

BUSINESS PLAN

2009-2010

NORTHERN IRELAND LAW COMMISSION

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Introduction

This is the third business plan for the Northern Ireland Law Commission. It sets out the background to the setting up of the Commission and describes its statutory position and its remit, and the broad approach to law reform that the Commission intends to adopt. It also sets out our strategic objectives and the work which the Commission intends to undertake in the year 2009-2010 in pursuance of those objectives. This work is described in our business objectives, which have associated key targets.

The Commission has recently submitted to the Secretary of State its First Programme of Law Reform. The content of this programme will dictate the main work of the Commission until March 2011 when it will be replaced by the Second Programme. This Business Plan is based on the proposed First Programme and is linked to the Commission Strategic Plan April 2009-March 2011.

Background to setting up of Commission

The Commission is established under the Justice (Northern Ireland) Act 2002 following the recommendations of the Criminal Justice Review Group (2000). The purpose of the Commission is to keep the law of Northern Ireland under review and make recommendations for its systematic development and reform.

The Act requires the Commission to consider any proposals for the reform of the law of Northern Ireland referred to it. The Commission must also submit to the Secretary of State programmes for the examination of different branches of the law with a view to reform. The Secretary of State must consult with the Lord Chancellor, the First and deputy First Minister and the Attorney General before approving any programme submitted by the Commission.

VISION FOR THE NORTHERN IRELAND LAW COMMISSION

The governmental aim

The overall governmental aim is to secure a lasting peace, based on the Belfast or Good Friday Agreement and the St Andrew's Agreement, in which the rights and identities of all traditions in Northern Ireland are fully respected and safeguarded and in which a safe, stable, just, open and tolerant society can thrive and prosper. The delivery of a fair and impartial system of justice to the community in Northern Ireland and the delivery of effective and efficient justice are key elements of the overall governmental aim for Northern Ireland.

Mission Statement of the NILC

The establishment of an independent law commission is part of the exciting and optimistic peace process that is underway in Northern Ireland. The central aim of the Commission is directly linked to the governmental aim as set out above. In taking forward this aim the Commission recognises that a fundamental premise of a modern system of justice and legal system for Northern Ireland is that everyone has rights and duties under the law. The Commission – alongside other bodies responsible for developing aspects of the law – will use its resources to respect, safeguard and promote those rights and duties. Our aim is to provide for Northern Ireland an

effective means of simplifying and modernising the law and making it accessible to the people.

The Commission intends to establish itself as a body that puts forward robust, workable and timely proposals for improving the law and its practice in Northern Ireland. This emphasis on achieving practicable outcomes will be an important value defining the work of the Commission.

[Working with government](#)

Although the Law Commission has a statutory duty to keep all of the law of Northern Ireland under review, responsibility for law reform is not a monopoly of the Commission. The Northern Ireland Executive and its Departments, the Northern Ireland Assembly and the Northern Ireland Office are involved with the reform and amendment of substantial and important areas of the law. Ways of coordinating their efforts with those of the Commission and other law reform agencies, to ensure the most efficient use of resources and the orderly and systematic review of those branches of the law, is an important aspect of the Commission's considerations.

In many jurisdictions around the world independent law reform commissions have a special status in the legislative and administrative regimes within which they operate. The matters with which the Commissions are concerned are sometimes technical and non controversial but sometimes they may involve matters of social or political controversy. It is hoped that the Northern Ireland Law Commission can establish itself as a valued part of the constitutional structures of Northern Ireland and that its reform proposals will carry weight and will be handled expeditiously by the relevant parts of government here.

[Choosing projects for a programme of work](#)

In August 2008 the Commission launched a consultation on its First Programme of Law Reform. The Commission was gratified to receive a large response to this consultation. In addition to commenting on the topics put forward by the Commission respondents proposed a further 45 potential law reform topics.

The Commission has carefully considered all the proposals submitted by respondents. This involved research on the proposals followed by the application of our published selection criteria - namely importance, suitability and resources, and are rated accordingly.

Five topics were chosen to forward into the Programme.

The Programme was submitted to the Secretary of State for Northern Ireland for approval in accordance with statutory requirements on 1 June 2009.

The projects in the Programme are as follows:

- Land Law Reform

This is a referral from the Department of Finance and Personnel which includes the later referred topics of adverse possession and ground rents legislation.

The aim of this project is to reform and modernise Northern Ireland's antiquated land law and conveyancing law and practice. Land law in Northern Ireland is for the most part based on nineteenth century or earlier legislation. The work on the project is well under way and on 1 June 2009 a Consultation Paper was published seeking views on our main land law reform proposals. This consultation continues until 18 September 2009. Thereafter we intend to publish a Supplementary Consultation Paper on the additional items. We intend to complete this work on the Project with a Report and draft legislation. The Commission is receiving substantial resource support from the Northern Ireland Land and Property Services for the land law project.

