



Criminal Law
Codification
Advisory Committee

An Coiste Comhairleach um Chódú an Dlí Choiriúil

Annual Report 2010

(PRN. A11/0855)

Mr Alan Shatter T.D.
Minister for Justice, Equality and Defence
94 St Stephen's Green
Dublin 2

24 March 2011

Dear Minister,

In accordance with section 175 of the Criminal Justice Act 2006, I have the honour of submitting to you the annual report of the Criminal Law Codification Advisory Committee for the year ended 31 December 2010.

This is the fourth Annual Report of the Advisory Committee.

I am pleased to report that the Advisory Committee submitted a preliminary draft of the inaugural Criminal Code and Commentary to the former Minister for Justice and Law Reform, Dermot Ahern, in May 2010. The draft, which reflects the work done on the codification project during the 2007-2010 funding period, was designed to serve as a useful representation of how the inaugural Criminal Code might look and to provide a clear idea of the significant advantages associated with codification.

I would like to commend the contribution of the members of the Advisory Committee during the year and their commitment to the project. I would also like to express my appreciation and that of the Advisory Committee to the staff of the Codification Research Support Unit and the staff of your Department for their expertise and dedication.

We look forward to co-operating with your Department during the upcoming consultation on the codification project in 2011. Naturally, we are hopeful that the outcome of the consultation process will be positive and will enable the Advisory Committee to continue its work.

Yours sincerely,

(Professor) Finbarr McAuley
Chairman

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Introduction

The Criminal Law Codification Advisory Committee, which was established on 1 February 2007 under Part 14 of the Criminal Justice Act 2006, is the statutory body responsible for overseeing the development of a programme for the codification of the criminal law.

The Advisory Committee, which is chaired by Professor Finbarr McAuley, consists of representatives of the judiciary, the legal profession, legal academia, the Department of Justice and Law Reform, the Office of the Attorney General and the Office of the Director of Public Prosecutions.

Section 175 of the 2006 Act requires the Advisory Committee, no later than three months after the end of each calendar year, to submit to the Minister for Justice and Law Reform a report on the performance of its functions and activities during the preceding year.

Background to the codification project

Purpose of the project

On 1 February 2007, the then Tánaiste and Minister for Justice, Equality and Law Reform, Mr Michael McDowell, commenced the criminal law codification project by establishing the Criminal Law Codification Advisory Committee. The role of the Advisory Committee is to oversee the development of a programme for the codification of the criminal law.

The criminal law of Ireland is housed in a multiplicity of statutes and court judgments. The main purpose of the codification project is to create a clear, accessible statement of the criminal law in a single instrument.

The advantages of codification for lawyers and citizens include:

- Improved access to the law
- Greater clarity in the statement of the rules and principles of the criminal law
- Enhanced understanding of the law
- Improved consistency in the application of the law.

Origins of the codification project and establishment of the Expert Group on the Codification of the Criminal Law

The Irish codification project has its origins in the Programme for Government 2002 to 2007 in which a commitment was made to codify the criminal law into a single Crimes Act. This commitment was in line with other Government initiatives to modernise and bring clarity and enhanced accessibility to the law (as for example the Better Regulation Initiative and the Statute Law Revision Programme).

There was a high level of awareness that the history of criminal law codification, particularly in other common law jurisdictions, tells a mixed story of success and failure. While codification has been achieved in many jurisdictions such as Canada, Australia, New Zealand and the USA, it has been less successful in others. Jurisdictions nearer home, such as England and Scotland, have not yet succeeded in establishing criminal codes. Consequently, it was clear that before embarking on a codification project, a necessary first step was to conduct a thorough examination of the feasibility of such a course of action.

Accordingly, an Expert Group was established in January 2003 to consider possible approaches to codification and to advise on the scope and extent of such approaches, in particular identifying any areas where the Group considered codification may give rise to policy difficulties. The Expert Group

was chaired by Professor Finbarr McAuley and included criminal law representatives from the Department of Justice, Equality and Law Reform, the State legal services, practice and legal academia.

In its report, *Codifying the Criminal Law*, published in November 2004, the Expert Group outlined the overall structure and style of a criminal code and recommended that codification be undertaken on a phased basis using the various tools of restatement, consolidation and law reform in developing and maintaining the code.

The Expert Group emphasised the need for a long-term commitment to the codification project and recommended the establishment of a statutory Criminal Law Codification Advisory Committee to oversee the implementation of a programme of phased codification.

The Expert Group also recommended that the Advisory Committee's role should not cease with the creation of the code but that it should also have a role in ensuring the ongoing maintenance of the code.

The Group's recommendation for the establishment of a statutory Advisory Committee was accepted by the then Government. The Advisory Committee was established on a statutory basis by Part 14 of the Criminal Justice Act 2006.

