

LAW REFORM COMMISSION

COIMISIÚN UM ATHCHÓIRIÚ AN DLÍ



TWENTY SECOND REPORT 2000

PN 10629



TWENTY SECOND REPORT

IRELAND

The Law Reform Commission

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Michael McDowell, S.C.,
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 **Twenty Second Report (2000)** of the Law Reform Commission. It covers the period from 1st January 2000 to 31st December 2000.

Yours sincerely,

Declan Budd
President

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FOREWORD

In December the Second Programme of Law Reform was approved by the Government for publication. This will be the foundation stone on which, over the next seven years, the Commission intends to co-operate with others who are interested in law reform and those who are responsible for the implementation of its recommendations.

In 2000 the Commission conducted a survey of its sixty or so Reports. This showed that the bulk of its recommendations have been implemented; and provided valuable information on the level of implementation in individual cases. The survey was instigated by the Attorney General's Consultative Committee as part of that body's ongoing attempt to foster fruitful liaison between the Commission and the Attorney General's Office, Government Departments, the Bar Council and the Law Society.

The Commission has recently, with the encouragement and assistance of the Attorney General, adopted a policy of publishing a draft Bill with each Report. This indicates how the recommendations in the Report can be implemented. The process of drafting the Bill is helpful in bringing attention to pitfalls and practical difficulties. In addition, carefully drafted legislation based on considered and reasoned recommendations should facilitate implementation.

A delegation from the Law Reform Commission, namely, Commissioner Rickard-Clarke, Commissioner Delany and Commissioner McAuley, together with Pearse Rayel, Programme Manager, and John Quirke, Secretary, attended before the Joint Oireachtas Committee on Justice, Equality, Defence and Women's Rights in September 2000. They explained the background and consultative process undertaken in respect of the New Programme for Law Reform and outlined the contents of the New Programme. The Commission has subsequently written to the Committee indicating a willingness to liaise with them, so that matters of mutual interest, including our Reports, may be discussed. In June, the Commission met with the Attorney General and his senior staff to discuss topics concerning reform, the drafting of legislation, liaison and administrative matters.

While it falls outside the period of this Report, I record our sadness at the untimely death of Commissioner Arthur F. Plunkett, our full-time Commissioner since 1997. A fuller appreciation of Arthur is included later in the Report. Here, I should like simply to say how much we owe to his ability, diligence, loyalty and good judgment. As I turn out the lights in the Commission, I think of late evening discussions with Arthur, his hard work, legal learning and sage advice, his courage, and the strong sense of fairness and honour which were characteristic of Arthur, a truly Christian gentleman.

Declan Budd
President

RÉAMHFHOCAL

Cheadaigh an Rialtas an Dara Clár de Leasú Dlí a fhoilsiú i mí na Nollag 2000. Beidh sé seo mar bhunchloch don chomhoibriú atá beartaithe againn leo seo ar suim leo leasú dlí agus leo siúd arb é a ndulagas na moltaí a chur i gcrích ar feadh na seacht mbliana seo chugainn.

Sa bhliain 2000 rinne an Coimisiún suirbhé den seasca nó mar sin de Thuarascála dá chuid. Léirigh sé sin go raibh an chuid is mó de na moltaí curtha i gcrích; agus thug sé eolas luachmhar faoin méid a bhí curtha i gcrích i dtaca le cásanna áirithe. Ba é Coiste Comhairleach an Ardaighne a chuir tús leis an suirbhé seo mar chuid dá iarracht leanúnach comhoibriú idir an Coimisiún agus Oifig an Ardaighne, Ranna Rialtais, Comhairle an Bharra agus an Cumann Dlí a chothú.

Le déanaí, de bharr spreagadh agus cabhair an Ardaighne, ghlac an Coimisiún leis an bpolasaí dréachtBhille a fhoilsiú maille le gach Tuarascáil. Cuireann seo in iúl conas is féidir moltaí as gach Tuarascáil a chur i bhfeidhm. Cuidíonn dréachtú an Bhille le deacrachtaí agus fadhbanna a thabhairt chun solais. Ina theannta sin ba chóir go mbeadh sé éasca reachtaíocht dréachtaithe go cúramach, bunaithe ar mholtaí atá pléite go stuama, a chur i gcrích.

Bhí toscaireacht ón gCoimisiún um Leasú Dlí, mar atá, na Coimisiúinéirí Rickard-Clarke, Delaney, agus McAuley mar aon le Pearse Rayel, Bainisteoir an Chláir agus John Quirke, Rúnaí i láthair faoi bhráid Chomhchoiste an Oireachtais um Cheart, Chothromaíocht, agus Chosaint agus Cearta na mBan i Meán Fómhair 2000. Mhíníodar cúlra an Chláir Nua um Leasú Dlí agus an próiseas comhairle a rinneadh maidir leis, agus thugadar cuntas ar phríomhábhair an Chláir. Ina dhiaidh sin scríobhadh chuig an gCoiste á chur in iúl dóibh gur mian linn comhoibriú leo ionas gur féidir ábhair is spéis linn araon a phlé. I mí an Mheithimh, bhuail an Coimisiún leis an Ardaighne agus a fhoireann shinsearach le téamaí a bhaineann le leasú, le dréachtú reachtaíochta, le caidreamh agus le cúrsaí riaracháin a phlé.

Cé go dtiteann sé taobh amuigh de thréimhse na Tuarascála seo ba mhaith liom ár mbrón faoi bhás an Choimisiúinéara Arthur F. Plunkett, ár gCoimisiúinéir lánaimseartha, a chur in iúl. Tá moladh níos iomláine ar Arthur le fáil níos déanaí sa Tuarascáil seo. Ag an bpointe seo ba mhaith liom a rá go bhfuilimid faoi chomaoin aige as a dhíograis, as a dhílseacht agus as a dheabhreithiúnas. Agus mé ag múchadh soilse an Choimisiúin smaoiním ar chomhráití déanacha tráthnóna le hArthur, ar a obair dhian, ar a fhoghlaim dlí, ar a chomhairle ghaoiseach, ar a mhisneach agus ar an ndianbhraistint don chothromaíocht agus don onóir ba dual d'Arthur, Críostaí agus duine uasal.

