



Northern Ireland  
**Law Commission**

*promoting law reform in Northern Ireland*

# **Consultation Paper Second Programme of Law Reform**

August 2010



**NORTHERN IRELAND LAW COMMISSION**  
**CONSULTATION PAPER**

**SECOND PROGRAMME OF LAW REFORM**  
**2011**

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Northern Ireland Law Commission  
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**NORTHERN IRELAND LAW COMMISSION**  
**SECOND PROGRAMME OF LAW REFORM**  
**2011**

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## **PREFACE AND ACKNOWLEDGEMENTS**

The Northern Ireland Law Commission is an independent body, established under the Justice (Northern Ireland) Act 2002, charged with the statutory responsibility of modernising and simplifying the law. The law reform projects upon which the Commission is engaged at any given time require the approval of the Department of Justice, following public consultation. At present, the Commission is in the midst of its First Programme of Law Reform. This programme contains five projects, which were selected following an exercise in public consultation. The purpose of that exercise was to enable interested members of the public, groups, organisations and professions to propose particular areas of the law as candidates for reform. This stimulated a substantial response, culminating in recommendations from the Law Commission to the Secretary of State (who was then the relevant responsible Minister) and ensuing ministerial approval for the First Programme.

The Law Commission consists of a Chairman, who must be a High Court Judge and four Commissioners. The responsible Government Department is the newly established Department of Justice. Bearing in mind the relevant statutory requirements, the Law Commissioners have a wide range of qualifications, skills, experience and expertise. They must include a legal academic, a solicitor and a barrister, together with a non-legally qualified person. The Law Commission's statutory duties are, fundamentally, to consider any proposals made for the reform of the law of Northern Ireland; to prepare and submit periodically to the Minister of Justice law reform programmes; to undertake such law reform programmes as are approved by the Minister; and to formulate, by means of draft legislation and/or reports, law reform proposals for consideration by Government. The Law Commission must also obtain such information about the legal systems of other countries as appears likely to facilitate the performance of its duties. Notably, the Commission is subject to a statutory duty to consult the other Law Commissions of England and Wales, Scotland and the Republic of Ireland.

Being a society governed by the rule of law, every member of the population in Northern Ireland is affected by the law, directly or indirectly, on a daily basis. Thus the activities of the Law Commission have an impact on every citizen. Independent law reform has been something of a late developer in this jurisdiction. Law Commissions were established by the newly elected Labour government in 1965 in England, Wales and

Scotland and in 1975 the Irish government established the Law Reform Commission. It was not until 1989 that the Law Reform Advisory Committee was established in this jurisdiction with a remit confined to civil law and a very modest budget. The 1998 constitutional settlement led to the formation of the Criminal Justice Review group which found very broad support for the establishment of a law commission with an extensive remit in civil and criminal law, practice and procedure. The review group recommended accordingly and the statutory basis for the Commission was later enshrined in the Justice (Northern Ireland) Act 2002.

There is a need for the Commission to develop practical and effective working relationships with government. These will be critical to the ability of the Commission to contribute effectively to the simplification and modernisation of the law of Northern Ireland. The Commission is committed to working in partnership with government to achieve ongoing development of the law in Northern Ireland which properly respects the appropriate balance of rights, duties and responsibilities amongst citizens themselves and between citizens and the state. Now, with the devolution of policing and justice powers to the Northern Ireland Assembly, it is even more important that the Commission develops this partnership to ensure that legislation is made in the Northern Ireland Assembly addressing key areas of law reform which will impact on all the citizens of this jurisdiction. Furthermore, it is important that the Commission reaches out to all members of the population and ensures that their concerns regarding the law are noted and any suggestions regarding reform are fully considered.

The publication of this consultation paper represents the first step in a process which will conclude with ministerial approval of the Law Commission's Second Programme. Taking into account financial and other limitations, it is anticipated that the Second Programme will incorporate approximately two or three law reform projects. You have an opportunity to influence the content of the Second Programme by making known your views and suggestions. The purpose of this consultation paper is to ensure that you have the opportunity to do so. The Commission are anxious to receive a broad spectrum of ideas and proposals, all of which will be carefully and independently scrutinised. In common with its approach to the First Programme, the criteria which the Commission will apply in making its recommendations to the Minister are importance, suitability and resources. With reference to each individual proposal, the Commission will evaluate the extent to which the existing law is unsatisfactory; the nature and scale

of any perceived deficiencies or disadvantages; the potential benefits and costs arising from reforming the law in any particular sphere; 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; the Commission's resources; and the question of whether any other agency (for example, a particular Government Department) is better equipped (e.g. on account of expertise or resources) to undertake law reform in a given area.

