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# Facsimile Cover Sheet

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**Date:** 12/01/93

**Pages including this  
cover page:** 9

**Comments:** Please find attached what I hope is the final research specification for the RoS study which I outlined to you this morning. I have spoken with and faxed a copy to DPP staff for their approval. If you could confirm your acceptance of section 4 I can proceed to tender stage.

**We do not plan to have members of the Judiciary interviewed but may do so with senior staff in Belfast. At the moment however your only commitment is to access to relevant court records. We plan to use QUB Law Faculty but I will keep you briefed as the project moves forward. Top copy will follow in the post.**

The 1988 Order was phased in over a period of 2 months. Articles 2 and 4 came into operation on 21 November 1988. The remainder of the Order came into operation on 14 December 1988. In its complete form, the 1988 Order has therefore been in operation for approximately 5 years.



REVIEW OF THE OPERATION OF  
THE "RIGHT OF SILENCE" LEGISLATION:  
RESEARCH SPECIFICATION

1. BACKGROUND TO THE REVIEW

The Criminal Evidence (Northern Ireland) Order, hereinafter referred to as the '1988 Order', was made on 14 November 1988. The 1988 Order amends the law relating to evidence in criminal proceedings in Northern Ireland. In particular:

- Article 3 specifies circumstances in which inferences may be drawn from an accused's failure to mention particular facts when questioned about or charged with an offence, which are later relied upon in defence.
- Under Article 4 an accused person may be called upon by the court to give evidence at his trial and certain inferences may be drawn if he refuses to do so.
- Article 5 authorises inferences to be drawn from an accused person's failure or refusal to account for objects, substances or marks in certain circumstances.
- Article 6 allows inferences to be drawn from an accused person's presence at a place about the time when the offence in respect of which he was arrested was committed, if specified conditions are satisfied.

The 1988 Order was phased in over a period of 2 months. Articles 2 and 4 came into operation on 21 November 1988. The remainder of the Order came into operation on 14 December 1988. In its complete form, the 1988 Order has therefore been in operation for approximately 5 years.



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**2. RESEARCH AIMS CONSIDERATIONS**

The Northern Ireland Office now requires to be apprised of the operation and effect of the '1988 Order' since its inception. The review has the following broad aims:

i. To describe the operation of the 1988 Order in Crown Court proceedings.

ii. To examine the effects of Articles 3, 4, 5 and 6 of the 1988 Order.

**3. RESEARCH OBJECTIVES**

Within the context of the overall project aims, the specific objectives will be:

i. To provide a legal analysis of the reported and unreported judgements which reflect upon the operation and effect of the 1988 Order.

ii. To quantify the operation and effect of the 1988 Order in the Crown Court both in relation to scheduled and non-scheduled cases.

iii. To assess the views of key practitioners in the criminal justice system.

iv. To analyse and assess the importance of the 1988 Order upon the operation of the criminal justice system generally.

An analysis of relevant legal judgements will constitute a primary focus of the project. The Office of the Director of



#### 4. METHODOLOGICAL CONSIDERATIONS

It will be necessary to employ a range of methodologies involving the study of relevant literature; the legal analysis of significant court judgements; the collation of readily available statistical information and access to information which has not previously been analysed; and interviews with key participants.

The Office of the Director of Public Prosecutions will assist, in providing and arranging access to relevant data, information, and staff. The Northern Ireland Court Service will assist in providing access to relevant court records. The Northern Ireland Office will assist in obtaining access to key individuals. It will also provide details of its own internal research as well as a Home Office review of relevant research.

#### Relevant Literature

This will involve familiarisation with:

- relevant legal text books and articles published in local, National and International legal periodicals on the operation of the 1988 Order;
- literature in regard to analogous provisions maintained in other jurisdictions.

#### The Legal Analysis

An analysis of relevant legal judgements will constitute a primary focus of the project. The Office of the Director of



Public Prosecutions will be the main source of the required information. Two aspects should be addressed.

- N.I. Legal Judgements

The Interviews

An analysis of reported and unreported judgements of the 1988 Order made in Northern Ireland. Crown Court, Court of Appeal, and House of Lords judgements will be made available by the Office of the DPP.

- Court Records

An analysis of a sample of relevant cases at court which are illustrative of the operation and effect of the Order. The Northern Ireland Court Service will assist in providing access to relevant records.

In undertaking these analyses, it will be essential to assess the operation and impact of the legislation against the legislative objectives of the 1988 Order as defined in Hansard.

**The Statistical Analyses**

Statistical analyses on the use of silence prior to appearance in court have already been carried out by the Northern Ireland Office. Results will be made available to the researchers for inclusion in the study.

A routine monitoring system of relevant cases maintained by the DPP's office will also be made available to the researchers. This will allow further statistical analysis of



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the operation of the 1988 Order for both scheduled and non-scheduled cases. This will facilitate research at the court stage of proceedings.

**The Interviews**

Views of key practitioners in the criminal justice system should be canvassed. Interviews should include a section relating to working practices. Interviewees may include both prosecution and defence views and will be agreed with the research sponsors. The Northern Ireland Office will assist as necessary in arranging interviews.

April 1994 - Completion of Statistical Analysis.

May 1994 - Report on interview with participants in criminal justice system.

June 1994 - Presentation of draft, then final report to the Steering Group.



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**5. SUGGESTED TIMETABLE**

A staged approach to the study and production of analyses would be appropriate. A six month study period is suggested.

January 1994 Award of contract. Project commences by familiarisation with literature.

March 1994 Submission of legal analysis in confidence, on reported and unreported cases. Public cases will be considered by the Steering Group, subject to contractual terms and conditions (if any).

April 1994 Completion of Statistical Analyses.

May 1994 Report on interview with participants in criminal justice system.

June 1994 Presentation of draft, then final report to the Steering Group.

**Payment**

One third of the agreed fee will be paid when the contract is signed. The remainder will be paid in stages to be agreed between the sponsors and contractors.



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**6. TERMS AND CONDITIONS**

Standard Departmental terms and conditions for the award of research contracts are attached at Annex A. In relation to this particular contract, certain issues and adjustments are important.

**Confidentiality**

The primary purpose of this project is to inform government, in confidence, about the operation and impact of the 1988 Order. Publication will be considered by the Steering Group, subject to contractual terms and conditions (Para. 2.35 - 2.37 Annex A). There may be an opportunity to publish factual information gathered in the course of the research.

**Project management**

A Steering Group will be established to oversee the management of the project. The Group will be chaired by the Northern Ireland Office and will also include representatives of the DPP and the research team. It will meet at regular intervals throughout the study.

**Payment**

One third of the agreed fee will be paid when the contract is signed. The remainder will be paid in stages to be agreed between the sponsors and contractors.



**7. CONTRACTOR REQUIREMENTS**

The successful researcher(s) will be required to demonstrate high levels of suitable skill, professionalism and objectivity. Specifically, they will be required to:

- outline proposals, methodology and timetable for completing the project to the initial meeting of the Steering Group;
- meet with the project Steering Group on a regular basis to report on progress;
- conduct the research in such a manner so that the different objectives are achieved as required;
- submit a draft report and presentation of findings made to the Steering Group for discussion and comment;
- submit the final report on the operation of the 1988 Order to the Steering Group;
- have overall responsibility for the co-ordination, writing, and production of the draft and final report

**10. SUBMISSION OF TENDER**

A written tender is invited. It should include proposals and methodology, including timetable, quality control, full CV's of the research team demonstrating their suitability to undertake this work, referees and detailed costings. Full details are contained in Annex A.