draw a distinction between public roup and all other forms of sale for the purposes of regulating subsequent

⁵See recommendation 11 in Part IV.

⁶Memorandum No. 27, para. 17.

⁷Para. 50 and provisional proposal 16.

ownership of unclaimed property, but we doubt whether this would be a satisfactory solution. It is true that, in practice, a sale ordered by a court will generally be conducted by public roup; but that is not an argument for saying that the acquirer's expectations should depend on the form of sale. In the past, when markets and the movement of goods were more restricted, the public display of the goods for sale, for instance at a town's market cross, might draw the attention of potential competing claimants to the goods, who might also live in that locality. The sale would be conducted in full public view to dispel any claims of unfair or corrupt practice by public authorities or private individuals. This would be reinforced by the procedure of public roup itself.⁸ It is doubtful to what extent these reasons are of relevance in modern conditions, where the movement of consumer goods is largely unrestricted and such goods may be sold in a wide variety of retail outlets.

5.8 We understood that, as a matter of policy, the police arrange for unclaimed property to be sold by public roup wherever it is feasible to do so, and certainly in all cases where the property appears to be valuable. The occasions when the police are likely to use other methods of disposal—for example of perishables, or of articles of relatively small worth—will tend to be those where the original owner will regard compensation as an adequate substitute. Some items—such as scrap, or scientific instruments—would be difficult to dispose of except by a method other than public roup: it is doubtful whether the expectations of acquirers of such property should be affected on that account. These are factors which, in our view, would render artificial a distinction between public roup and other modes of sale.

5.9 The main justification, however, for conferring ownership on a good faith acquirer, irrespective of the mode of sale, lies in the role of the police. Their role not only ensures that all reasonable attempts to trace the owner will have been made, but dispels any suspicions of unfair or corrupt practice in the disposal of the property. If there was a danger of dis-possession of a purchaser, some goods might prove unmarketable, or the market value might be greatly reduced: this in turn would reduce the amount of compensation payable to an owner. The public interest would be little served if, in consequence, administrative costs increased through the retention of unwanted goods and a reduction in the amount of income.

5.10 It is inherent in this solution that a *vitium reale* should not survive a sale of unclaimed lost property under the authority of the chief constable. The police may have strong suspicions that the property was in fact stolen. Indeed, the fact may not be in any doubt: the police will on occasions be disposing of unclaimed stolen property which had been retained by them for use as evidence in a criminal trial. All efforts to trace the lawful owner of such property may have failed. In these circumstances it would be hard to justify preferring the claims of the original owner to those of a *bona fide* onerous acquirer, especially as the original owner would be entitled to compensation in terms of the general scheme contained in this

⁸e.g., especially in the context of diligence, public advertisement of the sale; a valuation of the goods; and the appointment of a judge of the roup and an auctioneer.

report. The justification for the doctrine of *vitium reale* is to protect the interest of the original owner. In the present context, the involvement of the police at every stage appears to us to constitute a valid alternative: they are the authority to whom the theft will normally be reported, who investigate the crime and who ultimately have responsibility for disposing of the property.⁹

5.11 We discussed in another Memorandum in the corporeal moveables series¹⁰ the possibility of introducing into the law of Scotland a general doctrine of acquisitive prescription. The object of such a doctrine would be to protect a good faith acquirer of corporeal moveables and his successors, if the moveable was possessed “openly, peaceably, adversely to the owner and without any judicial interruption for a continuous period of 5 years by a possessor or possessors who had acquired by title apparently habile (i.e. appropriate) to transfer ownership”,¹¹ whether or not the acquisition was for value.¹²

5.12 We consider it appropriate that a doctrine such as we have just described should be incorporated into this area of the law—without prejudice to its acceptance in the general context of moveable property.¹³ It seems desirable to do so on practical grounds: to provide some period, short of the long negative prescription,¹⁴ after which a good faith gratuitous acquirer of lost property should become owner. We have concluded that the appropriate solution is to confer on the donee under the statutory procedure ownership subject to the right of the original owner to reclaim his property within a specified period.¹⁵ The remaining question is how long this period should be. Under the present law an obligation to make restitution is extinguished by the short negative prescription after five years,¹⁶ and we consider that it would be consistent to adopt a similar period.

5.13 The remaining questions also concern time limits: how long a claim for compensation should remain competent; and, a necessary corollary, how long the police should be obliged to keep records of their intromissions with lost property, and in particular of the compensation fund itself. We propose, in conformity with the views expressed in the previous paragraph, that a claim for compensation should be extinguished five years after the date of disposal of the property, and that the chief constable should be

⁹See also the discussion in relation to uncollected property: para. 7.22.

¹⁰Memorandum No. 30: Usucapion, or acquisitive prescription.

¹¹Memorandum No. 30 para. 9.

¹²That Memorandum also put forward in para. 12 a scheme for a 10-year acquisitive prescription, in which the distinction between good and bad faith would be immaterial, provided that the acquirer had neither stolen the moveable nor was aware that it had been stolen.

¹³In a number of legal systems which follow the solution of Article 2279 of the French *Code Civil*, acquisition of ownership of lost property after a lapse of time does not depend on prescription: the acquirer becomes owner subject to the original owner's right to reclaim his property within 3 years.

¹⁴20 years.

¹⁵This doctrine already exists in the law of bankruptcy in cases of reduction of gratuitous alienations.

¹⁶Prescription and Limitation (Scotland) Act 1973, s.6 and Sch. 1, para. 1(b).

obliged to retain records relating to the disposal of the property for a similar period. We understand that, under present practice, the police retain records for at least three years and sometimes longer.¹⁷

5.14 Finally, it is necessary to consider what should be done with any surplus which may remain in the compensation fund after the payment of compensation and the deduction of all necessary expenses. We referred in the Memorandum to the proposal of the Working Party that the recipient should be the regional or islands council (as the police authority).¹⁸ This proposal was approved on consultation, and we therefore recommend its implementation.

5.15 Recommendations

18. A compensation fund shall be formed from the proceeds of sales (paragraph 5.3).

19. The previous owner shall be entitled to compensation out of this fund, if his property has been sold, provided that he claims within five years of the date of sale (paragraphs 5.3 and 5.13).

20. The amount of compensation shall be the sale price, less any reasonable expenses incurred in consequence of the custody and the sale, including the payment of a reward to the finder (paragraph 5.3).

21. Any sale of unclaimed lost property under the authority of the chief constable shall divest the previous owner and confer ownership on a good faith acquirer (paragraphs 5.4 to 5.10).

22. A gratuitous acquirer in good faith shall become owner subject to the original owner's right to reclaim his property during a period of five years after the disposal (paragraphs 5.11 and 5.12).

23. The chief constable shall retain records relating to the disposal of lost property for five years from the date of disposal (paragraph 5.13).

24. Any surplus in the compensation fund is to be accounted for to the police authority (paragraph 5.14).

PART VI THE FINDER

The obligations of the finder

6.1 We have already discussed, and rejected, the proposal canvassed in the Memorandum that there should be a positive duty to report the discovery of, or take possession of, lost and abandoned property of historic, archaeo-

¹⁷The Burgh Police Act imposes an obligation on the chief constable to keep records of *inter alia* unclaimed goods (s.414), but does not specify how long these records must be retained.

¹⁸Para. VI.3.(vi) of the Working Party's report.

logical or cultural importance.¹ The general law of Scotland does not impose a legal duty on a person to take possession of another's property merely because the former is aware that it has been lost². However attractive such a rule might be, it was rejected on consultation for practical reasons: there would be no effective sanction against failure to discharge such an obligation. Moreover, we are not convinced that it would be desirable to introduce such a duty in the case of property of small value.³ We have therefore concluded that the duty should be limited to cases where a person takes possession. The existing statutory formula should, however, be made more precise.⁴ If, moreover, a finder voluntarily takes possession of property, he should be under an obligation to take reasonable care of it while it remains in his possession.

6.2 In the Memorandum⁵ we discussed whether the finder should be required in all cases to hand over property to the police.⁶ We suggested that a finder who has handed over a mislaid article to the occupier of premises on which the article was found should be regarded as having discharged any duty to hand over the article to the public authorities. In other words, the occupier would be regarded as the finder's agent. We proposed that the occupier, if he accepted custody, should be entitled to retain unclaimed property for perhaps seven full days before handing it over to the appropriate authorities. We referred to the existence of evidence that many stores, shops and other businesses had not been complying with their existing statutory duty to hand in lost property, one reason being that many English-based firms operating in Scotland appeared to be unaware of the law of Scotland.⁷

6.3 At present the period for handing in lost property is 48 hours.⁸ There are a number of options, which include retaining the 48-hour period; extending it; conferring on the police a power to extend any prescribed period; or expressing the duty in more general terms. We have no doubt that the period should be a short one—as short as possible. Most finders hand in property well within 48 hours if it is reasonably practicable to do so: indeed, failure to do so might in certain circumstances arouse suspicion.

¹Para. 2.12.

²S.412 of the Burgh Police Act provides that "every person finding any goods", etc., "shall report the fact and deposit such goods" etc., with the appropriate authority. Para. 4 of the Public Service Vehicles (Lost Property) Regulations 1934 might be construed as imposing such a duty. It provides that: "Any person who finds property accidentally left in a vehicle shall immediately hand it in the state in which he finds it to the conductor".

³e.g. a single glove found in the street.

⁴See clause 1 of the draft Bill. Thus, for example, if a farmer discovered a car abandoned on his land, he would not be regarded as having taken possession for the purposes of the statute.

⁵Paras. 27-33.

⁶Or to those transport authorities which at present have statutory powers in relation to articles found on their premises or vehicles—see para. 1.7 and Part III.

⁷We understand that informal arrangements between the police and shops have alleviated this problem.

⁸S.412 of the Burgh Police Act, s.478(1) of the Dundee Act, s.497(1) of the Edinburgh Act.

In our view any specific extension of the 48-hour period would inconvenience an owner whose first action on discovering the loss of his property is to make enquiries at a police station—a course which the general scheme of this report seeks to encourage.⁹ Some owners enquire at a police station before the property has been handed to the police; others enquire first at the shop or shops where they think they may have lost their property. This last factor does not, in our view, point to a general extension of the period, which would be justified only if the police, taking into account all the relevant interests, considered it expedient. We also reject the possibility that there should be one rule for the owner or occupier of commercial premises and another rule for members of the general public. We have concluded, too, that there is no need to confer a discretion on the police to extend any statutory period, because it will be the police in the first instance who will have to consider whether criminal proceedings should be brought against a finder who has disregarded the statutory provision.

6.4 We gave consideration to a proposal that the statutory obligation should be couched not in terms of a specific period but rather in terms of handing in property within a reasonable time, or without undue delay, or some similar formula. We think that this proposal has considerable merit, on the grounds that the existing period of 48 hours may often be too long and in some circumstances (especially in country areas) might prove too short. There is much to be said for making the finder justify any reasonable delay on his part. We considered that this point might be met by stating that property should be handed in as quickly as possible, and at any rate not later than 48 hours; but we have concluded that this formula would in practice enable the finder to delay in all cases for 48 hours even where it was practicable for him to discharge his obligation sooner. We recommend, therefore, that once a finder takes possession of lost property he should be obliged, without unreasonable delay, to report the discovery of, or to hand over, the article to the appropriate person in authority.

6.5 In the Memorandum¹⁰ we commented that the duty imposed on finders by section 412 of the Burgh Police Act was too rigid, because it appeared to overrule the common law duty of restitution. The section provides that every person finding any goods, articles or money is to report the fact and deposit the goods with the police within 48 hours. In its terms the section appears to exclude what in many cases may appear to be the natural alternative—to restore the property directly to the owner, or to intimate its discovery to him. There was agreement on consultation that this should be competent, and we therefore recommend that the finder's duty should be discharged if he hands the property to, or reports the discovery of the property to, the owner (or the person entitled to possession) or anyone authorised to accept the property on his behalf.

6.6 If a person finds an article in, say, a shop or a vehicle it should also be competent to hand it to the owner or occupier of the premises or the vehicle, or to a person in authority. The natural reaction of a finder in

⁹See, in particular, Part III.

¹⁰Para. 30.

these circumstances may well be to entrust the property to the nearest person in authority rather than to a police officer. Moreover, a person who insisted on removing property which he had found in a shop might arouse suspicions of dishonesty even if his intentions were entirely honourable. We do not envisage that a person such as a shop manager should be obliged to take possession of lost property: he should have the right to direct the finder to hand the article to the police. If, however, he does accept possession, he should incur the same obligations as a finder.

6.7 In terms of the draft Bill annexed to this report¹¹ the chief constable may require the finder to deliver the property to such person at such place and such time as the chief constable may direct. The object is not to impose an onerous duty on a finder but merely to confer on the police wide powers to regulate the administration of lost property as soon as the statutory provisions take effect. If such power were not conferred on the police, a department store, for example, could lawfully require the police, at public expense, to collect lost property from the store. We do not regard this as desirable, especially if the police make concessions to such enterprises on the time within which articles should be handed over. Such a power, moreover, is unlikely to be exercised capriciously in a question with a member of the general public.

6.8 In the Memorandum we discussed briefly what should be the penalty for failure to discharge the obligation just described.¹² We suggested that a sanction, unrelated to the value of the property found, might on occasion not prove very effective, and that if finders were to be rewarded in proportion to the value of the property which they had deposited, corresponding considerations of value might seem relevant in fixing a maximum fine. There are two broad options. The first is to provide that the penalty for failure to hand in lost property should be expressed in terms of a maximum fine, or the value of the property, whichever is the greater. This was the solution proposed by the Working Party¹³ and, without expressing any opinion on it ourselves, we invited comment. The other option, to which we did not refer in the Memorandum, is to stipulate only a maximum fine, omitting any reference to the value of the property.

