



LAW REFORM
COMMISSION/COIMISIÚN UM
ATHCHÓIRIÚ AN DLÍ

REPORT

STATUTE LAW RESTATEMENT

[LRC 91 – 2008]



LAW REFORM
COMMISSION/COIMISIÚN UM
ATHCHÓIRIÚ AN DLÍ

REPORT

STATUTE LAW RESTATEMENT

(LRC 91 - 2008)

© COPYRIGHT
Law Reform Commission 2008

FIRST PUBLISHED JULY 2008

ISSN 1393-3132

LAW REFORM COMMISSION'S ROLE

The Law Reform Commission is an independent statutory body established by the *Law Reform Commission Act 1975*. The Commission's principal role is to keep the law under review and to make proposals for reform, in particular by recommending the enactment of legislation to clarify and modernize the law. Since it was established, the Commission has published over 130 documents containing proposals for law reform and these are all available at www.lawreform.ie. Most of these proposals have led to reforming legislation.

The Commission's role is carried out primarily under a Programme of Law Reform. Its *Third Programme of Law Reform 2008-2014* was prepared by the Commission following broad consultation and discussion. In accordance with the 1975 Act, it was approved by the Government in December 2007 and placed before both Houses of the Oireachtas. The Commission also works on specific matters referred to it by the Attorney General under the 1975 Act. Since 2006, the Commission's role includes two other areas of activity, Statute Law Restatement and the Legislation Directory.

Statute Law Restatement involves the administrative consolidation of all amendments to an Act into a single text, making legislation more accessible. Under the *Statute Law (Restatement) Act 2002*, where this text is certified by the Attorney General it can be relied on as evidence of the law in question. The Legislation Directory - previously called the Chronological Tables of the Statutes - is a searchable annotated guide to legislative changes. After the Commission took over responsibility for this important resource, it decided to change the name to Legislation Directory to indicate its function more clearly.

MEMBERSHIP

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

The Commissioners at present are:

President:

The Hon Mrs Justice Catherine McGuinness
Former Judge of the Supreme Court

Full-time Commissioner:

Patricia T Rickard-Clarke, Solicitor

Part-time Commissioner:

Professor Finbarr McAuley

Part-time Commissioner:

Marian Shanley, Solicitor

Part-time Commissioner:

Donal O'Donnell, Senior Counsel

LAW REFORM RESEARCH STAFF

Director of Research:

Raymond Byrne BCL, LLM, (NUI) Barrister-at-Law

Legal Researchers:

Áine Clancy BCL, LLM (NUI)

Kate Dineen LLB, LLM (Cantab)

Philip Flaherty BCL, LLM (NUI), Diop sa Gh (NUI)

Eleanor Leane LLB, LLM (NUI)

Gemma Ní Chaoimh BCL, LLM (NUI)

Verona Ní Dhrisceoil BCL (Díí agus Gaeilge), LLM (NUI)

Jane O'Grady BCL, LLB (NUI), LPC (College of Law)

Charles O'Mahony BA, LLB (NUI), LLM (Lond), LLM (NUI)

Nicola White LLB, LLM (Dub) Attorney-at-Law (NY)

STATUTE LAW RESTATEMENT

Project Manager for Restatement:

Alma Clissmann, BA (Mod), LLB, Dip Eur Law (Bruges), Solicitor

Legal Researchers:

John P. Byrne BCL, LLM (NUI), Barrister-at-Law

Kristian Douglas BA (Law and History), LLM (TCD)

Elizabeth Fitzgerald LLB, M.Sc. (Criminology & Criminal Justice),
Barrister-at-Law

LEGISLATION DIRECTORY

Project Manager for Legislation Directory:

Heather Mahon LLB (ling. Ger.), M.Litt, Barrister-at-Law

Legal Researchers:

Margaret Devaney LLB

Eóin McManus BA, LLB (NUI), LLM (Lond)

ADMINISTRATION STAFF

Head of Administration and Development:

John Glennon

Higher Executive Officer:

Alan Heade

Executive Officers:

Simon Fallon

Emma Kenny

Darina Moran

Peter Trainor

Legal Information Manager:

Conor Kennedy BA, H Dip LIS

Cataloguer:

Eithne Boland BA (Hons), HDip Ed, HDip LIS

Clerical Officers:

Ann Browne

Ann Byrne

Liam Dargan

Sabrina Kelly

PRINCIPAL LEGAL RESEARCHERS FOR THIS REPORT

John P. Byrne BCL, LLM (NUI), Barrister-at-Law

Kristian Douglas BA (Law and History), LLM (TCD)

John Kenny LLB, LLM (Cape Town), Barrister-at-Law

Eimear Long LLB, PhD (TCD), Barrister-at-Law

CONTACT DETAILS

Further information can be obtained from:

Head of Administration and Development
Law Reform Commission
35-39 Shelbourne Road
Ballsbridge
Dublin 4

Telephone:

+353 1 637 7600

Fax:

+353 1 637 7601

Email:

info@lawreform.ie

Website:

www.lawreform.ie

ACKNOWLEDGEMENTS

The Commission would like to thank the following people who provided valuable assistance in the preparation of the Report:

Noreen Banim, Bills Office, Houses of the Oireachtas

William Beausang, Department of Finance

Leo Bollins, eDemocracy Unit, Houses of the Oireachtas

Hugh Boyle, Department of Justice, Equality and Law Reform

Dick Caffrey, Bills Office, Houses of the Oireachtas

Cladonia Ltd.

Bill Cox, Department of Enterprise, Trade and Employment

Frank Daly, Chairman, Revenue Commissioners

Michael Dreelan, Department of Transport

Eugene Forde, Department of Enterprise, Trade and Employment

Paul Gallagher SC, Attorney General

Kevin Gleeson, PA Consulting

Diarmuid Hallinan, Office of the Data Protection Commissioner

Aileen Harrington, Department of Justice, Equality and Law Reform

Richard Humphreys, Barrister-at-Law and Consultant to the Pre-Independence Project, Office of the Attorney General

Brian Hunt, Mason Hayes & Curran Solicitors

Liam Kelly, CMOD, Department of Finance

Michael Larkin, Government Supplies Agency

Dermot McCarthy, Department of the Taoiseach

Colonel Tony McCourt, Defence Forces

John Marks, Office of Public Sector Information, London

Mark Martin, National University of Ireland, Maynooth

Gerry Matthews, Office of the Attorney General

Kieran Mooney, Office of the Parliamentary Counsel to the Government, Office of the Attorney General

Deirbhle Murphy, Chief Parliamentary Counsel, Office of the Attorney General

Deaglán Ó Briain, Department of Community, Rural and Gaeltacht Affairs

Evelyn O'Connor, Department of the Environment, Heritage and Local Government

Tadhg O'Leary, CMOD, Department of Finance

Sean O'Shea, Revenue Commissioners

Alan Pawsey, Office of Public Sector Information, London

Randall Plunkett, Legal Services Division, Department of Agriculture, Food and Rural Development

Propylon Ltd.

Evelyn Robinson, Office of the Parliamentary Counsel to the Government,
Office of the Attorney General

Barry Sheehan, Solicitor, Barry Sheehan Solicitors

Lesley Torlin, Office of Public Sector Information, London

The Commission would also like to acknowledge and thank all those who submitted suggestions of candidate Acts for inclusion in the Programme of Statute Law Restatement:

Full responsibility for this publication lies with the Commission.

TABLE OF CONTENTS

CHAPTER 1	STATUTE LAW RESTATEMENT IN CONTEXT	5
A	Introduction	5
B	The context of restatement in the Irish legislative framework	5
	(1) Background	5
	(2) The Statute Law (Restatement) Act 2002 and Better Regulation	7
	(3) The Irish Statute Book and pre-1922 legislation	9
	(4) The Irish Statute Book and the role of restatement	10
	(5) Principle of access to legislation	12
	(6) Current availability of legislation	14
	(7) The content of restatements	16
	(8) The Legislation Directory	18
	(9) Contribution of the Statute Law Restatement Programme to the Legislation Directory	19
C	The difficulties facing restatement in Ireland	21
	(1) The difficulty of finding pre-1922 legislation: The Explosives Act 1875 and the Explosives Substances Act 1883	21
	(2) The difficulties presented by the growth of amending Acts and “Miscellaneous Provisions” Acts: The Irish Medicines Board (Miscellaneous Provisions) Act 2006	24
	(3) Finding the text of an Act as amended: The Freedom of Information Act 1997	25
	(4) The difficulties of incorporating statutory instruments	26
D	Benefits of restatement	29
	(1) Increased transparency of legislation	29
	(2) Benefits to the economy	29
	(3) Benefits to the legislative process	30
	(4) Benefits to the legal system	31
	(5) Development of law reform – codification, consolidation and restatement	32
	(6) eLegislation	34
	(7) The future of restatement	38

CHAPTER 2	THE PROCESS OF RESTATEMENT	39
A	Introduction	39
B	Process	39
	(1) Introduction to terminology - principal Act, group of Acts and suite of Acts	40
	(2) Reliable data	40
	(3) XML data	41
	(4) Identifying affecting provisions	43
	(5) “As amended”	44
	(6) Commencement dates	44
	(7) Drafting a restatement	45
	(8) Quality control	45
	(9) Double blind	46
	(10)Peer review	46
	(11)Commission sign-off	46
	(12)Transmission to the Office of the Attorney General	47
	(13)Certification	47
	(14)Online publication before certification	47
C	Format of restatements	48
	(1) Version 1	48
	(2) Version 2	48
	(3) Version 3	50
	(4) Modified version 3	50
	(5) Groups of Acts	54
	(6) Suites of Acts	55
	(7) Structure	55
	(8) Annotations	57
D	Publication	66
	(1) Printed and electronic versions	67
	(2) Updating restatements	69
	(3) Pre-certified restatements	71
CHAPTER 3	THE TECHNOLOGY OF RESTATEMENT	73
A	Introduction	73
B	The repository of data	73
	(1) Uniformity of the Data	73
	(2) Database	76
	(3) Accuracy of the data and corruption of data	77
C	Editing the data and output	80
	(1) Editing Tool	80
	(2) Tailoring the editing tool	81

	(3) Functionality	81
	(4) Web front end	81
	(5) Future proofing the project	82
D	Law Reform Commission Technology Developments	83
	(1) Repository of Data	83
E	Public procurement	85
	(2) Website	87
	(3) Maintaining the data	87
F	Quality control	88
	(1) Document comparison	88
	(2) Project management	89
G	Technology and eLegislation	90
CHAPTER 4	PROGRAMME OF RESTATEMENT	91
A	Introduction	91
B	The Selection Process	91
	(1) The candidates for restatement and prioritisation criteria	91
	(2) Submissions on certain candidate Acts	93
C	Restating suites of Acts	94
D	Survey of the Irish Statute Book since 1922	95
E	Restatement of pre-1922 statutes	97
	(1) Policy of replacement	97
	(2) Technical considerations	101
F	Restatements underway	102
	(1) Restatements already completed by the Commission	102
	(2) Revision and Publication of four Restatements already certified	103
G	First Programme of Restatement	103
	(1) Prepare XML versions of restatements already completed by the Commission, for certification and publication:	104
	(2) Update four restatements previously certified, and prepare for certification and publication:	104
	(3) Acts from the List of Candidate Legislation, together with related legislation:	104
	(4) Employment Leave Legislation	106
	(5) Proceeds of Crime and Criminal Assets Bureau	106
	(6) Equality Legislation	106
	(7) Criminal Procedure	106
	(8) Future Review	107

	H User group	107
CHAPTER 5	SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS	109
	A Introduction	109
	B Statute law in context	109
	C The process of restatement	111
	D The technology of restatement	112
	E Programme of restatement	113
APPENDIX A	STATUTE REVISION ACT, BRITISH COLUMBIA	115
APPENDIX B	EXPANDED LIST OF CANDIDATE LEGISLATION FOR RESTATEMENT	121
APPENDIX C	RESTATEMENTS OF DATA PROTECTION ACTS 1988 AND 2003	131
APPENDIX D	RESTATEMENTS OF PREVENTION OF CORRUPTION ACTS 1889-2005	219

TABLE OF LEGISLATION

Adaptation of Enactments Act 1922	1922, No. 2	Irl
Adoptive Leave (Amendment) Act 2005	2005, No. 25	Irl
Adoptive Leave Act 1995	1995, No. 2	Irl
Air Force (Application of Enactments) (No.2) Order, 1918	1918, SRO No. 548	UK
An Act respecting the Compilation of Laws and Regulations 2007 Bill 7	2007, Bill 7	Quebec
Animals Act 1985	1985, No. 11	Irl
Appropriation (1912-3) Act 1913	1913, c. 27	UK
Bail Act 1997	1997, No. 16	Irl
Bankruptcy Act 1988	1988, No. 27	Irl
Capital Acquisitions Tax Consolidation Act 2003	2003, No. 1	Irl
Carer's Leave Act 2001	2001, No. 19	Irl
Carriage of Dangerous Goods by Road Act 1998	1998, No. 43	Irl
Children Act 2001	2001, No. 24	Irl
Civil Liability (Amendment) Act 1964	1964, No. 17	Irl
Civil Liability (Amendment) Act 1996	1996, No. 42	Irl
Civil Liability (Assessment of Hearing Injury) Act 1998	1998, No. 12	Irl
Civil Liability Act 1961	1961, No. 41	Irl
Civil Liability and Courts Act 2004	2004, No. 31	Irl
Community Rural and Gaelteacht Affairs (Miscellaneous Provisions) Act 2007	2007, No. 32	Irl
Competition (Amendment) Act 2006	2006, No. 4	Irl
Constitution (Consequential Provisions) Act 1937	1937, No. 40	Irl
Consumer Credit Act 1995	1995, No. 24	Irl
Consumer Protection Act 2007	2007, No. 19	Irl
Continuing Consolidation of Statutes Act 2002	2002, Chapter 41	Terr. of Yukon

Control of Clinical Trials Act 1987	1987, No. 28	Irl
Criminal Assets Bureau Act 1996	1996, No. 31	Irl
Criminal Evidence Act 1992	1992, No. 12	Irl
Criminal Justice (Administration) Act 1924	1924, No. 44	Irl
Criminal Justice (Forensic Evidence) Act 1990	1990, No. 34	Irl
Criminal Justice (Public Order) Act 1994	1994, No. 2	Irl
Criminal Justice (Safety of United Nations Workers) Act 2000	2000, No. 16	Irl
Criminal Justice Act 1982	1982, c. 48	UK
Criminal Justice Act 1994	1994, No. 15	Irl
Criminal Justice Act 1999	1999, No. 10	Irl
Criminal Justice Act 2006	2006, No. 26	Irl
Criminal Justice Act 2007	2007, No. 29	Irl
Criminal Law (Insanity) Act 2006	2006, No. 11	Irl
Criminal Law (Jurisdiction) Act 1976	1976, No. 14	Irl
Criminal Law Act 1997	1997, No. 14	Irl
Criminal Procedure Act 1967	1967, No. 12	Irl
Customs Consolidation Act 1876	1876, c. 36	UK
Dangerous Substances Act 1972	1972, No. 10	Irl
Data Protection Act 1988	1988, No. 25	Irl
Defence (Amendment) Act 1998	1998, No. 31	Irl
Defence Act 1954	1954, No. 18	Irl
Destructive Insects and Pests (Consolidation) Act 1958	1958, No. 11	Irl
Electoral (Amendment) Act 2005	2005, No. 16	
Electronic Commerce Act 2000	2000, No. 27	Irl
Employment Equality Act 1998	1998, No. 21	Irl
Equal Status Act 2000	2000, No. 8	Irl
Equality Act 2004	2004, No. 24	Irl
Ethics in Public Office Act 1995	1995, No. 22	Irl

Euro Changeover (Amounts) Act 2001	2001, No. 16	Irl
European Communities (Access to Information on the Environment) Regulations 2007	2007, S.I. No. 133	Irl
European Communities (Occurrence Reporting in Civil Aviation) Regulations 2007	2007, S.I. No. 285	Irl
European Communities Act 1972	1972, No. 27	Irl
Explosive Substances Act 1883	1883, c. 3	UK
Explosives Act 1875	1875, c. 17	UK
Extradition Act 1965	1965, No. 17	Irl
Finance Act 2006	2006, No. 6	Irl
Fire Services Act 1981	1981, No. 30	Irl
Firearms (Firearms Certificates for Non-Residents) Act 2000	2000, No. 20	Irl
Firearms (Proofing) Act 1968	1968, No. 20	Irl
Firearms (Temporary Provisions) Act 1998	1998, No. 32	Irl
Firearms Act 1920	1920, c. 43	Irl
Firearms Act 1925	1925, No. 17	Irl
Firearms Act 1964	1964, No. 1	Irl
Firearms and Offensive Weapons Act 1990	1990, No. 12	Irl
Fisheries (Consolidation) Act 1959	1959, No. 14	Irl
Freedom of Information (Amendment) Act 2003	2003, No. 9	Irl
Freedom of Information Act 1997	1997, No. 13	Irl
Governor-General's Salary and Establishment Act 1923	1923, No. 14	Irl
Guardianship of Infants Act 1964	1964, No. 7	Irl
Health (Nursing Homes) Act 1990	1990, No. 23	Irl
Health Act 1947	1947, No. 28	Irl
Health Act 1970	1970, No. 1	Irl
Health Act 2004	2004, No. 42	Irl
Hotel Proprietors Act 1963	1963, No. 7	Irl
Indictments Act 1915	1915, c. 90	UK

Industrial and Provident Societies Act 1893	1893, c. 39	UK
Inquires Act 2005	2005, c. 12	UK
Irish Medicines Board (Miscellaneous Provisions) Act 2006	2006, No. 3	Irl
Irish Medicines Board Act 1995	1995, No. 29	Irl
Law Reform (Personal Injuries) Act 1958	1958, No. 38	Irl
Law Reform Commission Act 1975	1975, No. 3	Irl
Liability for Defective Products Act 1991	1991, No. 28	Irl
Local Government (Ireland) Act 1898	1898, c. 37	UK
Local Government Act 2001	2001, No. 37	Irl
Local Government Act 2001 (Commencement) (No. 3) 2001	2001, S.I. No. 588	Irl
Malicious Injuries Acts 1981	1981, No. 9	Irl
Markets in Financial Instruments and Miscellaneous Provisions Act 2007	2007, No. 37	Irl
Maternity Protection (Amendment) Act 2004	2004, No. 28	Irl
Maternity Protection Act 1994	1994, No. 34	Irl
Mental Health Act 2001 (Approved Centres) Regulations 2006	2007, S.I. No. 551	Irl
Merchandise Marks Acts 1887	1887, c. 28	UK
Merchant Shipping Act 1894	1894, c. 60	UK
Minimum Notice and Terms of Employment Act 1973	1973, No. 4	Irl
Mining Industry Act 1920	1920, c. 50	UK
Ministers and Secretaries Act 1924	1924, No. 16	Irl
Ministry of Transport Act 1919	1919, No. 50	UK
Misuse of Drugs Act 1977	1977, No. 12	Irl
National Monuments Act 1930	1930, No. 2	Irl
Occupiers' Liability Act 1995	1995, No. 10	Irl
Offences Against the State (Amendment) Act 1998	1998, No. 39	Irl
Official Secrets Act 1963	1963, No. 1	Irl

Packing of Explosive for Conveyance Order 1904	1904, SRO No. 1221	UK
Parental Leave (Amendment) Act 2006	2006, No. 13	Irl
Parental Leave Act 1998	1998, No. 30	Irl
Pawnbrokers At 1964	1964, No. 31	Irl
Personal Injuries Assessment Board (Amendment) Act 2007	2007, No. 35	Irl
Personal Injuries Assessment Board Act 2003	2003, No. 46	Irl
Prevention of Corruption (Amendment) Act 2001	2001, No. 27	Irl
Prevention of Corruption Act 1906	1906, c. 34	UK
Prevention of Corruption Act 1916	1916, c. 64	UK
Prisons (Ireland) Act 1826	1826, c. 74	UK
Prisons Act 2007	2007, No. 10	Irl
Probation of Offenders Act 1907	1907, c. 17	UK
Proceeds of Crime (Amendment) Act 2005	2005, No. 1	Irl
Proceeds of Crime Act 1996	1996, No. 30	Irl
Public Bodies Corrupt Practice Act 1889	1889, c. 69	UK
Registration of Deeds and Title Act 2006	2006, No. 12	Irl
Reprints Act 1992 (QLD)	1992, No. 27	Aus
Revenue Act 1909	1909, c. 43	Irl
Road Traffic Act 1961	1961, No. 24	Irl
Safety, Health and Welfare at Work Act 2005	2005, No. 10	Irl
Sale of Goods Act 1893	1893, c. 71	UK
Sale of Goods and Supply of Services Act 1980	1980, No. 16	Irl
Social Welfare (Consolidation) Act 1993	1993, No. 27	Irl
Social Welfare Consolidation Act 2005	2005, No. 26	Irl
Social Welfare Law Reform and Pensions Act 2006	2006, No. 5	Irl
Stamp Duties Consolidation Act 1999	1999, No. 31	Irl
Standards in Public Office Act 2001	2001, No. 31	Irl
Statute Law (Restatement) Act 2002	2002, No. 33	Irl

Statute Law Revision (Pre-1922) Act 2005	2005, No. 32	Irl
Statute Law Revision Act 2007	2007, No. 28	Irl
Statute of Limitations (Amendment) Act 1991	1991, No. 18	Irl
Statute of Limitations (Amendment) Act 2000	2000, No. 13	Irl
Statute of Limitations 1957	1957, No. 6	Irl
Statutory Instruments Act 1947	1947, No. 44	Irl
Street and House to House Collections Act 1962	1962, No. 13	Irl
Succession Act 1965	1965, No. 27	Irl
Taxes Consolidation Act 1997	1997, No. 39	Irl
Teaching Council (Amendment) Act 2006	2006, No. 2	Irl
Tourist Traffic Act 1939	1939, No. 24	Irl
Transport Act 1950	1950, No. 12	Irl
Tribunals of Inquiry (Evidence) Act 1921	1921, c. 7	UK
Údarás na Gaeltachta Act 1979	1979, No. 5	Irl
Unfair Dismissals Act 1977	1977, No. 10	Irl
University College Galway (Amendment) Act 2006	2006, No. 1	Irl

TABLE OF CASES

Kruse v. Johnson	[1898] 2 Q.B. 91	UK
The State (Harrington) v. Wallace	[1988] I.R. 290	Irl
The State (Murphy) v. Johnston	[1983] I.R. 235	Irl
Victoria University of Wellington Students' Association v. Government Printer	[1973] 2 NZLR 21	NZ

INTRODUCTION

1. Statute law restatement is the administrative consolidation of an Act with its subsequent amendments, as provided for in the *Statute Law (Restatement) Act 2002*. A restatement is certified by the Attorney General as an up to date statement of the Act in question as amended, and is made available in print or electronic form as a single text.¹ A restatement does not have the force of law or alter the substance of the law.² It does not require parliamentary time or enactment, but it can be cited in court as evidence of the law in question.³

2. In May 2006 the Government conferred responsibility for statute law restatement to the Commission. The Taoiseach announced a public consultation and invited submissions, many of which were received by the Commission in the course of its preparation of a Consultation Paper. Following the Consultation Paper's publication in July 2007,⁴ the Commission received further submissions. They mainly concerned the format of restatements and discussion of legislation which would benefit from restatement in the short or medium term.

3. The Consultation Paper discussed the state of the Irish Statute Book both before and after 1922 and the difficulties of navigating it to establish law which consists of much-amended provisions. It also described the strategies employed to tidy up the Statute Book including consolidation and law reform, codification and restatement, and considered the benefits of restatement. It reviewed a number of comparable initiatives in other jurisdictions and discussed restatement in the context of a future programme of eLegislation including statutes revised and maintained up to date.

4. The Consultation Paper recognised the key importance of technology and the format in which the electronic repository of legislation is held, can be edited, published and protected against obsolescence or future-proofed. It concluded that the Commission should work in XML, a mark-up language which is an international standard for legislation, and is already employed for the repository displayed on the electronic Irish Statute Book (eISB) at www.irishstatutebook.ie.

¹ Section 8 of the 2002 Act.

² Section 4 of the 2002 Act.

³ Section 5 of the 2002 Act.

⁴ LRC CP 45-2007.

5. The Consultation Paper also examined the process of restatement. It detailed the steps involved in undertaking a restatement, the source data available, the challenges posed by the different types of amendments to Acts and secondary legislation. It discussed the development of a programme of restatement and the criteria used to prioritise legislation proposed for restatement in the submissions received. It further discussed the work processes including quality assurance, and finally the way in which restatements might be presented. Three versions of the *Freedom of Information Act 1997* were included in an appendix for comparison and assessment.

6. This Report revisits the issues discussed in the Consultation Paper. Many of the views expressed in the Consultation Paper remain unchanged, and therefore this Report builds on the provisional conclusions arrived at in relation to technology, process and presentation. The Report is divided into four main chapters.

7. Chapter 1 (Statute Law Restatement in Context) describes the role of statute law restatement in the Government's policy of Better Regulation. It outlines the elements of the Irish Statute Book, which is not available in any single publication but comprises pre-1922 legislation, post-1922 legislation, secondary legislation and the Legislation Directory, published in print and (post-1922 legislation only) online. It discusses the elements of a restatement (statutes and secondary legislation), the Legislation Directory, and the contribution which the Legislation Directory and Restatement Programmes can make to each other. It describes the difficulties encountered in compiling restatements including restatements of pre-1922 legislation, and finding affecting provisions in "Miscellaneous Provisions" Acts and statutory instruments. Finally, it outlines the benefits of restatement, the other approaches to improving and simplifying the Statute Book including reform, consolidation and codification, and the future potential of an eLegislation programme.

8. Chapter 2 examines the process of restatement, starting with the requirement for reliable source data marked up in XML. The chapter notes that part of the existing electronic repository may need additional marking up, including pre-1922 legislation where this will be restated. Other steps in the process are described including the compilation of an Affecting Provisions Document and validation of the relevant Legislation Directory table. The chapter discusses quality control issues and the proposal to carry out a number of initial restatements twice, without collaboration between those involved ("double blind") to ensure the methodology is reliable. It also discusses the transmission of restatements to the Attorney General for certification, and the possibility of publication of pre-certified restatements online.

9. Chapter 2 also discusses the format and presentation of restatements and the reasons for opting for a modified version of the third version published in Appendix A of the Consultation Paper. It describes the Commission's decision to restate groups of Acts (some of which amend others) and also suites of Acts (Acts applying to the same area of law) in the interests of maximising the impact of the Restatement Programme. Restatements will be annotated with three types of note: F-notes (footnotes for textual amendments), C-notes (cross reference notes for non-textual amendments) and E-notes (editorial notes for previous affecting provisions, the exercise of statutory powers contained in the relevant section, obvious errors in the legislation and other comments). Chapter 2 concludes with a discussion of the publication of restatements in printed and electronic form, and their maintenance up to date in the future.

10. Chapter 3 describes the technical issues involved in the Restatement Programme, and confirms the choice of XML as the mark-up language for holding and editing the repository of legislative data. It explains many of the technical considerations which apply to enable the data to be searched, edited and correctly displayed. It outlines some security issues including the possibilities of electronic signatures and authentication of material displayed on a website. It identifies the requirements for an authoring tool to enable the Commission to undertake the production of restatements in XML efficiently.

11. Chapter 3 also describes the Commission's decision to procure an XML authoring tool to assist with the restatement process including provision of facilities to assist searching, editing, annotation, quality control and project management. It outlines the difficulties in using technology to assist in verifying the accuracy of electronic versions of statutes, and concludes that at present it may be more efficient to undertake document comparison visually. Finally, it discusses the important role of technology in any development of work practices which will underpin the implementation of eLegislation.

12. Chapter 4 addresses the development of a programme of restatement. Using the list of 60 candidate Acts suggested during the consultation process as a starting point, prioritised in accordance with the criteria developed in the Consultation Paper, the chapter discusses developments since these submissions were received to refine further the list of potential candidates for restatement and refers to the Commission's decision to restate suites of Acts in the same area of law as well as groups of Acts related by amendments. It describes a survey undertaken by the Commission of the Statute Book from 1922, seeking to quantify the number of Acts which are principal or amending Acts still in force and which are therefore candidates for restatement, and estimate the number of affecting provisions applying to each to enable the work of restating them to be estimated. The chapter notes the

policy of replacement of pre-1922 legislation and the work already accomplished under the policy, and currently in hand. It records the Commission's decision that the First Programme of Restatement should include some pre-1922 Acts.

13. Chapter 4 refers to restatements already prepared by the Commission using word processing software. It records the Commission's decision to undertake a First Programme of Restatement from July 2008 to December 2009.

14. Chapter 4 details the First Programme of Restatement set out at paragraph 4.38, including XML versions of three restatements already prepared, updated versions of the four restatements prepared in 2003 and 2004 under the supervision of the Office of the Attorney General, and six groups or suites of legislation and individual Acts, comprising a total of 45 Acts. The chapter concludes with the Commission's plans for the establishment of a user group to assist with setting standards and developing programmes of restatement in the future, and to serve as a focal point for representations and proposals from members of the public.

CHAPTER 1 STATUTE LAW RESTATEMENT IN CONTEXT

A Introduction

1.01 In this Chapter, the Commission examines the context of the Statute Law Restatement Programme within the Irish legislative framework. In particular, Part B considers how the *Statute Law (Restatement) Act 2002* complements the policy of Better Regulation, including the aim of improving access to legislation. Part C examines the difficulties presented by the current legislative framework to the restatement initiative and in doing so considers both primary and secondary legislation. Finally in Part D, the Commission examines the benefits and future of restatement in Ireland.

B The context of restatement in the Irish legislative framework

(1) Background

1.02 Statute law restatement may be described as the administrative consolidation of legislation. It is defined in the *Statute Law (Restatement) Act 2002* as the process of a statute, or portion of a statute, being made available in printed or electronic format and in the form of a single text, certified by the Attorney General to be a statement of the law contained in the provisions of the statutes to which it relates.¹ A restatement may exclude spent, repealed or surplus provisions, and may include statutory instruments. A restatement does not have the force of law and therefore does not alter the substance of the law.² A restatement is *prima facie* evidence of the law contained in the provisions to which it relates, and shall be judicially noticed.³ The Irish model is similar to the procedures in place in Queensland since 1992 and New South Wales since 1972.⁴

¹ Section 2 of the 2002 Act.

² Section 4 of the 2002 Act.

³ Section 5 of the 2002 Act.

⁴ See paragraphs 2.41 to 2.47 of the Consultation Paper (LRC CP 45-2007).

1.03 In July 2007 the Law Reform Commission published a Consultation Paper on statute law restatement.⁵ This Consultation Paper arose as a result of a Government decision in May 2006 conferring responsibility for restatement as provided for by the 2002 Act on the Commission. In agreeing to take on this function, the Commission recognised that restatement was compatible with its statutory mandate under the *Law Reform Commission Act 1975* to keep the law under review with a view to law reform, including “codification [of the law] (including in particular its simplification and modernisation) and the revision and consolidation of statute law.”⁶ The Commission also recognised the importance of restatement to its work of research and development of proposals for reform.⁷ As part of the Law Reform Commission’s research, it is often necessary for it to compile informal restatements in order to arrive at an understanding of the existing statute law. The Commission therefore saw a synergy between its existing work of law reform and the task of statute law restatement.⁸

The Commission noted in its *Consultation Paper on Statute Law Restatement*⁹ that the *Statute Law (Restatement) Act 2002* was one of a number of initiatives implemented by the Government to improve the regulatory environment in Ireland and make the law more accessible. Other initiatives included the Government’s report which laid out an action programme for regulatory reform *Reducing Red Tape* (1999),¹⁰ the Government’s Information Society Action Plan *New Connections, a Strategy to realise the potential of the Information Society* (2002),¹¹ which was followed by *New Connections 2nd Progress Report* (2004),¹²

⁵ Law Reform Commission *Consultation Paper on Statute Law Restatement* (LRC CP 45-2007).

⁶ *Law Reform Commission Act 1975*, section 1.

⁷ For example, the work conducted by the Commission on Limitation of Actions under the *Third Programme of Law Reform 2008-2014* would be greatly aided by a restatement of the *Statute of Limitations Act 1957*.

⁸ A recent example is the informal restatement of the *Adoption Act 1991*, appended to the Law Reform Commission’s *Consultation Paper on Aspects of Intercountry Adoption* (LRC CP 43-2007).

⁹ Law Reform Commission *Consultation Paper on Statute Law Restatement* (CP 45-2007) at 1.

¹⁰ *Reducing Red Tape – An Action Programme of Regulatory Reform in Ireland* (Department of the Taoiseach 1999), available at www.betterregulation.ie.

¹¹ *New Connections, A Strategy to realise the potential of the Information Society* (Government Action Plan, March 2002), available at www.taoiseach.gov.ie.

¹² *New Connections 2nd Progress Report* (Department of the Taoiseach 2004) p. 2, available at www.taoiseach.ie.

the *Regulating Better* White Paper (2004),¹³ and the Office of the Attorney General's work on pre-1922 legislation that culminated in the *Statute Law Revision Act 2007*.

(2) The Statute Law (Restatement) Act 2002 and Better Regulation

1.04 In 1999, the Government adopted the recommendations in *Reducing Red Tape – An Action Programme of Regulatory Reform in Ireland*. The report focused on the importance of regulation to continued economic growth and greater competitiveness. A key recommendation of this report was to make “legislation more coherent and more easily accessible to those who need it.”¹⁴ The report marked the beginning of a new national programme of regulatory reform which recognised the benefits of having “Statute Law consolidated in a form that is both easily accessible and available.”¹⁵ This national programme of regulatory reform contributed to the development and creation of the *Statute Law (Restatement) Act 2002*.

1.05 In 2001 the OECD published a report *Regulatory Reform in Ireland*.¹⁶ This report advocated the establishment of a coherent statute law reform and revision programme in Ireland. The report highlighted the connection between regulatory reform and continuing economic growth. In response to the OECD Report, the Government issued a White Paper *Regulating Better* in 2004.¹⁷

1.06 The *Regulating Better* White Paper stated that “Regulations should be drafted in language that achieves its intended purpose, resolving the tensions between clarity, simplicity and accuracy.”¹⁸ Setting statute law restatement in context, it stated that

“In relation to improved access for citizens to the existing stock of legislation, our programme for delivering e-Government will make provision for the accessibility of Acts, Statutory Instruments, the Chronological Tables (the Tables that provide information about

¹³ *Regulating Better, A Government White Paper setting out six principles of Better Regulation* (Government White Paper 16 January 2004 at 25), available at www.betterregulation.ie.

¹⁴ *Reducing Red Tape – An Action Programme of Regulatory Reform in Ireland* (Department of the Taoiseach 1999) at 6, available at www.betterregulation.ie.

¹⁵ *Reducing Red Tape – An Action Programme of Regulatory Reform in Ireland* (Department of the Taoiseach 1999) at 6, available at www.betterregulation.ie.

¹⁶ Available at www.betterregulation.ie.

¹⁷ Available at www.betterregulation.ie.

¹⁸ *Regulating Better: A Government White Paper setting out six principles of Better Regulation* (16 January 2004) at 25, available at www.betterregulation.ie.

amendments to Acts) and related materials such as Dáil and Seanad Debates. These initiatives will be structured to complement similar developments at EU level. In addition, the programme of Statute Law Revision will outline specific targets and priorities for using repeal, consolidation and restatement to streamline existing legislation.”¹⁹

1.07 The *Regulating Better* White Paper laid out an action plan to achieve the stated goals of Better Regulation and included dates for completion of phases. In particular, there are two sections of this White Paper to which the Commission wishes to draw the reader’s attention. The first is the action described at 1.1, which deals with pre-1922 legislation and the proposal that

“A programme (under the remit of the Statute Law Revision Unit) will be put in place to analyse pre-1922 legislation with a view to:

- Identifying moribund legislation and repealing it through the introduction of a Bill;
- Re-enacting legislation that is still useful, removing anomalies in the process; and
- Streamlining/simplifying the Statute Book as necessary.”

1.08 Considerable progress has been made in realising these objectives. In particular, the enactment of the *Statute Law Revision Act 2007* represents a major breakthrough in relation to the first and third objectives, and work continues under this heading on the preparation of a similar Act which will eliminate a large number of Local and Personal and Private Acts. As detailed below,²⁰ a number of re-enactment and reform Bills are before the Oireachtas or in preparation, progressing the second and third objectives.

1.09 The second action in the White Paper of particular interest in the context of restatement is described at 1.6, “Improved access to legislation”, and states:

“Current e-Government (including e-Cabinet) and Quality Customer Service initiatives will be utilised more fully to improve the quality and accessibility of legislation, including:

- Greater accessibility of Acts, Statutory Instruments, the Chronological Tables (the Tables that provide information about amendments to Acts) and related materials such as Dáil and Seanad Debates.

¹⁹ *Regulating Better: A Government White Paper setting out six principles of Better Regulation* (16 January 2004) at 25, available at www.betterregulation.ie.

²⁰ See further paragraphs 4.18-4.20.

- Further development of a web-based service to allow citizens full electronic access to legislation, debates of the Houses of the Oireachtas and other related materials.
- Using customer charters to reduce the burden of compliance on the citizen.”

Again, much progress on realising these objectives has been achieved. In particular, the electronic Irish Statute Book (eISB) and Oireachtas websites²¹ have transformed access to legislation and related materials over the past five to ten years.

1.10 The 2008 OECD report *Ireland, towards an Integrated Public Service*²² recognises that

“significant progress has been made in Ireland implementing the Action Plan. Such progress includes: reforming and streamlining the Statute Book, improving electronic accessibility of secondary legislation and ascertaining and addressing the impacts of regulatory burdens on business.”²³

The Commission sees the Statute Law Restatement Programme as contributing to the Government’s objective of better regulation including “streamlining and simplification of the Statute Book” by integrating amending legislation into principal Acts; and “improved access to legislation” by making amended legislation easier for all to read by such integration.

(3) The Irish Statute Book and pre-1922 legislation

1.11 The phrase “Irish Statute Book” may be misleading as there is no single repository where all Irish legislation is contained in an accessible format. When the State was established in 1922, all pre-1922 Acts were carried over and continued to apply until replaced by legislation enacted by the Oireachtas. Since 1922, over 3,200 Acts²⁴ have been passed by the Oireachtas and over 27,000 statutory instruments²⁵ have been made under statutory powers.

1.12 The *Statute Law Revision Act 2007* identified 23,370 pre-1922 Acts that were possibly applicable in Ireland. Out of these 23,370 Acts the 2007 Act

²¹ www.irishstatutebook.ie and www.oireachtas.ie.

²² OECD *Ireland, Towards an Integrated Public Service* 2008.

²³ OECD *Ireland, Towards an Integrated Public Service* 2008 at 83.

²⁴ Includes all Acts passed by the Oireachtas up to end 2007.

²⁵ Hunt *The Irish Statute Book: A Guide to Irish Legislation* (First Law 2007) at 331.

identified a White List of 1,364 Acts that are to remain in force and on the Statute Book until new legislation of the Oireachtas replaces them.

1.13 The Commission notes that pre-1922 legislation which is currently in force in the Republic of Ireland may not be readily available. The Government Publications Office does not publish or stock legislation dating from before 1922 and legislation that has been repealed in the UK may not be available from the Office of Public Sector Information.²⁶ Thus if a pre-1922 Act (such as the *Probation of Offenders Act 1907* or the *Industrial and Provident Societies Act 1893*)²⁷ is still in force in Ireland but has been repealed in the United Kingdom it may only be possible to obtain a copy of it from a small number of libraries and private collections. As a result public access to the law can be impeded.

1.14 The importance of public access to these pre-1922 Acts was recognised in the Government's White Paper *Regulating Better* (2004),²⁸ which sought to streamline and simplify the Statute Book and bring greater accessibility to Acts. The 2007 *Progress Report to Government by the Better Regulation Group on Regulating Better*²⁹ detailed progress made or being made on statute law revision in relation to a number of important projects: the *Statute Law Revision Act 2007*, the *Land and Conveyancing Law Reform Bill 2006*, the consolidation and modernisation of legislation governing regulation of the financial services industry and the codification of the criminal law. Other work to modernise and replace older legislation also continues.³⁰

1.15 Despite the undoubted progress being made in modernising and replacing pre-1922 legislation, the task is not expected to be completed in the foreseeable future. In these circumstances, without an interim measure to enable public access to as much of this legislation as remains in force, the issue of its accessibility will continue.

(4) The Irish Statute Book and the role of restatement

1.16 The online Statute Book (eISB) at www.irishstatutebook.ie was established in 1998 and is maintained by the Office of the Attorney General. It is a free-to-access public website and is the main online source of Irish legislation. It would be hard to overstate the difference it has made to the accessibility of Irish law and it has proved to be a very widely used resource.

²⁶ www.opsi.gov.uk.

²⁷ 7 Edw. 7 c. 21 and 56 & 57 Vict. c. 39

²⁸ Available at www.betterregulation.ie.

²⁹ Published 1 October 2007, available at www.betterregulation.ie.

³⁰ See paragraphs 4.18-4.20.

The Office of the Attorney General continues to make improvements to the quality of the data published and the frequency of the intervals at which new legislation is posted. For example, a set of known errors were corrected within the last year and allowed the removal of a disclaimer in relation to them. Because of some small but significant errors in the texts of at least some of the Acts on the website, which arose during the processing of the scanned data when the electronic repository of statute law was being created, there continue to be difficulties for those who wish to rely on this important electronic database. It is recognised that all users would benefit if it were to be authenticated in due course as an official source of law.

1.17 Currently there is no access to a database of “in-force” versions of Acts such as the Statute Law Database in the UK.³¹

1.18 The Commission notes that the *Statute Law Revision Act 2007* has greatly improved the situation regarding pre-1922 legislation by identifying the 1,364 Acts which still apply. However, the accessibility of legislation from both before and after 1922 suffers from the way in which Irish law is made. In contrast to the framework of a code of law employed in civil law countries such as France, Ireland and some other common law countries still pass an annual series of Acts which each address a specific issue or aspect of society or Government, and which do not fit into an overall framework or code. This in itself is not necessarily a problem. But these Acts may amend previous Acts, and may build up layers of amendments which make the reading of such conglomerations of laws very difficult for lawyers and lay persons alike. Secondary legislation such as commencement orders may add another layer of complexity to the task of ascertaining the state of the law. Further, amending legislation may not be in a readily recognisable amending Act but included in an Act which gives no indication in its title that it in fact amends the legislation in question. This last issue is illustrated in the discussion of “Miscellaneous Provisions” Acts below.³² This lack of transparency in the text of much amending legislation is recognised by those involved in its production, but they are constrained by political and practical considerations which make it difficult to avoid.³³

³¹ www.statutelaw.gov.uk.

³² Paragraphs 1.66 to 1.72.

³³ Brian Hunt identifies 12 causes of inaccessibility of legislation: lack of political will; lack of body conferred with responsibility; task of publication regarded as secondary; system of effecting legislative change; increasing reliance on legislation; absence of post legislative scrutiny; absence of sunset provisions; under-use of technology; over-reliance on statutory instruments; amendment of Acts by statutory instrument; statutory instruments having “statutory effect”; and

1.19 Restatement is envisaged as a step towards remedying this situation. The object of restatement is to integrate the subsequent amendments into a principal Act or Acts, to result in a seamless-looking principal Act or group of Acts. In order to make the origins of amendments to the principal Act(s) transparent, it is also important that all changes (insertions, deletions, substitutions and non-textual amendments) are annotated. The result of the Restatement Programme will be a streamlined and simplified Statute Book, which will give the public greater accessibility to legislation. In the longer term, the existence of restated principal Acts which can be used as a basis for consolidation or reform or enacted in their restated form will be a key element in making progress towards eLegislation.³⁴

1.20 The Statute Law Revision Unit (SLRU) in the Office of the Attorney General was instrumental in the production of four restatements in 2003 and 2004. The SLRU developed a restatement guide and policy to assist Department officials wishing to develop draft restatements. The four restatements were certified by the Attorney General and are available on the Office of the Attorney General's website.³⁵

1.21 The Commission decided that the format of future restatements will differ from that of the original four restatements compiled under the supervision of the Office of the Attorney General. Two alternative styles of restatement, together with the original style, were demonstrated in Appendix A of the *Consultation Paper on Statute Law Restatement* and are discussed in further detail in Chapter 2 of this Report. The Commission has chosen a modified version of one of these for its First Programme of Restatement.³⁶

(5) Principle of access to legislation

1.22 The Commission notes that the Government White Paper *Regulating Better* identified a fundamental obligation on the State to make legislation accessible. This duty stems from the role that legislation plays in governing the relationship between state and citizen. It reduces the moral authority of the state and damages its relationship with its citizens if it seeks to enforce laws of which citizens cannot reasonably be expected to be aware. Although one of the

"Henry VIII" provisions which authorise the making of secondary legislation which amends primary legislation. See his analysis in Hunt "Big Hat, No Cattle: Accessibility, and Reform of the Irish Statute Book", paper at PAI seminar 2 July 2008, 11-20.

³⁴ See paragraph 1.102.

³⁵ www.attorneygeneral.ie/slr/restatements.html.

³⁶ Paragraph 2.54.

basic principles of our legal system is that “Ignorance of the law is no excuse”,³⁷ this presupposes that knowledge of the law is accessible.

1.23 This principle is reflected in a decision from New Zealand of Wild CJ in *Victoria University of Wellington Students' Association v. Government Printer*:

“I think it can be accepted that the Crown is broadly responsible for making the text of enactments of the Legislature available for public information. People must be told what Parliament is doing and must be able to read the letter of the law.”³⁸

1.24 The Government has also recognised that it is obliged to ensure that the law is framed in such a way as to be clearly comprehensible to those affected by it. The *Regulating Better* White Paper acknowledges that:

“Regulations should be drafted in language that achieves its intended purpose, resolving the tensions between clarity, simplicity and accuracy.”³⁹

1.25 The Department of the Taoiseach has noted:

“The role of government is to provide a clear, consistent and predictable legal framework, to promote a pro-competitive environment in which electronic commerce can flourish, and to ensure adequate protection of public interest objectives such as privacy, intellectual property rights, prevention of fraud, consumer protection and public safety.”⁴⁰

1.26 Therefore access to

“up to date legislation that is easily accessible and comprehensible to the public may be regarded as part of the basic infrastructure of society, as essential as the roading system or a reliable

³⁷ For further discussion of this see Bennion *Bennion on Statutory Interpretation* (5th Edition LexisNexis 2008) at 40-41.

³⁸ [1973] 2 NZLR 21, 23.

³⁹ *Regulating Better, A Government White Paper setting out six principles of Better Regulation* (Government White Paper 16 January 2004) at 25. Available at www.betterregulation.ie.

⁴⁰ *New Connections, A Strategy to realise the potential of the Information Society* (Government Action Plan, March 2002) at 10, available at www.taoiseach.gov.ie. This quotation is attributed in the article to a Communiqué issued by the United States of America and Ireland on Electronic Commerce, 4 September 1998.

telecommunications system, and without which the everyday functioning of society is made more difficult.”⁴¹

1.27 As discussed in the following pages, the Statute Book is not yet sufficiently accessible to make the application of the rule that “Ignorance of the law is no excuse” realistic or fair. The Commission recognises that the present electronic Statute Book available on the eISB website is a welcome improvement on what was available before, and provides an essential and valuable service to the public. Improvements to the website continue to be made, including more frequent updating. Building on this valuable resource, the Commission sees scope for the Restatement Programme and the Legislation Directory Programme, among other possible initiatives,⁴² to further improve the Statute Book and public access.

(6) Current availability of legislation

(a) Printed – the Government Publications Sales Office

1.28 In accordance with the Irish Constitution the President plays a crucial role in declaring a particular text to be law. Article 13.3.2 states “The President shall promulgate every law made by the Oireachtas”. Article 25.4.2 goes into further detail and gives an indication as to what form promulgation should take:

“Every Bill signed by the President under this constitution shall be promulgated by him as a law by the publication by his direction of a notice in *Iris Oifigiúil* stating that the Bill has become Law.”

1.29 Acts signed into law by the President are listed in the *Iris Oifigiúil*. The President currently also publishes a list of Acts she has signed into law on the website www.president.ie and this can sometimes be the first source of confirmation that an Act passed by the Oireachtas has become law.

1.30 The publication of Acts of the Oireachtas is not governed by statute law. In practice, an Act is published shortly after the President has signed it. At present the Bills Office in the House of the Oireachtas is charged with sending the signed version of an Act for printing. The printers supply the printed Act to the Government Supplies Agency, who makes it available for purchase from the Government Publications Sales Office. The Act is also published on the website of the Houses of the Oireachtas.⁴³

⁴¹ Geoff Lawn “*Improving Public Access to Legislation: the New Zealand experience*” at 11, available at www.pco.parliament.govt.nz/pal/gla3.shtml.

⁴² Discussed at paragraphs 1.102 to 1.111.

⁴³ www.oireachtas.ie/viewdoc.asp?fn=/documents/nav/legislation.htm&m=b.

(b) Online – the importance of the eISB

1.31 Major progress in making legislation more accessible was achieved in 1998 with the establishment of the free-to-access electronic Irish Statute Book (eISB) website by the Office of the Attorney General. The eISB contains three databases of Irish legislation which are

- primary legislation from 1922 to 2007,
- secondary legislation from 1922 to mid 2005, and a link to another web page displaying secondary legislation for much of 2007 and 2008, and
- the Legislation Directory (previously the Chronological Tables of the Statutes) from 1922 to 2005, and other useful tables.

1.32 As already noted above,⁴⁴ the primary and secondary legislation databases of the eISB do not include any pre-1922 legislation.

1.33 The small errors which mainly arise in the first batch of legislation to have been prepared for website publication are corrected when identified, but some will inevitably remain until a validation of the repository can be systematically undertaken.

1.34 The Legislation Directory database up to the end of 2005 also suffers from some errors, but is nonetheless a valuable and important resource.⁴⁵

1.35 Improvements in the frequency of updating of the website with new legislation are being achieved. The Commission understands that work to prepare the statutory instruments from mid 2005 to the end of 2006 for online publication is in progress.

1.36 The Commission welcomes the new procedures for the creation of statutory instruments⁴⁶ and the creation of a new statutory instrument database by the Working Group on Electronic Statutory Instruments. This new electronic Statutory Instrument System (eSIS) for the making of statutory instruments is under the management of the Government Supplies Agency. The system

⁴⁴ Paragraph 1.13.

⁴⁵ This is further discussed in the Law Reform Consultation Paper on the Legislation Directory *Legislation Directory: Towards a Best Practice Model* (July 2008), LRC CP 49-2008.

⁴⁶ *Guidelines on the Electronic Statutory Instrument System* (Government Guidelines published January 2008), available at www.betterregulation.ie.

ensures that all statutory instruments are produced in a standard electronic format and are numbered correctly before being signed. This system already facilitates the faster and more accurate publication of statutory instruments and enables those with responsibility for the maintenance of the eISB to place statutory instruments there more quickly.

1.37 The new electronic system for the making of statutory instruments and their subsequent posting on the online Statute Book has been fully operational from mid 2007. As mentioned above, those statutory instruments available for 2007 and 2008 may be viewed on a link page, accessible from the eISB. They are currently available in PDF format, in contrast to XML, the mark-up language in which the rest of the eISB legislation repository is held. Work is ongoing to complete the series for 2007.

1.38 The revised *Guidelines on the Electronic Statutory Instrument System*, published in January 2008, state that

“Electronic versions of the SI in both PDF and XML⁴⁷ formats will be made available from the electronic system for inclusion on the online Irish Statute Book at www.irishstatutebook.ie,⁴⁸

The availability of XML as well as PDF versions will be very helpful to users of the eISB because they can be searched as a group, whereas PDF versions must be searched individually.

1.39 The eISB is an especially important resource for the restatement project as it is the only publicly available repository of legislation in XML format. The work of restatement necessarily requires access to legislation in XML format for reasons set out in Chapter 3, including future proofing of the format in which the repository is held and greater efficiency and versatility in formatting and production.

(7) The content of restatements

1.40 As the *Statute Law Restatement Act 2002* provides for “the making available of any statute, statutory instrument or number of related statutes or statutory instruments in the form of a single text, to be known as a Restatement,” it will be helpful to have a clear definition of what statutes and statutory instruments are.

1.41 The primary building blocks for a restatement are the statutes or Acts, otherwise known as primary legislation. A statute is defined in the *Statute*

⁴⁷ See paragraph 3.06 for a discussion of XML.

⁴⁸ *Guidelines on the Electronic Statutory Instrument System* (January 2008) at 14 paragraph 33, available at www.betterregulation.ie.

Law Restatement Act 2002 to include Acts of the Oireachtas and of Saorstát Éireann, Acts of the Parliament of the United Kingdom of Great Britain and Ireland passed in the period 1801 to 1922, Acts of the Parliament of Great Britain passed in the period 1707 to 1800, Acts of the Parliament of England passed in the period 1226 to 1707 and Acts passed by any Parliament sitting in Ireland before the Union with Great Britain in 1801.⁴⁹

1.42 As noted above,⁵⁰ when the State was established in 1922 all pre-1922 Acts were carried over and continued to apply until replaced by legislation enacted by the Oireachtas. The *Statute Law Revision Act 2007* completed a comprehensive audit of all pre-1922 legislation and compiled a White List of 1,364 pre-1922 Acts which remain on the Statute Book. Thus combining the White List with the approximately 1,932 Acts passed by the Oireachtas since 1922 which are still in effect gives a list of the over 3,200 statutes comprising the Irish Statute Book.⁵¹

1.43 The Statute Book also includes secondary or subsidiary legislation made by way of statutory instrument. The *Statute Law (Restatement) Act 2002* defines a statutory instrument as “an instrument made, issued or granted under a power or authority conferred by statute”. The *Statutory Instruments Act 1947* defines a statutory instrument as being an “order, regulation, rule, scheme or bye-law made in exercise of a power conferred by Statute”.⁵² It is estimated that over 27,000 statutory instruments have been created since 1922.⁵³

1.44 Regulations are the most common type of statutory instrument. Regulations normally supplement primary legislation, providing the administrative or technical detail which is not contained in the parent Act. Regulations are legislative in nature, they share the character of Acts and are construed in the same way. They have a continuous regulating effect and like Acts are “always speaking”.⁵⁴ By virtue of Ireland’s membership of the European Union, section 3 of the *European Communities Act 1972* allows for the making of regulations that are capable of amending primary legislation in pursuance of obligations of being a member State. The use of regulations to

⁴⁹ *Statute Law (Restatement) Act 2002*, section 1(1).