I commend this consultation paper to you and would strongly encourage you to respond, whether individually or on behalf of some interested group or profession. I can assure you that your suggestions for law reform will be carefully and fairly considered, without any preconceptions, by the Commission. The more concrete and specific your suggestions, the easier they will be to evaluate. Following careful consideration, the Commission will submit its recommendations for the content of the Second Programme to the Minister of Justice, who will be the final arbiter.

Please note that as stated on page vii, the final date for responding to this publication is 31 October 2010. Details of how to respond are found on page vii. On behalf of the Law Commission, I look forward eagerly to receiving your views and suggestions regarding law reform.

The Honourable Mr Justice Bernard McCloskey – *Chairman of the Commission*  
Chairman  
Northern Ireland Law Commission



## **THE CONSULTATION PROCESS**

This Consultation Paper sets out and explains the processes to be utilised in the decision making for the Northern Ireland Law Commission's (hereafter the Commission) Second Programme. Responses and submissions may be made either in writing or electronically.

## **RESPONDING TO THIS CONSULTATION**

Interested parties are invited to submit proposals for projects to be included in the Second Programme of Law Reform. As well as being available in hard copy, this consultation paper is available on the Commission's website: [www.nilawcommission.gov.uk](http://www.nilawcommission.gov.uk).

If the format of this document is not suitable please contact us to discuss how we can best provide a copy of this consultation paper that meets your needs.

The closing date for responses to this consultation paper is 31 October 2010. All responses should therefore be submitted by that date as the Commission cannot guarantee that it will be able to consider responses received after that date. Responses will be acknowledged on receipt.

Any responses to this Consultation Paper should be forwarded by post for attention of: -

Mr. Robert Hunniford  
Mrs. Patricia MacBride  
Northern Ireland Law Commission  
Linum Chambers  
2 Bedford Square  
Bedford Street  
Belfast BT2 7ES

Or alternatively by e-mail to: [info@nilawcommission.gov.uk](mailto:info@nilawcommission.gov.uk)

## **QUERIES**

Any queries regarding the proposals should be sent to: -

[robert.hunniford@nilawcommission.gov.uk](mailto:robert.hunniford@nilawcommission.gov.uk) or [patricia.macbride@nilawcommission.gov.uk](mailto:patricia.macbride@nilawcommission.gov.uk)

## CONSULTATION CRITERIA

This consultation is being conducted in compliance with the seven cardinal principles contained in the Cabinet Office “Code of Practice on Consultation”. These are:

- Formal consultation should take place at a stage when there is scope to influence the policy outcome
- Consultation processes should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible
- Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals
- Consultation documents should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach
- Keeping the burden of consultation to the minimum is essential if consultations are to be effective and if consultees’ buy-in to the process is to be obtained
- Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation
- Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Further information on these consultation criteria is available at [www.bre.berr.gov.uk](http://www.bre.berr.gov.uk).

If you have any queries about the manner in which this consultation has been carried out, please contact the Law Commission at the following address:

Business Manager  
Northern Ireland Law Commission  
Linum Chambers  
2 Bedford Square  
Bedford Street  
Belfast  
BT2 7ES

Tel: +44 (0)28 9054 4860  
Email: [info@nilawcommission.gov.uk](mailto:info@nilawcommission.gov.uk)  
Website: [www.nilawcommission.gov.uk](http://www.nilawcommission.gov.uk)

# **CONSULTATION RESPONSES: CONFIDENTIALITY AND FREEDOM OF INFORMATION**

## **Freedom of Information Act 2000**

The Freedom of Information Act 2000 gives the public a right of access to any information held by a public authority: in this case the Northern Ireland Law Commission. The right of access to information includes information provided in response to a consultation. The Commission will treat all responses as public documents in accordance with the Freedom of Information Act 2000 and may attribute comments and include a list of all respondents' names in any final report.