6.9 One disadvantage of the first option is that it may render necessary a formal valuation and the leading of expert evidence. The second option, moreover, represents the normal method of prescribing a maximum penalty for committing a statutory offence. We have therefore concluded that the second option is to be preferred, and recommend that a finder who fails to comply with the obligations described under this heading¹⁴ should be liable, on summary conviction, to a fine not exceeding £50.¹⁵

¹¹Clause 1(4).

¹²Such failure is an offence under s.412 of the Burgh Police Act, s.497(2) of the Edinburgh Act, s.152 of the Glasgow Act and s.478(2) of the Dundee Act. Under the Burgh Police Act and the Dundee Act there is a penalty not exceeding £5; under the Edinburgh and Glasgow Acts a penalty not exceeding £10.

¹³A maximum fine of £10 was suggested by the Working Party (para. VI.3.(i) of their report).

¹⁴As summarised in recommendations 25 and 26 in para. 6.18.

¹⁵In serious cases, there may be the alternative of a prosecution for theft or reset.

The rights of the finder

6.10 Before discussing the rights of the finder, it seems appropriate to enquire whether there are any other interests which the law should recognise. In the Memorandum¹⁶ we said that, as a matter of principle, we did not think that rights to property should depend upon the place where the property was found, or upon who was the owner or occupier of that place (including the employer of a finder). The owner or occupier of land may himself be the owner of the lost property, but there does not seem to be a sound case for conferring upon an owner or occupier of land rights to the ownership of moveables found there which he would not otherwise possess. There was general agreement with this proposition on consultation, a proposition which accords with the present approach of the law of Scotland. We recommend that, for the avoidance of doubt, the position be made clear in legislation.

6.11 The law should seek to ensure that there is sufficient incentive to members of the public to hand in lost property to a person in authority. In the Memorandum we put forward three possible schemes, in which the emphasis varied between giving the finder a right to the ownership of unclaimed property; a right to a reward (whether or not the property was claimed); and a right neither to a reward nor to ownership.¹⁷ The Working Party on Civic Government proposed that, where property remained unclaimed, the finder should be entitled to ownership of the property or to the proceeds of sale;¹⁸ where it was claimed, the finder should be entitled to a reward equal to 10% of the value, subject to a discretion vested in the chief constable to reduce or increase the reward in any particular case or, in the event of hardship, to waive it altogether.¹⁹ In the Memorandum we rejected the view that the finder should have a right, either to ownership of the property or to a reward, whether or not the property was claimed.

6.12 There was very little support on consultation for conferring rights of ownership on finders of unclaimed property. Even those who favoured this approach recognised that it would be inappropriate to confer ownership on finders of certain types of property, for example items which are not owned by the possessor, such as passports and credit cards, or items which may be of historical or archaeological interest. There might be serious drafting difficulties in framing the necessary exceptions—notably in evolving an effective description or definition of a category of historic and archaeological interest. In relation to articles of value it is not, in our view, in the public interest that a finder should have such a right. On the whole, we consider that the finder of property is sufficiently recompensed if he receives a pecuniary acknowledgement of the trouble he has taken and of his honesty.²⁰

¹⁶Para. 18.

¹⁷Paras 24-26 and provisional proposals 4-6.

¹⁸VI.3.(iii).

¹⁹VI.3.(ii).

²⁰Different considerations, which we have already described, arise in the case of items of historic, etc., importance: see para. 2.6.

6.13 We have reservations about the recommendation of the Working Party that the reward should be fixed at a standard percentage of the value, subject to a discretion to reduce or increase the reward if the owner claims his property. Persons in certain occupations may frequently find lost property, and they should not be encouraged to expect a fixed financial reward, as of right, simply for carrying out their responsibilities in the course of their employment. The establishment of a rate which, in principle at least, is fixed would make the valuation of the property an unnecessarily important incident of the procedure, and would add to expense. We see no merit in the rule embodied in the Edinburgh Act that a maximum reward should be stipulated.²¹ It would have to be set at a relatively low figure and would require to be periodically adjusted. Similar objections would apply to a standard figure which could be varied either upwards or downwards: indeed, a power of variation would undermine the object of specifying any standard figure.

6.14 Our preference, therefore, is to confer on the chief constable power to fix the amount of a reward. In keeping with our view that a finder should not have a right to unclaimed property (or the proceeds of its disposal), this power should be exercisable both where the property is claimed by its owner and where it remains unclaimed. While accepted norms are likely to emerge in the course of time, we consider that it would be useful, in any legislation which may follow on this report, to draw attention to the desirability of having regard, not only to the nature and value of the property, but to the circumstances of the owner and the actions of the finder. We recommend, therefore, that in determining whether or not to make a payment out of the compensation fund, or to order the owner to make a payment, and in either case in calculating the amount, the chief constable should have regard to the whole circumstances including:

- (i) the nature and value of the property;
- (ii) the ability of the owner to pay; and
- (iii) the actions of the finder.

We further recommend that any party aggrieved by the chief constable's decision should have the right to appeal to the sheriff by summary application.

6.15 The recommendation set out in the previous paragraph should not preclude the chief constable, in suitable circumstances, from returning unclaimed property to the finder in lieu of a reward. We consider that this power would be of much practical utility in disposing of items of limited value.

6.16 There may on occasions be disputes as to who was the finder of the property. This problem should arise infrequently in a system which denies rights to employers of actual finders and to owners or occupiers of land; but nonetheless there may be competing claims, for example from two or more employees of a firm on whose premises an article is found, or two or more

²¹S.498(1).

passengers on a vehicle. We think the appropriate procedure is that any person claiming to be a finder, whose claim is rejected by the chief constable, should have the right to appeal to the sheriff by summary application.

6.17 Under the present law, the chief constable is obliged in some cases to communicate with the finder after the statutory period has elapsed and the property remains unclaimed. We received suggestions that, in order to reduce the administrative duties of the police, it should be incumbent on the finder to make enquiries to ascertain whether or not the property had been claimed. These suggestions acquire greater force in the context of our recommendation that the finder's interest should be confined to a reward, the amount of which would be determined by the chief constable. It seems appropriate that, at the time when property is handed in, the finder should be informed that he may qualify for a reward. If the property is claimed the police would require the owner to pay the amount of any reward to themselves,²² and would communicate with the finder, asking him either to arrange to collect the reward or to give instructions as to where it should be sent. This is in accordance with present police practice. If the property is not claimed, there should be no obligation on the police to do more than arrange for its disposal, unless they intend to offer it to the finder in lieu of a reward: we consider that the onus should rest on the finder to make enquiries and apply for a reward.

6.18 Recommendations

(i) *The obligations of a finder*

25. A finder, on taking possession of lost property, shall take reasonable care of it and shall be under an obligation without unreasonable delay to deliver the property or report the fact that he has taken possession of it to (a) the owner; (b) the person having right to possession of it; or (c) the chief constable. The finder may also, if the property is found on land or premises, deliver it to the owner or occupier thereof or a person having the authority to accept it on his behalf. Similarly, if the property is found on any form of transport, he may deliver it to the person in control of the transport or to anyone having the authority to accept it on that person's behalf (paragraphs 6.1 to 6.6).

26. A finder shall, on being required to do so by the chief constable, deliver the property to such person at such place and at such time as the chief constable may direct (paragraph 6.7).

27. A person failing to comply with either of the preceding recommendations shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £50 (paragraphs 6.8 and 6.9).

(ii) *The rights of a finder*

28. No finder, employer of a finder, or owner or occupier of land on which any property is found, shall by reason only of the finding have any right to claim ownership of the property (paragraphs 6.10 to 6.14). This

²²The amount would then be credited to the compensation fund.

recommendation shall not prejudice the right of an owner or occupier of land to prove to the satisfaction of the chief constable that he is the owner of the property or has a right to possession of it (paragraph 6.10).

29. The chief constable may order the person who claims the property to pay to him such sum as he may determine as a reward to the finder (paragraphs 6.14 and 6.17).

30. The chief constable may, in the event of the property not being claimed, pay to the finder such sum as he may determine as a reward (paragraph 6.14).

31. In determining whether or not to make a reward under recommendations 29 and 30, and in determining the amount of any reward, the chief constable shall have regard to the whole circumstances including:

- (i) the nature and value of the property;
- (ii) the ability of the owner to pay;
- (iii) the actings of the finder (paragraph 6.14).

32. The chief constable shall be empowered to hand unclaimed property to the finder in lieu of a reward (paragraph 6.15).

33. Any person aggrieved by any decision of the chief constable under recommendations 28 to 32 above shall have a right to appeal by summary application to the sheriff (paragraphs 6.14 to 6.16).

PART VII UNCOLLECTED PROPERTY

7.1 Until recently the Disposal of Uncollected Goods Act 1952 superimposed upon the common law a procedure to enable a person with whom goods had been deposited to dispose of them. The main features of the 1952 Act were as follows. It applied only to contracts of deposit.¹ The Act conferred on the depositary a right of sale exercisable in certain circumstances after an interval of not less than 12 months had elapsed from the date when the goods were ready for redelivery.² The twelve-month period commenced when the depositary gave to the depositor a notice that the goods were ready for delivery.³ After the twelve-month period had expired, a further notice had to be given of intention to sell.⁴ In Scotland additional difficulties arose through an attempt to translate the English concept of bailment for application in Scotland.⁵

7.2 In the Memorandum⁶ we counselled the repeal of the Act and its replacement by a more satisfactory procedure. We indicated that there was

¹The expression "deposit" is inapposite: *locatio custodiae* and *locatio operis faciendi* would have been more appropriate. See also Walker, *Principles of Scottish Private Law* 2nd edn. p. 1572.

²S.1(3)(a).

³S.1(3)(b).

⁴S.1(3)(c).

⁵It is not clear, for example, whether a Scottish court would have regarded an acquirer's title as absolute or qualified.

⁶Paras. 59-64.

thought to be a substantial problem, especially for small repairers and probably for those who serviced bulky objects; ordinary businesses might in some cases be seriously dislocated if no effective means were available to dispose of uncollected articles after reasonable notice. The Act, which was generally accepted throughout Britain to be unnecessarily complicated, has now been repealed. It has been replaced in England by sections 12 and 13 of the Torts (Interference with Goods) Act 1977, but so far there has been no new enactment in Scotland. The only applicable area of law at present, therefore, is the common law.

7.3 The new English legislation was based on recommendations by the Law Reform Committee.⁷ The main elements of this legislation are as follows. If the custodian cannot trace the owner after taking reasonable steps to do so, he is entitled to sell the goods and is liable to account to the owner for the proceeds, less any expenses of sale. The Act does not prescribe a minimum period before a sale takes place. The depositary may apply to the court for authority to sell.⁸ If there is a dispute over the goods, he cannot sell without the court's authority.⁹

7.4 In the Memorandum, while noting that it would be possible to follow this solution, we emphasised that there were a number of significant differences between Scottish and English property law which might point towards another solution. The most important of these is that in Scots law, unlike English law in this respect, abandoned property belongs to the Crown at common law (or to some body on which statutory title has been conferred) and there is comprehensive statutory provision for the speedy disposal of abandoned property.¹⁰ We also expressed the view that in Scots law the conferring of merely possessory title—as contrasted with ownership—was a policy which should not be encouraged, because it creates continuing uncertainty as to title. We took the view that a person who had commissioned services on articles which he failed to collect should not be more favoured by the law than a person who had accidentally lost his property; and, moreover, that the supplier of services should be relieved of the burden of book-keeping and custody within a reasonable time.

7.5 As a basis for discussion we proposed that, where a depositary wished to dispose of uncollected property, the police should assume responsibility for disposing of it. The method of disposal should be public sale, the depositary being paid his charges out of the proceeds of sale and the balance being applied for local authority purposes. The length of time between notification of intention to sell, and disposal, would be three or six months, depending on the net value of the property. A purchaser would acquire ownership, but the original owner would qualify for compensation.¹¹

⁷*Eighteenth Report (Conversion and Detinue)*, Cmnd. 4774 (1971).

⁸S.13. Such an application may be advisable in the case of valuable goods because it will protect him from a subsequent claim by the depositor.

⁹Sch. 1, para. 7.

¹⁰Uncollected property can, after a certain time, be regarded as abandoned.

¹¹Cf. the proposals in Part V.

7.6 While it is true that it is open to the parties to forestall any difficulties by contract, many depositaries will not make any stipulations to deal with the eventuality that the depositor may fail to reclaim his goods within a reasonable time. The need for some statutory procedure was, therefore, stressed by those who commented on our proposals. The common law by itself was said to be unsatisfactory: while it does not, in specific terms, provide that a depositary may sell uncollected goods, neither does it require him to retain possession of another person's property indefinitely. We agree with these contentions.

7.7 On re-examining this question we have considered, as elsewhere in this report, whether it is desirable to draw a distinction between articles according to their value. The chief constable could not be expected to carry out the task of valuation unless he received the assistance of professional valuers—a course which would increase administrative expense and would reduce the amount of compensation available to a claimant. Our recommendation, therefore, is that there should be a single procedure, irrespective of the value of the goods.

7.8 The provisional scheme envisaged a role for the police in the disposal of uncollected goods. This proved to be more controversial on consultation. The evidence which we received from the police was that delivery to themselves of uncollected goods would be an additional burden which they could not reasonably be expected to undertake, and in particular would create a severe strain on storage space. A difference between uncollected goods and most other lost or abandoned property is that a depositary has voluntarily accepted possession of the goods in the course of a business, and should not expect the official lost property service to take unwanted goods off his hands simply because their continued possession proves inconvenient. We accept these points and, while we propose to maintain consistency between the two systems of disposal, we are not disposed to recommend that uncollected goods should be handed over to the police unless the police themselves so direct.

