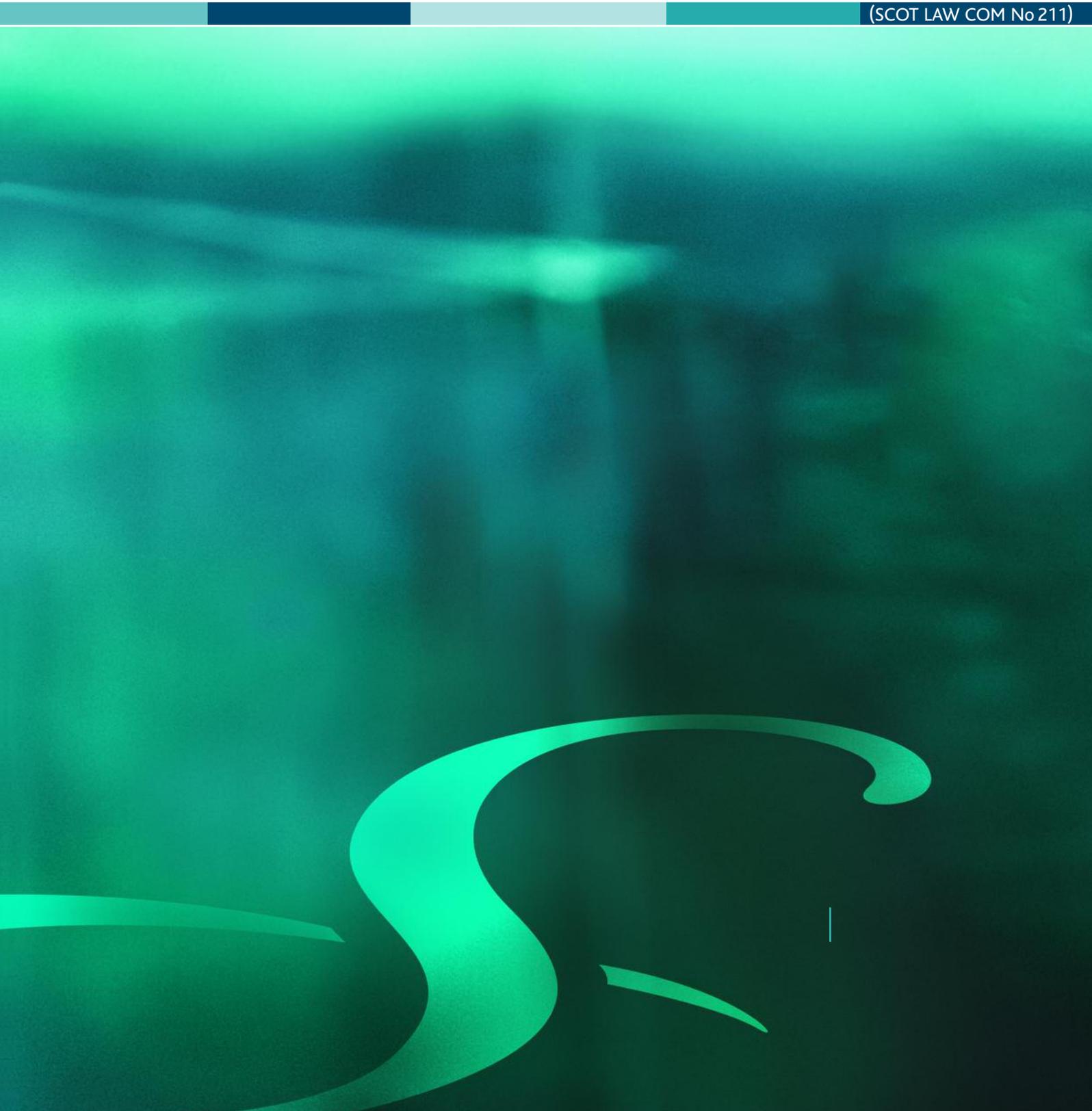




Scottish Law Commission
promoting law reform

(SCOT LAW COM No 211)







Scottish Law Commission

promoting law reform

Established under the Law Commissions Act 1965

Our function

To recommend reforms to improve, simplify and update the law of Scotland

Our role

To play a leading role in developing the law for the people of Scotland so that it is just, principled, responsive and easy to understand

annual report | 2007



Professor George Gretton, Professor Gerry Maher, Colin Tyre (seated), Michael Lugton, Lord Drummond Young and Professor Joe Thomson



Annual Report 2007

To: Mr Kenny MacAskill MSP, Cabinet Secretary for Justice

We are pleased to submit to the Scottish Ministers our Annual Report for the year to 31 December 2007.

James Drummond Young JAMES DRUMMOND YOUNG, *Chairman*

George Gretton GEORGE GRETTON

Gerard Maher GERARD MAHER

Joseph M Thomson JOSEPH M THOMSON

Colin Tyre COLIN TYRE

Michael Lugton.

Michael Lugton, *Chief Executive*
6 February 2008

Laid before the Scottish Parliament by the Scottish Ministers under section 3(3) of the Law Commissions Act 1965

February 2008

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Chairman's foreword



It gives me much pleasure to present the Commission's Annual Report for the year 2007.

Four reports were published during the year, dealing with the variation and termination of trusts, limitation and prescribed claims, the implications of the case of *Sharp v Thomson*, and rape and other sexual offences. The Scottish Government has indicated that during 2008 it will introduce a Bill to implement the Report on Rape and Other Sexual Offences, and we very much welcome the prompt implementation of our reports in this way.

During 2007 we also published discussion papers dealing with succession and damages for wrongful death and, jointly with the English Commission, a consultation paper concerning aspects of insurance contract law. We have also begun work on two new projects, on unincorporated associations and consumer remedies, the latter being a joint project with the English Commission. Work has also continued on the very major project dealing with land registration.

