



Northern Ireland  
Assembly

Committee for Finance and Personnel

# OFFICIAL REPORT (Hansard)

Land Law Proposals: Departmental Briefing

23 May 2012

# NORTHERN IRELAND ASSEMBLY

## Committee for Finance and Personnel

### Land Law Proposals: Departmental Briefing

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**Members present for all or part of the proceedings:**

Mr Conor Murphy (Chairperson)  
Mr Dominic Bradley (Deputy Chairperson)  
Mr Roy Beggs  
Mr Leslie Cree  
Mr Paul Girvan  
Mr David Hilditch  
Mr William Humphrey  
Mr Paul Maskey  
Mr Mitchel McLaughlin  
Mr Adrian McQuillan

**Witnesses:**

Ms Laura McPolin	Department of Finance and Personnel
Mr Oswyn Paulin	Department of Finance and Personnel

**The Chairperson:** I welcome Oswyn Paulin, who is a departmental solicitor, and Laura McPolin, legal policy adviser to the Departmental Solicitor's Office (DSO). This is an incredibly complex area, so I do not expect us to get into the whole detail of it. The Committee will wish to get to the bottom of how the process will be handled, and, given that it will come in some form of legislation, we will consider the time frame. My understanding is that this is one of the most complex pieces of legislation that we are likely to have to deal with. Therefore, from a Committee perspective, we want to ensure that we have adequate time to deal with it. I hope that you will address that in your remarks. You are very welcome.

**Mr Oswyn Paulin (Department of Finance and Personnel):** Thank you, Chairman. I will try to, but there is a limit to what I will be able to say, given the stage that things are at. At the outset, I thank the Committee for the opportunity to speak to the Northern Ireland Law Commission's recommendations for the reform of the general land law. Our briefing paper could not go beyond the recommendations because the substantive issues are still being considered at Executive level. Chairman, it may be that some of the issues that are likely to be of particular interest to the Committee and which you have flagged up, such as the shape of legislation and its timing, are matters on which I cannot add greatly to the Committee's knowledge at this point. I know that the Law Commission has briefed the Committee on the recommendations, and I regret that, at this stage, we cannot take the discussion beyond the preliminary issues. However, as soon as the Department is able to do so, it will. As the Committee is aware, the commission's recommendations cover a range of complex and highly technical issues. Subject to any directions from the Committee, I propose to proceed on a question-and-answer basis, rather than simply rehearsing what is in the briefing paper, where we have

attempted to describe the history of reform in this area, how the Law Commission went about its work and the recommendations that it made.

I thought, however, that it might be helpful to say a few brief words at the outset about the reforms that have taken place in the Republic of Ireland. In that jurisdiction, the Land and Conveyancing Law Reform Act 2009 has provided for the abolition of feudal tenure, although it retained the doctrine of estates, which derives from feudal concepts. Old forms of freehold estates, such as fee tail estate, where the land passes to descendants of the original holder, or a life estate, which last only for the duration of the holder's or another party's life, have disappeared. There are now only two types of estate; namely, an estate of a fee simple in possession and a leasehold estate. That is the position in the Republic.

The Act also touches on some issues that drew the attention of our Law Commission, including future interests, easements, profits à prendre and mortgages. The Irish Act was, for the most part, commenced in December 2009. However, by 2011, the legislature was already revisiting the issue of easements and profits à prendre. As the Committee will be aware, an easement is a right over neighbouring land such as a right of way, whereas a profit is a right to take something from the land, such as a natural resource, for example, turf. In late 2010, the Law Society of Ireland expressed concern that the new legislative provisions in the 2009 Act could, in certain circumstances, lead to unnecessary expense. The Irish Government accepted the thrust of the Law Society's submission, and the Civil Law (Miscellaneous Provisions) Act 2011 provides for the amendment of the 2009 Act and the Registration of Title Act 1964 to allow for the registration of rights without a court order, provided that there is no disagreement between the parties about the right concerned. This is proof, if proof were needed, that the process of law reform does not always run smoothly and that there may always be room for further improvement.