⁵⁰ Paragraph 1.11.

⁵¹ See further paragraph 4.13 in relation to post 1922 legislation which is repealed and spent.

⁵² *Statutory Instruments Act 1947*, section 1(1).

⁵³ Hunt *The Irish Statute Book: A Guide to Irish Legislation* (First Law 2007) at 331.

⁵⁴ Bennion *Statutory Interpretation* (Lexis Nexis 2008) at 268.

implement EU legislation is becoming increasingly common, reflecting the increased volume of European Community law applying to member states.

1.45 Orders tend to be procedural in nature and are primarily used to carry out a delegated task such as commencement of an Act, a compulsory purchase or a transfer of functions between Ministers. The effect of an Order is usually “limited to a particular moment in time, rather than being continuing.”⁵⁵

1.46 Rules are typically used for the instruments which govern a procedure of a court, tribunal, corporation or other statutory body. Rules tend to be relatively less common and are legislative in nature.

1.47 Schemes tend to be administrative in nature. The term scheme is used where “power is given to make detailed arrangements for some matter considered to be in need of general statutory supervision or administration”⁵⁶ and often consist of numerical material such as scales of fees and charges.

1.48 By-laws possess similar legislative characteristics to rules and regulations. They are used for delegated legislation made by local authorities, public utilities and other public bodies. They are defined as “an ordinance affecting the public, or some portion of the public, imposed by some authority clothed with statutory powers ordering something to be done or not to be done, and accompanied by some sanction or penalty for its non-observance.”⁵⁷

1.49 The content of restatements will not only include primary and secondary legislation which is currently in force but will also refer to amendments that may have been amended or superseded. This will give the end user a legislative history of the legislation and allow for the legislation at a certain point in time to be ascertained, as well as its current status.

(8) The Legislation Directory

1.50 Following the Law Reform Commission’s acceptance of responsibility for statute law restatement, the Commission at the Attorney General’s request also took responsibility for the maintenance of the Chronological Table of the Statutes. Responsibility for the maintenance of the Chronological Tables passed to the Law Reform Commission in November 2007.

1.51 In November 2007 the Commission decided to change the name of the Chronological Tables of the Statutes, renaming it the Legislation Directory. The Commission considered that the name Legislation Directory would better

⁵⁵ Bennion *Statutory Interpretation* (Lexis Nexis 2008) at 267.

⁵⁶ Bennion *Statutory Interpretation* (Lexis Nexis 2008) at 271.

⁵⁷ *The State (Harrington) v. Wallace* [1998] IR 290. The Supreme Court adopted Lord Russell’s definition of a by-law in *Kruse v. Johnson* [1898] 2 QB 91.

reflect the functions of the Chronological Tables of the Statutes and mark their new stewardship by the Commission. The Commission intends that the new Legislation Directory will in due course incorporate innovations in presentation and functionality.⁵⁸

1.52 The current Legislation Directory is a publicly available database listing all primary legislation with affecting provisions in the form of primary or secondary legislation. It is available on the free-to-access electronic Irish Statute Book (eISB) website maintained by the Office of the Attorney General.⁵⁹ The eISB contains a general disclaimer as to the accuracy of information displayed, which applies equally to the Legislation Directory.

1.53 By recording the amendments and other modifications made to legislation, the Legislation Directory provides a vital source of information which aids all users of legislation in establishing the current state of the law. Through charting affecting provisions, the Legislation Directory enables the reader to trace any changes made to legislation. It has been described as “the one identifiable publication upon which the coherence and accessibility of our Statute Book rests.”⁶⁰

1.54 The current Legislation Directory includes Acts of the Oireachtas and affecting provisions up to 31 December 2005. Only post-1922 amendments to pre-1922 Acts are included. Statutory instruments are not included and there are occasional errors and omissions encountered in the individual tables of the Directory.

1.55 The task of restatement will be facilitated by the availability of the Legislation Directory, but as a quality assurance measure the Commission will also undertake its own compilations of affecting provisions.

(9) Contribution of the Statute Law Restatement Programme to the Legislation Directory

1.56 The Commission recognises that the Legislation Directory is an essential resource which once updated under the Legislation Directory Programme will greatly facilitate not only the public but also the Statute Law Restatement Programme in establishing the current law. The Commission’s expectation that the Statute Law Restatement and Legislation Directory

⁵⁸ Consultation Paper (July 2008), *Legislation Directory: Towards a Best Practice Model*, LRC CP 49-2008.

⁵⁹ www.irishstatutebook.ie/chronological.html.

⁶⁰ Hunt *The Irish Statute Book: A Guide to Irish Legislation* (First Law 2007) at 60.

Programmes will be complementary and assist each other has already been demonstrated in the research conducted for certain draft restatements.⁶¹

1.57 To appreciate how the Legislation Directory and the Restatement Programmes complement each other it is necessary to look at the steps involved in carrying out a restatement. The principal tasks involved are (i) locating an accurate copy of the principal Act to be restated and affecting legislation; (ii) identifying the affecting provisions and (iii) verifying the existing Legislation Directory for the Act; (iv) inserting the amendments in the restatement; and (v) establishing the commencement status of the affecting provisions.

1.58 The Commission is aware that even when the Legislation Directory is brought up to date with entries for recent amending legislation, it will not be possible to wholly rely on tables which have been compiled over many years. Therefore the Restatement Programme will create new tables of affecting provisions which will be used to verify and update existing corresponding tables in the Legislation Directory. This process will add significantly to the work of restatement. However, as the Legislation Directory Programme brings the Directory up to date, it is envisaged that the Legislation Directory project will be able to supply verified tables of Acts for the use of the Restatement Programme. Until then the Restatement Programme will work in tandem with the Legislation Directory Programme, verifying, correcting and updating tables for the Legislation Directory in the course of its work.

1.59 Work on the restatement of the *Freedom of Information Act 1997* demonstrates the scope for common interest and collaboration between the Legislation Directory and Statute Law Restatement Programmes. *The Freedom of Information (Amendment) Act 2003* significantly amended the *Freedom of Information Act 1997*; however, the 2003 Act contains only about 50% of the significant textual changes to the 1997 Act. The remaining 50% were made by other Acts without the title “Freedom of Information”, such as the *Safety, Health and Welfare at Work Act 2005*. A total of 110 textual changes were made to the *Freedom of Information Act 1997*, and 54 of those changes came from 40 Acts other than the *Freedom of Information (Amendment) Act 2003*. In addition, a number of other, non-textual changes to the 1997 Act were made.⁶² This underlines the complexity of what appears at first sight to be a relatively

⁶¹ For example the draft restatement of the *Freedom of Information Act 1997* included in the Law Reform Commission *Consultation Paper on Statute Law Restatement* (CP 45-2007) at Appendix A.

⁶² For the full list of Acts, Regulations and Orders affecting the 1997 Act, see Appendix A of the *Consultation Paper on Statute Law Restatement* (July 2007) (LRC CP45-2007).

straightforward process and just how crucial it is to have a comprehensive and accurate list of affecting provisions to work from.⁶³

C The difficulties facing restatement in Ireland

1.60 In order to demonstrate the practical benefits of restatement the Commission has considered a number of instances in which restatement will be particularly effective and functional.

(1) The difficulty of finding pre-1922 legislation: The Explosives Act 1875 and the Explosives Substances Act 1883

1.61 To illustrate the difficulty of finding the text of an Act that has been amended, the Commission has taken two examples from the pre-1922 era, the *Explosives Act 1875*⁶⁴ (which deals primarily with the regulatory system for the civil use of explosives) and the *Explosive Substances Act 1883*⁶⁵ (which deals primarily with the criminal offences associated with the possession and use of explosives).⁶⁶

1.62 The original *Explosives Act 1875* consisted of 122 sections and about 25,000 words. The text of the 1875 Act has been amended by a number of Acts, Orders and Regulations since 1875, including:

- *Public Health Act 1875*
- *Order in Council (No.10A) Relating to Importation of Fireworks 26 June 1884*
- *Summary Jurisdiction Act 1884*
- *Statute Law Revision (No.2) Act, 1893*
- *Merchant Shipping Act 1894*
- *Local Government (Ireland) Act 1898*

⁶³ At another level, it also underlines the unsatisfactory nature of the process for updating legislation, and the scope for rolling updates of legislation discussed at paragraph 1.102 in the context of eLegislation.

⁶⁴ (38 & 39 Vict.), c. 17.

⁶⁵ (46 & 47 Vict.), c. 3.

⁶⁶ The Commission's analysis of the word count in the 1875 and 1883 Acts is derived from the electronic version of the Acts in the UK Statute Law Database, www.statutelaw.gov.uk. The list of amending Acts is based on the 1921 Chronological Tables and Index to the Statutes, and the Legislation Directory available at www.irishstatutebook.ie.

- *Packing of Explosive for Conveyance Order, 1904 No.1221 Statutory Rules and Orders*
- *Revenue Act 1909*
- *Appropriation (1912-3) Act 1913*
- *Air Force (Application of Enactments) (No.2) Order, 1918 No. 548 Statutory Rules and Orders*
- *Ministry of Transport Act 1919*
- *Mining Industry Act 1920*
- *Explosives Act 1875 Adaptation Order 1926*
- *Explosives Act 1875 Adaptation Order 1935*
- *Transport Act 1950*
- *Dangerous Substances Act 1972*
- *Fire Services Act 1981*
- *Carriage of Dangerous Goods by Road Act 1998*
- *European Communities (Transport of Dangerous Goods by Rail) Regulations 2003*
- *Criminal Justice Act 2006*

1.63 The same pattern can be seen in the *Explosive Substances Act 1883*⁶⁷ which consisted of 9 sections and about 1,500 words. The text of the 1883 Act has been amended by a number of Acts since 1883 including:

- *Indictments Act 1915*
- *Firearms Act 1920*
- *Criminal Justice (Administration) Act 1924*
- *Criminal Law (Jurisdiction) Act 1976*
- *Criminal Evidence Act 1992*
- *Bail Act 1997*
- *Offences Against the State (Amendment) Act 1998*
- *Criminal Justice Act 1999*
- *Criminal Justice (Safety of United Nations Workers) Act 2000*

⁶⁷ (46 & 47 Vict.), c. 3.

1.64 The typical legislative process for amendments to, for example, the 1883 Act is to specify in the post-1883 Act that a particular section – or part of a section – of the 1883 Act is to be replaced by new text to be “inserted” by the amending Act. This “insertion”, however, is not at present actually entered on a paper or electronic copy of the text of the 1883 Act as previously amended.⁶⁸ Without having recourse to the 1921 *Chronological Table and Index to the Statutes* for the pre-1922 changes and to the Legislation Directory for the post-1922 changes, it would be necessary to begin with the original copy of the 1883 Act and then to take account of all post-1883 amendments to the original text. Even with the 1921 *Chronological Table and Index to the Statutes* and the Legislation Directory, compiling an updated version of the Act is a complex and time-consuming exercise.⁶⁹

1.65 The following analysis summarises the difficulties inherent in this system of maintaining the Statute Book:

“Whether a person can actually arrive at an accurate view of the up to date position of the law is very much dependent on a series of assumptions:

- Assuming that the Legislation Directory is up to date;
- Assuming all of the relevant entries in the Legislation Directory are accurate;
- Assuming that all of the relevant amendments have actually commenced, or if commenced, remain in force;
- Assuming that the amending provisions have not themselves been amended;
- Assuming that there are no judicial decisions which impact directly on any of the provisions in question; and finally,
- Assuming that the person reading the amendments applies them correctly.”⁷⁰

⁶⁸ The 1875 and 1883 Acts, as amended by the Parliament of the United Kingdom, remain on the UK Statute Book. An electronic version of the text of the 1875 and 1883 Acts, as they apply in the UK, can be viewed on the UK Statute Law Database, www.statutelaw.gov.uk.

⁶⁹ A proposal for the drafting of a comprehensive new Bill to replace existing Explosives legislation was approved by Government in February 2008. Under these circumstances it will not be a candidate for restatement.

⁷⁰ Brian Hunt “Big Hat, No Cattle: Accessibility, and Reform of the Irish Statute Book”, paper at PAI seminar 2 July 2008, 10.

(2) The difficulties presented by the growth of amending Acts and “Miscellaneous Provisions” Acts: The Irish Medicines Board (Miscellaneous Provisions) Act 2006

1.66 The Statute Law Restatement Programme has the potential to assist users of Irish legislation who are presented with an increasing growth of amending Acts and “Miscellaneous Provisions” Acts, the subjects of which may not be clear from their short titles.

1.67 The Commission is aware that in recent years legislative activity – law reform in its widest sense – has increased significantly. This has led to a proliferation of Acts which consist primarily of amendments to previous Acts. The first six Acts passed by the Oireachtas in 2006 illustrate this. These were: the *University College Galway (Amendment) Act 2006*, the *Teaching Council (Amendment) Act 2006*, the *Irish Medicines Board (Miscellaneous Provisions) Act 2006*, the *Competition (Amendment) Act 2006*, the *Social Welfare Law Reform and Pensions Act 2006* and the *Finance Act 2006*.

1.68 The fifth and sixth Acts passed in 2006, dealing with social welfare, pensions and finance, are annual features of the Oireachtas legislative calendar. In large measure, they implement the year’s budgetary measures by way of amendments to previous Social Welfare Acts, Pensions Acts and Taxes Acts. From the specific perspective of any comprehensive tidying up of the Statute Book, they indicate that an annual update (in both cases involving large amounts of text) is required in these specific areas.

1.69 For readers’ ease of use, it would be helpful if the amendments in these Acts were integrated into the principal Acts which they amend, and published as updated principal Acts (revised Acts). If there is no principal Act governing an area of law,⁷¹ the user would best be served by the collection of all legislation into a new principal Act.

1.70 The first four Acts also indicate the general breadth of current legislative activity including education law, the regulation of medical products and competition law. The titles of the first four Acts of 2006 also indicate that they involve amendments to previous Acts on these topics. Indeed, the use of the word “miscellaneous” in the *Irish Medicines Board (Miscellaneous Provisions) Act 2006* hints that the amendments range over a potentially broader area than the regulation of medical products, though it would be difficult to appreciate this without an examination of the actual content of the 2006 Act, which the Commission considers is worth providing here.

⁷¹ This is the position with the six *Prevention of Corruption Acts 1889-2005*, Appendix D.

1.71 The more obvious amendments made by the *Irish Medicines Board (Miscellaneous Provisions) Act 2006* were to the *Irish Medicines Board Act 1995*. These included amendments to implement the provisions of an EC Directive, 2004/23/EC, which sets standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells for human applications. Another amendment to the 1995 Act enables the Minister for Health to make Regulations providing for nurse prescribing, which the title of the 2006 Act may have merely hinted at. But the 2006 Act also involved significant changes which would not be obvious on a perusal of its title. For example, the 2006 Act amended the *Misuse of Drugs Act 1977* in order to transfer from the Minister for Health to the Irish Medicines Board (IMB) the function of licensing controlled drugs under the 1977 Act. The 2006 Act also amended the *Control of Clinical Trials Act 1987* to confer additional enforcement functions on the IMB. The 2006 Act also amended the *Health Act 1947* to enable country of origin meat traceability requirements to be imposed on retail outlets and restaurants; and it amended the *Health Act 1970* concerning eligibility for dental, ophthalmic and aural health services. Many other examples of this form of “omnibus amendment” Act could be given,⁷² and the Commission notes here that they underline the complexity of comprehensively tidying up the Statute Book.

1.72 The Commission also notes, however, that if Acts were to be maintained in a revised or updated state as envisaged in the concept of eLegislation,⁷³ “Miscellaneous Provisions” Acts would not pose the problems they do at present. In those circumstances, the relevant amending provisions would be inserted into the revised Act and would be immediately available for all to see, with the source of the amendment in the “Miscellaneous Provisions” Act referred to in a note.

(3) Finding the text of an Act as amended: The Freedom of Information Act 1997

1.73 The Commission in its *Consultation Paper on Statute Law Restatement* chose the *Freedom of Information Act 1997* to demonstrate the complexities involved in completing a restatement. The example chosen

⁷² For example, the *Criminal Justice Act 2006* contains 197 sections, a number of which involve entirely new provisions, but some of which also involve amendments to, for example, the *Explosives Act 1875* (referred to in paragraph 1.61 above), the *Firearms Act 1925*, the *Criminal Justice (Forensic Evidence) Act 1990*, the *Criminal Justice (Public Order) Act 1994* and the *Children Act 2001*. Further changes to some of these Acts were made by the *Criminal Justice Act 2007*.

⁷³ Discussed at paragraph 1.102.

appears at first sight to be a relatively straightforward matter of “cutting and pasting” into the text of the *Freedom of Information Act 1997* the relevant amendments made by the *Freedom of Information (Amendment) Act 2003*. As noted above, however, the 2003 Act contains about 50% of the significant textual changes to the 1997 Act. As the draft restatement indicates, the remaining 50% were made by other Acts without the title “Freedom of Information,” such as the *Safety, Health and Welfare at Work Act 2005*. A total of 121 textual changes were made to the *Freedom of Information Act 1997*, and 54 of those changes came from 40 Acts other than the *Freedom of Information (Amendment) Act 2003*. In addition, a number of other non-textual changes to the 1997 Act were also made.⁷⁴ This underlines the complexity of what appears at first sight to be a relatively straightforward process.

(4) The difficulties of incorporating statutory instruments

1.74 A major problem in compiling restatements is the tracking of amendments to statutory instruments and reflecting their effect on the Act being restated. Secondary legislation appears to be increasingly amended⁷⁵ and the amendments may have a serious impact on the reading of primary legislation and must be taken into account. At present there is no current Legislation Directory equivalent for statutory instruments,⁷⁶ although statutory instruments are searchable in their own right on the online Irish Statute Book and are sometimes referred to in the Legislation Directory. The restatement of the *Data Protection Act 1988* has highlighted the difficulties. Section 14(1) of the *Data Protection Act 1988* was amended by *S.I. No. 192/2002 European Communities (Data Protection and Privacy in Telecommunications) Regulations 2002* and the amending provision of this statutory instrument was in turn amended by *S.I. No. 535/2003 European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003*. The current Legislation Directory does not list either of these statutory instruments as an

⁷⁴ For the full list of Acts, Regulations and Orders affecting the 1997 Act, see Appendix A of the Law Reform Commission’s *Consultation Paper on Statute Law Restatement* (CP 45-2007).

⁷⁵ Examples of much-amended secondary legislation are the *Inland Post Warrant 1939*, S.I. No. 202 of 1939, the *Building Regulations 1997*, S.I. No. 497 of 1997, and the *Rules of the Superior Courts 1986*, S.I. No. 15 of 1986. A search of the statutory instrument section of the electronic Statute Book for “(amendment) regulations” and “(amendment) order” turns up nearly 5,000 amending instruments.

⁷⁶ The only such index to be published is Humphreys *Index to Irish Statutory Instruments* (Butterworths 1988), 3 volumes.

amending provision, although in many other instances the Directory does note statutory instruments as affecting provisions where appropriate.

Annual Report

14.—(1) The Commissioner shall in each year after the year in which the first Commissioner is appointed prepare a report in relation to his **F17**[activities under the European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003 and this Act] in the preceding year and cause copies of the report to be laid before each House of the Oireachtas.

(2) Notwithstanding *subsection (1)* of this section, if, but for this subsection, the first report under that subsection would relate to a period of less than 6 months, the report shall relate to that period and to the year immediately following that period and shall be prepared as soon as may be after the end of that year.

F18 [(3) For the purposes of the law of defamation, a report under subsection (1) shall be absolutely privileged.]

Annotations:

Amendments:

F17 Amended (6.11.2003) by European Communities (Electronic Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003 (S.I. No. 535 of 2003), reg. 23(1).

F18 Inserted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 15, S.I. No. 207 of 2003.

Editorial Note:

E14 Previous Affecting Provision: Section amended (8.05.2002) by European Communities (Data Protection and Privacy in Telecommunications) Regulations 2002, (S.I. No. 192 of 2002) reg. 19. Amended section substituted as per **F17** above.

1.75 The identification of those statutory instruments known as “commencement orders” can prove problematic. To alert users to the fact that a commencement provision applies to an Act, the commencement provision may be included in the table of the Act in the Legislation Directory. However, the effects of commencement orders (the actual commencement dates) are not usually recorded in the Directory. A commencement order usually contains the name of the Act under which it is made and the word “commencement” in its title, and can be found by scanning the annual lists of statutory instruments published on the electronic Statute Book or available from law libraries. The common practice of commencing only parts of Acts at one time, while often necessary from an administrative point of view, can make it more difficult for a

user to establish exactly when a particular provision was commenced because an Act may be commenced by a number of commencement orders. While this system can be navigated by lawyers and others experienced in working with legislation, it is a very unsatisfactory system for others.

1.76 The Commission is aware that it may face some difficulties by choosing to incorporate commencement dates in restatements as the dates specified by statutory instruments are not always clear. However the Commission is of the view that the inclusion of these dates is necessary for a complete restatement.

1.77 An example of the kind of difficulty arising in seeking to include commencement dates is demonstrated by the *Local Government Act 2001 (Commencement) (No. 3) Order 2001*.⁷⁷ Article 8 specifies

“Section 13(1)(i) of the Act of 2001 shall come into operation and have effect for the purposes of the local elections in the year 2004 and from then on. Section 14 of the Act of 2001 shall come into operation and have effect on and from the ordinary day of retirement of members next after the enactment of the Act of 2001.”

Neither section 13(1)(i) or section 14 contains a certain or fixed date and both require recourse to the Department of the Environment or another external source to clarify matters. The lack of clarity on the face of the order is of particular concern in the area of local democracy and government, given the large number of people affected and the importance to local administration.

1.78 It was decided on 20 June 2007 by the Government that a pilot electronic Statutory Instrument System (eSIS) should be implemented to allow for faster and more accurate production of statutory instruments in both final printed format and in an electronic format that is suitable for placing statutory instruments on the online Statute Book. The Government published its revised *Guidelines on the Electronic Statutory Instruments System* in January 2008. A key element of the system is that statutory instruments will be converted to the required print and web-ready formats before the statutory instrument is signed into law. In this way it is intended the statutory instruments will be ready for publication, both in hard copy and electronically, within four working days of signature. Electronic versions of the statutory instrument in both PDF and XML formats are to be made available from the electronic system for inclusion on the online Statute Book (eISB) at www.irishstatutebook.ie.⁷⁸

⁷⁷ S.I. No. 588 of 2001.

⁷⁸ *Guidelines on the Electronic Statutory Instrument System* (Government Guidelines published January 2008) at 14 paragraph 33, available at www.betterregulation.ie.

1.79 At the time of writing⁷⁹ work continues to fully implement the eSIS. The Commission understands that work is proceeding to prepare statutory instruments for 2005 - 2006 for display on the eISB website in XML. Statutory instruments for most of 2007 and 2008 to date are available on a link page from the website in PDF, not XML, which has implications for key word searching.⁸⁰ Uploading of new statutory instruments is done in batches and is therefore somewhat behind the publication dates, and not yet meeting the four working day target.

D Benefits of restatement

1.80 The Consultation Paper identified the main benefit of restatement as being the provision of an up to date statement of the law in question. It then went on to consider some of the wider benefits of restatement.

(1) Increased transparency of legislation

1.81 Transparency and accountability were identified in the Government's White Paper *Regulating Better* as two of the six principles of better regulation to be promoted as part of the Better Regulation initiative. The amalgamation of a number of Acts into one restatement will make the legislation in question more transparent. It will also promote accountability by the Government and legislature whose responsibility it is to ensure that coherent, appropriate and enforceable laws are on the Statute Book.

1.82 Restatements have the potential to enhance compliance with legislation. If legal requirements are known to those affected and others, non-compliance is more visible and more exposed to community disapproval.

(2) Benefits to the economy

1.83 The benefits of restatement to the economy are an extension of the benefits to the economy of a clear, unambiguous and appropriate regulatory and legal framework. By simplifying commercial and regulatory rules, businesses are free to operate on a more level playing field without concerns that unclear laws are favouring special interests or those better resourced to cope with them. More accessible, clearer laws as made available in restatements will also enable consumers, businesses and investors to have greater confidence in purchasing, trading and investing.

⁷⁹ June 2008.

⁸⁰ XML allows searches to be carried out over a number of files or indeed the entire repository. PDF requires searches to be made on one file at a time, which is a much slower process.

1.84 The current patchwork nature of much legislation, where amendments are layered on amendments, is costly to all users of legislation and those who employ them. Individual lawyers, civil servants and many others must undertake their own informal restatements of particular pieces of legislation in order to establish the state of the law. The cost to the economy of these replicated individual efforts is impossible to quantify but must be considerable. The savings to be achieved by the availability of convenient restatements of widely used legislation must be correspondingly significant.

1.85 Where this work to assemble informal restatements cannot be undertaken because of pressure of cost, time or lack of knowledge, those concerned suffer from uncertainty and misinformation, which have their own economic costs in lack of confidence to act and error. The economic advantages of greater accessibility of legislation were identified by the OECD report *Regulatory Reform in Ireland* (2001) already referred to, and underpin the Government's policy of Better Regulation, of which restatement is part.⁸¹

1.86 The private sector⁸² offers informal restatements of a number of Acts, available at a cost, and some informal restatements appear on the websites of Government departments and state bodies.⁸³ None of these can be relied upon as *prima facie* evidence of the law, as is provided for by section 5 of the *Statute Law (Restatement) Act 2002*. Nonetheless, their existence reveals that they supply a practical solution to a real problem, and that in the absence of formal restatements, there is a demand for them.

1.87 While the private sector, Government bodies and special interest groups produce restatements of particular relevance to their interests, they cannot be relied upon to undertake restatements of less popular or more obscure legislation where the commercial realities of time and resources do not justify the work. The Commission believes that this can only be achieved by a body charged with undertaking restatements as a public service. Making restatements available free of charge like other legislation is in accordance with the Government's policy of promoting access to legislation.

(3) Benefits to the legislative process

1.88 Restatements will be of benefit to the legislative process by assisting the drafters of legislation in the preparation of new or amending legislation. It

⁸¹ See paragraphs 1.04-1.10.

⁸² For example, Thomson Round Hall on their website www.westlaw.ie.

⁸³ For example, an informal restatement of the *Data Protection Acts 1988 and 2003* (compendium of Acts) is available on the website of the Data Protection Commissioner www.dataprivacy.ie.

will also assist legislators who are debating an amending Act and who face obstacles in understanding the original legislation, particularly if it has already been amended. Further, as restatements are administrative consolidations they do not require parliamentary time. They are therefore able to contribute to the simplification of the Statute Book without making demands on that limited resource.

1.89 The improved accessibility of legislation which can be afforded by restatements may also increase citizen participation in the legislative process. If people are aware of the state of the law and the issues involved, it is easier for them to seek to influence its future shape. The availability of restatements at no charge gives power equally to those who cannot easily afford the informal restatements available from the private sector.

(4) Benefits to the legal system

1.90 The economic benefit of restatements to those working in the legal system is even more obvious than the benefit to the economy in general, because of the concentration of work involving legislation. The Consultation Paper mentioned the *Planning Acts* as an example of legislation which is widely used by legal practitioners and others, and which would benefit many if it were to be restated.

1.91 It appears that clients as well practitioners could directly benefit from restatements. In a submission on the Government's Consultation Paper *Towards Better Regulation*, the Courts Service suggested that one of the main reasons for citizens' frequent use of judicial review was the lack of clarity and quality of legislation.⁸⁴

1.92 The Commission is conscious that statute law restatement must be seen against the broader background of regulatory reform, which is central to the Commission's statutory remit. The introduction to the Government's 2004 White Paper *Better Regulation* states that it aims to make legislation

“more accessible to all and better understood. Existing regulations will be streamlined and revised, where possible, through a process of

⁸⁴ At 14, available at www.betterregulation.ie/attached_files/upload/static/1157.rtf. On the other hand, the cost of judicial review and its application restricted to administrative decisions are factors limiting its use. The cost factor cannot be unaffected by the need to work with much amended legislation. In this way, inaccessible legislation contributes to the perceived need for judicial review, and to making it unaffordable.

systematic review and by repealing, restating and consolidating them as appropriate.”⁸⁵

1.93 The process of law reform also stands to benefit from restatement, which can assist by clarifying the state of the law to be reformed, any gaps which exist or provisions which require reform. Informal restatements are compiled and used by the Commission in this way.⁸⁶

1.94 The Commission sees statute law restatement as one of a range of initiatives aimed at the eventual introduction of eLegislation,⁸⁷ in turn an important element of regulatory reform. Restatement can also be seen in the specific context of law reform, as a precursor to consolidation, reform and codification of a particular area.

(5) Development of law reform – codification, consolidation and restatement

1.95 Codification and consolidation should not be seen as alternatives to restatement but rather as other distinct tools that facilitate the making of legislation more accessible and coherent. Both codification and consolidation are legislative in nature and require parliamentary time. Restatement does not, and can facilitate consolidation and codification by laying the groundwork for these processes.

(a) Codification

1.96 Codification is the process that combines all existing law into one body of law. In Ireland, a common law jurisdiction, this means combining case law with existing legislation to form a legal code. Codification aims to make statute law accessible and coherent and may be applied equally to civil and criminal law.

1.97 The *Report of the Expert Group on the Codification of the Criminal Law* was published in November 2004 and has given rise to the establishment of a Criminal Law Codification Advisory Committee under Part 14 of the *Criminal Justice Act 2006*. The Criminal Law Codification Advisory Committee is working to compile a draft criminal code.

⁸⁵ *Regulating Better, A Government White Paper setting out six principles of Better Regulation* (Government White Paper 16 January 2004) at Introduction, available at www.betterregulation.ie.

⁸⁶ Paragraph 1.03.

⁸⁷ Discussed at paragraph 1.102.

1.98 The Criminal Law Codification Advisory Committee has published its First Programme of Work 2008-2009.⁸⁸ In this programme the Committee notes that

“the key objective will be to collect the substantive law of crime in a single instrument that is logically organised and easy to read... this is normally done by dividing the criminal code into two parts, one dealing with the principles of criminal liability (the General Part), the other with the criminal calendar (the Special Part).⁸⁹

As regards the General Part, the accent will be on restatement. The task will be to restate the common and (small corpus of) statute law rules and principles governing the ascription of criminal liability in a comprehensive body of law capable of systematic application to all of the offences included in the Special Part.⁹⁰

...

In the case of the Special Part, the emphasis will also be on restatement, albeit that the body of law requiring restatement has already been reduced to statutory form – in the shape of the four mini-codes that have been selected for inclusion in the inaugural Special Part.”⁹¹

1.99 In the above passage, the term “restatement” is used in a somewhat different sense to that in the *Statute Law (Restatement) Act 2002*. Nonetheless, in relation to the Special Part, the reference to restatement demonstrates the contribution that this activity may make as a preparatory step in the development of a code, by the provision of a single legislative text.⁹²

⁸⁸ *First Programme of Work 2008 – 2009 Approved by the Minister for Justice, Equality and Law Reform* (Published Criminal Law Codification Advisory Committee January 2008) available at www.criminalcode.ie.

⁸⁹ *Ibid* at paragraph 2.02.

⁹⁰ *Ibid* at paragraph 2.03.

⁹¹ *Ibid* at paragraph 2.08. This approach will of course not necessarily apply in relation to codification of aspects of civil law.

⁹² The *Report of the Expert Group on the Codification of the Criminal Law 2004* also recognised the potential contribution of restatement under the 2002 Act “in alleviating the difficulties besetting pre-independence statutes still applicable in Ireland” (at paragraph 1.75). It suggested identifying those parts of the law amenable to straightforward restatement and prioritising work accordingly (at paragraph 3.52).

(b) Consolidation

1.100 Consolidation is the formal amalgamation of related Acts into a single Act. As consolidation may require statutes to be redrafted in order to update language and to ensure consistency between the consolidated Acts, consolidations must be passed by the Oireachtas and require parliamentary time. There are a total of six Consolidation Acts currently on the Irish Statute Book⁹³ and a number of further Bills are proposed.⁹⁴

1.101 Consolidation in the context of the Irish legislative framework is particularly fraught as

“many acts are amended, modified, restricted, applied in particular circumstances and affected in a myriad of ways. The task of consolidation is not only a matter of ‘scissors and paste’ but also requires the involvement of an experienced drafter to decide how to deal with the problems caused by modifications, restrictions, constructions and other devices used by drafters to give effect to complex instructions.”⁹⁵

Consolidation is a more ambitious and complex task than restatement. Because of the complexity of certain legislation, it may not be suitable for restatement. Nonetheless, where there is in existence a restatement of the legislation concerned, it can only serve to simplify the task of consolidation.

(6) eLegislation

1.102 The Commission referred to the Government’s eLegislation strategy in the Consultation Paper and stated its commitment to ensuring that its Programme of Statute Law Restatement will be compatible with the ongoing development of the eLegislation initiative. It noted that there is no uniform

⁹³ *Social Welfare Consolidation Act 2005* (which replaced previous Consolidation Acts of 1993 and 1981), *Capital Acquisitions Tax Consolidation Act 2003*, *Stamp Duties Consolidation Act 1999*, *Taxes Consolidation Act 1997*, *Fisheries (Consolidation) Act 1959* and *Destructive Insects and Pests (Consolidation) Act 1958*.

⁹⁴ An example is the *Land and Conveyancing Law Reform Bill 2006*, which arose from the Commission’s *Report on Reform and Modernisation of Land Law and Conveyancing Law* (LRC 74-2005) (July 2005). The 2006 Bill will repeal over 150 pre-1922 Acts, as well as repealing parts of many post-1922 Acts. The 2006 Bill modernises the language of many of the provisions in the existing body of legislation.

⁹⁵ Donelan “Recent Developments in Statute Law Revision in Ireland” *Statute Law Review* (2001) Vol. 22, pp. 1-19.

definition of the exact scope of eLegislation, and that in its purest form it appears to envisage the elimination of paper from the legislative process altogether. It referred to the experience and achievements of different jurisdictions, where online access to updated legislation is made available, often within a short period of enactment or coming into force.

1.103 An *ad hoc* group to progress eLegislation started work in December 2007 with the Commission's participation. The first task of the group is to scope the eLegislation project, work which is underway.

1.104 As implied in its name, eLegislation depends on technology to achieve its objective of prompt online publication of current legislation. The case for compatible and inter-operable technology is well accepted and it is therefore important that any new initiatives integrate with existing technology and systems. Elements of a drive towards greater eLegislation must involve technical integration or inter-operability in the chain of activities from origination to publication of legislation; coordination of work practices and development of agreed standards and guidelines in drafting and presentation; and a cohesive management structure which allows for consultation with and input from all those involved, but which also has the authority to make decisions and elicit cooperation.⁹⁶

1.105 Significant elements of an eLegislation programme are already in place, including the Legislative Workbench system in the Oireachtas, the electronic Statutory Instrument System (eSIS) and the online Statute Book (eISB). The XML authoring tool being developed for the Commission (discussed in Chapter 3) will be compatible with these systems and will allow the production of restatements which can be added to the existing repository of legislation. Significant opportunities for efficiency are readily discernable in the introduction of an XML authoring tool for the drafting of legislation, maintenance of the Legislation Directory as a by-product of legislative drafting, publication of the statutory instruments in XML format and upgrading of the management and maintenance of the eISB (at the time of writing under consideration in the Office of the Attorney General).⁹⁷

⁹⁶ In Hunt "Big Hat, No Cattle: Accessibility, and Reform of the Irish Statute Book", paper at PAI seminar 2 July 2008, p. 26, the author suggests that many of the difficulties with the Statute Book arise from the fragmentation of responsibility for its various aspects, and that responsibility for the publication and order of the Statute Book should be conferred on a single office or body.

⁹⁷ June 2008. The successful coordination of these different elements of an eLegislation programme will of course require a common template and management.

1.106 The Commission views the current Restatement Programme as an ongoing project in the context of the complexities of tidying up the Statute Book. The Programme's contribution to making legislation more accessible and available online in a more up to date form will in itself be a contribution to the eLegislation objective. The Commission sees further potential to build on this work and avoid the inevitable ageing of restatements as new amendments are introduced and restatements go out of date. The Commission may not have the resources to continuously update restatements without jeopardising its future programme of restatement, nor does it consider that resources should be applied in this manner. To address this issue, the Commission suggests a twofold approach.

1.107 The Commission believes that the value of a restatement could be increased by its enactment as an up to date version of the relevant principal Act, replacing the original principal Act and amending provisions (which would be repealed). This could be achieved by an accelerated parliamentary procedure. In British Columbia, the Chief Legislative Council may prepare a revision Bill which following a special and simple legislative committee procedure is then enacted.⁹⁸ The Commission recognises that this would be a radical development in the context of the Irish tradition of parliamentary enactment of legislation, and any procedure would have to satisfy the requirement for parliamentary scrutiny and control. The Commission notes, however, that a special parliamentary procedure is already in place for the enactment of consolidations,⁹⁹ and considers that in the interests of a more accessible Statute Book a system adapted from that used in British Columbia would have merit.¹⁰⁰ This would also have the benefit of building on section 5 of the *Statute Law (Restatement) Act 2002* which states that restatements are

⁹⁸ The British Columbia *Statute Revision Act* is reproduced in Appendix A. A number of other Canadian provinces including Quebec (*An Act respecting the Compilation of Laws and Regulations 2007 Bill 7*), Ontario (*Legislation Act 2006 S.O 2006, Chapter 21 Schedule F*) and the territory of Yukon (*Continuing Consolidation of Statutes Act 2002 Chapter 41*) make statutory provision for the acceleration of Restatement Bills through the legislature. In these Canadian jurisdictions a restatement (albeit named differently) may be put forward as a Restatement Bill and a special fast track mechanism is available to speed up its progress through the legislature.

⁹⁹ Standing Orders 134-143 of the House of the Oireachtas.

¹⁰⁰ The procedure under the British Columbia Statute Revision Act was discussed by Donelan "Recent Developments in Statute Law Revision in Ireland" *Statute Law Review* (2001) Vol. 22, 1-19.

prima facie evidence of the law contained in the provisions to which they relate and shall be judicially noticed.

(a) Report recommendation

1.108 *The Commission recommends that consideration be given to the enactment of restatements as principal Acts using an accelerated procedure such as that used in British Columbia.*

1.109 Further, in respect of already restated Acts, the Commission suggests that future amending legislation could be published already integrated into the restated Act, resulting in the enactment of a new version of the Act.¹⁰¹ The Commission recognises that this integration would effectively occur in the Office of the Attorney General, which prepares all Government Bills. In preparing amending legislation, the Commission understands that informal restatements may be developed to assist with this drafting process. Any additional work may in time be assisted by the introduction of appropriate technology including an authoring tool which supports the drafting function.

1.110 At present, piecemeal amendments can be preferred to entire replacements of text for strategic reasons (as only the amendments being proposed are open for debate in the Oireachtas), and the Commission recognises that this reality would have to be accommodated in any new procedure. At present, when consolidated legislation is being planned, it is customary to enact pre-consolidation amendments to facilitate passage of the consolidation Act.¹⁰² The Commission's proposal would reduce this process to a single step.

(b) Report recommendation

1.111 *The Commission recommends that, in respect of already restated Acts, future amending legislation be published already integrated into the restated Act, resulting in the enactment of a new version of the Act.*

¹⁰¹ The Commission recognises that as long as the printing of Acts is the primary means of publication, the re-enactment of large Acts with only a small number of amendments may not be viable on grounds of printing cost. However, the Commission believes that the preparation of a version of the legislation incorporating amendments would still be useful and could be published (at least online) as a restatement of the principal Act at the time of enactment.

¹⁰² For example, the pre-consolidation provisions contained in the Finance Acts which immediately preceded the enactment of the *Taxes Consolidation Act 1997*.

(7) The future of restatement

1.112 The Commission notes the different steps being taken to tidy up the Statute Book in accordance with the Government's policies, of which restatement is one (the others being general statute law reform, statute law consolidation and codification). The process of restatement may be seen as a "first step" that will facilitate any future consolidation and codification of legislation by preparing cohesive statements of the legislation.

1.113 The Commission is conscious that statute law restatement cannot solve all the problems which are associated with the current state of Irish legislation. However restatement will go some way to making Irish legislation more accessible and will provide impetus for moving forward in the future by setting out the legislative position with clarity and doing essential preparatory work for any reforms. Restatements have the potential to lay the ground work for achieving greater integration in the access, presentation and publication of legislation.

1.114 The Commission believes that restatements should be seen as an important measure to assist in the streamlining and tidying up of the Statute Book, and in appropriate cases forming the basis for new legislation which enacts them as principal Acts or consolidations. As already suggested above,¹⁰³ the need for further restatements to incorporate future amendments should be avoided by their incorporation at the drafting stage in new versions of legislation. The Commission accepts that this will require changes to the way in which legislation is enacted, but believes that this should be considered in the interests of a more accessible Statute Book. This may be considered by the eLegislation working group.¹⁰⁴

1.115 Even in the event that existing restatements are enacted and updated as suggested, the Commission foresees the need for an ongoing restatement programme to continue to simplify the Statute Book and contribute to other initiatives such as consolidation, codification and reform, and the improved access to law envisaged by the eLegislation concept.

¹⁰³ Paragraph 1.109.

¹⁰⁴ Paragraph 1.103.

CHAPTER 2 THE PROCESS OF RESTATEMENT

A Introduction

2.01 In this chapter, the Commission considers in detail the process required to produce a restatement. Part B broadly describes the overall process of producing a restatement, from securing a reliable text version of the Act to be restated - the principal Act - through to the requirement to obtain the signature of the Attorney General and subsequent publication.

2.02 Part C examines the question of what form restatements will take. This part focuses on the issue of the presentation of restatements in a format which will achieve a series of desired aims including comprehensiveness and ease of reference. This part draws on the submissions which the Commission received concerning the three versions of the restated *Freedom of Information Act 1997* which were published in the Consultation Paper.¹

2.03 Part D considers the structure of restatements including the types of annotations and commencement information which the Commission will use for its First Programme of Restatement. Part E discusses the issue of publication on paper and online as part of a public-access website. With that in mind, the Commission examines whether particular additional features are required for each of those formats. This part also considers the various options for publishing restatements, within the constraints presented by the project - in particular the requirement that the Attorney General certifies the restatement with his signature, and the desirability of maintaining restatements up to date in response to legislative amendment.

B Process

2.04 This part examines the process of creating a restatement. The Consultation Paper dealt in some detail with this aspect of the restatement project. The following discussion builds on that earlier analysis with reference to the various submissions which the Commission received and the acquired knowledge which the Commission has built up internally through a number of "pilot restatements".

¹ *Consultation Paper on Statute Law Restatement (July 2007)* (LRC CP45-2007).

(1) Introduction to terminology - principal Act, group of Acts and suite of Acts

2.05 In order to carry out the process of statute law restatement ideally the Commission must first acquire a reliable electronic version of the text of the principal Act to be restated and all of the subsequent Acts and statutory instruments which affect that Act. Appendix C contains a restatement of the *Data Protection Acts 1988 and 2003*. In that case the 1988 Act is the principal Act. However, two independent provisions remain in the 2003 Act aside from the amending provisions, and are included in a restatement of the 2003 Act. In many cases each restatement exercise will restate one principal Act, but this will not always be the case. Appendix D contains a restatement of the *Prevention of Corruption Acts 1889-2005*. In that case there is no principal Act but rather there is a series of six Acts, each of which must be separately restated.

2.06 In the latter case the result is a group of Acts - the *Prevention of Corruption Acts* - which the Commission publishes together. In this report, as will become apparent, references to a group of Acts can mean a reference to a series of Acts of more or less equal importance - such as the *Prevention of Corruption Acts*. The term "a suite of Acts" is used to refer to a decision by the Commission to publish together a series of unrelated restatements which concern the same broad subject matter, or which can be categorised in the same way.

(2) Reliable data

2.07 As mentioned, the first stage in the process of statute law restatement is the acquisition of a reliable electronic version of the various Acts and statutory instruments which will form a part of the restatement exercise. Securing accurate data is an essential starting point in undertaking a restatement, and for practical reasons the data must be in an electronic form which lends itself easily to the editing process - an essential part of the restatement exercise.

2.08 The principal electronic repository of data of the statutes, for the Commission, will be the electronic Irish Statute Book (eISB),² which holds statutes from 1922 to the end of 2006, statutory rules, orders and regulations from 1922 to 1947, and statutory instruments from 1948 to mid-2005. The Commission received this repository from the Office of the Attorney General in February 2008.

² www.irishstatutebook.ie.

2.09 As stated in the Consultation Paper, the Commission was aware of a data error disclaimer which was published on the eISB site in August 2006 as a result of a specific data error on the site. The Commission was informed that extensive work was carried out to eliminate that error and it welcomes the deletion of that disclaimer in January 2008, and the re-publication of a general disclaimer. The Commission understands that this indicates there are no further *known* errors remaining in the eISB repository of data.

2.10 However, even with the development that the eISB repository of data is now more reliable as a source of statutory material, the Commission intends to adopt a cautious approach to questions of reliability. In that regard the Commission intends to take further steps to validate the accuracy of the data supplied to it.

2.11 The Commission will use official printed versions of the Acts of the Oireachtas and the statutory instruments for visual comparison with the equivalent electronic versions. It is also considering the use of document comparison software - incorporating Optical Character Recognition (OCR) - which might be employed to speed up the process of comparison and achieve a greater degree of accuracy. OCR software could be used to convert scanned printed legislation into electronically readable legislation, thus facilitating a comparison between two electronic versions of the same text. However, the scanning will take time and the conversion itself may be unreliable, and these aspects must be evaluated.

2.12 While the Commission intends to take all practical steps, day-to-day, to ensure the accuracy of the data which it will use for the restatement process, it sees the advantages for all users of having the repository of legislation validated and authenticated.

(3) XML data

2.13 The issue of Extensible Mark-Up Language (XML) data and the role that such data plays in the process of restatement will be considered in detail in Chapter 3. However, for the moment, it should be noted that the eISB repository of data is marked-up in XML format, though to different levels of detail or “granularity”. This will allow the Commission to edit restatements in that format, though the Commission will need to upgrade the marking-up of part of the repository.

2.14 In the Consultation Paper³ the Commission set out its intention to use XML data on the basis, among other matters, that such data is, on the one hand, easily manipulated, and on the other, held in a sufficiently robust and durable format.

³ LRC CP 45-2007.

2.15 The Commission did not receive any submission which disagreed with that position or which questioned the Commission's choice of XML as the preferred format for holding and manipulating legislative material, and the Commission has decided to proceed with the use of XML. The Commission has received a full repository of XML data for Acts from 1922 to 2006. The Commission has also received a full repository of statutory rules, orders and regulations and statutory instruments, marked-up in XML, from 1922 to June 2005. The Commission will seek to acquire XML marked-up versions of the Acts since 2006 and statutory instruments since July 2005 on an ongoing basis. If not promptly available in marked up form, the Commission may need to make independent arrangements for the mark-up of new legislation. The Commission has received the Legislation Directory (previously the Chronological Tables of the Statutes) for the period 1922 to 2005 in XHTML, a related format to XML.

2.16 An issue for the Commission is the question of the availability of pre-1922 Acts. The Commission has so far been unable to secure a reliable source of those Acts⁴ marked up in XML format. This may present obvious difficulties for the Commission when it turns its attention to material which will encompass this pre-1922 legislative material.

2.17 However it is anticipated that a relatively small number of pre-1922 Acts will be required by the Commission based on its First Programme of Restatement.⁵ In order to compile such a programme the Commission took account of various criteria set out in Chapter 4. While not dealing with that issue in any great detail at this juncture, it is enough to note that for various reasons very few of the pre-1922 Acts satisfied those criteria to the extent that they will feature in the Commission's First Programme of restatement.

2.18 The Commission will therefore not require XML versions of the entire repository of pre-1922 legislation, but will arrange for certain pre-1922 Acts to be marked-up on an individual basis as the need arises.

2.19 In that regard, the Commission is aware that during an Oireachtas debate on the *Statute Law Revision Act 2007*, the Government stated that it was intended that all pre-1922 Acts remaining on the Irish Statute Book five years after the passing of the 2007 Act would be made available online.⁶ If that is achieved it will largely address the requirements of the Commission.

⁴ The 1,364 Acts listed in the *Statute Law Revision Act 2007*, First Schedule.

⁵ Paragraph 4.38.

⁶ Select Committee on Finance and the Public Service, 13 March 2007, available at www.oireachtas.ie.

(4) Identifying affecting provisions

2.20 Once the Commission has acquired accurate source data of all the legislative material in XML format, the next step will be to collate all the material which affects the principal Act(s) to be restated.

2.21 One tool which may be considered to offer assistance at this stage is the Legislation Directory (previously the Chronological Tables of the Statutes). This Directory provides an amendment history for each Act enacted or amended between 1922 and 2005. This should provide a useful guide from which to identify the relevant material for each of its restatements. However, as noted in the Consultation Paper, the Legislation Directory is neither sufficiently accurate nor up to date to be relied upon in that way. The Commission has already encountered several inaccuracies in the current Legislation Directory.

2.22 At the request of the Attorney General, the Commission agreed to take responsibility for the maintenance of the Legislation Directory in 2007. The Commission has prepared a Consultation Paper on issues arising in relation to the Legislation Directory, its future form and presentation.⁷ On publication of the Paper, the Commission will be in a position to start work on the maintenance of the Legislation Directory. In the meantime, the absence of an up to date Legislation Directory is problematic for the restatement project and also for many other users of legislation. The lack of all the necessary information in the Legislation Directory is proving to be costly to the restatement project because of the time needed to acquire that information from other sources. However, once a Legislation Directory table has been updated and validated for the restatement project, this revision can be contributed to the Legislation Directory project.

2.23 With these considerations in mind the Commission concludes that for the time being the Directory can only be used in conjunction with other quality assurance procedures which the Commission will employ to ensure accuracy and reliability of the amendment history of any Act.

2.24 Initially, the quality assurance exercise which the Commission employed in this regard was, essentially, a manual exercise in collecting relevant data from various sources - the Irish Statute Book, the *Iris Óifigúil*, the website of the Houses of the Oireachtas, and commercial databases. The Commission collected all of the various materials in one document, which it called the Affecting Provisions Document, and checked the material in that document against the Act's table in the Legislation Directory. Any discrepancies between the Affecting Provisions Document and the relevant

⁷ *Legislation Directory: Towards a Best Practice Model* (July 2008), LRC CP 49-2008.

table in the Legislation Directory were examined with the objective of validating and completing a revised and up to date Legislation Directory table. This table was then used as the basis for carrying out the restatement exercise.

2.25 With the assistance of the search facility in the authoring tool being developed for the Commission, restatement will proceed with the assembly of an Affecting Provisions Document setting out all legislative provisions which affect the Act being restated, using the Legislation Directory and other sources. Once that is achieved, each reference in the Affecting Provisions Document can be validated or discarded by a member of the restatement team. In that way an accurate Legislation Directory table for the principal Act can be prepared, as well as a master list of changes to be implemented.

(5) “As amended”

2.26 It should not be overlooked that all of the relevant provisions of the Acts and statutory instruments which will form a part of the restatement must be presented in an “as amended” format. In effect, this means that as the original amendments to the principal Act may have been modified or repealed, it is necessary that such provisions are themselves “restated” before they are inserted into the principal Act to be restated.

2.27 Only those sections relevant to the restatement of the principal Act will be presented in this “as amended” format. The example below is taken from a restatement of the *Prevention of Corruption Act 1906* which shows that the affecting provisions were themselves twice amended.

C3 Act affected (09.07.2001) by *Prevention of Corruption (Amendment) Act 2001*, (27/2001) ss. 3-6 and 9-10, S.I. No. 519 of 2001 (with the exception of s. 4(2)(c), commenced (11.10.2002) by S.I. No. 477 of 2002); as amended (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005*, (1/2005), s. 23, commenced on enactment; and (01.08.2006) by *Criminal Justice Act 2006*, (26/2006), s. 191; S.I. 390 of 2006.

(6) Commencement dates

2.28 The next step in the process of restatement will be to collect the statutory instruments which set commencement dates of any affecting legislation for inclusion in the annotation. In order to establish whether an Act or section of an Act has been commenced, the Commission will have to undertake searches of the Irish Statute Book (eISB) website and paper copies of more recent statutory instruments.

2.29 However, aside from the difficulty of locating commencement orders which commence particular sections and Acts, there is also the difficulty of obtaining information which states that particular sections or Acts have *not* yet

commenced. The Commission has found that, quite often, the only way of confirming this information is by directly contacting the relevant Department or body responsible for sponsoring the legislation at issue.

2.30 One development which will assist the process into the future is the introduction in 2007 of the electronic Statutory Instrument System (eSIS), which is managed by the Government Supplies Agency. The aim of that system is to standardise electronic publication of statutory instruments. The eSIS repository has greatly improved the general availability of statutory instruments, including commencement orders, from that time onwards. The Government Supplies Agency makes them available for publication in PDF through a link on the eISB. Additional statutory instruments produced through the eSIS will be included on the link from the eISB site as they become available, and the Commission understands that work will be undertaken to make statutory instruments from the second part of 2005 and 2006 available also.

(7) *Drafting a restatement*

2.31 Once the Commission has acquired accurate core data, and has generated a revised Legislation Directory table with full commencement information, the restatement team will be in a position to draft a restatement of the principal Act(s). In general, this task involves inserting the material listed in the revised Legislation Directory table into the principal Act to be restated and providing succinct annotations for each amendment included. Once an individual amendment has been completed and annotated, that provision will be marked off in the Legislation Directory table as having been dealt with.