In November we received a new reference from the Scottish Government on a range of aspects of criminal law and procedure; initially we are considering possible Crown rights of appeal against judicial rulings that can end a solemn case without a jury verdict and certain aspects of the rule against double jeopardy. References from Government form an important aspect of our work, and we are always anxious to deal with them expeditiously.

During 2008 we will continue to make progress with our existing projects. We envisage publication of reports on our projects on Crown appeals and damages for wrongful death. We will also start to develop proposals for our Eighth Programme, which will operate from 2010 onwards.

We are pleased that the Scottish Government has stated that it will implement our Report (published in 2006) on Interest on Debt and Damages. It is nevertheless a matter of some concern that a significant number of our other reports since devolution remain to be implemented. During the year we have had useful discussions with the Cabinet Secretary for Justice, and we very much hope that these will lead to the further implementation of our reports.

Finally, our success during the year is due to the dedication, ability and hard work of all of the staff of the Commission and my fellow Commissioners, and I would like to pay tribute to them.

James Drummond Young

THE HON LORD DRUMMOND YOUNG
Chairman

Publications 2007

Annual Report 2006 Scot Law Com No 205	20 March 2007
Report on Variation and Termination of Trusts Scot Law Com No 206	30 March 2007
Insurance Contract Law: Misrepresentation, Non-Disclosure and Breach of Warranty by the Insured – A Joint Consultation Paper DP No 134	17 July 2007
Discussion Paper on Damages for Wrongful Death DP No 135	1 August 2007
Discussion Paper on Succession DP No 136	16 August 2007
Report on Personal Injury Actions: Limitation and Prescribed Claims Scot Law Com No 207	5 December 2007
Report on <i>Sharp v Thomson</i> Scot Law Com No 208	12 December 2007
Report on Rape and Other Sexual Offences Scot Law Com No 209	19 December 2007

In addition two papers on insurance law, which are not included in our numbered series, were published jointly with the Law Commission: Issues Paper 3: Intermediaries and Pre-Contract Information, published in March 2007 and Issues Paper 4: Insurable Interest, published in January 2008.

Copies of all these publications are available on our website www.scotlawcom.gov.uk

Law reform projects

Seventh Programme of Law Reform

Our Seventh Programme of Law Reform, published in February 2005, outlines the main projects on which we will be working up to the end of 2009. It incorporates ongoing work from our last programme of law reform and outlines projects on which we are currently working including those on property law, succession, trusts, unincorporated associations, and assignment of, and security over, incorporeal moveable property. The programme also includes a criminal law project on the law on provocation, self-defence, coercion, and necessity.

The programme was prepared after extensive consultation with the legal profession, a wide range of other interested bodies and with the public into areas of law they thought were in need of reform. The consultation process was extremely helpful and indeed two projects on which we are working – the law of succession and on unincorporated associations - were included in the programme as a result of suggestions made to us.

During 2008 we will start preparations for our Eighth Programme which will set out our programme of work from 2010 to 2014. We expect to start the consultation process on a draft programme towards the end of 2008, with a general public consultation in the first half of 2009.

References from Ministers

While projects under our Seventh Programme form the core of our law reform work, we also undertake work in response to references from Ministers. These projects are an important part of our work and are usually prompted by concern about specific areas of law which may need reform. Topics referred to us are usually on legal issues which need fairly urgent review. For that reason, we generally aim to complete work on references within a shorter timescale than our programme work.

New projects

In November 2007 we received a new reference on criminal law from the Scottish Ministers inviting us to consider the law relating to –

- judicial rulings that can bring a solemn case to an end without the verdict of a jury and rights of appeal against such;
- the principle of double jeopardy and whether there should be exceptions to it;
- admissibility of evidence of bad character or of previous convictions, and of similar fact evidence; and
- the Moorov doctrine.

This is a substantial reference. For that reason we have decided that work should be divided into separate projects. We have started work on the first two parts of the reference and will turn to the remaining parts of the reference once those projects have been completed.

Recently we received a reference to undertake a joint project with the Law Commission in London, on consumer remedies. The project will be looking at ways of simplifying the remedies available to consumers, for example when they purchase faulty goods.

Implementation of our reports

In recent years we have been pleased to assist the Scottish Government in connection with the passage of several Bills in the Scottish Parliament which implemented our recommendations for reform on a number of topics, particularly property law. We regard this work as an important part of our role and one which we hope to continue in the future.

We hope to assist the Scottish Government during 2008 with implementation of recommendations in our Report on Rape and Other Sexual Offences, once the public consultation exercise has been completed.

Further information about implementation of our reports can be found on the Publications page of our website

www.scotlawcom.gov.uk

Projects under our Seventh Programme

Land registration

Project Team

Professor George Gretton, Commissioner

John Dods, Project Manager

Ross Sanderson, Legal Assistant

John Glover, Registers of Scotland

The modern system of land registration was introduced by the Land Registration (Scotland) Act 1979. The new system has brought with it many benefits. But experience has disclosed certain shortcomings in the legislation, and it became apparent some years ago that a review would be desirable. The project is aimed at enhancing the technical functionality of the system, improving the fit between registration law and general property law, removing certain practical difficulties arising from the current legislation, bringing clarity to matters that are obscure under that legislation, and overhauling existing property statutes to make them e-compatible. Registers of Scotland have provided, and are continuing to provide, extensive support for the project and we are most grateful to them for that support.

The issues involved are complex and for that reason we published three separate discussion papers on different aspects of reform. The first discussion paper - on Void and Voidable Titles - examined the legal policy issues underlying land registration, while the Discussion Paper on Registration, Rectification and Indemnity considered the provisions of the 1979 Act. The third discussion paper - on Miscellaneous Issues - dealt with topics such as descriptions and boundaries, servitudes, overriding interests, and decision-making by the Keeper of the Registers of Scotland.

