

LAW REFORM COMMISSION

COIMISÚN UM ATHCHÓIRIÚ AN DLÍ



EIGHTEENTH REPORT 1996

THE LAW REFORM COMMISSION
AN COIMISIÚN UM ATHCHÓIRIÚ AN DLÍ

EIGHTEENTH REPORT (1996)

IRELAND
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The Law Reform Commission

AN COIMISIÚN UM ATHCHÓIRIÚ AN DLÍ

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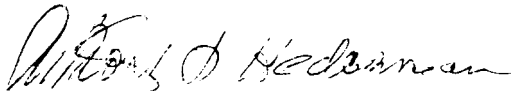
12th March 1997

Dermot Gleeson Esq.,
Attorney General,
Government Buildings,
Dublin 2.

Dear Attorney General,

In accordance with section 6 of the *Law Reform Commission Act 1975*, I have the honour to present the Eighteenth Report (1996) of the Law Reform Commission. It covers the period from 1st January 1996 to 31st December 1996.

Yours sincerely,



ANTHONY J. HEDERMAN
PRESIDENT

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RÉAMHFHOCAL

D'fhógair Mí na Nollag 1996 go raibh an dara téarma curtha isteach ag mo chomh-Choimisinéirí - an Breitheamh John Buckley, an Ollamh William Duncan, Maureen Gaffney agus Simon O'Leary.

Ceapadh sa phost ar dtús iad i 1987. I 1992 ath-cheapadh iad ionas go rabhadar i bhfeidhmeannas ar feadh cúig bliana eile.

Is iontach mar a d'oibrigh siad ar mhaithe le athchóiriú an dlí in Éirinn. Ba mhor agam a gcuid taithí, a ndúthracht agus a dtacaíocht le linn na ceithre bliana seo caite.

Anois agus deireadh tagtha le téarma na gCoimisinéirí, ní mór machnamh ar na himeachtaí tábhachtacha a tharla le linn na deich mbliana sin.

Sa tréimhse sin, foilsíodh ceithre tuarascáil is tríocha ina raibh moltaí le haghaidh athchóiriú an dlí. Orthu bhí ceithre cinn déag i dtaobh an dlí choiriúil, cúig cinn i dtaobh an dlí phríobháideach idirnáisiúnta, agus sé cinn i dtaobh an dlí talún agus tíolactha. Foilsíúcháin den chéad scoth a bhí mar thoradh ar an modh oibre a forbraíodh sa tréimhse sin. Chuathas i gcomhairle le grúpaí sainleasa nuair a bhí suim leathan phoiblí san ábhar a bhí faoi chaibidil. Bunaíodh coistí comhairleacha ar leith nuair a bhí gá le tuairimí saineolaithe i réimse éigin. I gcás an dlí talún agus tíolactha, tá an Coimisiún á chomhairliú le deich mbliana anuas ag grúpa deonach fé stiúir an Bhreithimh Buckley: ar son an Choimisiúin gabhaim buíochas leis na dlíodóirí úd as ucht saothar iontach a chur ar fáil. Ba mhaith liom chomh maith mo bhuíochas a chur in iúl don Dochtúir Alpha Connelly thar ceann a díograis mar Chomhairleoir Taighde don Choimisiún.

Deintear sa tuarascáil seo cur síos ar na dlíthe nua a reachtaíodh ar bhonn moltaí an Choimisiúin. Tá an cur i gcrích réasúnta sásúil ach tógfaidh mé an deis seo chun reachtóirí a spreagadh chun bheith níos gníomhaí fós sa réimse seo. Is minic nach bhfuil aon bhrúgrúpa taobh thiar des na hathruithe dlí is fearr.

Táim ag súil le téarma na gCoimisinéirí nua agus le hullmhú an Dara Clár um Athchóiriú an Dlí.



ANTHONY J. HEDERMAN,
UACHTARAN.

FOREWORD

December 1996 marked the end of the term of office of my colleagues on the Commission - Judge John Buckley, Professor William Duncan, Ms Maureen Gaffney and Mr Simon O'Leary.

They were originally appointed in 1987. In 1992 their appointments were renewed for a further five years.

Their contribution to law reform in Ireland has been immense. I greatly valued their experience, commitment and support over the last four years.

Now that the term of office of the Commissioners has come to an end, one has to reflect on the important events that occurred in that ten year period.

In that period, thirty four final Reports containing proposals for law reform were published. These include fourteen Reports on Criminal Law matters, five Reports concerning Private International Law and six Reports on Land Law and Conveyancing Law. The method of work developed over the last ten years resulted in Reports of the highest quality. The consultation process, as outlined in this Annual Report, was used when the topic under consideration was of broad public import. Specialist working groups were set up when the input of experts in a particular field was deemed necessary. Indeed, in the area of Land Law and Conveyancing Law the Commission has been advised by a voluntary group of conveyancing lawyers for the past ten years under the chairmanship of Judge Buckley. On behalf of the Commission I extend to them our gratitude and thanks for the excellent work they have produced. I would also like to thank Dr. Alpha Connelly for her contribution as Research Counsellor while with the Commission.