(8) *Quality control*

2.32 Quality control procedures form a vital part of the restatement exercise. This chapter has already considered instances where quality control procedures are utilised in order to maximise the accuracy of the restatements published by the Commission - verification of the electronic version of legislation provided to the Commission, and verification of the Legislation Directory table, for instance. As the Attorney General has the statutory authority to certify the completed restatements as accurate statements of legislation, he will be kept informed of the operation of the various quality control procedures in the Commission.

2.33 The Commission anticipates that the work process involved in delivering accurate, uniform and reliable restatements is likely to evolve over time. The initial process sketched here is designed to uncover particular identified points of concern such as those associated with search techniques, and inaccuracies in the data repository. The Commission anticipates that it will be in a position to streamline these various procedures as identified concerns

are addressed systematically. Initially, the following processes will be utilised by the Commission.

(9) Double blind

2.34 In the interests of quality assurance, it is anticipated that early restatement exercises will be undertaken by two researchers in the Commission without any collaboration between them. By comparing and contrasting the results the Commission will be able to deal with points of differentiation between the two exercises.

2.35 As such “double blind” exercises are a resource-intensive quality assurance tool, it is intended that the Commission will only employ this approach during the initial stage of the Commission’s programme of restatement. Once a body of knowledge has been built up and documented in an internal restatement manual, and issues giving rise to errors have been identified and remedied where possible, the Commission anticipates that identical results will be achieved on a consistent basis. At that point the practice of “double blind” exercises can be discontinued, subject to the Commission’s confidence in the process.

(10) Peer review

2.36 Once a restatement has been completed by a researcher in the Commission, it will be submitted to another researcher for peer review. This verification process will ensure that the restatement has been compiled in accordance with the Commission’s internal manual, and that any obvious errors are checked and corrected if necessary.

2.37 The Commission understands that initial editing by a well-trained editor can achieve high rates of accuracy. The Commission believes that such rates are achieved by the team working on the United Kingdom Statute Law Database.⁸

(11) Commission sign-off

2.38 Once the restated Act has been peer-reviewed it will be forwarded to the project manager for the restatement project. The project manager will ensure that all quality control procedures have been complied with and will verify that the restatement meets the required editorial standard. The project manager will carry out spot-checks of amendments and annotations. At this stage the project manager may advise a researcher to revisit a restatement in order to carry out certain identified tasks including checking for recent changes.

⁸ Conversation with the Office of Public Sector Information, London, in January 2008.

These will be dealt with before the restatement project manager and the Commission sign off on the restatement.

(12) *Transmission to the Office of the Attorney General*

2.39 When the Commission has completed the quality assurance process, and has signed-off on the restatement, it will send the completed restatement to the Office of the Attorney General for certification. While, as yet, it is undecided how this transfer will be conducted, the Commission anticipates that the restatement may be sent in PDF format. The Commission understands that this format is relatively invulnerable to electronic corruption.

2.40 The Commission will liaise closely with the Office of the Attorney General during the initial phase of the Programme of Restatement to work out the exact steps of this process - in particular to ensure that the quality control burden which falls on both bodies is acceptable to all concerned.

2.41 In that regard, the Commission is conscious, in particular, that further amendments may become operative in the period between sign-off by the project manager on behalf of the Commission, and signature by the Attorney General. The Commission considers that the best option may be for the Attorney General to certify a restatement as of a particular date.

(13) *Certification*

2.42 The *Statute Law (Restatement) Act 2002* requires that the Attorney General certifies a restatement before it can be regarded as a restatement under the Act. The Act stipulates that once the restatement has been certified, it must be laid before the Houses of the Oireachtas for a twenty one day period.⁹ Once that requirement has been satisfied the Commission, or possibly the Office of the Attorney General, will deal with the matter of electronic publication of the restatement while, at the same time, arrangements are also made to produce a paper version.

(14) *Online publication before certification*

2.43 In the interests of making restatements available to the public without unnecessary delays, the Commission is considering the publication of pre-certified restatements online, until such a time as the restatements are certified.

2.44 While not having the authority of restatements under the *Statute Law (Restatement) Act 2002*, the Commission considers that such restatements may still be of benefit to users of legislation. Such pre-certified publication may have advantages - it would allow updates to existing restatements to be published promptly, without the need to request the Attorney General's signature and

⁹ *Statute Law (Restatement) Act 2002*, section 8.

laying before the Houses of the Oireachtas on a very frequent basis. This is further discussed below.¹⁰

C Format of restatements

2.45 This part examines the format that restatements will take. The Consultation Paper published three versions of the *Freedom of Information Act 1997* and invited submissions on those versions. Many submissions received referred to the various versions. Version 1 was compiled in the style of the Statute Law Revision Unit in the Office of the Attorney General. Version 2 was compiled in the style of the Statute Law Database in the United Kingdom. Version 3 was a modified version of the approach used by the Statute Law Database team in the United Kingdom. The major difference between version 2 and version 3 was the inclusion in version 3 of the text of all non-textual amendments.

(1) Version 1

2.46 The Commission received no submissions which expressed a preference for version 1. That version was found to be confusing and difficult to navigate. In particular the “Chapter” system and the “Miscellaneous Provisions” section, as departures from the form in which legislation is enacted, were found to be difficult for the non-expert user to comprehend. On the basis of these submissions the Commission decided to exclude version 1 from further consideration.

(2) Version 2

2.47 Version 2 gained a significant body of support in the submissions received by the Commission. It will be recalled that that version included only a bare reference to a non-textual amendment, without including the text of such an amendment. In that way, it kept the restatement close to the original length of the principal Act. Submissions received which were favourable to this version considered that it included the most amount of relevant information without the negative effects of introducing large extraneous amounts of text. If version 2 were adopted the user would be presented with the following (sample) annotation - rather than approximately four pages of extrinsic statutory text that would otherwise be supplied if version 3 were used:

Prevention of Corruption Act, 1906.
(6 Edw. 7.) CHAPTER 34.

¹⁰ Paragraphs 2.108 to 2.10.

An Act for the better Prevention of Corruption.

[4th August 1906]

B E it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Annotations:

Modifications etc. (not altering text):

C1 Act affected (22.12.1916) by *Prevention of Corruption Act 1916*, (6 & 7 Geo. 5 ch. 64), ss. 1-4, commenced on enactment, as amended (1.11.95) by *Ethics in Public Office Act 1995*, (22/1995), s. 38, S.I. No. 282 of 1995.

C2 Act affected (12.06.1928) by *Prevention of Corruption Acts, 1889 To 1916, Adaptation Order 1928* (S.R.O. 37 of 1928).

C3 Act affected (1.11.1995) by *Ethics in Public Office Act 1995*, (22/1995) ss. 1(3) and 38, S.I. No. 282 of 1995.

C4 Act affected (26.11.2001) by *Prevention of Corruption (Amendment) Act 2001*, (27/2001), ss. 2-10, S.I. No. 519 of 2001, (with the exception of s. 4(2)(c), commenced (4.11.2002) by S.I. No. 477 of 2002); as amended (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005*, (1/2005), s. 23, commenced on enactment; and (01.08.2006) by *Criminal Justice Act 2006*, (26/2006), s. 191, S.I. 390 of 2006.

C5 Application of Act not excluded (1.01.2003 and 21.05.2004) by *Local Government Act 2001*, (37/2001), s. 170, S.I. No. 218 of 2002 and S.I. No. 217 of 2004.

Editorial note:

E1 Previous affecting provision: Act applied (12.07.1989) by *Central Bank Act 1989*, (16/1989), ss. 16 and 17, S.I. No. 176 of 1989. S. 16 repealed (01.05.2003) by *Central Bank and Financial Services Authority Act 2003*, (12/2003), s. 35 and sch. 1, S.I. No. 160 of 2003. S. 17 applies to every person to whom s. 16 relates, and therefore would appear to be obsolete.

2.48 The Commission is aware that the conciseness of version 2 is attractive to the non-expert and occasional user. However, the Commission has concluded that to proceed with version 2 would have significant disadvantages. Most importantly it would require a user to consult an extrinsic source on each occasion he or she wanted to establish the exact parameter of a non-textual amendment to the restated Act. This would, the Commission believes, defeat the primary purpose of a restatement and lead to a user replicating much of the work already undertaken by the Commission's editorial staff.

2.49 The Commission believes that providing even a minimal extract of text will quickly and efficiently allow users to filter the non-textual amendments to establish their significance or otherwise. It is precisely because the text from

these non-textual amendments is provided in the restatement that users are enabled to quickly identify what is relevant and irrelevant.

2.50 The Commission believes that version 2 would be less than ideal as the primary restatement format. However, version 2 may be appropriate for online publication, particularly where links are made available to the legislation cited in the annotations, giving users the option of looking up any reference.

2.51 Where printing from the internet is concerned, version 2 will not offer any special advantage because of its greater compactness. A compact version for printing can be achieved by a facility which will allow annotations to be turned on or off at the option of the user. The Commission aims to include such an option for its restatements published online, subject to agreement with the custodian of the electronic Irish Statute Book (eISB) website. In other words, a version 2 restatement, or indeed a version 3 restatement, can technically be presented in such a way that the restatement may be printed with or without annotations, at the choice of the user.

(3) Version 3

2.52 Of the options presented in the Consultation Paper, version 3 received the greatest level of support. Many of the submissions, particularly those received from Government departments, stated that presenting as much information as possible in a restatement would aid them in appraising the evolution of an Act, without the necessity of recourse to extrinsic materials.

2.53 However, the Commission is aware of the competing imperative of compiling a comprehensive restatement and presenting it in a manner that enables non-expert users to readily understand the material. For this reason the Commission has decided to employ a modified form of version 3.

(4) Modified version 3

2.54 On the basis of the submissions received the Commission experimented with variations of version 3. As a result of those trials the following modifications are adopted.

(a) Non-textual amendments

2.55 The Commission considers that including the full text of all non-textual amendments - as applied in the versions in the Consultation Paper - would make some Acts impractically long.

2.56 During the trial phase after the publication of the Consultation Paper, the Commission came to consider that it was not necessary to include the full text of non-textual amendments, and that smaller extracts would be equally useful to a user of the restatement. Including an entire section in the restatement would inform the reader of a non-textual amendment (in this

example the non-application of the *Data Protection Act 1988*), yet that information could be buried in lengthy and otherwise irrelevant provisions.

2.57 Therefore the major modification of version 3, as presented in the Consultation Paper, will be the exclusion of all but the directly relevant fragment of legislation that refers to the principal Act. The Commission believes that this will offer a user all necessary information to track down the complete text should it be required, without unduly lengthening the restatement. As originally envisaged by version 3, non-textual amendments would be represented as follows:

C2 Application of Act restricted (20.11.2000) by *Refugee Act 1996* (17/1996), s. 11 (5), S.I. No. 365 of 2000.

Investigation of application by Commissioner.

11.—(1) Subject to *section 12*, where an application is referred to the Commissioner under *section 8, 16, 22* or otherwise by the Minister and unless the application is withdrawn or deemed to be withdrawn pursuant to the provisions of *section 9* or *22*, as the case may be, it shall be the function of the Commissioner to investigate the application for the purpose of ascertaining whether the applicant is a person in respect of whom a declaration should be given.

(2) In a case to which *subsection (1)* or *section 12 (2)* applies, the Commissioner shall, for the purposes of that provision, direct an authorised officer or officers to interview the applicant concerned and the officer or officers shall comply with any such direction and furnish a report in writing in relation to the application concerned to the Commissioner and the report shall refer to the matters raised by the applicant and to such other matters as the officer or officers consider appropriate and an interview under this subsection shall, where necessary and possible, be conducted with the assistance of an interpreter.

(3) The applicant concerned, the High Commissioner or any other person concerned may make representations in writing to the Commissioner in relation to any matter relevant to an investigation by him or her under this section and the Commissioner shall take account of any such representations.

(4) (a) The Commissioner may, for the purposes of his or her functions under this Act, by notice in writing, request the Minister, the Minister for Foreign Affairs or such other persons as may be specified in the notice to make such inquiries and to furnish to him or her such information in his or her possession or control as he or she may reasonably require within such period as shall be specified in the notice.

(b) Following the receipt of a request under *subsection (1)*, the Minister or the Minister for Foreign Affairs, as the case may be, may withhold any information in his or her possession or control in the interest of national security or public policy ("*ordre public*").

(5) Nothing in the *Data Protection Act, 1988*, shall be construed as prohibiting a person from giving to the Commissioner, on request by him or her, such information as is in the person's possession or control relating to the application.

(6) Subject to *subsection (7)*, the Commissioner shall furnish the applicant concerned with copies of any reports, documents or representations in writing submitted to the Commissioner under this section and an indication in writing of the nature and source of any other information relating to the application which has come to the notice of the Commissioner in the course of an investigation by him or her under this section.

(7) Where information has been supplied to the Commissioner, a Department of State or another branch or office of the public service by or on behalf of the government of another state in accordance with an undertaking (express or implied) that the information would be kept confidential, the information shall not,

without the consent of the other state, be produced or further disclosed otherwise than in accordance with the undertaking.

(8) Where an application is referred to the Commissioner under *section 8, 16 or 22* or otherwise by the Minister, the Commissioner shall, without delay, give or cause to be given to the applicant a statement in writing specifying, where possible in a language that he or she understands—

- (a) the procedures to be observed in the investigation of applications under this section,
- (b) the entitlement of the applicant to consult a solicitor,
- (c) the entitlement of the applicant to contact the High Commissioner,
- (d) the entitlement of the applicant to make written submissions to the Commissioner,
- (e) the duty of the applicant to co-operate with the Commissioner and to furnish information relevant to his or her application, and
- (f) the obligation of the applicant to notify the Commissioner of his or her address in the State.

2.58 Subsections (1) to (4) and (6) to (8) are irrelevant to the restated *Data Protection Act 1988* and inhibit rather than aid comprehension of the reference to it. The Commission sees no benefit in including this material. The Commission has therefore decided to present only an abbreviated version of this material indicating that application of the restated Act has been restricted:

C2 Application of Act restricted (20.11.2000) by *Refugee Act 1996* (17/1996), s. 11 (5), S.I. No. 365 of 2000.

Investigation of application by Commissioner.

11.—...

(5) Nothing in the Data Protection Act, 1988, shall be construed as prohibiting a person from giving to the Commissioner, on request by him or her, such information as is in the person's possession or control relating to the application.

...

2.59 This approach will give the user information on every instance the principal Act has been referred to. It will allow a user to quickly sift the affecting provisions, and avoid the necessity to read through tracts of statutory text that have no effect on the substantive operation of the principal Act being restated.

2.60 Concern over the issue of deleting text on the basis of irrelevance was raised in two submissions received by the Commission. Although not directly addressing the point above, representations were received that warned against the introduction of any editorial discretion. Discretion as to what text to

include and what to exclude, it was argued, would undermine faith in the restatement process and lead to individual users replicating the Commission's work in order to establish the impact of the excluded material.

2.61 The Commission appreciates the concerns raised about the necessity for editorial consistency. The Commission does not believe, however, that excluding the irrelevant parts of Acts or statutory instruments that affect the Act being restated will undermine public confidence in the restatement programme. As discussed above, leaving out the entirety of all statutory text would substantially defeat the purpose of a restatement. Including the full text, without reference to relevance, would generate a restatement text that could intimidate and discourage non-expert users. By exercising a modest amount of editorial discretion, the Commission is satisfied that the modified version of version 3 strikes an appropriate balance between accessibility and utility.

(b) Colour

2.62 Colour will continue to be used to signify text which has been replaced by an amendment. The Commission used the colour blue in the restatements in Appendix A of the Consultation Paper. It uses the colour brown in this report, because it causes less confusion with the default blue colour used to signify a hyperlink.

(c) Excluded information...

2.63 The exclusion of text, including exclusion entailed by the adoption of the modification to version 3 above, necessitates a method to indicate that text has been excluded. The Commission will use three consecutive dots (...) to indicate that text has been excluded from a section. A similar indicator will also be used where one or more sections have been excluded, to indicate that the excluded material may be extensive and may include parts, sections or subsections not indicated in the restatement. This is illustrated in the following sample annotation.

C3 Act affected (26.11.2001) by Prevention of Corruption (Amendment) Act 2001, (27/2001), ss. 5, 9 and 10, S.I. No. 519 of 2001, (with the exception of s. 4(2)(c), commenced (4.11.2002) by S.I. No. 477 of 2002); as amended (12.02.2005) by Proceeds of Crime (Amendment) Act 2005, (1/2005), s. 23, commenced on enactment; and (01.08.2006) by Criminal Justice Act 2006, (26/2006), s. 191, S.I. 390 of 2006.

Search Warrant.

5.—(1) A judge of the District Court, on hearing evidence on oath given by a member of the Garda Síochána, or a member of the Garda Síochána not below the rank of superintendent, may, if he or she is satisfied that there are reasonable grounds for suspecting that evidence of or relating to the commission of an offence or suspected offence under the *Prevention of Corruption Acts, 1889 to 2001*, punishable by imprisonment for a term of 5 years or by a more severe penalty ("an offence") is to be found in any place, issue a warrant for the search of that place and any persons found at that place.

...

Offences by bodies corporate.

9.—(1) Where an offence under the *Prevention of Corruption Acts, 1889 to 2001*, has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any wilful neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

...

Short title, collective citation and construction.

10.—...

(2) The *Prevention of Corruption Acts, 1889 to 1995*, and this Act may be cited together as the *Prevention of Corruption Acts, 1889 to 2001*, and shall be construed together as one.

...

(5) Groups of Acts

2.64 Apart from submissions on the narrow issue of the preferred versions, the Commission received extensive feedback advising that certain Acts or areas of legislation should or should not be included in the restatement programme. On examining the suggestions, the Commission determined that restating single Acts would, in circumstances where a body of legislation is spread among a number of related Acts, none of which is a principal Act, be of limited value to both practitioners and the wider public.

2.65 This is the case with the *Prevention of Corruption Acts 1889-2005*. The Act of 1906 was put forward as a restatement candidate, but the amendments to that Act, when incorporated in a restatement, did not give the whole picture in relation to the group of six Acts which were given a statutory collective citation as the *Prevention of Corruption Acts 1889 to 2005*.¹¹ The Commission concluded that it would be of both benefit to users and a more efficient use of resources if this information was presented as a restatement of one complete group of Acts. In reaching this conclusion, the Commission is conscious that the Oireachtas has increasingly relied upon such groups of Acts, where the amending Acts are required to be cited or read together.¹² In a

¹¹ *Prevention of Corruption (Amendment) Act 2001*, s. 10. A *Prevention of Corruption Bill 2008* was published in June 2008 and will extend the collective citation to include it.

¹² Brian Hunt distinguishes between “collective citation” and “collective construction”. The former is simply a manner of legislative expediency, in order to avoid citing all constituent parts of a major sweep of legislation such as the *Merchant Shipping Acts 1894-1997*. Collective construction on the other hand requires the listed Acts to read as one Act, so that “provisions which are contained in the later Act are deemed to be incorporated into the earlier Act”.

situation such as this, it is the Commission's belief that only restating part of a group of Acts would lessen the utility of the restatement project.

(6) Suites of Acts

2.66 The term "group" of Acts is used to describe Acts which are related by amendments, which may have a collective citation, or which should be read as one piece of legislation.¹³ The term "suite" of Acts is used here to signify a number of Acts which govern areas of law that have similar content matter or which deal with a discrete demographic or functional area. An example of this category is the *Maternity Protection Act 1994*, the *Adoptive Leave Act 1995*, the *Parental Leave Act 1998*, and the *Carer's Leave Act 2001*. These Acts, although they are not formally regarded as a suite, can justifiably be restated together. Owing to the fragmentation of the Statute Book these informal compilations will not purport to be comprehensive collections of any particular subject-matter, nor be capable of being read together. It is hoped however, that this approach will provide coverage of broad functional areas so as to be of use to practitioners and the public alike.

2.67 While the Commission envisages a continuing role for restating important stand-alone Acts and groups of a principal and amending Acts, the First Restatement Programme will also include suites of legislative material. This is further discussed in Chapter 4.

(7) Structure

2.68 The Commission is aware that the structure that is adopted for the eventual restatement text will exercise a very substantial influence over the success of the project. The Commission's concern in this regard is informed by

Hunt *The Irish Statute Book: A Guide to Irish Legislation* (Firstlaw, 2007), 189-191.

¹³ For example see the *Electoral (Amendment) Act 2005*, s. 7(2), which holds that, "The Electoral Acts 1992 to 2004 and this Act may be cited together as the Electoral Acts 1992 to 2005 and shall be read together as one". However, on other occasions the group of Acts is defined by an Act with no apparent relationship to the original group. For example, in that regard, the *Firearms Acts 1925 to 2000* are redefined as the *Firearms Acts 1925 to 2006* by the *Criminal Justice Act 2006*. This *ad hoc* expansion can make establishing what is and is not included in a legislative group a difficult exercise. The *Criminal Justice Act 2006*, s. 1(6), expands a collective citation by retrospectively including a Part of an earlier Act: "The collective citation 'the Misuse of Drugs Acts 1977 to 2006' shall include Part II (other than section 7) of the Criminal Justice Act 1999 and Part 8 (other than section 86) and those Acts and those Parts (other than the sections specified) shall be construed together as one".

the structural variations which face regular users of legislation. The Commission is conscious that the structure of Acts, in their original format, has evolved considerably over the previous century. For example, pre-1922 Acts feature particular introductory elements which may appear unfamiliar to a modern reader. They include armorial insignia, parliamentary invocations, preambles and long titles. Acts passed from 1922 to 1937 dispensed with the Royal Seal, and with preambles from 1923 onwards.¹⁴ Legislation in that period briefly adopted an approach that replaced the parliamentary invocation with an “Explanatory Provision” beginning, in the manner of international treaties, with the word “Whereas”. It is in this period that tables began to be generally, but not exclusively, replaced with series of schedules. The major innovation in terms of statutory presentation is the inclusion of a table of “Statutes Affected” from 1982 onwards.¹⁵

2.69 The difficulty posed by the diversity in statutory styles is compounded by the fact that many of the candidate Acts for restatement have been heavily amended. New amendments have commonly been imposed on older provisions, and the text can become incoherent over time. This is particularly the case where the original scheme of a statute was not suited to its subsequent development. In beginning a programme of restatement that will eventually encompass statutes drafted in a diversity of formats, the Commission was concerned that a wide variety of styles could potentially obscure the statutory text. On the basis of this concern, and similar reservations expressed by the New Zealand Law Reform Commission,¹⁶ consideration was given to feeding all legislation, irrespective of origin, into a standardised legislative template.

2.70 However, the submissions received by the Commission indicated that version 1 (SLRU House Style) was found to be confusing precisely because of its departure from the original structure of legislation.¹⁷ In that version, for example, the restatement of the *Sale of Goods and Supply of Services Act 1893* is structurally different to the original Acts. The Commission is aware that even

¹⁴ For example, the *Governor-General's Salary and Establishment Act 1923*.

¹⁵ For a discussion on the precise status of the long title, short title, preamble marginal notes and tables of legislation see the Commission's *Report on Statutory Drafting And Interpretation: Plain Language and the Law* (LRC 61-2000).

¹⁶ See *Presentation of New Zealand Statute Law*, New Zealand Law Reform Commission in conjunction with the New Zealand Parliamentary Counsel Office, (2007), pp. 38-40.

¹⁷ For version 1 style, see Appendix A of the Consultation Paper, LRC CP 45-2007.

non-expert users have some familiarity with the structure of legislation, and are familiar with the concepts of parts, sections, subsections and schedules. The Commission experimented with introducing tables of amended legislation, and excluding insignia and other preliminary material in the interests of brevity and uniformity, but it was found that this approach distorted a familiar structure and caused uncertainty.¹⁸

2.71 A further experiment was attempted where tables of affected legislation, or “Acts Referred To”, were created and inserted into early Acts which did not originally have them. However, it was the Commission’s experience that in introducing this extrinsic material, it was insufficiently clear where the structure was original and where it had been altered. The Commission has therefore decided that all restatements will, as far as possible, be presented in a structure as close as possible to the form in which the legislation being restated was originally passed.

(8) Annotations

2.72 Version 2 and version 3 of the *Freedom of Information Act 1997* presented in the Consultation Paper used the same format of annotation. This system involved appending a note to the altered part of the text coupled with a corresponding note beneath the relevant section. Where the restated Act was generally, rather than in relation to a specific section, affected by another Act, these effects were represented between the preamble and section 1 as non-textual amendments, annotated by C-notes. This system of annotation received no adverse comments in submissions to the Commission, and is currently being successfully used by the Statute Law Database in the United Kingdom.¹⁹ Although additional types of annotation are proposed to be used, the Commission is satisfied to proceed with the format of annotation trialled in the Consultation Paper.

2.73 In addition to F-notes and C-notes, used in the Consultation Paper, the Commission proposes to use at least one other type of note: E-notes. The United Kingdom Statute Law Database uses F-notes to indicate textual amendments and C-notes for non-textual amendments (described as “Modifications (not altering text)”), and these terms were adopted in the Consultation Paper.

2.74 The Commission had difficulty with references to the principal Act in other legislation being treated as non-textual amendments to the principal Act.

¹⁸ For a discussion on the consequences of removal of these adornments see “Statutory Revision: Review of the Interpretation Act 33 of 1957”, South African Law Reform Commission (December 2006), Chapter 2.

¹⁹ www.statutelaw.gov.uk.

This is the practice of the United Kingdom Statute Law Database team and was adopted in the Commission's Consultation Paper. Such references are not amendments and have no effect on the Act being restated (the principal Act). They are only of interest to show the Act in the context of its relationships with other legislation. Many examples arise in relation to the *Data Protection Act 1988* where numerous other Acts refer to the definition of data set out in the 1988 Act. The Commission considered annotating these reference provisions as R-notes, or reference notes.

2.75 In the course of annotating the *Data Protection Acts 1988 and 2003* and including reference provisions, the Commission found that 60% of the annotations were of references by other legislation (105 of a total of 174). The Commission reviewed the use of R-notes or reference notes in restatements in the light of this experience and decided that they should not be included. As well as the added cost of time in researching and checking the reference annotations, there were other disadvantages. Their inclusion would be likely to cause a restatement to go more quickly out of date as changes to other legislation referencing the legislation being restated are likely to occur more frequently than revisions to the restated legislation itself. Their inclusion in Legislation Directory tables would add greatly to their length. Likewise, they would tend to clutter restatements and make the legislation itself less, not more, accessible. The Commission considered the relatively small group of users of legislation who might be expected to benefit from their inclusion (for example, parliamentary counsel), and concluded that they were not the primary users for whom restatement was designed. On balance, the Commission considered that the advantages of including them did not justify the costs involved, particularly when considered in terms of the resources which would therefore not be available to undertake other restatements.

2.76 E-notes or editorial notes will be used in the restatement for comment on subsidiary legislation made, previous affecting provisions, obvious errors in legislation, minor issues of spelling or punctuation, and other helpful information. They were not used in the Consultation Paper. They are denoted as X-notes in the United Kingdom Statute Law Database.

2.77 The types of annotation proposed for restatements are summarised below:

- F-notes or footnotes: textual amendments (used in the Consultation Paper); they are called footnotes because they appear in pairs in the text and at the foot of a section.
- C-notes or Cross-reference notes: non-textual amendments or "modifications (not altering text)" (used in the Consultation Paper); they are called Cross-reference

notes because they make amendments which are only discernable by cross-reference to another text.

- E-notes or editorial notes: for comment on the exercise of powers to make subsidiary legislation, previous affecting provisions, obvious errors, minor issues of spelling or punctuation, and other helpful information (not used in the Consultation Paper, denoted as X-notes in the United Kingdom Statute Law Database).

2.78 On the Statute Law Database website, a help screen is available to users to explain the significance of the seven types of notes used there. The Commission will offer an explanation of the types of notes used by the Commission in both paper and online publication of restatements.

(a) F-Notes

2.79 F-notes or footnotes are used to annotate insertions, substitutions or deletions to the statutory text. An F-note in bold black type will be placed outside a square bracket, indicating the beginning of the alteration. Inside in the bracket will be contained, for example, three dots indicating repealed text. A corresponding F-note will be included below the section, indicating the repealing provision, the date of repeal and the relevant commencement information:

Savings.

3.— (1.) F6 [...]

(2.) A person shall not be exempt from punishment under this Act by reason of the invalidity of the appointment or election of a person to a public office.

Annotations:

Amendments:

F6 Repealed by Statute Law Revision Act 1908, (8 Edw. 7 ch. 49), s. 1 and sch., commenced on enactment.

2.80 In the case of an amendment or substitution the Commission will use the same mode of annotation. An F-note in bold black type will be placed outside a square bracket. Inside the bracket the amendment text will be in coloured text. An F-note with the corresponding number will be included in the annotation section telling the user the origin of the amendment. Where the restatement is viewed online without a colour screen to show the colour text, the square brackets will identify the amendment.

7. In this Act—

The expression ‘public body’ means any council of a county or county of a city or town, any council of a municipal borough, also any board, commissioners, select vestry, or other body which has power to act under and for the purposes of any Act relating to local government, or the public health, or to poor law or otherwise to administer money raised by rates in pursuance of any public general Act, but does not include any public body as above defined existing elsewhere than in F8[Saorstát Éireann]:

...

Annotations:

Amendments:

F8 Substituted (12.10.1928) by Prevention of Corruption Acts, 1889 To 1916, Adaptation Order 1928, (S.R.O. 37 of 1928), s. 3 and sch. pt 1, commenced on enactment.

(b) C-Notes

2.81 C-notes or Cross-reference notes are used to indicate modifications made to an Act that do not alter its text. As C-notes will always apply to an entire Act, part or section, no reference to a C-note will appear in the text. The C-note will be included beneath the preamble where the entire Act has been amended or beneath the relevant part or section where only a portion of the restated Act has been amended. The C-notes will appear in chronological order of their commencement under “**Modifications etc (not altering text):**”.

PART XIII POSTAL VOTING

Annotations:

Modifications etc. (not altering text):

C26 Part non-textually amended (11.12.2006) by *Electoral (Amendment) Act 2006*, (33/2006), s. 7, commenced on enactment.

Voting by electors under this Act.

7.— (1) The provisions of Part XIII of the Act of 1992 shall apply to the issue of ballot papers to, and the return of such ballot papers by, electors at a Dáil election whose names are entered in the postal voters list pursuant to this Act, subject to the following modifications:

(a) ...

(b) a reference to “receipt”, in relation to documents appropriate to such electors, shall be construed as a reference to “declaration of identity”;

(c) a reference to “receipt duly signed”, in relation to such documents, shall be construed as a reference to “declaration of identity duly signed and witnessed and stamped with the stamp of the prison”;
and

(d) a reference to “sign”, in relation to an elector who is unable to write, shall be construed as a reference to the making by the elector of his or her mark.

(c) E-Notes

2.82 E-notes denote editorial notes, where an editorial comment may be useful. For example, a section may give the relevant Minister or another officer or body power to make regulations, orders or other secondary legislation. Where this power has been exercised, the restatement editor will list any secondary legislation which has been made under the appropriate provision in the annotations to that section.

Regulations for registration.

20.—(1) The following matters, and such other matters (if any) as may be necessary or expedient for the purpose of enabling *sections 16 to 19* of this Act to have full effect, may be prescribed:

- (a) the procedure to be followed in relation to applications by persons for registration, continuance of registration or alteration of the particulars in an entry in the register or for withdrawal of such applications,
- (b) the information required to be furnished to the Commissioner by such persons, and
- (c) the particulars to be included in entries in the register,

and different provision may be made in relation to the matters aforesaid as respects different categories of persons.

(2) A person who in purported compliance with a requirement prescribed under this section furnishes information to the Commissioner that the person knows to be false or misleading in a material respect shall be guilty of an offence.

Annotations:

Editorial Note:

E2 Power to prescribe exercised (9.01.1989) by S.I. No. 351 of 1988, Data Protection (Registration) Regulations, 1988.

2.83 E-notes will also be used to note previous affecting provisions, indicating to the user that the relevant section of the restated Act has previously been amended or affected, but that amendment or effect is no longer operative.

Annotations:

Amendments:

F1 Substituted (26.11.2001) by *Prevention of Corruption (Amendment) Act 2001*, (27/2001), s. 2, S.I. No. 519 of 2001.

Editorial note:

E1 Previous affecting provision: section amended (1.11.1995) by *Ethics in Public Office Act 1995*, (22/1995), s. 38, S.I. 282 of 1995. Amended section substituted as per **F1** above.

2.84 Note **E1** informs the user that the original section was amended in November 1995 by section 38 of the *Ethics in Public Office Act 1995*. The amended section was itself replaced in November 2001, as denoted by note **F1**. It should be borne in mind that these E-notes do not necessarily indicate that the previous affecting provision has itself been repealed. Rather it may indicate that the portion of the restated Act which was previously affected has been repealed. In the interest of clarity, and in recognition of the fact that this material is primarily of historical interest, the Commission has decided that no text from previous affecting provisions will be reproduced in a restatement.

2.85 E-notes may also be used for other editorial comments. For example, section 23 of the *Road Traffic (Amendment) Act 1978* refers to “Part III of the Act of 1968”, which deals with an unrelated matter.²⁰ In order to clarify the situation and reduce confusion, an E-note referring to the apparent error may be inserted. Further, obvious grammatical, spelling, punctuation and other minor textual errors may arise in the original legislation or as a result of amendments.²¹ The Commission proposes to sparingly use E-notes to inform users about such issues in the text.²²

²⁰ An issue in *The State (Murphy) v. Johnston* [1983] I.R. 235. Section 23 deals with driving offences and Part III of the 1968 Act deals with driving licences.

²¹ The *Statute Law (Restatement) Act 2002* is silent as to the scope of any alterations that can be made to legislation being restated. This contrasts with, for example, the Queensland *Reprints Act 1992 (QLD)* which precisely details the exact parameters of the changes that can be effected by the Reprint editors including omission of obsolete provisions, gender-proofing of sections, renumbering of provisions and the omission of provisions which merely amend other laws. Section 8 of the *Reprints Act* holds that editorial changes are not, however, to change the meaning of the reprint, see www.austlii.edu.au/au/legis/qld/consol_act/ra1992132.

²² The United Kingdom Statute Law Database uses X-notes as editorial notes to denote any aspect of the text that users need to be aware of, such as textual inconsistencies in old legislation; see www.statutelaw.gov.uk.

2.86 In order to reduce clutter no E-note will appear in the text. Rather, like a C-note, the E-note will be included beneath the Preamble where the entirety of the restated Act was previously affected, or beneath the section which contained the previous affecting provision or other content being commented on.

(d) Format of annotations

2.87 The Commission has decided to adopt as uniform a format as possible for the various types of annotations. This format is best illustrated by explaining a complex example.

C3 Act affected (26.11.2001) by *Prevention of Corruption (Amendment) Act 2001*, (27/2001), ss. 5, 9 and 10, S.I. No. 519 of 2001, (with the exception of s. 4(2)(c), commenced (4.11.2002) by S.I. No. 477 of 2002); as amended (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005*, (1/2005), s. 23, commenced on enactment; and (01.08.2006) by *Criminal Justice Act 2006*, (26/2006), s. 191, S.I. 390 of 2006.

- The note type and number in bold type (**C3**) tells the user what type of provision is being annotated and the number of that particular type of note within the annotations to the Act. In the case of F-notes, a companion note of the same number will be found in the text.
- The next part of the annotation (“affected”) will state what change or effect is being described by the note. Where an amendment has been made, this will typically read “substituted”, “inserted” or “amended”. Other descriptions such as “excluded by”, “explained by” and “restricted by” will tell the user why the note has been included in the restatement.
- After this the user will see a date in the format (26.11.2001). This date is the date on which the original alteration was made operative or commenced, not necessarily the date it was enacted.
- The date will be followed by the title of the Act or statutory instrument which affects the principal Act.
- This will be followed by a bracket indicating the year and number of that Act or statutory instrument (27/2001).
- After this the section or sections of that Act which have an effect will be listed (ss. 5, 9 and 10).
- After the affecting parts have been listed, the commencement information will be included. If, as with the

Proceeds of Crime (Amendment) Act 2005, the Act was commenced on enactment, this will be recorded here.

- The annotation will conclude with information on whether the affecting Act has itself been amended. In the case above the affecting part of the 2001 Act was amended by the cited Acts from 2005 and 2006. These subsequent amending Acts will be referred to in a manner consistent with the standard notation.

2.88 During the trial phase the Commission became aware that too many fonts, colours or other means of distinguishing text tended to obscure rather than clarify the modifications made to the restated Act. The Commission has therefore chosen not to distinguish between changes made at different times to the original Act. In that way, the changes made pursuant to the 2001 Act will be presented to include the subsequent amendments by the 2005 and 2006 Acts. The individual changes made by the three Acts will not be separately flagged in the inserted text.

(e) Commencement information

2.89 Every Act or statutory instrument that is cited in a restatement will include commencement information represented by a date: (1.11.1995) and the source of the information: S.I. No. 282 of 1995, or indicate that it was commenced on enactment, or on some other date and indicate that date. This information will be helpful in the Commission's objective of supplying limited point-in-time information.²³

C2 Act affected (1.11.95) by <i>Ethics in Public Office Act 1995</i> , (22/1995) s. 38, S.I. No. 282 of 1995.

(f) Future annotations

2.90 The Commission is conscious of the desirability of developing a restatement protocol that is transparent to the non-expert user. It is also conscious of not delaying and frustrating the initial programme of restatement by attempting to incorporate every desirable feature in the initial programme of restatement. Therefore the Commission envisages that further functions and annotations may be added once the initial phase is concluded. In particular the

²³ The Ontario eLegislation project shades uncommenced portions of consolidated, rather than restated, Acts in a grey colour. The Commission experimented with shading to denote various stages of commencement but found that it overly complicated presentation without adding to the clarity of the text. See www.e-laws.gov.on.ca for the Ontarian legislation format.

Commission is aware that some form of annotation denoting prospective amendments may be of benefit to practitioners, highlighting changes which have not yet come into effect.

2.91 The Commission views the list of annotations above (F-, C- and E-notes) as core categories with which to begin the Programme of Restatement. Further categories may be introduced as the Commission identifies a need for them.

(g) Blanket or silent amendments

2.92 A significant body of Acts silently amends large numbers of Acts without directly changing their text. These Acts typically provide that wherever a certain word occurs, it is to be given a meaning different to that given by the original statutory text. The *Adaptation of Enactments Act 1922*, for example, provided that all pre-1922 statutes were to be construed so as to reflect the establishment of the Irish Free State (Saorstát Éireann).

3.—For the purpose of the construction of any British Statute the name "Ireland," whether used alone or in conjunction with the expression "Great Britain," or by implication as being included in the expression "United Kingdom" shall mean Saorstát Éireann.

2.93 A non-exhaustive list of these Acts identified by the Commission includes:

- *Adaptation of Enactments Act 1922*
- *Ministers and Secretaries Act 1924*
- *Constitution (Consequential Provisions) Act 1937*
- *Standard Time Act 1968*
- *Criminal Law Act 1997*
- *Defence (Amendment) Act 1998*
- *Euro Changeover (Amounts) Act 2001*
- *Local Government Act 2001*
- *Health Act 2004*

2.94 The Commission is aware that this list is only a sample of the blanket or silent amendments scattered throughout the Statute Book.²⁴ While offering significant drafting efficiencies, and providing clarity in respect of the pre-1922 legislative legacy, blanket amendments may make comprehension of legislation for the inexperienced user difficult, as such amendments are not inserted into the individual Acts to which these amendments refer. The Commission understands that since 2001 drafting guidance indicates that non-textual amendments, including blanket amendments, should be avoided. Similarly, in the UK, according to one authority, textual amendment “has largely superseded indirect amendment”.²⁵ However, it is recognised that blanket amendments are unavoidable in certain circumstances, for example time constraints during the passage of legislation in the Oireachtas.

2.95 The Commission has decided not to include blanket amendments in restatements. Two considerations grounded this decision. Identifying and annotating blanket changes would be a heavy burden on limited resources, without any proportionate benefit. The Commission considers that the changes being made are both generally known and readily predictable, for example from United Kingdom of Britain and Ireland, to Saorstát Éireann and Ireland, or from decimal currency to the Euro. The Commission also recognises that it would be extremely difficult to capture all blanket amendments in a comprehensive list, and that this would not be the best use of resources.

D Publication

2.96 This Part will deal with the matter of publication of restatements. Section 2 of the Statute Law (Restatement) Act 2002 provides that

“The Attorney General may authorise a statute, or portion of a statute, to be made available in printed or electronic form in the form of a single text certified by the Attorney General to be a statement of the law contained in the provisions of the statutes to which it relates, which form shall be known and is in this Act referred to as a restatement.”

2.97 The 2002 Act gives equal status to printed and electronic versions. While it is anticipated that most day-to-day references to restatements will take place online, on the online Statute Book (eISB) or other appropriate website, the Commission received a number of submissions that stressed the need to continue to produce paper versions. The thrust of these submissions was that

²⁴ This issue was addressed in the Commission’s Report *The Indexation of Fines* (LRC 37-1991, 22-23), which the Fines Bill 2007 will, when enacted, implement.

²⁵ Francis Bennion, *Statute Law* (3rd ed, London, 1990), 229.

electronic access is not universally available and that a number of people will rely on paper versions as their primary method of accessing restatements. The Commission believes that publication in both printed and electronic format should be tested.

(1) Printed and electronic versions

2.98 Considering that the Commission proposes to restate suites of Acts together, printed restatements present two particular problems.

Firstly, the Commission is aware that the *Statute Law (Restatement) Act 2002* requires that restatements be available in a “single” text.²⁶ The Commission understands this to mean that each printed copy of each Act must be comprehensible and comprehensive. The Commission had considered whether to pursue a trialled method of including all non-textual amendment provisions that affected a group of Acts in a special section not appended to any one Act. While this would have made the restatements shorter overall, by removing, for example, the necessity for recording that the *Prevention of Corruption Acts, 1889 To 1916, Adaptation Order 1928*, (S.R.O. 37 of 1928) applied to the three pre-1922 *Prevention of Corruption Acts*, the Commission is conscious that as far as possible all material relevant to a particular restatement should be available in that restatement. For that reason the Commission has decided not to pursue this approach.

2.99 Secondly, the Commission is conscious that printed restatements, unlike web-published restatements, will not have the option of hyperlinking to extrinsic materials. It had been suggested to the Commission that one method of keeping restatements to a manageable length would be to hyperlink all application provisions that do not amend the text. While the Commission will seek to avail of options offered by hyperlinking for online publication, in paper format the Commission will continue to directly cite all extrinsic material. This consideration has substantially influenced the Commission’s decision to pursue the modified version 3 format of restatement detailed above.

2.100 The Commission may collaborate with a publishing partner, possibly a Government agency, to ensure that the public have access to printed restatements.

(a) Electronic versions

2.101 The Commission is aware that the restatement project as currently envisaged does not amount to eLegislation.²⁷ The option of having a comprehensive website, housing the restatements, such as that developed in

²⁶ *Statute Law (Restatement) Act 2002*, s. 2.

²⁷ Discussed at paragraph 1.102.

the state of Victoria²⁸ or the United Kingdom,²⁹ is for future consideration. The Commission is consequently faced with the issue of where to provide public access to the electronic copies of restatements. Options discussed by the Commission included posting them on the Commission's own website, on the website of the Attorney General or the development of a specialist site to host the restatements. Although the arrangements are yet to be finalised, the Commission anticipates that the first restatements will be posted on the electronic Irish Statute Book website. The Commission is conscious that this is currently the primary location for accessing statutory material, and that usage of restatements would be greatly aided by their being available in the same location. It is intended that, in any event, restated legislation will be freely and publicly available.

(b) Future electronic publication options

2.102 As with the system of annotations set to be used by the Commission in the initial programme of restatement, the Commission is conscious that comparable legislative programmes in different jurisdictions have successfully used a variety of formats to assist different user groups. The Commission is aware of two variations, in particular, that have proved effective in comparable projects.

2.103 Electronic publication offers the possibility of including an enormous volume of legislative material without the associated problems of length and structural fragmentation. Earlier versions of restated legislation may be retained to give point-in-time information on restated legislation. Discussing the development of such a system, Timothy Arnold-Moore states:

“While it is extremely unwieldy to provide access to every previous version of a particular piece of legislation in paper form, electronic delivery can solve the storage and presentation problems. What users want is the ability to specify a time point and then search and browse the collection as it was at that time point, viewing the law that applied at that time. While it is helpful to search the current time point and browse to previous versions, being able to search previous versions is particularly important where provisions have been repealed or replaced by provisions that cover different ground”.³⁰

²⁸ www.legislation.vic.gov.au.

²⁹ www.statutelaw.gov.uk.

³⁰ Arnold-Moore T et al, “Connected to the Law: Tasmanian Legislation Using EnAct”, 2000(1) *The Journal of Information, Law and Technology* (JILT).

2.104 The Commission is conscious that a point-in-time capability would be of significant value to practitioners. To start to build this capacity, the Commission proposes retaining earlier versions of restated Acts for this purpose, as restatements are superseded by later versions.

2.105 A further suggestion received by the Commission during the public consultation process was to provide a “clean” legislative text. This would provide the non-expert user with a text that looks identical to the legislation as passed, but would have all the amendments incorporated into it. This would provide many of the benefits of restatement to the non-expert user without additional information such as commencement information or other forms of annotation. As already stated, the Commission understands that an online function where annotations to the restatement may be toggled on and off by the user is technically feasible, and the Commission will seek to have this provided by the custodian of the Irish Statute Book website, or other website on which restatements are displayed.

(2) Updating restatements

2.106 The Commission is aware that one of the principal attributes of restatement is the ease of use provided by a single, clear, up to date Act rather than a complicated network of principal Acts and amending Acts. The Commission is conscious that it is unsatisfactory to restate an Act, for example the *Data Protection Act 1988*, in 2008, and not revisit that Act until resources allow, possibly years later. The user in this scenario would be forced to juggle the restatement with any amendments subsequently enacted.

2.107 In time, the introduction of the more integrated process for the preparation, updating and publication of legislation referred to as eLegislation³¹ would obviate the need to maintain restated legislation in the form of new restatements. Instead, any new amendments being introduced could be accompanied by an updated version of the legislation, incorporating the new amendments. Subject to a suitable constitutional and parliamentary mechanism being found,³² restated versions of the legislation could have statutory authority and the new restated version of the legislation could become the operative Act. In this way part of the restatement function (for already restated Acts) could pass to the Office of the Parliamentary Counsel and be incorporated into the process of amending legislation.³³

³¹ Discussed at paragraph 1.102.

³² For example, an abbreviated passage through the legislative process, supervised by a parliamentary oversight committee. See discussion at paragraph 1.107.

³³ See recommendations above at paragraphs 1.108 and 1.111.

2.108 The updating of restatements raises a significant issue with regards to the process of authorisation mandated by the *Statute Law (Restatement) Act 2002*.³⁴ The Act requires that before a restatement may be published it must be certified by the Attorney General and laid before the Houses of the Oireachtas for 21 days.³⁵ It is the Commission's understanding that it is only on completion of these two steps that the restatement may be regarded as *prima facie* evidence of the Act contained in the restatement.³⁶

2.109 Following this procedure for every single update to a restated Act could be unwieldy. For example, since the publication of the Consultation Paper in July 2007, the *Freedom of Information Act 1997* has been amended, affected or applied on four occasions to the end of 2007.³⁷ Were the Commission to endeavour to keep the Act consistently up-to-date, the restatement would be in a constant state of motion between the Commission, the Attorney General and the Houses of the Oireachtas. By the time one update had passed the 21 day waiting period, it is quite probable that another would be in carriage before the Houses. Pursuing the programme of restatement in this way would risk generating confusion, as well as unduly imposing on the resources of the Houses and the Office of the Attorney General.

2.110 In order to circumvent the conflicting priorities imposed by the need to keep a restatement as up-to-date as resources allow and the restrictions imposed by the authorisation procedure, the Commission will consider making pre-certified electronic versions available to the public.

³⁴ *Statute Law (Restatement) Act 2002*, sections 2, 6 and 8.

³⁵ *Statute Law (Restatement) Act 2002*, sections 2, and 8.

³⁶ The Commission is unaware of any similar restatement project where this phrase has been used, although all restatements benefit from some form of presumption as to accuracy. In Western Australia, for example, the reprint enjoys a rebuttable presumption as to the veracity of its contents. There is little if any practical difference between the two formulations in the Western Australian and Irish Acts.

³⁷ By the *Markets in Financial Instruments and Miscellaneous Provisions Act 2007*, s. 20; the *Community Rural and Gaelteacht Affairs (Miscellaneous Provisions) Act 2007* (No. 32 of 1997), s. 53; the *European Communities (Access to Information on the Environment) Regulations 2007*, S.I. No. 133 of 2007; and the *European Communities (Occurrence Reporting in Civil Aviation) Regulations 2007*, S.I. No. 285 of 2007.

(3) **Pre-certified restatements**

2.111 The pace of change in Irish law can be so rapid, particularly in relation to those heavily used Acts which are the natural candidates for restatement, that issuing updated hard copy restatements to take into account every change in the law would be prohibitively expensive.³⁸ Electronic versions are inherently more flexible than hard-copy restatements because they can be updated more easily, quickly and cheaply.

2.112 As noted above, the Commission proposes to publish restatements of related Acts together. Once the collection, editing and preparation are complete, these restatements will be transmitted to the Attorney General for certification and will be laid before the Houses of the Oireachtas. Once these procedures are complete, this group can be published in hard copy format. This format will be the authorised version, inclusive of all relevant material up to the date certified by the Attorney General. It is also anticipated that this version will be posted online, on the eISB or another website as the Commission will decide.

2.113 As further amendments and alterations to this restated text are made, the Commission will, as far as resources allow, bring the restatement up to date.³⁹ These post-certification amendments will only be captured on the electronic version of the restatement and only be periodically updated in print because of cost. These post-certification amendments may not always have been certified by the Attorney or laid before the Houses of the Oireachtas and may therefore not be official versions. This electronic text will have two dates appended to it. The “certification date” will be the date that the restatement last went through the procedures required by the *Statute Law Restatement Act 2002*. Where the restatement has been updated since, an “Updated to xx/xx/20xx” date will be prominently included at the beginning of the Act. These subsequent amendments will be edited using identical processes as those used to compile the certified versions, and users will be made aware that any material added after the authorisation date will not have official status as a restatement.

2.114 In that way, on-line users will be presented with an option as to which version to use. The Commission is aware that a similar regime is operated in many common law jurisdictions, where the electronic version is not officially

³⁸ Hunt gives the example of the *Social Welfare (Consolidation) Act 1993*, s.223, as having being amended 13 times in 14 years. See Hunt *The Irish Statute Book: A Guide to Irish Legislation* (Firstlaw, 2007) at 51.

³⁹ See the Commission’s reservations on this course of action at paragraph 1.106.

authorised, yet widely relied upon.⁴⁰ The Commission anticipates that many users will chose to access the most up-to-date version available, irrespective of whether it has been certified or not, subject to the purpose for which they are consulting it.

2.115 At periodic intervals, by agreement with the Office of the Attorney General, updated restatements will be put forward for certification by the Attorney General and laying before the Oireachtas.

⁴⁰ Including in the UK, as represented to the Commission during discussions with Her Majesty's Office of Public Sector Information, January 2008.

CHAPTER 3 THE TECHNOLOGY OF RESTATEMENT

A Introduction

3.01 This chapter outlines the technology associated with the restatement process. It considers issues arising from the repository of data, the input of data into an editing tool, the editing of that data and the export of the data. The chapter considers the particular technological developments in the Commission on the issue since the publication of the Consultation Paper on Statute Law Restatement in July 2007 including particular data difficulties which have recently come to the Commission's attention.¹ It considers the important issue of quality control and the manner in which technology can assist with this particular endeavour. Finally, it discusses the key role of technology in any collaboration with other bodies concerned with the preparation, enactment and publication of legislation in the context of eLegislation.

B The repository of data

3.02 In order for the Commission to carry out the process of generating restatements there is a requirement for the Commission to be able to manipulate the source data of the statutes which can be gathered at one source and collectively called a repository. The importance of a repository of accurate data of the statutes was emphasised in the Consultation Paper. The benefits of a repository are that as the data is held together at one source it becomes easier to interact with and manipulate the data. It also becomes easier to apply a dedicated tool, such as an editing tool, which can produce a particular uniform result across the data when requested and which can have a designated uniform output. These matters are each considered in greater detail below.

(1) *Uniformity of the Data*

3.03 Although there is no particular necessity that a repository of data is entirely uniform in every respect there are some obvious advantages when the repository of the data is consistent. One advantage is that it becomes easier to manipulate the data using a single tool, an editor for instance, which can perform a series of functions leading to a particular end result. As a general

¹ In May 2008.

rule, a uniform repository of data can be achieved in several different inter-connecting ways.

(a) Mark-Up Language

3.04 One way to ensure the uniformity of data is to guarantee that all of the data is “marked-up” using a uniform mark-up language. Data can be marked up manually by a person tagging the data in conformity with the particular instructions which govern a particular mark-up language. There are several different types of mark-up languages, for example, XML, SGML, HTML, and XHTML.

3.05 Each of these languages conforms to its own particular rules and in many instances there is considerable overlap between them. XML, for instance, is a simplified version of SGML and every XML document is also, by default, an SGML document allowing relatively easy transfer from SGML to XML using a conversion process. Similarly, XHTML is a similar, though more robust, version of HTML and was designed, in particular, to assist in publication of XML documents on the World Wide Web.

(i) Extensible Mark-Up Language (XML)

3.06 XML (Extensible Mark-Up Language) is a mark-up language that has become an international standard in the field. XML is internationally used for legislation in the common law jurisdictions of Tasmania and the United Kingdom and in the civil law jurisdictions of Italy, Belgium, Spain, and Brazil, among others. It is also the used by the European Union.

