

# QUEEN'S UNIVERSITY BELFAST

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1. Some aspects of the Rule of Law  
in Northern Ireland
2. The Northern Ireland Law  
Commission

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## I THE RULE OF LAW

[1] New, incoming students of law could be readily forgiven for thinking that the essential ingredients of the rule of law consist of the investigation and detection of criminal offences; the prosecution of suspected offenders; the conviction and sentencing of the guilty; and, on the civil side – claims for compensation; consumers' rights; the rights and duties in the relationship between landlord and tenant; and the resolution of employment disputes. All of these are indeed important elements of the rule of law. However, the rule of law has an altogether broader and more profound connotation.

[2] The primary meaning of the rule of law is that everything must be done according to law. Thus every Government Minister who, or Government agency which, purports to act in any given field must justify the action in question as authorised by law – which will normally (though not invariably) mean authorised by parliamentary legislation. Acts of governmental power routinely affect the legal rights, duties and liberties of the individual. All such acts must be shown to have a strict legal pedigree. The courts are the arbiters of whether the necessary legal pedigree exists. Thus the rule of law is founded on the principle of legality. The rule of law has an important *secondary* meaning in all well developed systems of administrative law: it is that government should be conducted within a framework of recognised rules and principles which restrict the exercise of discretionary power and are designed to prevent its abuse. Once again, it is the courts which are the arbiters of the legitimate use – and misuse– of governmental power.

[3] Thus the rule of law and the independence of the judiciary are inseparable elements of a modern constitutional democracy. Plainly, the rule of law cannot function properly and effectively unless adjudication upon the legality of governmental acts is carried out by judges who are independent of the executive. Judicial independence is, therefore, a cornerstone of the rule of law. Properly appreciated, it explains and illuminates the doctrine of the separation of powers. In the context of the United Kingdom, it has been observed that “... *the British Constitution, though largely unwritten, is firmly based upon the separation of powers*”<sup>1</sup>. This is also captured in the following statement:

*“The right to carry a dispute with the Government before the ordinary courts, manned by judges of the highest independence, is an important element in the Anglo-American concept of the rule of law”.*<sup>2</sup>

[4] The doctrine of the rule of law is also identifiable in the following profound words:

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<sup>1</sup> Duport Steel -v- SIRS [1990] 1 WLR 142, p. 157 (per Lord Diplock). And see Lord Hoffmann's lecture “Separation of Powers” [2002] JR 137.

<sup>2</sup> “Administrative Law” (Wade and Forsyth, 10<sup>th</sup> Edition, p. 19).

*“[The court] has the constitutional role and duty of ensuring that the rights of citizens are not abused by the unlawful exercise of executive power. While the court must properly defer to the expertise of responsible decision makers, it must not shrink from its fundamental duty to do right to all manner of people”.*<sup>3</sup>

Furthermore, it is no coincidence that the rule of law occupies a prominent position in the EU Treaty. Article 6/1 provides:

*“The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and **the rule of law**, principles which are common to the Member States.”*

[My emphasis].

As this cornerstone provision of the Treaty recognizes, the rule of law is one of the values which binds and unifies the diverse and disparate Member States of the European Union.

[5] Few would deny that the independence of the judiciary is a value of supreme importance throughout the developed world. Equally undeniable is the marriage of the rule of law and judicial independence: neither partner can survive without the other. At a recent conference, one of the most senior English judges offered the following formulation of judicial independence:

*“In a democratic country all power, however exercised in the community, must be founded on the rule of law. Therefore each and every exercise of political power must be accountable not only to the electorate at the ballot box, when elections take place, but also and at all times to the rule of law. Independent professions protect it. Independent press and media protect it. **Ultimately, however, it is the judges who are guardians of the rule of law. That is their prime responsibility. They have a particular responsibility to protect the constitutional rights of each citizen as well as the integrity of the constitution by which those rights exist. The judge therefore cannot be out for popularity. He – or she – cannot please everyone. He should never try to please anyone. That includes the judge himself. He should never use his office to confirm his predilections or to allow his***

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<sup>3</sup> The Queen –v- Ministry of Defence, ex parte Smith [1996] QB 517, p. 556 (per Sir Thomas Bingham MR).

***prejudices to gain some kind of spurious judicial respectability”.***<sup>4</sup>

[6] Judicial responsibility, of course, goes hand in hand with judicial independence. No judge has any dispensing power – that is to say the power to set aside or disregard the law. Thus it was observed by Thomas Fuller in the mid 17<sup>th</sup> century:

*“Be ye never so high the law is above you.”*

This followed the public trial, and ensuing execution, of a king who had proclaimed that *“Rex is Lex”*. This claim was exposed as fallacious because it was plainly inimical to the rule of law. Judges might do well to reflect on this heresy from time to time. The essence – and burden - of judicial responsibility has been described by Lord Judge CJ in these terms:

*“Having been entrusted with huge power, judges have an ultimate responsibility to see that when exercising the power vested in them, they use it lawfully in precisely the same way as **they** ensure that political and other powers vested in other institutions of the State are exercised lawfully.”*

[My emphasis].