**If you wish to submit a confidential response, you should clearly mark your submission as “confidential”. The Commission cannot automatically consider as confidential information supplied to it by you in response to a consultation.**

**Please note that the Commission will disregard automatic confidentiality statements generated by an IT system.**

## **EXECUTIVE SUMMARY**

Section 51(2) of the Justice (Northern Ireland) Act 2002, as amended by the Northern Ireland Act 1998 (Devolution of Policing and Justice Function) Order 2010, provides that the Northern Ireland Law Commission must consider any proposals for law reform, made or referred to it. In order to fulfil this duty the Commission must provide an opportunity for everyone to make representations about projects for possible law reform and this is achieved through the publication of this paper.

The paper outlines briefly the Commission's background and the legal framework under which we operate in undertaking law reform projects and making legislative proposals to Government.

Additionally, an overview of the progress of the projects contained in the First Programme (2009-2011) is provided. A more detailed outline of the work of the Commission to date can be found in its Annual Report.

The criteria applied by the Commission in the process for considering the projects to be included in the Second Programme, for recommendation to the Minister of Justice should be considered carefully by those submitting proposals in response to this paper.

This consultation paper provides a unique opportunity for everyone to become involved in law reform. The Commission will ensure that all respondents are informed of the outcome of the selection process and the Minister's final decision. In addition ongoing updates on the progression of projects will be published on the Commission's website.

The advent of the Commission's Second Programme coincides with the devolution of policing and justice legislative powers to the Northern Ireland Assembly. This may enhance the Commission's ability to embark on law reform projects on issues of particular importance to the Northern Ireland community.

## INTRODUCTION

The Northern Ireland Law Commission is a relatively new body which was formally launched on Tuesday 1 April 2008, against the background of the constitutional settlement in 1998. This point was emphasised by our Chairman, the Honourable Mr Justice Bernard McCloskey, during a recent presentation regarding the Commission's functions and activities to the Criminal Justice Issues Group at the Royal Courts of Justice. He outlined that the Justice (Northern Ireland) Act 2002 had enacted significant reforms in certain areas of the Northern Ireland legal system.

These include the creation of a new Public Prosecution Service; establishing the post of the Attorney General for Northern Ireland; appointing the Lord Chief Justice of Northern Ireland as president of the Court of Judicature and a series of inferior courts; the formation of the Judicial Appointments Commission; and establishing the office of Chief Inspector of Criminal Justice. The Commission is, in the language of the statute, one of the other new institutions brought into existence.

The Chairman also reaffirmed, the importance of the Commission demonstrating its independence, through its commitment to thorough and vigorous research, broad engagement with the community and high quality analysis of all information and data gathered.

In developing proposals for our Second Programme we seek the active engagement of the Northern Ireland community, especially those most affected by the impact of the law in their daily lives, in submitting suggestions and proposals for law reform.

The wide diversity of proposals submitted for inclusion in the First Programme demonstrated the interest of the community. In addition to those projects included in the First Programme, we set out in this paper a selection of other proposals in Annex 1, which we considered for inclusion in the First Programme. These are by way of illustration only. We emphasise that the Commission is now looking for fresh proposals (which may include proposals previously made or revised proposals as well as entirely new proposals) and will consider all responses to this paper with an entirely open mind.

A questionnaire to facilitate the submission of proposal content is contained in Annex 3. Its use is recommended, but not obligatory.

## THE STATUTORY FRAMEWORK

The Northern Ireland Law Commission is a statutory body, established and governed by the provisions of the Justice (Northern Ireland) Act 2002 (the 2002 Act); see Part 3, Sections 50-52.<sup>1</sup>

Under section 50, the Commission is a body corporate, consisting of a Chairman and four Commissioners appointed (henceforth) by the new Minister of the Department of Justice. The Chairman must be a High Court Judge. The four other commissioners must be a barrister; a solicitor; a law academic and a lay commissioner. Appointment must be preceded by consultation with the First Minister and Deputy First Minister and the Attorney General for Northern Ireland. In making appointments, the Minister of Department of Justice –

“...must so far as possible secure that the Commissioners (taken together) are representative of the community in Northern Ireland”.

Commissioners are appointed for a maximum period of five years.

Section 51(1) sets out the duties of the Commission as follows:

“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.”

Section 51(2) as amended by the Northern Ireland Act 1998 (Devolution of Policing and Justice Function) Order 2010 sets out that the Commission must:

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<sup>1</sup> Amended very recently by the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 [SI 2010 No. 977], in operation from 12<sup>th</sup> April 2010. See also The Northern Ireland Act 1998 (Amendment of Schedule 3) Order 2010, operative from the same date.

