

**The Work of the Northern Ireland Law Commission**  
**Presentation by The Honourable Mr Justice McCloskey,**  
**Chairman of the Northern Ireland Law Commission,**  
**30<sup>th</sup> September 2010, Inn of Court, Belfast**

**The Northern Ireland Law Commission-**

[1] The Commission is a statutory body, established and governed by Sections 50-52 of and Schedule 9 to the Justice (Northern Ireland) Act 2002 (*“the 2002 Act”*), as amended.<sup>1</sup> The creation of the Commission is one of the significant reforms of the Northern Ireland legal system effected by the 2002 Act. By Section 50, the Commission is a body corporate, consisting of a Chairman and four Commissioners appointed by the Minister.

[2] Pursuant to Section 51 of the 2002 Act, the Commission is obliged to keep under review the law of Northern Ireland with a view to its systematic development and reform. Specifically, the methods prescribed for the performance of this overarching duty are codification, the elimination of anomalies, the repeal of unused legislation and the reduction of the number of separate legislative provisions. Section 51 further provides that the Commission should undertake the simplification and modernisation of the law of Northern Ireland.

[3] Within the ambit of the broad statutory remit set out above, the Commission has certain specific statutory obligations. These are:

- (a) To consider any proposals made for the reform of the law of Northern Ireland.
- (b) To prepare and submit to the Minister, periodically, law reform programmes.
- (c) To make recommendations to the Minister about law reform programmes and to pursue such programmes as are duly approved.
- (d) Within the ambit of such programmes, to formulate, by means of draft legislation or otherwise, law reform proposals.
- (e) Pursuant to any request of the Minister to prepare, periodically, comprehensive programmes of consolidation and repeal of legislation.

---

<sup>1</sup> The relevant provisions of the 2002 Act, as amended, are contained in an appendix hereto.

- (f) To provide advice and information (i) to Northern Ireland Departments and (ii) with the consent of the Department of Justice, to Departments of the Government of the United Kingdom and other authorities or bodies concerned with proposals for the reform or amendment of any branch of the law of Northern Ireland.
- (g) To obtain such information as to the legal systems of such countries as appears to the Commission likely to facilitate the performance of its other duties.

[4] The Minister must, before approving any Commission law reform programme, consult the Attorney General for Northern Ireland. Furthermore the Commission must transmit to the Department of Justice :

- (a) An Annual Report.
- (b) Its law reform proposals, upon completion of the relevant project.
- (c) Each law reform programme approved by the Minister.

All of these must be laid by DOJ before the Northern Ireland Assembly. Thereafter, the Commission must arrange for publication of these materials.

[5] Pursuant to Section 51(4) of the 2002 Act, in performing its duties, the Commission must consult the Law Commission of England, the Scottish Law Commission and the Law Reform Commission of the Republic of Ireland.

### **The Commission's First Programme of Law Reform**

[6] The Commission's predecessor was the Law Reform Advisory Committee, operating under the aegis of the Northern Ireland Office, which had a remit confined to civil law. The present Commission was inaugurated on 1<sup>st</sup> April 2008. At the time of its inauguration, it published a consultation paper which was designed to stimulate the views and suggestions of interested professions, agencies and individuals regarding the content of its First Programme. At this stage, the Commission emphasized that there was potential to reduce the gap between the public and the law. The Commission also stressed that it is an independent statutory body.

[7] There was a substantial and enthusiastic response to the consultation invitation. Over forty proposals for law reform were received. These were rigorously scrutinized by the Commission. This process resulted in the

Commission submitting certain proposals to the Secretary of State (then the responsible Minister), which were duly approved. As a result, the First Programme of Law Reform was duly published. There are five law reform projects within this programme, as follows:

- (a) Land Law Reform.
- (b) Business Tenancies Law Reform.
- (c) Reform of the Law and Procedures relating to Vulnerable Witnesses in Civil Cases.
- (d) The Law and Procedures relating to Domestic Multi-Unit Developments (i.e. flats/apartments).
- (e) The Law and Practice of Bail in Northern Ireland.

[8] In making its recommendations to the Secretary of State, the criteria applied by the Commission were, broadly, importance, suitability and resources. The application of these criteria entailed, with reference to each of the individual proposed projects, an assessment of the extent to which the existing law is unsatisfactory; the scale of any perceived deficiencies or disadvantages; the potential benefits and costs arising from reforming the law; the presence or absence of political sensitivities or controversy; whether any other agency is better equipped to undertake the project; the desirability of having a good mix of law reform projects at any given time; the expertise of the appointed Commissioners and their legal staff; and available funding.

