

Malicious Damage

In September 1988, the Commission published its Report on [Malicious Damage \(LRC 26-1988\)](#) following a March 1987 request from the then Attorney General.

As a further step in its revision of pre-1922 criminal legislation, the Commission examined the *Malicious Damage Act, 1861*. The 1861 Act was found to be basically sound and adequate for dealing with the mischief presented by arson and damage to property. The problem was that it was unnecessarily verbose and complex. The Commission decided that simplification was necessary, and that the legislative opportunity should be taken to propose certain new offences and procedural reforms.

Twenty one recommendations in total were made in the Report among which were that:

1. The present approach, of providing a long list of specific offences, should be replaced by a general offence in respect of criminal damage to another person's property, supplemented by a small number of other offences, dealing with liability in specific instances.
2. The same test of recklessness should apply to offences relating to criminal damage as we recommended should apply to the offence of handling unlawfully obtained property, in our Report on [Receiving Stolen Property \(LRC 23-1987\)](#).
3. Arson should be retained as a separate offence. It should not carry a higher maximum penalty than other acts involving damage to property. The common law offence of arson should be abolished.
4. The District Court should have jurisdiction to try summarily offences of criminal damage where the Director of Public Prosecutions so elects.
5. The maximum penalty for all criminal damage offences, whether by fire or otherwise, prosecuted on indictment, which do not involve intent to endanger life or recklessness as to whether life would be endangered should be ten years' imprisonment. Where such intent or recklessness exists, a life sentence would apply.
6. The legislation should include a provision for the payment of compensation to victims of criminal damage and the related offences already proposed.
7. There would be a power of arrest without warrant, by a member of the gardai or any other person, in respect of the offences proposed, where, in either case, there is a reasonable belief that (a) such an offence has been committed and (b) the arrested person committed such offence.

Draft Legislation in Report

A draft *Criminal Damage Bill* is included in the Report.

Information on Implementation

Recommendations of the Commission were implemented by the *Criminal Damage Act 1991* and *Criminal Justice Act 1993*.