- The law and procedure relating to bail

Unlike the position in England and the Republic of Ireland we do not have in Northern Ireland a specific piece of legislation that codifies the law in relation to bail. Provisions governing aspects of bail are to be found in a number of different statutory sources. The result is a piecemeal approach to a subject of

great importance in the context of the administration of criminal justice. There is a case for the enactment of a unifying piece of legislation that brings together the various provisions that currently relate to the subject and also that defines for the first time in this jurisdiction the specific criteria governing decisions on bail both by the police and by the courts.

This would be an opportunity not only to consolidate the existing law but also to assess whether there are any weaknesses in the current system of bail.

The project would include a specific consideration of existing remand and bail provisions in respect of young persons presently governed by Article 12 of the Criminal Justice (Children) (Northern Ireland) Order 1998.

The Commission has already carried out initial research on bail law, practice and procedure. A main part of this work has involved consultation with a wide range of stakeholders.

- Business tenancies law

The law relating to business tenancies law was the subject of reform 13 years ago. In general the law seems to be working well and for the most part the correct balance between the interests of landlords and tenants has been struck. However, there is evidence that the business environment has changed sufficiently in the intervening years so that some aspects of the legislation may be overly restrictive and out of date. This relates in particular to the statutory prohibition on contracting out of the legislation. This prohibition is seen by some as an anachronism which undermines the freedom of landlords and tenants to negotiate mutually satisfactory terms for leasing business property. The legislation's provisions on notifications and time limits were also criticised as in need of modernisation.

The business tenancies legislation is an important aspect of economic life and business development. A review of its operation to ensure it is fit for modern commercial life is timely.

- The law and procedures relating to vulnerable witnesses in civil cases

The reform of the law relating to vulnerable witnesses in civil law cases offers the potential for real benefits for people who face the trauma for them of civil litigation in the courts. The general thrust of the reforms would be to extend the modern concepts developed within the criminal law cases for the protection of vulnerable witnesses in civil law court cases. This kind of improved protection would help in particular victims of domestic violence involved in family law cases.

Traditionally vulnerable witnesses in both civil and criminal cases have been expected to give evidence under the same conditions as all other witnesses; that is, in person, before a public forum. The principle of orality has traditionally been seen as a fundamental aspect of the adversarial model of proof and is grounded on the premise that live evidence affords an opportunity for the tribunal of fact to observe the demeanour of the witness and, in turn, to form an accurate opinion on his or her credibility.

Over the course of the past two decades special protections and services have been introduced for such witnesses in criminal proceedings in order to enhance the quality of their evidence. The Criminal Evidence (Northern Ireland) Order 1999 introduced a wide range of “special measures” to enable vulnerable witnesses to give better evidence in criminal cases. Similar legislation was enacted in England and Wales under the provisions of the Youth, Justice and Criminal Evidence Act 1999. In Scotland legislation has been enacted to deal with the protection of vulnerable witnesses in criminal and civil cases under the provisions of Vulnerable Witnesses (Scotland) Act 2004.

- The law and procedures relating to multi unit (domestic) developments (apartments).

The ownership of flats has become much more common in recent years. The physical characteristics of a flat are quite different from those of free standing properties because flats are units of self-contained accommodation within a

multi-unit development. Each flat is part of a larger building and is dependent for support on other flats or parts of the structure. Various parts of the whole building and development are often shared in common with other owners both external and internal e.g. car park, garden, access, stairs, passageways, roof, pipes, cables and services (common parts)

It is evident that problems are arising with the condition of flats and/or the common parts deteriorating and the flat owners or their neighbours are not able to get them adequately addressed.

It is envisaged that this topic- the law and practice relating to multi unit (domestic) developments – will roll over into the Commission's Second Programme.

Working methods

The Commission wishes to create a centre of law reform excellence for Northern Ireland. This will mean being able to recruit talented legal and support staff and providing them with relevant training and challenging work. It also means valuing our staff highly and creating a supportive, productive and intellectually creative working environment. The staff structure of the Commission is a combination of experienced lawyers supported by research assistants. The latter are post graduate law students who have shown research potential, who will benefit from a stint with the Commission while at the same time contributing to the research excellence culture.

A legal team headed by a Commissioner will be created for each project. The Commissioner will have responsibility for providing the strategic project leadership along with a level of detailed legal and policy work commensurate with his or her part-time commitment. Teams will be encouraged to exchange information freely across the project boundaries and governance mechanisms will ensure that Commissioners have a degree of involvement across all projects. The aim of such mechanisms will be to build a corporate policy approach for the Commission and to ensure that any inter-dependencies or linkages between projects is recognised and reflected in the Commission's considerations.

The standard process by which the Commission will deliver its recommendations will be through a Consultation Paper published for public consultation (in some cases this may be preceded by the publication for consultation of an Issues Paper). The Consultation Paper will set out the law as it currently stands, will discuss the perceived weaknesses/defects in the law and its operation and set out possible options for reform. The responses to the public consultation will be analysed and the Commission will take account of this analysis as part of its final considerations. A Report with recommendations and draft legislation, where appropriate, will be drawn up and presented to government.