Work is progressing on our report and draft Bill, both of which are likely to be lengthy. The project is a medium-term one under our Seventh Programme and as such is due for completion by the end of 2009 at latest. We hope to complete this project by the end of 2008 or in the first half of 2009.

Trusts

Project Team

Professor Joe Thomson, Commissioner

Colin Tyre QC, Commissioner

David Nichols, Project Manager

Lyndsey Foggarty, Legal Assistant

Trust law is a long-term project which is likely to be carried forward into our next programme of law reform. It is a substantial project and for that reason we are working on it in two main stages, dealing with trusts and trustees.

We have published five discussion papers so far, covering a range of topics:

- Breach of Trust
- Apportionment of Trust Receipts and Outgoings
- Trustees and Trust Administration
- Variation and Termination of Trusts
- The Nature and Constitution of Trusts

The first of our Reports – on Variation and Termination of Trusts – was published in March 2007. Our recommendations address some of the difficulties that arise when private trusts are varied or terminated and seek to simplify the reorganisation of charities, public trusts and endowments.

As regards private trusts, at present the beneficiaries if all of full age and capacity may agree to vary the trust, terminate it or resettlement the trust property in another trust. As there was no support from consultees for change, the Report recommends that the present position be given statutory authority and the draft Bill annexed to the Report sets out new statutory provisions. We also recommend that parents or guardians should continue not to be permitted to agree to a variation or termination on behalf of a child who is a beneficiary under a trust, because of the likelihood of there being a conflict of interest.

Section 1 of the Trusts (Scotland) Act 1961 allows the court to approve on behalf of underage, unborn or incapable beneficiaries a variation or termination of a private trust. The Report recommends a number of changes to improve the way this section works in practice by giving the court the following additional powers:

- power to exonerate trustees from liability where an interest of negligible value which has been cut out by the variation unexpectedly emerges;
- power to approve a variation which would prejudice an unborn beneficiary if there is no reasonable likelihood of such a beneficiary being born;
- power to approve a variation on behalf of an untraceable beneficiary;
- power to take non-economic considerations into account in assessing whether there is prejudice to an underage, incapable or unborn beneficiary.

In the public trust field there are different regimes for reorganising endowments, charities and non-charity public trusts. We recommend that the criteria for reorganisation should be simplified, should be the same for all, and that the Office of the Scottish Charity Regulator (which approves reorganisations of charities) should also deal with reorganisations of public trusts and endowments.

We are now considering liability of trustees to third parties with a view to publishing a discussion paper on this topic early in 2008.

Succession

Project Team

Professor Joe Thomson, Commissioner

David Nichols, Project Manager

Maria Theodossiou, Legal Assistant

We decided to undertake a further review of the law of succession following suggestions made to us during consultation on a draft of our Seventh Programme. Our earlier Report on Succession, published in 1990, dealt with a wide range of issues but has not been implemented.

The current project is re-examining succession law to ensure that it reflects current social attitudes and deals with the types of relationship which have become fairly common in Scotland in recent years.

We published a Discussion Paper in August 2007. The two main parts of the Discussion Paper consider the rights of surviving spouses, civil partners, cohabitants, children and stepchildren on intestacy; and whether these relatives should be protected against disinheritance and how such protection is best achieved.

In relation to the law of intestacy, we propose that where there are no surviving issue, the surviving spouse or civil partner should be entitled to the whole estate. Where there are also surviving issue, we propose that the surviving spouse or civil partner should continue to have a measure of priority as at present and should be entitled to the deceased's whole estate up to £300,000 with half of any excess being shared equally with the issue.

Following concerns expressed by members of our advisory group, the Discussion Paper also considers

whether executors-dative appointed by the court in intestate estates should continue to be required to find caution.

In cases of testate succession we propose a rule-based scheme of protection for surviving spouses or civil partners whereby the survivor would be entitled to 25% of what he or she would have received had the deceased died intestate under our new intestacy proposals. We propose extending to testate estates the recently enacted court-based protection scheme in section 29 of the Family Law (Scotland) Act 2006 for people whose cohabitating partners died intestate. We also favour a court-based scheme for dependent children to whom the deceased owed an obligation of aliment. We tend to think that there should be no protection for adult children, but if they are to be protected then we put forward a rule-based scheme with the entitlement being 25% of what the child would have received on intestacy.

The Discussion Paper also considers whether provisions should be introduced in order to prevent a person evading before death the proposed protections against disinheritance by way of lifetime gifts, the prescription of disinheritance claims, and private international law matters.

The consultation period ended in December. We are now considering the responses with a view to completing our report around the end of 2008.



David Nichols, Maria Theodossioui and Professor Joe Thomson

Assignment of and security over incorporeal moveable property

Project Team

Professor George Gretton, Commissioner

John Dods, Project Manager

Ross Sanderson, Legal Assistant

This project was suggested to us by the Law Society of Scotland and a number of other consultees during consultation on items for inclusion in our current programme of law reform. It is a substantial long-term project which we intend to carry forward into our next programme of law reform, starting in 2010. The resources available to the project will continue to be limited until the land registration project has been completed.

During the year we studied developments in this area in a number of European countries. We also embarked on a series of pre-consultation meetings. Those we met included representatives of the Insolvency Practitioners Association, HM Revenue & Customs, the Royal Bank of Scotland, CBI Scotland, and solicitors' firms with clients who are involved in such transactions. During 2008 we intend to hold further pre-consultation meetings.

Unincorporated associations

Project Team

Colin Tyre QC, Commissioner

Gillian Swanson, Project Manager

Lyndsey Foggarty, Legal Assistant

Unincorporated associations exist for a wide variety of purposes and in a wide range of sizes and structures. At one end of the scale they may be substantial organisations with property, employees and contractual commitments. At the other end, they may be informal groupings of individuals joining together for temporary and specific purposes.

