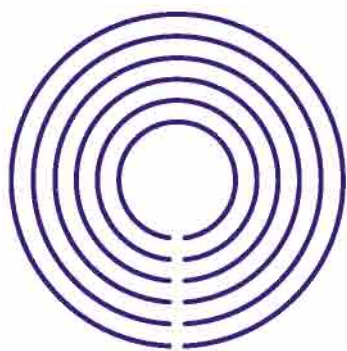




LAW REFORM
COMMISSION/COIMISIÚN UM
ATHCHÓIRIÚ AN DLÍ

CONSULTATION PAPER

LEGISLATION DIRECTORY: TOWARDS A BEST PRACTICE MODEL



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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 modernise 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.

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Full responsibility for the content of this publication, however, lies with the Commission.

TABLE OF CONTENTS

TABLE OF LEGISLATION	xiii
TABLE OF CASES	xvii
INTRODUCTION	1
A Purpose of this Consultation Paper	1
B Background	1
C Renaming the Chronological Tables of the Statutes	1
D Purpose and Function of the Legislation Directory	2
E Legislation as a Public Resource	2
F The Statute User	3
G Outline of the Consultation Paper	3
CHAPTER 1 THE LEGISLATION DIRECTORY IN CONTEXT	5
A Introduction	5
B Historical Development of the Irish Statute Book and the Legislation Directory	5
(1) The Legislative Legacy of Ireland's Political History	5
(2) The Development of an Index to the Statutes and the Chronological Tables	6
(3) Index to the Statutory Instruments	9
C The Inaccessible Statute Book	10
(1) The Legislative Process and the Publication of Legislation	10
(2) Making and Publication of Secondary Legislation in the UK	14
(3) Publication of Secondary Legislation in Australia	16
(4) The Problem of Legislative Scatter and Buried Amendments	17
(5) Other Methods of Improving Accessibility	18
D Conclusion	24
CHAPTER 2 THE LEGISLATION DIRECTORY IN PRACTICE	25
A Introduction	25
B Introduction to the electronic Irish Statute Book (eISB) online	25
C Legislation Directory Homepage	26
D Legislation Directory Functionality	29
(1) List of Abbreviations	29
(2) A Chronological List of the Public General Acts enacted from 6 December 1922 to 31 December 2005	32
(3) An Alphabetical List of Acts in Force, which were brought into operation either in whole or in part by Orders made on or before 31 December 2005	37
(4) An Alphabetical List of Collective Citations	40
(5) Orders made under Section 6 (1) of the Ministers and Secretaries (Amendment) Act 1939.	41
(6) Regulations made under Section 3 of the European Communities Act 1972	43

	(7) Chronological Table of Private Acts from 6 December 1922 to 31 December 2005.	45
	(8) Integration of pre-1922 and post-1922 Legislative Provisions	46
	(9) Pre-1922 Act Unaffected by Post-1922 Legislation	46
	(10) Pre-1922 Act affected by both pre and post-1922 Legislation	47
	(11) Sub-division of Pre-1922 Acts	47
	(12) Integration of Pre-1922 Legislative Effects	48
	(13) Local Government (Application of Enactments) Order 1898 and Local Government (Adaptation of Irish Enactments) Order 1899	50
	(14) Expressions Adapted from Pre-1922 Legislation and Legislation of Saorstát Éireann	52
	(15) An Alphabetical List of all Acts in the Legislation Directory	53
	(16) Alphabetical List of all Acts by decade	54
	(17) User Awareness	55
E	Effect of Case Law on Legislation	58
	(1) Rulings of Unconstitutionality	58
	(2) Rulings in Relation to the European Convention on Human Rights	59
	(3) Rulings at European Level	60
F	Conclusion	61
CHAPTER 3	BUILDING THE LEGISLATION DIRECTORY	65
A	Introduction	65
B	Workflows and Quality Assurance	65
	(1) The Rationale for Formulating Structured Processes	65
	(2) The Workflow for Incoming Acts of the Oireachtas	65
	(3) Incoming Statutory Instruments - Associated Secondary Legislation	69
	(4) Aspects of Quality Assurance	70
C	Errors and Omissions	71
	(1) Assessing Database Error Rate	71
	(2) Notified Errors and Omissions	71
D	Reflecting Affecting Provisions in the Legislation Directory	73
	(1) Types of Affecting Provision	74
	(2) Textual Amendment	74
	(3) Non-Textual Amendment	75
	(4) Referential Amendment	76
E	Sourcing Primary and Secondary Legislation	77
F	Technology	77
	(1) Authoring Functionality	78
	(2) Choosing a Supporting Software Platform	78
	(3) Roll-Out of the new Authoring System	78
	(4) Data Quality Issues	79
	(5) Export of Data from the Commission to the eISB	79
G	Conclusion	80
CHAPTER 4	E-LEGISLATION	81

A	Introduction	81
B	What is eLegislation?	81
C	The Benefits of eLegislation	81
D	Practical Considerations in the Implementation of eLegislation	82
	(1) Integration of Technology	82
	(2) Drafting and Working Styles	83
	(3) Project Management	83
E	Developments in Other Jurisdictions	83
	(1) Australia	83
	(2) Tasmania	84
	(3) New Zealand	85
F	eLegislation and the Legislation Directory	86
G	Conclusion	87
CHAPTER 5	SUMMARY OF RECOMMENDATIONS	89

TABLE OF LEGISLATION

Act of Union (Ireland) 1800	(40 Geo. 3) c.38	Irl
Adaption of Enactments Act 1922	No. 2 of 1922	Irl
Births and Deaths Registration Act (Ireland) 1880	(43 & 44 Vict.) c. 13	Irl
Capital Acquisitions Tax Consolidation Act 2003	No. 1 of 2003	Irl
Civil Bill Courts (Ireland) Act 1851	(14 & 15 Vict.) c.57	UK
Civil Liability Act 1961	No. 41 of 1961	Irl
Constitution (Consequential Provisions) Act 1937	No. 40 of 1937	Irl
Copyright and Related Rights (Amendment) Act 2007	No. 39 of 2007	Irl
Copyright and Related Rights Act 2000	No. 28 of 2000	Irl
Courts of Justice Act 1928	No. 15 of 1928	Irl
Criminal Justice (Mutual Assistance) Act 2008	No. 7 of 2008	Irl
Criminal Justice Act 2006	No. 26 of 2006	Irl
Criminal Justice Act 2007	No. 29 of 2007	Irl
Crown Lands Act 1841	(5 Vict.) c. 1	UK
Data Protection Act 1988	No. 25 of 1988	Irl
Destructive Insects and Pests (Consolidation) Act 1958	No.11 of 1958	Irl
Development Banks Act 2005	No. 34 of 2005	Irl
Diseases of Animals Act 1966	No. 6 of 1966	Irl
Electoral Amendment Act 2004	No. 15 of 2004	Irl
European Communities Act 1972	No. 27 of 1972	Irl
European Communities Act 2007	No. 18 of 2007	Irl
European Convention of Human Rights Act 2003	No. 20 of 2003	Irl
Evidence Act 1851	(14 & 15 Vict.) c.99	UK
Evidence Further Amendment Act 1869	(32 & 33 Vict.) c. 68	UK
Finance Act (1909-1910) 1910	(10 Edw. 7) c. 8	UK
Finance Act 1980	No. 14 of 1980	Irl
Finance Act 2004	No. 8 of 2004	Irl
Fisheries Consolidation Act 1959	No. 14 of 1959	Irl
Garda Síochána (Complaints) Act 1986	No. 29 of 1986	Irl
Grand Jury (Ireland) Act 1837	(7 Will. 4 & 1 Vict.) c. 2	UK
Health (Mental Services) Act 1981	No 17 of 1981	Irl