The present Report gives details of the extent to which the Commission's recommendations for reform have been translated into legislation. The level of implementation has been quite satisfactory but I would take this opportunity to encourage our legislators to be still more active in the area. Often the best law reforms have no supporting lobby.

I look forward to the term of office of the new Commissioners and also to the formulation of a second programme for law reform.



ANTHONY J. HEDERMAN,
PRESIDENT.

EIGHTEENTH REPORT OF THE LAW REFORM COMMISSION

This report covers the period from 1 January 1996 to 31 December 1996. It is addressed to the Attorney General pursuant to section 6 of the *Law Reform Commission Act, 1975*. The report details the work undertaken by the Commission in 1996, its publications during that year, and legislative implementation of Law Reform Commission reports.

COMMISSIONERS

The following were the Commissioners in office in 1996:

- * The Hon Mr Anthony J Hederman, former Judge of the Supreme Court, President;
- * John F Buckley, BA, LLB, Judge of the Circuit Court;
- * William R Duncan, MA, FTCD, Barrister-at-Law, Professor of Law and Jurisprudence, University of Dublin, Trinity College;
- * Maureen Gaffney, BA, MA (Univ. of Chicago), Senior Lecturer in Psychology, University of Dublin, Trinity College;
- * Simon P O'Leary, BA, LLB, Barrister-at-Law.

STAFF

John Quirke is Secretary to the Commission.

At the start of the year the Research Counsellor was Alpha Connelly, BA, LLM, DCL. On 31 January 1996 Dr Connelly left the Commission to take up the position of Legal Advisor in the Department of Foreign Affairs. Gerard Quinn BA, LLB, LLM (Harv), SJD (Harv), Barrister-at-Law, was appointed Research Counsellor on 12 December 1996, to assume duties on 1 January 1997.

At the beginning of the year, Nuala Egan, BCL, LLM (Lond), Barrister-at-Law, Sarah Farrell, LLB, LLM (Lond) Barrister-at-Law, and Lia O'Hegarty, BCL, LLM, (Mich), LLM (Harv) Barrister-at-Law, were Research Assistants. In the course of the year, Ms Egan and Ms Farrell were succeeded by Deirdre Mulligan, LLB, LLM (Edinburgh), Attorney-at-Law (State of New York) and Roisin Pillay, LLB, LLM (Cantab).

The clerical staff during 1996 were Mary Teresa Faherty, Dymphna Forde, Martina McGuire, and Maura Whelan.

FUNCTIONS OF THE COMMISSION

The Law Reform Commission was established by the *Law Reform Commission Act, 1975* as a statutory body corporate to keep the law under review.

Section 4 (1) of the Act states:

"The Commission shall keep the law under review, and in accordance with the provisions of this Act, shall undertake examinations and conduct research with a view to reforming the law, and formulate proposals for law reform.

The scope and content of the Commission's research is determined and directed in two primary ways:

1. First, by a *Programme for Law Reform*. Section 4 (2) (a) of the Act requires the Commission, 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 a programme prepared by the Commission is approved by the Government, the Commission will examine and research the subjects set out in it and, if appropriate, formulate and submit to the Taoiseach proposals for the reform of the law in those areas.
2. Second, section 4 (2) (c) of the Act provides that the Attorney General may request the Commission to examine and research a particular area of the law. The Commission is to comply with such a request whether or not such area of the law is included in the programme submitted by the Commission and approved of by the Government. If such a request is made, the Commission will examine and research it and, if requested, formulate and submit to the Attorney General proposals for the reform of the area of law in question.

FIRST PROGRAMME FOR LAW REFORM

Subsequent to its establishment, and pursuant to the provisions of the Act, the Commission prepared a programme for the examination of different branches of the law, which was subsequently approved by the Government. Copies of the *First Programme for Examination of Certain Branches of the Law with a View to their Reform (First Programme for Law Reform)* were laid before both Houses of the Oireachtas on 4 January 1977.

The *First Programme for Law Reform* envisaged an extensive examination of the law. Among the general areas included in the programme were:

- * Administrative Law;
- * Conflict of Laws;

- * Criminal Law;
- * Evidence; and
- * Family Law.

The majority of the topics listed in the First Programme for Law Reform have now been dealt with in reports by the Commission. Details of reports on the topics contained in the First Programme for Law Reform are contained in Appendix A.

REQUESTS BY THE ATTORNEY GENERAL

Research undertaken at the request of the Attorney General has also formed a substantial part of the Commission's work.

