

ANNUAL

BUSINESS PLAN

2013-2014

NORTHERN IRELAND LAW COMMISSION

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Introduction by the Chief Executive of the Northern Ireland Law Commission

I am pleased to present the Northern Ireland Law Commission (the “Commission”). Seventh Annual Business Plan for 2013-14. This Business Plan sets out the background to the setting up of the Commission, its remit, its statutory position, and the broad vision for law reform that it has adopted. Most importantly, however, the Business Plan is a yearly plan for achieving the strategic aims and objectives that are set out in the Commission’s Programmes of Law Reform. It therefore sets out the work which the Commission intends to carry out during 2013-14 in pursuance of these aims and objectives, together with key targets against which progress will be measured.

From 12 April 2010, under the devolution of justice arrangements, the Commission became independent advisory non-departmental public body of the new Department of Justice. (Prior to this date, the sponsoring Departments were the Northern Ireland Office (with a role also for the Department of Finance and Personnel). The Justice (Northern Ireland) Act 2002, which establishes the Commission, is amended to reflect this new constitutional position by virtue of the provisions of the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010.

The content of the Commission’s First Programme (approved by the Secretary of State in October 2009) set out the main work of the Commission for the first 3 years until late 2011 when it is replaced by the Second Programme.

The content of the Commission’s Second Programme sets out the main work of the Commission. The Second Programme covers the period from June 2011 to March 2015.

One on-going project that was commenced in the First Programme of Law Reform continued on into the Second Programme, the reform of the law relating to Apartments.

In drawing up this Plan the Commission is mindful of the fact that the recommendations of the review of the NILC commissioned by the sponsor body are still under consideration.

DoJ as sponsor Department commissioned an independent review of the NILC in October 2012. The period for consideration and implementation of the Review recommendations coincides with the period of this business plan. This situation has placed certain restrictions on the Commission's business planning process which are reflected within the Plan.

Judena Goldring
Chief Executive and Accounting Officer

BACKGROUND TO SETTING UP OF THE COMMISSION AND ITS REMIT

The Commission is established under the Justice (Northern Ireland) Act 2002 (as amended by the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010) (referred to hereon as the 2002 Act (as amended)).

The purpose of the Commission is to keep the law of Northern Ireland under review and make recommendations for its systematic development and reform.

On 12 April 2010, justice functions in Northern Ireland were devolved to the Northern Ireland Assembly (NIA) and the Department of Justice (DOJ) came into existence as a new Northern Ireland Department. From this date, the Commission became an independent advisory non-departmental public body (NDPB) of the Department of Justice.

STATUTORY POSITION OF THE COMMISSION

The 2002 Act as amended 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 government programmes for the examination of different branches of the law with a view to reform. The Commission submits its programmes of work to the Department of Justice. The Minister for the Department of Justice is required to consult with the Attorney General for Northern Ireland. The Department of Justice must consult with the Secretary of State for Northern Ireland before approving any 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.

THE COMMISSION'S VISION FOR ITS LAW REFORM ROLE

The governmental aim

The constitutional arrangements for Northern Ireland including 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).

Aim 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 law 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 an effective means of simplifying and modernising the law and making it accessible to the people of Northern Ireland.

The Commission prides itself as a body that puts forward carefully researched, robust and workable 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.¹ 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 Northern Ireland Law 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.

¹ 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

MEETING THE STRATEGIC AIMS OF THE COMMISSION

The Commission has two strategic aims:

1. To develop and maintain a centre of law reform excellence for Northern Ireland within the resources provided by government.
2. To take forward the Commission's Programmes of Law Reform for Northern Ireland.

STRATEGIC AIM 1

In order to satisfy Strategic Aim 1, the Commission wishes to maintain 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 generally law graduates or graduates who have postgraduate qualifications in law, who have shown research potential, and 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 or the CEO is created for each project. The Commissioner or CEO has 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. Each project has a steering group which consists of the Commissioner(s) leading the project, the project lawyer, the CEO of the Commission and a representative from the Department with responsibility for the policy area. 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 is recognised and reflected in the Commission's considerations.

The standard process by which the Commission delivers its recommendations is through a Consultation Paper published for public consultation. Each Consultation Paper sets out the law as it currently stands, discusses the perceived weaknesses/defects in the law and its operation and set outs 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 drawn up and presented to the Northern Ireland Department of Justice.

