

# **BUSINESS PLAN**

**2010-2011**

# **NORTHERN IRELAND LAW COMMISSION**

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### INTRODUCTION

This is the fourth Business Plan for the Northern Ireland Law Commission (the “Commission”). The Business Plan sets out the background to the setting up of the Commission and its remit, describes 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 were set out in the Strategic Plan 2010-2011. It therefore sets out the work which the Commission intends to carry out during 2010-2011 in pursuance of these aims and objectives, together with key targets against which progress will be measured.

This Business Plan differs from previous plans in that it is operative within new constitutional arrangements for Northern Ireland, which have affected the statutory position of the Commission. From the 12 April 2010, under the devolution of justice arrangements, the Commission becomes an NDPB 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) sets out the main work of the Commission. The First Programme runs until March 2011 when it will be replaced by the Second Programme. This Business Plan is based on the First Programme and is linked to the Commission’s Strategic Plan April 2009-March 2011.

## 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) 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.

## 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. Before it was amended, the 2002 Act made provision that the Secretary of State must consult with the Lord Chancellor, the First Minister and deputy First Minister and the Attorney General before approving any programme submitted by the Commission. These arrangements are changed so that the Commission will in future submit programmes of work to the Minister for the Department of Justice. The Minister will be required to consult with the Attorney General but there will be no longer be a requirement to consult with the Lord Chancellor or the First Minister and Deputy First Minister. The Department of Justice must, however, consult with the Secretary of State 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.

## VISION OF LAW REFORM FOR THE COMMISSION

### The governmental aim

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

### Mission Statement of the Commission

The aim of the Commission is directly linked to the governmental aim as set out above. In taking forward its work the Commission recognises a fundamental premise of a modern system of justice and legal system for Northern Ireland: that everyone has rights and duties under the law. The Commission – alongside other bodies responsible for developing aspects of the law – will use its resources to respect, safeguard and promote those rights and duties. Our aim is to provide for Northern Ireland an effective means of simplifying and modernising the law and making it accessible to its people.

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

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

### Working with government

Although the Commission has a statutory duty to keep all of the law of Northern Ireland under review, responsibility for law reform is not a monopoly of the Commission. The Department of Justice is particularly engaged in the reform and amendment of substantial and important areas of the law. The Northern Ireland Executive and its other Departments and the Northern Ireland Assembly also have responsibility for law reform.<sup>1</sup> . Ways of co-ordinating their efforts with those of the Commission and other law reform agencies, to ensure the most efficient use of resources and the orderly and systematic review of those branches of the law, is an important aspect of the Commission's considerations.

In many jurisdictions around the world independent law reform commissions have a special status in the legislative and administrative regimes within which they operate. The matters with which the commissions are concerned are sometimes technical and non-controversial but sometimes they may involve matters of social or political controversy. The Commission is an important part of the new constitutional structures of Northern Ireland and it is hoped that its reform proposals will carry weight and will be handled expeditiously by the relevant parts of government here.

### MEETING THE STRATEGIC AIMS OF THE COMMISSION

In its Strategic Plan 2009-2011, the Commission sets out three 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 First Programme of Law Reform for Northern Ireland.
3. To develop a Second Programme of Law Reform for the period 2011-2014.

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<sup>1</sup> The Northern Ireland Office continues to have a role with regard to any areas of law reform relating to reserved matters under the Northern Ireland Act 1998

### Strategic Aim 1

In order to satisfy Strategic Aim 1, 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 generally more recently qualified lawyers or 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 is 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 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 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 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 equality and financial and regulatory impacts. Staff in the Commission will be provided with appropriate training in these areas.

### 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 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.

### Strategic Aim 2

In order to further Strategic Aim 2, 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 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.

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 the existing statutory requirements on 1 June 2009.

The projects in the Programme are as follows:

- Land Law Reform

This is a referral from the Department of Finance and Personnel which includes the later referred topics of adverse possession and ground rents legislation.

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. The work on the project is well under way and on 1 June 2009 a Consultation Paper was published seeking views on our main land law reform proposals. This consultation continued until 18 September 2009. Thereafter, a Supplementary Consultation Paper on adverse possession and ground rents was published in February 2010 with consultation until 30 April 2010. Work on the Project will be completed by end of December 2010 with a Report and draft legislation. The Commission is receiving substantial resource support from the Northern Ireland Land and Property Services for the land law project.