Declan Budd
Uachtarán

TWENTY SECOND REPORT OF THE LAW REFORM COMMISSION

This Report covers the period from 1 January to 31 December 2000. 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 2000, its publications and action taken in areas covered by its Reports during the year.

COMMISSIONERS

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

The President of the Commission was **The Hon Mr Justice Vivian Lavan**, Judge of the High Court, up to February, 2000. Thereafter, **The Hon Mr Justice Declan Budd**, Judge of the High Court assumed office as President.

The other Commissioners holding office were:

Arthur F. Plunkett, Esq, BA, Barrister-at-Law, on secondment from the Attorney General's Office (full-time Commissioner);

Dr Hilary Delany, BA, M Litt, PhD, Barrister-at-Law, lecturer, Trinity College Dublin;

Patricia T. Rickard-Clarke, BCL, Solicitor, Partner, McCann FitzGerald, Solicitors;

Professor Finbarr Mc Auley, BCL LLB, MPhil, LLD, University College Dublin.

Secretary: John Quirke.

STAFF IN 2000

The Director of Research in 2000 was David Gwynn Morgan LLB, LLM, PhD, Barrister-at-Law. Professor Gwynn Morgan holds the position on secondment from his position as Professor of Law at University College Cork.

The Researchers during 2000 were as follows:

Ms Leesha O'Driscoll, BCL, LLM (European Law), Barrister-at-Law (to 28th January, 2000).

Ms Bairbre O'Neill, BCL, LLM (University of Dublin).

Ms Dara Dowling, BCL, LLM (University of Paris II) (from 10th January, 2000).

Mr Patrick Mc Evoy, BCL, LLM (Cantab.), BL (from 10th January to 29th September, 2000).

Mr Liam Herrick, BCL, LLM (from 3rd April to 30th November, 2000).

Ms Nessa Cahill, LLB, LLM (Bruges), BL (from 18th April to 8th September, 2000).

Ms Olwyn Burke, BA, LLB, LLM (Edin.) (from 4th September, 2000).

Ms Jane Mc Cullough, BCL, EMA (Padua) (from 11th September, 2000).

Ms Niamh O'Brien, LLB, LLM (Cantab.) (from 25th September, 2000).

Ms Maireád O'Dwyer, MB, BCh, BAO, BCL (from 2nd October, 2000).

Ms Siobhán Stack, LLB, LLM, Barrister-at-Law, (from November 2000) was retained as a part-time researcher for the specific project of Adverse Possession of Leasehold Land.

The Legal Information Manager was Ms Helen Bradley, BA, MPhil, MLIS (to September 2000). She was succeeded by Ms Marina Greer, BA (Mod), HDipLIS.

Cataloguer: Ms Eithne Boland, BA (Hons), H Dip Ed, H Dip LIS.

Project Manager: Mr Pearse Rayel.

Clerical Staff: Ms Deborah McAdams (Private Secretary to the President) until September 2000, succeeded by Mr Liam Dargan; Mr Denis McKenna; Ms Susan Fitzpatrick (for part of the year), and Ms Teresa Hickey (from October, 2000).

We are sorry to record the death in 2000 of Ms Dympna Lawes (née Forde), who served as Clerical Officer at the Commission until 1st July, 1999.

COMMISSIONER ARTHUR F. PLUNKETT, 1942 – 2001: AN APPRECIATION

Arthur was dedicated and hardworking and was the “anchor-man” full-timer at the Commission. His breadth of legal knowledge was impressive and influenced policy and projects of the Commission. As Professor Gerard Quinn, former Director of Research, has written: “More importantly, as a human being, Arthur was unfailingly polite and courteous. He always had the good manners to give the other side the benefit of a full hearing.”

After attending Gonzaga College, Arthur continued his education at UCD, where he took a BA in Economics in 1963. He was subsequently called to the Bar in 1965 and practised on the South-Eastern circuit until 1973.

He entered the Attorney General’s Office in late 1973 and, in 1975, was promoted from Third to Second Legal Assistant and thereafter in 1985 to Deputy Senior Legal Assistant (Deputy head of the advisory side of the Office). In an office which, for most of the history of the State, has been remarkably small in relation to the diversity and weight of legal problems which rest upon it, his experience covered a wide range of domestic, constitutional, and international matters. He was, amongst many other things, for the first twenty years of Ireland’s membership of the European Community, effectively chief legal adviser on European Law, including not only the EU but also the Council of Europe. His magisterial opinion on why Ireland could not make a unilateral declaration to the Single European Act was read into the record of the Dáil. He was also an enthusiastic representative of Ireland in negotiating the Hague Conventions on Private International Law. His enthusiasm for improving the law, clear vision, patience with vicissitudes of international negotiations and respectful bonhomie made him as popular in this international milieu as in his own country.

Arthur moved to the Commission in 1997. Because he was of a partially academic turn of mind – and he would have graced a university law department – he took very well to the rather different work of law reform. A need for a law to be made partly retrospective – something which to some lawyers would be anathema – found him open to the idea and resourceful in its execution. Again, the idea that judges should be given some legislative guidance in statutory interpretation to reinforce or modify the techniques devised by earlier generations of judges in bygone centuries seemed to him worthy of adoption.

Among his many agreeable and sociable qualities was a strong sense of humour. He laughed as heartily at other people’s jokes as at his own. He especially liked jokes with a legal, political or historical flavour.