- (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 programmes for the examination of different branches of that law with a view to reform, including recommendations as to the agency 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 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 to Northern Ireland departments and, 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.

Before approving any programmes prepared by the Commission, the Department of Justice must consult the Attorney General for Northern Ireland.

In performing its duties the Commission must consult the Law Commission, the Scottish Law Commission and the Law Reform Commission of the Republic of Ireland.

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.

For the purposes of subsection (3A) reserved matter and excepted matter have the meanings given by section 4 of the Northern Ireland Act 1998(a).

## **Reports**

(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 to have the document published.

## **THE COMMISSION'S FIRST PROGRAMME OF LAW REFORM**

The Commission's predecessor was the Law Reform Advisory Committee, operating under the aegis of the Department of Finance and Personnel, which had a remit confined to civil law. As previously mentioned, the present Commission was inaugurated on 1 April 2008. Following our inauguration, we published a Consultation Paper which was designed to stimulate the views and suggestions of interested professions, agencies and individuals regarding the content of our First Programme. We emphasised that there was potential to reduce the gap between the public and the law. We again also stressed our independence of government.

There was a substantial and enthusiastic response to our consultation invitation. We received over forty proposals for law reform. We gave these rigorous scrutiny, applying the broad criteria of:

- importance,
- suitability and
- financial and human resources.

The outcome of the process was that we submitted proposals for specific projects to the Secretary of State (who then had authority for approval of our programme). This approval was duly given and, as a result, our First Programme of Law Reform was

inaugurated. This Programme has a formal lifetime of June 2009 to March 2011. The five law reform projects within this programme are 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 (ie flats/apartments)
- (e) The Law and Practice of Bail in Northern Ireland

Each of these projects has reached differing stages of progress taking into account the complexity and overall size of individual project work which includes public consultation, analysis of the current law and comparative research. A report with recommendations and draft legislation, if applicable, will be published at the conclusion of each project.

The current state of each project is summarised in Annex 2. All projects have made substantial progress.

Further details of the Commission and of individual projects can be viewed at our website: [www.nilawcommission.gov.uk](http://www.nilawcommission.gov.uk).

## **THE PROCESS REGARDING THE SECOND PROGRAMME OF LAW REFORM**

Since each of our statutory Programmes is of finite duration, there are opportunities in this and future programmes for interested parties to submit new or modified proposals or to re-submit proposals made for the First Programme.

It is likely that of the five projects in the First Programme the Bail Project and the Multi Unit Development Project will not reach completion by the commencement date for the Second Programme, due to the complexity of the issues and the volume of the work being undertaken. It is, accordingly, envisaged there will be overlap between the First Programme and the Second Programme in respect of these Projects.

Within current resource limits and taking into account the two overlapping projects at the time of publication of this Consultation Paper we envisage that we can realistically absorb two or three new projects for inclusion in our Second Programme.

We will rely mainly on electronic means for publication and response to this Consultation for our Second Programme (although this will not preclude other modes of consultation such as meetings with key stakeholders). We are publishing this consultation paper and alerting all those on our consultation list via electronic means to the commencement of the consultation exercise. The list includes:

- members of the public,
- representative bodies of the legal professions,
- Northern Ireland Departments including their Agencies and associated public bodies,
- local authorities,
- the law schools in the Queen's University of Belfast and the University of Ulster,
- The Northern Ireland Human Rights Commission, the Equality Commission of Northern Ireland, Commissioner for Children and Young People, and the Older Persons Advocate, and
- representative bodies from the business, voluntary and community sectors.

## **DETAILED PROJECT SELECTION CRITERIA**

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:

### **1. 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.

### **2. 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.

### 3. Resources

The Commission will consider the human and financial resources, current and projected, at its disposal.

### 4. 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.

### Equality Obligations

The Commission will perform its obligations under section 75 of the Northern Ireland Act 1998 consistent with the guidance of the Equality Commission of Northern Ireland in its Guide to Section 75.

### Project Selection

Following the closing date, all responses will be collated and any necessary additional research will be carried out by the Commission. Following careful deliberation and application of the selection criteria, the proposed final Second Programme will be submitted for consideration and approval by the Minister as previously outlined.