On 6 March 1987, the then Attorney General requested the Commission to examine and research certain areas of law and submit to him proposals for reform in relation to the following matters:

- (1) Conveyancing law and practice, in areas where this could lead to savings for house purchasers;
- (2) Sexual offenses generally, including, in particular, the law relating to rape and the sexual abuse of children;
- (3) The law relating to sheriffs, the collection of taxes and debt collection;
- (4) The law relating to compensation in personal injuries cases, including, in particular:
 - (a) provision for periodic payments and the making of provisional awards; and
 - (b) the Statute of Limitations in cases of latent personal injury; and
- (5) The following aspects of criminal law:
 - (a) Sentencing policy;
 - (b) indexation of fines;
 - (c) confiscating the proceeds of crime; and
 - (d) whether there is a need to revise or up-date the law relating to the various offenses which are still mainly governed by pre-1922 legislation, including in particular, the laws relating to dishonesty, malicious damage and offenses against the person.

In January 1989, the then Attorney General requested the Commission to undertake an examination of and conduct research into the law of defamation and contempt of court, and to

formulate and submit to him proposals for reform in relation to these areas.

In March 1992, the then Attorney General made a similar request in respect of the law relating to occupier's liability.

In February 1994, the then Attorney General requested the Commission to examine and research the law relating to bail. The Commission was not asked to formulate proposals for reforming the law.

Details of the research undertaken pursuant to requests by the Attorney General are contained in Appendix B.

METHODS OF WORK

The Commission's reports and consultation papers are based on careful and thorough research. In the course of research on any topic, consideration is given to caselaw, legislation, jurisprudence, regulations and academic writings, both domestic and international. The Commission gives particular attention to the law of comparable jurisdictions, as well as proposals put forward by Law Reform bodies in these jurisdictions.

THE CONSULTATION PROCESS

The consultation process is of central importance to the Commission's work. Consultation may take several forms. In the initial stages of its research, the Commission may meet with professionals working in a particular area, or representatives of interest groups. The Commission will then, in most cases, prepare a consultation paper, which will either be published, or, if the subject is a specialised one, distributed to interested experts. The Commission will then seek written submissions from interested parties, on the provisional recommendations made in the consultation paper. These submissions will be taken into account in the drafting of the final report on the subject, and any issues or concerns they raise will be dealt with in the report. In some cases, before the drafting of the final report, a seminar will be held, to which the Commission may invite interested parties, or those who have made submissions.

WORKING GROUPS

Under its establishing Act, the Commission may set up Working Groups, to examine particular areas of the law. Since its inception in 1991, the Working Group on Land Law and Conveyancing has met regularly to review the law in that area. The Working Group has produced several reports on aspects of Land Law and Conveyancing.

The members of the working group are:

- * Judge J F Buckley (Convenor);
- * Mr G Brady, SC;
- * Professor J C Brady;
- * Mr E Farrell, Solicitor;
- * Mr P Fagan, Solicitor;
- * Ms M G Miller, BL;
- * Mr T O'Connor, Solicitor;
- * Ms D Wheeler, BL.

PUBLICATIONS IN 1996

By 31 December 1996, the Commission had, since its inception, formulated and submitted to the Taoiseach or the Attorney General 55 Reports containing proposals for reform of the law, as well as 13 Working Papers, 10 Consultation Papers, 17 Annual Reports and an Examination of the Law of Bail.

REPORTS IN 1996

In 1996, the Commission published the following Report on a topic contained in the Commission's First Programme:

- * *Report on Family Courts*

In the same year, the Commission published the following Reports on topics referred to it by the Attorney General:

- * *Report on Sentencing*
- * *Report on Personal Injuries: Periodic Payments and Structured Settlements*

CONSULTATION PAPERS IN 1996

In 1996, the Commission published the following consultation paper on a topic contained in the Commission's first programme:

- * *Consultation Paper on Privacy: Surveillance and the Interception of Communications*

In the same year, the Commission circulated to selected experts the following Consultation Paper on a topic contained in the First Programme for Law Reform:

- * *Consultation Paper on the UNIDROIT Convention on the International Return of Stolen or Illegally Exported Cultural Objects (limited circulation)*

THE YEAR'S WORK

CRIMINAL LAW

(i) Sentencing

In July 1996, the Commission published a *Report on Sentencing*. The report followed a *Consultation Paper on Sentencing* published in March 1993.

The Commission, in the Report, examined the various views concerning the objects of sentencing. On this question, the Commission divided into majority and minority. The majority favoured a "just desserts" approach to sentencing, based on retribution to be exacted for the offender's blameworthy conduct, while the minority rejected a retributory, just desserts approach, in favour of an emphasis on the rehabilitation of the offender. There was no dissent, however, from the final recommendations of the Report.

