



The Law Reform Commission
AN COIMISIÚN UM ATHCHÓIRIÚ AN DLÍ

**SECOND PROGRAMME FOR EXAMINATION OF CERTAIN BRANCHES OF
THE LAW WITH A VIEW TO THEIR REFORM: 2000-2007**

**Approved by Government on 19 December 2000
after submission by the Taoiseach to the Government,
pursuant to section 5(1) of the Law Reform Commission Act 1975**

IRELAND

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THE LAW REFORM COMMISSION

The Law Reform Commission is an independent statutory body whose main aim is to keep the law under review and to make practical proposals for its reform. It was established on 20th October, 1975, pursuant to section 3 of the *Law Reform Commission Act, 1975*.

To date the Commission has published sixty-three Reports, containing proposals for reform of the law; eleven Working Papers; sixteen Consultation Papers; a number of specialised Papers for limited circulation; and twenty-one Reports in accordance with Section 6 of the 1975 Act. A full list of its publications is contained in an Appendix to this Programme.

Membership

The Law Reform Commission consists of a President, one full-time Commissioner and three part-time Commissioners. The Commissioners at present are:

President

The Hon Mr Justice Declan Budd
High Court

Full-time Commissioner

Arthur F Plunkett BL

Part-time Commissioners

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LAW REFORM COMMISSION
SECOND PROGRAMME FOR LAW REFORM
PART ONE - OVERVIEW

Introduction

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,

- (a) to undertake examinations and conduct research with a view to reforming the law, and
- (b) to formulate proposals for law reform.

In order to give effect to these requirements the Commission is required by section 4 of the Act, 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. Such programmes prepared by the Commission are subject to approval by the Government. (A second way in which the functions of the Commission under the Act are to be performed is pursuant to specific requests, commonly called "references", from the Attorney General to the Commission to examine, conduct research into or make proposals for reform of particular branches of the law whether or not they are included in a Programme.)

This Second Programme for Law Reform sets out the work which will be undertaken by the Law Reform Commission over the next seven years. This Programme lists (in Part Two below) thirty one topics grouped under the following general branches of the law: the Legal System; Evidence; Administrative Law; Civil Rights Law; Criminal Law; the Law of Obligations; Real and Personal Property; Company and Commercial Law; Law and the Information Society; Vulnerable Groups and the Law; Family Law; and International Law. It also envisages the continuation of an exercise recently undertaken by the Commission: the preparation of proposals for an annual Law Reform (Miscellaneous Provisions) Bill. In addition to the items covered in the Programme, the Commission will continue to give priority to any issues which may be referred to the Commission by the Attorney General.

The Commission has been operating under its First Programme of Work adopted by the Government in 1977. While many of the broad fields set out for study under the First Programme continue to deserve sustained attention, much of the more specific work listed therein has been completed. Over sixty key documents, including Working Papers (known since the mid 80s as Consultation Papers) and Reports, have been adopted on topics as diverse as: plain language in statutory drafting and interpretation, defamation, personal injuries, family courts, sentencing, privacy and the law governing inter-country adoption. Much of this work has led on to reforming legislation.

Mission Statement

The Commission sees its mission in the following terms (which is the formulation used in its Strategy and Business Plan, 1999-2001):

In accordance with the provisions of the Law Reform Commission Act, 1975, but subject thereto, acting as a body which is independent in the performance of its functions, and as effectively as possible within the resources available to it:

1. in the interest of improving and maintaining justice in the law for all persons governed by the laws of the State, to keep those laws under independent, impartial and expert review with a view to ensuring that they are regularly and systematically reformed, and

2. with a view to the achievement of the foregoing objective

(a) in consultation with the Attorney General, to prepare for submission by the Taoiseach to the Government for its approval (with or without amendment) Programmes for the examination of different branches of the law with a view to their reform;

(b) to undertake examinations and conduct research with a view to reforming the law pursuant to Programmes for law reform approved by the Government aforesaid;

(c) at the request of the Attorney General, to undertake examinations of and conduct research in relation to particular branches of the law; and

(d) to formulate proposals for law reform on matters specified in such Programmes or at the request of the Attorney General.