Houses of the Oireachtas (Laying of Documents) Act 1966	No. 10 of 1966	Irl
Housing (Private Rented Dwelling) Act 1982	No. 6 of 1982	
Immigration Act 2004	No. 1 of 2004	Irl
International Criminal Court Act 2006	No. 30 of 2006	Irl
Interpretation Act 1901	No. 2, 1901	Aus
Interpretation Act 1937	No. 38 of 1937	Irl
Interpretation Act 2005	No. 23 of 2005	Irl
Investment Funds, Companies and Miscellaneous Provisions Act 2005	No. 12 of 2005	Irl
Irish Nationality and Citizenship Act 1956	No. 26 of 1956	Irl
Irish Nationality and Citizenship Act 2001	No. 15 of 2001	Irl
Law Reform Commission Act	No. 3 of 1975	Irl
Legislation Publication Act 1996	No. 17 of 1996	Tas
Legislative Instruments Act 2003	No. 139, 2003	Aus
Livestock Marts Act 1967	No. 20 of 1967	Irl
Local Government (Ireland) Act 1898	(61 & 62 Vict.) c.37	UK
Local Government Act 2001	No. 37 of 2001	Irl
Local Government Act 2001	No. 37 of 2001	Irl
Magna Carta 1297	(25 Edw. 1) cc. 1, 9, 29	Eng
Ministers and Secretaries (Amendment) Act 1939	No. 36 of 1939	Irl
Ministers and Secretaries (Amendment) Act 1939	No. 36 of 1939	Irl
Natural Oil Reserves Agency Act 2007	No. 7 of 2007	Irl
Official Languages Act 2003	No. 32 of 2003	Irl
Package Holidays and Travel Trade Act 1995	No. 17 of 1995	Irl
Poyning's Law 1495	(10 Hen. 7) c. 22	Eng
Property Values (Arbitrations and Appeals) Act 1960	No. 45 of 1960	Irl
Public Works (Ireland) Act 1831	(1 & 2 Will. 4) c. 33	UK
Sea-Fisheries and Maritime Jurisdiction Act 2006	No.8 of 2006	Irl
Social Welfare Act 2007	No. 40 of 2007	Irl
Social Welfare Consolidation Act 2005	No. 26 of 2005	Irl
Stamp Duties Consolidation Act 1999	No. 31 of 1999	Irl
Statute Law Restatement Act 2002	No. 33 of 2002	Irl
Statute Law Revision (Pre-Union Irish Statutes) Act 1962	No. 29 of 1962	Irl
Statute Law Revision Act 1856	(19 & 20 Vict.) c. 64	UK

Statute Law Revision Act 1861	(24 & 25 Vict.) c. 101	UK
Statute Law Revision Act 1983	No. 11 of 1983	Irl
Statutory Instruments (Amendment) Act 1955	No. 26 of 1955	Irl
Statutory Instruments Act 1946	(9 & 10 Geo. 6) c.36	UK
Statutory Instruments Act 1947	No. 44 of 1947	Irl
Succession Act 1965	No. 27 of 1965	Irl
Summary Jurisdiction (Ireland) Act 1851	(14 & 15 Vict.) c. 92	UK
Taxes Consolidation Act 1997	No. 39 of 1997	Irl
Temple Bar Renewal and Development Act 1991	No. 19 of 1991	Irl
Union with Ireland Act 1800	(39 & 40 Geo. 3) c.67	GB
Youth Work Act 2001	No. 42 of 2001	Irl

TABLE OF CASES

CIF v Autorita Garante della Concorrenza del Mercato	(Case C-198/01) [2003] ECR 1-8055	ECJ
Dudgeon v United Kingdom	(1982) 4 EHRR 149	ECtHR
East Donegal Cooperative v Attorney General	[1970] IR 317	Irl
Flaminio Costa v ENEL	(Case 6/64) [1964] ECR 585	ECJ
Gilligan v Criminal Assets Bureau	[1998] 3 IR 185	Irl
Harvey v Minister for Social Welfare	[1990] 2 IR 232	Irl
Maher v Minister for Agriculture	[2001] 2 IR 139	Irl
Ministero delle Finanze v IN.CO.GE '90	(Case C-10-22/97) [1998] ECR 1-6307	ECJ
Murphy v Attorney General	[1982] IR 241	Irl
Norris v Ireland	(1991) 13 EHRR 186	ECtHR
Quinn v Ireland (No 2)	[2007] 2 ILRM 101	Irl
Rooney v Minister for Agriculture and Food	[1991] 2 IR 539	Irl
State (Sheehan) v the Government of Ireland	[1987] IR 550	Irl
Vermeire v Belgium	(1991) 15 EHRR 488	ECtHR

INTRODUCTION

A Purpose of this Consultation Paper

1. This *Consultation Paper on the Legislation Directory: Towards a Best Practice Model* is part of the Commission's review of the Legislation Directory. It is intended to provide a focus for public discussion on how the Legislation Directory can best serve its user base in terms of content provision and accessibility. The Commission also wishes to share its initial views in relation to its future plans for the Legislation Directory. The Commission would welcome submissions from interested parties in relation to the issues highlighted in this Consultation Paper.

B Background

2. The Consultation Paper arises out of the transfer of responsibility for the Chronological Tables of the Statutes from the Office of the Attorney General to the Law Reform Commission. The Law Reform Commission is an independent statutory body established by the *Law Reform Commission Act 1975*. The 1975 Act gives the Commission the primary role of keeping the law under review and conducting research with a view to the reform of the law. "Reform" is defined under section 1 of the Act to include matters relating to the simplification, modernisation, revision and consolidation of statute law.