Amongst the Report's main recommendations were that:

- * The legislature should undertake a comprehensive review of the law and procedure in relation to the present range of sentencing options, with a view to better co-ordination of penal and sentencing policy;
- * A detailed review of the law and procedure governing the administration of sentence should also be undertaken by the legislature;
- * Non-statutory guidelines on sentencing should be introduced;
- * Mandatory and minimum sentences of imprisonment for indictable offenses should be abolished;
- * All maximum penalties should be reviewed;
- * The prosecution should have the power to seek review of District Court sentences;
- * Greater use should be made of community service orders;
- * Statutory provision should be made for suspended sentences.

(ii) Homicide

The Commission continued its study of the law of homicide in 1996, with a view to the publication of a Consultation Paper on the subject in 1997.

FAMILY LAW

(i) *Family Courts*

In March 1996, the Commission published a *Report on Family Courts*. A Consultation Paper on the same subject had been published in March 1994. Subsequent to the publication of the Consultation Paper, an extensive consultation process was undertaken, and further meetings of the Commission's Expert Group on Family Courts were convened. The members of the expert group were:

- * The Hon Mr Justice Francis D Murphy (High Court);
- * His Honour Judge Matthew Deery (Circuit Court);
- * Her Honour Judge Catherine McGuinness (Circuit Court);
- * Judge Thelma King (District Court);
- * Mr Cormac Corrigan, BL;
- * Mr Frank Murphy, Solicitor;
- * Ms Muriel Walls, Solicitor.

The Report on Family Courts dealt with several areas which had not been covered by the Consultation Paper, including systems of case management, the appeals process, issues surrounding confidentiality in the mediation process and issues surrounding the appointment and secondment of judges.

Amongst the main recommendations of the Commission were:

- * The establishment of a system of Regional Family Courts, operating as a division of the Circuit Court, and having a unified family law jurisdiction;
- * The limitation of the jurisdiction of the District Court in family matters to making emergency and interim orders;
- * The introduction of a comprehensive system of case management and its implementation by means of Rules of Court;
- * The establishment of Family Court Information Centres, one of which would be attached to each Regional Family Court;
- * The increased use of mediation in the family law system;
- * That the courts should have the power to appoint an independent representative for a child whose welfare is in issue in family proceedings.

(ii) Inter-Country Adoption

Following the signing by Ireland, on 19 June 1996, of the *Hague Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption, 1993*, the Commission began a study of the legal implications of the implementation of the Convention in Ireland. Implementation of the Convention would have a significant impact on procedures for the adoption of children abroad by Irish parents.

The Commission has considered the views of professionals working in the adoption area, as well as adoptive parents' organisations. It is anticipated that a Consultation Paper on the subject will be published in early 1997.

COMPENSATION FOR PERSONAL INJURIES

Periodic Payments and Structured Settlements

Amongst the requests made by the Attorney General in 1987 was a request for the Commission to consider the law relating to compensation for personal injuries, including, in particular, periodic payments of damages, the making of professional awards, and the limitation period in cases of latent personal injuries. The latter aspect of that reference was addressed in 1987 in the *Report on the Statute of Limitations: Claims in Respect of Latent Personal Injuries*. Since 1993, the Commission has been studying the law on structured settlements. A Report was published in December 1996.

The Commission's principal recommendations are that:

- * Provision should be made for the interim award of damages;
- * It should be possible to make provisional awards of damages in cases where a chance of serious deterioration in the plaintiff's health exists as a result of the wrong;
- * Provision should be made for the use of structured settlements;
- * The court should not have the power to authorise a structured settlement against the wishes of any party to the litigation. This recommendation should, however, be reviewed in five year's time in the light of experience of the structuring, or non-structuring, of awards in the interim.

PRIVACY

Surveillance and the Interception of Communications

In October 1996, the Commission published a Consultation Paper entitled *Privacy: Surveillance and the Interception of Communications*. The preparation of the Consultation Paper was a response to the growing concern, noted in the Commission's *First Programme for Examination of Certain Branches of the Law with a View to their Reform*, at the lack of legal protection for privacy. The Commission adopted a classification of privacy into four categories:

- (1) Territorial privacy or privacy of property;
- (2) Privacy of the person;
- (3) Privacy in the information context; and
- (4) The interest in freedom from surveillance and from the interception of one's communications.

The Consultation Paper published in 1996 deals with the fourth category. The protection of this general interest in specific institutional contexts (e.g. the workplace) will be considered at a later stage.

In the Consultation Paper, the Commission considers the following aspects of surveillance and the interception of communications:

- * deregulation of the postal and communications services in an open economy;
- * the constitutional basis of the protection of privacy;
- * the present civil law relating to privacy;
- * the power of the State to intercept postal packets and telecommunications;
- * the State's international obligations in relation to privacy; and
- * laws and proposals for reform in other jurisdictions.