In Scots law, such associations are not recognised as having a separate legal personality. It is this absence of personality which can create difficulties especially in connection with entering into contracts, owning property and dealing with claims by or against the association and its members. The project will look at ways of removing the current difficulties, possibly by giving some form of legal status to unincorporated associations.

The subject matter of this project is reserved under the Scotland Act 1998 and any recommendations which we may make will fall to be implemented by the United Kingdom Parliament. For that reason we intend to keep in close touch with the Department for Business, Enterprise and Regulatory Reform as regards progress with our work.

We have completed our initial research and have recently discussed a short preliminary paper with several interested parties. We aim to publish a discussion paper in the second half of 2008.

Judicial factors

Our Seventh Programme includes a project to review the law relating to judicial factors. The legislation on this topic has been in existence for over a hundred years and requires to be updated to suit modern needs.

We have completed our research for a discussion paper, which we had hoped to publish during 2007. However, we have not been able to complete the discussion paper as we have had to give priority to completing our project on rape and other sexual offences. Furthermore, as we now need to devote resources to the new reference on criminal law, we have decided to suspend work on this project meantime.

Provocation, self-defence, coercion, and necessity

We included in our current programme a project to review the defences of provocation, self-defence, coercion and necessity, as a follow-up to our earlier Report on Insanity and Diminished Responsibility, published in 2004. The decision to undertake the project arose in part from the case of *Drury v HM Advocate* 2001 SCCR 583, in which the court commented that the law of provocation should be reformed and restated in statutory form. We decided to extend the scope of the project to include self-defence, coercion and necessity as those topics are also in need of review.

We had planned to start work on this project once we had completed our review of the law of rape and other sexual offences. As we have been asked by Scottish Ministers to give priority to the new criminal law reference, which we received in November 2007, we have deferred work on this project for the time being, although we intend to consult on whether the project should be carried forward into our next programme of law reform, due to start in 2010.

References from Scottish Ministers

Rape and other sexual offences

Project Team

Professor Gerry Maher QC, Commissioner

Charles Garland, Project Manager

Cara Jardine, Legal Assistant

We completed work on this project in December when our wide ranging Report on Rape and Other Sexual Offences was published. The Report marks an important stage in the first ever systematic review of Scots law on sexual offences.

We were asked by Scottish Ministers to review this area of law following two widely-reported High Court cases in 2004 and concern among professionals involved in this area of law as well as the general public that the law was unclear.

The Report recommends an extension to the definition of rape aimed at protecting both male and female victims. It also recommends the creation of the new offence of sexual assault which would cover sexual touching or other forms of sexual contact without the victim's consent. In addition sexual coercion would be made a crime. This means that it would be an offence to make a person watch or participate in a sexual activity without the person's consent. It would also cover the sending of sexual e-mails and other communications without the recipient's consent, if the sender acts out of sexual gratification or an intention to humiliate or distress the recipient.

We recommend that the crime of rape should continue to be tried only in the High Court and that there should be a maximum sentence of life imprisonment for rape, sexual assault and certain acts of sexual coercion.

For the first time in Scots law, the meaning of consent, which lies at the heart of the new offences, is to be made clear. It is defined as 'free agreement' and we set out a list of situations in which there is no consent, such as when a person is incapable through intoxication, or is threatened with violence, or is deceived about the purpose of the sexual activity.

One of the main aims of our recommendations is to ensure that there is no distinction between male and female victims or between male and female perpetrators. Many of the current offences are framed in a way which does not respect this principle. As part of this aim we recommend the repeal of offences based on sexual orientation as we see no general justification for consenting conduct being criminal.

Another principle which we have sought to promote is that of sexual autonomy. This means that non-consenting sexual conduct should be criminal, as it represents an invasion of the victim's sexual autonomy, while consenting sexual conduct should not be criminal unless there are powerful reasons for creating an offence.

A further principle which we have adopted in the Report – the 'protective principle' – is that some people should be protected from all sexual activity, such as young children, while more limited protection should cover those who may be able to consent to sexual activity but who should be protected in view of their relative immaturity or vulnerability.

In our Discussion Paper, published in January 2006, we sought views on whether the existing rules of corroboration should be relaxed or removed in respect of sexual offences. The vast majority of consultees were opposed to removing corroboration in cases involving sexual offences. In view of this response we have concluded that if the rules on corroboration need to be reviewed they should be considered as part of a general review of corroboration as it applies throughout the criminal law. For that reason the Report makes no recommendations as regards corroboration in relation to sexual offences.

On publication of the Report the Scottish Government announced a public consultation on our recommendations with a view to introducing a Bill in the Scottish Parliament in 2008.

Crown appeals

Project Team

The Hon Lord Drummond Young, Commissioner

Alastair Smith, Project Manager

Cara Jardine, Legal Assistant

This topic is the first part of the new reference on criminal law, received from Scottish Ministers in November.

This part of the reference relates to judicial rulings that can bring a case under solemn criminal procedure to an end without the merits of the case being considered by a jury, and Crown rights of appeal against such rulings.

At present there are two types of ruling which directly lead to an acquittal - a ruling on a submission of no case to answer under the Criminal Procedure (Scotland) Act 1995 - and a ruling following what is called a "common law submission" which follows the conclusion of evidence. A judge may also make rulings on other matters such as the admissibility of essential pieces of evidence which, while not formally amounting to an acquittal, undermine the prosecution case to the extent that an acquittal becomes inevitable.

Although the issues involved in the project arose in some recent criminal decisions, the project will consider the issues in the broad context of the criminal law generally.

We started initial research for the project towards the end of 2007. We also established a small group comprising members of the Judiciary to assist us and had our first meeting with them in December.

We aim to consult on our proposals in the spring with a view to reporting with recommendations for reform in the summer of 2008.

Double jeopardy

Project Team

Professor Gerry Maher QC, Commissioner

Alastair Smith, Project Manager

Nicola McGowan, Legal Assistant

This topic forms the second part of the recent reference from Scottish Ministers on criminal justice topics.