[7] It is well recognised that respect for and protection of judicial independence provides a bulwark for the citizens of every civilised society. In June 1998, the judges of the Commonwealth formulated the principle of judicial independence in these words:

*“Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects”.*

In the United Kingdom context, Lord Bingham of Cornhill has stated:

*“Independence of the judges (or, put negatively, the protection of judges from executive pressure or interference) is all but universally recognised as a necessary feature of the rule of law”.*<sup>5</sup>

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<sup>4</sup> The words of the Rt. Hon. Lord Judge, Lord Chief Justice of England and Wales: 16<sup>th</sup> Commonwealth Law Conference, Hong Kong, 9<sup>th</sup> April 2009 – my emphasis.

<sup>5</sup> Independent Jamaica Council for Human Rights -v- Marshall-Burnett [2005] UKPC 3 and [2005] 2 AC 356, paragraph [12].

The doctrine of the separation of powers requires appropriate deference by Government and Parliament to the decisions of the court. Per Lord Bingham again:

*“Just as the courts must apply Acts of Parliament whether they approve of them or not, and give effect to lawful official decisions whether they agree with them or not, so Parliament and the executive must respect judicial decisions whether they approve of them or not, unless and until they are set aside”.*<sup>6</sup>

**[8]** Judicial independence, an inseparable element of the rule of law, is an internationally recognised value of longstanding. See, for example, the Resolutions of the General Assembly of the United Nations.<sup>7</sup> Reference may also be made to a resolution of the UN Economic and Social Council.<sup>8</sup> In similar vein are the well known “Bangalore Principles of Judicial Conduct”.<sup>9</sup> In short, the independence of the judiciary derives from, and is an integral feature of, two internationally recognised seminal principles or doctrines: the first is the rule of law and the second is the separation of powers.

**[9]** In a recent discourse, Sir Sidney Kentridge QC began by posing the question of whether anything more of substance could, at this stage, be legitimately said about the rule of law.<sup>10</sup> Having recalled the apartheid laws of South Africa before 1994, Sir Sidney observes:

*“On the whole we know a rule of law state when we see it – or at least we know when the rule of law is absent. What is certain is that the content of what we mean by the rule of law has expanded. In modern times - say the last fifty or sixty years – there has been a recognition that certain individual rights are ‘fundamental’ and deserve particular respect from executive, legislature and the courts. This is true even of states within the Commonwealth which have no written constitution.”*

Of course, as the author notes, the rule of law has, historically, been powerless to prevent some dreadful abuses of the rights of citizens. These include the widespread practice of slavery in the British colonies and, only fifty years ago, the forced removal of the small but long established permanent population of the Chagos Islands in order to accommodate a United States naval and air force base – an act of governmental injustice perpetrated in the name of the Royal Prerogative without parliamentary or judicial authority. Equally, in the United States, the Declaration of Independence which affirmed

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<sup>6</sup> In *Re McFarland* [2004] UKHL 17 and [2004] 1 WLR 1289, paragraph [7]

<sup>7</sup> Resolutions 40/32, 29<sup>th</sup> November 1985 and 40/146, 13<sup>th</sup> December 1985.

<sup>8</sup> Resolution 1989/60, 15<sup>th</sup> Plenary Meeting, 24<sup>th</sup> May 1989.

<sup>9</sup> Adopted by the Judicial Group on Strengthening Judicial Integrity – at The Hague, 25/26 November 2002.

<sup>10</sup> *The Commonwealth Lawyer*, Volume 20 (No. 2), August 2011, p. 16.

that “*all men are created equal*” did not preclude a ruling by the Supreme Court in 1857 that “*all men*” did not include black men. This was a *judicial* determination which, in retrospect, seems remarkable. The rule of law is, emphatically, not the exclusive preserve of so-called civilised or economically advanced nations. However, undeniably, in those countries where gross economic hardships and privations abound, the rule of law is comparatively empty of real meaning. When one reflects on the plight of the poor, the deprived and the disadvantaged, a nexus between the rule of law and economic and social rights begins to emerge. Where such rights are lacking, is the rule of law truly efficacious?<sup>11</sup>

**[10]** In his eloquent discourse, Sir Sidney highlights one particular feature of contemporary government and politics posing a threat to the rule of law:

*“But one aspect of the rule of law, on which we would certainly all agree, is the independence of the judiciary. It is secured, in part, by laws which give the judges security of tenure and in part by ensuring as far as possible that they are persons of integrity, appointed on merit rather than by reason of political connection ...*