3.07 In New Zealand the *Public Access to Legislation* (PAL) initiative selected XML as the most appropriate technical platform upon which to construct their recently launched PAL database.² Another initiative, from the civil law world, is the NormeinRete (NIR) project in Italy³ which has designed an XML standard which operates across the Italian Parliament, Courts, Public Authorities, and Regional Assemblies.

3.08 The Italian project offers a tool called xmLegesEditor as an open-source free-to-download tool which the project hopes can be reused as a developing platform for supporting any Legislative XML standard. The aim is that the tool would assist in developing an international standard for legislative XML. Countries like Brazil and Spain have already developed, or are in the process of developing, similar XML standards. As set out in the Consultation

² *Presentation of New Zealand Statute Law* (Law Commission of New Zealand in conjunction with Parliamentary Counsel Office of New Zealand) (2007) at 19.

³ *Proceedings of the V Legislative XML Workshop* (Italy, 2007) from p. 239.

Paper there are also significant XML legislative projects ongoing in the United Kingdom, New Zealand, Belgium and Tasmania, to name a few jurisdictions.⁴

(ii) Schema

3.09 Uniformity in the structure and format of a repository of documents can be supported and enhanced by a schema. In broad terms a schema is a particular set of instructions which sets out how a repository is tagged. There are different types of schema. One particular type is common to both the XML and SGML languages and is known as a DTD.

(iii) DTD

3.10 A DTD (Document Type Definition) is a type of schema for XML and SGML data. Effectively it functions as a type of blueprint for a repository of data in those languages. The DTD is described as “a powerful tool for the standardization of the formal structure of documents and ... is a key tool in order to guarantee interoperability among all the software agents involved in the document lifecycle.”⁵ In effect, a DTD sets down the type of tags that are permitted in the repository and, critically, the arrangement of those tags. In that way, by considering the DTD for the repository of data, a user can see at a glance what tags are available for use in the repository.

3.11 This is useful when it comes to consider the design of an editor, for instance, which a user can use to interact with the repository of data. From the perspective of legislation it is vital that all tags are managed by a DTD, as failure to do this can result in “a complete failure of the original objectives of standard compliant document production.”⁶

3.12 Each DTD is specific to a particular repository and can be designed with a particular output in mind. In that way a DTD is a type of design which creates a particular desired result. The importance of the DTD in the restatement process is considered below.

(b) Types of mark-up

3.13 A DTD may contain many different types of mark-up instructions or constraints on a document or a repository of documents. These different types of tag can assist in creating rigidity and uniformity of the repository which are important considerations for legislation. The different types of mark-up include procedural mark-up and descriptive mark-up.

⁴ At p.34.

⁵ *Proceedings of the V Legislative XML Workshop (Italy, 2007)* at p. 241.

⁶ *Ibid.*

(i) Procedural mark-up

3.14 Procedural mark-up is a type of mark-up which focuses on the presentation of the final document. Commonly it addresses matters such as the typeface, whether bold or italics, and the position of the text on the page, whether centred or to one side.

(ii) Descriptive mark-up

3.15 Descriptive mark-up is more concerned with defining particular segments of data. This type of mark-up is particularly deployed to assist in developing common standards in a particular industry. In the legislative domain, descriptive mark-up can define what constitutes a section, a subsection and so on. It applies these distinctions uniformly throughout the repository meaning that a well designed editing tool, for instance, will treat each section and each subsection in the same way.

3.16 While procedural mark-up and descriptive mark-up are distinct creatures it would be unwise to consider them as entirely separate. In most instances a DTD is made up of many interrelating elements and a descriptive mark-up and procedural mark-up, along with other types of mark-up, often co-occur.

(2) Database

3.17 The Consultation Paper considered the relative advantages and disadvantages of a database as compared with a flat-document management system. It will be recalled that a flat-document management system retains the independence of each individual file of raw material while a database actually extracts the information from various individual files and holds the information together inside one source. In the same way that schemas can be applied internally to a document or to a series of documents in a repository, schemas can also be applied to a database.

3.18 The Commission received one submission which pointed to the possibility of using a combination of database and a flat-document management system. The submission pointed to the relative advantages of both systems depending on the business functions required. In the event, the Commission has opted for such a model.

3.19 Within the context of the requirements of statute law restatement, the most particular functionality required, whether through a database or flat-document format, is increased searchability of the repository of data.

(a) Searchability and generic mark-up

3.20 Aside from procedural and descriptive mark-up already considered, there is a type of descriptive mark-up known as generic mark-up. This type of

mark-up can serve a particular function within a database structure where, for example, it allows for the categorisation of data. This is particularly useful for cross-referencing and for the purposes of searching a repository.

3.21 In that way, generic mark-up of a repository of data can allow a user to more easily locate a particular part of a document in the repository, or a particular document, or a particular category of document. This makes the process of interacting with the repository of data considerably more user-friendly.

3.22 Within the context of restatement, generic mark-up can allow for easier searching of the repository of data. This is particularly valuable in the early stages of generating a restatement when the editor in the Commission must locate all of the subsequent amendments made to the principal Act in order to compile a list of amendments which must be incorporated into the restated version, as described in Chapter 2.

(3) Accuracy of the data and corruption of data

(a) Overview

3.23 The success of the Programme of Statute Law Restatement depends on the accuracy of the restatements which are presented to the Attorney General for certification under the *Statute Law (Restatement) Act 2002*. The accuracy of the restatement is, in turn, critically dependent on the accuracy of the original repository of data which is available to the Commission. With that in mind, the Commission welcomes the completion of the initiative at the Office of the Attorney General which corrected known errors in the online version of the Irish Statute Book. It recognises that other errors remain, and discusses below the steps it will take to ensure that the electronic version of legislation is checked against the official printed version.⁷

(b) Electronic Signatures

3.24 The functions of an electronic signature are considered virtually identical to those of any other form of signature.⁸ The issue of electronic signatures is an important one for statute law restatement in two particular respects: (i) allowing the Attorney General to electronically certify restatements; and (ii) allowing the ordinary internet user the facility to download the official restatement onto his or her computer for personal use. As both of these aspects touch upon the same issues and relate to similar technological aspects, they are treated together in the discussion which follows.

⁷ Paragraphs 3.79 to 3.82.

⁸ Brazell, Lorna *Electronic Signatures Law and Regulation* (Bird & Bird) (London, 2004) at 31.

3.25 It is very desirable that the recipient of an official document which has been downloaded can be completely confident that the downloaded document is the official unaltered version. The attachment of an electronic signature to a document assists that process of authentication.

3.26 Conceptual underpinning for electronic signatures came originally from the text of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures. This was followed in Ireland by the enactment of the *Electronic Commerce Act 2000*.

3.27 As a general rule electronic signatures employ a system which utilises a type of public key/private key arrangement. The private key is a password-protected numerical value that allows the user to sign a document. The public key is embedded in the digital signature and is used to mathematically verify digital signatures when the signatures are checked. The private key encrypts a code that is stored with a signature when you sign; the public key decrypts the code. Each user can have access to the public key which is contained in a certificate that can be shared.

3.28 One jurisdiction which has successfully implemented the public key/private key arrangement is the Australian Capital Territory (ACT). That jurisdiction provides a secure website of legislation, through the *Canberra Connect* web portal,⁹ for direct download with a VeriSign SSL Certificate. The public key for downloading legislation can itself be downloaded from the secure site. Only one download of the public key is needed because it will apply to all digitally signed files in the secure site. For digital signatures the ACT uses *Adobe Acrobat 5.0* or *Adobe Reader 5.1* or a higher version of the reader.¹⁰

3.29 Another option is the use of XML Advanced Electronic Signatures (XAdES). The W3C initiative, a group made up of representatives from across the worldwide technology sector, set down guidelines in the form of a “note” on XAdES in February 2003. These Guidelines detailed XAdES structures and included details on technical criteria and qualifying properties for such signatures.

3.30 W3C stated that an electronic signature produced in accordance with the published document would provide evidence that “can be processed to get confidence that some commitment has been explicitly endorsed” and that the

⁹ www.canberraconnect.act.gov.au/.

¹⁰ www.legislation.act.gov.au/updates/authentication.asp.

document could be used for any transaction “between an individual and a governmental body, etc.”¹¹

3.31 In any event, the internal management for electronic signatures is significant and can affect the trust to be placed in the certificates issued. Requirements set down by the European Telecommunications Standards Institute¹² should be followed. Such requirements include the vetting of employees who control the public keys, the internal policies on how such keys are stored, and the mechanisms that are in place to verify that relevant policies are followed.¹³

(c) Security

3.32 The issue of security is an important concern for the restatement project. It is important that users on the internet who wish to access a restatement are satisfied that they can do so from a secure location. In the Australian Capital Territory, as already stated, a secure website of legislation is provided where users can download material from a site that has a VeriSign Secure Sockets Layer (SSL) Certificate.

3.33 An SSL website protects the website by enabling encryption of sensitive information during online transactions. The company who provides Verisign SSL Certificates state that an SSL Certificate consists of a system involving a public key and a private key. The result is that a web user can enter a secure website that “guarantees message privacy and message integrity”.¹⁴

(d) Authentication

3.34 One final issue is that concerning the authentication, or officialisation,¹⁵ of the restatements for online users. In the United States of America the American Association of Law Libraries conducted an inductive survey on authentication of online legal resources across the various states.¹⁶

¹¹ www.w3.org/TR/XAdES/ at 3.

¹² See their paper “Policy requirements for certification authorities issuing public key certificates” ETSI TS 102 042, v1.1.1 (2002-04), para 7.4 and see more recent developments as part of the e-standardization initiative at http://portal.etsi.org/portal_common/home.asp?tbkey1=esi.

¹³ Mason *Electronic Signatures in Law* (LexisNexis, 2003) at 347.

¹⁴ www.verisign.com/.

¹⁵ The New Zealand Law Commission refers to the term officialisation (*Presentation of New Zealand Statute Law* (Law Commission of New Zealand) (2007) at 22).

¹⁶ *State-by-State Report on Authentication of Online Legal Resources American Association of Law Libraries* (Washington, 2007).

That Association considered that verification of a legal resource as authentic was “especially suited to the digital world” and recognised that online legal resources are inherently capable of being corrupted or tampered with at the level of the individual copy. The Association concluded that “online legal resources are fundamentally different from print legal resources.”

3.35 An authentic text is considered as one which has been verified by a Government entity to be complete and unaltered. Typically, an authentic text will bear a certificate or mark that conveys information as to its certification.¹⁷

3.36 In New Zealand the Public Access to Legislation Project (PAL) conducted extensive quality assurance procedures as part of its officialisation process. The New Zealand Law Commission noted that officialisation is a different concept from “becoming an official source of legislation”. The former “necessarily precedes the latter”.¹⁸

3.37 The issue of electronic signatures, and all of the various options available, will be considered by the Commission in the context of making a decision on the issue of online publication of restatements.

C Editing the data and output

(1) *Editing Tool*

3.38 Once a repository of data has been acquired the next requirement in the process of restatement is the ability to interact with that data. Where for instance the data is held in XML format there are several different options which are available including the use of an XML viewer, or XML reader, which will allow the user to view the core plain text data without reading the mark-up of the data. In other words the user can read the plain English text-version of the legislation without reading the categorisation of specific parts as sections, subsections etc.

3.39 Aside from an XML viewer another option is to use an XML editor. Such an editor allows the user to edit the data in XML format as well as simply to read the plain text version of the data. Many such editors have toggle switches which allow the user to turn on or turn off the mark-up.

3.40 The advantage of using an XML editor over an XML viewer is that by using an XML editor the user can embrace all of the various advantages that go hand in hand with using XML such as rigidity, uniformity etc.

¹⁷ *Ibid* at 8-9.

¹⁸ *Presentation of New Zealand Statute Law* (Law Commission of New Zealand) (2007) at 22.

(2) Tailoring the editing tool

3.41 XML editors can be tailored for a particular repository where for instance, in the case of restatement, an XML editor is designed to recognise and interact with all of the various tags that are contained in the repository as set down by the DTD. Once the editing tool has been set up to recognise the tags in the repository the editing tool can then be configured in a particular way to give a desired end result. In the case of restatements a desired end result would incorporate two particular facets: output design and output data.

(a) Output design

3.42 The desired output design is the report or document which the Commission wishes to produce. In the case of restatement this is the design of the restatements.

(b) Output data

3.43 The desired output data is the format of the underlying data which the editing tool produces. In the case of an XML repository it would be considered desirable to have an output in XML format. However other formats may also be considered desirable, for example, HTML, XHTML, and PDF, to name a few. The benefit of having the data in different formats is that it becomes easier to feed that data into different applications or to apply the data to different uses.

(3) Functionality

3.44 It would be desirable, to assist the preparation of restatements, that an editing tool would be set up in such a way as to maximise the productivity of output from the restatement project. For example, facilities such as drop-down menus for the insertion of textual or non-textual amendments have been identified as elements which would enhance the productivity of the restatement project.

(4) Web front end

3.45 It is envisaged that the restatements which the Law Reform Commission produces will be displayed on a free-to-access public website. In that regard the Commission is aware that it would be desirable that one of the output formats from an editing tool for restatements would be XHTML. This would assist greatly in the publication of the restatements on a website.

(5) Future proofing the project

3.46 The Commission is aware of the importance of future proofing, or ensuring the data longevity¹⁹ of the technological solution which the Commission will use for the restatement process. Future proofing, a concept mentioned in the Consultation Paper, effectively means that the decision-maker keeps one eye on the future when implementing any technology solution in order to reduce the risk of adopting a solution which becomes quickly outdated. There is no guarantee that a solution will not become outdated, and indeed, it is inevitable that to some extent all solutions will in time suffer that fate. However, the exigencies of future proofing dictate that a decision-maker should take all reasonable steps to guard against a foreseeable and imminent future shift in technology which could unsettle the project.

3.47 In that regard there are certain matters which the decision-maker should take into account when deciding on a solution. One of these factors is an understanding of the difference between a tailor made, or bespoke product, on the one hand, and a full end-to-end branded technology system on the other.

3.48 From the perspective of future proofing the following should be considered. Firstly, as a general rule, bespoke systems which are designed for a particular purpose can be difficult to future proof. There are a variety of reasons for this including the fact that such systems are often difficult or expensive to upgrade. The use of branded products for the design of bespoke systems can assist in reducing that risk but cannot guarantee against up-grade difficulties.

3.49 Secondly, an end-to-end branded technology system may present fewer difficulties from the perspective of future proofing. This is primarily the case owing to the nature of such a solution. Generally, such solutions are not custom-built for one particular purpose but rather are uniform packages that can accommodate the requirements of different solutions.

3.50 There are advantages in using such a system. One of the advantages is that such a system generally has many different stakeholders, often across different fields, which broadens the reach of the solution and assists in copper-fastening future developments across a number of different fields and interests. In that way, it may be considered that there is “safety in numbers”, in the sense that if there is a significant shift in technology in the future there is a more powerful interest group demanding that the system is adapted to the changing environment.

¹⁹ The New Zealand Law Commission refers to the term data longevity as opposed to future proofing (*Presentation of New Zealand Statute Law* (Law Commission of New Zealand) (2007) at 19-20).

3.51 It can often be the case that such large branded solutions drive future developments in technology meaning that stakeholders find themselves at the forefront. In contrast those who use bespoke systems can find their solution isolated in the market and vulnerable to future shifts.

3.52 On the other hand, bespoke systems offer the advantages of being tailor-made to suit the particular wishes of an individual client. In that way a bespoke system may perform a particular task, or a series of inter-connected tasks, which a branded product - bought "off the shelf" - could not achieve.

3.53 In many respects, however, such a view of the merits of bespoke products, on the one hand, and branded products, on the other, can be overly simplistic. The reality in the market place is that technology solutions providers often customise branded products - meaning that the client obtains a solution that provides the best of both worlds.

3.54 The Commission has adopted a solution based on the development of an authoring tool which will use an existing Content Management System, customised for the Commission. In general, the Commission is aware of the inevitable fact that technology will advance and evolve with the passing of time. Every effort will be made to ensure that the technological solution adopted is resilient enough to withstand or adapt to those changes and to adopt them as necessary.

3.55 In addition to seeking to future proof technical aspects, the Commission is conscious that the coordination of standards and approach in the preparation and publication of legislation will also contribute to its general usefulness, accessibility and longevity. The Commission will collaborate as appropriate with other bodies engaged in these matters to achieve this through the eLegislation initiative.²⁰

D Law Reform Commission Technology Developments

3.56 Having considered the technological challenges in a general sense, the Commission now considers the specific technological developments which have taken place since the publication of the Consultation Paper.

(1) Repository of Data

3.57 The Commission has acquired (from the Office of the Attorney General) a copy of the repository known as the electronic Irish Statute Book repository (eISB).²¹ This is a repository of the Acts from 1922 to 2006 in XML

²⁰ Paragraph 1.102.

²¹ Paragraph 2.08.

format, the statutory rules, orders and regulations from 1922 to 1947, the statutory instruments from 1948 to June 2005 and the Legislation Directory from 1922 to 2005. This will serve as the primary electronic repository of data of the statutes for the purposes of the Restatement project.

3.58 The Acts of 2007 have since been made available on the eISB website in the same format and will be available to the Commission. The Commission also understands that it is intended to have the statutory instruments from July 2005 to December 2006 marked up in XML and published on the eISB in due course, and that they will then also become available to the Commission.

3.59 The Commission has learned that the eISB repository is marked up in accordance with two very different XML document type definitions (DTDs). Legislation from 1922 to 1997 is marked up in accordance with the “docbook” DTD (docbook.dtd), and legislation from 1998 onwards is marked in accordance with the “legislation” DTD (legislation.dtd). The docbook material is not marked up in such a way as to be capable of being edited using the XML authoring tool being developed for the Commission. This appears to be because it was originally marked up on a visual basis (by scanning and optical character recognition), rather than being “chunked” in accordance with formats for headings, sections and so on. This visual basis was largely satisfactory for display purposes, but does not allow the full advantage of the XML mark-up to be realised for editing purposes.

3.60 The Commission recognises the advantages of transportability, interoperability and efficiency of editing and producing restatements in XML and is investigating ways of upgrading the mark-up of the docbook material to allow it to be used with the authoring tool. Having restatement material marked-up as needed is an option which will incur an additional overhead and some delay, but will allow the Restatement Programme to proceed.

3.61 The Legislation Directory Programme is working in tandem with the Restatement Programme and will also use the XML authoring tool and the same repository of data. It appears that the Legislation Directory can be edited using the authoring tool, but not hyperlinked to docbook marked-up legislation.

3.62 The Commission is advised that the docbook data will have to be upgraded if the data is to be used for any purpose other than display. Arriving at a DTD which is suited to all the purposes of the repository will be a matter for the organisations working with the repository (including the Office of the Attorney General, the Oireachtas and the Law Reform Commission). The Commission believes that upgrading the docbook data in accordance with the current legislation.dtd may be a useful first step in the upgrading of the

repository, and may assist future uses.²² The cost must be considered in the light of its benefit to both the Restatement and Legislation Directory projects, and its potential benefit to other uses of the repository.

3.63 Upgrading the docbook data can be done by a conversion process, which uses the existing text, or by the multiple re-keying technique, which gives an almost completely accurate text. Although more expensive, in the longer term multiple re-keying may have advantages, as the Commission understands that it will almost completely eliminate the errors which are currently the legacy of the original scanning process, and eventually allow the re-keyed data to be relied upon and authenticated or “officialised”.

3.64 Other issues remain in relation to statutory instruments from mid 2005 to date and into the future.²³ It would be ideal from the Commission’s point of view if the online Statute Book (eISB) repository were to be updated on a continuous basis as new legislation is passed into law.

3.65 The Commission will seek to obtain access to Acts from the Oireachtas on an ongoing basis for the foreseeable future, if needed before their publication on the eISB. The Commission understands that there are as yet no routine arrangements in place for the regular updating of the eISB website with newly enacted legislation for the Oireachtas, but understands that this is under consideration.

E Public procurement

3.66 The Commission published an invitation to tender for an XML authoring system in October 2007. The winning bidder for this tender was The Stationary Office (TSO). The Commission are currently working closely with that supplier to deliver a solution that will provide the functionality needed for the restatement project in the Commission. The solution will be based on the *ActiveText* content management system and will draw on much of the functionality provided by it. The supplier will design a DTD for the editing of restatements. It will also provide output in several different formats: XML, PDF, and XHTML with the option to output in other formats if required. The tool will provide an enhanced search function, including a key-word and key-expression search facility. It will also incorporate quality assurance features. This Report will now consider each of these matters in turn.

²² For example, the drafting of new legislation in XML by the Office of the Parliamentary Counsel.

²³ A large number (but not a complete list) of statutory instruments from 2007 and 2008 are available on a linked page from the eISB in PDF format, but not in XML. The XML format is preferable for searching and editing purposes.

(a) DTD for restatements

3.67 The Commission considers that a DTD for restatement should be generated based on advice received. The primary repository of data in XML format which the Commission has received already adheres to a DTD (*legislation.dtd*). However, that DTD was specifically designed for the publication environment and not for the editing and authoring environment. In that regard, it was considered that a DTD for the authoring and editing environment of restatements was necessary.

3.68 Having a custom designed DTD for the authoring and editing environment will bring particular benefits. In particular it will bring greater rigidity and stability to the authoring and editing process and will draw better on the particular benefits of editing within an XML environment. Another benefit is that the DTD will act as a type of technological blueprint for the design of restatement which the Commission has already indicated is desirable. See Chapter 2 for a discussion of the restatement format, structure, layout and annotations considered desirable.

(b) Editing tool

3.69 Another requirement is the editing tool which the Commission will use on a day-to-day basis to author and edit restatements. It was considered desirable that this tool should have particular functionality which will assist in the process of authoring and editing restatements. In particular it was emphasised that the tool should offer drop-down menus which will allow the author in the Commission to insert textual and non-textual amendments easily and without any formatting difficulties.

3.70 It was a requirement of the tool that it should provide an accurate key field, keyword and logical expressions search. This search facility is considered of vital importance to the Commission. This is particularly the case in circumstances where the Commission is aware that the accuracy of the Legislation Directory tables cannot be relied upon and in circumstances where the Commission is engaged in resolving this problem within the remit of a different project.²⁴

3.71 As mentioned in Chapter 2, a search facility will be provided through which authors in the Commission can generate an Affecting Provisions Document. This will show all provisions which affect or refer to a principal Act for each restatement exercise.

²⁴ The Legislation Directory Programme, discussed in the Commission's Consultation Paper *Legislation Directory: Towards a Best Practice Model* (July 2008), LRC CP 49-2008.

(c) Output

3.72 The Commission considers that it is essential that the authoring system for restatements will produce restatements in several different outputs. It is considered desirable that one output will be in XML. Another output should be in XHTML as this will assist in publishing the restatements on the web. PDF format was also considered desirable for the purposes of sending restatements to the Attorney General for certification and to print.

(2) Website

3.73 The principle online source of Irish legislation is the eISB website www.irishstatutebook.ie, and it makes sense to make restatements available there where people are most likely to find and to use them. The Commission will therefore seek to arrange for the online publication of restatements with the custodian of that website.²⁵ With the eLegislation objective of fully revised statutes in the longer term, it also makes sense to maintain one source of all available legislation.

(3) Maintaining the data

3.74 The Commission had to consider the issue of how the data would be maintained. When deciding on the most appropriate solution to employ, three options were considered: (1) buy the infrastructure including servers and house it in the Commission; (2) buy the infrastructure including servers and allow an Internet Service Provider (ISP) to host the data remotely; (3) do not buy any infrastructure and have the data hosted remotely.

3.75 In this regard one important consideration when making the decision was the issue of the security of the data. The security of the data is important in that users of the restatements must be confident in the authenticity of the data.

3.76 In some ways the issue of security also encompasses the issue of the retrieval of the data from the internet for personal use – the issue of downloading of the data. It is important in this regard that the user of restatements, the person who downloads the data, must be confident that he or she has downloaded the data from the correct official location and that the data has not been corrupted by a third party. This matter was already considered in the section on electronic signatures.²⁶

3.77 The successful bidder for the development of the authoring tool demonstrated to the Commission that the optimum solution would be option (1)

²⁵ Currently the Office of the Attorney General.

²⁶ Paragraphs 3.34 to 3.37.

set out above, that is, for the Commission to have the necessary infrastructure in the Commission, and the Commission has decided to take this course.

F Quality control

3.78 The issue of quality control is a vital component in the process of statute law restatement. Quality control has already been considered in the discussion on the restatement process in Chapter 2. The matter is briefly considered here from the perspective of technological processes that might assist within the overall scheme of quality assuring each restatement which the Commission undertakes. There are two particular ways in which technology can assist quality control procedures: (a) document comparison software; and (b) project management.

(1) Document comparison

3.79 Dedicated software with the particular function of verifying data can be used at the commencement of each particular restatement. This software can be used in order to authenticate the accuracy of the electronic version of the various Acts from which the restatement team will work. The reason for this particular step is to ensure that the restatement team is working from an electronic version of a particular Act which exactly matches the official paper version.

3.80 The eISB repository from which the restatement team will work is known to contain some problems such as missing text and typographical errors.²⁷ The purpose of using dedicated comparison software is to enable the identification and correction of any such errors that do exist.

3.81 Document comparison software can compare the accuracy of two electronic copies of legislation in a particular format – Word 2007 for instance. By converting paper versions into scanned text using OCR²⁸ software and by using text comparison software a simple text comparison can be achieved to a relatively high degree of accuracy.

3.82 There are difficulties with this approach, however, principally the difficulties in accurately converting a paper copy of an Act into a scanned electronic version using OCR software. The Commission is exploring whether the cost of scanning, processing with OCR software and using software to compare the scanned text with the repository text is less than the cost of visually checking the repository version against the printed version. The Commission will adopt whichever course is more cost-beneficial, and any errors

²⁷ See Hunt “Electro Shock” Law Society’s Gazette Aug/Sep 2006.

²⁸ Optical character recognition.

found will be forwarded to the custodian of the repository for correction. In time, the repository will benefit by becoming more reliably accurate.

(2) Project management

3.83 Project management is a vital component in the process of quality control. The Commission has contracted a dedicated project manager for the restatement project whose primary function will be the coordination of the process of creating the various restatements which the Commission will undertake. This will include the coordination of the restatement team personnel in the Commission as well as the verification of each restatement which the team produces.

3.84 The Commission has also appointed a project manager to take responsibility for the maintenance and development of the Legislation Directory. The two project managers will collaborate to complement the work of each of their functions. When an Affecting Provisions Document is prepared by the restatement team to validate the relevant table from the Legislation Directory, any additions and corrections will be shared with the Legislation Directory team. In time, once the Legislation Directory has been brought up to date, the Directory team can assist the restatement team by the preparation of Affecting Provisions Documents and the validation of individual tables.

3.85 The project management function can be significantly assisted through technological processes. This includes functionality which provides quality control measures.

3.86 The editing tool which has been referred to already in this chapter can assist in that quality control process. As well as providing a facility to edit and annotate restatements with relative ease, the tool can also, effectively, monitor the repository of data. During the public procurement process the Commission set down particular requirements in that regard.

3.87 One of those requirements was a facility which limits the users who can make changes to any particular restatement. Another requirement was the generation of an audit trail which will record what changes have been made to a particular restatement and the identity of the personnel who made each particular change.

3.88 It is also a requirement that a facility is available to verify that all amendments listed in the Legislation Directory table or the Affecting Provisions Document have been referred to in the actual restatement. This will be activated by the user selecting an option "verify amendments". This facility will not verify that each amendment has been inserted accurately – only careful authoring and checking can achieve that aim – but it will verify that each amendment, or affecting provision, has been editorially noticed. In that way the risk of omission will be minimised.

G Technology and eLegislation

3.89 The Commission is conscious that technology is a key factor in the development of work practices which will enable the realisation of eLegislation, including the availability of fully revised and up to date legislation efficiently produced. The technology used at the different stages of preparation, drafting, enactment, amendment and publication will have to be inter-operable, transportable or compatible between the different bodies concerned, including the Office of the Attorney General, the Oireachtas Bills Office, the Commission itself, the custodian of the eISB website and the Government Supplies Agency, who arrange for the printing of legislation. The Commission gratefully acknowledges the assistance provided by these organisations in relation to statute law restatement, and will continue its collaboration with them within the eLegislation project. The technology chosen by the Commission to assist the restatement project – the authoring of restatements in XML, using the existing XML repository, in accordance with a compatible DTD – was chosen to fit as closely as possible with existing standards, and contribute restatements which are technically compatible and usable by other bodies into the future.

CHAPTER 4 PROGRAMME OF RESTATEMENT

A Introduction

4.01 In this chapter the Commission discusses the development of a First Programme of Restatement for 2008 and 2009, to be undertaken following the publication of this report. The discussion uses as a starting point the 60 candidate Acts listed in the Consultation Paper, supplemented by a small number of subsequent suggestions of suitable legislation for restatement. The chapter outlines the results of a survey of the Irish Statute Book from 1922 to 2007, the identification of principal and amending Acts which are still in force and their grouping into areas of law to assist with the development of suites of related Acts. It describes the rationale for deciding to undertake restatements of suites of related Acts, and how the survey and grouping was used to identify these. The chapter continues to describe how the tables in the Legislation Directory were used to estimate the number of amendments or affecting provisions affecting all Acts in the Statute Book. These estimates were used as a basis to estimate the time involved in preparing restatements of individual Acts and suites of Acts, information which was then used to inform decisions on what legislation should be included in the programme. The Commission also discusses pre-1922 legislation and the different issues arising for this body of law, including an ongoing programme of repeal and replacement in a number of areas of law. Finally, it discusses the rationale for the restatements that have already been completed by the Commission.

B The Selection Process

(1) *The candidates for restatement and prioritisation criteria*

4.02 A list of 60 candidate Acts for restatement, suggested during the initial consultation period, was set out in Appendix B of the Consultation Paper.¹ Subsequent to the publication of the Consultation Paper in July 2007, certain other legislation was suggested for restatement:

- *Bail Act 1997*

¹ LRC CP 45-2007. They are reproduced in Appendix B of this Report, supplemented by the four additional candidates below.

- *Criminal Procedure Act 1967*
- *Criminal Justice Act 1994*
- Prisons legislation, dating from the *Prisons (Ireland) Act 1826* (possibly more suited to consolidation and reform)

4.03 The Commission decided that the 60 Acts in the Consultation Paper together with those listed above are a good starting-point. The criteria outlined in the Consultation Paper are still relevant and useful in considering the priority listing of the Acts for restatement. The Consultation Paper used two sets of criteria to prioritise Acts for restatement. The primary criteria (allocated two points each) are

- whether the Act is in frequent use,
- whether it is currently easily accessible to the public and
- whether the restatement might ease the regulatory burden on business.

The secondary criteria (allocated one point each) are

- the level of work involved,
- whether there is an existing informal restatement and
- whether proposals to make significant amendments to an Act exist.

4.04 At a maximum of nine points, those Acts rated six to nine points were given high priority for restatement purposes, while those rated three to five points and one to two points were assessed as having medium and low priority respectively. The Commission accepts that applying the criteria to the list of restatement candidates is necessarily a matter of judgment, and the weighting awarded to each Act is therefore indicative rather than precise.

4.05 Based on this approach, the additional Acts listed above may be prioritised as follows:

Area of Law	Legislation	Work Level	Primary criteria	Secondary criteria	Result
Criminal	Bail Act 1997	2 Acts 46 affecting provisions	a: 2 b: 2 c: 0	a: 1 b: 1 c: 1	High: 7
Criminal	Criminal Procedure Act 1967	15 Acts 413 affecting provisions	a: 2 b: 2 c: 0	a: 1 b: 1 c: 1	High: 7
Criminal	Criminal Justice Act	7 Acts 280	a: 2 b: 2	a: 0 b: 1	Medium: 5

	1994	affecting provisions	c: 0	c: 0	
Criminal	Prisons legislation from 1826 to date	High (not quantified)	a: 2 b: 2 c: 1	a: 0 b: 0 c: 1	Better suited to repeal and reform

Of the Acts in this table, the *Bail Act 1997* and the *Criminal Procedure Act 1967* are scored at high priority. There are proposals to repeal and to re-enact two significant and lengthy parts of the *Criminal Justice Act 1994* in the expected *Money Laundering Bill* as well as smaller portions of other parts, and therefore the 1994 Act is considered to be unsuitable for restatement at this time.

4.06 The Prisons legislation spans a very long period, from the *Prison (Ireland) Act 1826* to parts of the *Children Act 2001*. Of the 36 prison Acts identified in this group, half pre-date 1922. Any restatement would encounter the problems inherent in integrating older and newer legislation discussed below.² The need for a re-casting of the body of prison legislation seems to have been recognised by the Government within the past 10 years. A preliminary draft of new prison legislation was prepared in 2001, dealing with all aspects of prison law. However, this was not pursued and the Commission understands that no active work is in progress. While not proposing to include it in the First Programme of Restatement, the Commission will keep this legislation under review and will consider it for a subsequent programme, if it has not been re-enacted in the meantime under the Government's policy of re-enacting pre-1922 legislation.³

(2) **Submissions on certain candidate Acts**

4.07 During the consultation period after publication of the Consultation Paper, certain submissions received by the Commission indicated that the restatement of some of the Acts on the candidate legislation list should be postponed. They include the *Consumer Credit Act 1995*, as an EC Directive is due which will require considerable reform, and the *Unfair Dismissals Act 1977* and the *Minimum Notice and Terms of Employment Act 1973*, until the passing of the *Employment Law Compliance Bill 2008*. Legislation is also planned in the areas of Housing and Adoption. Consolidation is being considered for the *National Monuments Act 1930*, the *Údarás na Gaeltachta Act 1979*, and the Fisheries legislation. In addition, major changes are to be made to the *Health (Nursing Homes) Act 1990*, which may negate the need for restatement. It was

² Paragraph 4.21.

³ Paragraph 4.18.

noted in the Consultation Paper, on the candidate list itself, that some of the Acts listed should perhaps not be restated at this time. These included the Consumer Protection legislation (now updated by the *Consumer Protection Act 2007*), the Inland Fisheries legislation and the Landlord and Tenant legislation,⁴ which either have been or are being considered by other bodies.

C Restating suites of Acts

4.08 It seemed to the Commission that the best way for restatements to be useful to the public and other users, and to make an impact on different sectors of law, was to consider not only the candidate Acts in isolation, but suites of related Acts. The Commission posed itself the question: which additional Acts, if restated together, would be useful to people working in those areas of law? For example, the *Adoptive Leave Act 1995* is included in the Appendix B list in the Consultation Paper (priority weighting 8). If the Commission were to restate this Act in isolation, it is quite likely that the impact of the restatement on potential users would be small. Even if potential users registered that a restatement was available, they would not necessarily remember which of the various Employment Leave Acts (Adoptive, Carer's, Parental, Maternity Protection) was restated. Users of the Leave legislation would therefore be less likely to check, assuming that whatever Leave Act had been restated, it was probably not the one they needed. However, if all the Leave Acts were known to be restated, this would be likely to increase the use made of them, as potential users would have confidence that whichever Acts they were looking for were in fact restated.

4.09 The Commission also considered the increased effectiveness of tackling a related body of legislation together, where knowledge, expertise and sources of information accumulated for one restatement could be put to good use for related legislation. In relation to future development of the law and the eLegislation objective,⁵ it considered that such juxtaposition of an updated, related body of law may also be advantageous in facilitating simplification and rationalisation of related legislation.

4.10 The Commission therefore surveyed the Statute Book and the categories of the statutes in force (discussed below) to determine what other legislation might usefully be restated in suites centred on individual Acts of the candidate legislation. Some Acts had relatively few other Acts naturally associated with them. For example, the *Data Protection Acts 1988 and 2003*

⁴ The Commission published its *Report on the Law of Landlord and Tenant* (LRC 85-2007) which included a draft Landlord and Tenant Bill.

⁵ Paragraph 1.102.

appeared to stand alone, and the *Civil Liability Act 1961* and the *Statute of Limitations 1957* have each only a few related Acts. In contrast, some Acts appear to have a large body of related legislation, such as the *Road Traffic Act 1961*, the various Family Law Acts and the various Children Acts. The Commission identified legislation related to the candidate Acts and from this put together suites of Acts. In some cases, secondary legislation must also be included. Counts of the amendments for each of these suites of Acts were collated, and times for undertaking restatements of the different suites were estimated. A list of the proposed suites of Acts and a table of the resulting time estimates were produced to assist the Commission in developing a restatement programme for the second half of 2008 and 2009. This is a period of approximately 18 months, and will coincide with the XML authoring tool commissioned by the Commission becoming available to facilitate the work.

4.11 As a basis for developing categories of legislation and then identifying closely related suites, the Commission undertook a survey of the Irish Statute Book since 1922.

D Survey of the Irish Statute Book since 1922

4.12 The Commission's survey of the Irish Statute Book since 1922 had a number of objectives. They included determining the number of post-1922 Acts currently in force, determining the number of amendments made to each Act and dividing the Acts into categories to make it easier to establish suites for restatement. The survey was also the basis for estimating the time required to undertake restatements of individual Acts and suites of related Acts.

4.13 The survey used data held in the Legislation Directory on the Irish Statute Book website, supplemented by searches of the more recent Acts. It showed that between 1922 and the end of 2007, a total of 3,166 Acts were passed. Of these approximately 1,932 Acts are still in force. Approximately 675 of these Acts have not been amended or affected and so do not require restatement in themselves. Therefore the remaining 1,257 Acts are potential material for restatements as principal or amending Acts.

4.14 It should be noted that although unamended or unaffected Acts may not require restatement in themselves, the Commission considers that under some circumstances it may be appropriate to include them in suites of Acts which are being restated, for completeness and to give a true administrative consolidation. As it is intended to include commencement information (the date on which an Act or provisions of an Act come into force) in all restatements, this at least is value which a restatement can add to an unamended Act.

4.15 Additional analysis of the statutes in force was made possible through calculations of the number of amendments to each Act.⁶ This enabled the making of an estimated determination of the workload and time involved in producing a restatement of any given Act, or group of Acts. The analysis was based on the information currently on the Irish Statute Book website, which continues up to the end of 2005, so that the Acts and amendments passed in 2006 and 2007 are not included. This has an impact on the accuracy of the estimates in some cases. Other uncertainties arise from the fact that one section may make a number of amendments in another section, but they are counted as one; and the fact that there are occasional omissions from the Legislation Directory. Nevertheless, early experience in doing restatements during the course of the preparation of this Report has led the Commission to believe that the estimates arrived at in this way are a reasonable approximation and, in preparing its First Programme, the Commission has proceeded on this basis.

4.16 In addition to counting the number of amendments or affecting provisions, the statutes were divided into different categories. The reason for dividing the statutes into categories was to make it easier to identify Acts that were related to each other, in order to put them into groups or suites⁷ for restatement.

4.17 The next step was to establish the number of amendments for each of the candidate Acts. This gave an idea of the workload involved in each individual restatement, based on estimates of time for the various steps involved in preparing a restatement:

- sourcing and validating the text of the Act and any amending legislation,
- validating the table in the Legislation Directory relating to the principal Act and relevant provisions of amending Acts,
- developing a master list of affecting provisions to be integrated into the principal Act, including commencement provisions,

⁶ The Commission is grateful to Kevin Gleeson of PA Consulting who developed this calculation in his *Statute Law Restatement Business Case Report* written for the Attorney General's Office in 2004, and to Liam Kelly of CMOD in the Department of Finance, who updated it for the Commission.

⁷ Groups - Acts related by amendments; suites - Acts more loosely related by subject matter.

- carrying out the restatement including the annotation of affecting provisions, and
- checking its accuracy.

This was of necessity a best guess estimate, because of the Commission's relative lack of experience in carrying out these tasks, and the lack of any experience of the productivity gains to be expected from the use of the XML authoring tool, which was still in development at this stage of the project.

E Restatement of pre-1922 statutes

(1) Policy of replacement

4.18 Since 1962 it has been Government policy to gradually replace all pre-1922 legislation with Acts of the Oireachtas.⁸ The 2004 Government White Paper *Regulating Better* commits to the review of all pre-1922 legislation, the repeal of redundant and moribund legislation and the re-enactment of provisions which are still useful. Significant progress was made in 2005 and 2007 with the enactment of the *Statute Law Revision (Pre-1922) Act 2005* and the *Statute Law Revision Act 2007*. These Acts repealed a large number of obsolete provisions and the 2007 Act for the first time identified all 1,364 pre-1922 statutes which are still, at least for the time being, in effect. Work in the Attorney General's Office continues on a *Statute Law Revision Bill* which will review Local and Personal Acts and Private Acts enacted prior to 6 December 1922.

4.19 The impetus for a consistent programme or programmes of law reform started in 1962 with the publication by the Department of Justice of a *Programme of Law Reform*. Individual Acts involving law reform were, of course, enacted prior to 1962 but the Programme represented the first major structured approach to the matter. Of the areas of law identified in that paper, many of which were governed by pre-1922 legislation, a large number have in fact been modernised by major reformative statutes: the *Street and House to House Collections Act 1962*, the *Official Secrets Act 1963*, the *Hotel Proprietors Act 1963*, the *Guardianship of Infants Act 1964*, the *Pawnbrokers At 1964*, the *Succession Act 1965*, the *Extradition Act 1965*, the *Malicious Injuries Acts 1981* and *1986*, the *Animals Act 1985*, the *Bankruptcy Act 1988*, the *Occupiers' Liability Act 1995*, the *Registration of Deeds and Title Act 2006* and the *Criminal Law (Insanity) Act 2006*. Remaining aspects of the programme of work outlined in the 1962 Programme were carried forward into the programmes of work of the Law Reform Commission after its establishment in 1975, and resulted in

⁸ *Programme of Law Reform*, Department of Justice, 1962 Pr. 6379.

recommendations for the reform and replacement of other pre-1922 legislation. Many of these recommendations have been put into effect.⁹

4.20 More recently, a number of other pre-1922 legislation modernisation projects have been accomplished or are underway. The *Local Government Act 2001* repealed and replaced 11 pre-1922 local government statutes, and partly repealed others. The *Consumer Protection Act 2007* repealed the *Merchandise Marks Acts 1887, 1891 and 1911*. Initiatives currently underway include

- land law, by means of the *Land and Conveyancing Law Reform Bill 2006* – this Bill when enacted will repeal around 10% of the remaining pre-1922 statutes;¹⁰
- tribunals of enquiry, by means of the *Tribunals of Enquiry Bill 2005*;¹¹
- merchant shipping, by means of a *Merchant Shipping (Miscellaneous Provisions) Bill* scheduled for publication in 2008 and a *Merchant Shipping Consolidation Bill* scheduled for publication in 2009;
- criminal law, by codification of all substantive criminal law;¹²
- licensing law, by means of a *Sale of Alcohol Bill* to codify the law relating to the sale and consumption of alcohol, scheduled for publication in late 2008 (heads of a Bill are agreed and legislation is being drafted);
- customs law;
- courts law, currently the subject of a joint initiative by the Department of Justice, Equality and Law Reform and the Commission;¹³

⁹ See *Report on the Third Programme of Law Reform 2008-2014* (LRC 86-2007), Appendix 5.

¹⁰ See the Commission's *Report on the Reform and Modernisation of Land Law and Conveyancing Law* (LRC 74-2005).

¹¹ See the Commission's *Report on Public Inquiries including Tribunals of Inquiry* (LRC 73-2005).

¹² The Criminal Law Codification Advisory Committee was established by Part 14 of the *Criminal Justice Act 2006*.

¹³ See the Commission's *Consultation Paper on Consolidation and Reform of the Courts Acts* and draft Courts Acts (July 2007) (LRC CP46-2007)

- landlord and tenant law, by means of a Bill to implement the Commission's 2007 *Report on the Law of Landlord and Tenant*,¹⁴

4.21 As mentioned in Chapter 2, pre-1922 legislation is frequently not suited to restatement for a number of reasons. It was conceived of and drafted in a very different society, and may sit uneasily with more recent legislation and interpretation. Some provisions may have become obsolete because of the changed circumstances. Cross references may have become obsolete or meaningless. Its drafting style can be difficult to integrate with modern drafting used in more recent legislation, particularly if non-textual amendments were used. The most commonly used and updated legislation, where restatement can have the most impact, is generally of a more recent origin or may have already been modernised and re-enacted since 1922. The Commission has therefore included only one pre-1922 group of Acts in its initial Programme, the *Prevention of Corruption Acts 1889-2005*. One of the main reasons the Commission included this group for restatement was in order to familiarize itself with the issues involved in restating pre-1922 legislation, and the restatement was undertaken in parallel with the preparation of this Report. The experience gained in undertaking the restatement of this pre-1922 legislation was useful in identifying the source materials and informing the procedures for legislation of this period. The (pre-certified) *Prevention of Corruption Acts 1889-2005 Restatement* is included in this Report in Appendix D.

4.22 The Commission received a small number of submissions suggesting the restatement of pre-1922 legislation. They concerned the *Explosives Act 1875*, the *Prevention of Corruption Act 1906* and the *Customs Consolidation Act 1876*. More recently, the Prisons legislation was also suggested.

4.23 The *Explosives Act 1875* and subsequent amendments have been the subject of a working group in the Department of Justice, Equality and Law Reform, and a proposal for the drafting of a comprehensive new Bill to replace existing legislation was approved by Government in February 2008. Undertaking a restatement of the legislation in these circumstances would serve little purpose.

4.24 The Commission has prepared a restatement of the *Prevention of Corruption Act 1906* along with restatements of related legislation: the *Public Bodies Corrupt Practice Act 1889*, the *Prevention of Corruption Act 1916*, the *Ethics in Public Office Act 1995*, section 38, the *Prevention of Corruption (Amendment) Act 2001* and the *Proceeds of Crime (Amendment) Act 2005*, Part

¹⁴ See the Commission's *Report on The Law of Landlord and Tenant* with draft Bill (LRC 85-2007).

5, now to be collectively cited as the *Prevention of Corruption Acts 1889-2005*.¹⁵ The *Prevention of Corruption (Amendment) Bill 2008* was presented in the Dáil in June 2008. The 2008 Bill deals with strengthening the law in relation to bribery of foreign public officials arising from an OECD Convention and recommendations.¹⁶ The 2008 Bill, when passed into law, may be incorporated in an updated restatement. Alternatively, the restatement of these related Acts may assist in the development of a new *Prevention of Corruption Act* to replace them, thereby simplifying the Statute Book, and eliminating three further, now very fragmented, pre-1922 Acts.

4.25 The *Customs Consolidation Act 1876* and its amending legislation are the subject of a reform and consolidation project currently being undertaken by the Revenue Commissioners, and intended to result in a Customs Consolidation Bill. It will form part of a programme of consolidation which includes the *Taxes Consolidation Act 1997*, the *Stamp Duties Consolidation Act 1999* and the *Capital Acquisitions Tax Consolidation Act 2003*. Much excise legislation, both primary and secondary, has also been recently consolidated and modernised on a rolling basis in a series of Finance Acts starting in 1999. The Revenue Commissioners have done considerable preparatory work and have suggested that the customs legislation would be suitable for restatement, as a step towards the preparation of a Bill. However, it has not been included in the initial programme, and its status will be kept under review.

4.26 The Prisons legislation dates back to 1826 and comprises 36 Acts or parts of Acts. For some years, reform of prison law was included in the Government's legislative programme and in 2001 heads of a Prisons Bill, dealing with all aspects of prison law, were drafted. However, this initiative was not pursued and the Commission understands that there are no current plans to continue with it. Instead, certain reforms have resulted from the *Prisons Act 2007*. The size of the project and the age of the legislation, much of it dating back to the 19th century, suggest that it would be better suited to reform and consolidation than to restatement. While deciding not to include it in its First Programme of Restatement, the Commission will keep the submission to restate this legislation under review in the future.

¹⁵ *Proceeds of Crime (Amendment) Act 2005*, s. 1(4). The pre-certified restatement is set out in Appendix D.

¹⁶ *Convention on the Bribery of Foreign Public Officials in International Business Transactions*, adopted at Paris on 21 November 1997 and ratified by Ireland on 22 September 2003.

(2) Technical considerations

4.27 In addition to the considerations of repeal and replacement of pre-1922 legislation and its suitability for restatement, there are different technical considerations for legislation of this period. Key to the efficient restatement of legislation is the availability of a repository of primary and secondary legislation, marked up in XML. This is largely available to the Commission as a result of the acquisition by the Commission of the repository of the Irish Statute Book (eISB) website, which covers the greatest part of both types of legislation from 1922 to 2007. Unless the eISB website is routinely promptly updated, however, the Commission may from time to time require sourcing and marking up of new legislation, or conversion from other sources.

4.28 For the period prior to 1922, there are no readily available sources of XML marked-up legislation, which makes the use of the authoring tool problematic. Either legislation identified for restatement will have to be specially marked up and made available to the authoring tool, or restatements involving pre-1922 legislation will have to be prepared without the authoring tool, using word processing software, and marked up later for display on the eISB or other website. Given these difficulties, and a recognition that nearly all of the candidate Acts in Appendix B of the Consultation Paper and proposed subsequently date from after 1922, the Commission decided to include only the *Prevention of Corruption Acts 1889-2005* and the *Sale of Goods Act 1893* in its initial restatement programme. The decision in relation to the latter Act, however, is subject to the timing of the Department of Enterprise, Trade and Employment in replacing this and other consumer legislation with a single piece of primary legislation. Although the Department's decision to do so has been made in principle, it is subject to the timing of the publication of EU consumer proposals, expected in 2008.

4.29 The *Sale of Goods Act 1893*, together with Part II of the *Sale of Goods and Supply of Services Act 1980*, was one of the four restatements carried out under the auspices of the Statute Law Revision Unit of the Office of the Attorney General in 2003 and 2004. Subject to the plans for new legislation mentioned above, it is intended to update and reissue this restatement along with the other three restatements from that period as part of the restatement programme for 2008-2009, and the question of marking up the pre-1922 legislation will have to be decided at that point.

F Restatements underway

(1) Restatements already completed by the Commission

(a) Freedom of Information Act 1997

4.30 Three versions of a restatement of the *Freedom of Information Act 1997* were included in Appendix A of the Consultation Paper.¹⁷ The 1997 Act was chosen for restatement because it fulfilled the three primary criteria. It was felt that it would aid both specialist users such as government departments, state agencies and journalists and also the general public for whom access to public information is a very important resource. It may also assist businesses who seek access to information held by public bodies. It has been heavily amended.

4.31 The restatement of the 1997 Act will be redone as a “double blind” exercise in accordance with the initial restatement methodology outlined in Chapter 2, and using the XML authoring tool when it becomes available in the summer of 2008, and will then be submitted to the Attorney General for certification.

(b) Data Protection Acts 1988 and 2003

4.32 A pre-certified restatement of the *Data Protection Acts 1988 and 2003* is attached to this Report. These Acts were chosen for restatement because they are widely used by private persons, business and Government. The legislation is also spread over a number of different enactments which makes it difficult to ascertain the law in force at a given time. In addition, an informal restatement is available on the Data Commissioner’s website.

(c) Prevention of Corruption Acts 1889-2005

4.33 A pre-certified restatement of the *Prevention of Corruption Acts 1889-2005* is attached to this Report (Appendix D). The *Prevention of Corruption Act 1906* was suggested for restatement during the consultation period, and this group of six Acts was chosen for restatement because it includes instances of pre-1922 legislation, so as to provide a means to explore the issues raised by legislation from that period, and because the legislation is also of relevance and concern to business and those in public life.

4.34 As will be seen below, the *Ethics in Public Office Act 1995* is also in the First Programme of Restatement and a restatement of this Act will complement the restatement of the *Prevention of Corruption Acts*.

¹⁷ LRC CP 45-2007.

(2) Revision and Publication of four Restatements already certified

4.35 Four restatements were prepared between 2003 and 2004 under the auspices of the Statute Law Revision Unit of the Office of the Attorney General, and have already been certified and are available on the website of the Attorney General. They are:

- *Sale of Goods Act 1893 and Part II of the Sale of Goods and Supply of Services Act 1980 Restatement* (certified 27 February 2003).
- *Defence Acts 1954 to 1998 and Court Martial Appeals Restatement* (certified 4 May 2004).
- *Tourist Traffic Acts 1939 to 2003 Restatement* (certified 18 May 2004).
- *Succession Act 1965 Restatement* (certified 18 May 2004).

4.36 The updating and reissue of existing restatements is of course desirable for users of the legislation. It is also likely to be helpful in establishing the concept and existence of restatements in the consciousness of users of legislation to have any existing restatements capable of being relied upon as up to date statements of the law. In the context of future eLegislation and revised or re-enacted legislation, a common starting point will be helpful, and is achievable because of the small number of previous restatements. For these reasons, the Commission decided to update these existing restatements to incorporate any recent changes and adapt them to the new style discussed in Chapter 2.

G First Programme of Restatement

4.37 The Commission decided to undertake a First Programme of Restatement over the period July 2008 to December 2009. The Commission considers that will provide a sufficiently large volume of Acts and also allow for review of the process to enable longer term planning for a Second Programme of Restatement.

4.38 The First Programme of Restatement will run for the 18 months from July 2008 to December 2009. The following summarises the work already underway by the Commission in the First Programme of Restatement.

