

SOURCES OF IRISH LAW

Legislation

Legislation is produced by the Oireachtas. This body consists of the President, Dail Eireann and Seanad Eireann.

Superior Legislation

These are the Acts of the Oireachtas.(also referred to as statutes). The initial proposal is known as a Bill.

The Bill will be divided into different sections and subsections. The Bill may introduce a new law, amend or repeal existing law, consolidate or codify existing law.

While the initial proposal for a bill may come from a particular Government Minister, the Bill is actually drafted by legal experts – Parliamentary Counsel to the Government.

The Legislative Process

- First Reading
- Second Reading
- Committee Stage
- Report Stage
- Final Reading
- Present to President for Signature

If the Dail and Seanad cannot agree, Dail Eireann may pass a resolution declaring that the bill has been passed by both houses. (Article 23 Constitution)

Bills to amend the Constitution

Such bills must be initiated in Dail Eireann. Instead of being sent to the President for approval, the bill must be approved by the people in a referendum. (Article 46.2)

Money Bills

If a bill is certified as a money bill by the Ceann Comhairle, it may be considered by Seanad Eireann, but not amended or rejected. (Article 21)

Legislation and the President

Under Article 26, the President, after consultation with the Council of State, may refer a bill to the Supreme Court for a decision as to whether it is compatible with the Constitution. This has occurred on fourteen occasions. (For example the Adoption Bill (no.2) 1987)

Under Article 27 the President may decline to sign a Bill if it concerns a matter of national importance and in her opinion the will of the people should be sought. This will happen if there is a petition signed by a majority of the Seanad and at least a third of the Dail. The will of the people can be ascertained through a referendum or through dissolving the Dail and holding a general election. This provision has not yet been used.

Legislation and the Courts

Under the Constitution, the High Court and Supreme Court can declare statutes unconstitutional. There is a presumption of constitutionality in relation to Acts passed since the enactment of the constitution. (Article 35.2)

Legislation in Practice

In reality the Government exercises almost complete control over the legislative process. This is due to the Governments control over the Dail (through holding the majority of seats) and its influence over the Seanad (the Taoiseach nominates 11 of the 60 seats).

Backbench TDs lack independence. How they vote in relation to particular pieces of legislation is controlled by the party 'Whips'.

The system is very much adversarial in nature – both government and opposition are concerned with being seen to score points against the opposition – which does not necessarily produce good legislation.

Legislation is proposed for a variety of reasons – bargains made with coalition partners or social partners, lobbying by special interest groups, pressure or direction from the EU, recommendations from the Law Reform Commission or a Tribunal of Inquiry or a response to a particular incident or situation.

Examples

Electronic Commerce Act 2000

National Management Agency Bill 2009

Twenty Eighth Amendment to the Constitution (Treaty Of Lisbon) Bill 2009

Subordinate Legislation

Subordinate legislation is also known as delegated legislation. The power to make law may be delegated, by statute, to another body.

An important example of this is the European Communities Act 1972, which empowers Ministers to implement EU Directives through the use of delegated legislation.

Executive Subordinate Legislation

The Government may pass certain measures by delegated legislation e.g. Misuse of Drugs Act 1977.

Statutory Orders, Instruments, Regulations

Ministers are given specific powers under statute, e.g. Road Traffic Act 1961.

Municipal Subordinate Legislation

Under the Local Government Act 2001, local authorities are empowered to make bye- laws.

Autonomous Subordinate Legislation

Some private bodies are given limited powers, by statute, to make regulations, e.g. Solicitors Act 1954.

Control of Subordinate Legislation

Subordinate legislation may be controlled by the Oireachtas. Generally proposals must be laid before the Houses of the Oireachtas and may be annulled by resolution of either house.

The courts may, in certain circumstances, declare subordinate legislation invalid. For example if a Minister passes a piece of delegated legislation which is outside the powers granted in the Act, this will be declared invalid on the grounds of 'ultra vires'.

Significance of Delegated Legislation

The importance of delegated legislation can be clear given the amount which is passed each year.

1990	38 Acts	347 Statutory Instruments
1999	35 Acts	465 Statutory Instruments

Criticisms of Delegated Legislation

Volume – there is so much of this type of law it is difficult to know what the law actually is.

Control – in reality it is difficult for the Oireachtas or the Courts to effectively control delegated legislation.

Examples

Data Protection (Registration) Regulations 2001 (SI 2001/2)
European Communities (Unfair Terms in Consumer Contracts) Regulations 1995

Bunreacht na hEireann – The Irish Constitution 1937

The Constitution sets out the most fundamental rules of Irish Law and is the basis of Irish Law.

1. It describes the basic structure, function and powers of government.
2. It also describes the legal relationship between the individual and the state through the guarantee of individual rights.