Training and development

Law reform is in some ways a specific legal specialism in that it combines legal analysis with policy development. It requires the lawyers to look at legal issues in the wider social, political and economic context. The law reformer must then develop workable legal reforms that reflect an effective degree of public participation. The Commission will put an emphasis on appropriate training to develop a high level of law reform skills within the organisation. This will include assessing equal opportunity and financial and regulatory impacts. Staff in the Commission will be provided with appropriate training in these areas.

Stakeholder communication

The Commission recognises that it must develop good communication with its stakeholders whether they be in government, business, the voluntary community, the legal professions or the general public. A variety of means including seminars, stakeholder interviews, news releases and web technology will be used to ensure that those with a stake in the outcome of the Commission's recommendations will have an opportunity to express their views. The Commission will put an emphasis within its analytical process on careful consideration of the views of stakeholders.

STRATEGIC OBJECTIVE 1:

TO ESTABLISH AND MAINTAIN A CENTRE OF LAW REFORM EXCELLENCE FOR NORTHERN IRELAND WITHIN THE RESOURCES PROVIDED BY GOVERNMENT

BUSINESS OBJECTIVES

1.1 To build and maintain effective governance and working practices in accordance with the rules and guidance governing NDPBs.

In year targets:

- Continue to develop the Commission's financial control systems to ensure compatibility with NIO accounting systems and which comply with audit requirements by end of March 2010.
- Prepare and publish Annual Report and Accounts for the 2008/09 financial year by end of July 2009.
- Prepare and publish an Annual Business Plan for 2009/10.
- Conduct an annual review of NILC risk register by end of January 2010

1.2 To take forward a Training and Development Plan

In year targets:

- Personal Performance Agreements (PPAs) and Personal Development Plans (PDPs) to be drafted and agreed in line with DFP Core Competence Framework by 30 June 2009.
- Develop and agree a one year Training and Development Plan for all staff by end September 2009.

1.3 To recruit the legal staffing complement

In year targets:

- To put in place a business tenancies project legal resource by January 2010.
- To recruit 3 legal researchers and have in post by the start of December 2009.

STRATEGIC OBJECTIVE 2:

TO TAKE FORWARD A PROGRAMME OF LAW REFORM FOR NORTHERN IRELAND

BUSINESS OBJECTIVES

2.1 To review the law relating to certain aspects of land holding/ownership

In year targets:

- Publication of main consultation paper April 2009.
- Publication of consultation paper on adverse possession January 2010
- Public consultation February 2009-April 2009
- Commence work on draft Report and legislation relating to first consultation October 2009

2.1.1 To review the law and practice relation to the redemption of ground rents

In year targets:

- Publication of consultation paper on ground rents January 2010
- Public consultation February 2010-April 2010

Resources relating to 2.1 and 2.1.1 (April 09 to March 10):¹

SPLO x 1 (LPS Funded)	(£76k)
PLO x 0.8 (LPS Funded)	(£43k)
PLO x 1 (NILC)	£54k
Professor Wylie (12 Months)	£25k
Chairman 1 day per month	£ 9k
Consultation	£15k

Total £103k

¹ The costs set out against this project and the others below reflect the main readily definable costs associated with the project(s). They do not take into account the costs of administrative support to the project team or costs of the input from the Chief Executive or the Chairman (except in the land law project) across all of the areas.

2.2 To carry out a review of the practice and law relating to bail

In year targets:

- Stakeholder meetings/public meetings – March 2009-October 2009.
- Detail of options and impact assessments – October 2009-December 2009.
- Drafting consultation paper – September 2009-February 2010.
- Commission Board to sign off consultation paper – March 2010.

Resources relating to the project (April 09 to March 10):

Commissioner (2 days/wk less corporate responsibility time)² - £39k
Commissioner (1 day/wk less corporate responsibility time) - £17k

SPLO [w.e.f. August 2009] - £40k
Legal researcher - £20k

Total - £116k

2.3 To carry out a review of the law and practice relating to special measures for vulnerable witnesses in civil cases.

In year target:

- To draft and publish a Consultation Paper for the project (expected publication date: end November 2009)
- To receive, collate and analyse responses to the Consultation Paper
Expected completion date for the analysis: end-March 2010.
- To commence drafting a Final Report and Recommendations for Reform
Expected commencement date for the report: September 2010.

Resources relating to the project (April 09 to March 10):

Commissioner (1 days/wk less corporate responsibility time) - £17k

PLO [w.e.f. June 09] - £43k

Legal researcher - £20k

Total - £80k

² One day per month of Commissioner's time is set aside for the Commission's corporate affairs

2.4 To carry out a review of certain aspects of business tenancies law

In year target:

- Preparation of PID May 2009
- Preliminary discussions with stakeholders July-September 2009
- Commence drafting of Consultation Paper October 2009-09-03
- Publish Consultation Paper end March 2009

Resources relating to the project (April 09 to March 10):

Commissioner (1 days/wk less corporate responsibility time) - £17k

SPLO – [w.e.f. January 2010] - £19k

Legal researcher - £20k

Total - £56k

**JUDENA GOLDRING
Chief Executive Officer
4 September 2009**