Mrs McPolin and I are happy to try to answer any questions that you may have. I assume that the major question is about timetabling. The first issue is when the matter will emerge from the Executive. We cannot provide an answer to that. It is in the hands of the Executive, and we hope that it will emerge soon. We cannot say anything beyond that. What happens then will be a matter of drafting a Bill. There is a Bill annexed to the report, but the Department and the draftsman are of the view that that Bill is not adequate and a new Bill will have to be drafted. That Bill will form the policy basis for the draft of the new Bill, but drafting it will take quite some time, and then, of course, there is the legislative process. It is difficult to see that the Bill will complete all its stages much before the end of this mandate, in my view.

**The Chairperson:** OK. I am quite happy for either. My experience is that the Department will start at the end of the mandate and work backwards in deciding its timetable. Through speaking to Committee staff, I expect that we would need a longer than normal process of Committee consideration of this Bill as it is a very complex area.

A Department either puts a paper to the Executive or warns them that it needs to be out of the Executive by such-and-such a date to fit in with the overall time frame. I am asking that whoever is advising the Department ensures that the time frame they work to in order to get the paper out of the Executive by a certain date includes extended Committee time to deal with this. The paper should go to the Executive and, if certain other processes have to follow to get it into draft legislation and policy discussion shape, that must also be factored into the timetable.

**Mr Paulin:** Taking all those things into account, we think it can be done within the mandate, but we do not think it can be done with a finish date much before the end of the mandate.

**Mr Beggs:** I am relatively new to this Committee, so I am just getting my head around some of the issues. Will you explain this land law reform to me so that I and the man in the street will understand the purpose behind it? Is it to speed up and reduce the cost of land conveyancing? What is the purpose of all this?

**Mr Paulin:** The purpose is, essentially, as you said, to make the transfer of land easier to understand and to accomplish, to bring it into line with other jurisdictions, and to abolish some concepts that are very much outdated, such as feudal tenure. That is the purpose of the legislation.

**The Chairperson:** You will not have the right to graze your sheep in the main street in Larne.

**Mr Cree:** Anymore.

**Mr Beggs:** Only if you are made a freeman of the borough, or something.

The Republic of Ireland was mentioned when you spoke about processes that exist elsewhere. Where else has this type of reform been brought in?

**Mr Paulin:** There are different ways of looking at this, but you could say that, in 1925 in England and Wales, there was a major reform of land law, which was not fully implemented in Northern Ireland. Bits of it were implemented, but it was not fully done. I think that five Acts went through the Westminster Parliament that applied to England and Wales and that did not apply to Northern Ireland, so some of this is bringing in reforms that occurred there at that point.

Scotland's land law system is different from ours, but they had feudal tenure until very recently. I think that virtually the first Act of the Scottish Parliament was to abolish that. They had a major reform of land law right at the outset of devolution in Scotland.

In the Republic of Ireland more recently, in 2009, a major reform of land law was carried out that included the abolition of feudal tenure. There is a link between what happened in the Republic of Ireland and what is proposed in Northern Ireland, and that link is essentially one person: Professor Wylie. He is the paramount expert on land law in Ireland, and has written a number of books on the subject. He was very much engaged in the process in the Republic of Ireland that led to their legislation and has been engaged in the process that has led to our Law Commission's report.

**Mr Beggs:** Did those processes reduce the cost of solicitors' fees when purchasing property?

**Mr Paulin:** That is a very good question. *[Laughter.]* It should certainly ensure that the problems that arise in conveyances — problems do arise from time to time — are diminished, and there should be a general saving as a result.

**Mr D Bradley:** Your notes say that separate proposals have been made on the law relating to ground rent redemption, but they are not included in the paper. Why is that? Will they be included in the eventual Bill?

**Ms Laura McPolin (Department of Finance and Personnel):** At present, we are not looking at the ground rent aspect of the Law Commission's recommendations for reform simply because it is quite a small technical adjustment to the existing statutory scheme. We thought that it was best to focus on the main land law recommendations because a separate amending Bill would be needed for ground rents. By focusing on the main land law recommendation, we can, hopefully, get a more streamlined, modern, up-to-date and more easily comprehensible system in place. That is the priority. Ground rents will not be left aside, but the amendment that the Law Commission has recommended is not minor but is fairly technical, and we thought that it was more important to focus on the big issues in the main recommendation.