Cricket was one of Arthur’s strongest interests and from his time as a schoolboy at Gonzaga to service with the Phoenix and the Leprechauns in the early 1990s, he was a devilishly accurate and good length bowler. He also loved cooking and eating good food. He delighted in telling colleagues, who only knew him in his later years, his eyes twinkling over his generous girth, that “to be a good spin bowler, you need to be of sylph-like proportions.”

Although aware for several months that he was suffering from fatal cancer, he continued in harness virtually to the end, wearing a good suit and maintaining his life-long good humour: very much a case of what Hemingway called ‘grace under pressure’. Arthur showed his concern for the publication of Commission Reports, and consideration to others, to the end. We all miss his enthusiasm, wisdom and courtesy, his loyalty to faith, values, family and friends.

FUNCTIONS OF THE COMMISSION

The Law Reform Commission was established as a statutory body corporate by the Law Reform Commission Act, 1975.

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.”

As is elaborated on subsequent pages, the content of the Commission’s research is determined and directed in two primary ways:

1. Under the 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 (with or without amendment) 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 under section 4(2)(b).
2. By references from the Attorney General: 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 and, further, may request that proposals for reform in that area be submitted to him. The Commission must 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.

As it happens no new references were received from the Attorney General in 2000 so that all the research carried out during the year 2000 was based upon either the Programme for Law Reform or earlier references from the Attorney General.

SECOND PROGRAMME FOR LAW REFORM

Following the procedure described on the previous page, in December our Second Programme was approved by the Government for publication, which occurred early in the new year. This Programme identifies the following branches of the law for examination, with a view to their reform, during the period 2000 – 2007, though many of the topics listed are of a long-term character and are likely to have a life of more than seven years. The topics identified by means of an asterisk will be given priority by the Commission in addressing its tasks under the Programme.

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 published 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

32. 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.

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 case law, legislation, jurisprudence and academic writings, both domestic and international. The Commission gives particular attention to the laws of comparable jurisdictions, as well as to 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 (known up to 1985 as a working paper), which will either be published, or, if the subject is a specialised one, distributed to relevant experts. The Commission will 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.

Working Group on Land Law and Conveyancing Law

The Working Group on Land Law and Conveyancing Law was set up in 1987, in response to a request by the Attorney General for an examination by the Commission of certain aspects of conveyancing law and practice. The Working Group has met regularly (usually every month) to review the law in that area and has published six reports to date. The Convenor of the Group until September was Commissioner Arthur F. Plunkett and, thereafter, Professor David Gwynn Morgan.

The other members of the Group in 2000 were:

- ~~/~~ Mr George Brady, SC;
- ~~/~~ His Honour Judge John F Buckley;
- ~~/~~ Mr Ernest Farrell, Solicitor;
- ~~/~~ Mr Patrick Fagan, Solicitor;
- ~~/~~ Mr Brian Gallagher, Solicitor;
- ~~/~~ Ms Mary Geraldine Miller, BL;
- ~~/~~ Mr Chris Hogan, Land Registry;
- ~~/~~ Commissioner Mrs Patricia Rickard-Clarke;
- ~~/~~ Ms Deborah Wheeler, BL;

~~///~~ Professor John C.W. Wylie.

~~///~~ Ms Bairbre O'Neill acted as Secretary/Researcher to the group.

STRATEGY AND BUSINESS PLAN UPDATE

The Strategy and Business Plan drawn up by the Commission in November, 1998, refers to the need to improve its level and quality of communication with outside organisations, interest groups and the public generally with regard to law reform.

With a view to enhancing outside public awareness of, and interest, in the law reform process, the Commission has taken the following action:

Website

To make information available through technology, the Commission has established a Website (www.lawreform.ie) which contains a comprehensive description of the Commission and its work, giving details of work in hand and inviting comments and submissions on topics and Consultation Papers. The Website lists the Commission's Consultation Papers and Reports. It also contains the full text of all Consultation Papers and Reports that have been issued since October 1999 which may be viewed online or downloaded. It is the intention of the Commission to publish all its past Consultation Papers and Reports on the Website in due course.

Communication with Government Departments

Government Departments have their own responsibilities concerning the areas of law within their jurisdictions and these sometimes overlap with matters which are covered by the Commission's Programmes. The Commission considers that it should make known to Government Departments on a regular and systematic basis the projects within its Programme for Law Reform and references from the Attorney General upon which it is currently engaged or is likely to be engaged in the foreseeable future.

As a first step in establishing a formal relationship with Government Departments, the Commission has established a structured consultation procedure with the Department of Justice, Equality and Law Reform, providing for regular meetings to review matters of mutual interest.

Contact with the Law Society

The Commission maintains very useful contacts with the Law Society and the Bar Council. With a view to developing these contacts, arrangements have been put in place to have regular meetings between the Commission and the Law Reform Committee of the Law Society. It is proposed to establish similar contacts with the Bar Council.

CONSULTATIVE COMMITTEE

Following extensive consultation between the Commission and the Attorney General on the Final Report of the Review of Organisation and Management of the Law Reform Commission, the Government announced in March 1998 the establishment of a Consultative Committee under the auspices of the Office of the Attorney General comprising representatives of certain Government Departments, the Bar Council, the Law Society, as well as the Commission. The function of the Consultative Committee is to assist the Attorney General in his consultations with the Commission in relation to the Programmes for Law Reform and in the selection of specific topics for reference to the Commission, and to monitor the implementation of the Commission's recommendations. The Second Programme for Law Reform was approved by the Government in December, 2000.