3. Until 2006, the Commission carried out its statutory mandate in relation to law reform by producing consultation papers and reports on subjects drawn from its Programmes of Law Reform, as well as acting on requests from the Attorney General to examine specific areas of law. However, in 2006-2007, the scope of the Commission's research work was expanded to include two other areas of activity, Statute Law Restatement and the Legislation Directory (then known as the Chronological Tables of the Statutes). The Office of the Attorney General had functional responsibility for the preparation of statute law restatements under the *Statute Law Restatement Act 2002*. Historically, it had also been responsible for the preparation and maintenance of the Legislation Directory. In 2006, a Government decision was made to transfer responsibility for Statute Law Restatement to the Commission. Subsequently, the Attorney General requested the Commission to take over functional responsibility for the Chronological Tables of the Statutes, and the Commission agreed to this request. Both of these functions are consistent with the function of the Commission set out in the *Law Reform Commission Act 1975* of keeping the law under review. Indeed, during the Oireachtas debates on the *Law Reform Commission Bill 1975*, Declan Costello, the then Attorney General, emphasised that "[e]ase of access to law is important not just to help the work of practising lawyers but also in the interests of the public."¹

C Renaming the Chronological Tables of the Statutes

4. Following the Commission's assumption of responsibility, the Commission made the decision in late November 2007 to change the name of the "Chronological Tables of the Statutes" to "Legislation Directory". This decision was taken in order to better indicate to potential users the function of this resource as a guide to legislative effects. It also marked out the new allocation of responsibility for this resource to the Commission, which in due course will lead to new innovations in terms of presentation and functionality.

5. The Commission also believes that the new name will lead to increased use of the database as anecdotal evidence suggests that the function of the Chronological Tables of the Statutes was not known to a considerable number of those who could have benefited from reference to this resource. Further, the term "chronological tables", which dates from 1870, is somewhat outdated in the modern era of electronic searching. The term also suggests that the database merely contains a chronological list of statutes rather than a fully searchable list of legislative effects.

6. Particular inspiration for the new name was drawn from the "Directory of Community Legislation in Force", which performs a similar function.² The term "directory" appealed to the Commission and the term

¹ Seanad Debates Vol. 80 Col. 205-206 (10 April 1975)(Second Stage)

² Available to view at <http://www.europa.eu.int/eur-lex/lex/en/legis/latest/index.htm>

“legislation” was viewed as broader than “statutory”. The name “Legislation Directory” is considered to be clear, concise and descriptive and meets with the Commission’s endorsement of the use of plain language where possible.

D Purpose and Function of the Legislation Directory

7. The Legislation Directory is a publicly available database. Its main purpose is to document modifications made to primary legislation by subsequent legislation. The resource provides a vital source of information which aids legal professionals, legislators and lay persons to inform themselves as to the current position of the law.

8. The compilation and maintenance of the Legislation Directory forms part of the overall policy of “Better Regulation” discussed in the 2004 Government White Paper entitled *Regulating Better*.³ The White Paper was designed to:

“...contribute to improving national competitiveness and better Government by ensuring that new regulations - Acts and Statutory Instruments (Orders) - are more rigorously assessed in terms of their impacts, more accessible to all and better understood.”⁴

9. In this document, transparency and accountability were recognised as two of the six principles of better regulation to be promoted as part of the “Better Regulation” initiative.⁵ The maintenance of the Legislation Directory enhances the transparency of the Irish Statute Book. It makes the law more accessible to citizens and serves to enhance the accountability of the law. Peter Martin, one of the co-founders of the Legal Information Institute at Cornell University, commented that:

“Efforts to make law more accessible, more understandable, more clearly expressed are ultimately efforts to make law more effective and in a democracy, more accountable.”⁶

E Legislation as a Public Resource

10. The New Zealand Law Commission has observed that:

“Legislation that is currently in force is binding. It affects citizens’ legal rights and obligations. This makes it important that citizens have access to it.”⁷

11. Indeed, it can be contended that there is a fundamental obligation on a state, which produces large quantities of legislation, to make this legislation accessible to the public.⁸ This can be seen to flow from the role that legislation plays in governing the relationship between state and citizen. One of the basic principles of our legal system is that “ignorance of the law is no excuse”. These difficulties have been recognised in Ireland. While discussing the *Statute Law Revision Bill 2004*, Minister of State, Tom Kitt, noted that:

“There are fundamental problems in requiring people to be bound by laws which they cannot reasonably be expected to find, interpret or understand.”⁹

³ *Regulating Better, A Government White Paper setting out six principles of Better Regulation* (16 January 2004). Available at www.betterregulation.ie

⁴ *Ibid* at 2

⁵ The six principles are Necessity; Effectiveness; Proportionality; Transparency; Accountability and Consistency. *Ibid*.

⁶ Martin & Foster, “Legal Information - A Strong Case for Free Content, An Illustration of How Difficult “Free” May Be to Define, Realize, and Sustain”. Available at <http://www4.law.cornell.edu/working-papers/open/martin/free.html>

⁷ Law Commission (New Zealand) *Presentation of New Zealand Statute Law* Issues Paper No 2 (12 September 2007) at paragraph 120. Available at <http://www.lawcom.govt.nz>

⁸ Bartholomew “Statute Law Revision” (1971) 1 *Hong Kong Law Journal* 274

⁹ Dáil Debates Vol. 608 No. 2 Col. 398 (20 October 2005)

F The Statute User

12. The Commission believes that identifying the users of the Irish Statute Book is key to any discussion on the dissemination of legislation. Accordingly, it is appropriate, for the purposes of this Consultation Paper and the wider Legislation Directory project, to identify the persons who may have an interest in the information which the Legislation Directory can provide. These include:

- Persons involved in the preparation, enactment and making of primary and secondary legislation; i.e. Government Departments, the Office of Parliamentary Counsel to the Government and members of the Houses of the Oireachtas;
- Bodies charged with the operation and implementation of legislation such as Government Departments, public bodies, local authorities and independent regulators;
- Barristers and solicitors involved in the provision of advice to clients on legislation and advocacy on their behalf;
- The legal academic community involved in teaching students of the law and writing scholarly publications commenting on the law;
- Members of the public who would like to know how legislation affects their personal circumstances;
- Persons involved in campaigning for changes in the law and those involved in making recommendations for changes to the law, including the Law Reform Commission.

G Outline of the Consultation Paper

13. In Chapter 1, the Commission will provide an introduction to the Legislation Directory, which will set the scene for evaluation of its operation in practice in subsequent chapters. The Commission will then discuss the historical development of the Irish Statute Book and the Legislation Directory. The accessibility of the Irish Statute Book for users will also be considered. The Commission will analyse how the methods of publication and amendment of legislation in Ireland can contribute towards the inaccessibility of legislation. Following from this, the Commission will also consider solutions to these problems which have been adopted in Ireland and in other jurisdictions.

14. In Chapter 2, the Commission will discuss the current operation of the Legislation Directory. It will provide an introduction to the electronic statute book (eISB) online. This website hosts the Legislation Directory and is now the primary resource for users of the Irish Statute Book who wish to access the Legislation Directory. Thus, this Consultation Paper will concentrate on an examination of the information available from this resource. The Commission will then examine the content of the Legislation Directory homepage. It will proceed to outline the current content and functionality of the individual listings on this homepage and make suggestions for improvement. Finally, it will consider whether the Legislation Directory should include details of the effect of case law on legislation.