Procedural Developments

It is appropriate to record here a number of developments in our modus operandi which have been growing during our First Programme and which will, we believe, be important during the Second Programme.

Following the Deloitte and Touche Report on the Commission, a Consultative Committee under the aegis of the Attorney General was set up by Government decision of March 1998. The Committee consists of representatives of interested Government Departments, the Bar Council, the Law Society and the Law Reform Commission. Its remit is to assist the Attorney General in his functions under the Act with regard both to research programmes and to particular references by the Attorney General to the Commission; and to monitor the implementation of recommendations of the Commission. The Consultative Committee is therefore to continue in existence after the settling of this Second Programme. The Committee will be a channel by which the Commission can keep Departments of State informed about its work; and they can keep the Commission abreast of their progress in implementing recommendations for law reform, within a reasonable time frame; and also as regards areas in which they themselves are preparing law reform.

Recently the Commission has welcomed invitations to explain publicly its recommendations after their adoption. This helps to keep the importance of law reform before those interested and the broader public. This was noted as follows in the foreword of the President of the Commission, Mr Justice Lavan, to the Commission's statutory Annual Report for 1998:

"During the year the Law Reform Commission appeared for the first time before an Oireachtas Committee, namely, the Joint Committee on Justice, Equality and Law Reform, to present and discuss the Commission's report on Privacy (Surveillance and the Interception of Communications). While it is not of course the function of the Commission to enter the political arena with regard to the implementation of its recommendations for law reform, it is

entirely consistent with the Commission's independent, non political role that it should explain its recommendations to those interested, whether they are our elected representatives or others. The Commission therefore greatly welcomes this development".

The Commission will continue its practice of consulting widely with the general public and experts, including: legal and other appropriate practitioners, governmental organisations and scholars in all relevant disciplines. Where appropriate, the Commission may establish other standing Working Groups comprised of experts in particular fields, as has already been done in the field of land law and conveyancing and, more recently, in the sphere of private international law.

The Second Programme

The contents of the Second Programme reflect the rapid pace of social and political change in Ireland and internationally.

In **Ireland** there is increasing emphasis on the importance of government accountability; and on the need to improve the interface between the citizen and the law. There is also greater sensitivity towards the plight of vulnerable groups such as children, the disabled (including those with legal incapacities) and the elderly. On the scientific and technological front, new dilemmas for law and society are emerging; and the information revolution is already affecting the way we live our lives and conduct our business.

On the **International** plane, the issue of law reform is necessarily affected by the trend towards economic globalisation and greater European integration. The problems that arise if there are differences between national legal systems have become more acute; often, they require the conflict of laws aspect of a law reform problem to be considered as well as its substantive features.

Hence, too, as a separate matter, it is ever more important that the Commission should pay close attention to the law and practice of our fellow EU Member States, while keeping in constant touch with developments in other common law jurisdictions. And, of course, the Commission must always bear in mind the common standards in the field of human rights set by the European Convention on Human Rights.

The Programme may prove to be an ambitious one for a seven-year period. When the likelihood of Attorneys General's references, which have priority, is taken into account, it may well be that not everything in the Programme can be completed within that period. Indeed, some of the topics listed are probably of a long-term nature and likely to have a life of more than seven years. While the Commission in seven years' time will be free to decide what to propose for its next Programme, it seems likely that there will be a degree of carry-over from the present Programme to its successor, just as there has been from the First Programme to the present one. At all events, it is considered better to be ambitious than to be over cautious.

Certain topics in the list contained in Part Two of this Programme, which are identified by means of an asterisk, will be given priority by the Commission in addressing its tasks under the Programme.

The Commission intends during the next seven years to fulfil its mission on the basis of the Second programme and of further statutory requests from the Attorney General, in co-operation where appropriate with those other official bodies which have a role in Law Reform.

LAW REFORM COMMISSION

PART TWO – BRANCHES OF THE LAW AND SPECIFIC TOPICS

The Legal System

1. Access to the law for the citizen and, in particular, the effectiveness of the promulgation and dissemination of statutes and statutory instruments.
2. Limitation of actions.
3. Class actions and representative actions taken in the public interest.
4. Alternative dispute resolution.
5. Statute Law: completion of the Commission's remit under its First Programme in the sphere of statutory drafting and interpretation (Consultation Paper in 1999; Report under preparation).