During the year the Committee considered how best to ensure that recommendations contained in Law Reform Commission's Reports which remain unimplemented could continue to be the subject of review by Government Departments and be considered for inclusion in the Government Legislative Programme. After detailed consideration the Committee decided on the following procedure:

- ~~///~~ the Consultative Committee to report directly to the Attorney General the views it may have on unimplemented recommendations in Law Reform Commission Reports;
- ~~///~~ the Attorney General to be asked to channel those views to the Minister whose Department has responsibility for the subject matter and to seek a response;
- ~~///~~ the Government Legislation Committee to be asked to note the outcome of the correspondence between the Attorney General and Ministers;
- ~~///~~ at the presentation of each Annual Report of the Law Reform Commission to the Government, the Department of the Taoiseach to be asked to consider whether the deliberations of the Consultative Committee and the response of Ministers on unimplemented recommendations of Commission Reports should be brought to the attention of the Government.

LIBRARY

Library

The primary role of the Commission library is to anticipate and respond to the needs of the Commissioners and the research team for library and information services, in partnership with other libraries and information providers.

Staff

In October 2000 Ms Marina Greer assumed the position of Legal Information Manager, in succession to Ms Helen Bradley who unfortunately had to relinquish her position due to illness. The manager is responsible for both the daily running and the development of library and information services. In November 2000 Ms Eithne Boland was appointed to the new position of Cataloguer. Clerical staff have provided assistance with daily administration.

The Library Committee, established in 1999 and chaired by Commissioner Delany, acts as a channel of communication with the research team, the administrative team and the library staff. The Legal Information Manager works in close consultation with the research team to provide timely access to hard-copy and electronic resources.

Developments in 2000

The Unicorn Collection Management System was implemented on a shared basis in the libraries of the Attorney General's Office, the Chief State Solicitor's Office and the Law Reform Commission. This has resulted in a multi-library system allowing each library to operate independently whilst benefiting from shared OPAC (online public access catalogue) and cataloguing modules.

The catalogue of the Law Reform Commission is currently under construction. It is envisaged that the system will be made available to the research team on the network in the second half of the year 2001. We foresee that this system will be of great benefit to the library staff and research team.

Mr Denis McKenna completed the archiving of all the material used by the research team in the preparation of the Commission's Reports and Consultation Papers since its inception, so that these will be readily accessible for future use.

Library resources & services

The library's print collection includes books, legal journals, law reports, official publications, legislation, Irish unreported judgments and a collection of publications from law reform bodies around the world which is unique in Ireland.

Library holdings are augmented using extensive links which have been built up with other organisations, including other libraries and Government Departments. Document delivery is provided by subscription to the Information Service at Trinity College Library, Dublin, the Institute for Advanced Legal Studies, London and the inside web service of the British Library.

The research team have networked access from their desktops to the internet and Lexis-Nexis, and to Eurolaw and the Irish Statute Book on CD-Rom. Further electronic services are under consideration.

The range of services provided by the library during the past year has included a current awareness service, training, document delivery, a research support and information service and loans (including interlibrary loans). In addition to queries from the research team, staff have also responded to external requests for information, as increasing interest in the collection has been shown by staff from Government Departments and other law libraries.

FINANCE

Income & Expenditure

The grant-in-aid approved by the Minister for Finance on the recommendation of the Attorney General represents almost the entirety of the Commission's income. Under the present accounting procedure, monies are drawn down on a monthly basis from the grant-in-aid with the consent of the Accounting Officer who is the Director General in the Attorney General's Office. The only other income derives from the sale of publications. It should be, noted, however, that many publications are not sold but are distributed free to members of the judiciary, members of the Oireachtas and legal scholars, as well as to libraries in various countries and to law reform agencies worldwide who in turn provide the Commission with copies of their work.

The expenses of the Law Reform Commission include rent and premises overheads, salaries of Commissioners and staff, emoluments of external researchers retained for specific tasks, the maintenance of the law library and the holding, from time to time, of public seminars.

Prompt Payment of Accounts

There were no late payments by the Law Reform Commission during 2000.

The Secretary keeps all current liabilities of the Commission under review with a view to their prompt discharge. The appropriate payments by the Commission in accordance with its internal procedures are made by cheque on a week-to-week basis.

Standard payment periods are not specified in written contracts.

Statement by Secretary to the Commission

Throughout 2000 the Law Reform Commission was in compliance with the Prompt Payment of Accounts Act, 1997.

The payment procedures outlined above were operational throughout this period. While these practices can only provide reasonable and not absolute assurance against material non-compliance with the Act, they would appear to have worked very well, in particular in view of the fact that there were no late payments during the period under review.

THE YEAR'S WORK

By 31 December 2000, the Commission had, since its inception, formulated and submitted to the Taoiseach or the Attorney General:

*sixty-two Reports containing proposals for reform of the law (as well as an examination of the law of Bail);
eleven Working Papers;
sixteen Consultation Papers;
twenty one Annual Reports; and
a number of specialised papers for limited circulation.*

PUBLICATIONS IN 2000

Reports

Report on Aggravated, Exemplary and Restitutionary Damages

The Commission's purpose in this Report is to ensure that where large amounts of damages of these types are given, they are awarded only if the conduct of the defendant is high-handed, insolent, vindictive or exhibits a gross disregard for the rights of the plaintiff. The Commission does not intend to endorse a 'compensation culture' in which excessive awards of damages are made. It takes the view that exemplary damages must be of the minimum amount necessary to achieve their purpose in the context of a particular case.

The Commission makes various recommendations as to damages of this type. In asserting the level of exemplary damages it recommends that factors such as the public interest in deterring this type of wrongdoing and the means of the defendant – whether, for instance, the defendant is a large company or simply an irresponsible individual – should be taken into account. Despite the fact that the damages are punitive rather than compensatory, the Commission recommends that the award should continue to go in full to the plaintiff rather than having to be shared with a public fund or charity. The Commission does however explore in some detail the latter alternative, for possible future reference in the light of developments in litigation. The Commission also concludes that exemplary damages are and should be available for breach of European Union law. This rule could be very significant in the areas of competition or environmental law.