In general terms the principle of double jeopardy is that a person may not be tried more than once for the same offence. Similar reviews have been undertaken in other jurisdictions which we will be examining as part of our work.

The project will examine the operation of the principle of double jeopardy in existing Scots law. We will also review the rationales underlying the principle of double jeopardy and consider whether grounds may exist for making any exceptions to it.

We have started initial research and a study of comparative law with a view to preparing a discussion paper.

Personal injury actions: limitation and prescribed claims

Project Team

The Hon Lord Drummond Young, Commissioner

Susan Sutherland, Project Manager

Maria Theodossiou, Legal Assistant

This project was completed in December with the publication of our Report on Personal Injury Actions: Limitation and Prescribed Claims.

The Report is in response to two references by the Scottish Ministers in September 2004 and August 2005. The first reference related to the provisions of the Prescription and Limitation (Scotland) Act 1973 which set out the rules of limitation in personal injury actions. The second reference, which concerned prescribed claims, arose from concerns by survivors of alleged institutional child abuse that they could not bring claims for damages because their right of action had been extinguished as a result of the law of prescription.

As regards the limitation rules, the Report recommends a five-year limitation period for personal injury actions in place of the current three-year limit. The longer period is aimed at assisting claimants and their advisers, particularly in cases involving claims for occupational diseases, where gathering evidence to bring a claim for damages can be very time consuming and difficult. The Report recommends changes to the statutory knowledge test so that it focuses on the key question of the seriousness of the pursuer's injuries.

In connection with the judicial discretion to allow time-barred actions to proceed where the court thinks it is appropriate, we recommend the introduction of a statutory list of factors which the court may take into account when exercising its discretion.

As regards the second reference, while we have sympathy with alleged victims of institutional child abuse and others whose claims have been extinguished by prescription we recommend that such claims should not be revived, for a number of reasons which we outline in the Report.

The Report includes a draft Bill which if implemented would give effect to our recommendations for amendments to the 1973 Act.

Sharp v Thomson

Project Team

Professor George Gretton, Commissioner

John Dods, Project Manager

Ross Sanderson, Legal Assistant

We completed work on this project in December with the publication of our Report, which makes recommendations to Scottish Ministers arising out of the case of *Sharp v Thomson* 1997 SC (HL) 66.

At present someone buying property can, in certain circumstances, lose the property if a corporate seller becomes insolvent before the purchaser registers title to it. While the current law is satisfactory at protecting someone who purchases property against the risk that an individual seller might become insolvent, it is less satisfactory in the case of a corporate seller.

With the aim of reducing the risk where a company sells property, the Report recommends that the rules be tightened -

- to ensure that buyers can readily find out whether winding-up proceedings against a corporate seller have been initiated.

- to ensure that floating charges cannot attach to the property without the attachment having been publicly registered – the "no attachment without registration" principle.

The Report also recommends the abolition of an antiquated rule which allows the liquidator of an insolvent corporate seller to out-manoeuvre a buyer by means of an immediate "completion of title".

Two proposals in our earlier Discussion Paper are not included in the recommendations. One of the proposals related to the doctrine of the "purchaser's beneficial interest", but following the House of Lords decision in *Burnett's Trustee v Grainger* 2004 SC (HL) 19, there is no longer any need for legislation on that issue.

The other proposal has already been implemented in section 17 of the Bankruptcy and Diligence etc. (Scotland) Act 2007, which enhances a buyer's protection against the insolvency of an individual non-corporate seller.

Damages for wrongful death

Project Team

Professor Joe Thomson, Commissioner

Susan Sutherland, Project Manager

Janet Hall, Legal Assistant

When the Bill which became the Rights of Relatives to Damages (Scotland) Act 2007 was being debated in the Scottish Parliament, Scottish Ministers concluded that some aspects of the law of damages for wrongful death merited further examination. As a consequence in September 2006 we were invited to undertake a review of the law and in particular the provisions of the Damages (Scotland) Act 1976.

When a person is injured as a result of the wrongful actions of another, the injured party is usually entitled to some form of compensation for loss suffered, whether the loss is patrimonial (financial) or non-patrimonial (non-monetary such as the loss of expectation of life). Where the injured person dies as a result of the injuries, three possibilities arise:

- the victim may have raised proceedings and claimed compensation from the responsible person before death;
- the victim may die before proceedings have been completed; and
- the victim may die before raising proceedings.

Our Discussion Paper, published in August, considered the issues for reform in each of these cases. It also invited views on the reform of the relatives' right to claim damages, on whether or not awards under section 1(4) of the Damages (Scotland) Act 1976 should be retained and, if so, what changes should be made to how they operate in practice.

Following consultation on our proposals, we are working on our report and draft Bill which will be published in the summer of 2008.

Joint projects with the Law Commission

Insurance contract law

Project Team

Colin Tyre QC, Commissioner

Gillian Swanson, Project Manager

Janet Hall, Trainee Solicitor

We are assisting the Law Commission with this project which they are carrying out under their Ninth Programme of Law Reform.

Insurance law is criticised as being outmoded and, in some cases, unfair to policy holders. This project aims to modernise the law and make it fairer.

Following a series of Issues Papers (a means of sharing initial thinking with interested parties), our joint Consultation Paper on Insurance Contract Law: Misrepresentation, Non-Disclosure and Breach of Warranty by the Insured was published in July 2007. The consultation period ended in November. The response has been excellent and we are most grateful to all those who have taken the time to let us have their views.

The proposals largely focus on misrepresentation and non-disclosure and explore the issues around what happens when claimants make mistakes in application forms or when they fail to mention facts which the insurer would regard as relevant.

