



# **Strategic Plan 2009-2011**

## Introduction

This strategic plan for the Northern Ireland Law Commission sets out the background to the setting up of the Commission and describes its statutory position and its remit, and the broad approach to law reform that the Commission intends to adopt. It sets out our strategic objectives for the period 2009-2011. A detailed yearly plan for achieving these objectives is set out in the Commission's annual business plans.

## Background to setting up of Commission

The Commission is established under the Justice (Northern Ireland) Act 2002 following the recommendations of the Criminal Justice Review Group (2000). The purpose of the Commission is to keep the law of Northern Ireland under review and make recommendations for its systematic development and reform.

The Act requires the Commission to consider any proposals for the reform of the law of Northern Ireland referred to it. The Commission must also submit to the Secretary of State programmes for the examination of different branches of the law with a view to reform. The Secretary of State must consult with the Lord Chancellor, the First and deputy First Minister and the Attorney General before approving any programme submitted by the Commission.

## VISION FOR THE NORTHERN IRELAND LAW COMMISSION

### The governmental aim

The overall governmental aim is to secure a lasting peace, based on the Belfast or Good Friday Agreement and the St Andrew's Agreement, in which the rights and identities of all traditions in Northern Ireland are fully respected and safeguarded and in which a safe, stable, just, open and tolerant society can thrive and prosper. The delivery of a fair and impartial system of justice to the community in Northern Ireland and the delivery of effective and efficient justice are key elements of the overall governmental aim for Northern Ireland.

### Mission Statement of the NILC

The establishment of an independent law commission is part of the exciting and optimistic peace process that is underway in Northern Ireland. The central aim of the Commission is directly linked to the governmental aim as set out above. In taking forward this aim the Commission recognises that a fundamental premise of a modern system of justice and legal system for Northern Ireland is 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 the people.

The Commission intends to establish itself as a body that puts forward robust, workable and timely proposals for improving the law and its practice in Northern Ireland. This emphasis on achieving practicable outcomes will be an important value defining the work of the Commission.

### Working with government

Although the Law Commission has a statutory duty to keep all of the law of Northern Ireland under review, responsibility for law reform is not a monopoly of the Commission. The Northern Ireland Executive and its Departments, the Northern Ireland Assembly and the Northern Ireland Office are involved with the reform and amendment of substantial and important areas of the law. Ways of coordinating their efforts with those of the Commission and other law reform agencies, to ensure the most efficient use of resources and the orderly and systematic review of those branches of the law, is an important aspect of the Commission's considerations.

In many jurisdictions around the world independent law reform commissions have a special status in the legislative and administrative regimes within which they operate. The matters with which the Commissions are concerned are sometimes technical and non controversial but sometimes they may involve matters of social or political controversy. It is hoped that the Northern

Ireland Law Commission can establish itself as a valued part of the constitutional structures of Northern Ireland and 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:

*Independence.* A key characteristic of the new Law 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.

*Impartiality.* It is important that from the outset 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 will become a centre of excellence for legal research and law reform.

*A focus on outcomes.* The Commission will develop 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 will place 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, the Scottish Law Commission and the Irish Law Reform Commission 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 is in the process of being developed.

### 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 will be used to ensure that those with a stake in the outcome of the Commission's recommendations will have an opportunity to express their views. The Commission will put 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 will mean 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 post graduate law students 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 will be created for each project. The Commissioner will have responsibility for providing the strategic project leadership along with a level of detailed legal and policy work commensurate with his or her part-time commitment. Teams will be encouraged to exchange information freely across the project boundaries and governance mechanisms will ensure that Commissioners have a degree of involvement across all projects. The aim of such mechanisms will be to build a corporate policy approach for the Commission and to ensure that any inter-dependencies or linkages between projects is recognised and reflected in the Commission's considerations.

The standard process by which the Commission will deliver 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 will set out the law as it currently stands, will discuss the perceived weaknesses/defects in the law and its operation and set out possible options for reform. The responses to the public consultation will be analysed and the Commission will take account of this analysis as part of its final considerations. A Report with recommendations and draft legislation, where appropriate, will be 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 will put an emphasis on appropriate

training to develop a high level of law reform skills within the organisation. This will include assessing equal opportunity and financial and regulatory impacts. Staff in the Commission will be provided with appropriate training in these areas.

## 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<sup>th</sup> 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. We intend to complete the work on the project with a Report and draft legislation.

- **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 and complete the work on the project with a Report and draft legislation.

- **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 13 years ago. In general the law seems to be working well and for the most part the correct balance between the interests of landlords and tenants has been struck. However, there is evidence that the business environment has changed sufficiently in the intervening years so that some aspects of the legislation may be overly restrictive and out of date. This relates in particular to the statutory prohibition on contracting out of

the legislation. This prohibition is seen by some as an anachronism which undermines the freedom of landlords and tenants to negotiate mutually satisfactory terms for leasing business property. The legislation's provisions on notifications and time limits were also criticised as in need of modernisation.

The business tenancies legislation is an important aspect of economic life and business development. A review of its operation to ensure it is fit for modern commercial life is timely.

We intend to issue a consultation paper and complete the work on the project with a Report and draft legislation.

- **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.

We intend to issue a consultation paper and complete the work on the project with a Report. We will decide on whether to include draft legislation in the Report after the consultation process is completed.

- **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.

- **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 May 2010 and to present a Second Programme of Law Reform to the Secretary of State in October 2010.