The Commission provisionally recommends the creation of the following torts:

- * the invasion of privacy by means of surveillance,
- * the invasion of privacy by the disclosure or publication of material obtained by means of privacy-invasive surveillance.

It also provisionally recommends the granting of power to a Court to make a "privacy order" to restrain persons from invading privacy or disclosing information.

The Commission also provisionally recommends that the following offenses be created:

- * infringing the integrity of a person by observation by means of an optical device without consent;
- * communicating such recorded observation without consent;
- * infringing the privacy of a person by listening to or recording by means of an aural device the voice of that person without consent;
- * communicating such recording to another without consent.

The Commission reiterates the recommendation of the Commission in its *Report on Non-Fatal Offenses Against the Person*, that an offence of harassment be created.

The Commission has invited submissions on its provisional recommendations.

LAND LAW AND CONVEYANCING LAW

The Commission's Working Group on Land Law and Conveyancing Law continued to meet throughout the year. Fourteen meetings of the Working Group were held in 1996.

Among the topics considered by the Working Group in the course of the year were:

- * The enforceability of covenants;
- * The merger of interests in land - Section 28 of the *Landlord and Tenant (Ground Rents) Act, 1978*;
- * The Doctrine of Advancement;
- * Words of limitation in easements;
- * Conclusiveness of Assents - the case of *Mohan v Roche*;
- * Variation of leases - surrender and regrant;
- * Section 4 of the *Judgement Mortgage (Ireland) Act 1850*; and
- * Reversionary Leases - section 18, 9 and 15 of the *Ground Rents (No. 2) Act 1978*, and Section 30 of the *Landlord and Tenant (Amendment) Act 1980*.

The Working Group is currently preparing a report to be entitled *Land Law and Conveyancing Law: (5) Further General Proposals*. It is envisaged that the General Proposals will be published in 1997.

PRIVATE INTERNATIONAL LAW

UNIDROIT Convention on the International Return of Stolen or Illegally Exported Cultural Objects

In November 1996, the Commission published, with a limited circulation, a *Consultation Paper on the UNIDROIT Convention on the Return of Stolen or Illegally Exported Cultural Objects*. The Consultation Paper examines the UNIDROIT Convention in the context of its implementation in Irish Law. It examines the Irish law on the restitution of stolen cultural objects and on the return of illegally exported cultural objects. It also discusses the law on the return from Ireland of objects stolen or illegally exported from another jurisdiction. The Consultation Paper provisionally recommends accession to the Convention.

OTHER TOPICS

The Interpretation and Drafting of Legislation

Work continued on an examination of the interpretation and drafting of legislation, with a view to publication in 1997.

ACTION TAKEN IN 1996 IN AREAS COVERED BY REPORTS OF THE COMMISSION

POWERS OF ATTORNEY ACT, 1996

Part II of the *Powers of Attorney Act, 1996*, introduces a scheme for Enduring Powers of Attorney (EPA), as recommended by the Commission in its *Report on Land Law and Conveyancing Law: (2) Enduring Powers of Attorney*. As recommended in that Report, the Bill provides for a non-mandatory standard-form EPA, and for a system of registration.

DOMESTIC VIOLENCE ACT, 1996

The *Domestic Violence Act, 1996*, in accordance with recommendations contained in the Commission's *Report on Child Sexual Abuse*, enables Health Boards to apply for a barring or protection order on behalf of a child. The Act came into effect on 27 March 1996.

PROCEEDS OF CRIME ACT, 1996

The *Proceeds of Crime Act, 1996* makes provision for the freezing of assets which constitute the proceeds of crime. This is broadly in accordance with the Commission's *Report on the Confiscation of the Proceeds of Crime* (recommendations 4 - 10).

The *Criminal Justice Act, 1994* also provided for measures to be taken against the proceeds of crime; however it did not wholly implement the recommendations of the Commission in this regard. The 1994 Act provided for the making of Confiscation Orders and Restraint Orders. An order could be made against the property of an individual where he had been convicted of an indictable or drug trafficking offence, or, in the case of a Restraint Order, where proceedings in relation to such an offence had been instituted against him, or where certain applications had been made in respect of the individual or his assets. This approach differs from that recommended by the Commission, which would have allowed for a restraint order to be made by a District Justice, where he was satisfied, on an information by a member of the Garda Síochána, that there were "reasonable grounds to suspect" that an offence had been committed.

The 1996 Act allows for more extensive powers of confiscation than those contained in the 1994 Act. Under its provisions, three types of orders may be made in respect of the proceeds of crime: an interim order, an interlocutory order and a disposal order. These orders may be made by the High Court, on an *ex parte* application by a member of the Garda Síochána or an officer of the Revenue Commissioners, where the Court is "satisfied" that the property constitutes, directly or indirectly, the proceeds of crime.

