

The Law Reform Commission

AN COIMISIÚN UM ATHCHÓIRIÚ AN DLÍ

FIRST PROGRAMME FOR EXAMINATION OF CERTAIN
BRANCHES OF THE LAW WITH A VIEW TO THEIR
REFORM

Laid by the Taoiseach before both Houses of the Oireachtas
on 4 January 1977 pursuant to section 5(2) of the Law
Reform Commission Act 1975

(Prl. 5984)

The Law Reform Commission

AN COIMISIÚN UM ATHCHÓIRIÚ AN DLÍ

An Taoiseach,
Liam Cosgrave, Esq., S.C., T.D.

A Thaoisigh,

The Law Reform Commission Act 1975 section 4 subs. (2) (a) imposes upon the Law Reform Commission a duty to prepare from time to time, in consultation with the Attorney General, programmes for the examination of different branches of the law with a view to their reform for submission by you to the Government.

I now have the honour to submit to you the first of these programmes.

Yours sincerely,
Brian Walsh
President.

December 1st, 1976.

The Law Reform Commission

AN COIMISIÚN UM ATHCHÓIRIÚ AN DLÍ

FIRST PROGRAMME FOR EXAMINATION OF CERTAIN BRANCHES OF THE LAW WITH A VIEW TO THEIR REFORM

INTRODUCTION

1. The Law Reform Commission was established by the Law Reform Commission Act 1975 as a statutory body corporate to keep the law of the State under review and, in accordance with the provisions of the Act, to undertake examinations and conduct research with a view to reforming the law and to formulate proposals for law reform. By section 4 of the Act the Commission is required, in consultation with the Attorney General, from time to time to prepare for submission by the Taoiseach to the Government programmes for the examination of different branches of the law with a view to their reform. If such programmes prepared by the Commission are approved by the Government, then the Commission shall undertake an examination of and conduct research in relation to the subjects set out in the programme and, if the Commission thinks fit, formulate and submit to the Taoiseach proposals for the reform of the law.

2. The Act also provides that, at the request of the Attorney General, the Commission shall undertake an examination of and conduct research in relation to any particular branch or matter of law whether or not such branch or matter is included in the programme submitted by the Commission and approved of by the Government. If the Commission is so requested by the Attorney General, then it shall formulate and submit to the Attorney General proposals for reform of the particular branches or matters of law submitted. Pursuant to this provision of the Act, the Attorney General has already submitted to the Law Reform Commission the following matters :

- (1) The law relating to the age of majority;
- (2) The law relating to the domicile of married women;
- (3) The prohibited degrees of relationship in the law of marriage;
- (4) The application of foreign law in cases in which the courts of this country have jurisdiction to grant a decree of nullity of marriage.

In respect of each of these subjects the Attorney General has requested the Law Reform Commission to undertake an examination of and conduct research into the law and, if it thinks fit, to formulate proposals for reform of the law in question and to submit these proposals to him. The Law Reform Commission is currently engaged in the examination of all these matters.

3. For some time the Law Reform Commission has had under consideration possible areas of study to be undertaken by the Commission in its early years. As it obviously would not be feasible to endeavour to include in the Commission's first programme a review of all the laws of the State, a selection of subjects has been made that will encompass an area touching on many different branches of the law. In the programme the subjects appear in alphabetical order. While the Commission hopes to be able to deal with the several aspects of these subjects concurrently, it is clear that all aspects of a particular subject cannot be dealt with at the one time, and the Commission may find it necessary or desirable to deal separately with different aspects of a particular subject. It is also clear that some subjects will require a longer period of research and study than others. However, as a matter of priority, the Commission will give its first attention to the subject of family law and to the law relating to the liability of builders, vendors and lessors for the quality and fitness of premises.

4. With respect to the matters appearing in its programme for law reform the procedure of the Commission in its work will be to prepare, after the necessary study and research, a working paper on the subject, which may, if the Commission thinks it necessary or desirable, be accompanied by draft legislative pro-

posals for consultation with interested parties. When the Commission, within whatever time-limit it fixes, has received the views of the various interested parties, the Commission will prepare a final report and will, where it thinks fit, formulate and submit to the Taoiseach proposals for reform in that particular branch of the law; and may, if it thinks it helpful to do so, also submit as part of its proposals a draft Bill to implement the proposals.