7.9 We adhere, however, to our provisional view that the chief constable should exercise certain supervisory functions over the disposal of uncollected property. The only obvious alternative would be a system of judicial control, which we believe would be cumbersome, expensive and subject to unacceptable delays. One advantage of conferring certain functions on the police is that they may be in the best position to trace the original owner, especially if it transpires that the property had been stolen. Another advantage is that after disposal the custodian would not have to retain funds on behalf of the owner if he did not wish to do so: the net proceeds could be paid to the police and held in the compensation fund.¹²

¹²See para. 7.23 below. In England, there is provision in the 1977 Act (s.13(1)(c)) for paying the net proceeds of sale into court—a procedure which is not available in Scotland.

7.10 There is already statutory control where unsolicited goods are sent to a private individual.¹³ The recipient becomes owner after six months if “the sender did not take possession of them and the recipient did not unreasonably refuse to permit the sender to do so”.¹⁴ We do not propose any modification of this procedure—which is directed against a specific abuse—but we see no reason why our own proposals should not co-exist with it. In terms of our recommendations, a recipient of such goods would be able to apply to the chief constable for authority to dispose of them three months after their receipt, provided that he had complied with certain statutory formalities.

7.11 The problems which we have described may be encountered not only by depositaries but may arise whenever a person has possession of another person’s property and the owner or person entitled to possession fails to repossess it.¹⁵ We are of the view that any new legislation should apply to uncollected property of whatever description. An example is where a tenant leaves property, which may or may not have belonged to him, in premises which he had formerly occupied. We discussed this problem in the Memorandum¹⁶ in the limited context of evicted tenants. The tenant may owe rent to the landlord, and the landlord may wish to give vacant possession to a new tenant. While abandonment might be presumed before the long negative prescription had run¹⁷ (and indeed could often be inferred even after a short time), such a presumption could not safely be made in the case of articles of value. Nor could the tenant be said to have lost such property.

7.12 We have reached the conclusion that the simplest way of dealing with this problem is to treat the former tenant’s property as uncollected property and to apply the statutory procedure which we describe in this Part of the report. The representations which were made to us on consultation were not dissimilar to those made in relation to uncollected property. The landlord is in a position analogous to that of a depositary, in view of the antecedent tenancy agreement. It was suggested, again, that to require property left by tenants to be handed over to the police would make an unrealistic demand upon their storage space.¹⁸

7.13 If a statutory procedure is to be introduced, the question arises to what extent freedom of contract should be permitted. Since the publication of the Memorandum a degree of control has been introduced by the Unfair Contract Terms Act 1977¹⁹ over unreasonable exemption clauses in most

¹³Unsolicited Goods and Services Act 1971.

¹⁴S.1(2)(a).

¹⁵Indeed, we were urged on consultation to take account of property left on a long-term basis with a bank or solicitor.

¹⁶Para. 58.

¹⁷20 years.

¹⁸We understand that social work departments may at present make arrangements for the storage of effects left by evicted tenants.

¹⁹S.16, and in certain circumstances s.17. The method of control is the test of reasonableness, and it would apply if the period for reclaiming the goods was unreasonably short.

of the contracts with which we are concerned. But within such contracts certain contractual stipulations which might be thought objectionable cannot be classified as exemption clauses. We have, therefore, concluded that certain of the requirements,²⁰ the introduction of which we propose in the absence of contractual arrangements for the disposal of uncollected goods, should be observed whatever the terms of the contract. If any depositary were to ignore them, he would incur civil liability to the owner.

7.14 If a custodian²¹ wishes to dispose of property under the statutory procedure, he should first of all be obliged to send a notice, by recorded delivery, to the owner,²² requesting him to remove the property or cause it to be removed and to pay any sum due; and warning him of the consequences of his failure to do so. The notice should include particulars of the property, the address where it may be collected, and the amount owing (which may include, in certain circumstances, a charge for storage). This obligation to send a formal notice should arise in all cases where the custodian knows the name and address of the owner,²² or can with reasonable diligence ascertain this information. We consider that, in order to protect the interest of the owner, it should not be competent to exclude or modify this obligation by contract. The owner's failure to collect his property may be due to an oversight or illness, and he may be unaware of the custodian's right of disposal.²³

7.15 We next propose that, in all cases, an interval of at least three months should elapse from the date when the goods are ready for collection (a date which may or may not be prescribed in the contract) before the property can be disposed of.²⁴ It should not be possible to abbreviate this period by contract. The formal notice referred to in the previous paragraph should be sent not earlier than one month after the date when the property is ready for collection: this is to enable the ordinary commercial courtesies to be observed, and to afford the owner sufficient time to call. A further period of not less than two months should then elapse before steps to dispose of the property can be taken. This proposal would not confer a power of disposal on a custodian where the contract obliged the custodian to retain possession of the property for a longer period. However, if the property cannot, in the custodian's opinion, be kept safely or con-

²⁰These requirements are that a minimum period of three months should elapse, before disposal, from the date when the property is ready for collection (para. 7.15); and that whenever the depositary knows the name and address of the owner, or can with reasonable diligence ascertain this information, he should be obliged to send a formal notice in accordance with the procedure described in para. 7.14.

²¹In the remainder of this Part—as also in the draft Bill—we use for convenience the term “custodian” to describe any person who has care and custody of uncollected property of any kind.

²²Or person apparently having a right to possession, as the case may be.

²³For example, a receipt handed to the owner at the time of deposit may contain a reference to standard form conditions, a copy of which may not have been made available to him.

²⁴The date should not be the date of deposit (or of the contract), because in many cases it may take three months or longer from the date of deposit for the custodian to perform his contractual obligations.

veniently for the prescribed period, he should be entitled to apply to the chief constable at any time for authority to dispose of it.²⁵

7.16 We considered carefully whether three months would be long enough in all cases. Sometimes the owner may be a person other than the depositor, especially if the article is a consumer durable of the kind often hired or bought by means of hire-purchase, and it may be some time before the owner discovers that his property has been deposited and not collected by the depositor. We note that the new English legislation enables a bailee to take steps to sell only if he is reasonably satisfied that the bailor owns the goods²⁶—a rule which we are unable to adopt, as we wish the procedure to be of wider application than the English law of bailment.²⁷ We have concluded, however, that the period should be three months—the same as that which we have recommended for lost property. In many cases nowadays the creditor in a consumer credit transaction does not wish in any circumstances to repossess the goods, largely because the value of consumer durables tends to depreciate rapidly: he will normally wish to pursue other remedies available to him. Thus in relation to such articles the owner's interest may not be seriously prejudiced by a relatively short time-limit. Moreover, the owner's position is to some extent protected in that he will be entitled to the net proceeds of sale, after deduction of the custodian's charges and expenses.²⁸ The selection of a longer period would in our view be unnecessary in the ordinary case where the owner was the depositor and received the formal notice sent to him by recorded delivery. In many cases, moreover, a custodian will not invoke any contractual right of disposal or the statutory procedure as soon as he is strictly entitled to, in order to retain the goodwill of his customer: the three-month period may often form part of a somewhat longer period during which the property is in his custody.

7.17 The contract will sometimes regulate disposal, for example by conferring on the custodian a specific right to sell after a certain time has elapsed. As a general principle, we consider that it should be open to a custodian, where he so desires, to seek the authority of the chief constable to dispose of uncollected property. Subject to the various qualifications proposed in this Part of the report, we also consider that a sale or other disposal should be competent in the manner prescribed by the contract. It should not be necessary for the custodian to apply to the chief constable, if disposal is validly regulated by contract, provided that a formal notice²⁹ has been served. In all other cases the custodian would require, for his protection, to seek the authority of the chief constable.

7.18 The application should take the form of a simple report, narrating all the relevant circumstances, and stating, where appropriate, that a notice

²⁵Cf. recommendation 16 in Part IV in relation to lost property.

²⁶S.12(3).

²⁷If the chief constable ascertained that the depositor was not the owner of the property, he might regard the custodian's application as inappropriate or premature.

²⁸See para. 7.23.

²⁹As described in para. 7.14.

containing the prescribed information has been sent and received. It should not be necessary to enclose a copy of the notice itself. Where it has not proved possible to serve a notice, the applicant should state that he has taken all reasonable steps to trace the owner or person apparently having a right to possession. The chief constable should have power, at his discretion, to refuse the request if, for example, he considers that the statutory procedure has not been complied with, that more time should be allowed to the owner to claim his property, or that further enquiries should be made. He would be able to impose conditions, such as requiring a notice to be displayed on the custodier's premises, or a sale to be advertised. He might also prescribe a particular method of sale where the contract was silent on the point. The custodier should have a right of appeal to the sheriff by summary application against any decision by the chief constable. There is, we concede, a risk that certain applicants may conceal material facts from the chief constable: but this, we consider, is a risk that has to be taken if a solution to the general problem is to be found and inconvenience to custodiers as a class is to be minimised. The possibility of dishonest behaviour could not altogether be excluded even if a judicial procedure were selected.

7.19 We do not make any specific recommendations in this report on the method of disposal, other than to affirm the right of the parties to regulate the matter by contract. It was represented to us on consultation that there is a need for flexibility: the custodier may well be the leading local specialist in a particular commodity and may be better placed than a public auctioneer to obtain a satisfactory price for the goods. Additional inconvenience and expense would be incurred by requiring the property to be transferred in all cases to an auction room. We agree with these observations, and are content to leave the matter to the discretion of the chief constable.

7.20 On disposal of the property, the custodier should be entitled in all cases to his reasonable charges and expenses. The chief constable, if dissatisfied with the amount of a depository's charges, would be able to withhold permission to sell, and it would be open to the custodier to appeal by summary application to the sheriff, who would then determine any question of the reasonableness of any charges. It may be objected that the chief constable would by so doing be exercising what is tantamount to a judicial function. It would, however, be impracticable to require the chief constable not to take into account considerations such as these in deciding whether or not to authorise a sale, and the availability of a right of appeal to the sheriff seems to us to constitute an adequate safeguard.³⁰

7.21 It is possible that a contract may contain a forfeiture clause, reserving to the custodier a right of ownership if the property is not collected within a prescribed time. While we have received no evidence that this kind of clause is encountered in practice, we consider that some method of control should be introduced in any forthcoming legislation. Such clauses

³⁰In England, if an application is made to the court, the court will determine the amount of a bailee's reasonable charges and expenses—s.13(1)(b).

might be justifiable if the amount of the custodier's charges and expenses were likely to exceed the value of the property. We propose that such a clause should be valid if the property cannot be sold at a profit—that is, if the proceeds of sale will not exceed sums due to the custodier (together with the expenses, if any, of the sale). Otherwise any such clause should be void.

7.22 In Part V we discussed, in the context of lost property, the question of rights to ownership after disposal, and concluded that any sale under the authority of the chief constable should confer ownership on a good faith acquirer (subject to the right of the original owner to claim compensation). The considerations are similar, though not identical, in the context of uncollected property. The original owner will generally have relinquished control of his property voluntarily—unlike the owner of lost property—and by failing to collect it will in effect be abandoning it: this is a factor which may be thought to diminish the strength of his claim in a question with a good faith acquirer. On the other hand, the procedure which we have proposed in this Part of the report for the disposal of uncollected property does not contemplate in all cases the intervention of the chief constable. We do not think it right, in the context of this report, to propose the extinction of the original ownership where disposal has proceeded solely on the basis of the contract and without the authority of the chief constable. In these cases any *vitium reale* should survive, and the rights of the respective parties should be determined by reference to the general law.³¹

7.23 We propose further that, where a custodier has exercised a contractual power of disposal, and has not made an application to the chief constable, he should have the choice between retaining the net proceeds of sale (after deduction of his charges and expenses) to meet a possible claim from the owner, and remitting the net proceeds to the chief constable. We consider it important that the custodier should be able to divest himself of any funds if he considers it expedient to do so.³² In all cases where he has applied to the chief constable for authority to dispose of the property, the custodier should be obliged to pay over the net proceeds to the chief constable. Wherever funds are made over in this way, the original owner would be entitled to claim this sum by way of compensation within a period of five years after the date of disposal.³³ The chief constable should, for a similar period, retain records relating to any property in respect of which an application has been made.

7.24 Recommendations

34. The custodier of another's property—including a depositary and the landlord of a former tenant—may, if he wishes, and provided that he is not required under any enactment or rule of law or under the terms of any agreement to keep the property in his care and custody, dispose of the property in accordance with the following recommendations (paragraph 7.6).

³¹Which we shall be reviewing in a subsequent report.

³²He might, for example, be contemplating retirement.

³³Cf. Part V, where we made a similar proposal in the domain of lost property (recommendation 19).

He may, in all cases, seek the authority of the chief constable to dispose of the property, irrespective of whether disposal is regulated by contract. He shall so apply if he has no contractual power of disposal (paragraph 7.17).

35. The custodier may not dispose of uncollected property until a period of three months, or such longer period as may have been agreed, has elapsed from the date when the property is ready for collection (paragraph 7.15). Not less than one month after the date when the property is ready for collection, he shall send a notice in writing by recorded delivery to the owner (or person apparently entitled to possession), which shall contain the particulars set out in the next recommendation. He shall not dispose of the property, or make an application to dispose of the property, until at least two months have elapsed from the date of the notice (paragraph 7.14).

36. The notice shall include:

- (a) particulars of the property;
- (b) the address where it may be collected;
- (c) the amount of any sums due to the custodier in respect of the property;
- (d) a request to collect the property and, if an amount has been specified under paragraph (c), to pay the amount;
- (e) the date on or after which the property may be disposed of (paragraph 7.14).

37. Where the custodier does not know the name and address of the owner (or person apparently entitled to possession) he shall take reasonable steps to ascertain his name and address. He shall not dispose of the property, without the chief constable's authority, unless a notice described in the two preceding recommendations has been served on the owner (or person apparently entitled to possession) (paragraph 7.14).

38. Where it appears to the custodier that the property cannot be kept safely or conveniently in his care and custody for a period of three months, or such longer period as may have been agreed, he may at any time before the expiry of that period, and whether or not he has served a notice, apply to the chief constable for authority to dispose of the property (paragraph 7.15).