Design of the Criminal Code

The Expert Group recommended that the criminal code should consist of two parts. The first part, the General Part, should contain the general principles of criminal liability. The second part, the Special Part, should contain the core criminal law offences.

The Group, in recommending a phased approach, proposed that the first code instrument should consist of a General Part and a Special Part comprising the four categories of offences which have been modernised in relatively recent enactments. These are the Criminal Justice (Theft and Fraud Offences) Act 2001; the Non-Fatal Offences against the Person Act 1997; the Criminal Justice (Public Order) Act 1994 and the Criminal Damage Act 1991.

Statutory Role of the Advisory Committee

Section 168 of the Criminal Justice Act 2006 provides that the function of the Criminal Law Codification Advisory Committee is to oversee the development of a programme for the codification of the criminal law.

More specific functions of the Advisory Committee are:

- (a) to plan, monitor and review the implementation of a programme for the development of a criminal code (“the code”),
- (b) to advise and assist the Minister for Justice and Law Reform on consolidation of areas of criminal law for inclusion in the code,
- (c) to advise and assist the Minister in relation to the amendment and future maintenance of the code,
- (d) to undertake or commission, or collaborate or assist in, research projects relating to the codification of criminal law,
- (e) to consult, on any particular matter which the Committee considers relevant, persons qualified to give opinions thereon,
- (f) to monitor, review and advise and assist the Minister on international developments in the codification of criminal law in so far as they may be relevant to the development of the code,
- (g) to advise and assist the Minister on any other related issues, including issues submitted by the Minister to the Committee for consideration.

Members of the Advisory Committee

Professor Finbarr McAuley, Chairman, Professor of Law, University College Dublin and Law Reform Commissioner

Mr Conal Boyce, Solicitor, Member of the Criminal Law Committee of the Law Society of Ireland

Ms Valerie Fallon, Department of Justice and Law Reform

Mr Matthew Feely, Office of the Attorney General

Ms Elizabeth Howlin, Office of the Director of Public Prosecutions

Cllr Dr Richard Humphreys SC

Mr Patrick MacEntee SC, QC

The Hon. Mr Justice Patrick J. McCarthy, Judge of the High Court

Professor Paul O'Connor, School of Law, University College, Dublin

Ms Mags O'Driscoll, Barrister-at-Law

Ms Lia O'Hegarty, Consultant on legislation and public affairs and member of the Human Rights Commission

Mr Caoimhín Ó hUiginn, former Assistant Secretary, Department of Justice, Equality and Law Reform

Contact Details

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Report of Activities in 2010

Advisory Committee Meetings

The Advisory Committee held 8 meetings in 2010.

Submission of preliminary draft of Criminal Code and Commentary to the Minister for Justice and Law Reform

At the end of May 2010, the Advisory Committee submitted a preliminary draft of the inaugural Criminal Code and Commentary, representing the work done on the codification project during the 2007-2010 funding period, to the then Minister for Justice and Law Reform, Mr Dermot Ahern. This document is intended to serve as a useful representation of how the inaugural Criminal Code might look and to provide a clear idea of the significant advantages associated with codification. It integrates all of the work done to date on the Draft Criminal Code, thus realising one of the principal aims of codification: bringing together the sources of law into a single instrument.

In line with the Advisory Committee's First Programme of Work 2008-2009, the draft contains six numbered Parts, as follows: Part 1: General Principles; Part 2: Homicide Offences; Part 3: Non-Fatal Offences Against the Person; Part 4: Theft and Fraud and Related Offences; Part 5: Criminal Damage Offences; Part 6: Public Order Offences.

(a) The General Part

Part 1, dealing with general principles, although not yet complete, illustrates how the codified general principles interact with the offences codified in Parts 3-6; and how this interaction contributes to greater certainty and consistency when interpreting and applying offence provisions.

(b) The Special Part

Part 2: Homicide Offences was included as an indicative heading only, to signal the fact that the Advisory Committee is mindful of the request of the former Minister for Justice, Equality and Law Reform, Mr Brian Lenihan, that homicide offences be included in the inaugural criminal code. Subject to a successful outcome of the upcoming review of the codification project by the Department, it is envisaged that the codification of homicide offences, and their eventual insertion into the Draft Criminal Code, will take place post review.

Parts 3-6 inclusive are complete in the sense that all of the targeted provisions of substantive law have been included; although it goes without saying that these Parts will be kept under review as work on the Draft Code progresses.

Research Support Unit

The Codification Research Support Unit, located in the School of Law in University College Dublin and funded by the Department of Justice and Law Reform, was established in 2007 to undertake research tasks assigned to it by the Advisory Committee. The first period of funding for the Research Support Unit was due to expire at the end of January 2010 but was extended by the Department until 31 May 2010. The funding extension facilitated the completion and refinement of the preliminary draft of the Criminal Code prior to its submission to the Minister by the Advisory Committee.