- (1) **Prepare XML versions of restatements already completed by the Commission, for certification and publication:**
- Freedom of Information Act 1997¹⁸
 - Data Protection Acts 1988 and 2003¹⁹
 - Prevention of Corruption Acts 1889-2005²⁰
- (2) **Update four restatements previously certified, and prepare for certification and publication:**
- *Sale of Goods 1893 and Part II of the Sale of Goods and Supply of Services Act 1980 Restatement (2003)*
 - *Defence Acts 1954 to 1998 and Court Martial Appeals Restatement (2004)*
 - *Tourist Traffic Acts 1939-2003 Restatement (2004)*
 - *Succession Act 1965 Restatement (2004)*
- (3) **Acts from the List of Candidate Legislation, together with related legislation:**
- Group/Suite 1: Ethics In Public Office legislation, encompassing
 - *Ethics in Public Office Act 1995*
 - *Standards in Public Office Act 2001*
 - *Local Government Act 2001, Part 15 (Ethical Framework for the Local Government Service)*
 - Group/Suite 2: Firearms legislation, encompassing:
 - *Firearms Act 1925*
 - *Firearms Act 1964*
 - *Firearms (Proofing) Act 1968*
 - *Firearms and Offensive Weapons Act 1990*
 - *Firearms (Temporary Provisions) Act 1998*
 - *Firearms (Firearms Certificates for Non-Residents) Act 2000*
 - *Criminal Justice Act 2006, Part 5*
 - *Criminal Justice Act 2007, Part 6*

¹⁸ See Appendix A of the Consultation Paper.

¹⁹ See Appendix C of this Report.

²⁰ See Appendix D of this Report.

- Group/Suite 3: Civil Liability and Statute of Limitations legislation, encompassing
 - *Statute of Limitations 1957*
 - *Law Reform (Personal Injuries) Act 1958*
 - *Civil Liability Act 1961*
 - *Liability for Defective Products Act 1991*
 - *Occupiers' Liability Act 1995*
 - *Civil Liability (Assessment of Hearing Injury) Act 1998*
 - *Personal Injuries Assessment Board Act 2003*
 - *Civil Liability (Amendment) Act 1964*
 - *Statute of Limitations (Amendment) Act 1991*
 - *Civil Liability (Amendment) Act 1996*
 - *Statute of Limitations (Amendment) Act 2000*
 - *Civil Liability and Courts Act 2004*
 - *Personal Injuries Assessment Board (Amendment) Act 2007*
- Group/Suite 4: Employment Leave legislation, encompassing
 - *Maternity Protection Act 1994*
 - *Adoptive Leave Act 1995*
 - *Parental Leave Act 1998*
 - *Carer's Leave Act 2001*
 - *Maternity Protection (Amendment) Act 2004*
 - *Adoptive Leave (Amendment) Act 2005*
 - *Parental Leave (Amendment) Act 2006*
- Group/Suite 5: Proceeds of Crime and Criminal Assets Bureau legislation, encompassing
 - *Proceeds of Crime Act 1996*
 - *Criminal Assets Bureau Act 1996*
 - *Proceeds of Crime (Amendment) Act 2005*
- Group/Suite 6: Equality legislation (start work if time remains)
 - *Employment Equality Act 1998*
 - *Equal Status Act 2000*
 - *Equality Act 2004*
- *Criminal Procedure Act 1967*

These number 45 Acts and include six groups or suites. The list includes Acts which are short, medium and long.

4.39 The above Acts from the candidate list of legislation were chosen after considering their priority rating in the list of candidate legislation²¹ and general importance. The work level involved in each was considered so as to have a balance between restatements that will take a shorter amount of time (such as the Proceeds of Crime and Firearms legislation) and those that will take a much longer amount of time (such as the Ethics in Public Office and Equality legislation). This ensures that a certain number of restatements will be certified and published, and also that work will begin on the longer term projects.

4.40 The following comments relate to certain elements of the programme.

(4) Employment Leave Legislation

4.41 This suite is part of a larger employment law category. Submissions have suggested that the restatement of the larger Acts such as the *Unfair Dismissals Act 1977* and the *Minimum Notice and Terms of Employment Act 1973* should be postponed in the short-term. It would be envisaged that remaining employment legislation would be tackled in future programmes, subject to consultation with the Department of Enterprise, Trade and Employment, which has announced a programme of consolidation of employment legislation.

(5) Proceeds of Crime and Criminal Assets Bureau

4.42 This suite could be extended to include the *Criminal Justice Act 1994* and money laundering legislation. Submissions have informed us that there is an intention to bring forward a Money Laundering Bill which would significantly amend this legislation. If at the time of the restatement of this suite this proposal has resulted in legislation or been abandoned, the restatement of the *Criminal Justice Act 1994* could be reconsidered.

(6) Equality Legislation

4.43 This suite represents considerable work and may not be completed within the timescale of 2008-2009. However, the Commission considers it important to tackle some bigger as well as smaller and more easily achievable restatements, and intends to embark on this legislation and achieve as much progress as possible during the programme period. If not completed in that time, it will be continued into the period of the Second Programme.

(7) Criminal Procedure

4.44 In time, the Criminal Procedure suite will comprise all legislation relating to criminal procedure, such as criminal evidence and bail. For the First

²¹ Appendix B.

Programme, the *Criminal Procedure Act 1967* from this suite will be restated. However, the Commission intends that the Second Programme will continue the work in this area. The most likely Acts to be restated in the Second Programme are the *Criminal Justice Act 1984* and the *Bail Act 1997*.

(8) Future Review

4.45 The Commission is committed to reviewing the Restatement Programme periodically to ensure that it reflects the needs of society. It is envisaged that the user group, proposed in the Consultation Paper and supported in a number of submissions, will play an important role in this regard. The Second Programme of Restatement will run from 2010 and the remaining Acts from the list of candidate legislation will be reconsidered at that point.

H User group

4.46 The Consultation Paper proposed the formation of a user group to assist the Commission in developing programmes of restatement, representing user interests in the future development of restatement programmes and standards of restatement. The group could also serve as a focal point for representations and suggestions to be brought to the attention of the Commission.

4.47 A number of positive responses were received to this proposal, and the Commission will seek to form a small user group of interested parties when the First Programme of Restatement is underway. Stakeholders in the restatement project include the Office of the Attorney General and in particular the Office of Parliamentary Counsel, Government departments, topic steering groups such as the Criminal Law Codification Advisory Committee, members of the legal profession and the academic community, and other groups who work with legislation on a regular basis including the social partners and consumer interests. The Commission is committed to regular consultation with such a user group, which it sees it as an essential element in the success of the restatement project.

CHAPTER 5 SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

A Introduction

5.01 In previous chapters the Commission has examined the context of the Statute Law Restatement Programme within the Irish legislative framework. It considered how the *Statute Law (Restatement) Act 2002* complements the policy of Better Regulation, including the aim of improving access to legislation and the difficulties presented by the current legislative framework to the restatement initiative. It also discussed the benefits of restatement in Ireland, its future and its potential role in achieving the objectives of eLegislation.

5.02 In the following paragraphs, the Commission sets out the main conclusions and proposals it has arrived at for the Statute Law Restatement Programme in relation to process, format and publication. It describes the technical aspects of the electronic format for holding and editing restatements and the steps it has taken to procure an appropriate authoring tool, and how the technology will be used where possible for quality control and to manage the restatement workload. Finally, the Commission discusses its analysis of the Statute Book from 1922 to date, its decision to use the legislation put forward during the consultation process as a starting point, its decision to restate legislation in a particular area of law where appropriate rather than individual Acts, and the selection of Acts and groups of Acts for the First Restatement Programme.

B Statute law in context

5.03 Despite the undoubted progress being made in modernising and replacing pre-1922 legislation, the task is not expected to be completed in the foreseeable future. In these circumstances, without an interim measure to enable public access to as much of this legislation as remains in force, the issue of its accessibility will continue. [Paragraph 1.15].

5.04 The Commission's expectation that the Statute Law Restatement and Legislation Directory Programmes will be complementary and assist each other has already been demonstrated in the research conducted for certain draft restatements. [Paragraph 1.56].

5.05 Elements of a drive towards greater eLegislation must involve technical integration or inter-operability in the chain of activities from origination to publication of legislation; coordination of work practices and development of agreed standards and guidelines in drafting and presentation; and a cohesive management structure which allows for consultation with and input from all those involved, but which also has the authority to make decisions and elicit cooperation. [Paragraph 1.1051.105].

5.06 Significant elements of an eLegislation programme are already in place, including the Legislative Workbench system in the Oireachtas, the electronic Statutory Instrument System (eSIS) and the online Statute Book (eSB). The XML authoring tool being developed for the Commission will be compatible with these systems and will allow the production of restatements which can be added to the existing repository of legislation. Significant opportunities for efficiency are readily discernable in the introduction of an XML authoring tool for the drafting of legislation, maintenance of the Legislation Directory as a by-product of legislative drafting, publication of the statutory instruments in XML format and upgrading of the management and maintenance of the eSB. [Paragraph 1.105].

5.07 The Commission views the current Restatement Programme as an ongoing project in the context of the complexities of tidying up the Statute Book. The Programme's contribution to making legislation more accessible and available online in a more up to date form will in itself be a contribution to the eLegislation objective. The Commission sees further potential to build on this work and avoid the inevitable ageing of restatements as new amendments are introduced and restatements go out of date. The Commission may not have the resources to continuously update restatements without jeopardising its future programme of restatement. [Paragraph 1.106].

5.08 The Commission recommends that consideration be given to the enactment of restatements as principal Acts using an accelerated procedure such as that used in British Columbia. [Paragraph 1.108].

5.09 The Commission recommends that, in respect of already restated Acts, future amending legislation be published already integrated into the restated Act, resulting in the enactment of a new version of the Act. [Paragraph 1.111].

5.10 The Commission accepts that the above recommendation will require changes to the way in which legislation is enacted, but believes that this should be considered in the interests of a more accessible Statute Book. [Paragraph 1.114].

5.11 Even in the event that existing restatements are enacted and updated as suggested, the Commission foresees the need for an ongoing

restatement programme to continue to simplify the Statute Book and contribute to other initiatives such as consolidation, codification and reform, and the improved access to law envisaged by the eLegislation concept. [Paragraph 1.115].

C The process of restatement

5.12 The Commission will undertake a comparison of the electronic version with the official printed version of legislation. [Paragraph 2.11].

5.13 The Commission has confirmed its choice of XML as the format for holding and manipulating legislative data. [Paragraph 2.15].

5.14 Restatement will proceed with the assembly of an Affecting Provisions Document setting out all legislative provisions which affect the Act being restated, using the Legislation Directory and other sources. [Paragraph 2.25].

5.15 Commencement dates will be included in the annotation of affecting provisions. [Paragraph 2.28].

5.16 Quality assurance of the restatement process will initially involve undertaking double blind restatements to test the reliability of the methodology. It will also involve peer and project manager review and sign off by the Commission. [Paragraphs 2.34 to 2.36].

5.17 Completed restatements will be submitted to the Attorney General probably in PDF format. [Paragraph 2.39].

5.18 The Commission will consider the publication of pre-certified restatements in the interests of making restatements available to the public without delay. [Paragraphs 2.43, 2.111 to 2.115].

5.19 The Commission has decided to employ a modified form of the version 3 style of restatement published in the Consultation Paper, Appendix A, which includes extracts from non-textual amending provisions rather than complete sections. [Paragraph 2.53].

5.20 The Commission will use colour to signify text which has been replaced by an amendment. Instead of the colour blue used in the restatements in Appendix A of the Consultation Paper, the Commission has chosen the colour brown because it causes less confusion with the default blue colour used to signify a hyperlink. [Paragraph 2.62].

5.21 The Commission will restate “groups” of related Acts where appropriate, rather than individual Acts, the restatement of which would have less impact. [Paragraph 2.65].

5.22 The Commission will restate “suites” of Acts to provide coverage of broad functional areas. [Paragraph 2.66, 4.08].

5.23 Restatements will be presented in a structure as close as possible to the original. [Paragraph 2.71].

5.24 Annotations will be presented in the format used in Appendix A of the Consultation paper. Three types of note will be used: **F**-notes or footnotes, **C**-notes or cross-reference notes and **E**-notes or editorial notes. [Paragraph 2.73].

5.25 The Commission envisages the possibility of additional forms of annotation in the future, including the noting of amendments which have not yet come into force. [Paragraph 2.90].

5.26 Amendments made by “silent” or blanket amending legislation will not be included in restatements. [Paragraph 2.95].

5.27 In order to facilitate public access, the Commission believes that publication of restatements in both electronic and printed format should be tested. [Paragraph 2.97].

5.28 The Commission believes that point in time information on since-amended legislation would be desirable, and that a facility should be provided for restatements published online to allow switching on and off of annotations. [Paragraphs 2.104, 2.105].

D The technology of restatement

5.29 The issue of electronic signatures, and all of the various options available, will be considered by the Commission in the context of making a decision on the issue of online publication of restatements. [Paragraph 3.37].

5.30 The Commission has adopted a technological solution based on the development of an authoring tool which will use an existing Content Management System, customised for the Commission. [Paragraph 3.54].

5.31 The Commission will if necessary arrange for the marking up of certain legislation in accordance with the appropriate DTD (document type definition) to enable it to undertake restatements using the XML authoring tool it commissioned for this purpose. [Paragraphs 3.60 to 3.65].

5.32 The XML authoring tool will be based on the *ActiveText* Content Management System and will draw on much of the functionality provided by it. The supplier will design a DTD for the editing of restatements. The tool will provide output in several different formats: XML, PDF, and XHTML with the option to output in other formats if required. The tool will provide an enhanced

search function, including a key-word and key-expression search facility. It will also incorporate quality assurance features. [Paragraphs 3.66 to 3.71].

5.33 The Commission will seek to arrange for the online publication of restatements with the custodian of the electronic Statute Book (eSB) website. [Paragraph 3.73].

5.34 The Commission will maintain the repository and restatement on servers and computer infrastructure housed in the Commission. [Paragraph 3.73.74].

5.35 The XML authoring tool being developed for the Commission will include features which will assist in the project management and quality control of restatements. [Paragraphs 3.86 to 3.88].

5.36 The technology adopted by the Commission to support the Restatement Programme was chosen to fit as closely as possible with existing technical standards, so that the Restatement Programme can contribute to the longer term goal of eLegislation. [Paragraph 3.89].

E Programme of restatement

5.37 The Commission chose the 60 Acts put forward during the consultation process and listed in Appendix B of the Consultation Paper, together with four Acts suggested subsequently, as a good starting point in developing a programme of restatement. [Paragraph 4.03].

5.38 The Commission considered certain submissions received by the Commission which indicated that the restatement of some of the Acts on the candidate legislation list of 60 Acts should be postponed. [Paragraph 4.07].

5.39 The Commission surveyed the Statute Book from 1922 to 2007 to establish Acts with the potential to be restated (excluding Acts repealed, spent or unaffected) and estimated the numbers of affecting provisions in relation to individual Acts. [Paragraphs 4.13 to 4.17].

5.40 The Commission noted the Government policy of replacement of pre-1922 legislation and steps being taken to implement it. [Paragraphs 4.18 to 4.20].

5.41 The Commission noted certain technical considerations which make restating pre-1922 more difficult than post-1922 legislation. [Paragraph 4.27 to 4.29].

5.42 The Commission will use the XML authoring tool to restate those restatements already undertaken in the course of its research: the *Freedom of Information Act 1997*, the *Data Protection Acts 1988 and 2003* and the *Prevention of Corruption Acts 1889-2005*. [Paragraphs 4.30 to 4.33].

5.43 The Commission will revise and update the four existing certified restatements carried out in 2003 and 2004 under the supervision of the Office of the Attorney General's Statute Law Revision Unit, and restate them in the new format proposed. [Paragraph 4.36].

5.44 The Commission decided to undertake a First Programme of Restatement covering the period from July 2008 to December 2009. [Paragraph 4.37].

5.45 The First Programme of Restatement includes 45 Acts and six suites or groups of Acts. [Paragraph 4.38].

5.46 The Commission will establish a User Group in the course of the First Programme of Restatement to assist in developing a Second Programme of Restatement, and to serve as a focal point for representations and suggestions. [Paragraphs 4.46, 4.47].

STATUTE REVISION ACT [BRITISH COLUMBIA]

RSBC 1996] CHAPTER 440*Contents**Section*

- 1 Preparation of revision
- 2 Revision powers
- 3 Revision to be submitted to committee of Legislative Assembly
- 4 Approved revision to be deposited as official copy
- 5 How revision comes into force
- 6 Title and publication of revision
- 7 Repeal of previous version of statutes
- 8 Legal effect of revision
- 9 How references are to be interpreted
- 10 Interim corrections to revision
- 11 *Interpretation Act* applies
- 12 Statute corrections generally

Preparation of revision**1** The Chief Legislative Counsel may prepare

(a) a general revision consisting of the public Acts enacted before a date chosen by the Chief Legislative Counsel together with those other Acts considered advisable, or

(b) a limited revision consisting of an Act or a portion of an Act.

Revision powers

2 (1) In preparing a revision, the Chief Legislative Counsel may do any or all of the following:

(a) combine Acts or provisions of them;

(a.1) separate an Act or a provision of an Act into 2 or more Acts or provisions;

(b) alter the numbering and the arrangement of Acts or provisions;

(c) rename an Act or portion of an Act;

(d) alter language and punctuation to achieve a clear, consistent and gender neutral style;

(e) make minor amendments to clarify the intent of the Legislature, to reconcile inconsistent provisions or to correct grammatical or typographical errors;

(f) for a limited revision, make minor amendments to other Acts required to reconcile them with a revised Act as if the minor amendments were consequential amendments to the revised Act;

(g) include in the revision those Acts or provisions that, although enacted, have not been brought into force, and indicate how they are to come into force;

(h) omit Acts or provisions that are spent, are repealed or have no legal effect;

(i) omit Acts or provisions that do not apply throughout British Columbia;

(j) omit forms or schedules from an Act.

(2) If a form or schedule is omitted under subsection (1) (j), a power to prescribe the form or schedule by regulation may be added to the appropriate Act.

(3) A form or schedule omitted from a revision is repealed on the coming into force of the revision.

(4) A regulation prescribing a form or schedule may be enacted before a revision comes into force but the regulation has no effect until the revision comes into force.

Revision to be submitted to committee of Legislative Assembly

3 The Chief Legislative Counsel must give a revision to the Clerk of the Legislative Assembly for presentation to a select standing committee of the Legislative Assembly designated by the Legislative Assembly to examine the revision.

Approved revision to be deposited as official copy

4 (1) If the select standing committee approves a revision and recommends that it be brought into force, the Lieutenant Governor may direct that a copy of the revision be deposited with the Clerk of the Legislative Assembly as the official copy of the revision.

(2) The official copy must be signed by the Lieutenant Governor and countersigned by the Clerk of the Legislative Assembly.

How revision comes into force

5 (1) The Lieutenant Governor in Council may specify by regulation when a revision deposited under section 4 (1) comes into force.

(2) A revision comes into force for all purposes as if it were expressly included in and enacted by an Act.

(3) A provision in a supplement to a revision comes into force as provided in the supplement.

(3.1) If an Act or a provision is included in a revision under section 2 (1) (g), the Act or provision

(a) comes into force for the purposes of the revision in accordance with the regulation under subsection (1) of this section, and

(b) comes into force as law as indicated in the revision.

(4) From the time a revision comes into force, the official copy deposited with the Clerk of the Legislative Assembly must be considered to be the original of the statutes of British Columbia replaced by the revision.

(5) The Clerk of the Legislative Assembly must keep the official copy of the most recent Revised Statutes of British Columbia until the next general revision comes into force.

Title and publication of revision

6 (1) A general revision may be published with the title Revised Statutes of British Columbia and may include in the title the year of its publication.

(2) A limited revision may be given a chapter number as if it were enacted in the current session of the Legislative Assembly or, if the Legislative Assembly is not then in session, in the next session, and the limited revision may be published in the volume of Acts enacted in that session.

Repeal of previous version of statutes

7 (1) When a general revision comes into force,

(a) the existing Revised Statutes of British Columbia, and

(b) all other Acts and provisions that are included in the general revision but were not included in the existing Revised Statutes of British Columbia

are repealed to the extent that they are incorporated in the general revision.

(2) When a limited revision comes into force, the Acts or provisions it replaces are repealed to the extent that they are incorporated in the limited revision.

Legal effect of revision

8 (1) A revision does not operate as new law but has effect and must be interpreted as a consolidation of the law contained in the Acts and provisions replaced by the revision.

(2) If a revised provision has the same effect as a provision replaced by the revision, the revised provision

(a) operates retrospectively as well as prospectively, and

(b) is deemed to have been enacted and to have come into force on the day on which the provision replaced by the revision came into force.

(3) If a revised provision does not have the same effect as a provision replaced by the revision,

(a) the provision replaced by the revision governs all transactions, matters and things before the revision comes into force, and

(b) the revised provision governs all transactions, matters and things after the revision comes into force.

How references are to be interpreted

9 (1) A reference in any of the following to an Act or provision included in a revision must be interpreted, in relation to any transaction, matter or thing after the coming into force of the revision, as a reference to the revised Act or provision having the same effect as the Act or provision replaced by the revision:

(a) an Act or provision that was enacted before the coming into force of the revision and that is not included in the revision;

(b) a regulation or other instrument enacted before the coming into force of the revision;

(c) a document existing before the coming into force of the revision.

(2) A reference in any of the enactments or documents referred to in subsection (1) (a) to (c) to the Revised Statutes of British Columbia must be interpreted, in relation to any transaction, matter or thing after the coming into force of a general revision, as a reference to the new Revised Statutes of British Columbia.

Interim corrections to revision

10 (1) The Lieutenant Governor in Council may make regulations to correct, in a manner consistent with the powers of revision in this Act, any error in a revision.

(2) A regulation under this section may be made retroactive to the coming into force of the revision.

(3) Unless confirmed by the Legislature, corrections made by a regulation under this section cease to have effect after the last day of the next session of the Legislative Assembly after the regulation is made.

Interpretation Act applies

11 The *Interpretation Act* applies to a revision as it applies to other enactments.

Statute corrections generally

12 (1) The Lieutenant Governor in Council may make regulations to correct the following in any Act:

- (a) errors of form;
- (b) errors of style;
- (c) numbering errors;
- (d) typographical errors;
- (e) reference errors.

(2) Unless confirmed by the Legislature, corrections made by a regulation under this section cease to have effect after the last day of the next session of the Legislative Assembly after the regulation is made.

Copyright (c) Queen's Printer, Victoria, British Columbia, Canada

Reproduced with permission

**EXPANDED LIST OF CANDIDATE LEGISLATION
FOR RESTATEMENT**

Key to Criteria¹

Primary Criteria (2 Points each)	Secondary Criteria (1 point each)
a. Frequent use	a. Work level (1 indicates low work level; 0 indicates high work level).
b. Not accessible	b. Existing informal restatements
c. Ease regulatory burden	c. Proposals for amendment
Total: 6 points	Total: 3 points
Maximum total: 9	

Key to Rating

Low	Medium	High
> 3 points	3 - 5 points	6 - 9 points

In the table below the reader will find a list of candidate Acts. Each of these Acts has been amended numerous times since enactment. In this list, the Commission indicates the number of amendments in the "Work Level" column. For example, the entry on the first Act shown, the *Copyright and Related Rights Act 2000*, shows it has been amended by two Acts, and that there are 14 provisions which amend the Act.

¹ See paragraph 4.03 above.

Area of Law	Legislation	Work Level	Primary Criteria	Secondary Criteria	Result
Commercial	Copyright and Related Rights Act 2000	2 Acts 14 Affecting Provisions	a. 2	a. 1	High: 6
			b. 0	b. 0	
			c. 2	c. 1	
	Data Protection Act 1988	14 A 54 P	a. 2	a. 1	High: 8
			b. 2	b. 1	
			c. 2	c. 0	
Communications	Communications Regulation Act 2002	2 A 32 P	a. 2	a. 1	High: 6
			b. 0	b. 0	
			c. 2	c. 1	
Consumer	Consumer Credit Act 1995	7 A 105P	a. 2	a. 1	High: 8
			b. 2	b. 0	
			c. 2	c. 1	
	Consumer Protection Legislation				<i>Suggested in the public consultation process. Much of this is now contained in the Consumer Protection Act 2007.</i>
	Sale of Goods Act 1893				<i>Restatement certified by the Attorney General 27 February 2003</i>
Civil Liability	Civil Liability Act 1961	12 A 46 P	a. 2	a. 0	High: 8
			b. 2	b. 1	
			c. 2	c. 1	

Area of Law	Legislation	Work Level	Primary Criteria	Secondary Criteria	Result
	Statute of Limitations 1957	2 A 6 P	a. 2 b. 2 c. 2	a. 0 b. 1 c. 1	High: 8
Criminal Law and Procedure	Criminal Assets Bureau Act 1996	3 A 10 P	a. 2	a. 1	High: 7
			b. 2	b. 0	
			c. 2	c. 0	
	Criminal Justice Act 1984	7 A 31 P	a. 2 b. 2 c. 0	a. 1 b. 0 c. 1	High: 6
	Explosives Act 1875	6 A 12 P	a. 2 b. 2 c. 0	a. 1 b. 0 c. 1	High: 6
	Firearms Act 1925	14 A 55 P	a. 2 b. 2 c. 0	a. 0 b. 1 c. 1	High: 6
	Non-Fatal Offences against the Person Act 1997	2 A 6 P	a. 2 b. 0 c. 0	a. 1 b. 0 c. 1	Medium: 4
	Prevention of Corruption Act 1906	4 A 2 P	a. 2 b. 2 c. 2	a. 1 b. 0 c. 0	High: 7
	Proceeds of Crime Act 1996	3 A 11 P	a. 2 b. 2	a. 1 b. 0	High: 7

Area of Law	Legislation	Work Level	Primary Criteria	Secondary Criteria	Result
			c. 2	c. 0	
	Road Traffic Act 1961	26 A 298 P	a. 2 b. 2 c. 2	a. 0 b. 1 c. 1	High: 8
	Bail Act 1997	2 A 46 P	a. 2 b. 2 c. 0	a. 1 b. 1 c. 1	High: 7
	Criminal Procedure Act 1967	15 A 413 P	a. 2 b. 2 c. 0	a. 1 b. 1 c. 1	High: 7
	Criminal Justice Act 1994	280 P	a. 2 b. 2 c. 0	a. 0 b. 1 c. 0	Medium: 5
	Prison legislation, Prison (Ireland) Act 1826 to date	High (unquantified)	a. 2 b. 2 c. 1	a. 0 b. 0 c. 1	Better suited to repeal and reform
Employment	Adoptive Leave Act 1995	3 A 25 P	a. 2 b. 2 c. 2	a. 1 b. 1 c. 0	High: 8
	Employment Equality Act 1998	4 A 138 P	a. 2 b. 2 c. 2	a. 0 b. 1 c. 1	High: 8
	Maternity Protection	4 A	a. 2	a. 0	High: 8

Area of Law	Legislation	Work Level	Primary Criteria	Secondary Criteria	Result
	Act 1994	31 P	b. 2	b. 1	
			c. 2	c. 1	
	Minimum Notice and Terms of Employment Act 1973	21 A 35 P	a. 2	a. 0	High: 8
			b. 2	b. 1	
			c. 2	c. 1	
	Parental Leave Act 1998	4 A 18 P	a. 2	a. 1	High: 7
			b. 0	b. 1	
			c. 2	c. 1	
	Unfair Dismissals Act 1977	48 A 104 P	a. 2	a. 0	High: 8
			b. 2	b. 1	
			c. 2	c. 1	
Energy and Natural Resources	Aquaculture Act 1997	4 A 32 P	a. 2	a. 1	High: 6 [<i>Note: An informal Restatement has been drafted by the Dept of Communication, Marine and Natural Resources</i>]
			b. 0	b. 1	
			c. 2	c. 0	
	Electricity Regulation Act 1999	5 A 41 P	a. 2	a. 0	Medium: 4
			b. 0	b. 0	
			c. 2	c. 0	
Energy and Natural Resources	Electricity (Supply) Act 1927	28 A 42 P	a. 2	a. 0	High: 6
			b. 2	b. 0	
			c. 2	c. 0	
	Fishery Harbour	5 A	a. 2	a. 1	High: 7

Area of Law	Legislation	Work Level	Primary Criteria	Secondary Criteria	Result
	Centres Act 1968	7 P	b. 2	b. 0	
			c. 2	c. 0	
	Foreshore Act 1933	8 A 32 P	a. 2	a. 1	High: 7
			b. 2	b. 0	
			c. 2	c. 0	
	Gas Act 1976	10 A 85 P	a. 2	a. 0	High: 6
			b. 2	b. 0	
			c. 2	c. 0	
	Legislation relating to Waterways Ireland and the inland navigation system		a. 0	a. 1	Low: 1 <i>[Note: currently under review by the Dept Communications, Marine and Natural Resources]</i>
			b. 0	b. 0	
			c. 0	c. 0	
Environment and Planning	Dumping at Sea Act 1996	1 A 15 P	a. 0	a. 1	High: 6
			b. 2	b. 0	
			c. 2	c. 1	
	Environmental Protection Agency Act 1992	9 A 57 P	a. 2	a. 0	High: 7
			b. 2	b. 0	
			c. 2	c. 1	
	Housing Act 1966	28 A 123 P	a. 2	a. 0	High: 7
			b. 2	b. 1	
			c. 2	c. 0	
Environment and Planning	National Monuments Act 1930	10 A 56 P	a. 2	a. 0	Medium: 5
			b. 2	b. 0	

Area of Law	Legislation	Work Level	Primary Criteria	Secondary Criteria	Result
			c. 0	c. 1	
	Planning and Development Act 2000	13 A 61 P	a. 2	a. 0	High: 8
			b. 2	b. 1	
			c. 2	c. 1	
Equality	Equal Status Act 2000	3 A 39 P	a. 2	a. 0	High: 7
			b. 2	b. 1	
			c. 2	c. 0	
Family	Adoption Act 1952	18 A 69 P	a. 2	a. 0	High: 6
			b. 2	b. 1	
			c. 0	c. 1	
	Child Abduction and Enforcement of Custody Orders Act 1991	4 A 18 P	a. 2	a. 1	High: 7
			b. 2	b. 1	
			c. 0	c. 1	
	Children Act 1997	1 A 17 P	a. 2	a. 1	Medium: 5
			b. 2	b. 0	
			c. 0	c. 0	
	Children Act 2001	1 A 18 P	a. 2	a. 1	Medium: 5
			b. 0	b. 1	
			c. 0	c. 1	
	Family Home Protection Act 1976	12 A 34 P	a. 2	a. 1	High: 6
			b. 2	b. 1	
			c. 0	c. 0	

Area of Law	Legislation	Work Level	Primary Criteria	Secondary Criteria	Result
Family	Family Law (Divorce) Act 1996	6 A 17 P	a. 2	a. 1	High: 6
			b. 2	b. 1	
			c. 0	c. 0	
	Family Law (Maintenance of Spouses and Children) Act 1976	21 A 59 P	a. 2	a. 0	Medium: 5
			b. 2	b. 1	
			c. 0	c. 0	
	Guardianship of Infants Act 1964	14 A 52 P	a. 2	a. 0	Medium: 5
			b. 2	b. 1	
			c. 0	c. 0	
	Judicial Separation and Family Law Reform Act 1989	12 A 34 P	a. 2	a. 0	Medium: 5
			b. 2	b. 1	
			c. 0	c. 0	
	Status of Children Act 1987	6 A 17 P	a. 2	a. 1	High: 6
			b. 2	b. 1	
			c. 0	c. 0	
Government/ International Relations	Diplomatic Relations and Immunities Act 1967	2 A 2 P	a. 2	a. 1	High: 6
			b. 2	b. 1	
			c. 0	c. 0	
	Electoral Act 1992	13 A 110 P	a. 2	a. 0	High: 6
			b. 2	b. 1	
			c. 0	c. 1	
	Ethics in Public Office	6 A	a. 2	a. 0	High: 6

Area of Law	Legislation	Work Level	Primary Criteria	Secondary Criteria	Result
	Act 1995	86 P	b. 2	b. 1	
			c. 0	c. 1	
Government/ International Relations	European Communities Act 1972	25 A	a. 2	a. 0	High: 8
		38 P	b. 2	b. 1	
			c. 2	c. 1	
	Freedom of Information Act 1997	41 A	a. 2	a. 0	High: 8
		107 P	b. 2	b. 1	
			c. 2	c. 1	
	Irish Nationality and Citizenship Act 1956	6 A	a. 2	a. 0	High: 6
		44 P	b. 2	b. 1	
			c. 0	c. 1	
	Ministers and Secretaries Act 1924	24 A	a. 2	a. 0	High: 6
		36 P	b. 2	b. 1	
			c. 0	c. 1	
	Údarás na Gaeltachta Act 1979	6 A	a. 2	a. 0	Medium: 5 [<i>Note: consolidation is under consideration</i>]
		34 P	b. 2	b. 1	
			c. 0	c. 0	
Health	Health (Nursing Homes) Act 1990	5 A	a. 2	a. 0	High: 7
		38 P	b. 2	b. 0	
			c. 2	c. 1	
Land Law	Landlord and Tenant Acts				<i>Law Reform Commission published its Report on The Law of Landlord and Tenant</i>

Area of Law	Legislation	Work Level	Primary Criteria	Secondary Criteria	Result
					<i>(LRC 85-2007)</i>
Legal System/ Public Law	Arbitration Act 1954	12 A 29 P	a. 2	a. 0	High: 8
			b. 2	b. 1	
			c. 2	c. 1	
Legal System/ Public Law	Solicitors Act 1954	12 A 111 P	a. 2	a. 0	High: 8
			b. 2	b. 1	
			c. 2	c. 1	
Revenue	Customs Consolidation Act 1876	16 A 46 P	a. 2	a. 0	High: 8
			b. 2	b. 1	
			c. 2	c. 1	
Social Welfare	Social Welfare Consolidation Act 2005	3 A	a. 2	a. 0	High: 6
			b. 0	b. 1	
			c. 2	c. 1	
Transport	Transport Act 1944	20 A 50 P	a. 2	a. 0	High: 7
			b. 2	b. 0	
			c. 2	c. 1	

Restatements of Data Protection Acts 1988 and 2003

These restatements of the Data Protection Acts 1988 and 2003 are certified by the Attorney General on **xx.xx.2008** under section 2(1) of the Statute Law (Restatement) Act 2002 (No. 33 of 2002) to be a statement of the law contained in the Data Protection Acts 1988 and 2003 as on that date.

Statute Law Restatement, as provided for in the Statute Law (Restatement) Act 2002, is an administrative consolidation of an Act. It is publicly available in printed or electronic form in a single text and is certified by the Attorney General as an up-to-date statement of the Act in question. It does not have the force of law but can be cited in court as *prima facie* evidence of the relevant law.

Introduction

The following Acts are restated:

- The Data Protection Act 1988 (25/1988)
- The Data Protection (Amendment) Act 2003 (6/2003)

Each restatement presents the text of the Act as it has been amended since enactment, but omits amending provisions which apply to other legislation. Each restated Act preserves the format in which it was first passed.

Annotations

The Restatement contains three types of note, one for amendments and two for legislative effects which do not alter the text of the restated Act:

- **F**-notes or footnotes explain amendments to the legislation as originally passed. Amendments are presented as **coloured** text with an accompanying **F**-note at the start of the amending text, matched by an **F**-note below the section explaining the origin of the amendment.
- **C**-notes or cross-reference notes are included beneath any preamble to describe non-textual amendments or legislative material that affect the restated Act generally. Material that affects a particular section is presented, again as a **C**-note, after that section.

- **E**-notes or editorial notes indicate editorial comments made by the Law Reform Commission, and include references to the exercise of power to make subsidiary legislation, and to previous affecting provisions.

The restated Acts may be read separately as each is fully annotated. They are published together as a group because of their collective citation, and because they are to be construed together as one (*Data Protection (Amendment) Act 2003* section 23). Where the 2003 Act amends the other, the amending provision is inserted into the 1988 Act and omitted from the 2003 Act. The omitted text is marked with three dots (...).

Format of Annotations

This format is best illustrated by explaining a complex example taken from the Prevention of Corruption Acts restatement.

C3 Act affected (26.11.2001) by *Prevention of Corruption (Amendment) Act 2001*, (27/2001), ss. 5, 9 and 10, S.I. No. 519 of 2001, (with the exception of s. 4(2)(c), commenced (4.11.2002) by S.I. No. 477 of 2002); as amended (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005*, (1/2005), s. 23, commenced on enactment; and (01.08.2006) by *Criminal Justice Act 2006*, (26/2006), s. 191, S.I. 390 of 2006.

- The note in bold type (**C3**) tells the user what type of provision is being annotated, and the number of that particular type of note within the annotations to the Act. In the case of **F**-notes, a companion note of the same number will be found in the text.
- The next part of the annotation (“applied”) states what change or effect is being described by the note. Where an amendment has been made, this will typically read “substituted”, “inserted” or “amended”. Other descriptions such as “applied”, “affected” and “excluded” tell the user why the note has been included in the restatement.
- After this the user will see a date in the format (26.11.2001). This date is the date on which the original alteration was made operative or commenced, not necessarily the date it was enacted.
- The date is followed by the title of the Act or Statutory Instrument which affects, or refers to, the legislation being restated.
- This is followed by a bracket indicating the year and number of that Act or Statutory Instrument (27/2001).
- After this the section or sections of that Act which have an effect are listed (ss. 5, 9 and 10).
- After the affecting parts have been listed, the commencement information is included (S.I. No. 519 of 2001). If, as with the *Proceeds of Crime (Amendment) Act 2005*, the Act was commenced on enactment, this is recorded here.

The annotation concludes with information on whether the affecting Act has itself been amended. In the case above the affecting part of the 2001 Act was amended by the cited Acts from 2005 and 2006. These subsequent amending Acts are referred to in a manner consistent with the standard notation.

Acts which affect these restatements

- Electoral (Amendment) Act 2006 (33/2006)
- Disability Act 2005 (14/2005)
- Public Service Management (Recruitment and Appointments) Act 2004 (33/2004)
- Commissions of Investigation Act 2004 (23/2004)
- Public Service Superannuation (Miscellaneous Provisions) Act 2004 (7/2004)
- Residential Institutions Redress Act 2002 (13/2002)
- Customs and Excise (Mutual Assistance) Act 2001 (2/2001)
- Commission to Inquire into Child Abuse Act 2000 (7/2000)
- Europol Act 1997, (38/1997)
- Health (Provision of Information) Act 1997 (9/1997)
- Refugee Act 1996 (17/1996)
- Statistics Act 1993 (21/1993)

Statutory instruments and orders which affect these restatements

- Data Protection (Processing of Genetic Data) Regulations 2007 (S.I. No. 687 of 2007)
- Data Protection (Fees) Regulations 2007 (S.I. 658 of 2007)
- European Communities (Ecodesign Requirements for Certain Energy-Using Products) Regulations 2007 (S.I. No. 557 of 2007)
- European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003 (S.I. No. 535 of 2003)
- European Communities (Directive 2000/31/EC) Regulations 2003 (S.I. No. 68 of 2003)
- European Communities (Data Protection and Privacy in Telecommunications) Regulations 2002, (S.I. No. 192 of 2002)
- European Communities (Data Protection) Regulations, 2001 (S.I. No. 626 of 2001)
- Data Protection (Registration) Regulations 2001 (S.I. No. 2 of 2001)
- Data Protection (Fees) Regulations 1996 (S.I. No. 105 of 1996)
- Data Protection Commissioner Superannuation Scheme 1993 (S.I. No. 141 of 1993)
- Data Protection Act 1988 (Section 5(1)(d) (Specification) Regulations 1993 (S.I. No. 95 of 1993)
- Data Protection (Fees) Regulations 1990 (S.I. No. 80 of 1990)
- Data Protection Act 1988 (Restriction of Section 4) Regulations 1989 (S.I. No. 81 of 1989)
- Data Protection (Access Modification) (Health) Regulations 1989 (S.I. No. 82 of 1989)

- Data Protection (Access Modification) (Social Work) Regulations 1989 (S.I. No. 83 of 1989)
- Data Protection Act (Commencement) Order 1988 (S.I. No. 349 of 1988)
- Data Protection (Registration Period) Regulations 1988 (S.I. No. 351 of 1988)
- Data Protection (Registration Period) Regulations 1988 (S.I. No. 350 of 1988)
- Data Protection (Fees) Regulations 1988 (S.I. No. 347 of 1988)



Number 25 of 1988

DATA PROTECTION ACT 1988

ARRANGEMENT OF SECTIONS

Preliminary

Section

1. Interpretation and application of Act.

Protection of Privacy of Individuals with regard to Personal Data

2. Collection, processing, keeping, use and disclosure of personal data.

2A. Processing of personal data.

2B. Right to establish existence of personal data.

2C. Security measures for personal data.

2D. Fair processing of personal data.

3. Right to establish existence of personal data.

4. Right of access.

5. Restriction of right of access.

6. Right of rectification or erasure.

6A. Right of data subject to object to processing likely to cause damage or distress.

- 6B. Rights in relation to automated decision taking.
- 7. Duty of care owed by data controllers and data processors.
- 8. Disclosure of personal data in certain cases.

The Data Protection Commissioner

- 9. The Commissioner.
- 10. Enforcement of data protection.
- 11. Restriction on transfer of personal data outside State.
- 12. Power to require information.
- 13. Codes of practice.
- 14. Annual report.
- 15. Mutual assistance between parties to Convention.

Registration

- 16. The register.
- 17. Applications for registration.
- 18. Duration and continuance of registration.
- 19. Effect of registration.
- 20. Regulations for registration.

Miscellaneous

- 21. Unauthorised disclosure by data processor.
- 22. Disclosure of personal data obtained without authority.
- 22A. Journalism, literature and art.
- 23. Provisions in relation to certain non-residents and to data kept or processed outside State.
- 24. Powers of authorised officers.
- 25. Service of notices.
- 26. Appeals to Circuit Court.
- 27. Evidence in proceedings.

28. Hearing of proceedings.
29. Offences by directors, etc., of bodies corporate.
30. Prosecution of summary offences by Commissioner.
31. Penalties.
32. Laying of regulations before Houses of Oireachtas.
33. Fees.
34. Expenses of Minister.
35. Short title and commencement.

FIRST SCHEDULE

CONVENTION FOR THE PROTECTION OF INDIVIDUALS WITH REGARD TO AUTOMATIC PROCESSING OF PERSONAL DATA DONE AT STRASBOURG ON THE 28TH DAY OF JANUARY 1981

SECOND SCHEDULE

THE DATA PROTECTION COMMISSIONER

THIRD SCHEDULE

PUBLIC AUTHORITIES AND OTHER BODIES AND PERSONS

DATA PROTECTION ACT 1988

AN ACT TO GIVE EFFECT TO THE CONVENTION FOR THE PROTECTION OF INDIVIDUALS WITH REGARD TO AUTOMATIC PROCESSING OF PERSONAL DATA DONE AT STRASBOURG ON THE 28TH DAY OF JANUARY, 1981, AND FOR THAT PURPOSE TO REGULATE IN ACCORDANCE WITH ITS PROVISIONS THE COLLECTION, PROCESSING, KEEPING, USE AND DISCLOSURE OF CERTAIN INFORMATION RELATING TO INDIVIDUALS THAT IS PROCESSED AUTOMATICALLY. [13th July, 1988]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Annotations:

Modifications (not altering text):

C1 Application of Act restricted (11.12.2006) by *Electoral (Amendment) Act 2006* (33/2006), s. 19, commenced on enactment.

List relating to draft register and register in force.

19.— Notwithstanding anything in the Data Protection Acts 1988 and 2003, a registration authority may, for the purposes of assisting in the preparation of a complete and accurate register of electors, prepare and publish, at any time after it publishes a draft register of electors in accordance with Rule 5 of the Second Schedule to the Act of 1992, a list, in such form and manner as the authority considers appropriate, of the names of all persons who are registered as electors in the register (in force at the time of publication of that draft register) but whose names are not included in that draft register.

C2 Application of Act extended (22.02.2002) by *Customs and Excise (Mutual Assistance) Act 2001* (2/2001), s. 9, S.I. No. 59 of 2002.

9.—Without prejudice to the generality of *section 5 (1)*, any person who uses personal data from the Customs Information System other than for the purpose of the aim specified in Article 2(2) of the CIS Convention shall, save where such use is in accordance with and is subject to the conditions specified in Article 8(1) of that Convention, be guilty of an offence under the Data Protection Act 1988.

C3 Application of Act restricted (20.11.2000) by *Refugee Act 1996* (17/1996), s. 11(5), S.I. No. 365 of 2000.

11. —...

(5) Nothing in the *Data Protection Act 1988*, shall be construed as prohibiting a person from giving to the Commissioner, on request by him or her, such information as is in the person's possession or control relating to the

application.

C4 Application of Act restricted by *Health (Provision of Information) Act 1997* (9/1997), s. 1(2), commenced on enactment. [Note that functions of specified bodies including health boards transferred (1.01.2005) to the Health Service Executive by *Health Act 2004*, s.59, S.I. No. 887 of 2004].

1. — ...

(2) Nothing in the Data Protection Act 1988, shall prevent the Minister for Health or a health board, hospital or other body or agency referred to in *subsection (1) (b)* from providing—

(a) to the Minister for Health, or to any other such health board, hospital or other body or agency, for the purposes of that programme, or

(b) for the purposes of inviting persons to participate in that programme,

any information provided under subsection (1).

C5 Application of Act restricted (1.11.1994) by *Statistics Act 1993* (21/1993), s. 24(2), S.I. No. 323 of 1994.

24. —...

(2) Persons and undertakings may provide information and records, or copies thereof, which they may possess to the Director General or officers of statistics on invitation under the provisions of this Act notwithstanding anything contained in the Data Protection Act, 1988.

Preliminary

1.—(1) In this Act, unless the context otherwise requires—

Interpretation
and application
of Act.

F1 ["the *Act of 2003*" means the *Data Protection (Amendment) Act 2003*;]

"appropriate authority" has the meaning assigned to it by the Civil Service Regulation Acts, 1956 and 1958;

F1 ["automated data" means information that—

(a) is being processed by means of equipment operating automatically in response to instructions given for that purpose, or

(b) is recorded with the intention that it should be processed by means of such equipment;]

"back-up data" means data kept only for the purpose of replacing other data in the event of their being lost, destroyed or damaged;

F1 ["blocking", in relation to data, means so marking the data that it

is not possible to process it for purposes in relation to which it is marked;]

"civil servant" has the meaning assigned to it by the Civil Service Regulation Acts, 1956 and 1958;

"the Commissioner" has the meaning assigned to it by *section 9* of this Act;

"company" has the meaning assigned to it by the Companies Act, 1963;

"the Convention" means the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data done at Strasbourg on the 28th day of January, 1981, the text of which is set out in the *First Schedule* to this Act;

"the Court" means the Circuit Court;

F1 ["data" means automated data and manual data;]

"data controller" means a person who, either alone or with others, controls the contents and use of personal data;

"data equipment" means equipment for processing data;

"data material" means any document or other material used in connection with, or produced by, data equipment;

"data processor" means a person who processes personal data on behalf of a data controller but does not include an employee of a data controller who processes such data in the course of his employment;

"data subject" means an individual who is the subject of personal data;

F1 ["the Directive" means Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁽¹⁾;

F1 ["direct marketing" includes direct mailing other than direct mailing carried out in the course of political activities by a political party or its members, or a body established by or under statute or a candidate for election to, or a holder of, elective political office;]

"disclosure", in relation to personal data, includes the disclosure of information extracted from such data and the transfer of such data but does not include a disclosure made directly or indirectly by a data controller or a data processor to an employee or agent of his for

the purpose of enabling the employee or agent to carry out his duties; and, where the identification of a data subject depends partly on the data and partly on other information in the possession of the data controller, the data shall not be regarded as disclosed unless the other information is also disclosed;

F1 ["the EEA Agreement" means the Agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the Protocol signed at Brussels on 17 March 1993;]

F2 ["Electronic Communications Networks and Services Regulations of 2003" means European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003;]

F1 ["enactment" means a statute or a statutory instrument (within the meaning of the Interpretation Act, 1937);]

"enforcement notice" means a notice under *section 10* of this Act;

F1 ["the European Economic Area" has the meaning assigned to it by the EEA Agreement;]

"financial institution" means—

(a) a person who holds or has held a licence under section 9 of the Central Bank Act, 1971, or

(b) a person referred to in section 7 (4) of that Act;

"information notice" means a notice under *section 12* of this Act;

"local authority" means a local authority for the purposes of the Local Government Act, 1941;

F1 ["manual data" means information that is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system;]

"the Minister" means the Minister for Justice;

F1 ["personal data" means data relating to a living individual who is or can be identified either from the data or from the data in conjunction with other information that is in, or is likely to come into, the possession of the data controller;]

"prescribed", in the case of fees, means prescribed by regulations made by the Minister with the consent of the Minister for Finance and, in any other case, means prescribed by regulations made by the Commissioner with the consent of the Minister;

F1 ["processing", of or in relation to information or data, means performing any operation or set of operations on the information or data, whether or not by automatic means, including—

- (a) obtaining, recording or keeping the information or data,
- (b) collecting, organising, storing, altering or adapting the information or data,
- (c) retrieving, consulting or using the information or data,
- (d) disclosing the information or data by transmitting, disseminating or otherwise making it available, or
- (e) aligning, combining, blocking, erasing or destroying the information or data;]

"prohibition notice" means a notice under *section 11* of this Act;

"the register" means the register established and maintained under *section 16* of this Act;

F1 ["relevant filing system" means any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible;]

F3 ["Regulations of 2003" means the European Communities (Directive 2000/31/EC) Regulations 2003;]

F1 ["sensitive personal data" means personal data as to—

- (a) the racial or ethnic origin, the political opinions or the religious or philosophical beliefs of the data subject,
- (b) whether the data subject is a member of a trade union,
- (c) the physical or mental health or condition or sexual life of the data subject,
- (d) the commission or alleged commission of any offence by the data subject, or
- (e) any proceedings for an offence committed or alleged to have been committed by the data subject, the disposal of such proceedings or the sentence of any court in such

proceedings;]

and any cognate words shall be construed accordingly.

(2) For the purposes of this Act, data are inaccurate if they are incorrect or misleading as to any matter of fact.

(3) (a) An appropriate authority, being a data controller or a data processor, may, as respects all or part of the personal data kept by the authority, designate a civil servant in relation to whom it is the appropriate authority to be a data controller or a data processor and, while the designation is in force—

(i) the civil servant so designated shall be deemed, for the purposes of this Act, to be a data controller or, as the case may be, a data processor, and

(ii) this Act shall not apply to the authority,

as respects the data concerned.

(b) Without prejudice to *paragraph (a)* of this subsection, the Minister for Defence may, as respects all or part of the personal data kept by him in relation to the Defence Forces, designate an officer of the Permanent Defence Force who holds a commissioned rank therein to be a data controller or a data processor and, while the designation is in force—

(i) the officer so designated shall be deemed, for the purposes of this Act, to be a data controller or, as the case may be, a data processor, and

(ii) this Act shall not apply to the Minister for Defence,

as respects the data concerned.

(c) For the purposes of this Act, as respects any personal data—

(i) where a designation by the relevant appropriate authority under *paragraph (a)* of this subsection is not in force, a civil servant in relation to whom that authority is the appropriate authority shall be deemed to be its employee and, where such a designation is in force, such a civil servant (other than the civil servant the subject of the designation) shall be deemed to be an employee of the last mentioned civil servant,

(ii) where a designation under *paragraph (b)* of this subsection is not in force, a member of the Defence

Forces shall be deemed to be an employee of the Minister for Defence and, where such a designation is in force, such a member (other than the officer the subject of the designation) shall be deemed to be an employee of that officer, and

- (iii) a member of the Garda Síochána (other than the Commissioner of the Garda Síochána) shall be deemed to be an employee of the said Commissioner.

F1 [(3A) A word or expression that is used in this Act and also in the Directive has, unless the context otherwise requires, the same meaning in this Act as it has in the Directive.

(3B) (a) Subject to any regulations under section 15(2) of this Act, this Act applies to data controllers in respect of the processing of personal data only if—

- (i) the data controller is established in the State and the data are processed in the context of that establishment, or
 - (ii) the data controller is established neither in the State nor in any other state that is a contracting party to the EEA Agreement but makes use of equipment in the State for processing the data otherwise than for the purpose of transit through the territory of the State.
- (b) For the purposes of paragraph (a) of this subsection, each of the following shall be treated as established in the State:
- (i) an individual who is normally resident in the State,
 - (ii) a body incorporated under the law of the State,
 - (iii) a partnership or other unincorporated association formed under the law of the State, and
 - (iv) a person who does not fall within subparagraphs (i), (ii) or (iii) of this paragraph, but maintains in the State—
 - (I) an office, branch or agency through which he or she carries on any activity, or
 - (II) a regular practice,

and the reference to establishment in any other state that is a contracting party to the EEA Agreement shall be construed accordingly.

- (c) A data controller to whom paragraph (a)(ii) of this subsection applies must, without prejudice to any legal proceedings that could be commenced against the data controller, designate a representative established in the State.

(3C) Section 2 and sections 2A and 2B (which sections were inserted by the *Act of 2003*) of this Act shall not apply to—

- (a) data kept solely for the purpose of historical research, or
- (b) other data consisting of archives or departmental records (within the meaning in each case of the National Archives Act 1986),

and the keeping of which complies with such requirements (if any) as may be prescribed for the purpose of safeguarding the fundamental rights and freedoms of data subjects.”]

(4) This Act does not apply to

- (a) personal data that in the opinion of the Minister or the Minister for Defence are, or at any time were, kept for the purpose of safeguarding the security of the State,
- (b) personal data consisting of information that the person keeping the data is required by law to make available to the public, or
- (c) personal data kept by an individual and concerned only with the management of his personal, family or household affairs or kept by an individual only for recreational purposes.

F1 [(5) (a) A right conferred by this Act shall not prejudice the exercise of a right conferred by the Freedom of Information Act 1997.

(b) The Commissioner and the Information Commissioner shall, in the performance of their functions, co-operate with and provide assistance to each other.]

F1 [⁽¹⁾ O.J. No. L 281/38 of 23.11.95, p.31.]

Annotations:

Amendments:

- F1** Inserted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 2, S.I. No. 207 of 2003.
- F2** Inserted (6.11.2003) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003* (S.I. No. 535 of 2003), reg. 17(1)(a).
- F3** Inserted (24.02.2003) by *European Communities (Directive 2000/31/EC) Regulations 2003* (S.I. No. 68 of 2003), reg. 9(8).