39. A custodier seeking the authority of the chief constable to dispose of uncollected property shall apply to the chief constable, narrating the circumstances in which the application is made (paragraph 7.18).

40. The chief constable may require the custodier to provide such further information as he thinks necessary (paragraph 7.18).

41. Thereafter the chief constable may grant the application (with or without modification) or refuse it. He may give such directions to the custodier in respect of the property (including directions as to delivery) as he thinks fit (paragraph 7.18).

42. A custodier shall have a right to appeal by summary application to the sheriff against any decision by the chief constable (paragraph 7.18).

43. On disposal of the property, the custodier shall be entitled to his reasonable charges and expenses (paragraph 7.20).

44. A forfeiture clause in any contract whereby a custodier is to acquire ownership of uncollected property shall be valid only if the property cannot be sold at a profit—that is, if the proceeds of sale will not exceed sums due to the custodier (together with the expenses, if any, of the sale) (paragraph 7.21).

45. Where a custodier has exercised a contractual power of disposal, and has not made an application to the chief constable, he shall have the choice between:

- (a) retaining the net proceeds of sale (after deduction of his reasonable charges and expenses) to meet a possible claim by the owner; and
- (b) remitting the net proceeds to the chief constable.

In all cases where he has applied to the chief constable for authority to dispose of the property, the custodier shall remit the net proceeds to the chief constable. Any sum remitted to the chief constable shall be paid into the compensation fund (paragraph 7.23).

46. The previous owner shall be entitled to compensation out of the compensation fund, if his property has been sold, provided that he claims within five years of the date of sale (paragraph 7.23).

47. The amount of compensation shall be the sum paid by the custodier to the chief constable, i.e. the net proceeds of sale (paragraph 7.23).

48. Any sale of uncollected property under the authority of the chief constable shall divest the previous owner and confer ownership on a good faith acquirer (paragraph 7.22).

49. A gratuitous acquirer in good faith, on disposal authorised by the chief constable, shall become owner subject to the original owner's right to reclaim his property during a period of five years after the disposal (paragraph 7.22).

50. The chief constable shall retain records relating to the disposal of uncollected property for five years from the date of disposal (paragraph 7.23).

PART VIII LIVING CREATURES

8.1 There is at present a special statutory provision dealing with lost dogs. Section 4 of the Dogs Act 1906¹ allows a finder, who registers his intention at a police station, to keep a stray dog, but the Act does not confer on him title as owner. If the original owner claims the animal, he would seem to be entitled to restitution. In the Memorandum we expressed no strong views on the question of disposal of lost dogs or other animals, but suggested that a claim by the original owner might operate harshly if, for example, a finder had kept a dog, which might otherwise have been

¹Substituted by s.2 of the Dogs (Amendment) Act 1928.

destroyed, for a substantial period. We suggested that there was a case for preferring the claim of the finder after he had kept the dog for one year, and that a longer period of acquisitive prescription would seem inappropriate in the case of relatively short-lived animals. We also enquired whether such an approach was suitable for other domestic animals, such as cats.

8.2 The information which we received on consultation tends very much to the conclusion that there should be a relatively short period, after which the keeper of an animal should, if he so wishes, be entitled to acquire ownership. There are two reasons for this. One is that if domestic animals are not claimed within a very short time they are usually destroyed or given to new "owners". The other reason is that most animals apparently forget their original owners very quickly, in many cases in less than three months.

8.3 The chief constable already has to make special provision for the custody of lost animals. There is no evident reason why such an animal should have to be handed over to an establishment which cares for lost domestic animals if the finder is willing and able to take on the responsibility himself. We have therefore formed the view that the finder of an animal should be allowed, at the chief constable's discretion, to retain possession of it.²

8.4 We consider, further, in response to the views expressed on consultation, that any person who has been given possession of an animal by the chief constable and has retained possession for three months should be entitled to become owner, if by the end of the period the animal remains unclaimed. The chief constable should retain the power, throughout this period of three months, to revoke the permission which he has granted to the finder and issue any other instruction which he thinks fit concerning the custody of the animal.

8.5 Lastly, we consider that these proposals should not be confined to dogs but should extend to all other animals. We have not overlooked the fact that special arrangements will have to be made for the custody of wild animals and, perhaps, valuable domestic animals. The effective safeguard, we think, lies in the chief constable's discretion: it is unthinkable that he would award temporary custody of a wild animal to an inexperienced member of the public. It would, however, be within his discretion to award possession to the finder of, say, a valuable pedigree dog, but such an animal would normally be claimed promptly.

²The draft Bill annexed to this report does not in terms contain a special provision on this point, which is covered by the general discretion vested in the chief constable by virtue of clause 2(2) to make such arrangements as he considers appropriate for the care and custody of lost property.

8.6 Recommendations

51. The chief constable, by virtue of the power conferred on him by recommendation 14, may permit the finder of any living creature to retain possession of it (paragraphs 8.3 and 8.5).

52. If the finder retains possession of the creature for a continuous period of 3 months, he shall become owner of it (paragraph 8.4).

PART IX SUMMARY OF RECOMMENDATIONS

Part II: The Crown's rights (paragraph 2.17)

1. The principle that the Crown's right to abandoned property is general, and is not restricted to "treasure", should be expressly stated in legislation (paragraphs 2.1 to 2.8).

2. Recommendation 1 does not affect any rights which the Crown may have to the ownership of wild creatures (paragraphs 2.9 to 2.11).

Part III: The role of the chief constable (paragraph 3.6)

3. The office of administrator of lost property shall be held by the chief constable (paragraph 3.1).

4. His responsibilities shall extend to property found in premises such as railway stations, ports, airports and bus stations, and in vehicles such as trains, ships, aircraft and buses (paragraphs 3.2 to 3.4).

5. It shall not be permissible to contract out of any new statutory code (paragraph 3.4).

6. Any legislation following on this report shall apply to all property situated in Scotland (paragraph 3.5).

Part IV: Care and disposal of lost property (paragraph 4.13)

(i) Tracing the owner

7. The chief constable shall take reasonable steps to trace the owner or person entitled to possession (paragraph 4.1).

(ii) Informing the Crown for its interest

8. The chief constable shall observe the instructions of the Crown in respect of the Crown's rights in any property (paragraph 4.2).

(iii) Claims by the owner

9. A claimant shall be entitled to recover possession of property on establishing to the satisfaction of the chief constable that he is the owner or has a right to possession of it (paragraph 4.3).

10. Any person who fails so to satisfy the chief constable shall have a right of appeal by summary application to the sheriff. The sheriff's jurisdiction under this procedure shall be confined to an order to transfer

possession of the article from the chief constable to the claimant: it shall not pre-empt wider questions of rights to ownership and possession which may involve third parties (paragraph 4.4).

11. The chief constable shall have power to make a reasonable charge for expenses incurred, which may be waived at his discretion (paragraph 4.5).

12. A claimant shall have a right of appeal to the sheriff by summary application against a decision by the chief constable to make such a charge (paragraph 4.5).

(iv) Disposal of unclaimed property

13. The chief constable shall retain possession of unclaimed property—subject to recommendation 16 below—for a period of at least three months from the date when it was delivered to him, or (if earlier) when its discovery was reported to him (paragraphs 4.7 to 4.10).

14. During this period he shall make such arrangements as he thinks appropriate for the care and custody of the property (paragraphs 4.7 to 4.10).

15. On the expiry of this period the chief constable shall have the power—but not the duty—to dispose of unclaimed property (paragraph 4.9).

16. As an exception to recommendation 13 above, if the property cannot, in the opinion of the chief constable, be safely or conveniently retained in his possession, he shall have the power to dispose of it, in any manner he thinks fit, within a shorter period (paragraph 4.11).

17. The chief constable shall have power to dispose of, in any manner, after the expiry of the three-month period, any article which is unclaimed, unwanted by the finder or, in his opinion, of such small value that it is not worth selling (paragraph 4.12).

Part V: Rights after disposal: the establishment of a compensation fund
(paragraph 5.15)

18. A compensation fund shall be formed from the proceeds of sales (paragraph 5.3).

19. The previous owner shall be entitled to compensation out of this fund, if his property has been sold, provided that he claims within five years of the date of sale (paragraphs 5.3 and 5.13).

20. The amount of compensation shall be the sale price, less any reasonable expenses incurred in consequence of the custody and the sale, including the payment of a reward to the finder (paragraph 5.3).

21. Any sale of unclaimed lost property under the authority of the chief constable shall divest the previous owner and confer ownership on a good faith acquirer (paragraphs 5.4 to 5.10).

22. A gratuitous acquirer in good faith shall become owner subject to the original owner's right to reclaim his property during a period of five years after the disposal (paragraphs 5.11 and 5.12).

23. The chief constable shall retain records relating to the disposal of lost property for five years from the date of disposal (paragraph 5.13).

24. Any surplus in the compensation fund is to be accounted for to the police authority (paragraph 5.14).

Part VI: The finder (paragraph 6.18)

(i) The obligations of a finder

25. A finder, on taking possession of lost property, shall take reasonable care of it and shall be under an obligation without unreasonable delay to deliver the property or report the fact that he has taken possession of it to (a) the owner; (b) the person having right to possession of it; or (c) the chief constable. The finder may also, if the property is found on land or premises, deliver it to the owner or occupier thereof or a person having the authority to accept it on his behalf. Similarly, if the property is found on any form of transport, he may deliver it to the person in control of the transport or to anyone having the authority to accept it on that person's behalf (paragraphs 6.1 to 6.6).

26. A finder shall, on being required to do so by the chief constable, deliver the property to such person at such place and at such time as the chief constable may direct (paragraph 6.7).

27. A person failing to comply with either of the preceding recommendations shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £50 (paragraphs 6.8 and 6.9).

(ii) The rights of a finder

28. No finder, employer of a finder, or owner or occupier of land on which any property is found, shall by reason only of the finding have any right to claim ownership of the property (paragraphs 6.10 to 6.14). This recommendation shall not prejudice the right of an owner or occupier of land to prove to the satisfaction of the chief constable that he is the owner of the property or has a right to possession of it (paragraph 6.10).

29. The chief constable may order the person who claims the property to pay to him such sum as he may determine as a reward to the finder (paragraphs 6.14 and 6.17).

30. The chief constable may, in the event of the property not being claimed, pay to the finder such sum as he may determine as a reward (paragraph 6.14).

31. In determining whether or not to make a reward under recommendations 29 and 30, and in determining the amount of any reward, the chief constable shall have regard to the whole circumstances including:

- (i) the nature and value of the property;
- (ii) the ability of the owner to pay;
- (iii) the actings of the finder (paragraph 6.14).

32. The chief constable shall be empowered to hand unclaimed property to the finder in lieu of a reward (paragraph 6.15).

33. Any person aggrieved by any decision of the chief constable under recommendations 28 to 32 above shall have a right to appeal by summary application to the sheriff (paragraphs 6.14 to 6.16).

Part VII: Disposal of uncollected property (paragraph 7.24)

34. The custodier of another's property—including a depositary and the landlord of a former tenant—may, if he wishes, and provided that he is not required under any enactment or rule of law or under the terms of any agreement to keep the property in his care and custody, dispose of the property in accordance with the following recommendations (paragraph 7.6). He may, in all cases, seek the authority of the chief constable to dispose of the property, irrespective of whether disposal is regulated by contract. He shall so apply if he has no contractual power of disposal (paragraph 7.17).

35. The custodier may not dispose of uncollected property until a period of three months, or such longer period as may have been agreed, has elapsed from the date when the property is ready for collection (paragraph 7.15). Not less than one month after the date when the property is ready for collection, he shall send a notice in writing by recorded delivery to the owner (or person apparently entitled to possession), which shall contain the particulars set out in the next recommendation. He shall not dispose of the property, or make an application to dispose of the property, until at least two months have elapsed from the date of the notice (paragraph 7.14).

36. The notice shall include:

- (a) particulars of the property;
- (b) the address where it may be collected;
- (c) the amount of any sums due to the custodier in respect of the property;
- (d) a request to collect the property and, if an amount has been specified under paragraph (c), to pay the amount;
- (e) the date on or after which the property may be disposed of (paragraph 7.14).

37. Where the custodier does not know the name and address of the owner (or person apparently entitled to possession) he shall take reasonable steps to ascertain his name and address. He shall not dispose of the property, without the chief constable's authority, unless a notice described in the two preceding recommendations has been served on the owner (or person apparently entitled to possession) (paragraph 7.14).

38. Where it appears to the custodier that the property cannot be kept safely or conveniently in his care and custody for a period of three months, or such longer period as may have been agreed, he may at any time before the expiry of that period, and whether or not he has served a notice, apply to the chief constable for authority to dispose of the property (paragraph 7.15).

39. A custodier seeking the authority of the chief constable to dispose of uncollected property shall apply to the chief constable, narrating the circumstances in which the application is made (paragraph 7.18).

40. The chief constable may require the custodier to provide such further information as he thinks necessary (paragraph 7.18).

41. Thereafter the chief constable may grant the application (with or without modification) or refuse it. He may give such directions to the custodier in respect of the property (including directions as to delivery) as he thinks fit (paragraph 7.18).

42. A custodier shall have a right to appeal by summary application to the sheriff against any decision by the chief constable (paragraph 7.18).

43. On disposal of the property, the custodier shall be entitled to his reasonable charges and expenses (paragraph 7.20).

44. A forfeiture clause in any contract whereby a custodier is to acquire ownership of uncollected property shall be valid only if the property cannot be sold at a profit—that is, if the proceeds of sale will not exceed sums due to the custodier (together with the expenses, if any, of the sale) (paragraph 7.21).

45. Where a custodier has exercised a contractual power of disposal, and has not made an application to the chief constable, he shall have the choice between:

- (a) retaining the net proceeds of sale (after deduction of his reasonable charges and expenses) to meet a possible claim by the owner; and
- (b) remitting the net proceeds to the chief constable.