Training and development

Law reform is in some ways a legal specialism in that it combines a high level of legal analysis with policy development. It requires lawyers to analyse legal issues and legislation and to do so within the wider social, political and economic context. The law reformer must 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.

Stakeholder communication

The Commission recognises that it must develop good communication with its stakeholders whether they are in government, business, the voluntary community, the legal and other relevant professions or the general public. A variety of means including seminars, stakeholder interviews, news releases and web technology is 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.

Financial and Resourcing Challenges

The Northern Ireland Law Commission, like others across the public service, is faced with the challenge of reducing our operating costs. In line with the previous three financial years, our 2013-14 budget allocation is again reduced by 5% year on year.

During the course of the year the Commission will continue to review our financial and resourcing savings plan to ensure that we manage the delivery of our key services in a way that realises the required savings.

STRATEGIC AIM 2

The Commission has a statutory responsibility to draw up programmes of law reform for approval by the Minister of the Department of Justice.

In order to further Strategic Aim 2, in July 2010 the Commission launched a consultation on its Second 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 24 potential law reform topics.

The Commission 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 were rated accordingly.

The Commission recommended five topics to go forward into the Second Programme. Two of these were approved by the Minister, who also referred 3 additional projects to the Commission. The Second Programme was formally laid in the Northern Ireland Assembly in July 2012, and the projects contained in the approved Second Programme form the basis of this business plan.

The projects going forward during this planning year are as follows:

- **The regulation of the health care professions: to contribute the Northern Ireland perspective to the project led in this area by the English Law Commission** - The Department of Health (England) requested that the Law Commission (England & Wales) review the United Kingdom legislation in relation to the regulation of health care professions. This area of law suffers from a complex legislative landscape which has developed piecemeal and resulted in a wide range of idiosyncrasies and inconstancy in the powers, duties and responsibilities of each of the regulatory bodies. There are also differences between regulatory bodies in their statutory powers to gather and share information, call witnesses and impose sanctions.

Reforms are aimed at reducing the complexity of the legislative landscape which has developed piecemeal in this area over the last 150 years. For example, there are currently six separate Acts of Parliament and three Orders made under section 60 of the Health Act 1990, covering nine individual regulatory bodies. These have since been extensively amended with a further sixteen section 60 Orders and a range of Acts of Parliament added over the last ten years.

Parts of the legislation covered by this review include devolved matters (under the Northern Ireland Act 1998) and falls within the policy responsibility of the Northern Ireland Department of Health, Social Services and Public Safety. The DHSSPS has requested the Commission to undertake a review of this area of law in partnership with the Law Commission (England & Wales) and the Scottish Law Commission.

The health-care professionals that will be affected by such reforms include: medical and dental practitioners, pharmacists, opticians, osteopaths, chiropractors and nurses/midwives.

- **The Unfitness of an Accused Person to Plead** - This project reviews the current law and practice in all criminal courts, with the exception of Youth Courts and examines in particular the current operation of the “Pritchard” test, which prescribes the criteria governing the determination of whether an accused person is fit to plead. Publication of the Consultation Paper took place on 16 July 2012. Publication of the Commission’s Final Report will take place early in this planning year.
- **Electoral law** - This project is operating on a UK wide basis in conjunction with our sister Law Commissions. It aims to simplify and modernise electoral administration law which has become complex and unwieldy and has given rise to inconsistencies and unjustifiable differences in practice between different elections and different parts of the UK. The scope of the Project is limited to technical aspects of electoral law governing the administration of elections and will not include issues such as the voting system, who can vote etc.

Electoral law is not a devolved matter. The Northern Ireland Assembly has no legislative competence in respect of elections. Under the Northern Ireland Act 1998 elections to the UK Parliament, including the franchise specifically, European Parliamentary elections, elections to the Northern Ireland Assembly, and local government (district council) elections are all excepted matters. The Northern Ireland Minister of Justice consulted with the Secretary of State and the Attorney General for Northern Ireland, (as required under section 51(3) and section 51(3A) of the Justice Act 2002) before granting approval to the Northern Ireland Law Commission to include this project in its Second Programme in November 2012. The Commission will work closely with its sister law reform bodies to ensure that Northern Ireland issues and interests are fully represented in any proposals for reform.

