



# **Revised Strategic Plan April 2010 - March 2011**

## Introduction

This revised strategic plan for the Northern Ireland Law Commission (the “Commission”) supplements the Strategic Plan 2009-2011 by taking account of the changes which have taken place as a result of the devolution of policing and justice functions on 12 April 2010.

## The statutory basis of the Commission

The Commission was established under the Justice (Northern Ireland) Act 2002 (“the 2002 Act”) 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 2002 Act has been amended from 12 April 2010 by provisions contained in the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010.

## Work Programmes

The 2002 Act as amended now requires the Commission to submit its work programmes for approval to the Department of Justice, rather than the Secretary of State for Northern Ireland (“the Secretary of State”).<sup>1</sup> Under previous arrangements, the Secretary of State was required to consult with the First Minister and Deputy First Minister, the Lord Chancellor and the Attorney General for Northern Ireland before approving a work programme.<sup>2</sup> Under the amended provisions, the Department of Justice must consult the Attorney General for Northern Ireland.<sup>3</sup> The Department of Justice must, however, consult with the Secretary of State before approving any work programme prepared by the Commission which includes examination of any branch of law relating in whole or in part to a reserved or excepted matter or the consolidation or repeal of any legislation which relates in whole or in part to a reserved or excepted matter.<sup>4</sup>

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<sup>1</sup> Section 50 of the Northern Ireland Act 1998 (c.47) as amended by Schedule 13 paragraph 8 of the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions ) Order 2010 (SI 2010 No. 976).

<sup>2</sup> Section 51(3) of the Justice (Northern Ireland) Act 2002 (c. 26).

<sup>3</sup> See Schedule 13 paragraph 3 of the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010.

<sup>4</sup> See Schedule 13 paragraph 4 of the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010.

## Appointments

Appointments of the chairman and commissioners are now to be made by the Department of Justice, rather than by the Secretary of State. The Department of Justice assumes responsibility for consulting on appointments with the Lord Chancellor, the First Minister and Deputy First Minister and the Attorney General for Northern Ireland.<sup>5</sup>

## Reports

Under previous arrangements, approved work programmes, proposals for reform and annual reports were to be sent by the Commission to the Secretary of State and the Office of the First Minister and Deputy First Minister. The Secretary of State was then required to lay the reports before Parliament, whilst the First Minister and Deputy First Minister were required to lay the reports before the Northern Ireland Assembly.<sup>6</sup>

Under the new arrangements, the Commission is required to send copies of the approved work programmes, proposals for reform and annual reports to the Department of Justice. The Department of Justice is then required to lay copies of these reports before the Northern Ireland Assembly. Where the Commission prepares any approved work programme, reform proposals or an annual report which includes material which relates to or contains any matter relevant to an excepted or reserved matter, these reports must be sent by the Commission to the Secretary of State. Any such documents must then be laid before Parliament by the Secretary of State.<sup>7</sup>

## Financial provisions

Prior to amendment of the 2002 Act, Schedule 9 of that Act required the Commission to prepare an annual statement of accounts in a form and containing such information as the Secretary of State directed. This duty remains, but the role of the Secretary of State is transferred to the Department of Justice.<sup>8</sup> The Commission was also required to send annual statements of accounts to the Secretary of State and the Comptroller and Auditor General. The Comptroller and Auditor General was then required to examine,

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<sup>5</sup> See Schedule 13 paragraph 8 of the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010.

<sup>6</sup> See section 52 of the Justice (Northern Ireland) Act 2002 (c.26).

<sup>7</sup> See Schedule 13 paragraph 10 of the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 which substitutes a new section 52 into the Justice (Northern Ireland) Act 2002 (c. 26).

<sup>8</sup> See Schedule 13 paragraph 25(6)(a) of the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010.

certify and report on the statements of accounts and lay a copy of the accounts and his report before Parliament.<sup>9</sup>

Under the new arrangements, the Commission must send its statement of accounts to the Department of Justice and the Comptroller and Auditor General for Northern Ireland. The Comptroller and Auditor General is then required to examine, certify and report on the statement of accounts and lay a copy of the accounts and his report before the Northern Ireland Assembly.<sup>10</sup>

## VISION FOR THE NORTHERN IRELAND LAW COMMISSION

### The governmental aim

The new constitutional arrangements for Northern Ireland including now devolution of policing and justice include institutions and statutory provisions dedicated to the achievement of reconciliation, tolerance and mutual trust and to the protection and vindication of the human rights of all people. These arrangements include a commitment to partnership, equality and mutual respect as the basis of relationships within Northern Ireland, between the two jurisdictions on the island of Ireland and between Ireland and the United Kingdom. The delivery of a fair and impartial system of justice to the community in Northern Ireland and the delivery of effective and efficient justice have been seen as key elements of the overall aim for Northern Ireland and much work has been carried out as a result of the recommendations of the Criminal Justice Review Group (2000).