15. Chapter 3 will focus on the methodology which the Commission will utilise in developing a Legislation Directory which is in line with the objectives set out in Chapter 2. The Commission will examine project management issues in relation to workflows and quality assurance. It will also consider the reliability of the substantive content of the existing database with particular emphasis on the handling of errors and omissions. The Commission will then examine the varying types of affecting provisions which may be reflected in the Legislation Directory. The chapter also emphasises the importance for the Commission of sourcing accurate copies of legislation. These form the raw material from which the added value provided by the Legislation Directory can be delivered. Finally, the Commission will discuss its approach to sourcing the appropriate technology to underpin the redesigned Legislation Directory and the interaction between this technology and the existing eISB and Legislation Directory.

16. In Chapter 4, the Commission will consider the future of the Legislation Directory in the wider context of eLegislation. The Commission sees the Legislation Directory project as part of the Government's wider eLegislation strategy and it is committed to ensuring that the ongoing development of the Legislation Directory will complement and be fully compatible with the development of that project. The Commission will discuss the ambit of the term "eLegislation". It will consider the benefits to be gained

from the implementation of a comprehensive eLegislation strategy. The Commission will also examine a number of practical matters which must be considered for the successful implementation of such a strategy. These include the integration of technology, the adoption of consistent work practices and drafting styles among stakeholders and the effective management of an eLegislation project. The Commission will outline developments in other jurisdictions that have made greater progress than Ireland in the context of eLegislation. Finally, the Commission will look at the interaction between the Legislation Directory and a more extensive eLegislation project.

17. This Consultation Paper is intended to form the basis for discussion and all recommendations made are, therefore, provisional in nature. Following further consideration of the issues and following consultation with interested parties, the Commission will make its final recommendations in a Report. Submissions on the provisional recommendations contained in this Consultation Paper are very welcome. In order for the Commission's final Report to be made available as soon as possible, those who wish to do so are requested to send their submissions in writing by post to the Commission or by email to info@lawreform.ie by October 23 2008.

A Introduction

1.01 This chapter provides a contextual introduction to the Legislation Directory which will set the scene for evaluation of its operation in practice in subsequent chapters. In Part B, the Commission will outline the historical development of the Irish Statute Book and the Legislation Directory. In Part C, the Commission will consider the accessibility of the Irish Statute Book for users. It will examine how the manner in which legislation, and in particular, secondary legislation, is produced and published can impede this accessibility. The Commission will also consider the production and publication of secondary legislation outside of Ireland. The Commission will then examine how the method in which legislation is amended can further contribute to the inaccessibility of the Irish Statute Book. It will then analyse the role of the Legislation Directory in improving ease of access to the Irish Statute Book. Finally, the Commission will examine other means by which the accessibility of legislation can be improved.

B Historical Development of the Irish Statute Book and the Legislation Directory

(1) *The Legislative Legacy of Ireland's Political History*

1.02 The Irish Statute Book encompasses a varied selection of sources which reflects the political history of our island. It has its roots in our colonial and pre-colonial past and its development can be traced from the era of Brehon law to the present day.

1.03 Brehon Law was one of the earliest forms of law in Ireland administered by Brehons or judges throughout the country.¹ Many of the key elements of the Brehon system of law are to be found in the Irish law tracts, which were written in the 7th and 8th centuries.² These tracts represent early forms of legislation in Ireland.

1.04 Anglo-Norman law arrived in Ireland following the invasion of 1169 at which point Ireland became the first recipient of the Anglo-Norman common law system. Since that time, Ireland's history has yielded a chequer board of legislation reflecting the legacy of foreign influence in this country.

1.05 A full account of the development of the Irish legislative landscape is outside the scope of this Consultation Paper.³ However, the main categories of pre-Independence public statutes on the Irish Statute Book can be described as:

- Pre-Union Irish statutes passed by various Parliaments sitting in Ireland between 1169 and the *Act of Union 1800*;⁴
- Pre-Union statutes enacted by the English Parliaments between the Norman invasion of 1066 and the Union of England and Scotland in 1707 which were applied to Ireland by virtue of *Poyning's Law 1495* or by express or implied provision;

¹ See generally Kelly *A Guide to Early Irish Law* (Dublin Institute for Advanced Studies 1988).

² Byrne and McCutcheon *The Irish Legal System* (4th ed Butterworths 2001) at 25

³ For a good summary see Byrne and McCutcheon *The Irish Legal System* (4th ed Butterworths 2001) at Chapter 2.

⁴ An Act of Union was passed by both the Great British and Irish Parliaments in 1800. The Act of the Parliament of Ireland was the *Act of Union (Ireland) 1800* (40 Geo. 3) c. 38 and the Act of the Parliament of Great Britain was the *Union with Ireland Act 1800* (39 & 40 Geo. 3) c. 67

- Statutes of the Kingdom of Great Britain passed by the Parliament of Great Britain at Westminster after the Union of England and Scotland in 1707 but before the Union of Great Britain and Ireland in 1800 and which were applied to Ireland;
- Statutes of the United Kingdom of Great Britain and Ireland passed after the *Act of Union 1800* but before the establishment of The Irish Free State (Saorstát Éireann) in 1922 and which were applied to Ireland.

1.06 The Anglo-Irish Treaty was signed in 1921. It provided for the establishment of the Irish Free State reflecting the gradual development of political independence from Great Britain. It led to the adoption of the Constitution of the Irish Free State in 1922. Article 73 of that document provided as follows:

“Subject to this Constitution and to the extent to which they are not inconsistent therewith, the laws in force in the Irish Free State (Saorstát Eireann) at the date of the coming into operation of this Constitution shall continue to be of full force and effect until the same or any of them shall have been repealed or amended by enactment of the Oireachtas”.

1.07 Thus, Article 73 of the 1922 Constitution transposed existing legislation of the United Kingdom of Great Britain and Ireland, applicable to Ireland, and which was not inconsistent with the law of the Irish Free State, into the law of that state.

1.08 In turn, Bunreacht na hÉireann (Constitution of Ireland) was adopted in 1937. Article 50 contains a similar provision to Article 73 of the 1922 Constitution. Consequently, the corpus of statute law applicable in this jurisdiction continues to reflect our pre-Independence legislative history.

1.09 As will be seen in Chapter 2, the treatment of pre-1922 legislation within the Legislation Directory is an issue which requires careful consideration.

(2) The Development of an Index to the Statutes and the Chronological Tables

1.10 The Commission has detailed the influence of our political history on the body of statute law applicable in this jurisdiction. There is further evidence of this influence in the Legislation Directory. Its content and format mirror initiatives carried out in the United Kingdom during the nineteenth and early twentieth century in relation to the compilation of Chronological Tables of the Statutes.