A particular feature of this Report is that over half of its recommendations are addressed to the courts rather than the Oireachtas. The reason for this is that the Commission believes that to recommend legislation would be to fail to take sufficient account of the fact that the law is at the moment developing satisfactorily by way of case-law. To attempt to intervene by statute at this stage would risk imposing undue rigidity on the natural development of the law.

Report on Statutory Drafting and Interpretation: Plain Language and the Law

The Consultation Paper on this subject was published in mid-1999 and was followed by a discussion process which, due to the high level of interest in this topic, included two well-attended seminars (in April and May) at which the views of judges, academics, parliamentary counsel, law officers, members of the Oireachtas and other experts in this field were obtained. In addition, in October, the Director of Research and Researcher Liam Herrick gave a public talk (on which see page 22) based on this Report.

As regards the interpretation of statutes, the Report recommends a number of changes, which have been accepted for incorporation in the Interpretation Bill, 2000, which is presently before the Dáil. At the moment, the basic rule of interpretation is the literal rule – that is, plain words should be given their plain meaning. However, adherence to an inflexible literal rule can produce unintended and undesirable results. In order to avoid this, the Commission recommends that a Court should be able to depart from the strict literal interpretation and to choose instead a construction based on the plain intention of the Oireachtas, in a situation in which a provision of an Act is ambiguous or obscure or would lead to an absurdity; or when a literal interpretation would fail to reflect the plain intention of the Oireachtas.

Another source of difficulty in interpretation arises where changes have occurred in social conditions, or in technology, during the time – maybe a century or more – between the enactment of a statute and the case coming before the Court. Sometimes, in such cases, the literal meaning of the words may not accurately or fully reflect the policy of the Act. The Commission recommends that a court should, while stopping well short of legislating, be able to make allowances for changes in social conditions, technology, the meaning of words or other relevant matters.

On the drafting side, a number of the changes, in the direction of plain language, which the Report recommends are already beginning to enter into actual practice in the Office of the Parliamentary Counsel to the Government, and also, indeed, in the drafting of private legal documents like conveyances or insurance policies. These include: omitting archaic words like ‘herein’, ‘heretofore’ or ‘whereof’; employing positive rather than negative statements; using examples, maps, diagrams, and mathematical formulae; adopting attractive modern methods of presentation (like the highlighting in bold font of terms which have been defined earlier in an Act); and providing explanatory memoranda, where appropriate.

Report on the Rule against Perpetuities and Cognate Rules

This Report recommends the abolition of one of the law’s oldest rules. In its modern form, the Rule against Perpetuities dates from the Seventeenth Century. It was devised to curb a feudal fondness for controlling property from beyond the grave. By today, such an ambition is unlikely and in any case is largely banned by Nineteenth Century legislative change. The Rule’s major effect today is unexpectedly to strike down perfectly reasonable family gifts, and to frustrate harmless commercial arrangements.

To make matters worse, the Rule is unhappily phrased, so that, on the one hand, it may catch gifts for reasons which have nothing to do with their potential to drag on for years; and, on the other hand, with clever drafting, the Rule is easily side-stepped.

Report on Variation of Trusts

Turning to the separate but related *Report on Variation of Trusts*, the Commission addresses the practical problems which can arise where trustees’ powers turn out to be outdated, overly restricted or inadequate. Frequently, it becomes clear that certain necessary powers, which should have been included in the document setting up the trust, have been unintentionally omitted. Examples include the power to sell land or other assets, the power to continue running a business, investment powers or the power to delegate if a trustee is going abroad. Furthermore, the terms of the trust may be wholly inadequate to cope with unanticipated changes in family circumstances, such as an early death or the need to make financial provision for a child with a disability.

At present the terms of the trust cannot usually be modified to respond to these problems. The law has always allowed for a change in the trust's terms, provided that all fully-capable beneficiaries consent. What the Report recommends is that in the case of a beneficiary not competent to consent – perhaps by virtue of infancy – the court should be empowered to consider whether the proposed change is for his benefit and, if so, to approve on his behalf. Jurisdiction will be conferred on the High Court, but to ensure that this facility is accessible and cost-efficient, the Commission has also recommended that the Circuit Court be given jurisdiction in relation to smaller trusts.

A certain amount of common ground exists between this Report and the Rule against Perpetuities Report. The possibility exists that, once the Rule against Perpetuities is swept away, some troublesome long trusts will become perfectly valid, when they would otherwise have been defeated by the Rule. In the few cases where this might occur, the facility provided by Variation of Trusts legislation will tidy up any persisting problems.

Annexed to both Reports are draft Bills, which implement the recommendations set out in both Reports. The practice of drafting legislation is an innovation on the part of the Law Reform Commission and is designed to facilitate speedier implementation of its Reports. In line with normal practice, since the subject of each Bill has been fully considered by the Land Law and Conveyancing Group, the recommendations are published as a Bill, without going through the Consultation Paper stage.

Consultation Paper

Consultation Paper on the Law of Limitation of Actions arising from the Non-Sexual Abuse Of Children

The political and legislative response to the revelations of child abuse in Ireland encompassed a number of measures and proposals, among them the enactment of the Statute of Limitations (Amendment) Act, 2000. This Act amended the law of limitations in order to facilitate the bringing of civil actions by victims of child sexual abuse, where such actions would fall far outside the time limits imposed by the existing law. In 1999, the then Attorney General, Mr David Byrne SC, requested the Commission to consider the question of limitations in relation to actions brought by plaintiffs who had suffered non-sexual abuse. The Commission concluded that a distinct limitation regime was not necessary for such cases, on the following grounds:

- ~~///~~ It does not seem appropriate that expert psychological or psychiatric evidence, which would often have to delve back many years into the past, should be the determining factor in devising a limitation regime for cases of non-sexual abuse (such evidence is the criterion in sexual abuse cases under the 2000 Act).
- ~~///~~ There is a substantial medical opinion and literature on the psychological effects that result from child sexual abuse, but comparatively little on non-sexual abuse.
- ~~///~~ So far as there is medical expertise as to whether victims of child non-sexual abuse are psychologically handicapped in their ability to bring legal proceedings in time, the experts are divided on the question.