[9] Thus the Commission's First Programme comprises five separate law reform projects. Each of these has reached differing stages of advancement. The most advanced, for historical reasons, is the land law reform project, an inheritance from the Commission's predecessor. The Land Law Project is scheduled to be completed by the end of this calendar year, when a report incorporating draft legislation, will be submitted to the Minister. The scheduled completion dates for the remaining First Programme projects are:

- (a) Business Tenancies Project: 31<sup>st</sup> January 2011.
- (b) Vulnerable Witnesses Project: 31<sup>st</sup> March 2011.
- (c) Bail Law Project: 30<sup>th</sup> November 2011.
- (d) Multi-Unit Developments Project: 31<sup>st</sup> December 2011.

## The Commission's Second Programme of Law Reform

[10] The Commission has begun the process of consulting with regard to the contents of its Second Programme. Please submit your views and suggestions for law reform projects by 31 October 2010. This consultation exercise will generate proposals from interested parties and organisations for the adoption of new law reform projects. Each of these proposals will be scrutinised independently and rigorously by the Commission, applying the selection criteria specified in paragraph [19], *infra*. At the culmination of this process, the Commission will submit to the Minister a draft Second Programme, containing new law reform projects, requesting approval. This will occur in the first quarter of 2011. In view of the differing durations and stages of development of the extant First Programme projects, there will be some overlap between the two programmes. Furthermore, some of the new Second Programme projects will be initiated in advance of others. The Commission will explain to the Minister its reasons for the proposed prioritization.

[11] As the statutory provisions make clear, the Commission exercises a significant influence in the process of legislating in Northern Ireland. The Commission's proposals to the Minister for the inclusion of specific projects in its periodic law reform programmes will be preceded by a robust and thorough process, which will include a comprehensive exercise of public consultation. This exercise will facilitate appropriate engagement with relevant Government Departments, interested professions, the business sector, the voluntary sector, the judiciary and any other interested parties or groups. This exercise will be accompanied by appropriate publicity, which will include deployment of the Commission's website and the organisation of appropriate public events. As required by statute, the Commission will also consult with the other Law Commissions in the British Isles and the Irish Law Reform Commission. Furthermore, there will be an opportunity for specific engagement with those most likely to be affected by the adoption of any given law reform project.

[12] The Commission will carefully consider each of the proposals emerging from the consultation process. In doing so, the Commission will apply the following selection criteria:

- (a) **Importance to Northern Ireland.** This will incorporate an assessment of potential benefits to and impact on the public, complexity, accessibility and the need for simplification and modernisation.
- (b) **Suitability.** The application of this criterion will include an assessment of the demands and dimensions of the candidate project; the desirability of having a good mix of law reform

projects at any given time; the projected duration of candidate projects; the skills, expertise and experience of Commissioners and Commission legal staff; and the desirability of any other agency undertaking the candidate law reform project.

- (c) **Resources.** The Commission will consider the human and financial resources, current and projected, at its disposal.
- (d) **Timing.** It will be necessary for the Commission to estimate the duration of each candidate project, giving effect to the general rule that where a project is unlikely to result in a report to Government, followed by new legislation, within a four-year period it will not be submitted by the Commission to the Minister for approval.

[13] The Commission's independence will not preclude engagement with the executive at all appropriate stages, both before and after formal ministerial approval of its law reform proposals. Such engagement is plainly harmonious with the legislative intention underlying the relevant provisions of the 2002 Act. Furthermore, it will be necessary for the Commission to have appropriate engagement with interested Government Departments during the progress of individual projects. This requires the appointment of a suitably senior official within relevant Government Departments for this purpose. This will be followed by appropriate communication between the Commission and the appointed official throughout the duration of the project in question which will entail, *inter alia*, attendance at project steering group meetings. This engagement and liaison will be to the mutual benefit of the Commission and Government. All of these processes will contribute to establishing and maintaining a working relationship between the Commission and the Executive which is mutually beneficial, serves the public interest and facilitates the efficient and expeditious discharge of the Commission's statutory obligations, without compromising its independence.