Review of the Codification Project

The Department of Justice and Law Reform commenced a first evaluation of the criminal law codification project in 2010 following the submission of the preliminary draft of the Code to the Minister. The Advisory Committee looks forward to co-operating with the Department during the upcoming consultation on the project in 2011.

Appendix: Part 14 of the Criminal Justice Act 2006

Section 167 *Criminal Law Codification Advisory Committee*

There stands established a body, which shall be known as An Coiste Comhairleach um Chódú an Dlí Choiriúil or, in the English language as, the Criminal Law Codification Advisory Committee and is in this Part referred to as the “Committee”, to perform the functions assigned to it by this Act.

Section 168 *Functions of Committee*

(1) The function of the Committee shall be to oversee the development of a programme for the codification of the criminal law.

(2) Without prejudice to the generality of *subsection (1)*, the Committee shall—

(a) plan, monitor and review the implementation of a programme for the development of a criminal code (“the code”),

(b) advise and assist the Minister on consolidation of areas of criminal law for inclusion in the code,

(c) advise and assist the Minister in relation to the amendment and future maintenance of the code,

(d) undertake or commission, or collaborate or assist in, research projects relating to the codification of criminal law,

(e) consult, on any particular matter which the Committee considers relevant, persons qualified to give opinions thereon,

(f) monitor, review and advise and assist the Minister on international developments in the codification of criminal law in so far as they may be relevant to the development of the code,

(g) advise and assist the Minister on any other related issues, including issues submitted by the Minister to the Committee for consideration.

Section 169 *Membership of Committee*

(1) The Committee shall consist of the following members, that is to say, a chairperson and such and so many ordinary members as may be appointed from time to time as occasion requires by the Minister.

(2) The members of the Committee shall be appointed by the Minister from among persons who in the opinion of the Minister have experience of, and expertise including Human Rights expertise in relation to, matters connected with the functions of the Committee.

Section 170 **Conditions of office of members of Committee**

(1) The Minister may at any time, for stated reasons, terminate a person's membership of the Committee.

(2) A member of the Committee may resign his or her membership of the Committee by notice in writing given to the Minister, and the resignation shall take effect on the day on which the Minister receives the notice.

(3) A member of the Committee shall, subject to the provisions of this Part, hold office upon such terms and conditions (including terms and conditions relating to remuneration and allowances for expenses) as the Minister, with the consent of the Minister for Finance, may from time to time determine.

Section 171 **Vacancies among members of Committee**

If a member of the Committee dies, resigns, or ceases to be a member of the Committee, the Minister may appoint a person to be a member of the Committee to fill the vacancy so occasioned in the same manner as the member of the Committee who occasioned the vacancy was appointed.

Section 172 **Meetings and procedure**

(1) The Committee shall hold such and so many meetings as may be necessary for the performance of its functions and the achievement of its programme of work and may make such arrangements for the conduct of its meetings and business (including the establishment of subcommittees and the fixing of a quorum for a meeting) as it considers appropriate.

(2) The Committee may act notwithstanding one or more vacancies among its members.

(3) Subject to the provisions of this Part, the Committee shall regulate its own procedure by rules or otherwise.

(4) At a meeting of the Committee—

(a) the chairperson of the Committee shall, if present, be the chairperson of the meeting, or

(b) if and so long as the chairperson of the Committee is not present, or if that office is vacant, the members of the Committee who are present shall choose one of their number to be chairperson of the meeting.

(5) A member of the Committee, other than the chairperson, who is unable to attend a meeting of the Committee, may nominate a deputy to attend in his or her place.

Section 173 **Programme of Work of Committee.**

(1) The Minister shall, as soon as may be after the commencement of this Part and thereafter, at least once in every 2 years, after consultation with the Committee, determine a programme of work to be undertaken by the Committee over the ensuing specified period.

(2) Notwithstanding *subsection (1)*, the Minister may, from time to time, amend the programme of work, including the period to which the programme relates.

Section 174 **Funding of Committee.**

For the purposes of expenditure by the Committee in the performance of its functions, the Minister may in each financial year, with the consent of the Minister for Finance, advance to the Committee out of moneys provided by the Oireachtas such sum or sums as the Minister, after consultation with the Committee, may determine.

Section 175 **Report of Committee.**

(1) The Committee shall, not later than 3 months after the end of each calendar year, prepare and submit to the Minister a report on the performance of its functions and activities during the preceding year and the Minister shall cause copies of the report to be laid before each House of the Oireachtas within a period of 2 months from the receipt of the report.

(2) A report under *subsection (1)* shall be in such form as the Minister may approve and shall include information in such form and regarding such matters as the Minister may from time to time direct.

(3) The Committee shall supply to the Minister such information regarding the performance of its functions as the Minister may from time to time require.