CRIMINAL ASSETS BUREAU ACT, 1996

Section 14 of the *Criminal Assets Bureau Act, 1996* is in accordance with a number of the recommendations of the Commission's *Report on the Confiscation of the Proceeds of Crime* (Recommendations 1 and 2). Section 14 of the Act provides that a District Court judge may issue a search warrant where there are reasonable grounds to suspect that evidence of or relating to assets or proceeds of criminal activity is to be found on the premises. In circumstances of urgency, such a search warrant may be issued by an officer of the Criminal Assets Bureau who is a member of the Garda Siochana and is not below the rank of superintendent. The search warrant authorises a named officer of the Criminal Assets Bureau, accompanied by other bureau officers, to enter and search the premises, and to seize and retain material.

DISCLOSURE OF CERTAIN INFORMATION FOR TAXATION AND OTHER PURPOSES ACT, 1996

Section 1 of the *Disclosure of Certain Information for Taxation and Other Purposes Act, 1996* provides for the disclosure of information by the Revenue Commissioners to the Gardai or relevant Government bodies, where the Revenue Commissioners have reasonable grounds to suspect that a person may have derived profits from unlawful activity, and that the information would assist an investigation, or that it is in the public interest.

Section 13 of the Act provides that the Gardai may apply for a court order to inspect and copy records from the books of financial institutions.

These provisions are in accordance with the recommendations of the Commission's *Report on the Confiscation of the Proceeds of Crime*. In that Report, the Commission recommended that provision should be made for the disclosure of tax information by the Revenue Commissioners, and of bank accounts and other transactions by any bank or financial institution to the prosecution authorities on production of a court order.

CONFERENCES

THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

The Eighteenth Session of the *Hague Conference on Private International Law* was attended by the President of the Commission in October 1996. The President attended at the Conference from 13 - 20 October. The Final Act of the Eighteenth Session adopted a *Draft Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children*.

Commissioner Buckley attended the Special Commission meeting of the *Hague Conference on Private International Law* on the recognition and enforcement of foreign judgements in civil and commercial matters, from 4 - 7 June 1996.

Commissioner Duncan continued to act as First Vice Chairman of the Special Commission of the *Hague Conference on Private International Law*, which has been revising the *Convention on the Protection of Minors, 1961*. He was also Chairman of the Drafting Committee. The work was completed at the Hague in October 1996, with the approval, at the diplomatic session of the Eighteenth Session, of the *Draft Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility, and Measures for the Protection of Children*.

APPENDIX A

MATTERS EXAMINED UNDER THE FIRST PROGRAMME FOR LAW REFORM

MATTER EXAMINED	RESULTING REPORTS *
Administrative Law	Working Paper 8-1979 - Judicial Review of Administrative Action
Animals	Report on Civil Liability for Animals (LRC 2-1982)
Conflict of Laws	Report on Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws (LRC 7-1983) Report on the Recognition of Foreign Divorces and Legal Separations (LRC 10-1985) Report on the Hague Convention on the Civil Aspects of International Child Abduction and some Related Matters (LRC 12-1985) Report on the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (LRC 16- 1985) Report on Private International Law Aspects of Capacity to Marry and Choice of Law Proceedings for Nullity of Marriage (LRC 19- 1985)

<p>Conflict of Laws (continued)</p>	<p>Report on Jurisdiction in Proceedings for Nullity of Marriage (LRC 20-1985)</p> <p>Report on the Service of Documents Abroad re. Civil Proceedings (LRC 22-1987)</p> <p>Report on the Recognition of Foreign Adoption Decrees (LRC 29-1989)</p> <p>Report on the Hague Convention on Succession to the Estates of Deceased Persons (LRC 36-1991)</p> <p>Report on the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (LRC 48-1995)</p>
<p>Criminal Law</p>	<p>Report on Vagrancy and Related Offenses (LRC 11-1985)</p> <p>Report on Offenses under the Dublin Police Acts and Related Offenses (LRC 14-1985)</p> <p>Report on Intoxication (LRC 51-1995)</p>
<p>Evidence</p>	<p>Report on the Rule against Hearsay in Civil Cases (LRC 25-1988)</p> <p>Report on the Competence and Compellability of Spouses as Witnesses (LRC 13-1985)</p> <p>Report on Oaths and Affirmations (LRC 34-1990)</p>