### **The Bail Law Project**

[14] This is one of the five projects which the Commission's First Programme of Law Reform incorporates. In this jurisdiction, there is no central governing instrument of legislation. This contrasts with England and Wales, where the Bail Act was introduced in 1976 and the Republic of Ireland, where a comparable statute was enacted in 1997. In Northern Ireland, there is a patchwork quilt of statutory sources, married with the exercise of the inherent jurisdiction of the High Court. This is considered unsatisfactory, given the substantial importance of bail in the context of the administration of criminal justice and the relatively intense degree of public

interest and concern which this subject routinely generates. The Commission believes that there is a persuasive case for the enactment of a unifying instrument of legislation regulating comprehensively the roles and responsibilities of the primary agencies concerned – the police, the Public Prosecution Service and the courts – coupled with some modernisation of the law in this sphere.

[15] It is clear to the Commission, at this stage, that there is a substantial public interest in this project. There are various concerns about the existing law and practice in this sphere; and material misunderstandings abound. The Commission is conscious that there has been a recent surge of publicity about the commission of offences by Defendants granted bail. A Belfast Telegraph publication suggested that more than 20,000 such offences – including 8 murders, 24 rapes and 150 robberies – were committed during the past two years alone. One of the most celebrated re-offenders is one of the Defendants in the Devlin murder trial. Other well known names include Shoukri, Conlon and Gorski.

[16] This particular project has reached an important stage. The Commission has just published a consultation paper, which invites all interested professions, agencies, groups and individuals to *formally* submit their views and suggestions for reform of the law in this sphere. This exercise in public consultation is considered by the Commission to be a vital aspect of the project. However, I emphasize that this is not an exhaustive, self-contained group. Today's event is an important aspect of the accompanying publicity. Those expected to respond with final/formal submissions include the key stakeholders and other main agencies with which the Commission has already engaged from the outset of its project. Others are encouraged to do likewise. It is emphasised that there is no hierarchy of consultees and respondents. Those who decline to engage and contribute at this stage will lose this golden opportunity to influence and shape future legislation in this important sphere. The Commission looks forward eagerly to receiving the views and suggestions of all interested citizens and organisations. The depth and quality of the responses to the Consultation Paper will unquestionably influence the Commission's final report to Government and, hence, the new legislation which will materialise ultimately.

[17] AND FINALLY – The Northern Ireland Law Commission website address is: <http://www.nilawcommission.gov.uk/>

## APPENDIX

### JUSTICE (NORTHERN IRELAND) ACT 2002

#### *Law Commission*

50. - (1) There is to be a body corporate known as the Northern Ireland Law Commission.

(2) The Commission is to consist of-

- (a) a chairman, and
- (b) four other Commissioners,

appointed by the Department of Justice.

(3) The chairman is to be a person who holds the office of judge of the High Court.

(4) Of the other Commissioners-

- (a) one is to be a person appearing to the Department of Justice to be suitably qualified to be a Commissioner by experience as a barrister,
- (b) one is to be a person appearing to the Department of Justice to be suitably qualified to be a Commissioner by experience as a solicitor,
- (c) one is to be a person appearing to the Department of Justice to be suitably qualified to be a Commissioner by experience as a teacher of law in a university, and
- (d) the other is to be a person who does not hold (and has never held) judicial office and is not (and has never been) a barrister, solicitor or teacher of law in a university.

(5) Before appointing a person to be a Commissioner the Department of Justice must consult-

- (b) the First Minister and deputy First Minister, and
- (c) the Attorney General for Northern Ireland.

(6) In appointing persons to be Commissioners, the Department of Justice must so far as possible secure that the Commissioners (taken together) are representative of the community in Northern Ireland.

(7) Schedule 9 makes further provision about the Commission.

#### *Duties of Commission*

51. - (1) The Commission must keep under review the law of Northern Ireland with a view to its systematic development and reform, including in particular by-

- (a) codification,
- (b) the elimination of anomalies,
- (c) the repeal of legislation which is no longer of practical utility, and
- (d) the reduction of the number of separate legislative provisions,

and generally by simplifying and modernising it.