RESEARCH IN 2000: WORK IN PROGRESS

1. Criminal Law and Procedure

Homicide

Three Consultation Papers/Reports are currently being prepared on aspects of the law of homicide. The first deals with the question of whether the existing definition of the mental element in murder is under-inclusive, i.e., whether some non-intentional killings deserve to be punished as murder on moral grounds; and considers whether this difficulty should be addressed by expanding the current *mens rea* for the offence to include reckless indifference to the value of human life. A Consultation Paper on this topic was published in March 2001.

The second Paper will examine the plea of provocation. The principal issue to be determined is whether the subjective test, which is currently applied in Ireland, should continue to apply in either its present form or some variation thereof; or whether a version of the objective test, which is applied in every other common law jurisdiction, should be introduced into Irish law.

The third Paper deals with the plea of legitimate defence. Its principal focus is the apparent disjunction between the common law rules on the use of lethal force and the new regime on defensive force introduced by the Non-Fatal Offences Against the Person Act, 1997.

Other Papers/Reports in the Homicide series will deal with the arguments for and against a new system of internal classification for murder and manslaughter and with the proper limits of the basic categories of homicide. Special attention will be given to the problem of the alleged over-inclusiveness of the current definition of murder – the claim that some forms of intentional killing do not warrant being labelled as murder on moral grounds; and to the various strategies that might be adopted to meet this difficulty. The aim of the Homicide series is to lay the groundwork for codification.

Penalties for Summary Offences

A number of issues of importance, both in principle and in practice arise in this area which concerns thousands of citizens each year, namely, sentencing by the District Court for a summary offence. In the first place, is it appropriate, on policy or constitutional grounds, that a person may be imprisoned for as much as a year without a jury trial? Secondly, can the wealth of a defendant be taken into account in assessing the level of fine in summary proceedings? In particular, in the context of a case against a wealthy corporation possibly for environmental offences, can the amount of the fine be related to turnover or profit?

Restorative Justice

Restorative Justice views crime as a breakdown in relationships which causes harm to the victim and the community. Restorative Justice seeks to repair this harm by attending to the needs of the victim and by trying to reintegrate the offender into the community and thus prevent re-offending. It thus adopts a radically different approach from that which is traditionally taken in the criminal process. Plainly, there are many types of case in which the new approach would not be appropriate and probably some in which it would be to everyone's advantage. Part of the Commission's research is directed to determining the point at which to draw this line. The Commission intends to

examine the developments in Restorative Justice in this jurisdiction (in the Children's Bill, 1999) and in other jurisdictions such as New Zealand and Australia where it is already an integral part of the criminal justice system.

2. Civil Liability

The Deductibility of Collateral Benefits from Awards of Damages

In December 1997, the Attorney General requested the Law Reform Commission to review section 2 of the Civil Liability (Amendment) Act, 1964, which provides that in assessing damages in a personal injury action to recover damages, any sum payable in respect of the injury, either under contract of insurance or as a statutory pension, gratuity or other like benefit, is not to be taken into account to reduce the damages.

Under the terms of the reference, the Commission was asked to address the question of repealing or amending this provision "with a view to ensuring that a plaintiff does not receive double compensation in respect of the same loss".

A Consultation Paper on the subject was published in August 1999. In March 2000, a seminar was held and work is continuing on the preparation of a Report.

Statutes of Limitation and Claims in Contract and Tort (Other than for Personal Injury)

In November 1997, the Attorney General requested the Commission to review the period of limitation in relation to claims in contract and tort (other than claims in respect of personal injuries) in circumstances where the loss is latent – i.e. in circumstances where the person was not and could not have been aware of the accrual of the right of action until after the expiration of the limitation period.

A Consultation Paper was published in November 1998 and a seminar to consider it was held in March, 1999. Work on the Report continued in 2000.

Law and the Elderly

It is coming to be recognised that there is a need to provide adequate legal safeguards for vulnerable groups in our society, that is, citizens who are themselves unable to vindicate their legal rights, whether because of advanced age, ill-health, mental incapacity, lack of education, or lack of familiarity with our legal structures. The Commission is embarking on its work in this field by preparing a Consultation Paper on Law and the Elderly: the increasing number of elderly people in our society makes this a timely subject.

While individual elderly citizens may be affected by almost every branch of law, the Paper will address the areas of law which impact most frequently on our elderly population. Some of the important subjects to be examined are: wills and testamentary capacity; care of the elderly person, including the law governing residential care facilities; decision-making on behalf of the incapacitated elderly person; 'Advance Care Directives'; and the problems of elder abuse and crimes against the elderly.

3. Land Law and Conveyancing Law

Working Group on Land Law and Conveyancing Law

The Working Group met on nine occasions in 2000 and among the topics discussed were the following:

- ?? Enforceability of Positive Freehold Covenants
- ?? Definition of “purchaser” in the *Succession Act, 1965*
- ?? The *Irish Church Act, 1869*, and compulsory registration
- ?? Acquisition of the fee simple: *Metropolitan Properties v. O’Brien*
- ?? Variations of Trusts
- ?? The Rule Against Perpetuities
- ?? Proposals for the Law Reform (*Miscellaneous Provisions*) Bills, 1999 and 2000

During the year the Working Group worked on the preparation of two further Reports (*the Rule against Perpetuities and Cognate Rules, Variation of Trusts*) and miscellaneous issues of Land Law and Conveyancing Law.