Modifications (not altering text):

- C6** References to the Minister for Justice shall be construed (9.07.1997) as references to the *Minister for Justice, Equality and Law Reform, Justice (Alteration of Name of Department and Title of Minister) Order 1997* (S.I. No. 298 of 1997), reg. 4(b).

4. In any enactment—

...

- (b) references to the Minister for Justice shall be construed as references to the Minister for Justice, Equality and Law Reform.

Editorial Notes:

- E1** Previous affecting provision: Definitions for “Directive”, “EEA Agreement”, “Enactment”, and “European Economic Area” inserted (1.04.2002) by *European Communities (Data Protection) Regulations 2001* (S.I. No. 626 of 2001), reg. 2(a). Amended section substituted as per **F1** above. S.I. 626 of 2001 including reg. 2(a) revoked (1.07.2003) by the *Data Protection (Amendment) Act 2003* (6/2003), s. 22(2).
- E2** Previous affecting provision: Subsection (5) inserted (1.04.2002) by *European Communities (Data Protection) Regulations 2001* (S.I. No. 626 of 2001), reg. 2(a). Amended subsection substituted as per **F1** above. S.I. 626 of 2001 including reg. 2(a) revoked (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 22(2).

Protection of Privacy of Individuals with regard to Personal Data

Collection,
processing,
keeping, use and
disclosure of
personal data.

2.— F4 [(1) A data controller shall, as respects personal data kept by him or her, comply with the following provisions:

- (a) the data or, as the case may be, the information constituting the data shall have been obtained, and the data shall be processed, fairly,
- (b) the data shall be accurate and complete and, where necessary, kept up to date,
- (c) the data—
 - (i) shall have been obtained only for one or more specified, explicit and legitimate purposes,
 - (ii) shall not be further processed in a manner incompatible with that purpose or those purposes,

(iii) shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they were collected or are further processed, and

(iv) shall not be kept for longer than is necessary for that purpose or those purposes,

(d) appropriate security measures shall be taken against unauthorised access to, or unauthorised alteration, disclosure or destruction of, the data, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.]

(2) A data processor shall, as respects personal data processed by him, comply with *paragraph (d) of subsection (1)* of this section.

(3) *Paragraph (a)* of the said *subsection (1)* does not apply to information intended for inclusion in data, or to data, kept for a purpose mentioned in *section 5 (1) (a)* of this Act, in any case in which the application of that paragraph to the data would be likely to prejudice any of the matters mentioned in the said *section 5 (1) (a)*.

(4) *Paragraph (b)* of the said *subsection (1)* does not apply to backup data.

(5) F4 [(a) Subparagraphs (ii) and (iv) of paragraph (c) of the said subsection (1) do not apply to personal data kept for statistical or research or other scientific purposes, and the keeping of which complies with such requirements (if any) as may be prescribed for the purpose of safeguarding the fundamental rights and freedoms of data subjects, and]

(b) the data or, as the case may be, the information constituting such data shall not be regarded for the purposes of *paragraph (a)* of the said subsection as having been obtained unfairly by reason only that its use for any such purpose was not disclosed when it was obtained,

if the data are not used in such a way that damage or distress is, or is likely to be, caused to any data subject.

(6) F4 [...]

F4 [(7) Where—

(a) personal data are kept for the purpose of direct marketing, and

(b) the data subject concerned requests the data controller

in writing—

(i) not to process the data for that purpose, or

(ii) to cease processing the data for that purpose,

then—

(I) if the request is under paragraph (b)(i) of this subsection, the data controller—

(A) shall, where the data are kept only for the purpose aforesaid, as soon as may be and in any event not more than 40 days after the request has been given or sent to him or her, erase the data, and

(B) shall not, where the data are kept for that purpose and other purposes, process the data for that purpose after the expiration of the period aforesaid,

(II) if the request is under paragraph (b)(ii) of this subsection, as soon as may be and in any event not more than 40 days after the request has been given or sent to the data controller, he or she—

(A) shall, where the data are kept only for the purpose aforesaid, erase the data, and

(B) shall, where the data are kept for that purpose and other purposes, cease processing the data for that purpose,

and

(III) the data controller shall notify the data subject in writing accordingly and, where appropriate, inform him or her of those other purposes.

(8) Where a data controller anticipates that personal data, including personal data that is required by law to be made available to the public, kept by him or her will be processed for the purposes of direct marketing, the data controller shall inform the persons to whom the data relates that they may object, by means of a request in writing to the data controller and free of charge, to such processing.]

Annotations:

Amendments:

F4 Amended (1.07.03) by *Data Protection (Amendment) Act 2003* (6/2003), s. 3; S.I No. 207 of 2003. [Amendments to s. 2 pursuant to 6/2003 came into operation on 24.10.2007 in respect of manual data held in relevant filing systems on the passing of 6/2003, s. 23].

F5 [Processing of personal data.

2A.—(1) Personal data shall not be processed by a data controller unless section 2 of this Act (as amended by the *Act of 2003*) is complied with by the data controller and at least one of the following conditions is met:

(a) the data subject has given his or her consent to the processing or, if the data subject, by reason of his or her physical or mental incapacity or age, is or is likely to be unable to appreciate the nature and effect of such consent, it is given by a parent or guardian or a grandparent, uncle, aunt, brother or sister of the data subject and the giving of such consent is not prohibited by law,

(b) the processing is necessary—

(i) for the performance of a contract to which the data subject is a party,

(ii) in order to take steps at the request of the data subject prior to entering into a contract,

(iii) for compliance with a legal obligation to which the data controller is subject other than an obligation imposed by contract, or

(iv) to prevent—

(I) injury or other damage to the health of the data subject, or

(II) serious loss of or damage to property of the data subject,

or otherwise to protect his or her vital interests where the seeking of the consent of the data subject or another person referred to in paragraph (a) of this subsection is likely to result in those interests being damaged,

(c) the processing is necessary—

(i) for the administration of justice,

(ii) for the performance of a function conferred on a

person by or under an enactment,

(iii) for the performance of a function of the Government or a Minister of the Government, or

(iv) for the performance of any other function of a public nature performed in the public interest by a person,

(d) the processing is necessary for the purposes of the legitimate interests pursued by the data controller or by a third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the fundamental rights and freedoms or legitimate interests of the data subject.

(2) The Minister may, after consultation with the Commissioner, by regulations specify particular circumstances in which subsection (1)(d) of this section is, or is not, to be taken as satisfied.

Right to establish existence of personal data.

2B.—(1) Sensitive personal data shall not be processed by a data controller unless:

(a) sections 2 and 2A (as amended and inserted, respectively, by the *Act of 2003*) are complied with, and

(b) in addition, at least one of the following conditions is met:

(i) the consent referred to in paragraph (a) of subsection (1) of section 2A (as inserted by the *Act of 2003*) of this Act is explicitly given,

(ii) the processing is necessary for the purpose of exercising or performing any right or obligation which is conferred or imposed by law on the data controller in connection with employment,

(iii) the processing is necessary to prevent injury or other damage to the health of the data subject or another person or serious loss in respect of, or damage to, property or otherwise to protect the vital interests of the data subject or of another person in a case where—

(I) consent to the processing cannot be given by or on behalf of the data subject in accordance with

section 2A(1)(a) (inserted by the *Act of 2003*) of this Act, or

(II) the data controller cannot reasonably be expected to obtain such consent,

or the processing is necessary to prevent injury to, or damage to the health of, another person, or serious loss in respect of, or damage to, the property of another person, in a case where such consent has been unreasonably withheld,

(iv) the processing—

(I) is carried out in the course of its legitimate activities by any body corporate, or any unincorporated body of persons, that—

(A) is not established, and whose activities are not carried on, for profit, and

(B) exists for political, philosophical, religious or trade union purposes,

(II) is carried out with appropriate safeguards for the fundamental rights and freedoms of data subjects,

(III) relates only to individuals who either are members of the body or have regular contact with it in connection with its purposes, and

(IV) does not involve disclosure of the data to a third party without the consent of the data subject,

(v) the information contained in the data has been made public as a result of steps deliberately taken by the data subject,

(vi) the processing is necessary—

(I) for the administration of justice,

(II) for the performance of a function conferred on a person by or under an enactment, or

(III) for the performance of a function of the Government or a Minister of the Government,

- (vii) the processing—
 - (I) is required for the purpose of obtaining legal advice or for the purposes of, or in connection with, legal proceedings or prospective legal proceedings, or
 - (II) is otherwise necessary for the purposes of establishing, exercising or defending legal rights,
- (viii) the processing is necessary for medical purposes and is undertaken by—
 - (I) a health professional, or
 - (II) a person who in the circumstances owes a duty of confidentiality to the data subject that is equivalent to that which would exist if that person were a health professional,
- (ix) the processing is necessary in order to obtain information for use, subject to and in accordance with the Statistics Act 1993, only for statistical, compilation and analysis purposes,
- (x) the processing is carried out by political parties, or candidates for election to, or holders of, elective political office, in the course of electoral activities for the purpose of compiling data on people's political opinions and complies with such requirements (if any) as may be prescribed for the purpose of safeguarding the fundamental rights and freedoms of data subjects,
- (xi) the processing is authorised by regulations that are made by the Minister and are made for reasons of substantial public interest,
- (xii) the processing is necessary for the purpose of the assessment, collection or payment of any tax, duty, levy or other moneys owed or payable to the State and the data has been provided by the data subject solely for that purpose,
- (xiii) the processing is necessary for the purposes of determining entitlement to or control of, or any other purpose connected with the administration of any benefit, pension, assistance, allowance, supplement

or payment under the Social Welfare (Consolidation) Act 1993, or any nonstatutory scheme administered by the Minister for Social, Community and Family Affairs.

(2) The Minister may by regulations made after consultation with the Commissioner—

- (a) exclude the application of subsection (1)(b)(ii) of this section in such cases as may be specified, or
- (b) provide that, in such cases as may be specified, the condition in the said subsection (1)(b)(ii) is not to be regarded as satisfied unless such further conditions as may be specified are also satisfied.

(3) The Minister may by regulations make such provision as he considers appropriate for the protection of data subjects in relation to the processing of personal data as to—

- (a) the commission or alleged commission of any offence by data subjects,
- (b) any proceedings for an offence committed or alleged to have been committed by data subjects, the disposal of such proceedings or the sentence of any court in such proceedings,
- (c) any act or omission or alleged act or omission of data subjects giving rise to administrative sanctions,
- (d) any civil proceedings in a court or other tribunal to which data subjects are parties or any judgment, order or decision of such a tribunal in any such proceedings,

and processing of personal data shall be in compliance with any regulations under this subsection.

(4) In this section—

‘health professional’ includes a registered medical practitioner, within the meaning of the Medical Practitioners Act 1978, a registered dentist, within the meaning of the Dentists Act 1985 or a member of any other class of health worker or social worker standing specified by regulations made by the Minister after consultation with the Minister for Health and Children and any other Minister of the Government who, having regard to his or her functions, ought, in the opinion of the Minister, to be consulted;

‘medical purposes’ includes the purposes of preventive medicine, medical diagnosis, medical research, the provision of care and treatment and the management of healthcare services.

Security
measures for
personal data.

2C.—(1) In determining appropriate security measures for the purposes of section 2(1)(d) of this Act, in particular (but without prejudice to the generality of that provision), where the processing involves the transmission of data over a network, a data controller—

- (a) may have regard to the state of technological development and the cost of implementing the measures, and
- (b) shall ensure that the measures provide a level of security appropriate to—
 - (i) the harm that might result from unauthorised or unlawful processing, accidental or unlawful destruction or accidental loss of, or damage to, the data concerned, and
 - (ii) the nature of the data concerned.

(2) A data controller or data processor shall take all reasonable steps to ensure that—

- (a) persons employed by him or her, and
- (b) other persons at the place of work concerned,

are aware of and comply with the relevant security measures aforesaid.

(3) Where processing of personal data is carried out by a data processor on behalf of a data controller, the data controller shall—

- (a) ensure that the processing is carried out in pursuance of a contract in writing or in another equivalent form between the data controller and the data processor and that the contract provides that the data processor carries out the processing only on and subject to the instructions of the data controller and that the data processor complies with obligations equivalent to those imposed on the data controller by section 2(1)(d) of this Act,
- (b) ensure that the data processor provides sufficient guarantees in respect of the technical security measures, and

organisational measures, governing the processing, and

- (c) take reasonable steps to ensure compliance with those measures.

Fair processing
of personal data.

2D.—(1) Personal data shall not be treated, for the purposes of section 2(1)(a) of this Act, as processed fairly unless—

- (a) in the case of data obtained from the data subject, the data controller ensures, so far as practicable, that the data subject has, is provided with, or has made readily available to him or her, at least the information specified in subsection (2) of this section,

- (b) in any other case, the data controller ensures, so far as practicable, that the data subject has, is provided with, or has made readily available to him or her, at least the information specified in subsection (3) of this section—

- (i) not later than the time when the data controller first processes the data, or

- (ii) if disclosure of the data to a third party is envisaged, not later than the time of such disclosure.

(2) The information referred to in subsection (1)(a) of this section is:

- (a) the identity of the data controller,

- (b) if he or she has nominated a representative for the purposes of this Act, the identity of the representative,

- (c) the purpose or purposes for which the data are intended to be processed, and

- (d) any other information which is necessary, having regard to the specific circumstances in which the data are or are to be processed, to enable processing in respect of the data to be fair to the data subject such as information as to the recipients or categories of recipients of the data, as to whether replies to questions asked for the purpose of the collection of the data are obligatory, as to the possible consequences of failure to give such replies and as to the existence of the right of access to and the right to rectify the data concerning him or her.

(3) The information referred to in subsection (1)(b) of this section is:

- (a) the information specified in subsection (2) of this section,
- (b) the categories of data concerned, and
- (c) the name of the original data controller.

(4) The said subsection (1)(b) does not apply—

- (a) where, in particular for processing for statistical purposes or for the purposes of historical or scientific research, the provision of the information specified therein proves impossible or would involve a disproportionate effort, or
- (b) in any case where the processing of the information contained or to be contained in the data by the data controller is necessary for compliance with a legal obligation to which the data controller is subject other than an obligation imposed by contract,

if such conditions as may be specified in regulations made by the Minister after consultation with the Commissioner are complied with.]

Annotations:

Amendments:

F5 Inserted (1.07.2003) by *Data Protection Amendment Act 2003* (6/2003), s. 4, S.I. No. 207 of 2003. [Sections 2A and 2B came into operation on 24.10.2007 in respect of manual data held in relevant filing systems on the passing of 6/2003, s. 23.]

Editorial Notes:

E3 Previous affecting provision: Section 2A inserted (1.04.2002) by *European Communities (Data Protection) Regulations, 2001* (S.I. No. 626 of 2001), reg. 3, Amended section substituted as per **F5** above. S.I. 626 of 2001 including reg. 3 revoked (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 22(2).

Right to establish existence of personal data.

3.—An individual who believes that a person keeps personal data shall, if he so requests the person in writing—

- (a) be informed by the person whether he keeps any such data, and
- (b) if he does, be given by the person a description of the data and the purposes for which they are kept,

as soon as may be and in any event not more than 21 days after the request has been given or sent to him.

Right of access.

4.—(1) F6[(a) Subject to the provisions of this Act, an individual shall, if he or she so requests a data controller by notice in writing—

(i) be informed by the data controller whether the data processed by or on behalf of the data controller include personal data relating to the individual,

(ii) if it does, be supplied by the data controller with a description of—

(I) the categories of data being processed by or on behalf of the data controller,

(II) the personal data constituting the data of which that individual is the data subject,

(III) the purpose or purposes of the processing, and

(IV) the recipients or categories of recipients to whom the data are or may be disclosed,

(iii) have communicated to him or her in intelligible form—

(I) the information constituting any personal data of which that individual is the data subject, and

(II) any information known or available to the data controller as to the source of those data unless the communication of that information is contrary to the public interest,

and

(iv) where the processing by automatic means of the data of which the individual is the data subject has constituted or is likely to constitute the sole basis for any decision significantly affecting him or her, be informed free of charge by the data controller of the logic involved in the processing,

as soon as may be and in any event not more than 40 days after compliance by the individual with the provisions of this section and, where any of the information is expressed in terms that are not intelligible to the average person without explanation, the

information shall be accompanied by an explanation of those terms.

(b) A request under paragraph (a) of this subsection that does not relate to all of its subparagraphs shall, in the absence of any indication to the contrary, be treated as relating to all of them.]

(c) (i) A fee may be payable to the data controller concerned in respect of such a request as aforesaid and the amount thereof shall not exceed such amount as may be prescribed or an amount that in the opinion of the Commissioner is reasonable, having regard to the estimated cost to the data controller of compliance with the request, whichever is the lesser.

(ii) A fee paid by an individual to a data controller under *subparagraph (i)* of this paragraph shall be returned to him if his request is not complied with or the data controller rectifies or supplements, or erases part of, the data concerned (and thereby materially modifies the data) or erases all of the data on the application of the individual or in accordance with an enforcement notice or an order of a court.

(2) Where pursuant to provision made in that behalf under this Act there are separate entries in the register in respect of data kept by a data controller for different purposes, *subsection (1)* of this section shall apply as if it provided for the making of a separate request and the payment of a separate fee in respect of the data to which each entry relates.

(3) An individual making a request under this section shall supply the data controller concerned with such information as he may reasonably require in order to satisfy himself of the identity of the individual and to locate any relevant personal data or information.

(4) Nothing in *subsection (1)* of this section obliges a data controller to disclose to a data subject personal data relating to another individual unless that other individual has consented to the disclosure:

Provided that, where the circumstances are such that it would be reasonable for the data controller to conclude that, if any particulars identifying that other individual were omitted, the data could then be disclosed as aforesaid without his being thereby identified to the data subject, the data controller shall be obliged to disclose the data to the data subject with the omission of those particulars.

F6[(4A) (a) Where personal data relating to a data subject consist of an expression of opinion about the data subject by another person, the data may be disclosed to the data subject without obtaining the consent of that person to the disclosure.

(b) Paragraph (a) of this subsection does not apply—

- (i) to personal data held by or on behalf of the person in charge of an institution referred to in section 5(1)(c) of this Act and consisting of an expression of opinion by another person about the data subject if the data subject is being or was detained in such an institution, or
- (ii) if the expression of opinion referred to in that paragraph was given in confidence or on the understanding that it would be treated as confidential.]

(5) Information supplied pursuant to a request under *subsection (1)* of this section may take account of any amendment of the personal data concerned made since the receipt of the request by the data controller (being an amendment that would have been made irrespective of the receipt of the request) but not of any other amendment.

(6) (a) A request by an individual under *subsection (1)* of this section in relation to the results of an examination at which he was a candidate shall be deemed, for the purposes of this section, to be made on—

- (i) the date of the first publication of the results of the examination, or
- (ii) the date of the request,

whichever is the later; and *paragraph (a)* of the said *subsection (1)* shall be construed and have effect in relation to such a request as if for "40 days" there were substituted "60 days".

(b) In this subsection "examination" means any process for determining the knowledge, intelligence, skill or ability of a person by reference to his performance in any test, work or other activity.

(7) A notification of a refusal of a request made by an individual under and in compliance with the preceding provisions of this section shall be in writing and shall include a statement of the

reasons for the refusal and an indication that the individual may complain to the Commissioner about the refusal.

(8) (a) If and whenever the Minister considers it desirable in the interests of data subjects F7[or in the public interest] to do so and by regulations so declares, the application of this section to personal data—

- (i) relating to physical or mental health, or
- (ii) kept for, or obtained in the course of, carrying out social work by a Minister of the Government, a local authority, a health board or a specified voluntary organisation or other body,

may be modified by the regulations in such manner, in such circumstances, subject to such safeguards and to such extent as may be specified therein.

(b) Regulations under *paragraph (a)* of this subsection shall be made only after consultation with the Minister for Health and any other Minister of the Government who, having regard to his functions, ought, in the opinion of the Minister, to be consulted and may make different provision in relation to data of different descriptions.

F6(9) The obligations imposed by subsection (1)(a)(iii) (inserted by the *Act of 2003*) of this section shall be complied with by supplying the data subject with a copy of the information concerned in permanent form unless—

- (a) the supply of such a copy is not possible or would involve disproportionate effort, or
- (b) the data subject agrees otherwise.

(10) Where a data controller has previously complied with a request under subsection (1) of this section, the data controller is not obliged to comply with a subsequent identical or similar request under that subsection by the same individual unless, in the opinion of the data controller, a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

(11) In determining for the purposes of subsection (10) of this section whether the reasonable interval specified in that subsection has elapsed, regard shall be had to the nature of the data, the purpose for which the data are processed and the frequency with which the data are altered.

(12) Subsection (1)(a)(iv) of this section is not to be regarded as requiring the provision of information as to the logic involved in the taking of a decision if and to the extent only that such provision would adversely affect trade secrets or intellectual property (in particular any copyright protecting computer software).

(13) (a) A person shall not, in connection with—

- (i) the recruitment of another person as an employee,
- (ii) the continued employment of another person, or
- (iii) a contract for the provision of services to him or her by another person,

require that other person—

(I) to make a request under subsection (1) of this section, or

(II) to supply him or her with data relating to that other person obtained as a result of such a request.

(b) A person who contravenes paragraph (a) of this subsection shall be guilty of an offence.]

Annotations:

Amendments:

F6 Amended (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 5, S.I. No. 207 of 2003 (except s. 4(13), not commenced as of 30.04.2008).

Modifications etc. (not altering text):

C7 Section restricted (18.07.2004) by *Commissions of Investigation Act 2004* (23/2004), s. 39, commenced on enactment.

Restriction of Data Protection Act 1988.

39.— Section 4 of *Data Protection Act 1988* does not apply to personal data provided to a commission for as long as the data is in the custody of—

- (a) the commission,
- (b) the specified Minister after being deposited with him or her under *section 43 (2)*,
- (c) a tribunal of inquiry after being made available to it under *section 45*,
or
- (d) a body after being transferred to it on the dissolution of a tribunal of

inquiry to which the data was made available under *section 45*.

C8 Section restricted (16.12.2002) by *Residential Institutions Redress Act 2002* (13/2002), s. 30, S.I. No. 520 of 2005.

Restriction of Data Protection Act, 1988.

30.— Section 4 of the *Data Protection Act, 1988* does not apply to personal data provided to the Board while the data is in the custody of the Board or the Review Committee.

C9 Section restricted (23.05.2000) by *Commission to Inquire into Child Abuse Act 2000* (7/2000), s. 33; S.I. No. 149 of 2000.

Restriction of Data Protection Act, 1988.

33.— Section 4 of *Data Protection Act, 1988*, does not apply to personal data provided to the Commission or a Committee while the data is in the custody of the Commission or a Committee, or in the case of such data provided to the Confidential Committee, of a body to which it is transferred by the Commission upon the dissolution of the Commission.

C10 Section restricted (19.04.1989) by *Data Protection Act 1988 (Restriction of Section 4) Regulations 1989* (S.I. 81 of 1989), reg. 3.

3. The prohibition and restrictions on the disclosure, and the authorisations of the withholding, of information contained in the provision of the enactments specified in the Schedule to these Regulations shall prevail in the interests of the data subjects concerned and any other individuals concerned.

C11 Section restricted (19.04.1989) by *Data Protection (Access Modification) (Health) Regulations 1989* (S.I. No. 82 of 1989), reg. 6.

6. Section 4 (4) of the Act shall not apply in relation to personal data relating to an individual other than the data controller or data subject concerned if that individual is a health professional who has been involved in the care of the data subject and the data relate to him in his capacity as such.

C12 Section restricted (19.04.1989) by *Data Protection (Access Modification) (Health) Regulations 1989* (S.I. No. 82 of 1989), reg. 4 and 5.

4. (1) Information constituting health data shall not be supplied by or on behalf of a data controller to the data subject concerned in response to a request under section 4 (1) (a) of the Act if it would be likely to cause serious harm to the physical or mental health of the data subject.

5. (1) A data controller who is not a health professional shall not—

(a) supply information constituting health data in response to a request under the said section 4 (1) (a), or

...

C13 Section restricted (19.04.1989) by *Data Protection (Access Modification) (Social Work) Regulations 1989* (S.I. No. 83 of 1989), reg. 4.

4. (1) Information constituting social work data shall not be supplied by or on behalf of a data controller to the data subject concerned in response to a request under section 4 (1) (a) of the Act if it would be likely to cause serious harm to the physical or mental health or emotional condition of the data subject.

...

(3) If the social work data include information supplied to a data controller by

an individual (other than an employee or agent of the data controller) while carrying out social work, the data controller shall not supply that information to the data subject under section 4 (1) (a) of the Act without first consulting that individual.

Editorial Notes:

E4 Power pursuant to section exercised (19.04.1989) by *Data Protection (Access Modification) (Social Work) Regulations 1989* (S.I. No. 83 of 1989).

E5 Power pursuant to section exercised (16.12.1988) by *Data Protection (Fees) Regulations 1988* (S.I. No. 347 of 1988).

E6 *Data Protection (Amendment) Act 2003* (6/2003), s. 23(5) states that insofar as the amendments to s. 2 and the insertion of s. 2A and s. 2B came into force on 24.10.2007 in respect of manual data held in relevant filing systems on the passing of the 2003 Act a data controller shall, if so requested in writing by a data subject when making a request under section 4— (a) rectify, erase, block or destroy any data relating to him or her which are incomplete or inaccurate, or (b) cease holding manual data relating to him or her in a way incompatible with the legitimate purposes pursued by the data controller.

Restriction of
right of access.

5.—(1) Section 4 of this Act does not apply to personal data—

- (a) kept for the purpose of preventing, detecting or investigating offences, apprehending or prosecuting offenders or assessing or collecting any tax, duty or other moneys owed or payable to the State, a local authority or a health board, in any case in which the application of that section to the data would be likely to prejudice any of the matters aforesaid,
- (b) to which, by virtue of *paragraph (a)* of this subsection, the said *section 4* does not apply and which are kept for the purpose of discharging a function conferred by or under any enactment and consisting of information obtained for such a purpose from a person who had it in his possession for any of the purposes mentioned in *paragraph (a)* of this subsection,
- (c) in any case in which the application of that section would be likely to prejudice the security of, or the maintenance of good order and discipline in—
 - (i) a prison,
 - (ii) a place of detention provided under section 2 of the *Prison Act, 1970*,
 - (iii) a military prison or detention barrack within the meaning of the *Defence Act, 1954*, or
 - (iv) Saint Patrick's Institution,

(d) kept for the purpose of performing such functions conferred by or under any enactment as may be specified by regulations made by the Minister, being functions that, in the opinion of the Minister, are designed to protect members of the public against financial loss occasioned by—

(i) dishonesty, incompetence or malpractice on the part of persons concerned in the provision of banking, insurance, investment or other financial services or in the management of companies or similar organisations, or

(ii) the conduct of persons who have at any time been adjudicated bankrupt,

in any case in which the application of that section to the data would be likely to prejudice the proper performance of any of those functions,

(e) in respect of which the application of that section would be contrary to the interests of protecting the international relations of the State,

(f) consisting of an estimate of, or kept for the purpose of estimating, the amount of the liability of the data controller concerned on foot of a claim for the payment of a sum of money, whether in respect of damages or compensation, in any case in which the application of the section would be likely to prejudice the interests of the data controller in relation to the claim,

(g) in respect of which a claim of privilege could be maintained in proceedings in a court in relation to communications between a client and his professional legal advisers or between those advisers,

F7[(gg) kept by the Commissioner or the Information Commissioner for the purposes of his or her functions,]

(h) kept only for the purpose of preparing statistics or carrying out research if the data are not used or disclosed (other than to a person to whom a disclosure of such data may be made in the circumstances specified in *section 8* of this Act) for any other purpose and the resulting statistics or the results of the research are not made available in a form that identifies any of the data subjects, or

(i) that are back-up data.

(2) Regulations under *subsections (1) (d) and (3) (b)* of this section shall be made only after consultation with any other Minister of the Government who, having regard to his functions, ought, in the opinion of the Minister, to be consulted.

(3) (a) Subject to *paragraph (b)* of this subsection, *section 4* of this Act, as modified by any other provisions thereof, shall apply notwithstanding any provision of or made under any enactment or rule of law that is in force immediately before the passing of this Act and prohibits or restricts the disclosure, or authorises the withholding, of information.

(b) If and whenever the Minister is of opinion that a prohibition, restriction or authorisation referred to in *paragraph (a)* of this subsection in relation to any information ought to prevail in the interests of the data subjects concerned or any other individuals and by regulations so declares, then, while the regulations are in force, the said *paragraph (a)* shall not apply as respects the provision or rule of law concerned and accordingly *section 4* of this Act, as modified as aforesaid, shall not apply in relation to that information.

Annotations:

Amendments:

F7 Inserted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 6, S.I. No. 207 of 2003.

Editorial Notes:

E7 Power pursuant to section exercised (7.04.1993) by *Data Protection Act 1988 (Section 5(1)(d)) (Specification) Regulations 1993* (S.I. No. 95 of 1993).

E8 Previous affecting provision: Power pursuant to section exercised (19.04.1989) by *Data Protection Act 1988 (Section 5(1)(d)) (Specification) Regulations 1989* (S.I. No. 84 of 1989). S.I. 84 of 1989 revoked (7.04.03) by *Data Protection Act 1988 (Section 5(1)(d)) (Specification) Regulations 1993* (S.I. No. 95 of 1993), reg. 4.

Right of
rectification or
erasure.

6.—(1) An individual shall, if he so requests in writing a data controller who keeps personal data relating to him, be entitled to have rectified or, where appropriate, F8[blocked or] erased any such data in relation to which there has been a contravention by the data controller of *section 2 (1)* of this Act; and the data controller shall comply with the request as soon as may be and in any event not more than 40 days after it has been given or sent to him:

Provided that the data controller shall, as respects data that are inaccurate or not kept up to date, be deemed—

- (a) to have complied with the request if he supplements the data with a statement (to the terms of which the individual has assented) relating to the matters dealt with by the data, and
- (b) if he supplements the data as aforesaid, not to be in contravention of *paragraph (b)* of the said *section 2 (1)*.

(2) **F8**[Where a data controller complies, or is deemed to have complied, with a request under subsection (1) of this section, he or she shall, as soon as may be and in any event not more than 40 days after the request has been given or sent to him or her, notify—

- (a) the individual making the request, and
- (b) if such compliance materially modifies the data concerned, any person to whom the data were disclosed during the period of 12 months immediately before the giving or sending of the request unless such notification proves impossible or involves a disproportionate effort,

of the rectification, blocking, erasure or statement concerned.]

Annotations:

Amendments:

F8 Amended (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 7, S.I. No. 207 of 2003.

F9 [Right of data subject to object to processing likely to cause damage or distress.

6A.—(1) Subject to subsection (3) and unless otherwise provided by any enactment, an individual is entitled at any time, by notice in writing served on a data controller, to request him or her to cease within a reasonable time, or not to begin, processing or processing for a specified purpose or in a specified manner any personal data in respect of which he or she is the data subject if the processing falls within subsection (2) of this section on the ground that, for specified reasons—

- (a) the processing of those data or their processing for that purpose or in that manner is causing or likely to cause substantial damage or distress to him or her or to another person, and
- (b) the damage or distress is or would be unwarranted.

(2) This subsection applies to processing that is necessary—

- (a) for the performance of a task carried out in the public interest or in the exercise of official authority vested in the

data controller or in a third party to whom the data are or are to be disclosed, or

- (b) for the purposes of the legitimate interests pursued by the data controller to whom the data are or are to be disclosed, unless those interests are overridden by the interests of the data subject in relation to fundamental rights and freedoms and, in particular, his or her right to privacy with respect to the processing of personal data.

(3) Subsection (1) does not apply—

- (a) in a case where the data subject has given his or her explicit consent to the processing,
- (b) if the processing is necessary—
 - (i) for the performance of a contract to which the data subject is a party,
 - (ii) in order to take steps at the request of the data subject prior to his or her entering into a contract,
 - (iii) for compliance with any legal obligation to which the data controller or data subject is subject other than one imposed by contract, or
 - (iv) to protect the vital interests of the data subject,
- (c) to processing carried out by political parties or candidates for election to, or holders of elective political office, in the course of electoral activities, or
- (d) in such other cases, if any, as may be specified in regulations made by the Minister after consultation with the Commissioner.

(4) Where a notice under subsection (1) of this section is served on a data controller, he or she shall, as soon as practicable and in any event not later than 20 days after the receipt of the notice, serve a notice on the individual concerned—

- (a) stating that he or she has complied or intends to comply with the request concerned, or

- (b) stating that he or she is of opinion that the request is unjustified to any extent and the reasons for the opinion and the extent (if any) to which he or she has complied or intends to comply with it.

(5) If the Commissioner is satisfied, on the application to him or her in that behalf of an individual who has served a notice under subsection (1) of this section that appears to the Commissioner to be justified, or to be justified to any extent, that the data controller concerned has failed to comply with the notice or to comply with it to that extent and that not less than 40 days have elapsed since the receipt of the notice by him or her, the Commissioner may, by an enforcement notice served on the data controller, order him or her to take such steps for complying with the request, or for complying with it to that extent, as the Commissioner thinks fit and specifies in the enforcement notice, and that notice shall specify the reasons for the Commissioner being satisfied as aforesaid.

Rights in relation to automated decision taking.

6B.—(1) Subject to subsection (2) of this section, a decision which produces legal effects concerning a data subject or otherwise significantly affects a data subject may not be based solely on processing by automatic means of personal data in respect of which he or she is the data subject and which is intended to evaluate certain personal matters relating to him or her such as, for example (but without prejudice to the generality of the foregoing), his or her performance at work, creditworthiness, reliability or conduct.

(2) Subsection (1) of this section does not apply—

(a) in a case in which a decision referred to in that subsection—

(i) is made in the course of steps taken—

(I) for the purpose of considering whether to enter into a contract with the data subject,

(II) with a view to entering into such a contract, or

(III) in the course of performing such a contract,

or

(ii) is authorised or required by any enactment and the data subject has been informed of the proposal to make the

decision, and

(iii) either—

(I) the effect of the decision is to grant a request of the data subject, or

(II) adequate steps have been taken to safeguard the legitimate interests of the data subject by, for example (but without prejudice to the generality of the foregoing), the making of arrangements to enable him or her to make representations to the data controller in relation to the proposal,

or

(b) if the data subject consents to the processing referred to in subsection (1).]

Annotations:

Amendments:

F9 Inserted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 8, S.I. No. 207 of 2003.

Duty of care owed by data controllers and data processors.

7.—For the purposes of the law of torts and to the extent that that law does not so provide, a person, being a data controller or a data processor, shall, so far as regards the collection by him of personal data or information intended for inclusion in such data or his dealing with such data, owe a duty of care to the data subject concerned:

Provided that, for the purposes only of this section, a data controller shall be deemed to have complied with the provisions of *section 2 (1) (b)* of this Act if and so long as the personal data concerned accurately record data or other information received or obtained by him from the data subject or a third party and include (and, if the data are disclosed, the disclosure is accompanied by)—

(a) an indication that the information constituting the data was received or obtained as aforesaid,

(b) if appropriate, an indication that the data subject has informed the data controller that he regards the information as inaccurate or not kept up to date, and

(c) any statement with which, pursuant to this Act, the data are supplemented.

Disclosure of personal data in certain cases.

8.—Any restrictions in this Act on the F10[processing] of personal data do not apply if the F10[processing] is—

- (a) in the opinion of a member of the Garda Síochána not below the rank of chief superintendent or an officer of the Permanent Defence Force who holds an army rank not below that of colonel and is designated by the Minister for Defence under this paragraph, required for the purpose of safeguarding the security of the State,
- (b) required for the purpose of preventing, detecting or investigating offences, apprehending or prosecuting offenders or assessing or collecting any tax, duty or other moneys owed or payable to the State, a local authority or a health board, in any case in which the application of those restrictions would be likely to prejudice any of the matters aforesaid,
- (c) required in the interests of protecting the international relations of the State,
- (d) required urgently to prevent injury or other damage to the health of a person or serious loss of or damage to property,
- (e) required by or under any enactment or by a rule of law or order of a court,
- (f) required for the purposes of obtaining legal advice or for the purposes of, or in the course of, legal proceedings in which the person making the disclosure is a party or a witness,
- (g) F11 [...]
- (h) made at the request or with the consent of the data subject or a person acting on his behalf.

Annotations:

Amendments:

F10 Substituted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 9, S.I. No. 207 of 2003.

F11 Deleted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 9, S.I. No. 207 of 2003.

The Data Protection Commissioner

The Commissioner.

9.—(1) For the purposes of this Act, there shall be a person (referred to in this Act as the Commissioner) who shall be known as

an Coimisinéir Cosanta Sonraí or, in the English language, the Data Protection Commissioner; the Commissioner shall perform the functions conferred on him by this Act.

F12[(1A) (a) The lawfulness of the processing of personal data (including their transmission to the Central Unit of Eurodac established pursuant to the Council Regulation) in accordance with the Council Regulation shall be monitored by the Commissioner.

(b) In paragraph (a) of this subsection, ‘the Council Regulation’ means Council Regulation (EC) No. 2725/2000 of 11 December 2000⁽²⁾ concerning the establishment of Eurodac for the comparison of fingerprints for the effective application of the Dublin Convention.

(1B) The Commissioner shall arrange for the dissemination in such form and manner as he or she considers appropriate of—

(a) any Community finding (within the meaning of subsection (2)(b) (inserted by the *Act of 2003*) of section 11 of this Act),

(b) any decision of the European Commission or the European Council under the procedure provided for in Article 31(2) of the Directive that is made for the purposes of paragraph 3 or 4 of Article 26 of the Directive, and

(c) such other information as may appear to him or her to be expedient to give to data controllers in relation to the protection of the rights and freedoms of data subjects in respect of the processing of personal data in countries and territories outside the European Economic Area.

(1C) The Commissioner shall be the supervisory authority in the State for the purposes of the Directive.

(1D) The Commissioner shall also perform any functions in relation to data protection that the Minister may confer on him or her by regulations for the purpose of enabling the Government to give effect to any international obligations of the State.

⁽²⁾ O.J. No. L 316, 15.12.00, p. 0001-0010]

(2) The provisions of the *Second Schedule* to this Act shall have effect in relation to the Commissioner.

Annotations:

Amendments:

F12 Inserted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 10, S.I. No. 207 of 2003.

Editorial Notes:

E9 Power pursuant to section exercised (25.05.1993) by *Data Protection Commissioner Superannuation Scheme 1993* (S.I. 141 of 1993).

E10 Previous affecting provision: Section amended (1.04.2002) by *European Communities (Data Protection) Regulations 2001* (S.I. No. 626 of 2001), reg. 4. S.I. 626 of 2001 including reg. 4 revoked (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 22(2).

Enforcement of data protection.

10.—(1) (a) The Commissioner may investigate, or cause to be investigated, whether any of the provisions of this Act have been, are being or are likely to be contravened **F13**[...] in relation to **F14**[a person] either where the **F14**[person] complains to him of a contravention of any of those provisions or he is otherwise of opinion that there may be such a contravention.

(b) Where a complaint is made to the Commissioner under *paragraph (a)* of this subsection, the Commissioner shall—

(i) investigate the complaint or cause it to be investigated, unless he is of opinion that it is frivolous or vexatious, and

F13[(ii) if he or she is unable to arrange, within a reasonable time, for the amicable resolution by the parties concerned of the matter the subject of the complaint, notify in writing the individual who made the complaint of his or her decision in relation to it and that the individual may, if aggrieved by the decision, appeal against it to the Court under section 26 of this Act within 21 days from the receipt by him or her of the notification.]

F13[(1A) The Commissioner may carry out or cause to be carried out such investigations as he or she considers appropriate in order to ensure compliance with the provisions of this Act **F15**[and the Electronic Communications Networks and Services Regulations of 2003] and to identify any contravention thereof.]

F15[(1B) The Commissioner may carry out or cause to be carried out such investigations as he or she considers appropriate in order to ensure compliance with Regulation 5, 6, 9, 12, 13, or 14, and to

identify any contravention thereof.]

(2) If the Commissioner is of opinion that a person, F13[...] has contravened or is contravening a provision of this Act (other than a provision the contravention of which is an offence), the Commissioner may, by notice in writing (referred to in this Act as an enforcement notice) served on the person, require him to take such steps as are specified in the notice within such time as may be so specified to comply with the provision concerned.

(3) Without prejudice to the generality of *subsection (2)* of this section, if the Commissioner is of opinion that a data controller has contravened *section 2 (1)* of this Act, the relevant enforcement notice may require him—

F13[(a) to block, rectify, erase or destroy any of the data concerned, or]

(b) to supplement the data with such statement relating to the matters dealt with by them as the Commissioner may approve of; and as respects data that are inaccurate or not kept up to date, if he supplements them as aforesaid, he shall be deemed not to be in contravention of *paragraph(b)* of the said *section 2 (1)*.

(4) An enforcement notice shall—

(a) specify any provision of this Act that, in the opinion of the Commissioner, has been or is being contravened and the reasons for his having formed that opinion, and

(b) subject to *subsection (6)* of this section, state that the person concerned may appeal to the Court under *section 26* of this Act against the requirement specified in the notice within 21 days from the service of the notice on him.

(5) Subject to *subsection (6)* of this section, the time specified in an enforcement notice for compliance with a requirement specified therein shall not be expressed to expire before the end of the period of 21 days specified in *subsection (4) (b)* of this section and, if an appeal is brought against the requirement, the requirement need not be complied with and *subsection (9)* of this section shall not apply in relation thereto, pending the determination or withdrawal of the appeal.

(6) If the Commissioner—

(a) by reason of special circumstances, is of opinion that a requirement specified in an enforcement notice should

be complied with urgently, and

(b) includes a statement to that effect in the notice,

subsections (4) (b) and (5) of this section shall not apply in relation to the notice, but the notice shall contain a statement of the effect of the provisions of section 26 (other than subsection (3)) of this Act and shall not require compliance with the requirement before the end of the period of 7 days beginning on the date on which the notice is served.

(7) On compliance by a data controller with a requirement under *subsection (3) of this section*, he shall, as soon as may be and in any event not more than 40 days after such compliance, notify—

(a) the data subject concerned, and

F13[*(b) if such compliance materially modifies the data concerned, any person to whom the data were disclosed during the period beginning 12 months before the date of the service of the enforcement notice concerned and ending immediately before such compliance unless such notification proves impossible or involves a disproportionate effort, of the blocking, rectification, erasure, destruction or statement concerned.*]

(8) The Commissioner may cancel an enforcement notice and, if he does so, shall notify in writing the person on whom it was served accordingly.

(9) A person who, without reasonable excuse, fails or refuses to comply with a requirement specified in an enforcement notice shall be guilty of an offence.

Annotations:

Amendments:

F13 Amended (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 11, S.I. No. 207 of 2003.

F14 Inserted (24.02.2003) by *European Communities (Directive 2000/31/EC) Regulations 2003* (S.I. No. 68 of 2003), reg. 9(9)(a).

F15 Inserted (6.11.2003) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003* (S.I. No. 535 of 2003), reg. 17.

Editorial Notes:

E11 The provision which inserted **F14** was identical to the provision which inserted **F13** in all respects except for the change from the word ‘individual’ to ‘person’ as noted. The provision at **F14** was superseded in all other respects. There is no record that the provision at **F14** was repealed or revoked.

F15[Restriction]
on transfer of
personal data
outside State.

F15 [11.—(1) The transfer of personal data to a country or territory outside the European Economic Area may not take place unless that country or territory ensures an adequate level of protection for the privacy and the fundamental rights and freedoms of data subjects in relation to the processing of personal data having regard to all the circumstances surrounding the transfer and, in particular, but without prejudice to the generality of the foregoing, to—

- (a) the nature of the data,
- (b) the purposes for which and the period during which the data are intended to be processed,
- (c) the country or territory of origin of the information contained in the data,
- (d) the country or territory of final destination of that information,
- (e) the law in force in the country or territory referred to in paragraph (d),
- (f) any relevant codes of conduct or other rules which are enforceable in that country or territory,
- (g) any security measures taken in respect of the data in that country or territory, and
- (h) the international obligations of that country or territory.

(2) (a) Where in any proceedings under this Act a question arises—

- (i) whether the adequate level of protection specified in subsection (1) of this section is ensured by a country or territory outside the European Economic Area to which personal data are to be transferred, and
- (ii) a Community finding has been made in relation to transfers of the kind in question,

the question shall be determined in accordance with that finding.

- (b) In paragraph (a) of this subsection ‘Community finding’ means a finding of the European Commission made for the purposes of paragraph (4) or (6) of Article

25 of the Directive under the procedure provided for in Article 31(2) of the Directive in relation to whether the adequate level of protection specified in subsection (1) of this section is ensured by a country or territory outside the European Economic Area.

(3) The Commissioner shall inform the Commission and the supervisory authorities of the other Member States of any case where he or she considers that a country or territory outside the European Economic Area does not ensure the adequate level of protection referred to in subsection (1) of this section.

(4) (a) This section shall not apply to a transfer of data if—

(i) the transfer of the data or the information constituting the data is required or authorised by or under—

(I) any enactment, or

(II) any convention or other instrument imposing an international obligation on the State,

(ii) the data subject has given his or her consent to the transfer,

(iii) the transfer is necessary—

(I) for the performance of a contract between the data subject and the data controller, or

(II) for the taking of steps at the request of the data subject with a view to his or her entering into a contract with the data controller,

(iv) the transfer is necessary—

(I) for the conclusion of a contract between the data controller and a person other than the data subject that—

(A) is entered into at the request of the data subject, and

(B) is in the interests of the data subject, or

(II) for the performance of such a contract,

(v) the transfer is necessary for reasons of substantial

public interest,

(vi) the transfer is necessary for the purpose of obtaining legal advice or for the purpose of or in connection with legal proceedings or prospective legal proceedings or is otherwise necessary for the purposes of establishing or defending legal rights,

(vii) the transfer is necessary in order to prevent injury or other damage to the health of the data subject or serious loss of or damage to property of the data subject or otherwise to protect his or her vital interests, and informing the data subject of, or seeking his or her consent to, the transfer is likely to damage his or her vital interests,

(viii) the transfer is of part only of the personal data on a register established by or under an enactment, being—

(I) a register intended for consultation by the public, or

(II) a register intended for consultation by persons having a legitimate interest in its subject matter,

and, in the case of a register referred to in clause (II) of this subparagraph, the transfer is made, at the request of, or to, a person referred to in that clause and any conditions to which such consultation is subject are complied with by any person to whom the data are or are to be transferred, or

(ix) the transfer has been authorised by the Commissioner where the data controller adduces adequate safeguards with respect to the privacy and fundamental rights and freedoms of individuals and for the exercise by individuals of their relevant rights under this Act or the transfer is made on terms of a kind approved by the Commissioner as ensuring such safeguards.

(b) The Commissioner shall inform the European Commission and the supervisory authorities of the other states in the European Economic Area of any authorisation or approval under paragraph (a)(ix) of this subsection.

(c) The Commissioner shall comply with any decision of the European Commission under the procedure laid down in Article 31.2 of the Directive made for the purposes of paragraph 3 or 4 of Article 26 of the Directive.

(5) The Minister may, after consultation with the Commissioner, by regulations specify—

(a) the circumstances in which a transfer of data is to be taken for the purposes of subsection (4)(a)(v) of this section to be necessary for reasons of substantial public interest, and

(b) the circumstances in which such a transfer which is not required by or under an enactment is not to be so taken.

(6) Where, in relation to a transfer of data to a country or territory outside the European Economic Area, a data controller adduces the safeguards for the data subject concerned referred to in subsection (4)(a)(ix) of this section by means of a contract embodying the contractual clauses referred to in paragraph 2 or 4 of Article 26 of the Directive, the data subject shall have the same right—

(a) to enforce a clause of the contract conferring rights on him or her or relating to such rights, and

(b) to compensation or damages for breach of such a clause,

that he or she would have if he or she were a party to the contract.

(7) The Commissioner may, subject to the provisions of this section, prohibit the transfer of personal data from the State to a place outside the State unless such transfer is required or authorised by or under any enactment or required by any convention or other instrument imposing an international obligation on the State.

(8) In determining whether to prohibit a transfer of personal data under this section, the Commissioner shall also consider whether the transfer would be likely to cause damage or distress to any person and have regard to the desirability of facilitating international transfers of data.

(9) A prohibition under subsection (7) of this section shall be effected by the service of a notice (referred to in this Act as a prohibition notice) on the person proposing to transfer the data concerned.

(10) A prohibition notice shall—

- (a) prohibit the transfer concerned either absolutely or until the person aforesaid has taken such steps as are specified in the notice for protecting the interests of the data subjects concerned,
- (b) specify the time when it is to take effect,
- (c) specify the grounds for the prohibition, and
- (d) subject to subsection (12) of this section, state that the person concerned may appeal to the Court under section 26 of this Act against the prohibition specified in the notice within 21 days from the service of the notice on him or her.

(11) Subject to subsection (12) of this section, the time specified in a prohibition notice for compliance with the prohibition specified therein shall not be expressed to expire before the end of the period of 21 days specified in subsection (10)(d) of this section and, if an appeal is brought against the prohibition, the prohibition need not be complied with and subsection (15) of this section shall not apply in relation thereto, pending the determination or withdrawal of the appeal.

(12) If the Commissioner—

- (a) by reason of special circumstances, is of opinion that a prohibition specified in a prohibition notice should be complied with urgently, and
- (b) includes a statement to that effect in the notice,

subsections (10)(d) and (11) of this section shall not apply in relation to the notice but the notice shall contain a statement of the effect of the provisions of section 26 (other than subsection (3)) of this Act and shall not require compliance with the prohibition before the end of the period of 7 days beginning on the date on which the notice is served.

(13) The Commissioner may cancel a prohibition notice and, if he or she does so, shall notify in writing the person on whom it was served accordingly.

(14) (a) This section applies, with any necessary modifications, to a transfer of information from the State to a place outside the State for conversion into personal data as it applies to a transfer of personal data from the State to such a place.

(b) In paragraph (a) of this subsection ‘information’ means information (not being data) relating to a living individual who can be identified from it.

(15) A person who, without reasonable excuse, fails or refuses to comply with a prohibition specified in a prohibition notice shall be guilty of an offence.]

Annotations:

Amendments:

F15 Substituted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 12, S.I. No. 207 of 2003.

Editorial Notes:

E12 Previous affecting provision: Section inserted (1.04.2002) by *European Communities (Data Protection) Regulations 2001* (S.I. No. 626 of 2001), reg. 5. Inserted section substituted as per **F14** above. S.I. 626 of 2001 including reg. 5 revoked (1.07.2003) by the *Data Protection (Amendment) Act 2003* (6/2003), s. 22(2).

Power to require information.

12.—(1) The Commissioner may, by notice in writing (referred to in this Act as an information notice) served on a person, require the person to furnish to him in writing within such time as may be specified in the notice such information in relation to matters specified in the notice as is necessary or expedient for the performance by the Commissioner of his functions.

(2) Subject to *subsection (3)* of this section—

(a) an information notice shall state that the person concerned may appeal to the Court under *section 26* of this Act against the requirement specified in the notice within 21 days from the service of the notice on him, and

(b) the time specified in the notice for compliance with a requirement specified therein shall not be expressed to expire before the end of the period of 21 days specified in *paragraph (a)* of this subsection and, if an appeal is brought against the requirement, the requirement need not be complied with and *subsection (5)* of this section shall not apply in relation thereto, pending the determination or withdrawal of the appeal.

(3) If the Commissioner—

(a) by reason of special circumstances, is of opinion that a requirement specified in an information notice should be complied with urgently, and

(b) includes a statement to that effect in the notice,

subsection (2) of this section shall not apply in relation to the notice, but the notice shall contain a statement of the effect of the provisions of *section 26* (other than *subsection (3)*) of this Act and shall not require compliance with the requirement before the end of the period of 7 days beginning on the date on which the notice is served.

(4) (a) No enactment or rule of law prohibiting or restricting the disclosure of information shall preclude a person from furnishing to the Commissioner any information that is necessary or expedient for the performance by the Commissioner of his functions.

(b) *Paragraph (a)* of this subsection does not apply to information that in the opinion of the Minister or the Minister for Defence is, or at any time was, kept for the purpose of safeguarding the security of the State or information that is privileged from disclosure in proceedings in any court.

(5) A person who, without reasonable excuse, fails or refuses to comply with a requirement specified in an information notice or who in purported compliance with such a requirement furnishes information to the Commissioner that the person knows to be false or misleading in a material respect shall be guilty of an offence.

F16[12A.—(1) This section applies to any processing that is of a prescribed description, being processing that appears to the Commissioner to be particularly likely—

(a) to cause substantial damage or substantial distress to data subjects, or

(b) otherwise significantly to prejudice the rights and freedoms of data subjects.

(2) The Commissioner, on receiving—

(a) an application under section 17 of this Act by a person to whom section 16 of this Act applies for registration in the register and any prescribed information and any other information that he or she may require, or

(b) a request from a data controller in that behalf,

shall consider and determine—

(i) whether any of the processing to which the application

or request relates is processing to which this section applies,

- (ii) if it does, whether the processing to which this section applies is likely to comply with the provisions of this Act.

(3) Subject to subsection (4) of this section, the Commissioner shall, within the period of 90 days from the day on which he or she receives an application or a request referred to in subsection (2) of this section, serve a notice on the data controller concerned stating the extent to which, in the opinion of the Commissioner, the proposed processing is likely or unlikely to comply with the provisions of this Act.

(4) Before the end of the period referred to in subsection (3), the Commissioner may, by reason of special circumstances, extend that period once only, by notice in writing served on the data controller concerned, by such further period not exceeding 90 days as the Commissioner may specify in the notice.

(5) If, for the purposes of his or her functions under this section, the Commissioner serves an information notice on the data controller concerned before the end of the period referred to in subsection (3) of this section or that period as extended under subsection (4) of this section—

- (a) the period from the date of service of the notice to the date of compliance with the requirement in the notice, or
- (b) if the requirement is set aside under section 26 of this Act, the period from the date of such service to the date of such setting aside,

shall be added to the period referred to in the said subsection (3) or that period as so extended as aforesaid.