(a) Early Commercial Publications

1.11 Prior to the commencement of the official Chronological Tables of the Statutes in the United Kingdom, a number of commercial publications of indexes to the statutes and chronological tables of the statutes were already in existence. For example, Raithby produced useful indexes in these areas.⁵

1.12 In Ireland, as early as 1836, a barrister called Andrew Newton Oulton prepared a chronological table of statutes affecting Ireland.⁶ Interestingly, the preface to the chronological table prepared by Oulton deals with issues surrounding access to the Statute Book, which still ring true today. He says:

“The want of a compilation of this description became apparent almost contemporaneously with joining the profession of a Barrister; and still more so, when unexpectedly increasing business demanded daily a facility of reference to the statute law of Ireland.”⁷

⁵ Raithby *The Alphabetical Index to the Statutes of the Realm, from Magna Carta to the end of the reign of Queen Anne* (London 1824)

Raithby *The Chronological Index to the Statutes of the Realm, from Magna Carta to the end of the reign of Queen Anne* (London 1828)

⁶ Oulton *Chronological Table of the Statutes in force in, or affecting Ireland from the earliest period to the present time, with references to the index to these statutes* (Hodges and Smith Dublin 1837).

⁷ Oulton *An Index to the Statutes at present in force in, or affecting Ireland from the year 1310 to 1835, inclusive: to be continued by annual supplements, (Hodges and Smith Dublin 1836) at v.*

1.13 Oulton began with a statutory index and in the preface to the first index outlined how he had intended on including a:

“...chronological list of the statutes relating to Ireland from the earliest period, distinguishing such as had become obsolete, those which had been repealed or suspended, with the repealing or superseding Acts and the analogous or superseding Acts and the analogous English Statutes.”⁸

The chronological list proved to be so “extensive in its compass” that it would delay the publication of the index so Oulton published his first alphabetical Index to the Statutes in 1836 and the Chronological Table of the Statutes was published a few months later.

1.14 The subject headings in Oulton's index relied largely on an earlier index compiled by William Ball.⁹ The chronological table in turn relied on the index and were bound with the supplements to the index.¹⁰ Later supplements by Oulton contained updates to both the index and the chronological table. The publication of Oulton's chronological table demonstrated the necessity for a directory detailing the effects of Irish legislation from an early stage. The last volume was published in 1839 covering the period 1310 to 1838.¹¹

(b) The Development of Official Publications

1.15 The development of the official Chronological Tables of the Statutes in this jurisdiction is attributable to earlier developments in the United Kingdom. In 1867, Lord Cairns, then Lord Justice, submitted a confidential memorandum to Lord Chancellor Chelmsford. He proposed an Index to the Statutes and a Chronological Table of the Statutes. He suggested that the Tables should have a column showing any repeals and the legislative source of the repeal for each Act and should also show any subsequent Acts containing important amendments and alterations. He annexed specimens of the proposed documents to the memorandum. He proposed that they would be compiled and maintained under the authority of the Houses of Parliament. It was also envisaged by Lord Cairns that these documents could be revised after each session of Parliament. He believed that the edition for each year should be published as soon after an end of a session as the alterations to the print could be made.

1.16 Lord Chelmsford then took advice on the contents of the memorandum and the most expedient method of implementing the proposals in it.¹² He received a positive report on the advantages of the proposal and, in particular, in relation to the regular updates. Then, in May 1867, while introducing the Statute Law Revision Bill of that year Lord Chelmsford explained the views of the Government on these matters to the House of Lords. In October, he wrote to the Home Secretary and informed him that an Index to the Statutes and a Chronological Table of the Statutes would be prepared.¹³

⁸ Oulton *First Supplement to the Index to the statutes in force or affecting Ireland comprising an Index to the statutes passed in the 6th and 7th William IV*, (Hodges and Smith Dublin 1836) at iv.

⁹ Ball *An Index to the Acts passed in Ireland in the thirty-ninth and fortieth years of the reign of His Present Majesty, King George the Third [A.D. 1799-A.D. 1800] together with an Appendix, containing a Short Index to such Acts of Parliament of the United Kingdom, passed in the 41st, 42nd and 43rd years of the same Reign [A.D. 1801-A.D. 1803], as appear to bind Ireland*. (S Grierson Dublin 1804).

¹⁰ The Index is available in the Early Printed Books section of the Berkeley Library in Trinity College Dublin.

¹¹ Oulton *Index to the statutes, at present in force or affecting Ireland, from the year 1310 to 1838, inclusive: continued by annual supplements* (Hodges and Smith Dublin 1839).

Another publication of interest is Darby *Handy Book of Post-Union Statutes originally relating to or affecting Ireland chronologically arranged from 1801 to 1870 both inclusive with an index to same and Acts extended to Ireland by the Imperial Parliament and now in force so far as they immediately relate to or affect Ireland* (McGlashan & Gill Dublin 1872).

¹² The matter was referred to Sir John Lefevre (Clerk of the Parliaments), Sir T.E. May (Clerk of the House of Commons) and Mr. Thring (later Lord Thring) (Counsel to the Home Office).

¹³ Letter dated October 29, 1867. See Parliamentary Papers, 1870, No. 116. See also Ilbert *Legislative Methods and Forms* (Oxford 1901) at 64.

1.17 Under the direction of the Statute Law Committee, the first official *Chronological Table of and Index to the Statutes* was published in 1870¹⁴ and continued annually thereafter. First editions of both are valuable sources for the statute law of mid-Victorian England.¹⁵

1.18 In 1876, Lord Thring, an active member of the Statute Law Committee who dedicated his working life to the improvement of statute law,¹⁶ devised careful instructions on the preparation of the Chronological Tables of the Statutes and the Index to the Statutes.¹⁷ Ireland's Legislation Directory still mirrors closely the content devised by Thring for the Chronological Tables of the Statutes. At the time, the Chronological Tables and Index to the Statutes of the United Kingdom applied to Ireland so the Irish tradition of tabling legislative effects also began officially at this time. The last volume of the official Chronological Tables of the Statutes in the United Kingdom which affected Ireland was published in 1922.¹⁸

(c) Post-Independence Developments

1.19 From 1923 until 1985 the effects of amending legislation on preceding enactments were detailed in tabular form at the back of the annual volumes of legislation published by the Stationery Office (now Government Publications). Each volume contained a table showing how legislation enacted in the particular year had impacted on existing statutes. These tables came to be known as the "Tables of the Effect of Legislation". For example, the 1985 volume of Acts of the Oireachtas contained after the relevant Acts:

- A list of British statutes affected: These were listed chronologically. Details included the year and chapter, the short title, how the legislation was affected and the affecting provision;
- A list of groups of Acts affected: These were listed alphabetically. Details included the collective citation of the Acts, how they were affected and the affecting provision;
- A list of Saorstát Éireann and Acts of the Oireachtas affected: These were listed chronologically. Details included the year and number of the Acts, the short title, how the legislation was affected and the affecting provision;
- A list of enactments brought into operation by Statutory Instruments made in the year 1985: These were listed alphabetically. Details included the name of the enactment and the Statutory Instrument.
- A chronological list of regulations made under the *European Communities Act 1972* in the year 1985: It included the number of the relevant Statutory Instrument in the 1985 series;
- A table showing in alphabetical order the latest collective citations of groups of Acts contained in Saorstát Éireann statutes from 1922 to 1937 and in Acts of the Oireachtas from 1938 to 1985: Details included the latest collective citation and the Act containing the citation;
- An alphabetical subject index to the Public General Acts of 1985.