(2) For that purpose the Commission must-

- (a) consider any proposals for the reform of the law of Northern Ireland made or referred to it,

- (b) prepare and submit to the Department of Justice (from time to time) programmes for the examination of different branches of that law with a view to reform, including recommendations as to the agency (whether itself or another body) by which any such examination should be carried out,
  - (c) undertake, pursuant to any such recommendations approved by the Department of Justice, the examination of particular branches of that law and the formulation (by means of draft legislation or otherwise) of proposals for reform of those branches,
  - (d) prepare (from time to time) at the request of the Department of Justice comprehensive programmes of consolidation and repeal of legislation, and undertake the preparation of draft legislation pursuant to any such programme approved by the Department of Justice,
  - (e) provide advice and information –
    - (i) to Northern Ireland departments, and
    - (ii) with the consent of the Department of Justice, to departments of the Government of the United Kingdom and other authorities or bodies concerned with proposals for the reform or amendment of any branch of the law of Northern Ireland, and
  - (f) obtain such information as to the legal systems of other countries as appears to the Commission likely to facilitate the performance of its other duties.
- (3) Before approving any programme prepared by the Commission, the Department of Justice must consult-
- (c) the Attorney General for Northern Ireland.
- (3A) Before approving any programme prepared by the Commission that includes –
- (a) the examination of any branch of law relating (in whole or in part) to a reserved matter or an excepted matter, or
  - (b) the consolidation or repeal of legislation relating (in whole or in part) to a reserved matter or an excepted matter,
- the Department of Justice must consult the Secretary of State.
- (3B) For the purposes of subsection (3A) “reserved matter” and “excepted matter” have the meanings given by section 4 of the Northern Ireland Act 1998.
- (4) In performing its duties the Commission must consult-
- (a) the Law Commission,
  - (b) the Scottish Law Commission, and
  - (c) the Law Reform Commission of the Republic of Ireland.
- (5) The Commission must make an annual report on how it has performed its duties.

*Reports etc.*

52. - (1) The Commission must send to the Department of Justice a copy of –
- (a) each programme prepared by the Commission and approved by the Department of Justice,

- (b) each set of proposals for reform formulated by the Commission pursuant to such a programme, and
  - (c) each annual report of the Commission.
- (2) The Department of Justice must lay before the Northern Ireland Assembly a copy of each document received by it under subsection (1).
- (3) The Commission must send to the Secretary of State a copy of—
- (a) any programme prepared by the Commission and approved by the Department of Justice which includes—
    - (i) the examination of any branch of law relating (in whole or in part) to a reserved matter or an excepted matter, or
    - (ii) the consolidation or repeal of legislation relating (in whole or in part) to a reserved matter or an excepted matter,
  - (b) any set of proposals for reform formulated by the Commission pursuant to an approved programme which relate (in whole or in part) to a reserved matter or an excepted matter, and
  - (c) any annual report of the Commission which contains anything relevant to a reserved matter or an excepted matter.
- (4) The Secretary of State must lay before each House of Parliament a copy of each document received by the Secretary of State under subsection (3).
- (5) After a copy of a document has been—
- (a) laid before the Assembly in accordance with subsection (2), and
  - (b) if so required by subsection (4), laid before Parliament in accordance with that subsection,
- the Commission must arrange for the document to be published.
- (6) In this section “reserved matter” and “excepted matter” have the meanings given by section 4 of the Northern Ireland Act 1998.
- (7) Section 41(3) of the Interpretation Act (Northern Ireland) 1954(a) applies for the purposes of subsection (2) in relation to the laying of a copy of a document as it applies in relation to the laying of a statutory document under an enactment.

## **LAW COMMISSION [Sch.9]**

### **Commissioners' tenure**

- 1 (1) Subject as follows, a Commissioner holds office for the period specified in his appointment (or re-appointment).
- (2) A person may not be appointed as a Commissioner for more than five years at a time.
- (3) A Commissioner may resign by notice in writing to the Department of Justice.
- (4) The Department of Justice may dismiss a Commissioner if satisfied that—
- (a) he has without reasonable excuse failed to exercise his functions for a continuous period of three months beginning not earlier than six months before the day of dismissal,
  - (b) he has been convicted of a criminal offence,

- (c) a bankruptcy order has been made against him, or his estate has been sequestrated, or he has made a composition or arrangement with, or granted a trust deed for, his creditors, or
- (d) he is otherwise unable or unfit to exercise his functions.

#### Commissioners holding judicial office

2 (1) A person who holds judicial office may be appointed as a Commissioner without relinquishing that office.