In all cases where he has applied to the chief constable for authority to dispose of the property, the custodier shall remit the net proceeds to the chief constable. Any sum remitted to the chief constable shall be paid into the compensation fund (paragraph 7.23).

46. The previous owner shall be entitled to compensation out of the compensation fund, if his property has been sold, provided that he claims within five years of the date of sale (paragraph 7.23).

47. The amount of compensation shall be the sum paid by the custodier to the chief constable, i.e. the net proceeds of sale (paragraph 7.23).

48. Any sale of uncollected property under the authority of the chief constable shall divest the previous owner and confer ownership on a good faith acquirer (paragraph 7.22).

49. A gratuitous acquirer in good faith, on disposal authorised by the chief constable, shall become owner subject to the original owner's right to reclaim his property during a period of five years after the disposal (paragraph 7.22).

50. The chief constable shall retain records relating to the disposal of uncollected property for five years from the date of disposal (paragraph 7.23).

Part VIII: Living creatures (paragraph 8.6)

51. The chief constable, by virtue of the power conferred on him by recommendation 14, may permit the finder of any living creature to retain possession of it (paragraphs 8.3 and 8.5).

52. If the finder retains possession of the creature for a continuous period of 3 months, he shall become owner of it (paragraph 8.4).

APPENDICES

APPENDIX I

Lost and Uncollected Property (Scotland) Bill

ARRANGEMENT OF CLAUSES

Procedure on finding lost property

Clause

1. Duty of finder.
2. Functions of chief constable.

Procedure on disposing of uncollected property

3. Disposal of uncollected property by custodier.
4. Authorisations by chief constable to dispose of uncollected property.
5. Rights of custodier.

Procedure on claiming lost and uncollected property

6. Claims by owner etc. prior to disposal.
7. Powers of chief constable to make rewards.
8. The compensation fund.

Rights in property

9. Rights arising on disposal.
10. Rights to compensation.
11. No right of ownership conferred by finding.
12. Living creatures.
13. Rights of Crown.

General

14. Appeal to sheriff.
15. The Crown.
16. Interpretation.
17. Local enactments.
18. Repeals and savings.
19. Citation, extent, commencement.

SCHEDULE: Repeals.

Lost and Uncollected Property (Scotland) Bill

DRAFT

OF A

BILL

TO

Make provision in connection with lost, abandoned and uncollected property in Scotland, and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Procedure on finding lost property

Duty of finder.

1.—(1) Any person taking possession of any property without the authority of the owner in circumstances which make it reasonable to infer that the property has been lost or abandoned (“a finder”), shall take reasonable care of it and shall without unreasonable delay deliver the property or report the fact that he has taken possession of it to a constable or to any of the persons mentioned in subsection (2).

EXPLANATORY NOTES

Clause 1

This clause implements recommendations 25, 26 and 27 in Part VI of the report, and partly implements recommendations 3, 4 and 5 in Part III. The clause applies to all persons who may be finders, including private individuals, public bodies and the Crown (see also clause 15). Its provisions may not be modified or excluded by contract.

Subsection (1)

This subsection, together with subsections (2) and (3), implements recommendation 25. It imposes two obligations on the finder: to take reasonable care of the property while it is in his possession; and to deliver it without unreasonable delay to a constable or to one of the persons specified in subsection (2).

The words "taking possession" import a positive action on the part of a finder. A person does not, for the purposes of the Bill, incur any obligation simply by ignoring the opportunity to acquire possession of lost property; or by being the owner or occupier of land on which the property is found. Thus a farmer who discovers an abandoned vehicle on his land does not become a "finder" merely because the vehicle is situated on his land.

The subsection does not require a finder to hand in property in every case: subject to subsection (4), it gives him the alternative of reporting its discovery to one of the persons specified.

A constable means any police officer (see the definition of "constable" contained in s.51 of the Police (Scotland) Act 1967). The expression "in circumstances which make it reasonable to infer that the property has been lost or abandoned" is phrased objectively, as failure to comply with the requirements of the section attracts a criminal sanction (subsection 5).

Lost and Uncollected Property (Scotland) Bill

- (2) The persons referred to in subsection (1) are—
- (a) the owner of the property;
 - (b) the person having right to possession of it;
 - (c) if the property has been found on land or premises, the owner or occupier thereof;
 - (d) if the property has been found on any form of transport the person in control thereof;
 - (e) any person apparently having the authority to act or behalf of any of those persons.

(3) Where any person mentioned in paragraph (c) or (d) of subsection (2) or in paragraph (e) in so far as it relates to those paragraphs, takes possession of the property, he shall act in accordance with the provisions of subsection (1) omitting therefrom any reference to any person so mentioned.

(4) Any person who reports the fact that he has taken possession of any property to a constable under subsection (1), shall, on being required to do so by the chief constable, deliver the property to such person at such place and such time as the chief constable may direct.

(5) Any person failing to comply with the preceding provisions of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £50.

**Functions of
chief constable.**

2.—(1) This section applies to any property which has been delivered or the finding of which has been reported to a constable in accordance with section 1(1), other than any such property in respect of which the chief constable has received instructions from the Queen's and Lord Treasurer's Remembrancer in exercise of the rights of the Crown in that property.

EXPLANATORY NOTES

Subsection (2)

This subsection partly implements recommendation 25. The expression “any person apparently having the authority” in paragraph (e) is intended to include any person to whom a member of the public, acting in good faith, would hand lost property. It is therefore a wider concept than agency. It includes, for example, an employee in a shop, or the conductor of a bus. Once any such person accepts possession he himself becomes a “finder” in the place of the original finder for the purposes of subsection (1), and incurs the obligations imposed by this clause.

Subsection (3)

This subsection is supplementary to subsection (2). It imposes on a person to whom property is handed, or to whom its finding is reported, an obligation in effect to deliver the property (or to report its discovery) to the owner, to the person entitled to possession, or to a constable.

Subsection (4)

This subsection implements recommendation 26. It confers on the chief constable wide powers to regulate the administration of lost property. Thus if a finder merely reported his discovery to the police, he might be required in terms of this subsection to deliver the property to the nearest police station.

Subsection (5)

This subsection implements recommendation 27. It makes it an offence to fail to hand in lost property in terms of subsections (1), (2) and (3), or to comply with the directions of the chief constable under subsection (4). The expression “summary conviction” means that a prosecution can only be brought before the sheriff court (see *McPherson v. Boyd* (1907) 5 Adam 247).

Clause 2

This clause implements recommendations 7 and 8, and 13 to 17 inclusive in Part IV; and also recommendation 23 in Part V of the report. It also implements in part recommendation 1 in Part II and recommendations 3 to 6 inclusive in Part III of the report.

Subsection (1)

This subsection provides that the chief constable’s functions commence with the delivery of lost property, or the reporting of its finding, to a constable. In doing so it partly implements recommendation 3 and, in particular, recommendations 4 and 6, by not making any exceptions to the scope of the chief constable’s functions, provided that the property is situated in Scotland (see also the definition of “chief constable” in clause 16). A further effect is that if property, when found, is returned directly to the owner, none of the functions of the chief constable require to be exercised; nor does the finder qualify for a reward under clause 7.

The reference to instructions received by the chief constable from the Queen’s and Lord Treasurer’s Remembrancer implements recommendation 8 and partly implements recommendation 1. It is so drafted as to avoid conflicts between their respective spheres of responsibility (see also clause 13).

Lost and Uncollected Property (Scotland) Bill

(2) The chief constable shall make such arrangements as he considers appropriate for the care and custody of the property.

(3) The chief constable shall take reasonable steps to ascertain the identity of the owner or person having right to possession of the property and to inform him where it can be collected.

(4) The chief constable may sell or otherwise dispose of the property after the expiry of a period of at least 3 months from the date on which its finding was reported to a constable, but shall not do so before the expiry of that period other than by returning it to the claimant under section 6 or by disposing of it under subsection (5).

(5) If the property cannot, in the opinion of the chief constable, be safely or conveniently kept for the period mentioned in subsection (4) he may dispose of it within that period in such manner as he thinks fit.

(6) The chief constable shall keep a record of particulars connected with the property and shall retain the record so made for a period of 5 years from the date on which the property is disposed of under the provisions of this Act.

EXPLANATORY NOTES

Subsection (2)

This subsection implements recommendation 14. It confers on the chief constable a wide discretion to determine how property should be cared for prior to a claim by the owner or disposal. This discretion will be especially relevant in the case of animals (such as dogs and cats) which are handed in to the police: see also recommendation 51 in Part VIII of the report and clause 12. The subsection does not oblige the chief constable to take natural (i.e. actual physical) possession of any item of lost property in circumstances where he regards this as inappropriate.

Subsection (3)

This subsection implements recommendation 7. It expresses the chief constable's duty to trace the owner in broad terms, and does not seek to set out detailed guidelines to which he must have regard.

Subsection (4)

This subsection implements recommendations 13, 15 and 17. It sets out the general rule which is subject to the exception contained in subsection (5). The three-month period is to commence, in effect, from the date when the chief constable is first in a position to administer the property—see also subsection (1). No separate reference is made in the clause to the date when property was delivered to a constable (see recommendation 13), because that date cannot be earlier than the date when its finding was reported to him. No obligation is imposed on the chief constable to dispose of any property after the three-month period if he thinks it inappropriate to do so.

The words "or otherwise dispose" implement recommendation 17; in effect, the chief constable is empowered in certain circumstances to destroy property. These words are designed to protect the chief constable from a subsequent claim by the owner if, in good faith, he has arranged for the destruction of any item which is unwanted by the finder and appears to have no intrinsic value.

Subsection (5)

This subsection implements recommendation 16. It applies principally to perishables and dangerous items.

Subsection (6)

This subsection implements recommendation 23. It is a necessary corollary of an owner's right to claim compensation within a period of five years after disposal of the property for value (see recommendation 19 and clause 10).

Lost and Uncollected Property (Scotland) Bill

Procedure on disposing of uncollected property

Disposal of
uncollected
property by
custodier.

3.—(1) This section applies to any property (“uncollected property”) in the care and custody of any person (“the custodier”) in any circumstances other than those mentioned in section 1, being property which—

- (a) does not belong to him; and
- (b) he wishes to dispose of; and
- (c) he is not required under any enactment or rule of law or any agreement to keep in his care and custody.

(2) Subject to the following provisions of this section, the custodier may sell or otherwise dispose of the property if, but only if, he does so—

- (a) in accordance with the authority of the chief constable granted under section 4; or
- (b) under an agreement entitling him to do so.

Paragraph (b) does not apply in cases to which subsections (5) and (6) apply.

EXPLANATORY NOTES

Clauses 3-5

These clauses relate solely to uncollected, as distinct from lost, property—see Part VII of the report. They implement the principle stated in recommendation 34 in that they provide a means whereby a custodian of another's property can divest himself of possession of the property (and the net proceeds of sale) without incurring legal liability to the owner or person entitled to possession, provided that the statutory procedure has been complied with and there has been no fraud or other dishonest conduct on the part of the custodian. They implement most of the detailed proposals set out in Part VII. Subject to certain exceptions spelled out in these clauses, the statutory procedure is without prejudice to a contractual right of disposal: however, one advantage of the statutory procedure is that a sale authorised by the chief constable will confer ownership of the property on the buyer (see clause 9). The custodian's right of appeal against any decision by the chief constable (recommendation 42) is implemented by clause 14.

Clause 3

This clause implements recommendations 34 to 38 inclusive.

Subsection (1)

This subsection, which partly implements recommendation 34, delineates the scope of the section. It applies to any property in a custodian's care and custody, and therefore includes property in the possession of the landlord of a former tenant (see recommendation 34). The subsection is sufficiently wide to enable custodians of property which has no known owner to invoke the statutory procedure: examples which may be cited are old title deeds in the hands of solicitors or the contents of safe deposit boxes held by banks.

The reference to "in any circumstances other than those mentioned in section 1" makes clear that the section does not apply to lost property, for which separate provision is made in clauses 1 and 2.

The words "which . . . he wishes to dispose of" indicate that the statutory procedure is optional, in the sense that no custodian is obliged to invoke the procedure against his will. He may, for example, have a valid contractual power of disposal, or may prefer to retain the item, for a variety of reasons, for longer than he is obliged to do.

Paragraph (c) ensures that a party to a contract which imposes positive duties of custody—e.g. a contract of care and custody, agency or mandate—cannot invoke the statutory procedure described in clauses 3 to 5 so as to circumvent his contractual obligations.

Subsection (2)

This subsection partly implements recommendation 34. It is subject to subsections (5) and (6), which implement recommendations 37 and 38. The effect is that, even where there is a contractual power of disposal, the custodian must seek the authority of the chief constable if he cannot serve a notice on the owner or if he wishes to dispose of perishables, etc., within a period of less than three months. Failure to obtain the chief constable's authority may render the custodian civilly liable to the owner (or to the person entitled to possession).

Lost and Uncollected Property (Scotland) Bill

(3) The custodier shall not sell or otherwise dispose of the property unless—

- (a) not less than 1 month after the date on which the property is ready for collection he sends a notice in writing by recorded delivery to the person apparently having right to possession of the property; and
- (b) not less than 2 months has elapsed from the date of that notice; and
- (c) whether or not a notice has been sent under paragraph (a), a period of at least 3 months, or such longer period as may have been agreed, has elapsed from the date on which the property is ready for collection.

Paragraphs (a) and (b) are subject to subsection (5).

Paragraph (c) is subject to subsection (6).

This subsection shall have effect notwithstanding any agreement to the contrary.

(4) The notice mentioned in subsection (3) shall include—

- (a) particulars of the property;
- (b) the address where it may be collected;
- (c) the amount of any sums due to the custodier in respect of the property;
- (d) a request to collect the property and if an amount has been specified under paragraph (c), to pay the amount;
- (e) the date on or after which the property may be disposed of.