Initial stakeholder work has commenced both on a UK wide basis and at local level, and has been positively received to date. There are particular issues regarding Northern Ireland electoral legislation which has developed in a piece meal and fragmented fashion. The project seeks to address the deficiencies in the legislation so that it is more accessible and more readily understood.

- **The law and procedures relating to Apartments** - The Report in this area will contain recommendations to address the problems experienced by those owning and living in apartments and other properties with elements of shared ownership, such as open spaces. As a matter of priority the Commission is seeking to provide solutions for current owners as well as trying to ensure that the same issues do not arise again in future.

The Commission believes that a comprehensive range of measures has to be considered. Although some may be achieved by the introduction of legislation, there are other more practical ways to produce more immediate and effective results. The Commission recognises that the funding and resourcing of any new schemes is an important factor, so it has aimed to be pragmatic and realistic in its approach. It has sought to put forward ideas that are low-cost and have the potential to be implemented without long delays.

In view of the pressing nature of the problems experienced by those owning and living in apartments, the Commission is keen to see that the recommendations will be explored further and has offered its assistance to the Departmental Solicitors Office in this regard. The Commission has indicated that it may be able to examine the viability of the options in greater detail if the policy options can be clarified.

- **The law relating to defamation** – At the time of construction of this plan, it is possible that a new project in the reform of defamation law will be added to the Commission's work programme. In July 2013 the Defamation Act 2013 was enacted for England and Wales (with a small number of provisions extending to Scotland). The Act which does not apply to Northern Ireland represented the culmination of several years of campaigning for wide ranging and radical reform which ultimately resulted in cross party support for the Bill in Westminster. The Act will come into force on 1 January 2014. It sets a higher threshold before defamatory imputations becomes actionable, introduces liberalised new defences of honest comment and public interest, widens the privilege enjoyed by some statutory reports, introduces a single publication rule, and makes available new defences for website operators and the publishers of peer reviewed statements in academic journals. Additionally, the presumption in favour of jury trial is abolished, some new rules are established in relation to jurisdiction, and new remedial powers are granted to the court.

Presuming formal referral by the DFP Minister, and subject to consultation with the Attorney General and approval by the DoJ Minister, it is hoped to start substantive work on the project in early 2014.

- **Review of the Public Health Act (Northern Ireland) 1967** – The Permanent Secretary of DHSSPS wrote to the Commission in February 2013 asking it to undertake a review of the Public Health Act (Northern Ireland) 1967 ('the 1967 Act') to advise on whether it remained fit for purpose. The Department were concerned that the 1967 Act had not been updated in any significant respect. A

number of authorities with responsibility for dealing with incidents, including the Public Health Authority, District Councils and the PSNI, expressed concerns that the current legislation is unclear on certain points, and that existing powers may be inadequate to deal with potential public health emergency scenarios. In addition, the legislation has never been reviewed in relation to human rights compatibility.

In England & Wales, the law was consolidated in the Public Health (Control of Disease) Act 1984 ('the 1984 Act'), as amended by the Health & Social Care Act 2008 ('the 2008 Act') & the Health & Social Care Act 2012). In Northern Ireland, consolidation in relation to infectious disease was carried out by the Public Health (Northern Ireland) Act 1967 ('the 1967 Act' as amended). However, many of the provisions in the 1967 Act (and the 1984 Act, as originally drafted) owe much to earlier Victorian and twentieth century statutes and are based on social conditions and an understanding of science extant in the 19th century, which favoured the use of compulsory powers for the common good.

The Commission is awaiting formal DoJ Ministerial approval for the inclusion of this project in its Second Programme.

- **Preparation of Third Programme of Law Reform** - During this planning year it is intended to carry out some initial work in preparation for the Third Programme of Law Reform. This work will include assessment of the projects undertaken by the English, Scottish and Irish Law Commissions, a review of proposals submitted to the Commission during the consultation on the previous programmes and a call for law reform proposals to NI Departments.

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:

1.1 To build and maintain effective governance and working practices that effectively support the objectives of the Commission, are in accordance with the statutory obligations, rules and guidance governing NDPBs and specifically the DOJ/NILC Relationship document governing the Commission.