5. The Commission will take into account the reports, findings or recommendations of any other committees that have dealt with or are currently dealing with any aspect of the subjects contemplated in the Commission's programme. It also envisages the setting up of working parties, partly composed of persons from outside the Commission, for the purpose of examining and making recommendations to the Commission in respect of any aspect of the programme referred to such working parties by the Commission. It is also contemplated that the Commission may from time to time consider the desirability of recommending that certain areas of our statute law should be referred for consolidation to one or more of the existing statute law consolidation agencies, e.g., the statutes relating to the sale of intoxicating liquors (the Licensing Laws), the statutory provisions for compulsory acquisition of land and premises, the statutes dealing with local government and the enactments relating to prisons (the Prisons Acts).

THE PROGRAMME

Administrative Law

6. As a first step in the examination of this vast subject the Commission proposes to examine the question of establishing a uniform procedural system to govern—

- (1) the making and processing of applications for the many different kinds of licences now required by law for various activities,
- (2) the decisions to grant or refuse such licences, and
- (3) the hearing of appeals from decisions granting or refusing such licences.

Animals (liability for injuries or damage caused by)

7. This will involve an examination of the present state of the law and consideration of whether there is justification for the continuation of the doctrine of *scienter* and whether any distinction should be made between liability for animals used for, and necessary for, the owner's or keeper's trade or business and liability for other animals. It will also involve an examination of the necessity for or the desirability of a continued distinction being made between the liability of those who keep wild animals and that of those who keep what are regarded in law as domestic animals.

Conflict of Laws

8. There is very little case law in Ireland in regard to private international law and little has been written on the subject. The Commission intends as a long-term project to prepare proposals for a statute codifying, reforming and modernising the rules of conflicts as they apply in the State. They propose that in the meantime the conflict rules in various branches of the law be examined with a view to recommending reforms, in particular so far as concerns the following matters :

- (1) Recognition and (where appropriate) enforcement of foreign marriages, legitimations, adoptions, *filiations*, maintenance decrees, annulments, legal separations and divorces;

- (2) **Recognition and enforcement of foreign arbitral awards;**
- (3) **The concept of domicile and the concept of habitual residence;**
- (4) **The application and construction of foreign law;**
- (5) **The rules of conflict in regard to matrimonial property regimes and succession, in particular, (a) the distinction drawn between movables and immovables and between plurality of succession and unity of succession, (b) the application of the *lex situs*, the *lex domicilii* or the *lex patriae* and (c) the doctrine of *renvoi* etc.;**
- (6) **The rules of conflict in regard to contractual and non-contractual obligations, including the rules on the international sale of goods.**

9. In considering the rules of private international law in any particular branch of the law the Commission will take account of the various International Conventions (multilateral, bilateral and regional) dealing with conflict of laws, and more particularly the Conventions prepared by The Hague Conference on Private International Law since 1954. The Commission will also examine the present method of implementing in municipal law and ratifying International Conventions as well as the interpretation by the courts of the rules contained in the Conventions (use of *travaux préparatoires* etc.).

Criminal Law

10. The Commission proposes to examine various aspects of the criminal law, and especially the following subjects :

- (1) **The law concerning larceny and kindred offences and concerning acts involving fraud and dishonesty. This is largely covered at present by the Larceny Act 1916, which has proved to be unsatisfactory in many respects and inadequate in others. The Commission considers it desirable to provide a clearer and more effective code of law to replace the existing law.**
- (2) **The mental element in crime and the legal fault required to constitute a crime.**

- (3) Criminal responsibility, including such matters as intoxication, necessity, duress and age.
- (4) The criminal culpability of corporations.
- (5) The law relating to minor offences concerned with public peace and order. In the Commission's view the existing statutory law in this area (e.g., the Vagrancy Act and the Dublin Police Acts) require to be amended and consolidated or replaced.
- (6) The law relating to offences against the person and offences against property, including the question of the possible reclassification of the existing statute and common law offences and reform and consolidation of the law relating to malicious injury and damage to property and to persons.
- (7) The law on matters proper to be taken into account in sentencing convicted persons.

Evidence

11. The existing law of evidence rests mostly on judicial decisions and to a considerably lesser extent upon statutory provisions. The revision and codification of the law of evidence, both civil and criminal, has been a subject much discussed for many years in common law countries and there seems to be general agreement as to the desirability of a code or codes of evidence, if such should prove to be practicable. The Commission appreciates that because of the immensity of the task it would not be feasible to undertake the preparation of comprehensive codes all at once. It is proposed that particular areas of the law be examined with a view to reform and that the reforms be designed to fit into an ultimate whole without the necessity for any subsequent substantial change. Priority will be given to areas where the reforms will simplify and improve court procedures and to particular problems, such as burdens of proof (evidential and persuasive burdens etc.), the competence and compellability as a witness of the spouse of an accused person, the hearsay rule, the Judges' Rules, unsworn evidence by children, and unsworn statements by an accused person. The Commission also proposes to examine the question of the desirability of retaining the oath for witnesses and for jurors.