*There is a particular threat to judicial independence which should concern us. That is the growing tendency for politicians and the press to attack in intemperate and even vituperative terms judges who have given decisions with which they disagree. Newspapers all too often respond to an unpopular decision with personal attacks on the judge concerned. Judges must accept strong criticism, even unfounded criticism ...*

*One of the attributes we expect of an independent judge is the moral courage to make decisions which will be unpopular with politicians or the media or the public ...*

*The real mischief of unwarranted attacks on the motives and integrity of the judges, however, is not any hurt to the judge's feelings. It is that they undermine that respect for the judiciary without which, as I have suggested, the foundations of the rule of law are underlined”.*

Sir Sidney's solution is to urge the legal profession to defend the judiciary in its constitutional function, drawing on the attempts of other distant states including Pakistan, Uganda and Kenya.

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<sup>11</sup> Rights of this kind are *not* protected by the Human Rights Act 1998. They do, however, feature in the draft Bill of Rights presented by the Northern Ireland Human Rights Commission to the Stormont Executive. While this fine piece of work is, as a minimum, deserving of rational and informed public debate, it lies dormant.

## Statutory Guarantees

[11] While it may appear somewhat remarkable, the recognition by statute of the independence of the judiciary in the United Kingdom did not occur until the Constitutional Reform Act 2005.<sup>12</sup> In Northern Ireland, the parallel provision is contained in Section 1 of the Justice (Northern Ireland) Act 2002. Pursuant to the latter provision, the First Minister, the Deputy First Minister, Northern Ireland Ministers and everyone responsible for any matter pertaining to the judiciary or the administration of justice “**must uphold the continued independence of the judiciary**”.

## ECHR

[12] Article 6 of the European Convention on Human Rights and Fundamental Freedoms provides:

*“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by **an independent and impartial tribunal** established by law.”*

[Emphasis added].

In the United Kingdom, Article 6 is one of the Convention rights implemented by the Human Rights Act 1998. Section 6 of this statute makes it unlawful for a court (and for any public authority) to act in a way which is incompatible with any of the protected Convention rights. There are no wasted or superfluous words in Article 6 ECHR. The stipulation is that courts and tribunals must be both independent *and* impartial. These are separate, cumulative requirements.

## The Rule of Law Further Afield

[13] Some brief reflections on Nigeria are instructive. Nigeria is a sovereign nation and the largest democracy in Africa. Democratic elections were held in 1999, in the wake of sixteen years of military incursions into power which had entailed a cycle of military dictatorships undermining and damaging the country’s economic, social and political systems. A new era of democracy dawned. Some of the writings of Nigerian jurists and judges are both profound and illuminating. In a fascinating treatise, two law teachers of the Faculty of Law, Benson Idahosa University, Nigeria have written:

*“Democracy and the rule of law are the pillars of sustainable development and the guarantee of*

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<sup>12</sup> See particularly Sections 1 and 3.

*fundamental freedoms in any society. The rule of law is one of the pre-requisites to creating an enabling environment that supports socio-economic growth and political development. The future of democracy rests with the ability of democratic governments to observe the rule of law. **The rule of law is the fulcrum of democracy and the pillar upon which the structures of democracy stand***.<sup>13</sup>

In short, democracy and the rule of law are inextricably linked. In order to survive and prosper, both require access to justice; the separation of powers; effective protection of basic rights; and free and fair elections. Notably, the writers make the following observations about the judiciary, in this context:

*“The judiciary occupies a strategic role in the administration of justice and sustenance of democracy. Any political system that uses the rule of law as its method of ordering societal interactions must have a highly trained judiciary that acts independently of the political system ...*

*The judiciary cannot afford to shrink from its sacred responsibility to maintain the rule of law. For democracy to survive, the courts must dispense justice according to the rule of law”.*<sup>14</sup>

Thus the rule of law should engage the interest and attentions of not only law students.

Rather, it features prominently and inexorably in other fields of study – such as politics, sociology and history. This will serve to remind law students that their future careers will in some way exert influence in many sectors of society.

**[14]** In this democratic society there are certain aspects of the rule of law so embedded in our legal and governmental systems that we take them for granted: freedom of speech; freedom to worship; the right to marry; the right to own property; protection by the agents of the law; the right to vote; the right to avail of the system of education; and a plethora of due process protections – the right to be informed of the reasons for one’s arrest; limitations on periods of detention; the right to a legal adviser; the right to trial by an independent and impartial tribunal; the right to be tried by a jury in certain circumstances; and all the other trial rights conferred on accused persons. This brief reflection highlights the truism that the citizen frequently views the rule of law through the lens of *personal rights and freedoms*. But, as I have sought to demonstrate, the rule of law possesses a somewhat more profound meaning and operates in an all-encompassing fashion. In particular, it plays a

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<sup>13</sup> Volume 36, No. 2, Commonwealth Law Bulletin (June 2010), p. 343 – emphasis added.

