



Northern Ireland
Law Commission

promoting law reform in Northern Ireland

First Programme of Law Reform

June 2009 - March 2011

FIRST PROGRAMME OF LAW REFORM

June 2009-March 2011

First programme of law reform presented to the Houses of Parliament by the Secretary of State for Northern Ireland in pursuance of Section 52(2) of the Justice (Northern Ireland) Act 2002.

Laid before the Northern Ireland Assembly pursuant to Section 52(3) of the Justice (Northern Ireland) Act 2002 by the First Minister and deputy First Minister.

December 2009

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The Northern Ireland Law Commission (the Commission) was 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 Law Commissioners are:

The Honourable Mr Justice Bernard McCloskey (Chairman)

Mr Neil Faris

Professor Sean Doran

Dr Venkat Iyer

Mr Robert Hunniford

The Chief Executive to the Commission is Ms Judena Goldring.

The Commission is located at Linum Chambers, 2 Bedford Square, Bedford Street, Belfast BT2 7ES.

The text of this Programme is available at the Commission's website:
www.nilawcommission.gov.uk.

The contents of this Programme were approved by the Secretary of State for Northern Ireland on 17 October 2009.

INTRODUCTION

The Justice (Northern Ireland) Act 2002 (the Justice (NI) Act) requires the Commission to consider any proposals for the reform of the law of Northern Ireland referred to it. The Commission must also, under section 51 (2) of the Justice (NI) Act, 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 Minister and deputy First Minister and the Attorney General before approving any programme submitted by the Commission. This is the Commission's first programme submitted under section 51 (2). It is intended that the period of the Commission's programme of law reform is aligned with the period of Government's spending plans to ensure that the Commission can match its programme of reform with the funding it can expect from the Government. The Commission's First Programme of law reform runs from 1 June 2009 to 31 March 2011. It is expected that the Second Programme will commence on 1 April 2011 and run to 31 March 2014.

VISION STATEMENT FOR THE COMMISSION

The governmental aim

The overall governmental aim is to secure a lasting peace, based on the Belfast/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, and tolerant society can thrive and prosper. The delivery to the community in Northern Ireland of a fair, impartial and effective legal and justice system is a key element of the overall governmental aim for Northern Ireland.

The establishment of an independent law commission in Northern Ireland signifies an important step in the pursuit of this aim. Our specific role is to provide an effective means of simplifying and modernising the law of Northern Ireland and making it more accessible. In taking forward its responsibilities the Commission recognises that a fundamental premise of a modern legal and justice system is that everyone has rights and duties under the law. The Commission – alongside other bodies responsible for developing the law within Northern Ireland – will use its resources to respect, safeguard and promote those rights and duties.

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 is 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 often technical and non controversial but sometimes they may involve matters of social, economic or political import. It is intended that the Northern Ireland Law Commission will establish itself as a valued part of the constitutional structures of Northern Ireland. It is hoped 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

The Commission opened a period of general consultation on its first programme of law reform between 28 August 2008 and 21 November 2008. During this process the Northern Ireland Executive departments, NI Assembly members, the judiciary, the academic community, equality and human rights groups, other interested bodies and specialist organisations, and the general public were consulted as to areas of law that they considered to be in need of 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. Some of these will go forward for consideration in the Commission's second programme.

The Commission carefully considered all the proposals submitted by respondents and applied our selection criteria. The Commission's project selection criteria are:

1. Importance:

- the extent to which the law is unsatisfactory (for example, unfair, unduly complex, unclear, inaccessible or outdated);
- the scale of the problem, whether the area of law affects a wide section of the public or whether it has a particular impact on a narrower section of the public;
- the potential benefits and costs likely to accrue to the community from undertaking reform, consolidation or repeal of the law.

2. Suitability:

- whether changes and improvements in the law can appropriately be put forward by a body such as the Commission after research and consultation. This would tend to exclude subjects where the considerations are shaped primarily by political judgements; or
- whether another body is better placed to undertake the project.

3. Resources:

- the qualification and experience of the Commissioners and their legal staff;
- the funding likely to be available to the Commission; and
- the need for a good mix of projects in terms of the scale and timing in order to achieve a balanced workload among Commissioners and to facilitate effective management of the Programme.

Approval of the Programme

Five topics were chosen to go forward into the First Programme presented to the Secretary of State for Northern Ireland. The Secretary of State consulted with the Lord Chancellor, the Attorney General and the First Minister and deputy First Minister in the Northern Ireland Executive. The latter consulted with their Ministerial colleagues in the Northern Ireland Executive. The content of the Programme was agreed by all parties consulted.

The Secretary of State approved the Programme on 17 October 2009.

The topics are set out in the following pages. More detail on each can be found on the Commission's website.

Working methods

The Commission wishes to create a centre of law reform and legal research excellence for Northern Ireland. The work of the Commission will involve careful research of the current law relating to the project including relevant comparative research. In addition to its statutory requirement to assess the equality impacts of its proposals the Commission will also where feasible assess the economic impacts of any proposals it puts forward. Throughout the Commission's work there will be an emphasis on effective consultation with stakeholders including the general public.

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.

1. Reform of aspects of land law

This is an example of the kind of law reform that can bring practical benefits to a wide range of people in either their domestic or business lives. Buying and selling one's home is the most important financial transaction that most of us ever undertake – and it marks key stages in our lives. The law in this area should therefore be as straightforward and as easily understood as possible.

It is equally essential for all forms of business in Northern Ireland that property transactions in respect of commercial premises should take place in a way that is cost effective and responsive to the modern needs of business and the economic community.

However, the law governing this area of domestic and economic activity is an uncoordinated amalgam of part 19th century and part 20th century legislation (with even more antique statutes thrown in). Added to that there is a mass of case law from judges from the Victorian era onwards. The result is that the law has in many ways failed to keep up with the needs of a modern society and economy. There is therefore an urgent need for reforms which will modernise and simplify the land law of Northern Ireland.

In May 2008 the Minister for the Department of Finance and Personnel requested the Commission to include the subjects of the law relating to ground rent redemption and covenants. These areas of law are included as part of the land law reform project.

There has been a positive response during the public consultation in favour of a review of land law. We are satisfied this is an important area of law in need of reform.

2. Bail law

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. The English legislation dates back to 1976 and that in the Republic of Ireland to 1965. 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 an argument 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. The main part of this work has involved consultation with a wide range of stakeholders.

There has been a positive response during the public consultation in favour of a review of the law on bail. We are satisfied this is an important area of law in need of reform.

3. 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.

There has been a positive response during public consultation in favour of a review of the law on business tenancies. We are satisfied this is an important area of law in need of reform.

4. 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.

There has been a positive response during the public consultation in favour of a review of this area of law. We are satisfied this is an important area of law in need of reform.

5. 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 eg 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.

There has been a positive response during the public consultation in favour of a review of this area of law. We are satisfied this is an important area of law in need of reform.

Membership of the Commission

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The Honourable Mr Justice Bernard McCloskey

Commissioners

Professor Sean Doran (Barrister-at-Law)

Mr Neil Faris (Solicitor)

Mr Robert Hunniford (Lay Commissioner)

Dr Venkat Iyer (Law Academic)

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