- The law and procedure relating to bail

Unlike the position in England and the Republic of Ireland, Northern Ireland does not have a specific piece of legislation that codifies the law in relation to bail. Provisions governing aspects of bail are to be found in a great 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 a case 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 includes 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.

A consultation paper will be published in September 2010 accompanied by road shows, publicity and a conference

- Business tenancies law

The law relating to business tenancies law was the subject of reform in 1996. In general, the law seems to be working well and for the most part the correct balance between the interests of landlords and tenants has been struck. However, there is evidence that the business environment has changed sufficiently in the intervening years so that some aspects of the legislation may be overly restrictive and out of date. This relates in particular to the statutory prohibition on contracting out of the legislation. This prohibition is seen by some as an anachronism which undermines the freedom of landlords and tenants to negotiate mutually satisfactory terms for leasing business property. The legislation's provisions on notifications and time limits were also criticised as in need of modernisation.

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

The preliminary work has now been completed with a Consultation Paper being published on 1 June 2010 with a consultation period until 30 September 2010.

- 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 may face particular difficulty when giving oral evidence in court during civil proceedings. The general thrust of the reforms would be to extend the modern concepts developed within the criminal law cases for the protection of vulnerable witnesses in civil law court cases. This kind of improved protection would help in particular victims of domestic violence involved in family law cases.

Traditionally vulnerable witnesses in both civil and criminal cases have been expected to give evidence under the same conditions as all other witnesses; that is, in person, before a public forum. The principle of orality has traditionally been seen as a fundamental aspect of the adversarial model of proof and is grounded on the premise that live evidence affords an opportunity for the tribunal of fact to observe the demeanour of the witness and, in turn, to form an accurate opinion on his or her credibility.

Over the course of the past two decades special protections and services have been introduced for such witnesses in criminal proceedings in order to enhance the quality of their evidence. The Criminal Evidence (Northern Ireland) Order 1999 introduced a wide range of “special measures” to enable vulnerable witnesses to give better evidence in criminal cases. Similar legislation was enacted in England and Wales under the provisions of the Youth, Justice and Criminal Evidence Act 1999. In Scotland legislation has been enacted to deal with the protection of vulnerable witnesses in criminal and civil cases under the provisions of Vulnerable Witnesses (Scotland) Act 2004.

A Consultation Paper will be published in April 2010 with a consultation period until 30 June 2010

- 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 eg 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 finding no means of adequate redress. This project will extend beyond the period of the First Programme of Law Reform and the Strategic Plan 2009-2011 and will be continued as part of the Second Programme of Law Reform.

Preliminary work has commenced and a Consultation Paper will be published in 2011.

### Strategic Aim 3

In order to fulfil Strategic Aim 3, the Commission has been carrying out preparatory work in relation to carrying out a consultation exercise to determine the views of stakeholders in relation to a Second Programme of Law Reform.

## **STRATEGIC AIM 1:**

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

### **STRATEGIC OBJECTIVES**

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

In year targets:

- Continue to develop the Commission's financial control systems to ensure continuing compatibility with DoJ accounting systems and which comply with audit requirements for the period ending 31 March 2011.
- Prepare Statement of Accounts for the 2009/10 financial year and submit to the Comptroller and Auditor General for audit by 31 July 2010.
- Publish Annual Report and Accounts for 2009/10 by 30 November 2010.
- Prepare and publish an Annual Business Plan for 2010/11.
- Conduct an annual review of NILC risk register by end of January 2011

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

In year targets:

- Personal Performance Agreements (PPAs) and Personal Development Plans (PDPs) to be drafted and agreed in line with DFP Core Competence Framework by 30 June 2010.
- Ensure appropriate staff development opportunities are identified and developed in to a one year Training and Development Plan by 30 September 2010.

#### **1.3 To build an effective legal staff within the terms of the Commission's resources.**

In year target:

- To put in place a business tenancies and multi-unit developments project legal resource by April 2010.