<sup>14</sup> Ibid, p. 353.

vital role in monitoring the exercise of executive/governmental/official power and intervening in appropriate cases. Such power can be abused and misused. The rule of law is at its most effective in countering and curbing such excesses. It is in this context that **judicial review**, a jurisdiction exercisable only by the High Court in our legal system, operates.

[15] A recent illuminating debate about the subject of arbitrary police powers and their compatibility with the rule of law was stimulated by a proposed amendment of the Criminal Investigation Act 2006 in Western Australia. This amendment would empower the Police Commissioner to designate certain public areas with the Minister's approval wherein a new power to stop a person, search them and to search a vehicle can be exercised. *There was no precondition of suspected actual or potential criminality.* Notably, a comparable law introduced in the United Kingdom during recent years and justified by the rationale of combating terrorism<sup>15</sup> was found unanimously by the European Court of Human Rights to be unlawful, on the ground that it infringed the rights of the person under Article 8 ECHR (the right to respect for one's private life). Under the Convention, it is possible for a *prima facie* interference with a protected right to be redeemed if it is *in accordance with the law* and necessary in a democratic society and compatible with one of the specified legitimate aims. In its jurisprudence, the European Court has construed "*in accordance with the law*" as requiring that the relevant measure be compatible with the rule of law. This means that the legislative or other measure in question must be adequately accessible and foreseeable and formulated with sufficient precision to allow individuals to regulate their daily lives. In the particular case of discretionary powers, these must be clearly expressed, with a comprehensible indication of how the discretion will be exercised. The court held that the powers conferred on police by the Terrorism Act encouraged arbitrariness and discriminatory application. They were not subject to sufficient legal safeguards against abuse. Accordingly, they were incompatible with the rule of law.<sup>16</sup>

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<sup>15</sup> Section 44 of the Terrorism Act 2000.

<sup>16</sup> Gillan -v- United Kingdom [2010] ECHR 28, paragraphs 83-87 especially.

## **II THE NORTHERN IRELAND LAW COMMISSION – WHO WE ARE AND WHAT WE DO**

**[16]** 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>17</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.

**[17]** 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.

**[18]** 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.
- (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.

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<sup>17</sup> The relevant provisions of the 2002 Act, as amended, are contained in an appendix hereto.

- (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.

**[19]** 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.

**[20]** 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**

**[21]** 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.

**[22]** 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.

[23] 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.

[24] Thus the Commission's First Programme comprised five separate law reform projects. The first three of these (supra) are now complete. The fourth, the bail law project, is expected to culminate in a report to Government, with accompanying draft legislation, in early 2012. In the fifth of these projects, relating to the law regulating multi-unit developments, the projected date is 2013.

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

[25] Following a public consultation exercise, the Commission has considered a series of new proposals for the reform of Northern Ireland. Having done so, it has made its suggestions to the Minister of Justice regarding the content of its Second Programme of Law Reform. The Commission is obliged to do so by statute. The Minister's final response is currently awaited. 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 are preceded by a robust and thorough process, which will include a comprehensive exercise of public consultation. This exercise facilitates appropriate engagement with relevant Government Departments, interested professions, the business sector, the voluntary sector, the judiciary and any other interested parties or groups. This process is also accompanied by appropriate publicity, which includes deployment of the Commission's website and the organisation of appropriate public events. As required by statute, the Commission also consults with the other Law Commissions in the British Isles and the Irish Law Reform Commission. Furthermore, there are opportunities for specific engagement with those most likely to be affected by the adoption of any given law reform project.

[26] The Commission has carefully considered each of the proposals emerging from the consultation process, applying the following selection criteria:

- (a) **Importance to Northern Ireland.** This incorporates 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 includes 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 considers the human and financial resources, current and projected, at its disposal.
- (d) **Timing.** It is 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.

[27] The Commission's independence does 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 is 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 is 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 are to the mutual benefit of the Commission and Government. All of these processes 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**

[28] 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.

[29] There is undoubtedly 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.

[30] This particular project has reached an important stage. The Commission is currently evaluating responses to its consultation paper, which invited 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.

### **Multi-Unit Developments**

[31] The law regulating multi-unit developments is the focus of the other unfinished Law Commission project under the umbrella of its First Programme of Law Reform. This is proving to be a particularly interesting and challenging project, one which has attracted not insubstantial political and media interest. [In passing, it should, in principle, be of interest to many undergraduate students!]. It is vitally important that every member of society realise their right to shape and influence the laws which regulate how we live by making representations to and interacting with the Law Commission. There are also considerations of civic responsibility in this respect.

[32] 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.