Evidence

6. Forensic evidence.
7. Other aspects of the law of evidence in civil and criminal cases.

Administrative Law

8. *Tribunals of inquiry.
9. Appeals from administrative decisions including judicial review.

Civil Rights Law

10. The law of privacy
 - (i) Privacy and the law of confidentiality;
 - (ii) Privacy in the context of the criminal justice system: longevity of criminal records and the expunging of certain offences from the record;
 - (iii) Privacy in specific institutional contexts: the workplace; the healthcare system; prisons.

Criminal Law

11. *The law of homicide.
12. Defences including provocation, legitimate defence, duress and necessity.
13. Inchoate offences.
14. Procedure in criminal cases.
15. Restorative Justice.
16. Corporate criminal liability.
17. Penalties for minor offences.

Law of Obligations

18. The law of tort. *Aspects of the law of compensation for personal injuries.
19. The law of contract. Privity of contract and the rights of third parties.

Real and Personal Property

20. *The law of trusts including the law of charities.
21. *Succession law.
22. The law relating to condominiums.
23. The Commission will continue its general review of land and conveyancing law with the assistance of its standing specialist Working Group.

Commercial Law

24. Mindful of the Government's proposal to establish a statutory Company Law Review Group, current issues arising in the area of commercial law will, as appropriate, be reviewed and examined.
25. Exceptions to the *nemo dat quod non habet* principle on transfer of title to goods.

Law and The Information Society

26. Electronic commerce and the Internet, where appropriate having regard to activities undertaken or to be undertaken by Government Departments and in particular:

- (i) privacy on the internet and encryption.
- (ii) liability of service providers.

Vulnerable Groups and The Law

27. *Law and the elderly, including the legal protection of older persons transferring assets and ‘advance care directives.’

28. The law affecting persons with physical, mental or learning disabilities, including issues of capacity, guardianship and the right to marry.

Family Law

29. The law of adoption - a general review.

30. Rights and duties of co-habitees.

International Law

31. Negotiation and preparation of various international agreements, including their implementation in Irish law. We pay particular regard to Ireland’s participation in conventions prepared by UNIDROIT, UNCITRAL and the Hague Conference on Private International Law.

Miscellaneous Provisions Bill

The Commission will continue to prepare an annual Law Reform (Miscellaneous Provisions Bill), as a vehicle for making minor reforms, ranging over the branches of the law which are covered by this Programme.

General

It is naturally difficult to anticipate change which may call for law reform in the future. Accordingly, the Commission considers it best to supplement the list of discrete topics given above by stating that if events require law reform in any area within any of the branches of the law set out above, the Commission will, where appropriate, and subject to the limits of its available resources, bring forward the necessary proposals.

As already indicated in Part One of this Programme, the Commission retains a continuing interest in codification of the law and proposes to address the issue of codification with regard to matters falling within branches of the law set out in this Programme as appropriate.

In all these areas, the Commission will, where appropriate, have regard to the activities of other official bodies interested in law reform, among them the Courts Service, and be ready to co-operate with them.



The Law Reform Commission
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APPENDIX: LIST OF LAW REFORM COMMISSION'S PUBLICATIONS

First Programme for Examination of Certain Branches of the Law with a View to their Reform (December 1976) (Prl. 5984) **[out of print]** [10p Net]

Working Paper No. 1–1977, The Law Relating to the Liability of Builders, Vendors and Lessors for the Quality and Fitness of Premises (June 1977) [£ 1.50 Net]

Working Paper No. 2–1977, The Law Relating to the Age of Majority, the Age for Marriage and Some Connected Subjects (November 1977) [£ 1.00 Net]

Working Paper No. 3–1977, Civil Liability for Animals (November 1977) [£ 2.50 Net]

First (Annual) Report (1977) (Prl. 6961) [40p Net]

Working Paper No. 4–1978, The Law Relating to Breach of Promise of Marriage (November 1978) [£ 1.00 Net]