**Mr D Bradley:** What remnants of the feudal system are still part of land law here?

**Mr Paulin:** Essentially, all land is held of the Crown. So, everybody's title is ultimately from the Crown. There are different types of title, including fee simple and fee tail, and there are different types of fee tail. However, you may have what you consider to be ultimate ownership of land, which is freehold and fee simple, but, in fact, that land is held from the Crown. The change from the feudal system is that that will no longer be the case. If someone has a freehold of a piece of land, they will own it themselves, not, as it were, of somebody else.

**Mr McQuillan:** How far up the Executive's priority list is the legislation? We heard that it might or might not be completed by the end of this mandate.

**Mr Paulin:** Our objective is for the Bill to get through all its stages by the end of this mandate. The paper has been with the Executive, and we expect a response soon. However, we cannot really say how soon.

**The Chairperson:** The Department wants to bring through a number of pieces of legislation in this mandate, and this is one of them.

**Mr Paulin:** It is indeed. Absolutely.

**Mr Cree:** I will go back to Dominic's point. Conveyancing is arguably the simplest part of the law. It is sorting out the bits and pieces. I would have thought that, through the freeholder issue, we should have taken the opportunity to deal with the whole matter of leases and so on, which are absolutely archaic. Instead of trailing behind law, as you have told us we have been doing, why can we not make an effort to try to get up to speed on it? It is a missed opportunity if we do not deal with the matter now.

**Mr Paulin:** You are talking about the ground rents. If we say that we will do the ground rents first, we will have to change it again when we do the general reform of the land law. So, we want to do it in this order.

**Mr Cree:** Why would you have to change it? I am talking about abolition.

**Ms McPolin:** You are talking about abolition of ground rents?

**Mr Cree:** Yes.

**Ms McPolin:** That is already provided for in the Ground Rents Act (Northern Ireland) 2001. It is a purely administrative procedure.

**Mr Cree:** I am aware of that. However, you have to trigger that. The UK Parliament was talking about making it a disposed-of period.

**Ms McPolin:** That was discussed at the time when the ground rents legislation was being brought forth, and it was decided that that scheme was fairer because, at the end of the day, there are people who hold ground rents and they are payable to them. So, it was a fairly straightforward administrative scheme whereby the rent payer could trigger that and put in their form. The rent owner could not object to that, and they got their compensation. It was determined that that was a fair process. If you abolish this with a mere stroke of a pen, you will discover that there are human rights aspects to it, because it is a property right. That is why the 2001 scheme is the way it is.

**Mr Cree:** With respect, I disagree with you on that. We all know how difficult it is to buy a house, but the people who are buying a house are paying for the house, which, in my opinion, includes the land that it is sitting on. They then have the rather doubtful privilege of paying a significant ground rent. It was a different story in the old days when it was a peppercorn rent, if demanded. People are paying substantial ground rents. They are struggling as it is, and they do not know about these things and probably do not have the capital to buy it out.

**Mr Paulin:** They should know about it. When they purchase a house, they should be advised that there is ground rent on it. Their solicitor will tell them that, so they will know when they buy a house.

**Mr Cree:** That is not the point I am making. Will they tell them that they can buy the ground rent out for x number of years?

**Mr Paulin:** I would be very surprised if they did not. Most people choose not to. I have a ground rent on my house, and I have not bought it out, and I would not.

**Mr Cree:** I suggest that your ground rent is nominal.

**Ms McPolin:** I redeemed mine, and it is nominal, for the simple reason that my house was leasehold, and it meant something. Even though it was nominal, I knew that it meant that it removed the lease from it. There tends to be long leases in Northern Ireland.