## STRATEGIC AIM 2:

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

#### STRATEGIC OBJECTIVES

#### **2.1 To reform aspects of the land and property law.**

In year target:

- To complete Final Report together with draft legislation by December 2010

#### **2.1.1 To review the law and practice relation to the redemption of ground rents and the law of adverse possession**

In year targets:

- To complete consultation process by 30 April 2010
- To analyse responses to the consultation and make recommendations for reform of the areas for inclusion in the Final Report on land law

*Cost of resources relating to the project (April 2010 to December 2010)*

<b>Land Law</b>	<b>£,000</b>
<b>CEO/Board Corporate Time</b>	<b>25</b>
<b>Commissioner(s)</b>	<b>-</b>
<b>Legal Staff Costs *</b>	<b>41</b>
<b>Consultancy</b>	<b>30</b>
<b>Administrative Staff Costs</b>	<b>21</b>
<b>Other Non Staff Costs</b>	<b>51</b>
<b>Total</b>	<b>168</b>

\* Excludes £80k cost of two lawyers funded by DFP, Land and Property Services.

#### **2.2 To reform the law relating to bail**

In year targets:

- Publication of consultation paper in late summer/autumn 2010
- Roadshows, publicity and conference during autumn/winter 2010
- Initial discussion with legislative draftsman/ commencement of drafting during winter 2010/spring 2011

*Cost of resources relating to the project (April 2010 to March 2011)*

<b>Bail</b>	<b>£,000</b>
CEO/Board Corporate Time	25
Commissioner(s)	57
Legal Staff Costs	89
Consultancy	-
Administrative Staff Costs	21
Other Non Staff Costs	51
<b>Total</b>	<b>243</b>

### **2.3 To carry out a review of certain aspects of business tenancies law**

In year targets:

- Publication of consultation paper in April 2010
- Approval of Final Report by Board by November 2010
- Publication of Final Report and draft legislation by January 2011

*Cost of resources relating to the project (April 2010 to March 2011)*

<b>Business Tenancies</b>	<b>£,000</b>
CEO/Board Corporate Time	25
Commissioner(s)	17
Legal Staff Costs	24
Consultancy	-
Administrative Staff Costs	21
Other Non Staff Costs	51
<b>Total</b>	<b>138</b>

### **2.4 To reform the law and procedures relating to vulnerable witnesses in civil cases.**

In year targets:

- To complete consultation exercise at end of June 2010
- To receive, collate and analyse responses to the Consultation Paper – during July to September 2010
- Final Report completed and approved in-house (but not published) – by March 2011

*Cost of resources relating to the project (April 2010 to March 2011)*

<b>Vulnerable Witnesses</b>	<b>£,000</b>
CEO/Board Corporate Time	25
Commissioner(s)	17
Legal Staff Costs	84
Consultancy	-
Administrative Staff Costs	21
Other Non Staff Costs	51
<b>Total</b>	<b>198</b>

**2.5 To reform the law and procedures relating to multi-unit (domestic) developments (apartments).**

In year targets:

- Commence drafting of consultation paper during May 2010
- To commence engagement with key stakeholders during May and June 2010
- “Issues emerging” paper to be available no later than March 2011

*Cost of resources relating to the project (April 2010 to March 2011)*

<b>Multi-unit (domestic) developments</b>	<b>£,000</b>
CEO/Board Corporate Time	25
Commissioner(s)	17
Legal Staff Costs	69
Consultancy	-
Administrative Staff Costs	21
Other Non Staff Costs	51
<b>Total</b>	<b>183</b>

### STRATEGIC AIM 3:

### TO DEVELOP A SECOND PROGRAMME OF LAW REFORM FOR THE PERIOD 2011-2014

#### STRATEGIC OBJECTIVE

**3.1 To publically 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.**

In year targets

- Finalisation of draft consultation paper by September 2010
- End of consultation period – 31 December 2010
- Submission to Department of Justice – early/mid February 2011
- Second Programme of Law Reform issued – by 31 March 2011

*Cost of resources relating to the project (April 2010 to March 2011)*

<b>Second Programme of Law Reform</b>	<b>£,000</b>
<b>CEO/Board Corporate Time</b>	<b>25</b>
<b>Commissioner(s)</b>	<b>-</b>
<b>Legal Staff Costs</b>	<b>27</b>
<b>Consultancy</b>	<b>-</b>
<b>Administrative Staff Costs</b>	<b>21</b>
<b>Other Non Staff Costs</b>	<b>51</b>
<b>Total</b>	<b>124</b>

**K L MILLAR**  
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**5 July 2010**