(5) Where the custodier does not know the name and address of the person apparently having right to possession of the property he shall take reasonable steps to ascertain his name and address; and after taking such steps the custodier may, if he has failed to ascertain that person's name and address, sell or otherwise dispose of the property in accordance with the authority of the chief constable granted under section 4.

(6) If it appears to the custodier that the property cannot be kept safely or conveniently in his care and custody for the period mentioned in paragraph (c) of subsection (3), he may at any time before the expiry of that period and whether or not he has complied with paragraph (a) or (b) of that subsection, sell or otherwise dispose of the property in accordance with the authority of the chief constable granted under section 4.

EXPLANATORY NOTES

Subsection (3)

This subsection implements recommendation 35. It ensures that—subject to the exception described in subsection (6)—a period of at least three months must elapse between the date when the property was ready for collection and the date of disposal, even if the contract between the parties provides for a shorter period. Thus a custodier who disposes of another's property within a shorter period may incur civil liability to the owner (or to the person entitled to possession).

Subsection (4)

This subsection implements recommendation 36. It lists the particulars to be contained in the notice.

Subsection (5)

This subsection implements recommendation 37 (see also subsection (2)). It obliges a custodier—if he wishes to secure the protection of the statutory procedure—to take reasonable steps to ascertain the name and address of the owner, etc. If, after taking such steps, he is still unable to serve the notice required by subsection (3), he must apply to the chief constable under clause 4(1) in order to benefit from the statutory procedure.

Subsection (6)

This subsection implements recommendation 38 (see also subsection (2)). It is a provision similar to that relating to lost property (clause 2(5)). It enables a custodier to dispose of perishables, etc., within a period of less than three months, provided that he applies to the chief constable for permission. Failure so to apply will render the custodier potentially liable to the owner (or to the person entitled to possession).

Lost and Uncollected Property (Scotland) Bill

Authorisations
by chief
constable to
dispose of
uncollected
property.

4.—(1) A custodier seeking the authority of the chief constable to sell or otherwise dispose of uncollected property shall apply to him in that behalf narrating the circumstances in which the application is made.

(2) The chief constable shall consider any such application and for that purpose may require the custodier to provide such further information as the chief constable thinks necessary.

(3) Thereafter the chief constable may—

- (a) either grant the application with or without modification, or
- (b) refuse it, and in either event,
- (c) give such directions to the custodier in respect of the property (including directions as to delivery) as he thinks fit.

(4) The chief constable shall keep a record of particulars connected with uncollected property in respect of which an application is made to him under this section, and shall retain the record so made for a period of 5 years from the date on which the property is disposed of under the provisions of this Act.

EXPLANATORY NOTES

Clause 4

This clause implements recommendations 39 to 41 inclusive and recommendation 50.

Subsection (1)

This subsection implements recommendation 39. It indicates that other methods of disposal remain legally competent, provided that certain formalities are satisfied—see clause 3(3), (4) and (5) and the Note to clause 3(1). The clause does not prevent a custodier from making an application to the chief constable, even where he possesses a valid contractual right of disposal, if an advantage may thereby be gained. A voluntary application under clause 4 would, for example, enable the custodier to confer a good title on a third party acquirer of the property, and might be desirable if there was a dispute over the ownership of the property.

The subsection does not lay down any formal requirements. The production of documents such as a copy of the notice or evidence of posting is, accordingly, not required.

Subsection (2)

This subsection implements recommendation 40.

Subsection (3)

This subsection implements recommendation 41. Paragraph (a) empowers the chief constable to regulate the method of disposal—e.g. by public auction or private sale. Paragraph (c) empowers the chief constable to regulate custody of the property even where, for example, he regards its disposal as inappropriate or premature.

Subsection (4)

This subsection implements recommendation 50. It obliges the chief constable to retain records relating to any property, in respect of which he receives an application, for five years from the date of disposal. It is a necessary corollary of an owner's right to claim compensation within a period of five years after disposal of the property for value—see recommendation 46 and clause 10.

Lost and Uncollected Property (Scotland) Bill

**Rights of
custodier.**

5.—(1) Where any uncollected property has been sold the custodier shall be entitled to payment from the proceeds of the sale of any sum owed to him by way of agreement or otherwise and any reasonable expenses incurred by him in connection with the property sold.

(2) A custodier may acquire ownership of any uncollected property if, but only if—

- (a) he is entitled under the terms of an agreement to do so; and
- (b) either—
 - (i) the property cannot be sold; or
 - (ii) if sold, the proceeds of sale would be insufficient to meet the sums due to him in respect of the property.

(3) If—

- (a) the sale referred to in subsection (1) has been carried out under the terms of an agreement without the authority of the chief constable, and
- (b) the sum to which the custodier is entitled under subsection (1) is less than the proceeds of the sale,

the custodier may pay any surplus to the chief constable.

EXPLANATORY NOTES

Clause 5

This clause implements recommendations 43 to 45 inclusive.

Subsection (1)

This subsection implements recommendation 43. The amount due to the custodier may or may not be prescribed in a contract. The chief constable is not in terms given power in the Bill to adjudicate the fairness of the custodier's charge (whether or not this charge is prescribed in the contract), but if dissatisfied he would be able to withhold permission to sell under clause 4. It would thereafter be open to the custodier to appeal to the sheriff under clause 14, and the sheriff would determine the question.

Subsection (2)

This subsection, which implements recommendation 44, restricts the validity of a forfeiture clause in a contract relating to property which is subsequently uncollected. Any such clause is to be void unless the proceeds of sale would be insufficient to meet the sums due to the custodier.

Subsection (3)

This subsection implements recommendation 45. It confers on a custodier a choice between retaining the net proceeds of sale to meet a possible claim by the owner, and remitting the net proceeds to the chief constable. This choice only arises where the custodier exercises a contractual power of disposal, and is neither obliged nor elects to apply to the chief constable for authority to dispose of the property under clause 4. Where an application is made the net proceeds must be paid to the chief constable—see clause 8(1).

Lost and Uncollected Property (Scotland) Bill

Procedure on claiming lost and uncollected property

Claims by
owner etc.
prior to
disposal.

6.—(1) The owner or person having right to possession of an property in the possession of the chief constable by virtue of the provisions of this Act may at any time prior to its disposal under those provisions claim that property from the chief constable in accordance with such procedure (if any) as the chief constable may direct.

(2) The chief constable shall consider any claim in respect of an property in his possession made to him under this section and on being satisfied that the claimant is the owner of that property or has a right to possession of it shall deliver the property to the claimant on such conditions as he thinks fit including payment of any reasonable expenses incurred by the chief constable.

In this subsection "expenses" includes the amount of any reward paid from the compensation fund.

(3) Nothing in this section affects any right to or interest in the property arising otherwise than by virtue of this section.

EXPLANATORY NOTES

Clause 6

This clause relates to the right of an owner, etc., to reclaim his property prior to its disposal. The clause mainly relates to lost property but may also apply to uncollected property (if the property has been delivered to the chief constable in terms of clause 4(3)(c)). The clause implements recommendations 9 and 11 in Part IV of the report. The recommendations relating to a claimant's right of appeal, insofar as it relates to lost property, (recommendations 10 and 12) are implemented by clause 14.

Subsection (1)

This subsection partly implements recommendation 9. The claimant may not necessarily be the owner, but he may be entitled to possession (for example if he is acquiring the property on hire-purchase). The subsection confers power on the chief constable to regulate the procedure whereby claims may be made.

The expression "in the possession of the chief constable" refers to both natural (i.e. physical) and civil possession. For example, the police will have civil possession, in the context of this report, when the discovery of property is reported to them but the property itself is not delivered to them (see especially clauses 1(1) and 2(1)).

Subsection (2)

This subsection partly implements recommendation 9 and implements recommendation 11. It does not define the standard of proof required of a claimant, using instead a statutory formula similar to that appearing in the existing legislation. The chief constable's power to make a charge for expenses is limited to the case where expenses have actually been incurred.

Subsection (3)

This subsection confines the chief constable's function to a decision whether or not to deliver the property to the claimant. The chief constable's function does not involve any decision which may affect the rights of third parties to the ownership or possession of the property (see also recommendation 10 and clause 14).

Lost and Uncollected Property (Scotland) Bill

Powers of
chief constable
to make
rewards.

7.—(1) A chief constable may—

- (a) in the event of any property in his possession by virtue of the provisions of section 1 being claimed, order the claimant on claiming it to pay to him such sum as he may determine as a reward to the finder; or
- (b) in the event of any such property not being claimed, give that property or any part of it to the finder, or pay him such sum as he may determine as a reward.

(2) In determining whether to make any reward under subsection (1) and in determining the amount of any such reward the chief constable shall have regard to the whole circumstances including—

- (a) the nature and value of the property;
- (b) the ability of the owner to pay; and
- (c) the actings of the finder.

EXPLANATORY NOTES

Clause 7

This clause implements recommendations 29 to 32 contained in Part VI of the report. Recommendation 33, which relates to the finder's right of appeal, is implemented by clause 14.

Subsection (1)

This subsection provides that a reward may be claimed only if the chief constable's functions under clause 2 apply. Thus if property is restored directly to the owner, or to some person acting on his behalf, any question of a reward is a private matter between owner and finder and does not concern the chief constable. A reward may, however, be paid to the finder if the chief constable has civil possession (see the Note to clause 6(1)).

The subsection distinguishes between property which is claimed and unclaimed. Where the property is claimed (paragraph (a)) the finder's interest is restricted to a reward. The subsection enables the chief constable, in terms of recommendation 29, to order the claimant to pay the reward to the chief constable, who in turn will arrange for it to reach the finder.

Paragraph (b) implements recommendations 30 and 32. If the property is unclaimed, the chief constable, at his discretion, may either pay a reward to the finder out of the compensation fund, or may give the property to the finder. In the latter case the finder acquires ownership subject to the previous owner's right to reclaim his property within a period of 5 years (see clause 9).

Subsection (2)

This subsection implements recommendation 31. It indicates the relevant factors to be taken into account in determining the amount of a reward.

Lost and Uncollected Property (Scotland) Bill

The compensation fund.

8.—(1) There shall be paid into a compensation fund established by the police authority for the purposes of this section the net proceeds of the sale of any property under the provisions of sections 2 and 3, and any surplus paid to the chief constable under section 5(3).

(2) Any sum payable to the compensation fund under subsection (1) shall be a debt owed to the fund and shall be recoverable by the chief constable as such.

(3) There shall be paid from the compensation fund—

- (a) any reward made by the chief constable under section 7;
- (b) any compensation payable under section 10.

(4) Any excess of the sums payable into the compensation fund for any accounting year over sums payable from the compensation fund in that year shall be applied for such purposes as the police authority may determine, being purposes of that authority.

(5) In this section “net proceeds” means the gross proceeds realised on disposal less any reasonable expenses which have been incurred in connection with the custody and disposal of the property in question, and in the case of a disposal of uncollected property, any other sum to which the custodier is entitled under section 5.

EXPLANATORY NOTES

Clause 8

This clause implements recommendations 18 and 24 in Part IV of the report. Subsection (3) also implements in part recommendation 19 in Part IV and recommendation 30 in Part VI of the report.

Subsection (1)

This subsection, which implements recommendation 18, provides for the establishment of a compensation fund, and further provides that the net proceeds of sale (as defined in subsection (5)) are to be paid into this fund. This rule is subject to an exception in the case of a valid sale of uncollected property under an agreement without the authority of the chief constable: the custodier may in that case, if he chooses, pay the net proceeds to the chief constable but he is not obliged to do so (see clause 5(3) and the Note thereto appended).

Subsection (2)

This subsection confers power on the chief constable to recover any sum which is due to the fund by virtue of the provisions of the Bill.

Subsection (3)

This subsection partly implements recommendation 19 in Part V and recommendation 30 in Part VI.

Subsection (4)

This subsection implements recommendation 24.

Lost and Uncollected Property (Scotland) Bill

Rights in property

Rights arising
on disposal.

9.—(1) Any disposal of any property authorised by the chief constable under section 2 or 4 to a person taking in good faith shall, subject to subsection (2), vest the ownership of the property in that person.

(2) In the case of any such disposal of property made otherwise than for value, any person who was immediately before the disposal the owner of the property (“the previous owner”) shall be entitled within the period of 5 years after the date of the disposal to recover possession of the property as owner.

EXPLANATORY NOTES

Clause 9

This clause implements recommendations 21 and 22 contained in Part V, and recommendations 48 and 49 contained in Part VII of the report. It regulates rights of ownership only where disposal of lost or uncollected property is authorised by the chief constable and where an acquirer takes in good faith. It does not deal with rights of ownership where a custodian of uncollected property disposes of that property (whether or not for value) under an agreement; nor does it seek to regulate the position where an acquirer is not acting in good faith. These are questions which will continue to depend on principles of the general law.

Subsection (1)

This subsection, which implements recommendations 21 and 48, vests the ownership of lost or uncollected property in a good faith acquirer for value.

Subsection (2)

This subsection implements recommendations 22 and 49. It reserves the right of the previous owner to reclaim his property within a period of 5 years if it has been disposed of otherwise than for value—in effect, if it has not been sold. This right exists in a question with any possessor—not merely the first person who may have acquired the property on disposal. The period of 5 years runs in all cases from the date of disposal and is not subject to extension by virtue of the legal disability of the owner, fraud or error (cf. s.6 of the Prescription and Limitation (Scotland) Act 1973). By implication, if the previous owner does not reclaim his property within 5 years, the right of the acquirer or his successors to the ownership of the property cannot thereafter be challenged.

Lost and Uncollected Property (Scotland) Bill

**Rights to
compensation.**

10.—(1) Subject to the provisions of this section, the previous owner of any property disposed of for value under the provisions of section 2 or 3 shall be entitled to compensation from the compensation fund in respect of any loss suffered by him in relation to that property.