<p>Family Law</p>	<p>Working Paper No. 4, 1978 - The Law Relating to Breach of Promise of Marriage</p> <p>Working Paper No. 5, 1978 - The Law Relating to Criminal Conversation and the Enticement and Harboursing of a Spouse</p> <p>Working Paper No. 6, 1979 - The Law Relating to Seduction and the Enticement and Harboursing of a Child</p> <p>Working Paper No. 7, 1979 - The Law Relating to Loss of Consortium and Loss of Services of a Child</p> <p>First Report on Family Law (LRC 1-1981)</p> <p>Report on Illegitimacy (LRC 4-1982)</p> <p>Report on the Age of Majority, the Age for Marriage, and Connected Subjects (LRC 5-1983)</p> <p>Report on the Restitution of Conjugal Rights, Jactitation of Marriage and Related Matters (LRC 6-1983)</p> <p>Report on Divorce a Mensa Et Thoro and Related Matters (LRC 8-1983)</p> <p>Report on Nullity of Marriage (LRC 9-1984)</p> <p>Report on the Family Courts (LRC 52-1996)</p>
<p>Privacy</p>	<p>Consultation Paper on Privacy: Surveillance and the Interception of Communications</p>

Sales	<p>Working Paper No. 1-1977 - The Law Relating to the Liability of Builders, Vendors and Lessors for the Quality and Fitness of Premises</p> <p>Report on Defective Premises (LRC 3-1982)</p> <p>Report on Minors' Contracts (LRC 15-1985)</p> <p>Report on the UN (Vienna) Convention on Contracts for the International Sale of Goods 1980 (LRC 42-1992)</p>
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* Where both a Working Paper and a Report, or both a Consultation Paper and a Report, have been published on the same topic, only the Report has been listed in this table. Working Papers and Consultation Papers have been listed only where they have not been followed by a Report.

APPENDIX B

MATTERS EXAMINED UNDER REFERENCE FROM THE ATTORNEY GENERAL

MATTERS REFERRED	RESULTING REPORTS
<p>Conveyancing Law and Practice, and where this could lead to savings for house purposes (referred 1987).</p>	<p>Report on Land Law and Conveyancing Law: (1) General Proposals (LRC 30-1989)</p> <p>Report on Land Law and Conveyancing Law (2) Enduring Powers of Attorney (LRC 31-1989)</p> <p>Report on Land Law and Conveyancing Law (3) Passing the Risk from Vendor to Purchaser (LRC 39-1991)</p> <p>Report on Land Law and Conveyancing Law (4) The Service of Completion Notices (LRC 40-1991)</p> <p>Report on Land Law and Conveyancing Law (5) Further General Proposals</p> <p>Interests of Vendor and Purchaser in Land during Period between Contract and Completion (LRC 49-1995)</p>
<p>The Law relating to Sheriffs, the collection of taxes and debt collection (referred 1987).</p>	<p>Report on Debt Collection: (1) the Law Relating to Sheriffs (LRC 27-1988)</p> <p>Report on Debt Collection: (2) Retention of Title</p>

<p>The Law relating to compensation for personal injuries cases including in particular:</p> <p>(1) provision for periodic payments and the making of provisional awards (referred 1987); and</p> <p>(2) the Statute of Limitations in cases of latent Personal Injury.</p>	<p>Report on the Statute of Limitations in Cases of Latent Personal Injuries (LRC 21-1987)</p> <p>Report on Personal Injuries: Periodic Payments and Structured Settlements (LRC 54-1996)</p>
<p>Aspects of Criminal Law, including:</p> <p>(1) sentencing policy;</p> <p>(2) indexation of fines;</p> <p>(3) confiscating the proceeds of crime; and</p> <p>(4) whether there is need to revise or update the law relating to the various offenses which are mainly governed by pre-1922 legislation, including, in particular, the laws relating to dishonesty, malicious damage and offenses against the person (referred 1987).</p> <p>Sexual Offenses Generally (Including in particular the law relating to rape and the sexual abuse of children) (referred 1987).</p> <p>The Law relating to Bail (referred 1994).</p>	<p>Report on Receiving Stolen Property (LRC 23-1987)</p> <p>Report on Malicious Damage (LRC 26-1988)</p> <p>Report on the Confiscation of the Proceeds of Crime (LRC 35-1991)</p> <p>Report on the Indexation of Fines (LRC 37-1991)</p> <p>Report on the Crime of Libel (LRC 41-1991)</p> <p>Report on the Law Relating to Dishonesty (LRC 43-1992)</p> <p>Report on Non-Fatal Offenses against the Person (LRC 45-1994)</p> <p>Report on Sentencing (LRC 53-1996)</p> <p>Report on Rape and Allied Offenses (LRC 24-1988)</p> <p>Report on Child Sexual Abuse (LRC 32-1990)</p> <p>Report on Sexual Offenses Against the Mentally Handicapped (LRC 33-1990)</p> <p>Report on an Examination of the Law of Bail (LRC 50-1995)</p>

<p>The Law of defamation and contempt of court (referred 1989).</p>	<p>Report on the Civil Law of Defamation (LRC 38-1991)</p> <p>Report on Contempt of Court (LRC 47-1994)</p>
<p>The law relating to occupier's liability (referred 1992).</p>	<p>Report on Occupier's Liability (LRC 46-1994)</p>

APPENDIX C

IMPLEMENTATION OF THE COMMISSION'S RECOMMENDATIONS

(The implementing legislation listed in the chart does not necessarily implement all the recommendations of the corresponding report in full. In many cases only some of the report's recommendations have been implemented by the legislation; in others the Commission's recommendations have been implemented only in a modified form.)