¹⁴ Jenkyns *Chronological Table of, and Index to the Statutes (Chronological Table of the Statutes) to the end of the session of 1869 (of 1872 [etc.]), etc.* (Eyre and Spottiswoode London 1870). The twelfth edition, published in 1893, consisted of the Index only. From 1950 onward *the Index to the Statutes in Force*, was issued separately.

¹⁵ See further "Tracing Acts of Parliament", House of Commons Information Office Factsheet L12. Available at <http://www.parliament.uk/documents/upload/L12.pdf>

¹⁶ See further the biographical entry for "Thring, Henry, Baron (1818-1907)" in Matthews and Harrison (eds) *Oxford Dictionary of National Biography* (Oxford University Press 2004).

¹⁷ See further Thring *Practical Legislation* (John Murray 1902).

¹⁸ See *The Public General Acts of 1922 of the United Kingdom of Great Britain and Ireland with a Table of the Titles, the Effect of the Year's Legislation, and an Index* (Eyre and Spottiswoode London 1922) for HMSO. See also the cumulative Chronological Tables of the Statutes for 1235-1921: *Chronological Table and Index of the Statutes Vol I Chronological Table of All the Statutes* (37th ed HMSO London 1921).

These Tables of the Effect of Legislation were included in the annual volumes until 1985. The subject index was continued until 1987. After that time, the tables and index no longer featured in each volume of the statutes.

1.20 An *Index to the Statutes 1922 to 1975 with Tables and 1976 Supplement* was published in 1977¹⁹ by the Stationery Office and prepared by the Statute Law Reform and Consolidation Office in the Office of the Attorney General. This was the first cumulative publication of the Chronological Tables of the Statutes and included a subject-matter index as well as a Chronological Table of the Public General Acts 1922-1976 detailing affecting provisions for Acts within that timeframe.

1.21 The next cumulative publication was an *Index to the Statutes 1922 to 1982 with Tables and Supplement for 1983 to 1985* which was again prepared by the Statute Law Reform and Consolidation Office in the Office of the Attorney General and published by the Stationery Office in 1986.²⁰

1.22 After that publication, the next and last hard copy format of the Tables, *Chronological Tables of the Statutes 1922 to 1995*, was published in 1996.²¹

(d) Provision of Alternative Publication Formats

1.23 As mentioned above, the *Chronological Tables of the Statutes 1922 to 1995* was the last hard copy volume published. In 1999, electronic access to the Chronological Tables along with primary and secondary legislation was made available online.²² The Chronological Tables were also made available on a CD-ROM in 1999. This CD-ROM has been subsequently updated to include information up to the end of 2002.

1.24 At present, the most current version of the Legislation Directory²³ available for consultation is on the electronic Irish Statute Book (eISB), an online database hosted by the Office of the Attorney General.²⁴ The purpose of the Legislation Directory is stated to be “to enable users of the Irish Statute Book to identify whether a particular provision has been amended or otherwise affected since its enactment.” That Office’s responsibility for the maintenance of the Legislation Directory ended with the uploading of entries for 2005.²⁵ This took place in January 2008. The detailed operation of the Legislation Directory is discussed in Chapter 2.

(3) Index to the Statutory Instruments

1.25 The Stationery Office also published a series of Indexes to the Statutory Instruments between 1922 and 1995. These were prepared in the Office of the Parliamentary Draftsman.²⁶ The final volume in

¹⁹ *Index to the Statutes 1922 to 1975 with Tables and 1976 Supplement* (Stationery Office Dublin 1977)

²⁰ *Index to the Statutes, 1922 to 1982: with Tables and Supplement for 1983 to 1985* (Stationery Office Dublin 1986)

²¹ “Chronological Tables of the Statutes 1922 to 1995 : Showing pre-Union Irish Statutes (1235-1800), English Statutes (1226-1707), pre-Union British Statutes (1707-1800), British Statutes (1801-1922) and Saorstát Éireann Statutes and Acts of the Oireachtas (1922-1995) affected by Saorstát Éireann Statutes or Acts of the Oireachtas enacted, or Statutory Instruments made, on or before 31 December 1995” (Stationery Office Dublin 1996)

²² There was no publication of the chronological tables between 1996 and 1999. From 1997 to the end of 2006, the preparation of the Chronological Tables was outsourced to a team of barristers under the auspices of the Office of the Attorney General.

²³ The Commission made the decision in late November 2007 to rename the Chronological Tables of the Statutes as the “Legislation Directory”. This is discussed at Part C in the Introduction to this Consultation Paper.

²⁴ www.irishstatutebook.ie.

²⁵ However, the Office of the Attorney General continues to be responsible for the maintenance of the eISB which hosts the Legislation Directory.

²⁶ Now the Office of Parliamentary Counsel to the Government.

1995 was divided into two parts and an appendix.²⁷ Part I contained an alphabetical list of statutes showing the subsidiary legislation made under each statute. It gave details of the particular provision or provisions of the primary legislation cited in the secondary legislation. It also gave information on how to locate the Statutory Instrument citing either the year and number of the instrument or details of its publication in *Iris Oifigiúil*.

1.26 Part II contained similar but rearranged information. Instead, the user could search by an alphabetical list of Statutory Instruments. Again, the user was provided with details of the statutory authority under which each Statutory Instrument was made and the applicable provision of that legislation. Details were also provided in relation to the year and number of the Statutory Instrument or its publication in *Iris Oifigiúil*.

1.27 The appendix set out a list of Statutory Instruments or classes of Statutory Instruments, which by virtue of directions given by the Attorney General under subsection (3) or (4) of section 2 of the *Statutory Instruments Act 1947* were not required to be published in the Statutory Instrument Series or in *Iris Oifigiúil*.

1.28 This publication was not maintained after the advent of the eISB. However, the Commission now proposes the addition of “Associated Secondary Legislation” to the Legislation Directory. This will replicate some of the functions carried out by this original publication.²⁸ This will be discussed in Chapter 2.

C The Inaccessible Statute Book

1.29 In Part B, the Commission examined the historical development of the Irish Statute Book and the Legislation Directory. It now turns to a consideration of the accessibility of the Irish Statute Book for users.

1.30 As mentioned in the Introduction to this Consultation Paper, there is a fundamental obligation on the State to make legislation accessible to the public. This duty stems from the role that legislation plays in governing the relationship between state and citizen. One of the basic principles of our legal system is that “ignorance of the law is no excuse”. A person cannot plead a lack of knowledge of the law which regulates his or her behaviour. A state that wishes to rely on that principle must at a minimum make law accessible to the public so that they can acquire such knowledge should they so wish to do so.

1.31 The Commission will first consider how the manner in which legislation is produced and published can impede accessibility. This is particularly true in the case of secondary legislation. The Commission will also consider the production and publication of secondary legislation outside of Ireland. The Commission will then examine how the method in which legislation is amended can further contribute to its inaccessibility. It will then discuss the role of the Legislation Directory in improving ease of access to the Irish Statute Book. Finally, the Commission will examine other means by which the accessibility of legislation can be improved.