Working Paper No. 5–1978, The Law Relating to Criminal Conversation and the Enticement and Harboursing of a Spouse (December 1978) [£ 1.00 Net]

Working Paper No. 6–1979, The Law Relating to Seduction and the Enticement and Harboursing of a Child (February 1979) [£ 1.50 Net]

Working Paper No. 7–1979, The Law Relating to Loss of Consortium and Loss of Services of a Child (March 1979) [£ 1.00 Net]

Working Paper No. 8–1979, Judicial Review of Administrative Action: the Problem of Remedies (December 1979) [£ 1.50 Net]

Second (Annual) Report (1978/79) (Prl. 8855) [75p Net]

Working Paper No. 9–1980, The Rule Against Hearsay (April 1980) [£ 2.00 Net]

Third (Annual) Report (1980) (Prl. 9733) [75p Net]

First Report on Family Law – Criminal Conversation, Enticement and Harboursing of a Spouse or Child, Loss of Consortium, Personal Injury to a Child, Seduction of a Child, Matrimonial Property and Breach of Promise of Marriage (LRC 1–1981) (March 1981) [£ 2.00 Net]

Working Paper No. 10–1981, Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws (September 1981) [£ 1.75 Net]

Fourth (Annual) Report (1981) (Pl. 742) [75p Net]

Report on Civil Liability for Animals (LRC 2–1982) (May 1982) [£ 1.00 Net]

Report on Defective Premises (LRC 3–1982) (May 1982) [£ 1.00 Net]

Report on Illegitimacy (LRC 4–1982) (September 1982) [£ 3.50 Net]

Fifth (Annual) Report (1982) (Pl. 1795) [75p Net]

Report on the Age of Majority, the Age for Marriage and Some Connected Subjects (LRC 5–1983) (April 1983) [£1.50 Net]

Report on Restitution of Conjugal Rights, Jactitation of Marriage and Related Matters (LRC 6–1983) (November 1983) [£ 1.00 Net]

Report on Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws (LRC 7–1983) (December 1983) [£ 1.50 Net]

Report on Divorce a Mensa et Thoro and Related Matters (LRC 8–1983) (December 1983) [£ 3.00 Net]

Sixth (Annual) Report (1983) (Pl. 2622) [£ 1.00 Net]

Report on Nullity of Marriage (LRC 9–1984) (October 1984) [£ 3.50 Net]

Working Paper No. 11–1984, Recognition of Foreign Divorces and Legal Separations (October 1984) [£ 2.00 Net]

Seventh (Annual) Report (1984) (Pl. 3313) [£1.00 Net]

Report on Recognition of Foreign Divorces and Legal Separations (LRC 10–1985) (April 1985) [£1.00 Net]

Report on Vagrancy and Related Offenses (LRC 11–1985) (June 1985) [£3.00 Net]

Report on the Hague Convention on the Civil Aspects of International Child Abduction and Some Related Matters (LRC 12–1985) (June 1985) [£2.00 Net]

Report on Competence and Compellability of Spouses as Witnesses (LRC 13–1985) (July 1985) [£2.50 Net]

Report on Offenses Under the Dublin Police Acts and Related Offences (LRC 14–1985) (July 1985) [£2.50 Net]

Report on Minors' Contracts (LRC 15–1985) (August 1985) [£3.50 Net]

Report on the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (LRC 16–1985) (August 1985) [£2.00 Net]

Report on the Liability in Tort of Minors and the Liability of Parents for Damage Caused by Minors (LRC 17–1985) (September 1985) [£3.00 Net]

Report on the Liability in Tort of Mentally Disabled Persons (LRC 18–1985) (September 1985) [£2.00 Net]

Report on Private International Law Aspects of Capacity to Marry and Choice of Law in Proceedings for Nullity of Marriage (LRC 19–1985) (October 1985) [£3.50 Net]

Report on Jurisdiction in Proceedings for Nullity of Marriage, Recognition of Foreign Nullity Decrees, and the Hague Convention on the Celebration and Recognition of the Validity of Marriages (LRC 20–1985) (October 1985) [£2.00 Net]