(2) A claim for compensation under subsection (1) in respect of any property may be made within a period of 5 years after the date of its disposal under section 2 or 3 in such manner as the chief constable may direct.

(3) The amount of any compensation payable under subsection (1) shall be the amount of the net proceeds paid into the compensation fund under section 8 in respect of that property.

**No right of
ownership
conferred by
finding.**

11.—No person who—

- (a) finds any property appearing to have been lost or abandoned;
- (b) is the employer of such a person;
- (c) owns or occupies the land on which any such property is found,

shall by reason only of the finding of that property have any right to claim ownership of it.

EXPLANATORY NOTES

Clause 10

This clause describes the circumstances in which a claim for compensation may be made. It implements recommendations 19 and 20 in Part V and recommendations 46 and 47 in Part VII of the report.

Subsection (1)

This subsection, as read with subsection (3), implements recommendations 20 and 47 and partly implements recommendations 19 and 46. It confines a claim to a sum, representing the net proceeds of sale, which is paid into the compensation fund in respect of the disposal of lost or uncollected property. Thus no claim to compensation may be made where property has not been disposed of for value, nor where a credit balance does not remain after a sale takes place. Similarly a claim may not be made until the net proceeds of sale are paid into the fund. In accordance with principles of the general law, a claim is confined to a loss actually sustained: thus a previous owner of uncollected property, disposed of by a custodian under an agreement, who reclaims his property from the acquirer under clause 9(2), cannot also claim compensation.

Subsection (2)

This subsection, which partly implements recommendation 19 in Part V and recommendation 46 in Part VII, restricts a claim to a period of 5 years after disposal. As in the case of clause 9(2), the period runs in all cases from the date of disposal and is not subject to extension by virtue of the legal disability of the owner, fraud or error (cf. s.6 of the Prescription and Limitation (Scotland) Act 1973).

Clause 11

This clause implements recommendation 28 in Part VI of the report. It preserves the right of an owner or occupier of land to establish to the satisfaction of the chief constable that he is the owner of the property.

Lost and Uncollected Property (Scotland) Bill

**Living
creatures.**

12.—Where any person who has found any living creature has been permitted to have at his request care and custody of that creature under arrangements made by the chief constable under section 2(2) and the creature has—

- (a) continued to be in his care and custody for a period of 3 months, and
- (b) not been claimed during that period,

that person shall at the end of that period become the owner of that creature.

**Rights of
Crown.**

13.—(1) Any property to which this section applies belongs to the Crown.

- (2) This section applies to any property—
 - (a) on being abandoned;
 - (b) which is lost and is not claimed or disposed of in accordance with the provisions of this Act.
- (3) This section does not apply to wild creatures.

EXPLANATORY NOTES

Clause 12

This clause implements recommendations 51 and 52 in Part VIII of the report. There is no explicit substitute for s.4 of the Dogs Act 1906 (the repeal of which is proposed in the Bill—see Schedule) in view of the wide powers conferred on the chief constable by virtue of clause 2(2).

Clause 13

This clause implements recommendations 1 and 2 in Part II of the report. It restates the general principle of law that the Crown is entitled to the ownership of abandoned property. The Crown, in terms of the Bill, will not be entitled to the ownership of lost or unclaimed property which is disposed of by or under the authority of the chief constable (see clause 9); nor to the net proceeds of sale paid into the compensation fund (see clause 8(4)). The clause does not seek to amend the existing law relating to the ownership of wild creatures: for example, it does not affect the Crown's right to the ownership of whales, nor the rights of private individuals to acquire ownership of wild creatures.

Lost and Uncollected Property (Scotland) Bill

General

Appeal to
sheriff.

14.—(1) Any person mentioned in subsection (2) may appeal by summary application to the sheriff against any decision of the chief constable made under the sections specified in relation to that person in that subsection.

(2) The persons referred to in subsection (1) are—

- (a) a custodier under sections 4 and 5;
- (b) a claimant under section 6;
- (c) a finder or owner mentioned in section 7.

(3) In upholding an appeal under this section the sheriff may—

- (a) remit the case with the reason for his decision to the chief constable for reconsideration of his decision; or
- (b) reverse or alter the decision of the chief constable.

The Crown.

15.—This Act binds the Crown.

EXPLANATORY NOTES

Clause 14

This clause deals with the appeals which may be made to the sheriff by summary application arising out of the exercise of various functions under the Bill. It accordingly implements recommendations 10 and 12 in Part IV; recommendation 33 in Part VI; and recommendation 42 in Part VII.

The matters which may be the subject of an appeal under this clause include:

- (a) an appeal by a custodier against a decision of the chief constable refusing or modifying an application to dispose of uncollected property (recommendation 42);
- (b) an appeal by a person claiming to be the owner of lost property against (i) the chief constable's refusal to recognise his claim (recommendation 10); (ii) a charge for expenses incurred by the chief constable in connection with the custody of lost property (recommendation 12); (iii) the amount of any reward payable to the finder fixed by the chief constable (recommendation 33);
- (c) an appeal by a finder against the amount of a reward fixed by the chief constable; or by a person claiming to be a finder of lost property against a decision by the chief constable refusing his claim (recommendation 33).

Clause 15

This clause *inter alia* implements in part recommendations 3 to 6. It ensures that the chief constable's functions relate to all property situated in Scotland, even if it is found on premises belonging to the Crown.

Lost and Uncollected Property (Scotland) Bill

Interpretation.

- 16.—**(1) In this Act, unless the context otherwise requires—
- “chief constable” means the chief constable of the region or islands area in which lost or abandoned or uncollected property is situated;
 - “compensation fund” means the fund established under section 8;
 - “custodier” has the meaning given by section 3;
 - “finder” has the meaning given by section 1;
 - “net proceeds” has the meaning given by section 8;
 - “police authority” means for every police area which is a region, the regional council, and for every police area which is an islands area, the islands council;
 - “previous owner” has the meaning given by section 9(2);
 - “uncollected property” has the meaning given by section 3.
- (2) In this Act, unless the context otherwise requires—
- (a) any reference to a numbered section is a reference to the section of this Act so numbered;
 - (b) a reference in a section to a numbered subsection is a reference to the subsection of that section so numbered;
 - (c) a reference in a section or subsection to a numbered or lettered paragraph is a reference to the paragraph of that section or subsection so numbered or lettered.

Local enactments.

17.—(1) Subject to subsection (2), where any local enactment provides for any matter which is also provided for by any provision of this Act, that provision shall have effect in substitution for the local enactment which shall cease to have effect.

(2) The Secretary of State may by order except from the operation of subsection (1) such local enactments as may be specified in the order and direct that corresponding provisions of this Act shall not have effect in the areas in which the specified local enactments have effect.

(3) If it appears to the Secretary of State that any local enactment not being an enactment which has ceased to have effect by virtue of subsection (1), is inconsistent with any provision of this Act, or is no longer required, or requires to be amended, having regard to any such provisions, he may by order repeal or amend the local enactment as he may consider appropriate.

EXPLANATORY NOTES

Clause 16

This clause defines certain expressions used in the Bill.

The definition of "chief constable" partly implements recommendation 6, by referring to the area in which lost or abandoned or uncollected property is situated.

The definition of "police authority" is taken from s.2(1) of the Police (Scotland) Act 1967 (as substituted by s.146(3) of the Local Government (Scotland) Act 1973).

Lost and Uncollected Property (Scotland) Bill

Repeals and
savings.

18.—(1) The enactments specified in the Schedule are repealed to the extent shown in column 3 of that Schedule.

1974 c.39.

(2) Nothing in this Act shall affect the operation of sections 114 to 122 (pledges) of the Consumer Credit Act 1974.

Citation,
extent, com-
mencement.

19.—(1) This Act may be cited as the Lost and Uncollected Property (Scotland) Act 1979.

(2) This Act extends to Scotland only.

(3) This Act shall come into operation on the expiration of one month from the date on which it is passed.

EXPLANATORY NOTES

Clause 18

Ss. 114 to 122 of the Consumer Credit Act 1974 already regulate *inter alia* the consequences of failure to redeem a pawn. They do not, however, provide a means whereby a pawnee may divest himself of the proceeds of sale of a pledge, a means supplied by clause 5(3) of this Bill.

Lost and Uncollected Property (Scotland) Bill

SCHEDULE

Section 18

REPEALS

| Chapter | Short Title | Extent of repeal |
|--------------------|-----------------------------------|---------------------|
| 55 & 56 Vict. c.55 | Burgh Police (Scotland) Act 1892 | Sections 412 to 415 |
| 6 Edw. 7 c.32 | Dogs Act 1906 | Section 4 |
| 12, 13, 14 Geo. 6 | Civil Aviation Act 1949 | Section 56 |
| 1965 c.27 | Lost Property (Scotland) Act 1965 | The whole Act |
| 1975 c.78 | Airports Authority Act 1975 | Section 16 |

EXPLANATORY NOTES

Schedule

See clause 12 and the Note appended thereto.

The repeals of s.56 of the Civil Aviation Act 1949 and of s.16 of the Airports Authority Act 1975 are required in order to implement recommendations 3, 4 and 6 of the report.

APPENDIX II

List of those who submitted Comments on Memorandum No. 29

Faculty of Advocates

Law Society of Scotland

Committee of Senators of the College of Justice

The Sheriffs' Association

Society of Writers to H.M. Signet

Faculty of Law, University of Aberdeen

Faculty of Law, University of Glasgow

Dr H. Silberberg

Convention of Scottish Local Authorities

Society of Antiquaries of Scotland

Council for British Archaeology (Scottish Group)

Scottish Police Federation

Association of Chief Police Officers (Scotland)

Inspector H. M. Robertson, Lothian and Borders Police

APPENDIX III

Extracts from the Burgh Police (Scotland) Act 1892 and the Local Acts

(a) The Burgh Police (Scotland) Act 1892

Goods, etc.
found to be
reported to
police office.

S.412 Every person finding any goods, articles, or money shall report the fact, and deposit such goods, articles, or money with the chief constable or other officer acting for him, within forty-eight hours after the same shall have been found by such person; and every person failing so to report and deposit shall be liable to a penalty not exceeding five pounds: Provided always, that if the owner of such goods, articles, or money shall not claim the same and prove his ownership to the satisfaction of the district court within six months from the date of such report and deposit, the district court may award the same to the finder, under deduction of the expenses incurred for advertising for the owner; and where the owner shall appear and prove his ownership as aforesaid, the district court shall order such goods, articles, or money to be delivered to such owner, under deduction of such expenses and of such reward to the finder as in the circumstances the district court shall determine: Provided also, that if the owner of the same do not prove his ownership, and the finder cannot, within six months and after notice, be found, the district court may order such goods or articles to be sold and the proceeds thereof, or if the subject be money, such money to be applied to the purposes of this Act.

How stolen or
unclaimed
goods to be
kept.

S.414 Where any stolen or unclaimed goods or effects may be brought to the police office, the chief constable or other officer of police shall forthwith make an entry of the same in a book to be kept in the police office for that purpose and of the names of the parties from whom taken or by whom pledged or brought to the police office, in which book the chief constable or other officer of police shall also enter the date and manner in which such stolen or unclaimed goods shall be retained till disposed of.

(b) Lost Property (Scotland) Act 1965

Extension of
section 412 to
counties.
1892 c.55.

S.1(1) Section 412 of the Burgh Police (Scotland) Act 1892 (Goods found to be reported to police office) shall, subject to subsection (2) of this section, apply to the landward areas of counties in Scotland as it applies to burghs . . .”

Perishable
articles.

S.2(1) Perishable articles deposited with a chief constable or other officer by virtue of the said section 412 or of that section as extended by the foregoing section may, if unclaimed by the owner, be sold or disposed of after the expiration of such period as the chief constable or other officer thinks fit.

(c) Aberdeen Corporation (General Powers) Order Confirmation Act 1938

S.199(1) The following sections of the Burgh Police (Scotland) Act 1892 shall be deemed to have been duly adopted by the Corporation in terms of that Act and shall come into force in the city at the commencement of and as part of this Order (that is to say):—

Ss.412-415.

S.199(2) Nothing contained in this section in the sections of the Burgh Police (Scotland) Act 1892 adopted as aforesaid shall apply to any property found in or on any public service vehicle belonging to the Corporation or railway property.

(d) Dundee Corporation (Consolidated Powers) Order Confirmation Act 1957

Goods etc.
found to be
reported to
police office.

S.478(1) Any person finding any goods, articles or money shall report the fact to and deposit such goods articles or money with the chief constable or other officer acting for him within forty-eight hours after the same have been found by such person.

S.478(2) Any person who fails so to report and deposit shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding five pounds.

S.478(3) If the owner of any such goods articles or money does not claim the same and prove his ownership to the satisfaction of the magistrate within six months from the date of such report and deposit the magistrate may award the same to the finder under deduction of the expenses incurred for advertising for the owner.

S.478(4) Where the owner appears and proves his ownership as aforesaid the magistrate shall order such goods articles or money to be delivered to such owner under deduction of such expenses and of such reward to the finder as in the circumstances the magistrate shall determine.

S.478(5) If the owner does not prove his ownership and the finder cannot within six months and after notice be found the magistrate may order such goods or articles to be sold and the proceeds thereof or if the subject be money such money to be applied to the purposes of the burgh fund.

S.478(6) Nothing in this section shall apply to any goods articles or money accidentally left in a public service vehicle.

How stolen or unclaimed goods to be kept.

S.480 Where any stolen or unclaimed goods or effects are brought to a police office the chief constable or other officer of police shall forthwith make an entry in a book to be kept in the police office for that purpose of—

- (1) the said goods or effects;
- (2) the names of the parties from whom the same have been taken or by whom the same have been pledged or brought to the police office;
- (3) the date on which such goods or effects are brought to the police office; and
- (4) the manner in which such stolen or unclaimed goods are to be retained till disposed of.