### Mission Statement of the Commission

The aim of the Commission is directly linked to the governmental aim as set out above. In taking forward its work the Commission recognises a fundamental premise of a modern system of justice and legal system for Northern Ireland: 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 its people.

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<sup>9</sup> Schedule 9 paragraph 6 of the Justice (Northern Ireland) Act 2002 (c. 26).

<sup>10</sup> See Schedule 13 paragraph 25(6)(c) of the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010.

We now place particular emphasis on the devolution of policing and justice in making Northern Ireland essentially a free standing jurisdiction and the Commission has a significant part to play in taking forward the aims of the devolution exercise.

The Commission is establishing 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 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 Department of Justice is particularly engaged in the reform and amendment of substantial and important areas of the law. The Northern Ireland Executive and its other Departments and the Northern Ireland Assembly also have responsibility for law reform.<sup>11</sup> Ways of co-ordinating 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. The Commission is an important part of the new constitutional structures of Northern Ireland and it is hoped that its reform proposals will carry weight and will be handled expeditiously by the relevant parts of government here.

### Values

In taking forward its task of keeping the law of Northern Ireland under review and formulating proposals for its reform, the Commission will be guided by a number of core values. These are:

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<sup>11</sup> The Northern Ireland Office continues to have a role with regard to any areas of law reform relating to reserved matters under the Northern Ireland Act 1998

*Independence.* A key characteristic of the Commission is its independence. The Commission has the statutory right to scrutinise the whole of the law of Northern Ireland and to put forward its own ideas as to what needs to be looked into and, if the topics are accepted by government, how such reforms should be progressed. This is balanced by the power of the government to decide whether it is going to take forward the Commission's proposals, and those proposals having to enter the appropriate democratic process through which all proposed legislation passes.

*Impartiality.* It is important that the Commission establishes itself as a body that approaches issues of law reform on a rigorously impartial and objective basis. All members of the Commission and Commission staff will adhere to these principles fully in the conduct of Commission work.

*Expertise and high performance culture.* It is intended that the Commission becomes a centre of excellence for legal research and law reform.

*A focus on outcomes.* The Commission is developing a culture that creates a strong focus on outcomes. This means the Commission will want to bring forward proposals for reform of the law which will have a real and beneficial effect on the lives of the citizens of Northern Ireland.

*Good communication and consultation.* The Commission places a strong emphasis on developing good communication and on effective consultation with its stakeholders.

*Effective relationships.* The Commission recognises the importance of working effectively with other bodies involved in the area of law reform. This includes Government and NICS Departments, other NDPBs, and the academic and professional legal community. It will also ensure appropriate protocols are in place to fulfil its statutory duty to consult with the Law Commission (England and Wales), the Scottish Law Commission and the Law Reform Commission (Ireland) when developing its law reform proposals.

### [Equality commitment](#)

The Commission is committed to the provision of equality of opportunity and fair participation to all persons regardless of sex, marital status, religious beliefs, political

affiliation/opinion, age, family status, ethnic or racial background, sexual orientation, disability, nationality or trade union membership. An Equality Scheme has been developed for the Commission.

### Commitment to effective public consultation and 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 are used to ensure that those with a stake in the outcome of the Commission's recommendations have an opportunity to express their views. The Commission puts an emphasis, within its analytical process, on careful consideration of the views of stakeholders.

### Working methods

The Commission wishes to create a centre of law reform excellence for Northern Ireland. This means 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 of post graduate status 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 or Commissioners has been created for each project. The Commissioner has responsibility for providing the strategic project leadership along with a level of detailed legal and policy work commensurate with his part-time commitment. Teams are encouraged to exchange information freely across the project boundaries and governance mechanisms ensure that Commissioners have a degree of involvement across all projects. The aim of such mechanisms is to build a corporate policy approach for the Commission and to ensure that any inter-dependencies or linkages between projects are recognised and reflected in the Commission's considerations.