Eighth (Annual) Report (1985) (Pl. 4281) [£1.00 Net]

Report on the Statute of Limitations: Claims in Respect of Latent Personal Injuries (LRC 21–1987) (September 1987) [£4.50 Net]

Consultation Paper on Rape (December 1987) [£6.00 Net]

Report on the Service of Documents Abroad re Civil Proceedings –the Hague Convention (LRC 22–1987) (December 1987) [£2.00 Net]

Report on Receiving Stolen Property (LRC 23–1987) (December 1987) [£7.00 Net]

Ninth (Annual) Report (1986–1987) (Pl. 5625) [£1.50 Net]

Report on Rape and Allied Offences (LRC 24–1988) (May 1988) [£3.00 Net]

Report on the Rule Against Hearsay in Civil Cases (LRC 25–1988) (September 1988) [£3.00 Net]

Report on Malicious Damage (LRC 26–1988) (September 1988) [£4.00 Net]

Report on Debt Collection: (1) The Law Relating to Sheriffs (LRC 27–1988) (October 1988) [£5.00 Net]

Tenth (Annual) Report (1988) (Pl. 6542) [£1.50 Net]

Report on Debt Collection: (2) Retention of Title (LRC 28–1988) (April 1989) [£4.00 Net]

Report on the Recognition of Foreign Adoption Decrees (LRC 29–1989) (June 1989) [£5.00 Net]

Report on Land Law and Conveyancing Law: (1) General Proposals (LRC 30–1989) (June 1989) [£5.00 Net]

Consultation Paper on Child Sexual Abuse (August 1989) [£10.00 Net]

Report on Land Law and Conveyancing Law: (2) Enduring Powers of Attorney (LRC 31–1989) (October 1989) [£4.00 Net]

Eleventh (Annual) Report (1989) (Pl. 7448) [£1.50 Net]

Report on Child Sexual Abuse (LRC 32–1990) (September 1990) [**out of print**] [£7.00 Net]

Report on Sexual Offences against the Mentally Handicapped (LRC 33–1990) (September 1990) [£4.00 Net]

Report on Oaths and Affirmations (LRC 34–1990) (December 1990) [£5.00 Net]

Report on Confiscation of the Proceeds of Crime (LRC 35–1991) (January 1991) [£ 6.00 Net]

Consultation Paper on the Civil Law of Defamation (March 1991) [£ 20.00 Net]

Report on the Hague Convention on Succession to the Estates of Deceased Persons (LRC 36–1991) (May 1991) [£ 7.00 Net]

Twelfth (Annual) Report (1990) (Pl. 8292) [£ 1.50 Net]

Consultation Paper on Contempt of Court (July 1991) [£ 20.00 Net]

Consultation Paper on the Crime of Libel (August 1991) [£ 11.00 Net]

Report on the Indexation of Fines (LRC 37–1991) (October 1991) [£ 6.50 Net]

Report on the Civil Law of Defamation (LRC 38–1991) (December 1991) [£ 7.00 Net]

Report on Land Law and Conveyancing Law: (3) The Passing of Risk from Vendor to Purchaser (LRC 39–1991) (December 1991); (4) Service of Completion Notices (LRC 40–1991) (December 1991) [£ 6.00 Net]

Report on the Crime of Libel (LRC 41–1991) (December 1991) [£ 4.00 Net]

Report on United Nations (Vienna) Convention on Contracts for the International Sale of Goods 1980 (LRC 42–1992) (May 1992) [£ 8.00 Net]

Thirteenth (Annual) Report (1991) (Pl. 9214) [£ 2.00 Net]

Report on The Law Relating to Dishonesty (LRC 43–1992) (September 1992) [£ 20.00 Net]

Land Law and Conveyancing Law: (5) Further General Proposals (LRC 44–1992) (October 1992) [**out of print**] [£ 6.00 Net]

Consultation Paper on Sentencing (March 1993) [£ 20.00 Net]

Consultation Paper on Occupiers' Liability (June 1993) [**out of print**] [£ 10.00 Net]

Fourteenth (Annual) Report (1992) (PN. 0051) [£ 2.00 Net]