REPORT	IMPLEMENTING LEGISLATION
First Report on Family Law	<i>Family Law Act, 1981</i>
Report on Civil Liability for Animals	<i>Animals Act, 1985</i>
Report on the Age of Majority, the Age for Marriage, and Connected Subjects	<i>Age of Majority Act, 1985</i> <i>Family Law Act, 1995</i>
Report on Illegitimacy	<i>Status of Children Act, 1987</i>
Report on Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws	<i>Domicile and Recognition of Foreign Divorces Act, 1986</i>
Report on the Recognition of Foreign Divorces and Legal Separations	<i>Domicile and Recognition of Foreign Divorces Act, 1986</i>
Report on Divorce a Mensa et Thoro and Related Matters	<i>Judicial Separation and Family Reform Act, 1989</i>
Report on Restitution of Conjugal Rights, Jactitation of Marriage, and Related Matters	<i>Family Law Act, 1988</i> <i>Family Law Act, 1995</i>
Report on Rape and Allied Offenses	<i>Criminal Law (Rape) (Amendment) Act, 1990</i> <i>Criminal Justice Act, 1993</i>
Report on Vagrancy and Related Offenses	<i>Housing Act, 1988</i> <i>Criminal Law (Sexual Offenses) Act, 1993</i> <i>Criminal Justice (Public Order) Act, 1994</i>

Report on Receiving Stolen Property	<i>Larceny Act, 1990</i> <i>Criminal Justice Act, 1993</i>
Report on Personal Injuries	<i>Statute of Limitations (Amendment) Act, 1991</i>
Report on Malicious Damage	<i>Criminal Damage Act, 1991</i> <i>Criminal Justice Act, 1993</i>
Report on the Hague Convention on the Civil Aspects of International Child Abduction and Some Related Matters	<i>Child Abduction and Enforcement of Custody Orders Act, 1991</i>
Report on the Recognition of Foreign Adoption Decrees	<i>Adoption Act, 1991</i>
Report on Child Sexual Abuse	<i>Child Care Act, 1991</i> <i>Criminal Evidence Act, 1992</i> <i>Criminal Law (Sexual Offenses) Act, 1993</i>
Report on Receiving Stolen Property	<i>Criminal Evidence Act, 1992</i> <i>Criminal Justice (No. 3) Act, 1994</i>
Report on the Competence and Compellability of Witnesses	<i>Criminal Evidence Act, 1992</i>
Report on Sexual Offenses Against the Mentally Handicapped	<i>Criminal Law (Sexual Offenses) Act, 1993</i>
Report on Offenses Under the Dublin Police Acts and Related Offenses	<i>Criminal Justice (Public Order Act), 1994</i>
Report on the Confiscation of the Proceeds of Crime	<i>Criminal Justice (No. 3) Act, 1994</i>
Report on Occupier's Liability	<i>Occupier's Liability Act, 1995</i>
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	<i>Family Law Act, 1995</i>

<p>Report on Land Law and Conveyancing Law: (1) General Proposals</p>	<p><i>Landlord and Tenant (Amendment) Act, 1994</i></p> <p><i>Family Law Act, 1995</i></p>
<p>Report on Land Law and Conveyancing: (2) Enduring Powers of Attorney</p>	<p><i>Powers of Attorney Act, 1996</i></p>
<p>Report on Child Sexual Abuse</p>	<p><i>Domestic Violence Act, 1996</i></p>

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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) (Pr. 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) (Pr. 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) (Pr. 8855) [75p Net]
- Working Paper No. 9-1980, The Rule Against Hearsay (April 1980) [£ 2.00 Net]
- Third (Annual) Report (1980) (Pr. 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 (<u>Annual</u>) 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 (<u>Annual</u>) 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 (<u>Annual</u>) 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 Offenses (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 <u>(Annual)</u> 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 <u>(Annual)</u> Report (1986-1987) (Pl. 5625)	[£ 1.50 Net]
Report on Rape and Allied Offenses (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 <u>(Annual)</u> 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 <u>(Annual)</u> 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 Offenses 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 <u>(Annual)</u> 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 (<u>Annual</u>) Report (1991) (PI. 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 (<u>Annual</u>) Report (1992) (PN. 0051)	[£ 2.00 Net]
Report on Non-Fatal Offenses 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 (<u>Annual</u>) Report (1993) (PN. 1122)	[£ 2.00 Net]
Report on the Hague Convention Abolishing the Requirement of Legalisation for Foreign 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 (<u>Annual</u>) 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 (<u>Annual</u>) 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]