4. Miscellaneous

Law Reform (Miscellaneous Provisions) Bill

The Commission has added a new method of work to the process of law reform. The Commission considers that there are many minor and uncontroversial, but valuable legal reforms which can be implemented, in a timely fashion, without the need for extensive research or a lengthy report.

Accordingly, following consultation with the Attorney General, it was decided that proposals for Law Reform (Miscellaneous Provisions) Bills should be formulated by the Commission to implement such measures on an annual basis. (The Commission would welcome proposals for reforms of this character from Government Departments, the judiciary, practising or academic lawyers or interested laypersons.)

In August 1999 the Commission submitted its proposals for the first Bill of this type to the Attorney General. A number of recommendations of the Commission in the area of land and conveyancing law were submitted, along with proposals for amendments in family law, succession law and commercial law. Work is proceeding on the preparation of proposals for a second such Bill.

5. Private and European International Law

Hague Conference on Private International Law

The Commission continued its work in conjunction with the Hague Conference on Private International Law.

Special Commission on International Jurisdiction and the Effects of Foreign Judgments in Civil and Commercial Matters:

Mr Arthur F Plunkett, Commissioner, attended a Special Commission meeting in Ottawa in May, as a member of the Irish delegation. Professor David Gwynn Morgan attended later informal meetings in Washington in October (with Ms Payne of the Attorney General's Office), and in Basle in December.

At each of these meetings the representatives from the Commission participated in the preparation and negotiation of a draft International Convention which would provide for common bases in different States for both the exercise of international jurisdiction and the recognition and enforcement of foreign judgments.

Electronic Commerce

Ms Niamh O'Brien, Researcher, attended, on behalf of the Commission, a meeting in Brussels, convened by the European Commission, in December, on the subject of e-commerce. The particular question which arises is whether it is the court of the jurisdiction of the buyer or the seller which is to be allocated jurisdiction in respect of disputes arising out of an e-commerce transaction. The scale of the legal problem is magnified by the world-wide character of the web. Its resolution is of special importance here because of the value of e-commerce to the Irish economy. This is a central question in the context of the draft Hague Convention described above.

MEETINGS WITH OTHER LAW REFORM BODIES

In April, the President spoke to the Irish Association of Law Teachers about the work of the Commission and the involvement of academic lawyers as researchers and consultants.

Again in April, the Director of Research, with his opposite numbers from the law reform bodies in England, Scotland and Northern Ireland gave a talk in Belfast to the annual meeting of the Socio-Legal Studies Association on the use of empirical research in law reform.

In June, some members of the Commission entered into dialogue with visiting US judges who were members of the International Judicial Academy.

In July, Mr Patrick MacEntee SC visited the Commission to discuss practical aspects of the mental element in homicide, which were relevant to the Consultation Paper published by the Commission later in the year.

Again in July, Ms Paula Scully visited the Commission. Ms Scully practised as a solicitor and before moving to Hong Kong where she worked for the Attorney General and for with the Law Reform Commission before taking her present position as charter Chairperson of the Guardianship Board. She led a stimulating Seminar with staff on her experience in Hong Kong and its relevance here.

In October, the Director of Research and Researcher Liam Herrick gave a paper on 'Statutory Drafting and Interpretation' at an international conference on *Legislative Drafting: Emerging Trends* convened by the Attorney General at Dublin Castle.

Later in October, the Northern Ireland Law Advisory Committee visited the Commission for the day, to discuss items of mutual interest, among them: the inclusion of Draft Bill in Reports; implementation of recommendations; involvement of the practising professions; collection of empirical facts. The visiting members of the Committee were: Judge Girvan, Ms. Eithne Harkness and Ms Geralyn McNally with Mr Michael Foster, Secretary. It was agreed that the Commission and the Committee would collaborate on a joint project on the taking of evidence in Northern Ireland for a trial held before an Irish court and vice versa.

In November, the President and Researcher Ms Dara Dowling visited the Scottish Law Commission and attended the Scottish Association for the Study of Delinquency where the subjects were relevant to our Restorative Justice Paper.

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	<p>Report on Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws (LRC 7-1983)</p> <p>Report on the Recognition of Foreign Divorces and Legal Separations (LRC 10-1985)</p> <p>Report on the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (LRC 16-1985)</p> <p>Report on Private International Law Aspects of Capacity to Marry and Choice of Law Proceedings for Nullity of Marriage (LRC 19-1985)</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>Report on the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (LRC 55-1997)</p>

	<p>Report on the Implementation of the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, 1993 (LRC 58-1998)</p>
Criminal Law	<p>Report on Vagrancy and Related Offences (LRC 11-1985)</p> <p>Report on Offences under the Dublin Police Acts and Related Offences (LRC 14-1985)</p> <p>Report on Intoxication (LRC 51-1995)</p>
Evidence	<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>
Family Law	<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</p>

	<p>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 Family Courts (LRC 52-1996)</p>
Privacy	<p>Report on Privacy: Surveillance and the Interception of Communications (LRC 57-1998)</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>
Statute Law	<p>Report on Statutory Drafting and Interpretation: <i>Plain Language and the Law</i> (LRC 61 – 2000)</p>

* 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. A full list of all the Law Reform Commission's publications appears on pages 32 to 36.