Examples

A34 – Court Structure
A12/13 – The Office of the President
A41 – Rights relating to the Family
A42 – Rights relating to Education

The Constitution has a higher status than other forms of Law. If there is a conflict between the Constitution and another source of Law (e.g. a statute) then the **Constitution will prevail.**

Article 26

The President has the power to refer a bill to the Supreme Court to decide whether the bill is unconstitutional.
An Act may be referred to the High Court (on appeal to Supreme Court) by any party affected by it (locus standi).

Cases

Attorney General v X (1992)
In re a Ward of Court (1995)
Ryan v Attorney General (1965)
King v Attorney General (1981)
MR V TR (2008)
Zappone and Gilligan v Ireland (pending)

Amendments to the Constitution

Any change to the Constitution requires a majority vote in a referendum

Examples

Third Amendment

In 1972 Article 29.4 was amended to allow Ireland to join the EU.

Eighth Amendment

In 1983 Article 40.3.3 was added, relating to the right to life of the unborn child.

Fifteenth Amendment

In 1996 Article 41 was amended to allow for the introduction of divorce.

European Union Law

Ireland joined the European Economic Community (now referred to as the EU) in 1973 following a referendum and the passing of the European Communities Act 1972.

EU Law now applies in Ireland. There are several categories of EU Law.

Treaties

These are agreements signed by the member states and contain the most important rules governing the EU. The treaties are referred to as primary law.

Examples

Treaty of Rome

Treaty of Amsterdam

Treaty of Nice

Secondary Law

The treaties set up institutions with the power to make different types of secondary law.

The Institutions

The Council of Ministers

This body consists of a Government Minister from each member state. It makes the final decision on new law.

The Commission

There is now one Commissioner from each member state, each with a specific area of responsibility (portfolio). Ireland's Commissioner is Maire G Quinn.

The Commission proposes new legislation.

The European Parliament

Each member state is allocated a number of seats in the Parliament and members are elected directly by the voters in each member state. The Parliament now has a more active role in the passing of new laws.

The institutions can make the following types of EU Law

Regulations

These rules take effect immediately throughout the EU.

Regulation 68/2004 – lists objects which may not be carried on aircraft.

Directives

This is an instruction to a member state to change its law within a specified time limit. Failure to do so can mean that the directive becomes directly effective.

Directive 2003/20 – new rules relating to the use of safety belts and child restraint systems in motor vehicles.

Recommendations and Opinions

These do not have binding force.

The European Court of Justice

This is the court of the EU. There is a judge from each member state and they are assisted by Advocates General. The court can hear two categories of case.

Direct Actions

In this case a member state may be brought before the court by the Commission
Commission v France (2005)

A member state may also take another member state before the court

France v UK

Reference for a Preliminary Ruling under Article 234

A court in a member state may refer a question to the ECJ where it believes that it is necessary in order to reach a decision in the case.

Van Costa v ENEL (1964)

Gend en Loos (1963)

Effect of EU law on Irish Law

Membership of the EU has had a significant impact on Irish Law. It restricts the freedom of the Oireachtas to pass whatever law it chooses. However it must be remembered that the process of law making in the EU is one in which Ireland fully participates through its membership of the institutions.

Sovereignty refers to the state's power to law. It can be argued that EU membership restricts sovereignty.

Judicial Precedent

This source of law is also known as case law or the Doctrine of Binding Precedent. This is judge-made law in the form of binding precedent.

The courts are arranged in a hierarchy so that the lower courts must follow the decisions of the higher courts. The Supreme Court is the highest court in the Irish legal system however it is now bound by decisions of the ECJ.

Binding Precedent

This refers to a decision that must be followed. The part of the decision which is binding is the *ratio decidendi* – reason for the decision. Other parts of the decision not directly related to the reason for the decision, are referred to as *Obiter Dicta* – other things said.

Persuasive Precedent

This is not a binding precedent but it may provide useful guidance. It may be a decision of a lower court, an *obiter dictum* or a decision from another jurisdiction.

Distinguishing

This is where the court decides that while the present case is similar to the previous case, there are material differences, therefore the previous case is not followed.

R v Allison (2000)
DPP v Bignall (1998)

Over-ruling

Generally higher courts can over-rule the decisions of lower courts.

Supreme Court

Since 1965 the Irish Supreme Court can over-rule its own previous decisions

In AG v Ryans Car Hire [1965], Justice Kingsmill Moore stated that while the SC accepted the need to follow precedent to avoid uncertainty in the law, where the court is clearly of the opinion that an earlier decision was erroneous, it should be at liberty to refuse to follow it.

Law Reports

In order for the system of precedent to operate there must be a system in place for the reporting of decided cases. In the past this was done through published volumes of law reports. However now cases can be accessed through the internet.

IR – Irish Reports

ILRM – Irish Law Reports Monthly

AllER – All England Reports

LEXIS – online law reports

www.irishlaw.org – has links to online law reports

Cases

EMI and others v Eircom (March 2010)

EMI and others v UPC (October 2010)