Report on Non-Fatal Offences Against The Person (LRC 45–1994) (February 1994) [£ 20.00 Net]

Consultation Paper on Family Courts (March 1994) [£ 10.00 Net]

Report on Occupiers' Liability (LRC 46–1994) (April 1994) [£ 6.00 Net]

Report on Contempt of Court (LRC 47–1994) (September 1994) [£ 10.00 Net]

Fifteenth (Annual) Report (1993) (PN. 1122) [£ 2.00 Net]

Report on the Hague Convention Abolishing the Requirement of Legalisation for Public Documents (LRC 48–1995) (February 1995) [£ 10.00 Net]

Consultation Paper on Intoxication as a Defence to a Criminal Offence (February 1995) [£ 10.00 Net]

Report on Interests of Vendor and Purchaser in Land during the period between Contract and Completion (LRC 49–1995) (April 1995) [£ 8.00 Net]

Sixteenth (Annual) Report (1994) (PN. 1919) [£ 2.00 Net]

An Examination of the Law of Bail (LRC 50–1995) (August 1995) [£ 10.00 Net]

Report on Intoxication (LRC 51–1995) (November 1995) [£ 2.00 Net]

Report on Family Courts (LRC 52–1996) (March 1996) [£ 10.00 Net]

Seventeenth (Annual) Report (1995) (PN. 2960) [£ 2.50 Net]

Report on Sentencing (LRC 53–1996) (August 1996) [£ 8.00 Net]

Consultation Paper on Privacy: Surveillance and the Interception of Communications (September 1996) [£ 20.00 Net]

Report on Personal Injuries (LRC 54–1996) (December 1996) [£ 10.00 Net]

Consultation Paper on the Implementation of The Hague Convention on Protection of Children and Co-operation in Respect on Intercountry Adoption, 1993 (September 1997) [£ 10.00 Net]

Report on The Unidroit Convention on Stolen or Illegally Exported Cultural Objects (LRC 55–1997)(October 1997) [£ 15.00 Net]

Report on Land Law and Conveyancing Law; (6) Further General Proposals including the execution of deeds (LRC 56–1998) (May 1998) [£ 8.00 Net]

Consultation Paper on Aggravated, Exemplary and Restitutionary Damages (May 1998) [£ 15.00 Net]

Report on Privacy: Surveillance and the Interception of Communications (LRC 57–1998)(June 1998) [£ 20.00 Net]

Report on the Hague Convention on Protection of Children and Co-operation in Respect on Intercountry Adoption, 1993 (LRC–58) (June 1998) [£ 10.00 Net]

Consultation Paper on The Statutes of Limitation: Claims in Contract and Tort in Respect of Latent Damage (Other Than Personal Injury) (November 1998) [£ 5.00 Net]

Consultation Paper on Statutory Drafting and Interpretation: *Plain Language and the Law* (July 1999) (LRC-CP14–1999) [£ 6.00 Net]

Consultation Paper on Section 2 of the Civil Liability (*Amendment*) Act, 1964: *The Deductibility of Collateral Benefits from Awards of Damages* (August 1999) (LRC-CP15–1999) [£ 7.50 Net]

Report on Gazumping (LRC 59–1999) (October 1999) [£ 5.00 Net]

Twenty First (Annual) Report (1999) (PN. 8643) [£ 3.00 Net]

Report on Aggravated, Exemplary and Restitutionary Damages (LRC 60 – 2000) (August 2000) [£ 6.00 Net]

Consultation Paper on the Law of Limitation of Actions Arising from Non-Sexual Abuse Of Children (LRC-CP16–2000) (September 2000) [£ 5.00 Net]

Second Programme for Examination of Certain Branches of the law with a view to their Reform 2000–2007 [£ 6.00 Net]

Report on Statutory Drafting and Interpretation: *Plain Language and the Law* (LRC 61–2000) (December 2000) [£ 6.00 Net]

Report on the Rule against Perpetuities and Cognate Rules (LRC 62–2000) (January 2001) [£ 6.00 Net]

Report on Variation of Trusts (LRC 63–2000) (January 2001) [£ 8.00 Net]