It is to be noted that the Criminal Law Bill of 1967 contained much of a reforming character and the Commission will give close attention to the provisions of that Bill in its examination of the criminal law and the law of evidence.

Family Law

12. This is a subject which covers a very wide area and in this programme it is not the intention of the Commission to undertake studies in the whole field of family law. For example, certain aspects of it, such as the law of succession, have been the subject of comprehensive legislation, which came into operation as late as 1 January 1967. Also, certain proposals by the Government for the amendment of the law of nullity have recently been put forward by the Attorney General for public discussion. The Commission considers that it should undertake an examination of both the substantive and the procedural law relating to matrimonial causes and the nature and the basis of existing matrimonial proceedings generally.

In addition, the Commission proposes to examine the law relating to causes of action (other than strictly matrimonial proceedings) such as criminal conversation, loss of *consortium*, breach of promise to marry, and the adequacy of the existing law for the protection of the family. Furthermore, the Commission proposes to undertake an examination of the rights of husband and wife (including property rights) arising out of the marriage and the duties and relationship of the members of the family (parents and children) towards each other. The Commission will also examine the law as to illegitimacy (including the succession and other rights of illegitimate children). In examining the various aspects of family law the Commission will consider the question of the best type of judicial or court structure or structures appropriate to deal with the different matters which fall under the general heading of family law.

Privacy

13. There appears to be growing public concern in most countries, including Ireland, at the lack of legal protection in this area. It is proposed by the Commission to examine the whole area of the protection of privacy and to include in this

examination and under this heading, in addition to purely personal privacy, the question of professional secrets, industrial secrets, expertise and what is commonly referred to nowadays as "know-how". The examination will also cover the protection of the knowledge of persons who by their research or other work produce new varieties or species of plant life.

Sales

14. The desirability and the feasibility of enacting in one statute or in some codified form a law dealing with the sale, and matters arising from the sale, of both movables and immovables are matters that the Commission proposes to examine. This would include the liability of the vendors, lessors and builders of premises and the quality and fitness of the premises. This latter aspect is one which the Commission proposes to examine at a very early stage, as mentioned in paragraph 3 *supra*. In considering the law as to sale, the Commission will examine the desirability of ratifying, and giving effect to, the two Hague Conventions of 1 July 1964 on (1) the Uniform Law on the International Sale of Goods and (2) the Uniform Law on the Formation of Contracts for the International Sale of Goods.

State Side Actions

15. The whole basis of that form of litigation which comes under the heading of "State Side", e.g., *Mandamus*, *Certiorari*, *Prohibition* etc., requires to be examined with a view to seeing whether the continuation of the present forms of procedure can be justified or whether the same or similar relief ought to be obtainable under a general heading in appropriate cases. The Commission will undertake this examination.

Statute Law

16. For some time there has been an increasing interest in common law countries in the desirability of a more flexible rule for the interpretation and construction of statutes and for a departure from what is at present largely a purely literal interpretation. Since our membership of the European Communities involves us in a very close way in legal and other matters with countries that have a much more flexible approach to statutory interpretation than is the case in this country and since

Community instruments and regulations will be interpreted by the standards and methods of the European Communities, it is desirable to re-examine this whole question in the context of our own legal system. It is to be noted that in the United States of America, which is a common law country, there is a much more flexible approach to the interpretation of statutes than exists here. However, "interpretation" covers not merely the general approach to the problem but also the question of what materials (written or other) outside the statute itself may legitimately be used for the purpose of ascertaining the intent of the legislature. Specifically, the Commission will examine the use of *travaux préparatoires* and of commentaries by experts. They will also examine such canons of interpretation as the *eiusdem generis* rule and the rule (often known as the rule in *Heydon's case*) under which the court has to consider the law before the enactment of the statute, the defect or mischief in that law and the remedy adopted to cure that defect or mischief. These canons of interpretation will, of course, have to be considered not alone in the context of ordinary statutes but also in the context of codified law and of the International Conventions that become part of Irish law.

17. The Commission proposes to examine ways in which the present method and style of drafting statute law might be improved. It also proposes to examine the form of production and publication of statutes and of amendments to statutes, as well as the question of the consolidation of statute law (already referred to in paragraph 5 *supra*).

December 1976