(6) Processing to which this section applies shall not be carried on unless—

- (a) the data controller has—
 - (i) previously made an application under section 17 of this Act and furnished the information specified in that section to the Commissioner, or

(ii) made a request under subsection (2) of this section,

and

(b) the data controller has complied with any information notice served on him or her in relation to the matter, and

(c) (i) the period of 90 days from the date of the receipt of the application or request referred to in subsection (3) of this section (or that period as extended under subsections (4) and (5) of this section or either of them) has elapsed without the receipt by the data controller of a notice under the said subsection (3), or

(ii) the data controller has received a notice under the said subsection (3) stating that the particular processing proposed to be carried on is likely to comply with the provisions of this Act, or

(iii) the data controller—

(I) has received a notice under the said subsection (3) stating that, if the requirements specified by the Commissioner (which he or she is hereby authorised to specify) and appended to the notice are complied with by the data controller, the processing proposed to be carried on is likely to comply with the provisions of this Act, and

(II) has complied with those requirements.

(7) A person who contravenes subsection (6) of this section shall be guilty of an offence.

(8) An appeal against a notice under subsection (3) of this section or a requirement appended to the notice may be made to and heard and determined by the Court under section 26 of this Act and that section shall apply as if such a notice and such a requirement were specified in subsection (1) of the said section 26.

(9) The Minister, after consultation with the Commissioner, may by regulations amend subsections (3), (4) and (6) of this section by substituting for the number of days for the time being specified therein a different number specified in the regulations.

(10) A data controller shall pay to the Commissioner such fee (if any) as may be prescribed in respect of the consideration by the Commissioner, in relation to proposed processing by the data controller, of the matters referred to in paragraphs (i) and (ii) of subsection (2) of this section and different fees may be prescribed in relation to different categories of processing.

(11) In this section a reference to a data controller includes a reference to a data processor.]

Annotations:

Amendments:

F16 Inserted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 13, S.I. No. 207 of 2003.

Editorial Notes:

E13 Power pursuant to section exercised (8.10.2007) by *Data Protection (Processing of Genetic Data) Regulations 2007* (S.I. No. 687 of 2007).

E14 Power pursuant to section exercised (1.10.2007) by *Data Protection (Fees) Regulations 2007* (S.I. No. 658 of 2007).

Codes of
practice.

13.—(1) The Commissioner shall encourage trade associations and other bodies representing categories of data controllers to prepare codes of practice to be complied with by those categories in dealing with personal data.

F17[(2) The Commissioner shall—

(a) where a code of practice (referred to subsequently in this section as a code) so prepared is submitted to him or her for consideration, consider the code and, after such consultation with such data subjects or persons representing data subjects and with the relevant trade associations or other bodies aforesaid as appears to him or her to be appropriate—

(i) if he or she is of opinion that the code provides for the data subjects concerned a measure of protection with regard to personal data relating to them that conforms with that provided for by section 2, sections 2A to 2D (inserted by the *Act of 2003*) and sections 3 and 4 (other than subsection (8)) and 6 of this Act, approve of the code and encourage its dissemination to the data controllers concerned, and

(ii) in any event notify the association or body concerned of his or her decision to approve or not to

approve the code,

- (b) where he or she considers it necessary or desirable to do so and after such consultation with any trade associations or other bodies referred to in subsection (1) of this section having an interest in the matter and data subjects or persons representing data subjects as he or she considers appropriate, prepare, and arrange for the dissemination to such persons as he or she considers appropriate of, codes of practice for guidance as to good practice in dealing with personal data, and subsection (3) of this section shall apply to a code of practice prepared under this subsection as it applies to a code,
- (c) in such manner and by such means as he or she considers most effective for the purposes of this paragraph, promote the following of good practice by data controllers and, in particular, so perform his or her functions under this Act as to promote compliance with this Act by data controllers,
- (d) arrange for the dissemination in such form and manner as he or she considers appropriate of such information as appears to him or her to be expedient to give to the public about the operation of this Act, about the practices in processing of personal data (including compliance with the requirements of this Act) that appear to the Commissioner to be desirable having regard to the interests of data subjects and other persons likely to be affected by such processing and about other matters within the scope of his or her functions under this Act, and may give advice to any person in relation to any of those matters.]

(3) Any such code that is so approved of may be laid by the Minister before each House of the Oireachtas and, if each such House passes a resolution approving of it, then—

- (a) in so far as it relates to dealing with personal data by the categories of data controllers concerned—
 - (i) it shall have the force of law in accordance with its terms, and
 - (ii) upon its commencement, references (whether specific or general) in this Act to any of the provisions of the said sections shall be construed (or, if the code is in substitution for a code having the force of law by virtue of this subsection, continue to

be construed) as if they were also references to the relevant provisions of the code for the time being having the force of law,

and

(b) it shall be deemed to be a statutory instrument to which the Statutory Instruments Act, 1947, primarily applies.

(4) This section shall apply in relation to data processors as it applies in relation to categories of data controllers with the modification that the references in this section to the said sections shall be construed as references to *section 2 (1) (d)* of this Act and with any other necessary modifications.

F17[(5) The Commissioner shall be paid by a person in relation to whom a service is provided under this section such fee (if any) as may be prescribed and different fees may be prescribed in relation to different such services and different classes of persons.

(6) In proceedings in any court or other tribunal, any provision of a code, or a code of practice, approved under subsection (3) of this section that appears to the court or other tribunal concerned to be relevant to the proceedings may be taken into account in determining the question concerned.]

Annotations:

Amendments:

F17 Amended (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 14(1), S.I. No. 207 of 2003.

Editorial Notes:

E15 *Data Protection (Amendment) Act 2003*, s. 14 states that a code of practice approved under s. 13(2) and in force immediately before the commencement of section s. 14 shall continue in force after the commencement of that section. This section appears to be obsolete as no code of practice was issued or in force at that time.

Annual report.

14.—(1) The Commissioner shall in each year after the year in which the first Commissioner is appointed prepare a report in relation to his **F18**[activities under the European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003 and this Act] in the preceding year and cause copies of the report to be laid before each House of the Oireachtas.

(2) Notwithstanding *subsection (1)* of this section, if, but for this subsection, the first report under that subsection would relate to a period of less than 6 months, the report shall relate to that period and

to the year immediately following that period and shall be prepared as soon as may be after the end of that year.

F19 [(3) For the purposes of the law of defamation, a report under subsection (1) shall be absolutely privileged.]

Annotations:

Amendments:

F18 Amended (6.11.2003) by *European Communities (Electronic Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003* (S.I. No. 535 of 2003), reg. 23(1).

F19 Inserted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 15, S.I. No. 207 of 2003.

Editorial Notes:

E16 Previous Affecting Provision: Section amended (8.5.2002) by *European Communities (Data Protection and Privacy in Telecommunications) Regulations 2002*, (S.I. No. 192 of 2002) reg. 19. Amended section substituted as per **F19** above.

Mutual assistance between parties to Convention.

15.—(1) The Commissioner is hereby designated for the purposes of Chapter IV (which relates to mutual assistance) of the Convention.

(2) The Minister may make any regulations that he considers necessary or expedient for the purpose of enabling the said Chapter IV to have full effect.

Registration

The register.

16.—**F20**[(1) In this section ‘person to whom this section applies’ means a data controller and a data processor (other than such (if any) categories of data controller and data processor as may be specified in regulations made by the Minister after consultation with the Commissioner) except in so far as—

(a) they carry out—

(i) processing whose sole purpose is the keeping in accordance with law of a register that is intended to provide information to the public and is open to consultation either by the public in general or by any person demonstrating a legitimate interest,

(ii) processing of manual data (other than such categories, if any, of such data as may be prescribed), or

(iii) any combination of the foregoing categories of processing,

or

(b) the data controller is a body that is not established or conducted for profit and is carrying out processing for the purposes of establishing or maintaining membership of or support for the body or providing or administering activities for individuals who are either members of the body or have regular contact with it.]

(2) The Commissioner shall establish and maintain a register (referred to in this Act as the register) of persons to whom this section applies and shall make, as appropriate, an entry or entries in the register in respect of each person whose application for registration therein is accepted by the Commissioner.

(3) (a) Members of the public may inspect the register free of charge at all reasonable times and may take copies of, or of extracts from, entries in the register.

(b) A member of the public may, on payment to the Commissioner of such fee (if any) as may be prescribed, obtain from the Commissioner a copy (certified by him or by a member of his staff to be a true copy) of, or of an extract from, any entry in the register.

(c) In any proceedings—

(i) a copy of, or of an extract from, an entry in the register certified by the Commissioner or by a member of his staff to be a true copy shall be evidence of the entry or extract, and

(ii) a document purporting to be such a copy, and to be certified, as aforesaid shall be deemed to be such a copy and to be so certified unless the contrary is proved.

(d) In any proceedings—

(i) a certificate signed by the Commissioner or by a member of his staff and stating that there is not an entry in the register in respect of a specified person as a data controller or as a data processor shall be evidence of that fact, and

(ii) a document purporting to be such a certificate, and to be signed, as aforesaid shall be deemed to be such

a certificate and to be so signed unless the contrary is proved.

Annotations:

Amendments:

F20 Substituted (1.10.07) by *Data Protection (Amendment) Act 2003* (6/2003), s. 16, S.I. No. 656 of 2007.

Editorial Notes:

E17 Power pursuant to section exercised (1.10.2007) by *Data Protection Act 1988 (Section 16(1)) Regulations 2007* (S.I. No. 657 of 2007).

E18 Previous affecting provision: Act applied (10.01.2001) by *Data Protection (Registration) Regulations 2001* (S.I. No. 2 of 2001), revoked (1.10.2007) by *Data Protection Act 1988 (Section 16(1)) Regulations 2007* (S.I. No. 657 of 2007), reg. 5.

E19 Power pursuant to section exercised (16.12.1988) by *Data Protection (Fees) Regulations 1988* (S.I. No. 347 of 1988).

Applications for registration.

17.—(1) (a) A person wishing to be registered in the register or to have a registration continued under *section 18* of this Act or to have the particulars in an entry in the register altered shall make an application in writing in that behalf to the Commissioner and shall furnish to him such information as may be prescribed and any other information that he may require.

F21[(b) Where a data controller intends to keep personal data for two or more related purposes, he or she shall make an application for registration in respect of those purposes and, subject to the provisions of this Act, entries shall be made in the register in accordance with any such application,

F21(c) Where a data controller intends to keep personal data for two or more unrelated purposes, he shall make an application for separate registration in respect of each of those purposes and, subject to the provisions of this Act, entries shall be made in the register in accordance with each such application.]

(2) Subject to *subsection (3)* of this section, the Commissioner shall accept an application for registration, made in the prescribed manner and in respect of which such fee as may be prescribed has been paid, from a person to whom *section 16* of this Act applies unless he is of opinion that—

(a) the particulars proposed for inclusion in an entry in the register are insufficient or any other information required by the Commissioner either has not been

furnished or is insufficient, or

- (b) the person applying for registration is likely to contravene any of the provisions of this Act.

F21[(3) The Commissioner shall not accept such an application for registration as aforesaid from a data controller who keeps sensitive personal data unless he or she is of opinion that appropriate safeguards for the protection of the privacy of the data subjects are being, and will continue to be, provided by him or her.]

(4) Where the Commissioner refuses an application for registration, he shall, as soon as may be, notify in writing the person applying for registration of the refusal and the notification shall—

- (a) specify the reasons for the refusal, and
- (b) state that the person may appeal to the Court under *section 26* of this Act against the refusal within 21 days from the receipt by him of the notification.

(5) If—

- (a) the Commissioner, by reason of special circumstances, is of opinion that a refusal of an application for registration should take effect urgently, and
- (b) the notification of the refusal includes a statement to that effect and a statement of the effect of the provisions of *section 26* (other than *subsection (3)*) of this Act,

paragraph (b) of subsection (4) of this section shall not apply in relation to the notification and paragraph (b) of subsection (6) of this section shall be construed and have effect as if for the words from and including “21 days” to the end of the paragraph there were substituted “7 days beginning on the date on which the notification was received.”

(6) Subject to *subsection (5) of this section*, a person who has made an application for registration shall—

- (a) until he is notified that it has been accepted or it is withdrawn, or
- (b) if he is notified that the application has been refused, until the end of the period of 21 days within which an appeal may be brought under *section 26* of this Act against the refusal and, if such an appeal is brought, until the determination or withdrawal of the appeal,

be treated for the purposes of *section 19* of this Act as if the

application had been accepted and the particulars contained in it had been included in an entry in the register on the date on which the application was made.

(7) *Subsections (2) to (6) of this section apply, with any necessary modifications, to an application for continuance of registration and an application for alteration of the particulars in an entry in the register as they apply to an application for registration.*

Annotations:

Amendments:

F21 Amended (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 17; S.I. No. 207 of 2003.

Editorial Notes:

E20 Power pursuant to section exercised (1.10.2007) by *Data Protection (Fees) Regulations 2007* (S.I. No. 658 of 2007).

E21 Previous affecting provisions: Act applied (16.12.1988) by *Data Protection (Fees) Regulations 1988* (S.I. No. 347 of 1988) reg. 5 and 6, revoked (4.4.1990) by *Data Protection (Fees) Regulations 1990* (S.I. No. 80 of 1990), reg. 5; Act applied (4.04.1990) by *Data Protection (Fees) Regulations 1990* (S.I. No. 80 of 1990), reg. 3 and 4, revoked (19.5.1996) by *Data Protection (Fees) Regulations 1996* (S.I. No. 105 of 1996), reg. 5; Act applied (19.5.1996) by *Data Protection (Fees) Regulations 1996* (S.I. No. 105 of 1996), reg. 3 and 4, revoked (1.10.2007) by *Data Protection (Fees) Regulations 2007* (S.I. 658 of 2007).

Duration and continuance of registration.

18.—(1) A registration (whether it is the first registration or a registration continued under this section) shall be for the prescribed period and on the expiry thereof the relevant entry shall be removed from the register unless the registration is continued as aforesaid.

F22[(2) The prescribed period (which shall not be less than one year) shall be calculated—

- (a) in the case of a first registration from the date on which the relevant entry was made in the register, and
 - (b) in the case of a registration which has been continued under this section, from the day following the expiration of the latest prescribed period.]
- (3) The Commissioner shall, subject to the provisions of this Act, continue a registration, whether it has previously been continued under this section or not.
- (4) Notwithstanding the foregoing provisions of this section, the Commissioner may at any time, at the request of the person to whom an entry relates, remove it from the register.

Annotations:

Amendments:

F22 Substituted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 18; S.I. No. 207 of 2003.

Editorial Notes:

E22 Power pursuant to section exercised (19.12.1988) by *Data Protection (Registration Period) Regulations 1988* (S.I. No. 350 of 1988).

Effect of
registration.

19.—(1) A data controller to whom *section 16* of this Act applies shall not keep personal data unless there is for the time being an entry in the register in respect of him.

(2) A data controller in respect of whom there is an entry in the register shall not—

- (a) keep personal data of any description other than that specified in the entry,
- (b) keep or use personal data for a purpose other than the purpose or purposes described in the entry,
- (c) if the source from which such data, and any information intended for inclusion in such data, are obtained is required to be described in the entry, obtain such data or information from a source that is not so described,
- (d) disclose such data to a person who is not described in the entry (other than a person to whom a disclosure of such data may be made in the circumstances specified in *section 8* of this Act),
- (e) directly or indirectly transfer such data to a place outside the State other than one named or described in the entry.

(3) An employee or agent (not being a data processor) of a data controller mentioned in *subsection (2)* of this section shall, as respects personal data kept or, as the case may be, to be kept by the data controller, be subject to the same restrictions in relation to the use, source, disclosure or transfer of the data as those to which the data controller is subject under that subsection.

(4) A data processor to whom *section 16* applies shall not process personal data unless there is for the time being an entry in the register in respect of him.

(5) If and whenever a person in respect of whom there is an

entry in the register changes his address, he shall thereupon notify the Commissioner of the change.

(6) A person who contravenes *subsection (1), (4) or (5)*, or knowingly contravenes any other provision, of this section shall be guilty of an offence.

Regulations for registration.

20.—(1) The following matters, and such other matters (if any) as may be necessary or expedient for the purpose of enabling *sections 16 to 19* of this Act to have full effect, may be prescribed:

- (a) the procedure to be followed in relation to applications by persons for registration, continuance of registration or alteration of the particulars in an entry in the register or for withdrawal of such applications,
- (b) the information required to be furnished to the Commissioner by such persons, and
- (c) the particulars to be included in entries in the register,

and different provision may be made in relation to the matters aforesaid as respects different categories of persons.

(2) A person who in purported compliance with a requirement prescribed under this section furnishes information to the Commissioner that the person knows to be false or misleading in a material respect shall be guilty of an offence.

Editorial Notes:

E23 Power pursuant to section exercised (9.01.1989) by *Data Protection (Registration Period) Regulations 1988* (S.I. No. 351 of 1988).

Miscellaneous

Unauthorised disclosure by data processor.

21.—(1) Personal data processed by a data processor shall not be disclosed by him, or by an employee or agent of his, without the prior authority of the data controller on behalf of whom the data are processed.

(2) A person who knowingly contravenes *subsection (1)* of this section shall be guilty of an offence.

Disclosure of personal data obtained without authority.

22.—(1) A person who—

- (a) obtains access to personal data, or obtains any information constituting such data, without the prior authority of the data controller or data processor by whom the data are kept, and

(b) discloses the data or information to another person,
shall be guilty of an offence.

(2) *Subsection (1)* of this section does not apply to a person who is an employee or agent of the data controller or data processor concerned.

F23[22A.—(1) Personal data that are processed only for journalistic, artistic or literary purposes shall be exempt from compliance with any provision of this Act specified in subsection (2) of this section if—

(a) the processing is undertaken solely with a view to the publication of any journalistic, literary or artistic material,

(b) the data controller reasonably believes that, having regard in particular to the special importance of the public interest in freedom of expression, such publication would be in the public interest, and

(c) the data controller reasonably believes that, in all the circumstances, compliance with that provision would be incompatible with journalistic, artistic or literary purposes.

(2) The provisions referred to in subsection (1) of this section are—

(a) section 2 (as amended by the *Act of 2003*), other than subsection (1)(d),

(b) sections 2A, 2B and 2D (which sections were inserted by the *Act of 2003*),

(c) section 3,

(d) sections 4 and 6 (which sections were amended by the *Act of 2003*), and

(e) sections 6A and 6B (which sections were inserted by the *Act of 2003*).

(3) In considering for the purposes of subsection (1)(b) of this section whether publication of the material concerned would be in the public interest, regard may be had to any code of practice approved under subsections (1) or (2) of section 13 (as amended by the *Act of*

2003) of this Act.

(4) In this section ‘publication’, in relation to journalistic, artistic or literary material, means the act of making the material available to the public or any section of the public in any form or by any means.]

Annotations:

Amendments:

F23 Inserted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 21, S.I. No. 207 of 2003.

Provisions in relation to certain non-residents and to data kept or processed outside State.

23.— F24[...]

Annotations:

Amendments:

F24 Repealed (1.10.2007) by *Data Protection (Amendment) Act 2003* (6/2003), s. 22(1); S.I. No. 656 of 2007.

Editorial Notes:

E22 Previous affecting provision: Section repealed (1.4.2002) by *European Communities (Data Protection) Regulations 2001* (S.I. No. 626 of 2001), reg. 6. Section also repealed as per **F22** above. Regulations revoked (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 22(2).

Powers of authorised officer.

24.—(1) In this section "authorised officer" means a person authorised in writing by the Commissioner to exercise, for the purposes of this Act, the powers conferred by this section.

(2) An authorised officer may, for the purpose of obtaining any information that is necessary or expedient for the performance by the Commissioner of his functions, on production of the officer's authorisation, if so required—

(a) at all reasonable times enter premises that he reasonably believes to be occupied by **F26[a person to whom the Regulations of 2003 apply]**, inspect the premises and any data therein (other than data consisting of information specified in *section 12 (4) (b)* of this Act) and inspect, examine, operate and test any data equipment therein,

(b) require any person on the premises, **F26[being a person to whom the Regulations of 2003 apply or an employee of such a person]**, to disclose to the officer any such data and produce to him any data material (other than data material consisting of information so specified) that is in that person's power or control and to give to him

such information as he may reasonably require in regard to such data and material,

- (c) either on the premises or elsewhere, inspect and copy or extract information from such data, or inspect and copy or take extracts from such material, and
 - (d) require any person mentioned in *paragraph (b)* of this subsection to give to the officer such information as he may reasonably require in regard to the procedures employed for complying with the provisions of this Act, the sources from which such data are obtained, the purposes for which they are kept, the persons to whom they are disclosed and the data equipment in the premises.
- (3) **F25**[...]
 - (4) **F25**[...]
 - (5) **F25**[...]
 - (6) A person who obstructs or impedes an authorised officer in the exercise of a power, or, without reasonable excuse, does not comply with a requirement, under this section or who in purported compliance with such a requirement gives information to an authorised officer that he knows to be false or misleading in a material respect shall be guilty of an offence.

Annotations:

Amendments:

F25 Repealed (1.10.07) by *Data Protection (Amendment) Act 2003* (6/2003), s. 22(1), S.I. No. 656 of 2007.

F26 Amended (24.02.2003) by *European Communities (Directive 2000/31/EC) Regulations 2003* (S.I. No. 68 of 2003), reg. 9(10).

Editorial Notes:

E24 Previous affecting provision: Subsections (3), (4) and (5) deleted (24.02.2003) by *European Communities (Directive 2000/31/EC) Regulations 2003* (S.I. No. 68 of 2003), reg. 9(10). Subsections repealed as per **F25** above.

Service of notices.

25.—Any notice authorised by this Act to be served on a person by the Commissioner may be served—

- (a) if the person is an individual—
 - (i) by delivering it to him, or

(ii) by sending it to him by post addressed to him at his usual or last-known place of residence or business, or

(iii) by leaving it for him at that place,

(b) if the person is a body corporate or an unincorporated body of persons, by sending it to the body by post to, or addressing it to and leaving it at, in the case of a company, its registered office (within the meaning of the Companies Act, 1963) and, in any other case, its principal place of business.

Appeals to
Circuit Court.

26.—(1) An appeal may be made to and heard and determined by the Court against—

(a) a requirement specified in an enforcement notice or an information notice,

(b) a prohibition specified in a prohibition notice,

(c) a refusal by the Commissioner under *section 17* of this Act, notified by him under that section, and

(d) a decision of the Commissioner in relation to a complaint under *section 10 (1) (a)* of this Act,

and such an appeal shall be brought within 21 days from the service on the person concerned of the relevant notice or, as the case may be, the receipt by such person of the notification of the relevant refusal or decision.

(2) The jurisdiction conferred on the Court by this Act shall be exercised by the judge for the time being assigned to the circuit where the appellant ordinarily resides or carries on any profession, business or occupation or, at the option of the appellant, by a judge of the Court for the time being assigned to the Dublin circuit.

(3) (a) Subject to *paragraph (b)* of this subsection, a decision of the Court under this section shall be final.

(b) An appeal may be brought to the High Court on a point of law against such a decision; and references in this Act to the determination of an appeal shall be construed as including references to the determination of any such appeal to the High Court and of any appeal from the decision of that Court.

(4) Where—

(a) a person appeals to the Court pursuant to *paragraph (a)*,
(b) or (c) of *subsection (1)* of this section,

- (b) the appeal is brought within the period specified in the notice or notification mentioned in paragraph (c) of this subsection, and
- (c) the Commissioner has included a statement in the relevant notice or notification to the effect that by reason of special circumstances he is of opinion that the requirement or prohibition specified in the notice should be complied with, or the refusal specified in the notification should take effect, urgently,

then, notwithstanding any provision of this Act, if the Court, on application to it in that behalf, so determines, non-compliance by the person with a requirement or prohibition specified in the notice, or, as the case may be, a contravention by him of *section 19* of this Act, during the period ending with the determination or withdrawal of the appeal or during such other period as may be determined as aforesaid shall not constitute an offence.

Evidence in proceedings.

27.—(1) In any proceedings—

- (a) a certificate signed by the Minister or the Minister for Defence and stating that in his opinion personal data are, or at any time were, kept for the purpose of safeguarding the security of the State shall be evidence of that opinion,
- (b) a certificate—
 - (i) signed by a member of the Garda Síochána not below the rank of chief superintendent or an officer of the Permanent Defence Force who holds an army rank not below that of colonel and is designated by the Minister for Defence under *section 8 (a)* of this Act, and
 - (ii) stating that in the opinion of the member or, as the case may be, the officer a disclosure of personal data is required for the purpose aforesaid,

shall be evidence of that opinion, and

- (c) a document purporting to be a certificate under *paragraph (a)* or *(b)* of this subsection and to be signed by a person specified in the said *paragraph (a)* or *(b)*, as appropriate, shall be deemed to be such a certificate and to be so signed unless the contrary is proved.

(2) Information supplied by a person in compliance with a request under *section 3* or *4 (1)* of this Act, a requirement under this

Act or a direction of a court in proceedings under this Act shall not be admissible in evidence against him or his spouse in proceedings for an offence under this Act.

Hearing of proceedings.

28.—The whole or any part of any proceedings under this Act may, at the discretion of the court, be heard otherwise than in public.

Offences by directors, etc. of bodies corporate.

29.—(1) Where an offence under this Act has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person, being a director, manager, secretary or other officer of that body corporate, or a person who was purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, *subsection (1)* of this section shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director or manager of the body corporate.

Prosecution of summary offences by Commissioner.

30.—(1) Summary proceedings for an offence under this Act may be brought and prosecuted by the Commissioner.

(2) Notwithstanding section 10 (4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this Act may be instituted within one year from the date of the offence.

Penalties.

31.—(1) A person guilty of an offence under this Act shall be liable—

(a) on summary conviction, to a fine not exceeding **F25[€3,000]**, or

(b) on conviction on indictment, to a fine not exceeding **F27[€100,000]**.

F28[(1A) A person guilty of an offence under the Electronic Communications Networks and Services Regulations of 2003 shall be liable on summary conviction to a fine not exceeding €3,000.]

(2) Where a person is convicted of an offence under this Act, the court may order any data material which appears to the court to be connected with the commission of the offence to be forfeited or destroyed and any relevant data to be erased.

(3) The court shall not make an order under *subsection (2)* of this section in relation to data material or data where it considers

that some person other than the person convicted of the offence concerned may be the owner of, or otherwise interested in, the data unless such steps as are reasonably practicable have been taken for notifying that person and giving him an opportunity to show cause why the order should not be made.

(4) Section 13 of the Criminal Procedure Act, 1967, shall apply in relation to an offence under this Act that is not being prosecuted summarily as if, in lieu of the penalties provided for in subsection (3) (a) of that section, there were specified therein the fine provided for in *subsection (1) (a)* of this section and the reference in subsection (2) (a) of the said section 13 to the penalties provided for by subsection (3) shall be construed and have effect accordingly.

Annotations:

Amendments:

F25 Repealed (1.10.2007) by *Data Protection (Amendment) Act 2003* (6/2003), s. 22(1), S.I. No. 656 of 2007.

F27 Amended (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 19, S.I. No. 207 of 2003.

F28 Inserted (6.11.2003) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003* (S.I. No. 535 of 2003), reg. 17(1)(d).

Modifications etc. (not altering text):

C14 Application of Act extended (31.12.2005) by *Disability Act 2005* (14/2005), s. 42(4), S.I. No. 474 of 2005.

Genetic testing and processing of genetic data.

42.— ...

(4) A person who contravenes *subsection (2)* or *(3)* shall be guilty of an offence; an offence under this subsection shall be deemed to be an offence to which section 31 of the Data Protection Act 1988 applies.

Laying of regulations before Houses of Oireachtas.

32.—Every regulation made under this Act (other than *section 2*) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Fees.

33.—(1) Fees under this Act shall be paid into or disposed of for the benefit of the Exchequer in accordance with the directions of the Minister for Finance.

(2) The Public Offices Fees Act, 1879, shall not apply in respect of any fees under this Act.

Expenses of
Minister.

34.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Short title and
commencement.

35.—(1) This Act may be cited as the Data Protection Act, 1988.

(2) This Act shall come into operation on such day or days as, by order or orders made by the Minister under this section, may be fixed therefor either generally or with reference to any particular purpose or provision and different days may be so fixed for different purposes and different provisions.

Annotations:

Editorial Notes:

E25 Power pursuant to section exercised (19.12.1988) by *Data Protection Act (Commencement) Order 1988* (S.I. No. 349 of 1988).

FIRST SCHEDULE

CONVENTION FOR THE PROTECTION OF INDIVIDUALS
WITH REGARD TO AUTOMATIC PROCESSING OF PERSONAL
DATA DONE AT STRASBOURG ON THE 28TH DAY OF
JANUARY, 1981

PREAMBLE

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve greater unity between its members, based in particular on respect for the rule of law, as well as human rights and fundamental freedoms;

Considering that it is desirable to extend the safeguards for everyone's rights and fundamental freedoms, and in particular the right to the respect for privacy, taking account of the increasing flow across frontiers of personal data undergoing automatic processing;

Reaffirming at the same time their commitment to freedom of information regardless of frontiers;

Recognising that it is necessary to reconcile the fundamental values of the respect for privacy and the free flow of information between peoples,

Have agreed as follows:

CHAPTER I - GENERAL PROVISIONS

Article 1

Object and purpose

The purpose of this convention is to secure in the territory of each Party for every individual, whatever his nationality or residence, respect for his rights and fundamental freedoms, and in particular his right to privacy, with regard to automatic processing of personal data relating to him ("data protection").

Article 2

Definitions

For the purposes of this convention:

a. "personal data" means any information relating to an identified or identifiable individual ("data subject");

b. "automated data file" means any set of data undergoing automatic processing;

c. "automatic processing includes the following operations if carried out in whole or in part by automated means: storage of data, carrying out of logical and/or arithmetical operations on those data, their alteration, erasure, retrieval or dissemination;

d. "controller of the file" means the natural or legal person, public authority, agency or any other body who is competent according to the national law to decide what should be the purpose of the automated data file, which categories of personal data should be stored and which operations should be applied to them.

Article 3

Scope

1. The Parties undertake to apply this convention to automated personal data files and automatic processing of personal data in the public and private sectors.

2. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, or at any later time, give notice by a declaration addressed to the Secretary General of the Council of Europe:

a. that it will not apply this convention to certain categories of automated personal data files, a list of which will be deposited. In this list it shall not include, however, categories of automated data files subject under its domestic law to data protection provisions. Consequently, it shall amend this list by a new declaration whenever

additional categories of automated personal data files are subjected to data protection provisions under its domestic law;

b. that it will also apply this convention to information relating to groups of persons, associations, foundations, companies, corporations and any other bodies consisting directly or indirectly of individuals, whether or not such bodies possess legal personality;

c. that it will also apply this convention to personal data files which are not processed automatically.

3. Any State which has extended the scope of this convention by any of the declarations provided for in sub-paragraph 2.*b* or *c* above may give notice in the said declaration that such extensions shall apply only to certain categories of personal data files, a list of which will be deposited.

4. Any Party which has excluded certain categories of automated personal data files by a declaration provided for in sub-paragraph 2.*a* above may not claim the application of this convention to such categories by a Party which has not excluded them.

5. Likewise, a Party which has not made one or other of the extensions provided for in sub-paragraphs 2.*b* or *c* above may not claim the application of this convention on these points with respect to a Party which has made such extensions.

6. The declarations provided for in paragraph 2 above shall take effect from the moment of the entry into force of the convention with regard to the State which has made them if they have been made at the time of signature or deposit of its instrument of ratification, acceptance, approval or accession, or three months after their receipt by the Secretary General of the Council of Europe if they have been made at any later time. These declarations may be withdrawn, in whole or in part, by a notification addressed to the Secretary General of the Council of Europe. Such withdrawals shall take effect three months after the date of receipt of such notification.

CHAPTER II-BASIC PRINCIPLES FOR DATA PROTECTION

Article 4

Duties of the Parties

1. Each Party shall take the necessary measures in its domestic law to give effect to the basic principles for data protection set out in this chapter.

2. These measures shall be taken at the latest at the time of entry into force of this convention in respect of that Party.

Article 5

Quality of data

Personal data undergoing automatic processing shall be:

- a.* obtained and processed fairly and lawfully;
- b.* stored for specified and legitimate purposes and not used in a way incompatible with those purposes;
- c.* adequate, relevant and not excessive in relation to the purposes for which they are stored;
- d.* accurate and, where necessary, kept up to date;
- e.* preserved in a form which permits identification of the data subjects for no longer than is required for the purpose for which those data are stored.

Article 6

Special categories of data

Personal data revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life, may not be processed automatically unless domestic law provides appropriate safeguards. The same shall apply to personal data relating to criminal convictions.

Article 7

Data security

Appropriate security measures shall be taken for the protection of personal data stored in automated data files against accidental or unauthorised destruction or accidental loss as well as against unauthorised access, alteration or dissemination.

Article 8

Additional safeguards for the data subject

Any person shall be enabled:

- a.* to establish the existence of an automated personal data file, its main purposes, as well as the identity and habitual residence or principal place of business of the controller of the file;
- b.* to obtain at reasonable intervals and without excessive delay or expense confirmation of whether personal data relating to him are stored in the automated data file as well as communication to him of

such data in an intelligible form;

c. to obtain, as the case may be, rectification or erasure of such data if these have been processed contrary to the provisions of domestic law giving effect to the basic principles set out in Articles 5 and 6 of this convention;

d. to have a remedy if a request for confirmation or, as the case may be, communication, rectification or erasure as referred to in paragraphs *b* and *c* of this article is not complied with.

Article 9

Exceptions and restrictions

1. No exception to the provisions of Articles 5, 6 and 8 of this convention shall be allowed except within the limits defined in this article.

2. Derogation from the provisions of Articles 5, 6 and 8 of this convention shall be allowed when such derogation is provided for by the law of the Party and constitutes a necessary measure in a democratic society in the interests of:

a. protecting State security, public safety, the monetary interests of the State or the suppression of criminal offences;

b. protecting the data subject or the rights and freedoms of others.

3. Restrictions on the exercise of the rights specified in Article 8, paragraphs *b*, *c* and *d*, may be provided by law with respect to automated personal data files used for statistics or for scientific research purposes when there is obviously no risk of an infringement of the privacy of the data subjects.

Article 10

Sanctions and remedies

Each Party undertakes to establish appropriate sanctions and remedies for violations of provisions of domestic law giving effect to the basic principles for data protection set out in this chapter.

Article 11

Extended protection

None of the provisions of this chapter shall be interpreted as limiting or otherwise affecting the possibility for a Party to grant data subjects a wider measure of protection than that stipulated in this

convention.

CHAPTER III-TRANSBORDER DATA FLOWS

Article 12

Transborder flows of personal data and domestic law

1. The following provisions shall apply to the transfer across national borders, by whatever medium, of personal data undergoing automatic processing or collected with a view to their being automatically processed.

2. A Party shall not, for the sole purpose of the protection of privacy, prohibit or subject to special authorisation transborder flows of personal data going to the territory of another Party.

3. Nevertheless, each Party shall be entitled to derogate from the provisions of paragraph 2:

a. insofar as its legislation includes specific regulations for certain categories of personal data or of automated personal data files, because of the nature of those data or those files, except where the regulations of the other Party provide an equivalent protection;

b. when the transfer is made from its territory to the territory of a non-Contracting State through the intermediary of the territory of another Party, in order to avoid such transfers resulting in circumvention of the legislation of the Party referred to at the beginning of this paragraph.

CHAPTER IV - MUTUAL ASSISTANCE

Article 13

Co-operation between Parties

1. The Parties agree to render each other mutual assistance in order to implement this convention.

2. For that purpose:

a. each Party shall designate one or more authorities, the name and address of each of which it shall communicate to the Secretary General of the Council of Europe;

b. each Party which has designated more than one authority shall specify in its communication referred to in the previous subparagraph the competence of each authority.

3. An authority designated by a Party shall at the request of an

authority designated by another Party:

a. furnish information on its law and administrative practice in the field of data protection;

b. take, in conformity with its domestic law and for the sole purpose of protection of privacy, all appropriate measures for furnishing factual information relating to specific automatic processing carried out in its territory, with the exception however of the personal data being processed.

Article 14

Assistance to data subjects resident abroad

1. Each Party shall assist any person resident abroad to exercise the rights conferred by its domestic law giving effect to the principles set out in Article 8 of this convention.

2. When such a person resides in the territory of another Party he shall be given the option of submitting his request through the intermediary of the authority designated by that Party.

3. The request for assistance shall contain all the necessary particulars, relating *inter alia* to:

a. the name, address and any other relevant particulars identifying the person making the request;

b. the automated personal data file to which the request pertains, or its controller;

c. the purpose of the request.

Article 15

Safeguards concerning assistance rendered by designated authorities

1. An authority designated by a Party which has received information from an authority designated by another Party either accompanying a request for assistance or in reply to its own request for assistance shall not use that information for purposes other than those specified in the request for assistance.

2. Each Party shall see to it that the persons belonging to or acting on behalf of the designated authority shall be bound by appropriate obligations of secrecy or confidentiality with regard to that information.

3. In no case may a designated authority be allowed to make

under Article 14, paragraph 2, a request for assistance on behalf of a data subject resident abroad, of its own accord and without the express consent of the person concerned.

Article 16

Refusal of requests for assistance

A designated authority to which a request for assistance is addressed under Articles 13 or 14 of this convention may not refuse to comply with it unless:

- a. the request is not compatible with the powers in the field of data protection of the authorities responsible for replying;
- b. the request does not comply with the provisions of this convention;
- c. compliance with the request would be incompatible with the sovereignty, security or public policy (*ordre public*) of the Party by which it was designated, or with the rights and fundamental freedoms of persons under the jurisdiction of that Party.

Article 17

Costs and procedures of assistance

1. Mutual assistance which the Parties render each other under Article 13 and assistance they render to data subjects abroad under Article 14 shall not give rise to the payment of any costs or fees other than those incurred for experts and interpreters. The latter costs or fees shall be borne by the Party which has designated the authority making the request for assistance.
2. The data subject may not be charged costs or fees in connection with the steps taken on his behalf in the territory of another Party other than those lawfully payable by residents of that Party.
3. Other details concerning the assistance relating in particular to the forms and procedures and the languages to be used, shall be established directly between the Parties concerned.

CHAPTER V - CONSULTATIVE COMMITTEE

Article 18

Composition of the committee

1. A Consultative Committee shall be set up after the entry into force of this convention.

2. Each Party shall appoint a representative to the committee and a deputy representative. Any member State of the Council of Europe which is not a Party to the convention shall have the right to be represented on the committee by an observer.

3. The Consultative Committee may, by unanimous decision, invite any non-member State of the Council of Europe which is not a Party to the convention to be represented by an observer at a given meeting.

Article 19

Functions of the committee

The Consultative Committee:

a. may make proposals with a view to facilitating or improving the application of the convention;

b. may make proposals for amendment of this convention in accordance with Article 21;

c. shall formulate its opinion on any proposal for amendment of this convention which is referred to it in accordance with Article 21, paragraph 3;

d. may, at the request of a Party, express an opinion on any question concerning the application of this convention.

Article 20

Procedure

1. The Consultative Committee shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within twelve months of the entry into force of this convention. It shall subsequently meet at least once every two years and in any case when one-third of the representatives of the Parties request its convocation.

2. A majority of representatives of the Parties shall constitute a quorum for a meeting of the Consultative Committee.

3. After each of its meetings, the Consultative Committee shall submit to the Committee of Ministers of the Council of Europe a report on its work and on the functioning of the convention.

4. Subject to the provisions of this convention, the Consultative Committee shall draw up its own Rules of Procedure.

CHAPTER VI - AMENDMENTS

Article 21

Amendments

1. Amendments to this convention may be proposed by a Party, the Committee of Ministers of the Council of Europe or the Consultative Committee.

2. Any proposal for amendment shall be communicated by the Secretary General of the Council of Europe to the member States of the Council of Europe and to every non-member State which has acceded to or has been invited to accede to this convention in accordance with the provisions of Article 23.

3. Moreover, any amendment proposed by a Party or the Committee of Ministers shall be communicated to the Consultative Committee, which shall submit to the Committee of Ministers its opinion on that proposed amendment.

4. The Committee of Ministers shall consider the proposed amendment and any opinion submitted by the Consultative Committee and may approve the amendment.

5. The text of any amendment approved by the Committee of Ministers in accordance with paragraph 4 of this article shall be forwarded to the Parties for acceptance.

6. Any amendment approved in accordance with paragraph 4 of this article shall come into force on the thirtieth day after all Parties have informed the Secretary General of their acceptance thereof.

CHAPTER VII - FINAL CLAUSES

Article 22

Entry into force

1. This convention shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2. This convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five member States of the Council of Europe have expressed their consent to be bound by the convention in accordance with the provisions of the preceding paragraph.

3. In respect of any member State which subsequently expresses its consent to be bound by it, the convention shall enter into force on

the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 23

Accession by non-member States

1. After the entry into force of this convention, the Committee of Ministers of the Council of Europe may invite any State not a member of the Council of Europe to accede to this convention by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the committee.

2. In respect of any acceding State, the convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 24

Territorial clause

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this convention shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this convention to any other territory specified in the declaration. In respect of such territory the convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

Article 25

Reservations

No reservation may be made in respect of the provisions of this convention.

Article 26

Denunciation

1. Any Party may at any time denounce this convention by means of a notification addressed to the Secretary General of the Council of Europe.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

Article 27

Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to this convention of:

- a.* any signature;
- b.* the deposit of any instrument of ratification, acceptance, approval or accession;
- c.* any date of entry into force of this convention in accordance with Articles 22, 23 and 24;
- d.* any other act, notification or communication relating to this convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, the 28th day of January 1981, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to any State invited to accede to this Convention.

Section 9.

SECOND SCHEDULE

THE DATA PROTECTION COMMISSIONER

1. The Commissioner shall be a body corporate and shall be independent in the performance of his functions.

2. (1) The Commissioner shall be appointed by the Government and, subject to the provisions of this Schedule, shall hold office

upon such terms and conditions as the Government may determine.

(2) The Commissioner—

- (a) may at any time resign his office as Commissioner by letter addressed to the Secretary to the Government and the resignation shall take effect on and from the date of receipt of the letter,
- (b) may at any time be removed from office by the Government if, in the opinion of the Government, he has become incapable through ill-health of effectively performing his functions or has committed stated misbehaviour, and
- (c) shall, in any case, vacate the office of Commissioner on reaching the age of 65 years ~~F29~~*[but where the person is a new entrant (within the meaning of the *Public Service Superannuation (Miscellaneous Provisions) Act 2004*) appointed on or after 1 April 2004, then the requirement to vacate office on grounds of age shall not apply].*

3. The term of office of a person appointed to be the Commissioner shall be such term not exceeding 5 years as the Government may determine at the time of his appointment and, subject to the provisions of this Schedule, he shall be eligible for re-appointment to the office.

4. (1) Where the Commissioner is—

- (a) nominated as a member of Seanad Éireann,
- (b) elected as a member of either House of the Oireachtas, the European Parliament or a local authority, or
- (c) regarded pursuant to section 15 (inserted by the European Assembly Elections Act, 1984) of the European Assembly Elections Act, 1977, as having been elected to such Parliament to fill a vacancy,

he shall thereupon cease to be the Commissioner.

(2). A person who is for the time being—

- (i) entitled under the standing orders of either House of the Oireachtas to sit therein,
- (ii) a member of the European Parliament, or
- (iii) entitled under the standing orders of a local authority to sit therein,

shall, while he is so entitled or is such a member, be disqualified for holding the office of Commissioner.

5. The Commissioner shall not hold any other office or employment in respect of which emoluments are payable.

6. There shall be paid to the Commissioner, out of moneys provided by the Oireachtas, such remuneration and allowances for expenses as the Minister, with the consent of the Minister for Finance, may from time to time determine.

7. (a) The Minister shall, with the consent of the Minister for Finance, make and carry out, in accordance with its terms, a scheme or schemes for the granting of pensions, gratuities or other allowances on retirement or death to or in respect of persons who have held the office of Commissioner.

(b) The Minister may, with the consent of the Minister for Finance, at any time make and carry out, in accordance with its terms, a scheme or schemes amending or revoking a scheme under this paragraph.

(c) A scheme under this paragraph shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

8. (1) The Minister may appoint to be members of the staff of the Commissioner such number of persons as may be determined from time to time by the Minister, with the consent of the Minister for Finance.

(2) Members of the staff of the Commissioner shall be civil servants.

(3) The functions of the Commissioner under this Act may be performed during his temporary absence by such member of the staff of the Commissioner as he may designate for that purpose.

(4) The Minister may delegate to the Commissioner the powers exercisable by him under the **F30[Public Service Management (Recruitment and Appointments) Act 2004]**, and the Civil Service Regulation Acts, 1956 and 1958, as the appropriate authority in relation to members of the staff of the Commissioner and, if he does so, then so long as the delegation remains in force—

(a) those powers shall, in lieu of being exercisable by the

Minister, be exercisable by the Commissioner, and

(b) the Commissioner shall, in lieu of the Minister, be for the purposes of this Act the appropriate authority in relation to members of the staff of the Commissioner.

9. (1) The Commissioner shall keep in such form as may be approved of by the Minister, with the consent of the Minister for Finance, all proper and usual accounts of all moneys received or expended by him and all such special accounts (if any) as the Minister, with the consent of the Minister for Finance, may direct.

(2) Accounts kept in pursuance of this paragraph in respect of each year shall be submitted by the Commissioner in the following year on a date (not later than a date specified by the Minister) to the Comptroller and Auditor General for audit and, as soon as may be after the audit, a copy of those accounts, or of such extracts from those accounts as the Minister may specify, together with the report of the Comptroller and Auditor General on the accounts, shall be presented by the Commissioner to the Minister who shall cause copies of the documents presented to him to be laid before each House of the Oireachtas.

F31[10. (1) A person who holds or held the office of Commissioner or who is or was a member of the staff of the Commissioner shall not disclose to a person other than the Commissioner or such a member any information that is obtained by him or her in his capacity as Commissioner or as such a member that could reasonably be regarded as confidential without the consent of the person to whom it relates.

(2) A person who contravenes subparagraph (1) of this paragraph shall be guilty of an offence.]

Section 16 (1) (a).

Annotations:

Amendments:

F29 Amended (25.03.2004) by *Public Service Superannuation (Miscellaneous Provisions) Act 2004* (7/2004), ss. 3, 6, 7, 10, sch. 2, pt. 2; commenced on enactment.

F30 Substituted (6.10.2004) by *Public Service Management (Recruitment and Appointments) Act 2004*, (33/2004) ss. 3, 4, 61 (1), 63, sch. 2, pt. 1; commenced on enactment.

F31 Inserted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 20, S.I. No. 207 of 2003.

Editorial Notes:

E26 Power exercised (25.05.1993) pursuant to schedule by *Data Protection Commissioner Superannuation Scheme 1993* (S.I. No. 141 of 1993).

THIRD SCHEDULE

F31[...]

Annotations:

Amendments:

F31 Repealed (1.10.07) by *Data Protection (Amendment) Act 2003* (6/2003), s. 22; S.I. No. 656 of 2007.



Number 6 of 2003

DATA PROTECTION (AMENDMENT) ACT, 2003

ARRANGEMENT OF SECTIONS

Section

2. Definitions

...

14. Amendment of section 13 (codes of practice) of Principal Act.

...

23. Short title, collective citation, construction and commencement.

Acts Referred to

Data Protection Act 1988

1988, No. 25

...



Number 6 of 2003

DATA PROTECTION (AMENDMENT) ACT, 2003

AN ACT TO GIVE EFFECT TO DIRECTIVE 95/46/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 24 OCTOBER 1995 ON THE PROTECTION OF INDIVIDUALS WITH REGARD TO THE PROCESSING OF PERSONAL DATA AND ON THE FREE MOVEMENT OF SUCH DATA, FOR THAT PURPOSE TO AMEND THE DATA PROTECTION ACT 1988 AND TO PROVIDE FOR RELATED MATTERS. [10th April, 2003]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Definitions

1.—In this Act— ...

“the Principal Act” means the *Data Protection Act 1988*.

...

Amendment of section 13 (codes of practice) of Principal Act.

14.—...

(2) A code of practice approved under subsection (2) of the said section 13 and in force immediately before the commencement of this section shall continue in force after such commencement as if approved under subsection (2) (inserted by this section) of section 13 of the Principal Act.

...

Short title, collective citation, construction and commencement.

23.—(1) This Act may be cited as the *Data Protection (Amendment) Act 2003*.

(2) This Act and the Principal Act may be cited together as the *Data Protection Acts 1988 and 2003* and shall be construed together as one.

...

Restatements of Prevention of Corruption Acts 1889-2005

Certified by the Attorney General on xx.xx.2008 under section 2(1) of the Statute Law (Restatement) Act 2002 (No. 33 of 2002) to be a statement of the law contained in the Prevention of Corruption Acts 1889-2005 as on that date.

Statute Law Restatement, as provided for in the Statute Law (Restatement) Act 2002, is an administrative consolidation of an Act. It is publicly available in printed or electronic form in a single text and is certified by the Attorney General as an up-to-date statement of the Act in question. It does not have the force of law but can be cited in court as *prima facie* evidence of the relevant law.

Introduction

The following Acts are restated:

- The Public Bodies Corrupt Practice Act 1889
- The Prevention of Corruption Act 1906
- The Prevention of Corruption Act 1916
- The Ethics in Public Office Act 1995, ss. 1 and 38
- The Prevention of Corruption (Amendment) Act 2001
- The Proceeds of Crime Act 2005, Part 5.

Each restatement presents the text of the Act as it has been amended since enactment, but omits amending provisions which apply to other legislation. Each restated Act preserves the format in which it was first passed.

Annotations

The restatements contain three types of note, one for amendments and two for legislative effects which do not alter the text of the restated Act:

- **F**-notes or footnotes explain amendments to the legislation as originally passed. Amendments are presented as **coloured** text with an accompanying **F**-note at the start of the amending text, matched by an **F**-note below the section explaining the origin of the amendment.
- **C**-notes or cross-reference notes are included beneath any preamble to describe non-textual amendments or legislative material that affect the restated Act

generally. Material that affects a particular section is presented, again as a C-note, after that section.

- E-notes or editorial notes indicate editorial comments made by the Law Reform Commission, and include references to the exercise of power to make subsidiary legislation, and to previous affecting provisions.

The restated Acts may be read separately as each is fully annotated. They are published together as a group because of their collective citation (*Proceeds of Crime (Amendment) Act 2005* section 1(4)). Where a later Act amends an earlier one, the amending provision is inserted into the earlier Act and omitted from the later Act. The omitted text is marked with three dots (...).

Format of Annotations

This format is best illustrated by explaining a complex example.

C3 Act affected (26.11.2001) by *Prevention of Corruption (Amendment) Act 2001*, (27/2001), ss. 5, 9 and 10, S.I. No. 519 of 2001, (with the exception of s. 4(2)(c), commenced (4.11.2002) by S.I. No. 477 of 2002); as amended (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005*, (1/2005), s. 23, commenced on enactment; and (01.08.2006) by *Criminal Justice Act 2006*, (26/2006), s. 191, S.I. 390 of 2006.

- The note in bold type (**C3**) tells the user what type of provision is being annotated, and the number of that particular type of note within the annotations to the Act. In the case of F-notes, a companion note of the same number will be found in the text.
- The next part of the annotation (“applied”) states what change or effect is being described by the note. Where an amendment has been made, this will typically read “substituted”, “inserted” or “amended”. Other descriptions such as “applied”, “affected” and “excluded” tell the user why the note has been included in the restatement.
- After this the user will see a date in the format (26.11.2001). This date is the date on which the original alteration was made operative or commenced, not necessarily the date it was enacted.
- The date is followed by the title of the Act or Statutory Instrument which affects, or refers to, the legislation being restated.
- This is followed by a bracket indicating the year and number of that Act or Statutory Instrument (27/2001).
- After this the section or sections of that Act which have an effect are listed (ss. 5, 9 and 10).
- After the affecting parts have been listed, the commencement information is included (S.I. No. 519 of 2001). If, as with the *Proceeds of Crime (Amendment) Act 2005*, the Act was commenced on enactment, this is recorded here.

The annotation concludes with information on whether the affecting Act has itself been amended. In the case above the affecting part of the 2001 Act was amended by the cited Acts from 2005 and 2006. These subsequent amending Acts are referred to in a manner consistent with the standard notation.

Acts which affect these restatements

- Criminal Justice Act 2006
- Criminal Law Act 1997
- Electoral Act 1963
- Local Government Act 2001
- Statute Law Revision Act 1908

Statutory instruments, orders and regulations which affect these restatements

- Central Bank Act, 1989 (Commencement) Order 1989, S.I. No. 176 of 1989
- Central Bank and Financial Services Authority of Ireland Act 2003 (Commencement of Certain Provisions) Order 2003, S.I. No. 160 of 2003
- Criminal Justice Act 2006 (Commencement) Order 2006, S.I. No. 390 of 2006
- Ethics in Public Office Act, 1995 (Commencement) Order 1995, S.I. No. 282 of 1995
- Local Government Act 2001 (Commencement) (No. 3) Order 2002, S.I. No. 218 of 2002
- Local Government Act 2001 (Commencement) Order 2004, S.I. No. 217 of 2004
- Prevention of Corruption Acts, 1889 To 1916, Adaptation Order 1928, (S.R.O. 37 of 1928)
- Prevention of Corruption (Amendment) Act 2001 (Commencement) Order 2001, S.I. No. 519 of 2001
- Prevention of Corruption (Amendment) Act 2001 (Commencement) (No. 2) Order 2002, S.I. No. 477 of 2002



Public Bodies Corrupt Practices Act, 1889

(52 & 53 Vict.) CHAPTER 69.