(2) But he is not, unless the terms of his appointment provide otherwise, required to perform the duties of his judicial office while he is a Commissioner.

#### Salary etc. of Commissioners not holding full-time judicial office

3 (1) The Commission must pay to or in respect of each Commissioner, other than a Commissioner who holds a full-time judicial office, any such-

- (a) salary,
- (b) allowances,
- (c) fees, or
- (d) sums for the provision of pensions,

as the Department of Justice may determine.

(1A) If a person who, by reference to any office or employment, is a participant in a scheme under Article 3 of the Superannuation (Northern Ireland) Order 1972 becomes a Commissioner, the Department of Finance and Personnel may determine that (instead of payments being made to him under sub-paragraph (1)(d)) his service as Commissioner is to be treated for the purposes of the scheme as service in that office or employment.

(1B) The Commission must pay to the Department of Justice, at such times as the Department may direct, such sums as the Department may determine in respect of expenditure under the Superannuation (Northern Ireland) Order 1972 attributable to sub-paragraph (1A).

#### *Staff*

4 (1) The Commission may employ staff, but subject to the approval of the Department of Justice as to-

- (a) numbers,
- (b) salary, and
- (c) other terms of employment.

(2) The Commission may make arrangements for securing the provision to it of such assistance by persons employed in-

- (a) the civil service of the United Kingdom, or
- (b) the civil service of Northern Ireland,

as it considers appropriate for or in connection with the exercise of its functions.

(2A) Employment as a member of staff of the Commission is among the kinds of employment to which a scheme under Article 3 of the Superannuation (Northern Ireland) Order 1972 can apply; and, accordingly, in Schedule 1 to that Order (kinds of employment etc. referred to in Article 3), at the appropriate place in the list of "Other Bodies" insert –

"Employment by the Northern Ireland Law Commission."

(2B) The Commission must pay to the Department of Justice, at such times as the Department may direct, such sums as the Department may determine in respect of expenditure under the Superannuation (Northern Ireland) Order 1972 attributable to sub-paragraph (2A).

*Financial provisions*

5 The Department of Justice may make grants to the Commission.

6 (1) The Commission must-

- (a) keep proper accounts and proper financial records, and
- (b) prepare in respect of each financial year a statement of accounts.

(2) The statement of accounts must-

- (a) contain such information, and
- (b) be in such form,

as the Department of Justice directs.

(3) The Commission must send copies of the statement of accounts relating to a financial year to-

- (a) the Department of Justice, and
- (b) the Comptroller and Auditor General for Northern Ireland,

within such period after the end of the financial year as the Department of Justice directs.

(4) The Comptroller and Auditor General for Northern Ireland must-

- (a) examine, certify and report on the statement of accounts, and
- (b) lay a copy of the statement of accounts and of his report on it before the Northern Ireland Assembly.

(4A) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the purposes of sub-paragraph (4)(b) in relation to the laying of a copy of a statement or report as it applies in relation to the laying of a statutory document under an enactment.

(5) In this paragraph "financial year" means-

- (a) the period beginning with the day on which section 50 comes into force and ending with the first 31st March which falls at least six months after that day, and
- (b) each subsequent period of twelve months beginning with 1st April.

*Miscellaneous*

7 The exercise by the Commission of its functions is not affected by-

- (a) any vacancy among the Commissioners, or
- (b) any defect in the appointment of a Commissioner.

8 (1) The Commission is not to be regarded-

- (a) as the servant or agent of the Crown, or
- (b) as enjoying any status, immunity or privilege of the Crown.

(2) The Commission's property is not to be regarded as property of, or held on behalf of, the Crown.

9 The Commission may do anything, apart from borrowing money, which it considers is-

- (a) appropriate for facilitating, or
  - (b) incidental or conducive to,
- the exercise of its functions.

10 The application of the seal of the Commission is to be authenticated by the signature of any Commissioner or member of staff of the Commission who has been authorised (whether generally or specially) for the purpose.

11 Any contract or instrument which, if entered into or executed by an individual, would not require to be under seal may be entered into or executed on behalf of the Commission by any person who has been authorised (whether generally or specially) for the purpose.

12 A document purporting to be-

(a) duly executed by the Commission under its seal, or

(b) signed on its behalf,

is to be received in evidence and is, unless the contrary is proved, to be taken to be so executed or signed.