The industry, aware that the Marine Insurance Act 1906 is outdated and inappropriate to a modern consumer market, has compensated with codes of practice. Regulation by the Financial Services Authority (FSA) and the dispute resolution service provided by the Financial Ombudsman Service (FOS) have also mitigated the harsh effects of the law. Whilst well intentioned, this is confusing for all

parties. The law says one thing, the FSA rules require another and the FOS reaches decisions based on a third.

The Commissions' proposals distinguish between business and consumer policyholders. For consumers, they largely reflect the FSA rules and FOS guidelines. A clear distinction is made between those who act deliberately or recklessly, those who act carelessly and those who act reasonably. Similar suggestions are made for business policyholders although for them the proposals would operate as a default regime.

We aim to publish a further consultation paper around spring 2009. In that connection, we have recently published an Issues Paper on Insurable Interest. We will also be looking at damages for late payment, fraud and post-contractual good faith.

Consumer remedies

Project Team

The Hon Lord Drummond Young, Commissioner

Gillian Swanson, Project Manager

Maria Theodossiou, Legal Assistant

The Department for Business, Enterprise and Regulatory Reform has asked us to look at simplifying the remedies which are available to consumers when they purchase goods which do not conform to contract because, for example, they are faulty. We have also been asked to look at remedies relating to the supply of goods. This is a joint project with the Law Commission for England and Wales.

This area of law is unnecessarily complex due to an overlap of domestic and EU remedies. One result of this complexity is that consumers, sales staff and trained consumer advisers find the law difficult to understand.

The EU Commission is currently carrying out a general review of consumer directives, including the Consumer Sales Directive which was implemented in the UK in 2002. As part of this project, the Department has asked us to advise it on any issues which appear to be of relevance to that review. Our aim will be to recommend appropriate remedies which make this area of the law easier for all users to understand and use. We plan to publish a joint consultation paper in the second half of 2008.

Progress on our law reform projects

Projects under our Seventh Programme

Land registration	Discussion Papers on - <ul style="list-style-type: none"> • Land Registration: Void and Voidable Titles (No 125) published February 2004 • Land Registration: Registration, Rectification and Indemnity (No 128) published August 2005 • Land Registration: Miscellaneous Issues (No 130) published December 2005 	Working on report and draft Bill
Trusts	Discussion Papers on – <ul style="list-style-type: none"> • Breach of Trust (No 123) published September 2003 • Apportionment of Trust Receipts and Outgoings (No 124) published September 2003 • Trustees and Trust Administration (No 126) published December 2004 • Variation and Termination of Trusts (No 129) published December 2005 • The Nature and the Constitution of Trusts (No 133) published October 2006 Report on – <ul style="list-style-type: none"> • Variation and Termination of Trusts (Scot Law Com No 206) published March 2007 	Working on Discussion Paper on Liability of Trustees to Third Parties
Succession	Discussion Paper on Succession (No 136) published August 2007	Working on report and draft Bill
Judicial factors		Work suspended
Assignment of, and security over, incorporeal moveable property		Undertaking research for discussion paper
Unincorporated associations		Undertaking research for discussion paper
Provocation, self-defence, coercion, and necessity		Project not yet started

References from Ministers

Rape and other sexual offences	Discussion Paper on Rape and Other Sexual Offences (No 131) published January 2006 Report on Rape and Other Sexual Offences (Scot Law Com No 209) published December 2007	Project completed
Crown appeals		Working on discussion paper
Double jeopardy		Undertaking research for discussion paper
Evidential questions		Project not yet started
Personal injury actions: limitation and prescribed claims	Discussion Paper on Personal Injury Actions: Limitation and Prescribed Claims (No 132) published February 2006 Report on Personal Injury Actions: Limitation and Prescribed Claims (Scot Law Com No 207) published December 2007	Project completed
<i>Sharp v Thomson</i>	Discussion Paper on <i>Sharp v Thomson</i> (No 114) published July 2001 Report on <i>Sharp v Thomson</i> (Scot Law Com No 208) published December 2007	Project completed
Damages for wrongful death	Discussion Paper on Damages for Wrongful Death (No 135) published August 2007	Working on report and draft Bill

Joint projects with the Law Commission

Insurance contract law	Consultation Paper on Insurance Contract Law: Misrepresentation, Non-Disclosure and Breach of Warranty by the Insured (No 134) published July 2007	Analysing comments and working on second consultation paper
Consumer remedies		Undertaking research for joint consultation paper

Consolidation and statute law repeals

Consolidation

Project Team

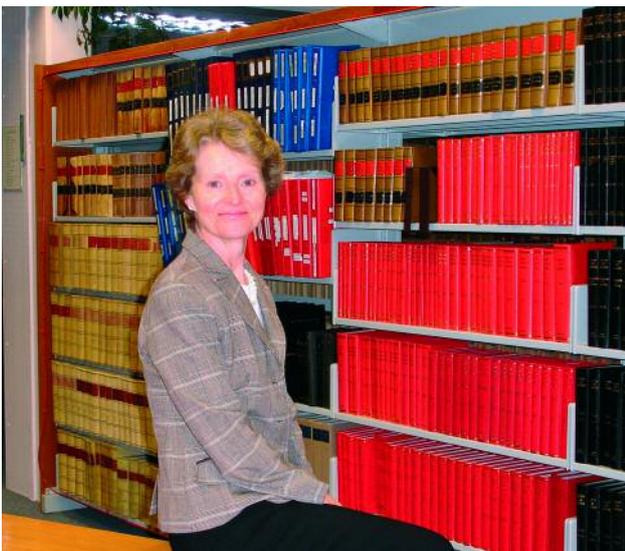
The Hon Lord Drummond Young, Commissioner

Susan Sutherland, Project Manager

Cara Jardine, Legal Assistant

One of our statutory functions is to undertake work on consolidation of legislation. Consolidation involves bringing together a number of statutes in an area of law into a single Act, with the aim of modernising the language and simplifying the provisions. Most of our consolidation work is undertaken jointly with the Law Commission and involves assisting in preparing a draft consolidation Bill.