**Mr Cree:** They are probably easing us in the head lease anyway.

**Mr Paulin:** I agree very strongly with Mrs McPolin. If you say that you are going to abolish ground rents so that there are no ground rents, you have to establish what the edges of that will be. Does it apply to only domestic property? Are you abolishing the leaseholding of land entirely? Of course, nobody would want to do that. You are also taking away opportunities from people. People buy

ground rents. Some people buy 20 ground rents in a street, and a lot of them are charities. I think this Committee will have been lobbied by one of the organisations that do that. There are people who do that, and it is a legitimate form of business to buy —

**Mr Cree:** Sorry to interrupt you, but I am talking about the domestic sector. It is quite a different story with private housing.

**Mr Paulin:** Charities buy them for private housing as well.

**Mr Cree:** I think that is immoral.

**Mr Paulin:** They are a species of property.

**Mr Cree:** People who have paid significant sums of money when they bought their house have the rather dubious pleasure of paying substantial ground rents for a particular term. I do not think that that is right.

**Ms McPolin:** The other benefit is that you can no longer create ground rents. I understand the point you are making and that in the run-up to the introduction of the legislation a lot of property developers imposed larger ground rents. The benefit is that you can no longer create new ground rents.

**Mr Cree:** It is a finite resource.

**Mr Girvan:** I appreciate that there were two systems in operation. You have registration of deeds and land registry, both of which create problems. A guy could transfer the compulsory registration and get a folio number for areas. He probably went a long way to try to clear that. That is only in properties that have been purchased and transferred. The difficulty is that a large volume of properties are still under the registration of deeds. They might or might not be registered, and they are sitting in somebody's drawer, with a signed witness statement and everything else attached to it, but not registered anywhere. That is a difficulty that I have encountered, as, I am sure, have many people round the table. What mechanism is going to be put in place to ensure that all of those transfer over onto a folio land registry map? You cannot find out who owns a number of pieces of land, because they have never been registered anywhere and have not necessarily been transferred. They go from one member in a family to the next. They could disappear for generations before they have to be sold off in their entirety or in parts, for instance. Will there be a process that could clarify everything and ensure that all land and property is registered at one time, to make sure that it is all traceable? I appreciate that that is what all this is about. It is about finding out who owns what.

**Mr Paulin:** You are really talking about compulsory registration of land.

**Mr Girvan:** Yes, it was introduced in 1995, but there was a period when, if anything was being sold, it was compulsory to register it.

**Mr Paulin:** Where there is no transaction, the compulsory nature of it does not —

**Mr Girvan:** If no fee is paid, there is no need to register.

**Mr Paulin:** Obviously, registration of land is something that Land and Property Services has the expertise on, rather than my office or me, sadly. As I understand it, however, there is a process of compulsory registration that is working its way through the system.

**Mr Girvan:** It will take forever.

**Mr Paulin:** It may.

**Ms McPolin:** It is a process; that is the important thing. As Oswyn said, it is important to emphasise that this is substantive land law as opposed to the registration procedure, but they are linked, in that if you make the title easier to trace, that obviously feeds into the registration process.

**Mr Girvan:** So, the Marquess of Donegall will lose a lot of his land through this process, as will the Earl of Shaftesbury.

**Mr Paulin:** It is Lough Neagh, really.

**Mr Girvan:** Well, the Marquess of Donegall owns quite a bit of County Antrim farmland. If you go right back, the Marquess of Donegall would be —

**Mr McLaughlin:** He stole it, you mean.

**Mr Girvan:** No. *[Laughter.]*

**The Chairperson:** The problem is how he acquired it. This could open up an interesting area of work.

I know that you will be dealing with the Department, and we will deal with the Department directly. It would be helpful for us to get an anticipated timetable from the Department that includes an extended Committee Stage. The experience of the Committee in the previous mandate was that quite complex legislation arrived at a late stage and members were told by officials that they had hoped to have it earlier.

If we had a timetable for the legislation's journey from its current position through to its arrival in the Executive and to the end of the mandate, including an extended Committee Stage, we would be able to see at every stage where there may be potential impacts and we will be able to chase it up and ensure that it moves along at the pace that is intended. If you would communicate that to the Department, I am sure that the Committee staff will be in touch with the Department as well. That would be helpful for us.

**Mr Paulin:** We are happy to do that.

**The Chairperson:** OK. Thank you very much.

**Mr Paulin:** Thank you.