APPENDIX B

**MATTERS EXAMINED PURSUANT TO
REFERENCES FROM THE ATTORNEY GENERAL**

(Recorded in chronological order of the References)

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 (LRC 44-1992)</p> <p>Report on Interests of Vendor and Purchaser in Land during Period between Contract and Completion (LRC 49-1995)</p> <p>Report on Land Law and Conveyancing Law: (6) Further General Proposals Including the Execution of Deeds (LRC 56-1998)</p> <p>Report on the Rule against Perpetuities and Cognate Rules (LRC 62 – 2000)</p> <p>Report on the Variation of Trusts (LRC 63 – 2000)</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; and</p> <p>(3) Limitation in cases of Child non-sexual abuse.</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>Consultation Paper on the Law of Limitation of Actions arising from Non-Sexual Abuse of Children (LRC-CP16-2000)</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 offences which are mainly governed by pre-1922 legislation, including, in particular, the laws relating to dishonesty, malicious damage and offences against the person (referred 1987).</p> <p>Sexual Offences Generally (Including in particular the law relating to rape and the sexual abuse of children) (referred 1987).</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 Offences against the Person (LRC 45-1994)</p> <p>Report on Sentencing (LRC 53-1996)</p> <p>Report on Rape and Allied Offences (LRC 24-1988)</p> <p>Report on Child Sexual Abuse (LRC 32-1990)</p> <p>Report on Sexual Offences Against the Mentally Handicapped (LRC 33-1990)</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 occupiers' liability (referred 1992).</p>	<p>Report on Occupiers' Liability (LRC 46-1994)</p>
<p>The Law relating to Bail (referred 1994).</p>	<p>Report on an Examination of the Law of Bail (LRC 50-1995)</p>
<p>Aggravated, Exemplary and Restitutionary Damages (referred 1997).</p>	<p>Report on Aggravated, Exemplary and Restitutionary Damages (LRC 60 – 2000)</p>
<p>The Statutes of Limitation in cases in contract and tort involving latent damage other than personal injury (referred 1997).</p> <p>'Gazumping'.</p> <p>Overlap between damages award in personal injuries action and other benefits received by the plaintiff.</p>	<p>Consultation Paper on the Statutes of Limitation: Claims in Contract and Tort in respect of Latent Damage (other than Personal Injury) (1998)</p> <p>Report on Gazumping (LRC 59-1999)</p> <p>The Deductibility of Collateral Benefits from Awards of Damages under Section 2 of the Civil Liability (Amendment) Act, 1964 (LRC-CP15-1999).</p>

* 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. A full list of all of the Law Reform Commission's publications appears on pages 32 to 36.

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 Illegitimacy	<i>Status of Children Act, 1987</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 Restitution of Conjugal Rights, Jactitation of Marriage, and Related Matters	<i>Family Law Act, 1988</i> <i>Family Law Act, 1995</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 Divorce <i>a Mensa et Thoro</i> and Related Matters	<i>Judicial Separation and Family Reform Act, 1989</i>
Report on the Recognition of Foreign Divorces and Legal Separations	<i>Domicile and Recognition of Foreign Divorces Act, 1986</i>
Report on Vagrancy and Related Offences	<i>Housing Act, 1988</i> <i>Criminal Law (Sexual Offences) Act, 1993</i> <i>Criminal Justice (Public Order) Act, 1994</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 Competence and Compellability of Witnesses	<i>Criminal Evidence Act, 1992</i>

Report on Offences Under the Dublin Police Acts and Related Offences	<i>Criminal Justice (Public Order Act), 1994</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>
Report on Receiving Stolen Property	<i>Larceny Act, 1990</i> <i>Criminal Justice Act, 1993</i> <i>Criminal Evidence Act, 1992</i> <i>Criminal Justice (No. 3) Act, 1994</i>
Report on the Statute of Limitations: Claims in respect of Latent Personal Injuries	<i>Statute of Limitations (Amendment) Act, 1991</i>
Report on the Service of Documents Abroad re Civil Proceedings (Hague Convention)	Hague Convention ratified 1994 Rules of the Superior Courts (no.3), 1994 (S.I. No.101 of 1994) <i>District Court (Service Abroad of Documents in Civil or Commercial Matters) Rules, 1994</i> (S.I. No.120 of 1994), now consolidated in <i>District Court Rules</i> (S.I. No.93 of 1997)
Report on Rape and Allied Offences	<i>Criminal Law (Rape) (Amendment) Act, 1990</i> <i>Criminal Justice Act, 1993</i>
Report on Malicious Damage	<i>Criminal Damage Act, 1991</i> <i>Criminal Justice Act, 1993</i>
Report on the Recognition of Foreign Adoption Decrees	<i>Adoption Act, 1991</i>
Report on Land Law and Conveyancing Law: (1) General Proposals	

Report on Land Law and Conveyancing: (2) Enduring Powers of Attorney	<i>Powers of Attorney Act, 1996</i>
Report on Child Sexual Abuse	<i>Child Care Act, 1991</i> <i>Criminal Evidence Act, 1992</i> <i>Criminal Law (Sexual Offences) Act, 1993</i> <i>Domestic Violence Act, 1996</i> <i>Criminal Justice (Miscellaneous Provisions) Act, 1997</i> <i>Protection for Persons Reporting Child Abuse Act, 1998</i>
Report on Sexual Offences Against the Mentally Handicapped	<i>Criminal Law (Sexual Offences) Act, 1993</i> <i>Criminal Justice (Miscellaneous Provisions) Act, 1997</i>
Report on the Confiscation of the Proceeds of Crime	<i>Criminal Justice (No. 3) Act, 1994</i>
Report on Non-Fatal Offences Against the Person	<i>Non-Fatal Offences Against the Person Act, 1997</i>
Report on Occupiers' Liability	<i>Occupiers' Liability Act, 1995</i>
Examination of the Law of Bail	<i>Bail Act, 1997</i>
Report on Family Courts	<i>Children Act, 1997</i>
Report on Sentencing	<i>Criminal Justice Act, 1999</i>
Report on Abolishing Requirement of Legalisation of Foreign Public Documents (Hague Convention)	<i>Rules of the Superior Courts (No.1) (Proof of Foreign Diplomatic, Consular and Public Documents) 1999 – SI No 3 of 1999</i>



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