We are assisting the Law Commission with work on a Bill to consolidate the legislation relating to representation of the people. Work is progressing on this substantial consolidation with the aim of producing an up to date Act on this area of electoral law. The Bill will reflect legislative changes in recent years, including those introduced by the Electoral Administration Act 2006.



Susan Sutherland

Statute law repeals

Project Team

The Hon Lord Drummond Young, Commissioner

Susan Sutherland, Project Manager

Cara Jardine, Legal Assistant

Another of our statutory functions is to make recommendations for the repeal of obsolete or otherwise unnecessary legislation. Along with consolidation, this work plays an important part in keeping legislation up to date and making it easier for people to use legislation.

We undertake work on statute law repeals jointly with the Law Commission, undertaking consultation with appropriate bodies in relation to repeals that relate to Scotland.

Work has recently been completed on the Eighteenth Statute Law (Repeals) Report and draft Bill, which was published at the end of January 2008. The Bill covers a wide range of subjects including legislation relating to police, criminal law and town and country planning. The repeal candidates were developed through research by the Law Commission and consultation with appropriate bodies, including where appropriate bodies in Scotland.

Promoting law reform

An important part of our work involves promoting law reform. Throughout the year we worked closely with the Law Commission on our joint projects and on matters of law reform generally. We provided comments on the Law Commission's provisional topics for inclusion in its tenth programme of law reform, which is due to start in April 2008. Some of the topics identified would be carried out jointly by the two Commissions.



Commissioners and Chief Executive with three of the English Law Commissioners and Chief Executive during a joint meeting in Edinburgh in May 2007.

We maintained our close working relationship with the Scottish Government and were pleased to welcome the Cabinet Secretary for Justice, Mr Kenny MacAskill who visited us in November.

During the year we participated in a number of international and other events aimed at fostering links between law reform agencies and encouraging an interest in law reform work.

In July the Chairman, Professor Maher and the Chief Executive attended a joint meeting of the Law Commissions for Northern Ireland, England and Wales, Ireland and Scotland, in Dublin.

In September our Chief Executive represented the Commission at the second biennial conference in Nairobi on "Encouraging International Cooperation on Law Reform". The conference was held in conjunction with the Commonwealth Law Conference on "Governance, Globalisation and the Commonwealth".

We also promote our work and an interest in law reform by attendance at law reform conferences and seminars.



Law reform publications planned for 2008

Discussion Papers

- Liabilities of trustees to third parties
- Unincorporated associations
- Crown appeals
- Consumer remedies (jointly with the Law Commission)

Reports

- Crown appeals
- Damages for wrongful death



Commissioners and staff

Commissioners and staff

Commissioners

The Hon Lord James Drummond Young, Chairman
 Professor George Gretton
 Professor Gerry Maher QC
 Professor Joe Thomson
 Colin Tyre QC

Chief executive

Michael Lugton

Parliamentary counsel

Gregor Clark CB

Project managers

John Dods
 Charles Garland
 David Nichols
 Alastair Smith
 Susan Sutherland
 Gillian Swanson

Trainee solicitor

Janet Hall

Legal assistants

Lyndsey Foggarty
 Cara Jardine
 Nicola McGowan
 Ross Sanderson
 Maria Theodossiou

Librarian

Nick Brotchie

Office manager

Lesley Young

Personal secretaries

Joan Melville
 Heather Ryan

Administrative and typing services staff

Jackie Palkowski
 Iain Ritchie
 Calum Robertson
 Gordon Speirs

Project advisory groups

We thank the members of our advisory groups for their assistance with our law reform projects in 2007

Rape and other sexual offences

Sandy Brindley, *Rape Crisis Scotland*
James Chalmers, *University of Edinburgh*
Brian Dempsey, *Outright Scotland*
Iain Fleming *Solicitor*
Janette de Haan, *Glasgow Women's Support Project*
Tim Hopkins, *Equality Network*
Louise Johnson, *Scottish Women's Aid*
Frances McMenamin QC
Stephanie Whitehead, *Brook*

Damages for wrongful death

Professor Douglas Brodie, *University of Edinburgh*
Laura Dunlop QC
Roderick Dunlop *Advocate*
Gilles Graham *Solicitor*
Maria Maguire QC
Harvey McGregor QC
Thomas Marshall *Solicitor*

Land registration

Professor Stewart Brymer *Solicitor*
Professor Roderick Paisley, *University of Aberdeen*
Professor Kenneth Reid, *University of Edinburgh*
Professor Robert Rennie, *University of Glasgow*

Personal injury actions

Robert Carr *Solicitor*
David Johnston QC
Ranald Macdonald, *Scottish Health Service Central Legal Office*
Robert Milligan *Advocate*
Fiona Moore *Solicitor*

Trusts

Alan Barr *Solicitor, University of Edinburgh*
Graham Burnside *Solicitor*
Robert Chill *Solicitor*
Andrew Dalgleish *Solicitor*
Frank Fletcher *Solicitor*
Alexander McDonald *Solicitor*
Christopher McGill *Society of Trust and Estate Practitioners (Scotland)*
Simon A Mackintosh *Solicitor*
James McNeill QC
Allan Nicolson *Consultant Solicitor*
Professor Kenneth Norrie, *University of Strathclyde*
Scott Rae *Solicitor*
Alister Sutherland *Consultant Solicitor*

Succession

Alan Barr *Solicitor, University of Edinburgh*
John Kerrigan *Solicitor*
Ross Macdonald, *University of Dundee*
Christopher McGill, *Society of Trust and Estate Practitioners (Scotland)*
Iain Maclean *Advocate*
Professor Michael Meston, *University of Aberdeen*
Malcolm Strang Steel *Solicitor*
Eilidh Scobbie *Solicitor*
Scott Rae *Solicitor*
Gordon Wyllie *Solicitor*

Insurance law

Sarah P L Wolffe *Advocate*
Professor Angelo Forte, *University of Aberdeen*

Running costs

The Commission receives its funding from the Scottish Government. Our running costs for 2007 were offset by payment received from Skills for Justice and the Royal Commission on the Ancient and Historic Monuments of Scotland for use of part of our office accommodation.