(1) The Legislative Process and the Publication of Legislation

The method of enactment and publication of primary and secondary legislation can impede the accessibility of the Irish Statute Book. This is particularly true in relation to secondary legislation.

(a) The Enactment and Publication of Primary Legislation

(i) Categories of Primary Legislation

1.32 Acts of the Oireachtas are of three types; Acts to amend the Constitution; Public General Acts which create law for the public at large; and Private Acts which create law for particular individuals or

²⁷ *Index to the Statutory Instruments 1987-1995* (Stationery Office Dublin 1996)

²⁸ However, it is not proposed to compile a chronological table of Statutory Instruments.

groups of individuals, such as companies or local authorities.²⁹ The Commission's focus in this Consultation Paper is limited to the corpus of Public General Acts.

(ii) The Legislative Process in Relation to Primary Legislation

1.33 Article 15.2.1° of the Constitution vests exclusive law-making powers in the Oireachtas.³⁰ Bills are drafted by the Office of Parliamentary Counsel to the Government.³¹ This ensures a high degree of consistency in the format and language of Bills. Once a Bill has been passed by both Houses of the Oireachtas, Dáil Éireann and Seanad Éireann,³² a vellum copy, prepared in the Office of the Houses of the Oireachtas, is presented by the Taoiseach to the President for signature and promulgation as an Act. A Bill becomes law, that is an Act of the Oireachtas, on the day it is signed by the President who is also required under Article 13.3.2° of the Constitution to promulgate every law. This is done by the publication of a notice in *Iris Oifigiúil* in accordance with Article 25.4.2°. The official text of the Act is the signed text which, in accordance with Article 25.4.5° of the Constitution, is enrolled in the Office of the Registrar of the Supreme Court. As Byrne and McCutcheon note, this "... is not merely a matter of exaggerated protocol. It formalises the record and in the unlikely event of a dispute arising as to the text of an Act (as opposed to its interpretation) the text thus enrolled is conclusive evidence of the provisions."³³

(iii) Publication of Primary Legislation

1.34 The Act is then published. The law does not prescribe the method in which Acts are to be published but the convention is that publication follows signing by the President. Responsibility for the publication of primary legislation rests with the Houses of the Oireachtas Commission and it is the Bills Office which takes charge of having the signed Act printed. Such Acts are then made available for purchase through the Government Publications Office in Molesworth Street, Dublin 2. The text of such Acts is also made available on the Houses of the Oireachtas website,³⁴ and on the eLSB however the latter currently only hosts Acts up to the end of 2006.³⁵

1.35 Section 7 of the *Official Languages Act 2003* provides that, "as soon as may be" after enactment each Act of the Oireachtas must be printed and published in each of the official languages simultaneously. This means that on some occasions, although an Act may have been signed by the President and have passed into law there may be a delay in publication while a translation is awaited.

1.36 Acts are published in their enacted form only. Once this version is published there will be no further re-publication of that Act to take account of modifications which may be made to an Act at a later date.

(b) The Enactment and Publication of Secondary Legislation

(i) The Making of Secondary Legislation

1.37 Delegated or secondary legislation consists of instruments enacted by a subordinate body or official to which or to whom law-making power is devolved by the legislative organ.³⁶ The Constitution

²⁹ Byrne and McCutcheon *The Irish Legal System* (4th ed Butterworths 2001) at [13.02]

³⁰ Note however, the provisions of Article 15.2.2° which will be discussed later.

³¹ See further Donelan "The Role of the Parliamentary Draftsman in the Preparation of Legislation in Ireland" (1992) 14 DULJ 1.

³² For a detailed account of parliamentary procedure see Byrne and McCutcheon *The Irish Legal System* (4th ed Butterworths 2001) at [13.29] ff.

³³ Byrne and McCutcheon *The Irish Legal System* (4th ed Butterworths 2001) at [13.25]

³⁴ www.oireachtas.ie

³⁵ www.irishstatutebook.ie. At time of writing the site was due for an update.

³⁶ For a discussion on the large number of bodies in Ireland with regulatory powers and the ambit of these powers see *Bodies in Ireland with Regulatory Powers* (February, 2007). Available at <http://www.betterregulation.ie/eng/index.asp?docID=97>

expressly provides for this procedure. Despite the apparently absolute terms in which Article 15.2.1° of the Constitution confers legislative power on the Oireachtas it is clear that, under Article 15.2.2° and within certain limits, power may be delegated by it to subordinate bodies.³⁷

1.38 Secondary legislation is also governed by the *Statutory Instruments Act 1947*. Section 1(1) of the 1947 Act defines a Statutory Instrument as an “order, regulation, rule, scheme or bye-law made in exercise of a power conferred by statute.”³⁸

1.39 Statutory Instruments have a wide variety of functions. They allow persons such as Ministers or bodies to whom legislative power has been delegated by statute to legislate in relation to detailed day-to-day matters arising from the operation of the relevant primary legislation.³⁹ However, such secondary legislation should not go beyond the implementation of principles and policies laid down in the primary legislation.⁴⁰ Furthermore, the effect must be “... truly regulatory or administrative only and ... not constitute the making, repealing or amending of the law in a manner which would be invalid having regard to the provisions of the Constitution.”⁴¹

1.40 Fennelly J captured the utility of secondary legislation as follows in *Maher v Minister for Agriculture*:

“The necessary regulation of many branches of social and economic activity involves the framing of rules at a level of detail that would inappropriately burden the capacity of the legislature. The evaluation of complex technical problems is better left to the implementing rules. They are not, in their nature, such as to involve the concerns and take up the time of the legislature. Furthermore, there is frequently a need for a measure of flexibility and capacity for rapid adjustment to meet changing circumstances.”⁴²

1.41 Notwithstanding the utility of secondary legislation, the fact cannot be ignored that in many cases it may be drafted by the bodies to whom the legislative power has been delegated and thus may reach the Irish Statute Book without the scrutiny or control of the Office of Parliamentary Counsel to the Government.⁴³ This lack of oversight leads to wide ranging inconsistencies in the format and language of these instruments.

1.42 However, some parliamentary control of secondary legislation may be achieved in certain circumstances. In some cases the parent statute may expressly retain the right of the Oireachtas, or one of its Houses, to annul, or less frequently to approve, the instruments made thereunder. Thus the Act will provide that instruments be “laid before” one or other or both Houses of the Oireachtas, who may within a stated time annul it. An example of a “laying before” provision is contained in the *International Criminal Court Act 2006*. Section 64(3) reads as follows:

“(3) Regulations under this section shall be laid before each House of the Oireachtas as soon as may be after they are made and, if a resolution annulling the regulations is passed by either such House within the next 21 days on which that House has sat after they are laid before it, the

³⁷ Article 15.2.2° states: “Provision may however be made by law for the creation or recognition of subordinate legislatures and for the powers and functions of these legislatures”.