# NORTHERN IRELAND LAW COMMISSION - BACKGROUND INFORMATION

## MEMBERSHIP

Chairman:	The Honourable Mr Justice McCloskey
Chief Executive:	Ms Judena Goldring MA, BLegSc, Solicitor
Commissioner:	Professor Sean Doran (Barrister-at-Law)
Commissioner:	Mr Neil Faris (Solicitor)
Commissioner:	Mr Robert Hunniford (Lay Commissioner)
Commissioner:	Dr Venkat Iyer (Law Academic)

## The Legal Staff

Mrs Diane Drennan LL.B, M Phil, Solicitor

Miss Clare Irvine LL.B, Solicitor

Ms Imelda McAuley LL.B, LL.M

Mrs Leigh McDowell LL.B, Solicitor

Ms Katie Quinn LL.B, M.Sc

Mrs Sarah Witchell LL.B, Solicitor

Legal Researchers: Mrs Rebecca Ellis LL.B, Solicitor

Miss Joan Kennedy BCL

Mrs Patricia MacBride BA, JD

Miss Nicola Smith BA (International), LL.B, LL.M

## Administration Staff

Business Manager:	Mr Derek Noble
HR and Communications Manager:	Ms Cathy Lundy
Personal Secretary to the Chairman and Chief Executive:	Ms Paula Sullivan
Administrative Officers:	Mr Chris Gregg BA (Hons) Mr Andrew McIlwrath

The Project Team for this Second Programme Consultation is:

Mrs Judena Goldring, MA, BlegSc, Solicitor

Mr Robert Hunniford,

Mrs Patricia MacBride BA, JD

## Contact Details

Further information can be obtained from:

Business Manager  
Northern Ireland Law Commission  
Linum Chambers  
2 Bedford Square  
Bedford Street  
Belfast  
BT2 7ES  
Tel: +44 (0) 28 9054 4860  
Email: [info@nilawcommission.gov.uk](mailto:info@nilawcommission.gov.uk)  
Website: [www.nilawcommission.gov.uk](http://www.nilawcommission.gov.uk)

## **ANNEX 1**

### **OUTLINE OF SOME FIRST PROGRAMME PROPOSALS**

#### **A proposal for the creation of a separate offence of domestic violence**

It was suggested that, although the law currently provides for varying degrees of offenses depending on the level of violence involved, it does not reflect the status of the victims in the context in which the violence occurred. It was proposed that a separate offense of domestic violence should be created.

#### **Proposal for the reform of personal injury law in the area of wrongful death claims**

A proposal was made regarding wrongful death claims. It was noted that the categories of persons who could claim bereavement damages are: a spouse (or civil partner) or the parents of a deceased minor who was unmarried. It was proposed that the eligibility criteria be widened.

#### **Proposal for the reform of community care law**

It was suggested that in community care law there was no statutorily defined right to request an assessment nor an effective legislative description of what the assessment process should involve. Because of this it was submitted that there was heavy reliance on departmental guidance in relation to assessment. It was suggested that reform in the shape of a simplification of the law in this area might be needed.

#### **Proposal in relation to imperfect trust provision**

A proposal was submitted that the repeal of Section 24 of the 1964 Act (the imperfect trust provision) when enacting the Charities Act 2008 was an oversight and should be reinstated. Testators leaving money in their will for 'worthy causes' would have found the charitable bequest failing as it was held not to be exclusively charitable. Section 24, however, permitted the imperfect wording to become exclusively charitable, thus preventing an unnecessary failure of gifts.

#### **Proposal in respect of enduring powers of attorney – cost of accessing forms and mental capacity**

It was suggested that the arrangement for entering into enduring powers of attorney was not as accessible in Northern Ireland as elsewhere in the United Kingdom because

of the requirement under the Enduring Power of Attorney (Northern Ireland) Order 1987 that requires the involvement of solicitors. It was suggested that this could be opened up but there might then be need to include additional safeguards that exist in other jurisdictions before making the forms more accessible.

In addition, with respect to enduring power of attorney it was suggested that the specific area of mental capacity be reviewed to test whether it is up to date with developments in the law.

### **Proposal for registrations of births and acquisition of parental responsibility**

It was submitted that under the Family Law Act (NI) 2001 a father could acquire parental responsibility by signing a parental responsibility agreement, registering as the child's father or by way of a court order. However, some have suggested that the law as it stands on this issue is unsatisfactory.