	£000	£000	£000	£000
Salaries – Commissioners (including national insurance contributions, superannuation payments and pensions to former Commissioners)	585.5		542.0	
Salaries – Chief Executive and legal staff (including national insurance contributions, superannuation payments and consultants' fees and expenses)	564.5		570.1	
Salaries – administrative staff (including national insurance contributions and superannuation payments)	176.5	1326.5	171.8	1283.9
Accommodation (including maintenance, rates and utilities)		49.8		60.3
Printing and publishing (including costs of books and library purchases, binding, machinery maintenance, photocopying, reprographic services and stationery)		91.6		94.8
Telephone and postage		10.1		12.2
Travel and subsistence		7.9		12.6
Miscellaneous (including training, office services and hospitality)		23.8		21.1
Total		£1509.7		£1484.9

Our law reform work involves-

- **Research** into the existing Scots law and review of comparative law
- **Analysis of problems** with the current law
- **Development of policies** for reform
- **Consultation** on proposed reforms
- **Consideration of consultation responses**
- **Review of policy** in the light of consultation
- **Publication of a report** to Ministers with recommendations for reform, including in most cases a draft Bill to implement the recommendations. Implementation of the recommendations in our reports requiring legislation is taken forward in the Scottish Parliament or in some cases in the UK Parliament at Westminster

For more information about the Commission please contact:

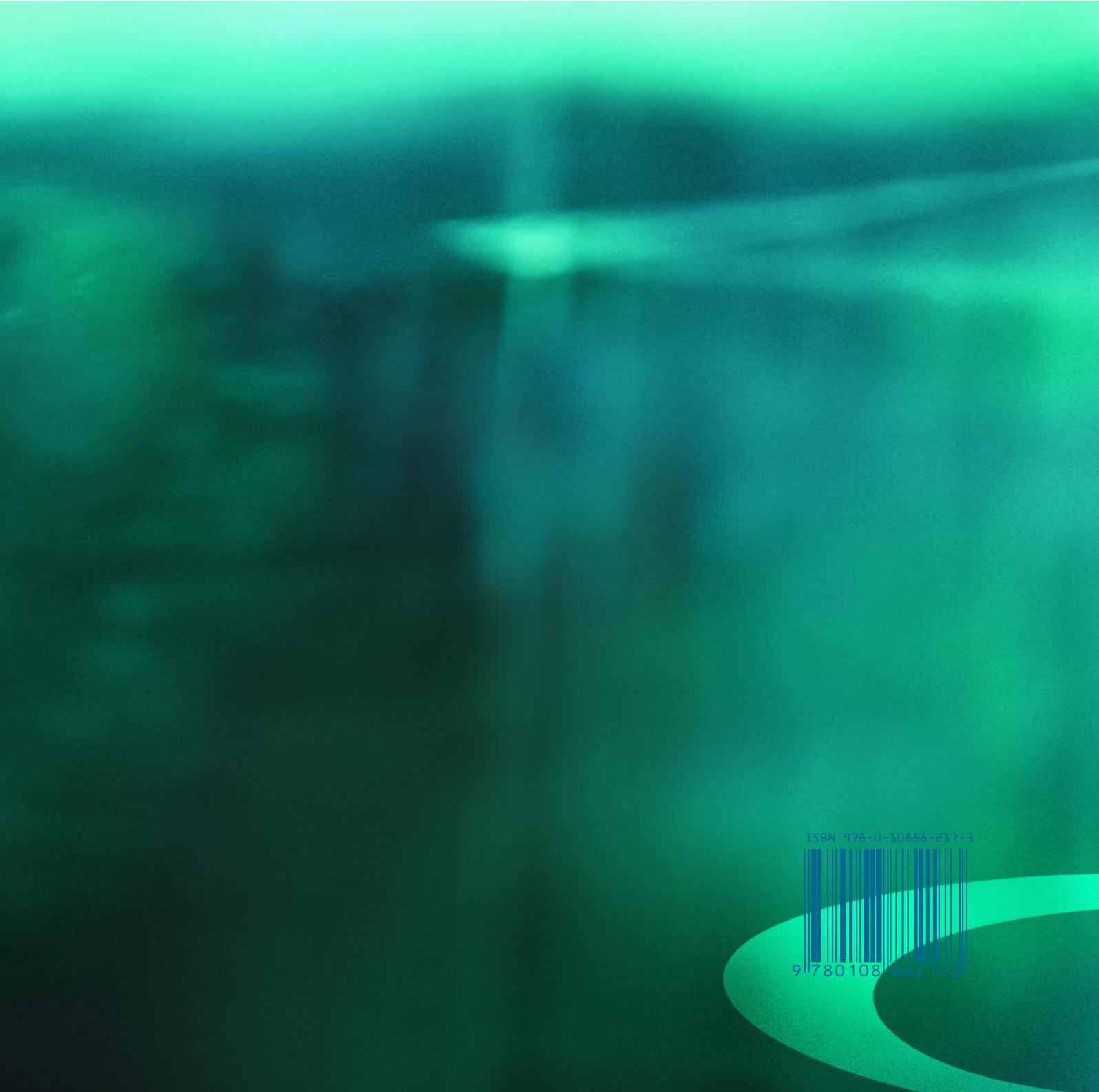
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This report is available on our website.
It may also be purchased from TSO Scotland Bookshop.

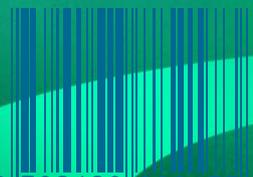
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