In year targets:

- To forward to DoJ an Annual Business Plan for the 2013-14 year.
- Continue to maintain a sound financial control system in line with DOJ accounting and audit requirements.
- During the course of the year the Commission will continue to review our financial and resourcing savings delivery plan to ensure, as far as practicable, that we manage the delivery of our services in a way that realises the required cash releasing savings totalling £150k.
- Continue to operate AccountNI in line with Government procedures and identify/resolve any arising operational issues with DOJ Financial Services Division, Directorate accountants and AccountNI for period ending 31 March 2014.
- To process all payments to suppliers within 10 days of receipt of a valid invoice in line with Government targets working in partnership with DOJ Financial Services Division and AccountNI.
- Prepare an Annual Report for the 2012/13 period and send to the DOJ by 31 August 2013.
- Conduct an annual review of NILC overarching risk register.

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

In year targets:

- For staff in post at 1 April 2013, Personal Performance Agreements (PPAs) and Personal Development Plans (PDPs) to be drafted and agreed in line with NICS Core Competence Framework by 30 June 2013.
- Ensure appropriate Commissioner and staff development opportunities are identified and developed in to a one year Training and Development Plan by 30 June 2013.

1.3 To maintain and build an effective legal staff team within the terms of the Commission's resources.

- As a result of the uncertainties around the outcome of the DOJ Review recommendations, planning for recruitment of Commission lawyers and legal researchers is put on hold until final decisions are made by the Department about the future structure of the Commission.

STRATEGIC AIM 2:

TO KEEP THE LAW OF NORTHERN IRELAND UNDER REVIEW AND BRING FORWARD PROGRAMMES OF LAW REFORM

STRATEGIC OBJECTIVE 1:

TO TAKE FORWARD THE PROJECTS CONTAINED WITHIN THE COMMISSION'S SECOND PROGRAMME OF LAW REFORM

2.1 To reform the law and procedures relating to apartments.

In year targets:

- Publication of the Final Report by May 2013.

2.2 To contribute to the Northern Ireland perspective to the English Law Commission project on regulation of the medical profession.

In year targets:

- Contribute to the Law Commission's final report and draft Bill for publication in January 2014

2.3 To develop recommendations for the reform of the law relating to unfitness to plead in criminal cases.

In year targets:

- Complete a final report with recommendations and publish by July 2013.

2.4 To contribute the Northern Ireland perspective to the English Law Commission project on electoral law (working alongside the Scottish Law Commission in a tri-partite project).

In year targets:

- To contribute to consideration of policy recommendations in conjunction with the Law Commission of England and Wales and the Scottish Law Commission.

2.5 To consider a review of the Public Health Act (NI) 1967.

In year targets:

- To carry out an initial assessment of the Public Health Act (NI) 1967 and advise the DHSSPS as to whether it is fit for purpose by December 2013.
- If a project in this area is approved then to finalise a Project Initiation Document by February 2014.
- To begin outline draft consultation paper by March 2014

2.6 To consider reform of the law of defamation in Northern Ireland

In year targets:

- To provide advice to the DFP Minister by November 2013 on the suitability of a project on reform of the law of defamation
- To commence research at the beginning of January 2014
- Subject to a review of the law of defamation being approved by Ministers to finalise a Project Initiation Document by February 2014 .
- Commence pre public consultation meetings with key stakeholders in February 2014

STRATEGIC OBJECTIVE 2:

TO IDENTIFY AND RESEARCH POTENTIAL LAW REFORM PROJECTS FOR THE THIRD PROGRAMME

During this planning year the preparation for the Third Programme of Law Reform will commence. This will include assessment of the work of the English, Scottish and Irish Law Commissions and a law reform proposal call to NI Departments.

In year target:

- To develop by February 2014 a list of at least seven potential law reform projects for inclusion in a public consultation on a Third Programme

THE COMMISSION'S BUDGET

The Commission is financed by the Department of Justice.

The budget for 2013-14 is £952,000

A summary of opening budget allocations for 2013-14 are as follows:

Budget Currency	2013-14
Capital	£0
Programme Staff Costs	£705,000
Programme Non Staff Costs	£247,000
Total	£952,000