### **Proposal for reform of planning law with respect to the unification of consent**

It was suggested that unification of consent regimes relating to planning would be beneficial. It was noted that the Review of Public Administration proposals for restructuring the planning system in Northern Ireland would if implemented result in an approach quite different to that adopted for England and Wales in the Planning Act. Although the proposed Northern Ireland planning structure does not preclude a unified approach to consents, it does create a different context to that in the rest of the United Kingdom when considering the issues.

### **Proposal in regard to the use of oaths and affirmations in the courts**

It was submitted that consideration be given the question of whether the present practice of oaths, affirmations and statutory declarations in court was sustainable within the multi-cultural and religious diversity of today's society.

### **Proposal for reform of inheritance provisions**

It was submitted that changes in family structures and individual property holding were sufficiently great to justify examination of the Inheritance (Provision for Family and Dependents) (NI) Order 1979 (the 1979 Order). It was suggested that a review of the 1979 Order could address the classes of person eligible to apply under the Order, the remedies available and the procedure governing the making of applications.



It was also suggested that consideration of a statutory requirement on lawyers to advise clients of their rights under the 1979 Order could also sensibly be considered within a review of this area of law.

### **Proposal for separate legal representation for children in private proceedings**

It was noted that the Children (Northern Ireland) Order 1995 provides for separate representation for children in public law proceedings. But it was also noted that there is no equivalent right to separate representation in private law proceedings. It was also noted that in practice, only in a very limited number of private law cases are children provided with separate representation by the courts. It was suggested that this area of law should be considered for reform.

### **Proposals for a statutory duty on lawyers.**

It was proposed that a statutory requirement on Departments and public bodies to carry out a children impact assessment when developing policy and legislation should be implemented. The United Kingdom as a signatory to the United Nations Convention on the Rights of the Child is legally bound to comply with the provisions of the Convention. Currently, Northern Ireland Departments are required under the Northern Ireland Act 1998 and the Disability Act 1995 to carry out equality and disability impact assessment throughout the legislative and policy process. It was further suggested that a children impact assessment could be implemented through a statutory approach.

## **ANNEX 2**

### **NORTHERN IRELAND LAW COMMISSION PROJECTS IN FIRST PROGRAMME OF LAW REFORM JUNE 2009 TO MARCH 2011**

#### **Reform of Aspects of Land Law**

A Consultation Paper (NILC 2) was published in June 2009 and a Supplementary Consultation Paper on Adverse Possession, Ground Rents and Covenants after Redemption (NILC 3) was published in February 2010.

The Consultation period for both consultations has closed and a Final report with draft legislation is due to be published in early 2011.

#### **Vulnerable Witnesses in Civil Cases**

A Consultation Paper (NILC 4) was published in April 2010 with a consultation period until 30 June 2010 and it is intended to publish a final report in mid 2011.

#### **Business Tenancies**

A Consultation Paper (NILC 5) was published on 1 June 2010 with a consultation period until 30 September 2010. It is intended to publish a Final Report with draft legislation in early 2011.

#### **Bail Law**

A Consultation Paper is to be published in September 2010 and there will be a consultation period until the end of January 2011. Public promotional events will be held across Northern Ireland to explain the project and to encourage broad response to the paper.

#### **Multi-Unit Developments**

Work on this project has recently commenced and it is intended to publish a Consultation Paper in 2011.

## **ANNEX 3**

### **SECOND PROGRAMME OF LAW REFORM YOUR RESPONSE**

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#### ***Questionnaire***

#### **Proposals for Consideration**

We welcome all suggestions to law reform and would ask that these should be submitted using the following guideline, if possible:

- 1. Name and contact details of person or organisation submitting proposal.**
- 2. Area of law considered in need of reform.**

**Please submit as much detail as possible including the currently applicable area of law, current practice under such law and why you consider the current law requires reform.**

- 3. Specific issue**

**Please include your suggestions for specific reform to address the problems or issues which you identify with current law and practice.**

- 4. Brief outline of reasons for submitting issue for possible reform including any suggestions regarding what would constitute a satisfactory outcome.**

**However, please note that submissions in any format will be received and duly considered.**

**Responses to this Consultation Paper should be forwarded by 31 October 2010  
and marked for the attention of:**

**Mr. Robert Hunniford  
Mrs. Patricia MacBride  
Northern Ireland Law Commission  
Linum Chambers  
2 Bedford Square  
Bedford Street  
Belfast BT2 7ES**

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