(e) **Edinburgh Corporation Order Confirmation Act 1967**

Lost property to be handed over to police by finder.

S.497(1) Every person who finds any article or money (in this head of this Part of this Order referred to as "lost property") shall, as soon as may be, and in any case within forty-eight hours, report the fact to, and hand over such lost property to, a constable at a police box or police station.

S.497(2) Any person failing to comply with the requirements of the preceding subsection shall be guilty of an offence unless he has reasonable cause for such failure.

Return of lost property to owner.

S.498(1) If the owner of any lost property claims it and proves his ownership to the satisfaction of the chief constable, the chief constable shall deliver it to such owner upon payment or deduction of a reward to the finder of an amount equal to 10 per cent. of its value but, except as hereinafter provided in this section, such reward shall not exceed £10:

Provided that if the chief constable considers that the amount of the reward is inequitable, he may increase or reduce such amount, or, in case of hardship, waive it altogether.

S.498(2) In the event of any dispute between the owner and the finder of any lost property as to its value such value shall be fixed by a valuator to be appointed by the chief constable, and the fee of such valuator shall be payable by the owner or the finder as the chief constable shall determine.

Return of lost property to finder.

S.499(1) If, on the expiration of six months after any lost property has been handed over to a constable, such lost property has not been claimed, or any person who has claimed it has failed to prove his ownership to the satisfaction of the chief constable, the chief constable shall:—

- (a) deliver such lost property to the finder; or
- (b) sell such lost property and pay the proceeds to the finder.

S.499(2) If the finder of such lost property cannot be traced, or he fails to take delivery of it within two months of receiving notice from the chief constable, the chief constable may cause such lost property to be sold.

Disposal of lost property of a perishable nature.

S.500 The chief constable may cause any lost property of a perishable nature to be sold or to be destroyed, and, in the case of an such sale, the proceeds shall be deemed to be lost property for the purposes of this head of this Part of this Order.

Proceeds of sale of unclaimed lost property to be paid into burgh fund.

S.501 The proceeds of the sale of any lost property sold by the chief constable and not paid to the owner or finder in pursuance of any provision of this head of this Part of this Order, or, if the lost property is money, such money, shall be accounted for to the city chamberlain and paid into the burgh fund.

Decisions of chief constable with respect to lost property may be referred to burgh court.

S.502 Any owner or finder of lost property aggrieved by decision of the chief constable under this head of this Part of this Order with respect to:—

- (a) the ownership of any lost property; or
- (b) the amount of a reward to a finder; or
- (c) the liability for payment of the fee of a valuator;

may require such decision to be referred to, and dealt with by, the burgh court, and the decision of the burgh court on any such question shall be final.

Saving for other enactments relating to disposal of lost property.

S.503 Nothing in this head of this Part of this Order shall apply in relation to any lost property found in any vehicle or premises in respect of which provision is made by any other enactment for the redelivery or disposal of lost property, or in or upon any railway property.

(f) Glasgow Corporation Consolidation (General Powers) Order Confirmation Act 1960

Penalties for certain offences.

S.152 Any person who is guilty of any of the following acts or omissions shall in respect thereof be guilty of an offence and shall be liable on summary conviction to penalties not exceeding those hereinafter respectively mentioned (that is to say):—

To a fine of ten pounds every person who—

- (10) finds any goods or any parcel bank note money or other article of value and does not either return the same to the owner or deliver it to a constable on duty at a police office within forty-eight hours thereafter. Provided that this paragraph shall not apply to any property found in or on any railway property or in or on any public service vehicles tramcars trolley vehicles or any subway carriage used on the subway railway of the Corporation.

(g) Greenock Corporation Act 1893

Property stolen and found.

S.8 Sections 412 to 415 of the Burgh Police (Scotland) Act 1892 are hereby incorporated with this Act.

APPENDIX IV

(a) Extracts from the British Airports Authority (Lost Property) Regulations 1972

Interpretation

2.(1) In these Regulations, unless the context otherwise requires—

“the Authority” means the British Airports Authority;

“customs Acts” shall have the same meaning as in the Customs and Excise Act 1952;

“lost property” means any property, vehicle, animal or thing to which these Regulations apply pursuant to Regulation 3 hereof;

“Lost Property Office” means any place designated by the Authority for the safekeeping of lost property, and any reference to the delivery of lost property to a Lost Property Office means delivery to an official at such an office;

“official” means an employee of the Authority.

Lost property to be handed to an official or constable

4. Subject to the provisions of the customs Acts, any person (other than an official or constable) who finds property to which these Regulations apply pursuant to sub-paragraph (i) of Regulation 3 hereof shall hand it immediately in the state in which he finds it to an official or to a constable and inform the official or constable of the circumstances in which it was found.

Delivery of lost property to Lost Property Offices

5. Subject to any provisions of the customs Acts, any official or constable to whom property is handed pursuant to Regulation 4 hereof or who himself finds any property to which these Regulations apply pursuant to sub-paragraph (i) of Regulation 3 hereof or any constable who finds and removes any vehicle, animal or thing to which these Regulations apply pursuant to sub-paragraph (ii) of Regulation 3 hereof shall, as soon as possible and in any case within 24 hours, deliver such property or such vehicle, animal or thing for safe custody in the state in which it comes into his possession to a Lost Property Office and inform an official at the Lost Property Office of the circumstances in which it was found:

Provided that if before any lost property shall have been delivered for safe custody to a Lost Property Office under this Regulation, it is claimed by a person who satisfies the official or constable, as the case may be, that he is the owner, it shall be returned to that person forthwith, without fee or reward, on his giving his name and address to the official or constable who shall, as soon as possible, report the facts and give the claimant's name and address and a description of the lost property to a Lost Property Office.

Recording and safe custody of lost property

6. Any lost property delivered to a Lost Property Office shall be retained in safe custody by the Authority until claimed by the owner thereof or dis-

posed of in accordance with these Regulations, and the Authority shall keep for a period of not less than 12 months a record showing particulars of the lost property (whether delivered to a Lost Property Office or disposed of pursuant to the proviso to Regulation 5 hereof), the circumstances in which it was found, and the ultimate disposal of the lost property, and such record shall at all reasonable times during the said period be available for inspection by any constable:

Provided that—

- (a) official documents, including licences, passports and aliens identity books shall wherever practicable be returned forthwith to the appropriate Government Department, local authority or other body or person responsible for issuing them or for controlling or dealing with them;
- (b) where the name and address of the owner of any lost property, other than the documents referred to in the preceding proviso, are readily ascertainable the Authority shall forthwith notify him that the lost property is in the possession of the Authority and may be claimed in accordance with these Regulations.

Return of claimed lost property

7. If any lost property, while it is retained by the Authority in safe custody, be claimed and the claimant proves to the satisfaction of the Authority that it belongs to him and he gives his name and address to an official at the Lost Property Office, it shall thereupon be delivered on demand to the claimant, without fee or reward, at the Lost Property Office.

Disposal of lost property

8.(1) If any lost property retained by the Authority for safe custody in accordance with these Regulations is not, within three months of the date when it was delivered to a Lost Property Office, re-delivered to a person pursuant to Regulation 7 hereof, the Authority shall be entitled to sell it for the best price that can reasonably be obtained.

(2) Notwithstanding the foregoing provisions of these Regulations, if any lost property retained by the Authority pursuant to these Regulations is of a perishable nature, and if, within 48 hours from the time when it was found, it has not been re-delivered to a person pursuant to Regulation 7 hereof, the Authority shall be entitled to sell it for the best price that can reasonably be obtained.

(3) Notwithstanding the foregoing provisions of these Regulations any lost property which is or which becomes objectionable may forthwith be destroyed or otherwise disposed of in a reasonable manner.

(4) A sale under this Regulation shall not prejudice the right of any person whose rights have been divested by the sale to be paid the proportion due to him of the residue of the proceeds of sale after deduction of the Authority's reasonable costs in connection with the sale.

Examination of property

9. Where any lost property is contained in a package, bag or other receptacle, the Authority may cause such receptacle to be opened and the contents examined, or require the claimant to open it and submit it and its contents for examination, for the purpose either—

- (a) of identifying and tracing the owner of the lost property, or
- (b) of ascertaining the nature of the contents.

(b) Extracts from the Public Service Vehicles (Lost Property) Regulations 1934¹

Definitions

2. In these Regulations, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them:—

“Vehicle” means Public Service Vehicle;

“Driver” means a person licensed to drive a vehicle;

“Conductor” means a person licensed to act as conductor of a vehicle or, in the case of a vehicle where there is no conductor, the driver;

“Operator” means the person who is the holder of a public service vehicle licence in respect of the vehicle in which any property is found.

Property to be handed to Conductor

4. Any person who finds property accidentally left in a vehicle shall immediately hand it in the state in which he finds it to the conductor who shall deal with it in accordance with these Regulations.

Property to be handed to Operator or his Representatives

5. Immediately before or on the termination of any journey the conductor shall as far as practicable search the vehicle for any property accidentally left therein and shall, as soon as may be and in any case within 24 hours, hand such property together with any property handed to him under the preceding Regulation in the state in which it came into his possession to the operator of the service or his representative who shall give the conductor a receipt for the property:

Provided that any property found by or handed to a conductor may, if he goes off duty before the completion of the journey, either be dealt with by him in accordance with the provisions of this Regulation or be handed by him, in the state in which it came into his possession to the conductor who comes on duty in his place, who shall give him a receipt therefor and deal with it in accordance with the provisions of this Regulation:

Provided also that if, before such property has been handed to the operator or his representative, it is claimed by a person who satisfies the

¹As amended by the Public Service Vehicles (Lost Property) (Amendment) Regulations 1958 (S.I. 1958/2262.)

conductor that he is the owner, it shall be returned to that person forthwith, without fee or reward, on giving his name and address to the conductor who shall, as soon as may be, report the facts and give the claimant's name and address and a description of the property to the operator or his representative.

Record of Property

6. The operator's representative shall within 48 hours deliver or send for custody to the operator in the state in which he received it any property handed to him in pursuance of these Regulations, together with particulars of the property, the circumstances in which it was found and the name of the conductor into whose possession it first came or shall forward to the operator such particulars as aforesaid and the address of the place at which he has custody of the property, and in either case the operator shall keep a record of such particulars and of the ultimate disposal of the property under these Regulations, and such record shall at all reasonable times be available for inspection by a police officer or any person authorised to inspect records by the Traffic Commissioners for the Area in which such record is kept.

Safe Keeping of Property

7. The operator or his representative having the custody of property in pursuance of these Regulations shall retain the property in safe keeping until claimed by the owner thereof or disposed of in accordance with these Regulations:

Provided that official documents, including licences, passports and aliens' identity books, shall be returned forthwith to the appropriate Government department, local authority or other body or person by whom they were issued:

Provided also that where the name and address of the owner of any property, other than documents referred to in the preceding proviso, are readily ascertainable the operator or his representative shall forthwith notify him that the property is in his possession and may be claimed in accordance with these Regulations.

Unclaimed Property

8. If any property so retained by an operator or his representative be not within three months of the date when it was handed over by the conductor to the operator or his representative proved to his satisfaction to belong to a claimant, it shall thereupon vest in the operator who shall, as he thinks fit, either deliver such property to the conductor or without undue delay sell such property and in respect of any article which realises a sum in excess of 2s. shall award to the conductor (up to an amount not exceeding £4) one-twelfth of the proceeds of such sale. For the purpose of computing the amount so due to the conductor any fraction of a penny shall be reckoned as a penny:

Provided that any documents, which have not been returned to the owner or other appropriate person under Regulation 7 hereof and which have not

been claimed by a person entitled to their return before the expiration of the aforesaid period of three months, shall not be delivered to the conductor or sold but shall be dealt with in such manner as the operator or his representative may deem appropriate.

Claimed Property

9.(a) If any property while it is so retained by an operator or his representative be claimed and the claimant prove to the satisfaction of such operator or representative that it belongs to him, it shall thereupon be delivered to him upon payment to the operator or his representative of a sum not exceeding one shilling and in the case of property of a value exceeding 2s. an additional sum (up to an amount not exceeding £4) of one-twelfth of the value of the property which additional sum shall be awarded by the operator to the conductor. For the purpose of computing the amount so due to the conductor any fraction of a penny shall be reckoned as a penny.

(b) For the purposes of this Regulation the value of the property shall be deemed to be such sum as may be agreed between the claimant and the operator or his representative, or, failing agreement, such sum as may be fixed by a licensed appraiser. Any fee payable to such licensed appraiser shall be paid by the claimant.

Perishable Property

10. If any property so retained by an operator or his representative appears to him to be of a perishable nature, and it be not claimed and proved to his satisfaction to belong to the claimant within 48 hours from the time when it was found he may thereupon destroy or otherwise dispose of it as he sees fit and if such property is sold the operator shall reward the conductor in the manner provided in Regulation 8 hereof:

Provided that any property which is or becomes objectionable may be destroyed or disposed of at any time in the discretion of the operator or his representative.

Conductor entitled to award

11. The conductor into whose possession the property first came shall alone be entitled to an award under the provisions of Regulations 8, 9 and 10 hereof.

Cost of packing and carriage

12. Where any property is forwarded to a claimant all costs of packing and carriage reasonably incurred shall be paid to the operator or his representative by the claimant.

Examination of Property

13. Where any property is contained in a package, bag or other receptacle, the operator or his representative may cause such receptacle to be opened

and the contents examined if he deems it necessary to do so for the purpose either

- (a) of identifying and tracing the owner of the property, or
- (b) of ascertaining the nature of its contents.

Proof of Ownership

14. Where any property is claimed by any person, the operator or his representative may require the claimant to open any receptacle in which it may be contained and to submit the contents to examination for the purpose of establishing his claim to ownership.

Penalty

15. If any person acts in contravention of or fails to comply with any of the requirements of these Regulations he shall be guilty of an offence and liable to a fine not exceeding £5.