The standard process by which the Commission delivers 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 sets out the law as it currently stands, discusses the perceived weaknesses or defects in the law and its operation and sets out possible options for reform. The responses to the public consultation are analysed and the Commission takes account of this analysis as part of its final considerations. A Report with recommendations and draft legislation, where appropriate, is then 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 puts an emphasis on appropriate training to develop a high level of law reform skills within the organisation. This includes assessing equal opportunity and financial and regulatory impacts. Staff in the Commission are provided with appropriate training in these areas.

**The Commission’s Budget**

NILC is financed jointly by the Department of Justice and the Department of Finance and Personnel.

Budget allocations over the 2009/10-2010/11 planning period are as follows:

	<u>2009-10</u>	<u>2010-11</u>
	<u>£’000</u>	<u>£’000</u>
<b>Chair/Commissioners</b>	<b>159</b>	<b>170</b>
<b>CEO/Staff Salary Costs *</b>	<b>509</b>	<b>550</b>
<b>Other Non Staff Costs</b>	<b>360</b>	<b>334</b>
<b>Total</b>	<b>1,028</b>	<b>1,054</b>

*\* Note: Staff Salary Costs shown do not include DFP Land and Property Services direct funding of two lawyers working on the collaborative Land Law Project.*



## Strategic aims and objectives

### **STRATEGIC AIM 1:**

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

#### Strategic objective 1

To build and maintain governance and working practices that effectively support the objectives of the Commission and are in accordance with the rules and guidance governing NDPBs.

#### Strategic objective 2

To take forward an effective Training and Development Plan that accords with the Commission's objectives and business plans.

#### Strategic objective 3

To build an effective legal staff within the terms of the Commission's resources

### **STRATEGIC AIM 2:**

TO TAKE FORWARD THE COMMISSION'S FIRST PROGRAMME OF LAW REFORM FOR NORTHERN IRELAND

#### The Commission's first 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 Programme was agreed without change on 17 October by the Secretary of State.

### The strategic objectives of the first programme of law reform

- **Strategic Objective 1**

To reform aspects of the land and property law.

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 and is complex and difficult to access. The proposed reforms will aim to update and rationalise the relevant law and in doing so will provide Northern Ireland with land and property law that is more supportive of a modern economy. In May 2008 the Minister for the Department of Finance and Personnel requested the Commission to take on a review of ground rents and covenants as part of the land law reforms. These topics now form part of the project, with the consultation process on these topics due to end by 30 April 2010. We intend to complete the work on the project with a Report and draft legislation by December 2010.

- **Strategic Objective 2**

To reform the law 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 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. A main part of this work has involved consultation with a wide range of stakeholders.

We intend to issue a consultation paper in late summer/autumn 2010 and hold roadshows, publicity and a conference during autumn/winter 2010. Discussions with a legislative draftsman will commence in winter 2010/ spring 2011 as we intend to complete the work on the project with a Report and draft legislation by early 2012.

- **Strategic Objective 3**

To reform aspects of the law relating to business tenancies.

The law relating to business tenancies law was the subject of reform 1996. 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.

We intend to issue a consultation paper by April 2010 and complete the work on the project with a Report and draft legislation by January 2011.

- **Strategic Objective 4**

To reform 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.

A consultation paper was issued in April 2010 and it is intended to complete the work on the project with a Report which will be completed in-house by March 2011. We will decide on whether to include draft legislation in the Report after the consultation process is completed in June 2010.

- **Strategic Objective 5**

To reform 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. Work on the project will commence in May 2010, with approval of an issues paper by the Board no later than March 2011.

- **Strategic Objective 6**

To carry out effective public consultation in the conduct of the Commission's law reform functions. We will use a range of public consultation processes to ensure effective public and stakeholder participation in the law reform process.

### **STRATEGIC AIM 3**

To develop a Second Programme of Law Reform for the period 2011-2014

#### **Strategic Objective 1:**

To publicly consult on a draft Second Programme in September 2010 and to present a Second Programme of Law Reform to the Department of Justice for approval in February 2011. The Second Programme of Law Reform will issue in March 2011.