An Act for the more effectual Prevention and Punishment of Bribery and Corruption of and by Members, Officers, or Servants of Corporations, Councils, Boards, Commissions, or other Public Bodies.

[30th August 1889]

Annotations:

Modifications etc. (not altering text):

C1 Act affected (12.06.1928) by *Prevention of Corruption Acts, 1889 To 1916, Adaptation Order 1928*, (S.R.O. 37 of 1928).

No. 37/1928:

PREVENTION OF CORRUPTION ACTS, 1889 TO 1916, ADAPTATION ORDER, 1928.

WHEREAS it is enacted by section 12 of the Adaptation of Enactments Act, 1922 (No. 2 of 1922), that the Executive Council of Saorstát Eireann may from time to time by order make all such general or specific adaptations of or modifications in any British Statute which in the opinion of the Executive Council are necessary in order to enable such statute to have full force and effect in Saorstát Eireann :

AND WHEREAS in the opinion of the Executive Council the adaptations intended to be made by this order of the Prevention of Corruption Acts, 1889 to 1916 (being British statutes within the meaning of the said Adaptation of Enactments Act, 1922), are necessary in order to enable such statutes to have full force and effect in Saorstát Eireann;

NOW, the Executive Council of Saorstát Éireann in exercise of the powers conferred on them by section 12 of the Adaptation of Enactments Act, 1922 (No. 2 of 1922), and of every and any other power them in this behalf enabling, do hereby order as follows :—

1. This Order may be cited for all purposes as the Prevention of Corruption Acts, 1889 to 1916, Adaptation Order, 1928.

2. The Interpretation Act, 1889, applies to the interpretation of this Order in like manner as it applies to the interpretation of an Act of the Oireachtas passed before the 1st day of January, 1924.

...

C2 Act affected (1.11.1995) by *Ethics in Public Office Act 1995*, (22/1995) ss. 1(3) and 38; S.I. No. 282 of 1995.

Short title, commencement, partial cesser and collective citation.

1.— ...

(3) The Prevention of Corruption Acts, 1889 to 1916, and *section 38* may be cited together as the Prevention of Corruption Acts, 1889 to 1995.

...

Amendment of Prevention of Corruption Acts, 1889 to 1916.

38. — The Prevention of Corruption Acts, 1889 to 1916, shall be amended as follows:

...

C3 Act affected (26.11.2001) by *Prevention of Corruption (Amendment) Act 2001*, (27/2001) ss. 3-6 and 9-10; S.I. No. 519 of 2001 (with the exception of s. 4(2)(c), commenced (4.11.2002) by S.I. No. 477 of 2002); as amended (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005*, (1/2005), s. 23, commenced on enactment; and (01.08.2006) by *Criminal Justice Act 2006*, (26/2006), s. 191; S.I. 390 of 2006.

Presumption of corruption from failure to disclose political donations.

3.—(1) Where in any proceedings against a person to whom this section applies for an offence under the Public Bodies Corrupt Practices Act, 1889, as amended, or the Act of 1906, as amended, it is proved that—

- (a) the person received a donation exceeding in value the relevant amount specified in the Electoral Act, 1997, or the Local Elections (Disclosure of Donations and Expenditure) Act, 1999, as appropriate
- (b) the person failed to disclose the donation in accordance with that Act to the Public Offices Commission or the local authority concerned as appropriate, and
- (c) the donor had an interest in the person doing any act or making any omission in relation to his or her office or position or his or her principal's affairs or business,

the donation shall be deemed to have been given and received corruptly as an inducement to or reward for the person doing any act or making any omission in relation to his or her office or position or his or her principal's affairs or business unless the contrary is proved.

...

Presumption of corruption.

4.—(1) Where in any proceedings against a person referred to in subsection (5)(b) of section 1 (inserted by *section 2* of this Act) of the Act of 1906 for an offence under the

Public Bodies Corrupt Practices Act, 1889, as amended, or the Act of 1906, as amended, it is proved that—

- (a) any gift, consideration or advantage has been given to or received by a person,
- (b) the person who gave the gift, consideration or advantage or on whose behalf the gift, consideration or advantage was given had an interest in the discharge by the person of any of the functions specified in this section,

the gift or consideration or advantage shall be deemed to have been given and received corruptly as an inducement to or reward for the person performing or omitting to perform any of the functions aforesaid unless the contrary is proved.

(2) This section applies to the following functions:

...

Search Warrant.

5.—(1) If a judge of the District Court is satisfied by information on oath of a member of the Garda Síochána, or if a member of the Garda Síochána not below the rank of superintendent is satisfied, that there are reasonable grounds for suspecting that evidence of or relating to the commission of an offence or suspected offence under the Prevention of Corruption Acts 1889 to 2001 punishable by imprisonment for a term of 5 years or by a more severe penalty ('an offence') is to be found in any place, he or she may issue a warrant for the search of that place and any persons found at that place.

...

Corruption occurring partially in State.

6.—A person may be tried in the State for an offence under the Public Bodies Corrupt Practices Act, 1889, or the Act of 1906, if any of the acts alleged to constitute the offence was committed in the State notwithstanding that other acts constituting the offence were committed outside the State.

...

Offences by bodies corporate.

9.—(1) Where an offence under the *Prevention of Corruption Acts, 1889 to 2001*, has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any wilful neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

...

Short title, collective citation and construction.

10.—...

(2) The Prevention of Corruption Acts, 1889 to 1995, and this Act may be cited together as the Prevention of Corruption Acts, 1889 to 2001, and shall be construed together as one.

...

C4 Application of Act not excluded (1.01.2003 and 21.05.2004) by *Local Government Act 2001*, (37/2001), s. 170; S.I. No. 218 of 2002 and S.I. No. 217 of 2004.

Prohibition of favours, rewards, etc.

170.—(1) An employee or a member of a local authority or of a committee of a local authority shall not seek, exact or accept from any person, other than from the local authority concerned, any remuneration, fee, reward or other favour for anything done or not done by virtue of his or her employment or office, and a code of conduct under

section 169 may include guidance for the purposes of this subsection.

(2) *Subsection (1)* shall not be read so as to exclude the persons to whom that subsection relates from the application of the Prevention of Corruption Acts, 1889 to 1995, and any Act which is to be construed together as one with those Acts.

Admissibility of certain documents.

16B.—(1) For the purposes of this section— ...

(b) ‘corrupt conduct’ is any conduct which at the time it occurred was an offence under the Prevention of Corruption Acts 1889 to 2001, the Official Secrets Act 1963 or the Ethics in Public Office Act 1995 ;

...

F1[...]

Annotations:

Amendments:

F1 Preamble repealed (21.12.1908) by *Statute Law Revision Act 1908* (8 Edw. 7 ch. 49), s. 1 and sch.; commenced on enactment.

*Corruption in
office a
misdemeanor.*

1.—(1) Every person who shall by himself or by or in conjunction with any other person, corruptly solicit or receive, or agree to receive, for himself, or for any other person, any gift, loan, fee, reward, or advantage whatever as an inducement to, or reward for, or otherwise on account of **F2**[an office holder or his or her special adviser or a director of, or occupier of a position of employment in] a public body as in this Act defined, doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the said **F3**[office holder or public body] is concerned, shall be guilty of a misdemeanor.

(2.) Every person who shall by himself or by or in conjunction with any other person corruptly give, promise, or offer any gift, loan, fee, reward, or advantage whatsoever to any person, whether for the benefit of that person or of another person, as an inducement to or reward for or otherwise on account of any **F2**[an office holder or his or her special adviser or a director of, or occupier of a position of employment in] any **F3**[office holder or public body] as in this Act defined, doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such **F3**[office holder or public body] as aforesaid is concerned, shall be guilty of a misdemeanor.

Annotations:

Amendments:

- F2** Substituted (1.11.1995) by *Ethics in Public Office Act, 1995*, (22/1995) s. 38(a)(i)(I); S.I. No. 282 of 1995.
- F3** Substituted (1.11.1995) by *Ethics in Public Office Act, 1995*, (22/1995) s. 38(a)(i)(II); S.I. No. 282 of 1995.

Penalty for offences.

2. Any person on conviction for offending as aforesaid shall, at the discretion of the court before which he is convicted,—

F4[(a) (i) if the conviction is a summary conviction, be liable to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 12 months or to both, or

(ii) if the conviction is on indictment, be liable to a fine not exceeding £50,000 or to imprisonment for a term not exceeding 7 years or to both, and paragraphs (b) to (e) of this subsection shall apply only if the conviction is on indictment; and]

(b) in addition be liable to be ordered to pay to such body, and in such manner as the court directs, the amount or value of any gift, loan, fee, or reward received by him or any part thereof; and

F5[(c) ...

(d) ...]

(e) if such person is an officer or servant in the employ of any public body upon such conviction he shall, at the discretion of the court, be liable to forfeit his right and claim to any compensation or pension to which he would otherwise have been entitled.

Annotations:

Amendments:

- F4** Substituted (1.11.1995) by *Ethics in Public Office Act 1995*, (22/1995), s. 38(a)(II); S.I. No. 282 of 1995.
- F5** Repealed (9.12.1963) by *Electoral Act 1963*, (19/1963), s. 3 and sch. 1; S.I. No. 245 of 1963.

Savings.

3.— (1.)**F6** [...]

(2.) A person shall not be exempt from punishment under this Act by reason of the invalidity of the appointment or election of a person to a public office.

Annotations:

Amendments:

F6 Repealed (21.12.1908) by *Statute Law Revision Act 1908*, (8 Edw. 7 ch. 49), s. 1 and sch.; commenced on enactment.

Restriction on prosecution.

4.—(1.) A prosecution for an offence under this Act shall not be instituted except by or with the consent of the Attorney General.

(2.) In this section the expression ‘Attorney General’ means the Attorney or Solicitor General for England, and as respects Scotland means the Lord Advocate, and as respects Ireland means the Attorney or Solicitor General for Ireland.

Annotations:

Modifications etc. (not altering text):

C6 Act affected (12.10.1928) by *Prevention of Corruption Acts 1889 To 1916 Adaptation Order 1928*, (S.R.O. 37 of 1928), s. 3 and sch. part 1.

...

In sub-section (1) the reference to the Attorney-General shall be construed as a reference to the Attorney-General of Saorstát Eireann and sub-section (2) shall cease to have effect.

...

Expenses of prosecution.

5. F7 [...]

Annotations:

Amendments:

F7 Repealed (22.07.1997) by *Criminal Law Act 1997*, (14/1997), s. 16 and sch. 3; commenced three months after enactment.

Jurisdiction of quarter sessions.

6. A court of general or quarter sessions shall in England have jurisdiction to inquire of, hear, and determine an offence under this Act.

Interpretation.

7. In this Act—

The expression ‘public body’ means any council of a county or county of a city or town, any council of a municipal borough, also any board, commissioners, select vestry, or other body which has power to act under and for the purposes of any Act relating to local government, or the public health, or to poor law or otherwise to administer money raised by rates in pursuance of any public general Act, but does not include any public body as above defined existing elsewhere than in **F8**[Saorsát Eireann]:

The expression **F9**['public office' means any office or employment of a person as an office holder or special adviser or as a director of, or occupier of a position of employment in, a public body; 'director', 'office holder', 'public body' and 'special adviser' have the meanings

assigned to them by the Ethics in Public Office Act, 1995:]

The expression ‘person’ includes a body of persons, corporate or unincorporate:

The expression ‘advantage’ includes any office or dignity, and any forbearance to demand any money or money's worth or valuable thing, and includes any aid, vote, consent or influence, or pretended aid, vote, consent, or influence, and also includes any promise or procurement of or agreement or endeavour to procure, or the holding out of any expectation of any gift, loan, fee, reward, or advantage, as before defined.

Annotations:

Amendments:

F8 Substituted (12.06.1928) by *Prevention of Corruption Acts, 1889 To 1916, Adaptation Order 1928*, (S.R.O. 37 of 1928), s. 3 and sch. part 1.

F9 Substituted (1.11.1995) by *Ethics in Public Office Act 1995*, (22/1995), s. 38(a)(III); S.I. No. 282 of 1995.

Application of Act to Scotland.

8. In the application of this Act to Scotland the sheriff and sheriff substitute shall have jurisdiction to try any offence under this Act; and

The expression ‘misdemeanor’ shall mean ‘crime and offence;’ and

The expression ‘municipal borough’ shall mean any ‘burgh.’

50 & 51 Vict. c. 20. not to apply to trial under Act.

9. The provisions of the Criminal Law and Procedure (Ireland) Act, 1887, shall not apply to any trial under the provisions of this Act.

Short title.

10. This Act may be cited as the Public Bodies Corrupt Practices Act, 1889.



Prevention of Corruption Act, 1906.

(6 Edw. 7.) CHAPTER 34.

An Act for the better Prevention of Corruption.

[4th August 1906]

B E it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Annotations:

Modifications etc. (not altering text):

C1 Act affected (22.12.1916) by *Prevention of Corruption Act 1916*, (6 & 7 Geo. 5 ch. 64), ss. 1-4, commenced on enactment, as amended (1.11.95) by *Ethics in Public Office Act 1995*, (22/1995), s. 38; S.I. No. 282 of 1995.

1. [...]

Presumption of corruption in certain cases.

2. Where in any proceedings against a person for an offence under the Prevention of Corruption Act, 1906, as amended, or the Public Bodies Corrupt Practices Act, 1889, as amended, it is proved that any money, gift or other consideration has been paid or given to or received by an office holder or special adviser or a director of, or occupier of a position of employment in, a public body by or from a person or agent of a person holding or seeking to obtain a contract from a Minister of the Government or a public body, the money, gift or consideration shall be deemed to have been paid or given and received corruptly as such inducement or reward as is mentioned in such Act unless the contrary is proved.

Time for taking proceedings.

3. Notwithstanding anything in the Summary Jurisdiction Acts proceedings under the Prevention of Corruption Act, 1906, instituted with a view to obtaining a summary conviction for an offence thereunder may be commenced at any time before the expiration of six months after the first discovery of the offence by the prosecutor.

Short title and interpretation.

4.—(1) This Act may be cited as the Act, 1916, and the Public Bodies Corrupt Practices Act, 1889, the Prevention of Corruption Act, 1906, and this Act may be cited together as the Prevention of Corruption Acts, 1889 to 1916.

(2) In this Act 'director', 'office holder', 'special adviser' and 'public body' have the meanings assigned to them by the Public Bodies Corrupt Practices Act, 1889, as amended, and 'agent' and 'consideration' have the meanings assigned to them by the Prevention of Corruption Act, 1906, as amended.

C2 Act affected (12.06.1928) by *Prevention of Corruption Acts, 1889 To 1916, Adaptation Order 1928*, (S.R.O. 37 of 1928).

No. 37/1928:

PREVENTION OF CORRUPTION ACTS, 1889 TO 1916, ADAPTATION ORDER, 1928.

WHEREAS it is enacted by section 12 of the Adaptation of Enactments Act, 1922 (No. 2 of 1922), that the Executive Council of Saorstát Eireann may from time to time by order make all such general or specific adaptations of or modifications in any British Statute which in the opinion of the Executive Council are necessary in order to enable such statute to have full force and effect in Saorstát Eireann :

AND WHEREAS in the opinion of the Executive Council the adaptations intended to be made by this order of the Prevention of Corruption Acts, 1889 to 1916 (being British statutes within the meaning of the said Adaptation of Enactments Act, 1922), are necessary in order to enable such statutes to have full force and effect in Saorstát Eireann;

NOW, the Executive Council of Saorstát Eireann in exercise of the powers conferred on them by section 12 of the Adaptation of Enactments Act, 1922 (No. 2 of 1922), and of every and any other power them in this behalf enabling, do hereby order as follows :—

1. This Order may be cited for all purposes as the Prevention of Corruption Acts, 1889 to 1916, Adaptation Order, 1928.

2. The Interpretation Act, 1889, applies to the interpretation of this Order in like manner as it applies to the interpretation of an Act of the Oireachtas passed before the 1st day of January, 1924.

...

C3 Act affected (1.11.1995) by *Ethics in Public Office Act 1995*, (22/1995) ss. 1(3) and 38; S.I. No. 282 of 1995.

Short title, commencement, partial cesser and collective citation.

1.— ...

(3) The Prevention of Corruption Acts, 1889 to 1916, and *section 38* may be cited together as the Prevention of Corruption Acts, 1889 to 1995.

Amendment of Prevention of Corruption Acts, 1889 to 1916.

38. The Prevention of Corruption Acts, 1889 to 1916, shall be amended as follows:

...

C4 Act affected (26.11.2001) by *Prevention of Corruption (Amendment) Act 2001*, (27/2001), ss. 2-10; S.I. No. 519 of 2001, (with the exception of s. 4(2)(c), commenced (4.11.2002) by S.I. No. 477 of 2002); as amended (12.02.2005) by

Proceeds of Crime (Amendment) Act 2005, (1/2005), s. 23, commenced on enactment; and (01.08.2006) by *Criminal Justice Act 2006*, (26/2006), s. 191; S.I. 390 of 2006.

Seizure of suspected bribe.

2A.—(1) A member of the Garda Síochána may seize any gift or consideration which the member suspects to be a gift or consideration within the meaning of section 1 of the Prevention of Corruption Act 1906, as amended by section 2 of this Act.

...

Presumption of corruption from failure to disclose political donations.

3.—(1) Where in any proceedings against a person to whom this section applies for an offence under the Public Bodies Corrupt Practices Act, 1889, as amended, or the Act of 1906, as amended, it is proved that—

- (a) the person received a donation exceeding in value the relevant amount specified in the Electoral Act, 1997, or the Local Elections (Disclosure of Donations and Expenditure) Act, 1999, as appropriate,
- (b) the person failed to disclose the donation in accordance with that Act to the Public Offices Commission or the local authority concerned as appropriate, and
- (c) the donor had an interest in the person doing any act or making any omission in relation to his or her office or position or his or her principal's affairs or business, the donation shall be deemed to have been given and received corruptly as an inducement to or reward for the person doing any act or making any omission in relation to his or her office or position or his or her principal's affairs or business unless the contrary is proved.

...

Presumption of corruption.

4.—(1) Where in any proceedings against a person referred to in subsection (5)(b) of section 1 (inserted by *section 2* of this Act) of the Act of 1906 for an offence under the Public Bodies Corrupt Practices Act, 1889, as amended, or the Act of 1906, as amended, it is proved that—

- (a) any gift, consideration or advantage has been given to or received by a person,
- (b) the person who gave the gift, consideration or advantage or on whose behalf the gift, consideration or advantage was given had an interest in the discharge by the person of any of the functions specified in this section,

the gift or consideration or advantage shall be deemed to have been given and received corruptly as an inducement to or reward for the person performing or omitting to perform any of the functions aforesaid unless the contrary is proved.

...

Search Warrant.

5.—(1) If a judge of the District Court is satisfied by information on oath of a member of the Garda Síochána, or if a member of the Garda Síochána not below the rank of superintendent is satisfied, that there are reasonable grounds for suspecting that evidence of or relating to the commission of an offence or suspected offence under the Prevention of Corruption Acts 1889 to 2001 punishable by imprisonment for a term of 5 years or by a more severe penalty ('an offence') is to be found in any place, he or she may issue a warrant for the search of that place and any persons found at that place.

...

Corruption occurring partially in State.

6.—A person may be tried in the State for an offence under the Public Bodies Corrupt Practices Act, 1889, or the Act of 1906, if any of the acts alleged to constitute the offence was committed in the State notwithstanding that other acts constituting the offence were committed outside the State.

Corruption occurring outside State.

7.—(1) Subject to *subsection (2)* of this section, where a person does outside the State an act that, if done in the State, would constitute an offence under section 1 (inserted by *section 2* of this Act) of the Act of 1906, he or she shall be guilty of an offence and he or she shall be liable on conviction to the penalty to which he or she would have been liable if he or she had done the act in the State.

(2) *Subsection (1)* shall apply only where the person concerned is a person referred to in *subsection (5) (b)* of the said section 1.

Corruption in office.

8.—(1) A public official who does any act in relation to his or her office or position for the purpose of corruptly obtaining a gift, consideration or advantage for himself, herself or any other person, shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding £2,362.69 or to imprisonment for a term not exceeding 12 months or to both, or

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 10 years or to both.

(2) In this section—

“consideration” includes valuable consideration of any kind;

“public official” means a person referred to in *subsection (5)(b)* of section 1 (inserted by *section 2* of this Act) of the Act of 1906.

Offences by bodies corporate.

9.—(1) Where an offence under the *Prevention of Corruption Acts, 1889 to 2001*, has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any wilful neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

...

Short title, collective citation and construction.

10.—...

(2) The *Prevention of Corruption Acts, 1889 to 1995*, and this Act may be cited together as the *Prevention of Corruption Acts, 1889 to 2001*, and shall be construed together as one.

...

C5 Application of Act not excluded (1.01.2003 and 21.05.2004) by *Local Government Act 2001*, (37/2001), s. 170; S.I. No. 218 of 2002 and S.I. No. 217 of 2004.

Prohibition of favours, rewards, etc.

170.—(1) An employee or a member of a local authority or of a committee of a local authority shall not seek, exact or accept from any person, other than from the local authority concerned, any remuneration, fee, reward or other favour for anything done or not done by virtue of his or her employment or office, and a code of conduct under *section 169* may include guidance for the purposes of this subsection.

(2) *Subsection (1)* shall not be read so as to exclude the persons to whom that subsection relates from the application of the Prevention of Corruption Acts, 1889 to 1995, and any Act which is to be construed together as one with those Acts.

Editorial note:

E1 Previous affecting provision: Act applied (12.07.1989) by *Central Bank Act 1989*, (16/1989), ss. 16 and 17; S.I. No. 176 of 1989. S. 16 repealed (01.05.2003) by *Central Bank and Financial Services Authority Act 2003*, (12/2003), s. 35 sch. 1, S.I. No. 160 of 2003. S. 17 applies to every person to whom s. 16 relates, and therefore would appear to be obsolete.

Admissibility of certain documents.

16B.—(1) For the purposes of this section— ...

(b) ‘corrupt conduct’ is any conduct which at the time it occurred was an offence under the Prevention of Corruption Acts 1889 to 2001, the Official Secrets Act 1963 or the Ethics in Public Office Act 1995 ;

...

*Punishment of
corrupt
transactions with
agents.*

1. F1[(1) An agent or any other person who-

(a) corruptly accepts or obtains, or

(b) corruptly agrees to accept or attempts to obtain, for himself or herself, or for any other person, any gift, consideration or advantage as an inducement to, or reward for, or otherwise on account of, the agent doing any act or making any omission in relation to his or her office or position or his or her principal's affairs or business shall be guilty of an offence.

(2) A person who-

(a) corruptly gives or agrees to give, or

(b) corruptly offers,

any gift or consideration to an agent or any other person, whether for the benefit of that agent, person or another person, as an inducement to, or reward for, or otherwise on account of, the agent doing any act or making any omission in relation to his or her office or position or his or her principal's affairs or business shall be guilty of an offence.

(3) A person who knowingly gives to any agent, or an agent who knowingly uses with intent to deceive his or her principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his or her

knowledge is intended to mislead the principal shall be guilty of an offence.

(4) A person guilty of an offence under this section shall be liable-

- (a) on summary conviction to a fine not exceeding £2,362.69 or to imprisonment for a term not exceeding 12 months or to both, or
- (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding 10 years or to both.

(5) In this Act-

'agent' includes-

- (a) any person employed by or acting for another,
- (b) (i) an office holder or director (within the meaning, in each case, of the Public Bodies Corrupt Practices Act, 1889, as amended) of, and a person occupying a position of employment in, a public body (within the meaning aforesaid) and a special adviser (within the meaning aforesaid),

(ii) a member of Dáil Éireann or Seanad Éireann,

(iii) a person who is a member of the European Parliament by virtue of the European Parliament Elections Act, 1997,

(iv) an Attorney General (who is not a member of Dáil Éireann or Seanad Éireann),

(v) the Comptroller and Auditor General,

(vi) the Director of Public Prosecutions,

(vii) a judge of a court in the State,

(viii) any other person employed by or acting on behalf of the public administration of the State,

and

- (c) (i) a member of the government of any other state,

(ii) a member of a parliament, regional or national, of any other state,

- (iii) a member of the European Parliament (other than a person who is a member by virtue of the European Parliament Elections Act, 1997),
- (iv) a member of the Court of Auditors of the European Communities,
- (v) a member of the Commission of the European Communities,
- (vi) a public prosecutor in any other state,
- (vii) a judge of a court in any other state,
- (viii) a judge of any court established under an international agreement to which the State is a party,
- (ix) a member of, or any other person employed by or acting for or on behalf of, any body established under an international agreement to which the State is a party, and
- (x) any other person employed by or acting on behalf of the public administration of any other state;

'consideration' includes valuable consideration of any kind;

'principal' includes an employer."]

Annotations:

Amendments:

F1 Substituted (26.11.2001) by *Prevention of Corruption (Amendment) Act 2001*, (27/2001), s. 2; S.I. No. 519 of 2001.

Editorial note:

E2 Previous affecting provision: section amended (1.11.1995) by *Ethics in Public Office Act 1995*, (22/1995), s. 38, S.I. 282 of 1995. Amended section substituted as per **F1** above.

Prosecution of offences.

2.—(1) F2[A prosecution for an offence under this Act shall not be instituted without the consent of the Attorney-General of Saorstát Eireann].

(2) The Vexatious Indictments Act, 1859, as amended by any subsequent enactment, shall apply to offences under this Act as if they were included among the offences mentioned in section one of that Act.

(3) Every information for any offence under this Act shall be upon

oath.

(4) F3[...]

(5) A court of quarter sessions shall not have jurisdiction to inquire of, hear, and determine prosecutions on indictments for offences under this Act.

(6) Any person aggrieved by a summary conviction, under this Act may appeal to a court of quarter sessions.

Annotations:

Amendments:

F2 Substituted (12.06.1928) by *Prevention of Corruption Acts, 1889 To 1916, Adaptation Order 1928*, (S.R.O. 37 of 1928), s. 4 and sch. part II.

F3 Repealed (22.07.1997) by *Criminal Law Act 1997*, (14/1997), s. 16 and sch. 3, commenced three months after enactment.

*Application to
Scotland.*

3. This Act shall extend to Scotland, subject to the following modifications:—

(1) Section two shall not extend to Scotland:

(2) In Scotland all offences which are punishable under this Act on summary conviction shall be prosecuted before the sheriff in manner provided by the Summary Jurisdiction (Scotland) Acts.

*Short title and
commencement.*

4.—(1) This Act may be cited as the Prevention of Corruption Act, 1906.

(2) This Act shall come into operation on the first day of January nineteen hundred and seven.



Prevention of Corruption Act, 1916

(6 & 7 Geo. 5.) CHAPTER 64.

An Act to amend the Law relating to the Prevention of Corruption.

[22nd December 1916]

B ^E it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Annotations:

Modifications etc. (not altering text):

CI Act affected (12.06.1928) by *Prevention of Corruption Acts, 1889 To 1916, Adaptation Order 1928*, (S.R.O. 37 of 1928).

No. 37/1928:

PREVENTION OF CORRUPTION ACTS, 1889 TO 1916, ADAPTATION ORDER, 1928.

WHEREAS it is enacted by section 12 of the Adaptation of Enactments Act, 1922 (No. 2 of 1922), that the Executive Council of Saorstát Eireann may from time to time by order make all such general or specific adaptations of or modifications in any British Statute which in the opinion of the Executive Council are necessary in order to enable such statute to have full force and effect in Saorstát Eireann :

AND WHEREAS in the opinion of the Executive Council the adaptations intended to be made by this order of the Prevention of Corruption Acts, 1889 to 1916 (being British statutes within the meaning of the said Adaptation of Enactments Act, 1922), are necessary in order to enable such statutes to have full force and effect in Saorstát Eireann;

NOW, the Executive Council of Saorstát Eireann in exercise of the powers conferred on

them by section 12 of the Adaptation of Enactments Act, 1922 (No. 2 of 1922), and of every and any other power them in this behalf enabling, do hereby order as follows :—

1. This Order may be cited for all purposes as the Prevention of Corruption Acts, 1889 to 1916, Adaptation Order, 1928.

2. The Interpretation Act, 1889, applies to the interpretation of this Order in like manner as it applies to the interpretation of an Act of the Oireachtas passed before the 1st day of January, 1924.

...

C2 Act affected (1.11.1995) by *Ethics in Public Office Act 1995*, (22/1995) ss. 1(3) and 38; S.I. No. 282 of 1995.

Short title, commencement, partial cesser and collective citation.

1.—...

(3) The Prevention of Corruption Acts, 1889 to 1916, and *section 38* may be cited together as the Prevention of Corruption Acts, 1889 to 1995.

...

Amendment of Prevention of Corruption Acts, 1889 to 1916.

38. The Prevention of Corruption Acts, 1889 to 1916, shall be amended as follows:

...

C3 Act affected (26.11.2001) by *Prevention of Corruption (Amendment) Act 2001*, (27/2001), ss. 5, 9 and 10, S.I. No. 519 of 2001, (with the exception of s. 4(2)(c), commenced (4.11.2002) by S.I. No. 477 of 2002); as amended (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005*, (1/2005), s. 23, commenced on enactment; and (01.08.2006) by *Criminal Justice Act 2006*, (26/2006), s. 191, S.I. 390 of 2006.

Search Warrant.

5.—(1) A judge of the District Court, on hearing evidence on oath given by a member of the Garda Síochána, or a member of the Garda Síochána not below the rank of superintendent, may, if he or she is satisfied that there are reasonable grounds for suspecting that evidence of or relating to the commission of an offence or suspected offence under the *Prevention of Corruption Acts, 1889 to 2001*, punishable by imprisonment for a term of 5 years or by a more severe penalty (“an offence”) is to be found in any place, issue a warrant for the search of that place and any persons found at that place.

...

Offences by bodies corporate.

9.—(1) Where an offence under the *Prevention of Corruption Acts, 1889 to 2001*, has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any wilful neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

...

Short title, collective citation and construction.

10.—...

(2) The Prevention of Corruption Acts, 1889 to 1995, and this Act may be cited together as the Prevention of Corruption Acts, 1889 to 2001, and shall be construed together as one.

...

C4 Application of Act not excluded (1.01.2003 and 21.05.2004) by *Local Government Act 2001*, (37/2001), s. 170; S.I. No. 218 of 2002 and S.I. No. 217 of 2004.

Prohibition of favours, rewards, etc.

170.—(1) An employee or a member of a local authority or of a committee of a local authority shall not seek, exact or accept from any person, other than from the local authority concerned, any remuneration, fee, reward or other favour for anything done or not done by virtue of his or her employment or office, and a code of conduct under *section 169* may include guidance for the purposes of this subsection.

(2) *Subsection (1)* shall not be read so as to exclude the persons to whom that subsection relates from the application of the Prevention of Corruption Acts, 1889 to 1995, and any Act which is to be construed together as one with those Acts.

Editorial note:

E1 Previous affecting provision: Act applied (12.07.1989) by *Central Bank Act 1989*, (16/1989), ss. 16 and 17; S.I. No. 176 of 1989. S. 16 repealed (01.05.2003) by *Central Bank and Financial Services Authority Act 2003*, (12/2003), s. 35 and sch. 1, S.I. No. 160 of 2003. S. 17 applies to every person to whom s. 16 relates, and therefore would appear to be obsolete.

Admissibility of certain documents.

16B.—(1) For the purposes of this section— ...

(b) ‘corrupt conduct’ is any conduct which at the time it occurred was an offence under the Prevention of Corruption Acts 1889 to 2001, the Official Secrets Act 1963 or the Ethics in Public Office Act 1995;

...

Increase of maximum penalty in certain cases.

1. F1[...]

Annotations:

Amendments:

FI Repealed (1.11.1995) by *Ethics in Public Office Act 1995*, (22/1995), s. 38; S.I. No. 282 of 1995.

Editorial note:

E2 Previous affecting provision: section amended (12.06.1928) by *Prevention of Corruption Acts, 1889 To 1916, Adaptation Order 1928*, (S.R.O. No 37 of 1928), s. 5 and sch. Part III. Amended section repealed as per **F1** above.

Presumption of corruption in certain cases.

2. F2[Where in any proceedings against a person for an offence under the Prevention of Corruption Act, 1906, as amended, or the Public Bodies Corrupt Practices Act, 1889, as amended, it is proved that any money, gift or other consideration has been paid or given to or received by an office holder or special adviser or a director of, or occupier of a position of employment in, a public body by or from a person or agent of a person holding or seeking to obtain a contract from a Minister of the Government or a public body, the money, gift or consideration shall be deemed to have been paid or given and received corruptly as such

inducement or reward as is mentioned in such Act unless the contrary is proved].

Annotations:

Amendments:

F2 Substituted (1.11.1995) by *Ethics in Public Office Act 1995*, (22/1995), s. 38; S.I. No. 282 of 1995.

Editorial note:

E3 Previous affecting provision: section amended (12.06.1928) by *Prevention of Corruption Acts, 1889 To 1916 Adaptation Order, 1928*, (S.R.O. 37 of 1928), s. 5 and sch 1. Amended section substituted as per **F2** above.

Time for taking proceedings.

3. Notwithstanding anything in the Summary Jurisdiction Acts proceedings under the Prevention of Corruption Act, 1906, instituted with a view to obtaining a summary conviction for an offence thereunder may be commenced at any time before the expiration of six months after the first discovery of the offence by the prosecutor.

Short title and interpretation.

4.—(1) This Act may be cited as the Act, 1916, and the Public Bodies Corrupt Practices Act, 1889, the Prevention of Corruption Act, 1906, and this Act may be cited together as the Prevention of Corruption Acts, 1889 to 1916.

(2) **F3**[In this Act 'director', 'office holder', 'special adviser' and 'public body' have the meanings assigned to them by the Public Bodies Corrupt Practices Act, 1889, as amended, and 'agent' and 'consideration' have the meanings assigned to them by the Prevention of Corruption Act, 1906, as amended.]

Annotations:

Amendments:

F3 Substituted (1.11.1995) by *Ethics in Public Office Act 1995*, (22/1995), s. 38; S.I. No. 282 of 1995.



Number 22 of 1995

ETHICS IN PUBLIC OFFICE ACT, 1995

ARRANGEMENT OF SECTIONS

PART I PRELIMINARY AND GENERAL

1 Short title, commencement, partial cesser and collective citation.

...

PART VI MISCELLANEOUS

...

38 Amendment of Prevention of Corruption Acts, 1889 to 1916.

AN ACT TO PROVIDE FOR THE DISCLOSURE OF INTERESTS OF HOLDERS OF CERTAIN PUBLIC OFFICES (INCLUDING MEMBERS OF THE HOUSES OF THE OIREACHTAS) AND DESIGNATED DIRECTORS OF AND PERSONS EMPLOYED IN DESIGNATED POSITIONS IN CERTAIN PUBLIC BODIES, FOR THE APPOINTMENT BY EACH SUCH HOUSE OF A COMMITTEE, AND FOR THE ESTABLISHMENT OF A COMMISSION, TO INVESTIGATE CONTRAVENTIONS OF THIS ACT AND TO ESTABLISH GUIDELINES TO ENSURE COMPLIANCE THEREWITH, TO PROHIBIT THE RETENTION OF VALUABLE GIFTS BY HOLDERS OF CERTAIN PUBLIC OFFICES, TO AMEND THE PREVENTION OF CORRUPTION ACTS, 1889 TO 1916, AND TO PROVIDE FOR RELATED

MATTERS.

[22nd July, 1995]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Annotations:

Modifications (not altering text):

C1 Act affected (19.11.2001) by *Prevention of Corruption (Amendment) Act 2001*, (27/2001), ss. 5, 9 and 10; S.I. No. 519 of 2001, (with the exception of s. 4(2)(c), commenced (11.10.2002) by S.I. No. 477 of 2002); as amended (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005*, (1/2005), s. 23, commenced on enactment; and (01.08.2006) by *Criminal Justice Act 2006*, (26/2006), s. 191; S.I. 390 of 2006.

Search Warrant.

5.—(1) A judge of the District Court, on hearing evidence on oath given by a member of the Garda Síochána, or a member of the Garda Síochána not below the rank of superintendent, may, if he or she is satisfied that there are reasonable grounds for suspecting that evidence of or relating to the commission of an offence or suspected offence under the *Prevention of Corruption Acts, 1889 to 2001*, punishable by imprisonment for a term of 5 years or by a more severe penalty (“an offence”) is to be found in any place, issue a warrant for the search of that place and any persons found at that place.

...

Offences by bodies corporate.

9.—(1) Where an offence under the *Prevention of Corruption Acts, 1889 to 2001*, has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any wilful neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

...

Short title, collective citation and construction.

10.— ...

(2) The *Prevention of Corruption Acts, 1889 to 1995*, and this Act may be cited together as the *Prevention of Corruption Acts, 1889 to 2001*, and shall be construed together as one.

...

C2 Application of Act not excluded (1.01.2003 and 21.05.2004) by *Local Government Act 2001*, (37/2001), s. 170; S.I. No. 218 of 2002 and S.I. No. 217 of 2004.

Prohibition of favours, rewards, etc.

170.—(1) An employee or a member of a local authority or of a committee of a local authority shall not seek, exact or accept from any person, other than from the local authority concerned, any remuneration, fee, reward or other favour for anything done or not done by virtue of his or her employment or office, and a code of conduct under *section 169* may include guidance for the purposes of this subsection.

(2) *Subsection (1)* shall not be read so as to exclude the persons to whom that subsection relates from the application of the Prevention of Corruption Acts, 1889 to 1995, and any Act which is to be construed together as one with those Acts.

Admissibility of certain documents.

16B.—(1) For the purposes of this section— ...

(b) ‘corrupt conduct’ is any conduct which at the time it occurred was an offence under the Prevention of Corruption Acts 1889 to 2001, the Official Secrets Act 1963 or the Ethics in Public Office Act 1995 ;

...

PART I PRELIMINARY AND GENERAL

Short title,
commencement,
partial cesser
and collective
citation.

1.—(1) This Act may be cited as the Ethics in Public Office Act, 1995.

...

(3) The Prevention of Corruption Acts, 1889 to 1916, and section 38 may be cited together as the Prevention of Corruption Acts, 1889 to 1995.

...

PART VI MISCELLANEOUS

Amendment of
Prevention of
Corruption Acts,
1889 to 1916.

38.—The Prevention of Corruption Acts, 1889 to 1916, shall be amended as follows:

(a) in the Public Bodies Corrupt Practices Act, 1889—

...

(b) in section 1 of the Prevention of Corruption Act, 1906—

...

and

(c) in the Prevention of Corruption Act, 1916—

...



Number 27 of 2001

PREVENTION OF CORRUPTION (AMENDMENT) ACT, 2001

ARRANGEMENT OF SECTIONS

Section	
Interpretation.	1.
Amendment of section 1 of Act of 1906.	2.
Presumption of corruption from failure to disclose political donations.	3.
Presumption of corruption.	4.
Search Warrant.	5.
Corruption occurring partially in State.	6.
Corruption occurring outside State.	7.
Corruption in office.	8.
Offences by bodies corporate.	9.
Short title, collective citation and construction.	10.
Acts Referred to	
Electoral Act, 1997	1997, No. 25
European Parliament Elections Act, 1997	1997, No. 2
Local Elections (Disclosure of Donations and Expenditure) Act, 1999	1999, No. 7
Planning and Development Act, 2000	2000, No. 30
Prevention of Corruption Act, 1906	1906, c. 34
Prevention of Corruption Acts, 1889 to 1995	
Public Bodies Corrupt Practices Act, 1889	1889, c. 69



Number 27 of 2001

PREVENTION OF CORRUPTION (AMENDMENT) ACT, 2001

AN ACT TO GIVE EFFECT TO THE CONVENTION DRAWN UP ON THE BASIS OF ARTICLE K 3(2)(c) OF THE TREATY ON EUROPEAN UNION ON THE FIGHT AGAINST CORRUPTION INVOLVING OFFICIALS OF THE EUROPEAN COMMUNITIES OR OFFICIALS OF MEMBER STATES OF THE EUROPEAN UNION DONE AT BRUSSELS ON THE 26th DAY OF MAY, 1997, THE CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS DRAWN UP UNDER THE AUSPICES OF THE ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT AND ADOPTED AT PARIS ON THE 21st DAY OF NOVEMBER, 1997, AND THE CRIMINAL LAW CONVENTION ON CORRUPTION DRAWN UP UNDER THE AUSPICES OF THE COUNCIL OF EUROPE AND DONE AT STRASBOURG ON THE 27th DAY OF JANUARY, 1999, AND FOR THAT PURPOSE TO AMEND CERTAIN ENACTMENTS AND TO PROVIDE FOR RELATED MATTERS. [9th July, 2001]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation.

1.—(1) In this Act “the Act of 1906” means the Prevention of Corruption Act, 1906.

(2) References in this Act to an act include references to an omission and references to the doing of an act include references to the making of an omission.

(3) References in this Act to any enactment shall be construed as references to that enactment as amended, adapted or extended by any subsequent enactment including this Act.

Amendment of section 1 of Act of 1906.

2.—The Act of 1906 is hereby amended by the substitution of the following section for section 1:

...

F1[Seizure of suspected bribe.

2A.—(1) A member of the Garda Síochána may seize any gift or consideration which the member suspects to be a gift or consideration within the meaning of section 1 of the Prevention of Corruption Act 1906, as amended by section 2 of this Act.

(2) The seized property may not be detained for more than 48 hours unless its detention for a further period is authorised by order of a judge of the Circuit Court.

(3) Such an order—

(a) shall not be made unless the judge is satisfied—

(i) that there are reasonable grounds for suspecting that the seized property is a gift or consideration within the meaning of the said section 1,

(ii) that either its origin or derivation is being further investigated or consideration is being given to instituting proceedings, whether in the State or elsewhere, against a person for an offence with which the gift or consideration is connected, and

(iii) that it is accordingly necessary that the property be detained for a further period, and

(b) shall authorise the detention of the seized property for a further specified period or periods, not exceeding 3 months in any case or 2 years in aggregate.

(4) An application for an order under subsection (3) of this section may be made by a member of the Garda Síochána.

(5) Property detained under this section shall continue to be so detained until the final determination of—

(a) any proceedings, whether in the State or elsewhere, against any person for an offence with which the property is connected, or

(b) any application under section 2B for its forfeiture,

whichever later occurs.

(6) Subject to subsection (5), a judge of the Circuit Court may cancel an order under subsection (3) of this section if satisfied, on application by the person from whom the property was seized or any other person, that its further detention is no longer justified.

Forfeiture of
bribe.

2B.—(1) A judge of the Circuit Court may order any gift or consideration which is detained under section 2A of this Act to be forfeited if satisfied, on application made by or on behalf of the Director of Public Prosecutions, that it is a gift or consideration referred to in section 1 of the Prevention of Corruption Act 1906, as amended by section 2 of this Act.

(2) An order may be made under this section whether or not proceedings are brought against any person for an offence with which the gift or consideration in question is connected.

(3) The standard of proof in proceedings under this section is that applicable in civil proceedings.

Application of
sections 40, 41,
42 and 45 of Act
of 1994 to
certain property.

2C.—Sections 40 (appeal against forfeiture order), 41 (interest on cash detained), 42 (procedure) and 45 (disposal of forfeited cash) of the Act of 1994 shall apply in relation to cash and, as appropriate, to any other gift or consideration detained under section 2A, or forfeited under section 2B, of this Act as they apply in relation to cash detained or forfeited under section 38 or 39 of that Act.]

Annotations:

Amendments:

F1 Inserted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005*, (1/2005), s. 23; commenced on enactment.

Presumption of
corruption from
failure to
disclose political
donations.

3.—(1) Where in any proceedings against a person to whom this section applies for an offence under the Public Bodies Corrupt Practices Act, 1889, as amended, or the Act of 1906, as amended, it is proved that—

(a) the person received a donation exceeding in value the relevant amount specified in the Electoral Act, 1997, or the Local Elections (Disclosure of Donations and Expenditure) Act, 1999, as appropriate,

(b) the person failed to disclose the donation in accordance with that Act to the Public Offices Commission or the local

authority concerned as appropriate, and

- (c) the donor had an interest in the person doing any act or making any omission in relation to his or her office or position or his or her principal's affairs or business,

the donation shall be deemed to have been given and received corruptly as an inducement to or reward for the person doing any act or making any omission in relation to his or her office or position or his or her principal's affairs or business unless the contrary is proved.

(2) This section applies to the following:

- (a) a person required by section 24 of the Electoral Act, 1997 , to furnish a donation statement to the Public Offices Commission,
- (b) a person required by section 13 of the Local Elections (Disclosure of Donations and Expenditure) Act, 1999 , to furnish to the local authority concerned a statement of donations under subsection (1) of that section.

(3) In this section—
“donation”

- (a) in relation to persons referred to in section 24 of the Electoral Act, 1997, has the meaning assigned to it by section 22 of that Act,
- (b) in relation to persons referred to in section 13 of the Local Elections (Disclosure of Donations and Expenditure) Act, 1999, has the meaning assigned to it by section 2 of that Act;

“donor” means the person who makes a donation or on whose behalf a donation is made.

Presumption of corruption.

4. —(1) Where in any proceedings against a person referred to in subsection (5)(b) of section 1 (inserted by *section 2* of this Act) of the Act of 1906 for an offence under the Public Bodies Corrupt Practices Act, 1889, as amended, or the Act of 1906, as amended, it is proved that—

- (a) any gift, consideration or advantage has been given to or received by a person,
- (b) the person who gave the gift, consideration or advantage or on whose behalf the gift, consideration or advantage was given had an interest in the discharge by the person of any of

the functions specified in this section,

the gift or consideration or advantage shall be deemed to have been given and received corruptly as an inducement to or reward for the person performing or omitting to perform any of the functions aforesaid unless the contrary is proved.

(2) This section applies to the following functions:

- (a) the granting, refusal, withdrawal or revocation by a Minister or an officer of a Minister or by any other person employed by or acting on behalf of the public administration of the State by or under any statute of any licence, permit, certificate, authorisation or similar permission,
- (b) the making of any decision relating to the acquisition or sale of property by a Minister or an officer of a Minister or by any other person employed by or acting on behalf of the public administration of the State,
- (c) any functions of a Minister or an officer of a Minister or of any other person employed by, acting on behalf of, or a member of a body that is part of the public administration of the State under the Planning and Development Act, 2000 .

Search Warrant.

5.— (1) F2[If a judge of the District Court is satisfied by information on oath of a member of the Garda Síochána, or if a member of the Garda Síochána not below the rank of superintendent is satisfied, that there are reasonable grounds for suspecting that evidence of or relating to the commission of an offence or suspected offence under the Prevention of Corruption Acts 1889 to 2001 punishable by imprisonment for a term of 5 years or by a more severe penalty ('an offence') is to be found in any place, he or she may issue a warrant for the search of that place and any persons found at that place.]

(2) A member of the Garda Síochána not below the rank of superintendent shall not issue a search warrant under this section unless he or she is satisfied—

- (a) that the search warrant is necessary for the proper investigation of an offence, and
- (b) that circumstances of urgency giving rise to the need for the immediate issue of the search warrant would render it impracticable to apply to a judge of the District Court under this section for the issue of the warrant.

(3) A warrant under this section shall be expressed, and shall operate,

to authorise a named member of the Garda Síochána, accompanied by such other members or persons as the member thinks necessary, to enter, within one month of the date of issue of the warrant, if necessary by the use of reasonable force, the place named in the warrant, to search it and any persons found at that place and to seize and to retain anything found at that place, or anything found in the possession of a person present at that place at the time of the search, which the said member reasonably believes to be evidence of or relating to the commission of an offence or suspected offence.

(4) A search warrant issued by a member of the Garda Síochána under this section shall cease to have effect after a period of 24 hours has elapsed from the time of the issue of the warrant.

(5) A member of the Garda Síochána acting under the authority of a warrant under this section may—

(a) require any person present at the place where the search is being carried out to give to the member his or her name and address, and

(b) arrest without warrant any person who—

(i) obstructs or attempts to obstruct that member in the carrying out of his or her duties,

(ii) fails to comply with a requirement under *paragraph (a)*, or

(iii) gives a name or address which the member has reasonable cause for believing is false or misleading.

(6) A person who obstructs or attempts to obstruct a member acting under the authority of a warrant under this section, who fails to comply with a requirement under *paragraph (a)* of *subsection (5)*, or who gives a false or misleading name or address to a member shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £2,362.69 or to imprisonment for a period not exceeding 12 months or to both.

(7) The power to issue a warrant under this section is without prejudice to any other power conferred by statute for the issue of a warrant for the search of any place or person.

Annotations:

Amendments:

F2 Inserted (01.08.2006) by *Criminal Justice Act 2006*, (26/2006), s. 191; S.I. 390 of

2006.

Modifications etc. (not altering text):

C1 Act not affected (01/08/2006) by *Criminal Justice Act 2006*, (26/2006), s. 191(2); S.I. 390 of 2006.

(2) This section shall not affect the validity of a warrant issued under section 5 of the *Prevention of Corruption (Amendment) Act 2001* before the commencement of this section and such a warrant shall continue in force in accordance with its terms after such commencement.

Corruption occurring partially in State.

6.—A person may be tried in the State for an offence under the *Public Bodies Corrupt Practices Act, 1889*, or the Act of 1906, if any of the acts alleged to constitute the offence was committed in the State notwithstanding that other acts constituting the offence were committed outside the State.

Corruption occurring outside State.

7.—(1) Subject to *subsection (2)* of this section, where a person does outside the State an act that, if done in the State, would constitute an offence under section 1 (inserted by *section 2* of this Act) of the Act of 1906, he or she shall be guilty of an offence and he or she shall be liable on conviction to the penalty to which he or she would have been liable if he or she had done the act in the State.

(2) *Subsection (1)* shall apply only where the person concerned is a person referred to in subsection (5) (b) of the said section 1.

Corruption in office.

8.—(1) A public official who does any act in relation to his or her office or position for the purpose of corruptly obtaining a gift, consideration or advantage for himself, herself or any other person, shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding £2,362.69 or to imprisonment for a term not exceeding 12 months or to both, or

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 10 years or to both.

(2) In this section—

“consideration” includes valuable consideration of any kind;

“public official” means a person referred to in subsection (5)(b) of section 1 (inserted by *section 2* of this Act) of the Act of 1906.

Offences by bodies corporate.

9.—(1) Where an offence under the *Prevention of Corruption Acts, 1889 to 2001*, has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any wilful neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as

the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, *subsection (1)* shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

Short title,
collective
citation and
construction.

10.—(1) This Act may be cited as the Prevention of Corruption Amendment) Act, 2001.

(2) The Prevention of Corruption Acts, 1889 to 1995, and this Act may be cited together as the Prevention of Corruption Acts, 1889 to 2001, and shall be construed together as one.

(3) This Act shall come into operation on such day or days as, by order or orders made by the Minister for Justice, Equality and Law Reform under this section, may be fixed therefor either generally or with reference to any particular purpose or provision, and different days may be so fixed for different purposes and different provisions.



Number 1 of 2005

PROCEEDS OF CRIME (AMENDMENT) ACT 2005

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY AND GENERAL

	Section
Short title, collective citation and construction.	1.
Interpretation.	2.

...

PART 5

AMENDMENTS TO ACT OF 2001

New sections 2A, 2B and 2C in Act of 2001.	23
--	----

Acts Referred to

...

Ethics in Public Office Act 1995	1995, No. 22
Local Government Act 2001	2001, No. 37
Prevention of Corruption Act 1906	6 Edw. 7. c. 34
Official Secrets Act 1963	1963, No. 1
Prevention of Corruption Acts 1889 to 2001	
Prevention of Corruption (Amendment) Act 2001	2001, No. 27



Number 1 of 2005

PROCEEDS OF CRIME (AMENDMENT) ACT 2005

AN ACT TO MAKE FURTHER PROVISION IN RELATION TO THE RECOVERY AND DISPOSAL OF PROCEEDS OF CRIME AND FOR THAT PURPOSE TO AMEND THE PROCEEDS OF CRIME ACT 1996, THE CRIMINAL ASSETS BUREAU ACT 1996, THE CRIMINAL JUSTICE ACT 1994 AND THE PREVENTION OF CORRUPTION (AMENDMENT) ACT 2001.
[12th February, 2005]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Proceeds of Crime (Amendment) Act 2005.

...

(4) The Prevention of Corruption Acts 1889 to 2001 and *Part 5* of this Act may be cited together as the Prevention of Corruption Acts 1889 to 2005.

Short title,
collective
citation and
construction.

Interpretation. **2.**—In this Act—

...

“Act of 2001” means the Prevention of Corruption (Amendment) Act 2001;

...

PART 5

AMENDMENTS TO ACT OF 2001

New sections 2A, 2B and 2C in Act of 2001. **23.**—The Act of 2001 is hereby amended by the insertion of the following sections after section 2:

...



The Law Reform Commission is an independent statutory body established by the *Law Reform Commission Act 1975*. The Commission's principal role is to keep the law under review and to make proposals for reform, in particular by recommending the enactment of legislation to clarify and modernise the law.

This role is carried out primarily under a Programme of Law Reform. The Commission's *Third Programme of Law Reform 2008-2014* was prepared and approved under the 1975 Act following broad consultation and discussion. The Commission also works on specific matters referred to it by the Attorney General under the 1975 Act. Since 2006, the Commission's role also includes two other areas of activity, Statute Law Restatement and the Legislation Directory. Statute Law Restatement involves incorporating all amendments to an Act into a single text, making legislation more accessible. The Legislation Directory (previously called the Chronological Tables of the Statutes) is a searchable guide to legislative changes.

€15

ADDRESS
35-39 Shelbourne Road Dublin 4 Ireland

TELEPHONE
+353 1 6377600

FAX
+353 1 6377601

EMAIL
info@lawreform.ie

WEBSITE
www.lawreform.ie

The Law Reform Commission is a statutory body established by the Law Reform Commission Act 1975