³⁸ Secondary legislation was issued in the form of Statutory Rules, Orders and Regulations between 1922 and 1947.

³⁹ Secondary legislation is also used to implement European measures. This will be discussed in further detail in paragraph 2.95 below.

⁴⁰ For a discussion of the relevant case law see Hogan and Whyte *JM Kelly: the Irish Constitution* (4th ed LexisNexis Butterworths 2003) at [4.2.09] ff.

⁴¹ *Harvey v Minister for Social Welfare* [1990] 2 IR 232 at 240.

⁴² [2001] 2 IR 139 at 245

⁴³ However, certain Statutory Instruments must be drafted in the Office of Parliamentary Counsel to the Government. For further details see Cabinet Handbook, (Department of the Taoiseach December 2006), Chapter 5. Available at <http://www.taoiseach.gov.ie/index.asp?docID=3405>

regulations shall be annulled accordingly, but without prejudice to the validity of anything previously done under them.”.

1.43 The “laying before” procedure, which is governed by the *Houses of the Oireachtas (Laying of Documents) Act 1966* and Standing Orders is largely symbolic but is nevertheless important in that it formalises the parliamentary role in relation to delegated legislation. However, as Keane J remarked “even in the hands of a vigilant deputy or senator, [the power of annulment] is something of a blunt instrument, since it necessarily involves the annulment of the entire instrument, although parts of it only be regarded as objectionable”.⁴⁴ Moreover, given the fact that most delegated legislation is made by Ministers and that the Government in effect controls the Oireachtas it is highly improbable that a particular measure will be annulled in this fashion.⁴⁵

1.44 Humphreys noted in 1988 when compiling an index of Statutory Instruments that there was no record of a Statutory Instrument having been annulled by resolution of either House of the Oireachtas. He wrote that it was tempting to conclude that parliamentary review of subordinate legislation had become a moribund exercise.⁴⁶ At time of writing, the Commission conducted similar research and could locate no record of any annulment.

1.45 The Commission has also previously commented on the fact that there has been no effective process of review of delegated legislation since the demise, in 1981, of the Seanad Select Committee on Statutory Instruments.⁴⁷

1.46 The power of the Seanad Committee was simply to report to both Houses of the Oireachtas and the validity of the instruments complained of remained unaffected. Moreover, it was probably inevitable given the technical nature of its remit that its reports were rarely, if ever, debated in either House. However, as technical exercises the reports proved to be worthwhile and they were effective in that Government departments tended to take account of the observations and criticisms that were made.⁴⁸

(ii) The Publication of Secondary Legislation

1.47 The publication of Statutory Instruments is governed by section 3 of the *Statutory Instruments Act 1947*.⁴⁹ Section 3(1) reads as follows:

“(1) The following provisions shall apply in respect of every Statutory Instrument to which this Act primarily applies—

(a) within seven days after the making thereof, a copy thereof shall be sent to each of the following, namely, the National Library of Ireland, the Law Library, Four Courts, Dublin, the King's Inns Library, Dublin, the Incorporated Law Society of Ireland, the Dublin Chamber of Commerce, the Cork Chamber of Commerce, the Limerick Chamber of Commerce, the Waterford Chamber of Commerce, the Galway Chamber of Commerce and the Southern Law Association, Cork,

⁴⁴ *Laurentiu v Minister for Justice* [1999] 4 IR 26 at 93

⁴⁵ Byrne and McCutcheon *The Irish Legal System* (4th ed Butterworths 2001) at [13.155]

⁴⁶ Humphreys *Index to Irish Statutory Instruments* (Dublin 1988), Volume 1 at iii

⁴⁷ Law Reform Commission *Report on Statutory Drafting and Interpretation : Plain Language and the Law* (LRC 61-2000) at 3

This is in contrast to the position in some other jurisdictions. For details of the scrutiny procedure in relation to delegated legislation in the United Kingdom see <http://www.parliament.uk/about/how/laws/delegated.cfm>

See also HMSO *Statutory Instrument Practice, A manual for those concerned with the preparation of Statutory Instruments and the parliamentary procedures relating to them*, (4th ed November 2006), Part 5

⁴⁸ Byrne and McCutcheon *The Irish Legal System* (4th ed Butterworths 2001) at [13.156]

⁴⁹ It should be noted that Section 3(1) of the *Statutory Instruments Act 1947* was substituted by section 1 of the *Statutory Instruments (Amendment) Act 1955*. The substituted text is given above.

(b) as soon as may be after it is made, notice of the making thereof and of the place where copies thereof may be obtained shall be published in the *Iris Oifigiúil*,

(c) on and from the date of the issue of the *Iris Oifigiúil* containing the notice, copies of the Statutory Instrument shall be kept at the place specified in the notice and may be obtained there,

(d) as soon as may be after it is made, it shall, notwithstanding that it is liable to be annulled, be printed under the superintendence of the Stationery Office."

1.48 The availability of a particular Statutory Instrument may thus be dictated by the adherence to the correct publication procedures by the body making the instrument. This cannot always be guaranteed

1.49 Indeed, there have been significant difficulties associated with the publication of secondary legislation. In particular, there have been long delays in publication. This means that a Statutory Instrument may come into force but nobody will be aware of its existence. For example, S.I. No. 189 of 2005 is actually the *Youth Work Act 2001 (Commencement) Order 2002*. That instrument appoints 22 April 2002 as the day on which sections 2, 3, 4, 5, 6, 7, 17, 18, 24 of and the schedule to the *Youth Work Act 2001* come into operation. This delay in publication is not an isolated example.

1.50 These and other difficulties with the dissemination of Statutory Instruments have been long recognised. The Government thus decided at a meeting on 20 June 2007 to introduce an electronic Statutory Instrument system (eSIs). The new electronic system has been developed to allow for faster and more accurate production of Statutory Instruments in both final printed format and in electronic format that is suitable for placing the Statutory Instruments on the eISB.⁵⁰ The key element of the revised 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, the Statutory Instrument will be ready for publication, both in hard copy and electronically, within 4 working days of signature. Once the Statutory Instrument is signed, the body making the instrument will still go through the usual procedures of obtaining a Statutory Instrument number and presentation number from the Government Supplies Agency as well as laying copies before the Houses of the Oireachtas. The new system should substantially improve accessibility for citizens to secondary legislation as it is made. The Government Supplies Agency will have ongoing responsibility for managing the new system.⁵¹

1.51 Ireland is not the only jurisdiction which has taken measures to address deficiencies in relation to secondary legislation. The United Kingdom and Australia have also taken steps in this direction. However, their solutions go even further than the Irish measures and may be instructive in relation to future development here.

(2) Making and Publication of Secondary Legislation in the UK

1.52 The Office of Public Sector Information (OPSI), perhaps better known as the HMSO (Her Majesty's Stationery Office), but now privatised, is responsible for the publishing of legislation in the UK.⁵² The OPSI operates as the principal focal point for public sector information in the UK. It has produced a manual in relation to Statutory Instrument practice and designed a Statutory Instrument template as part of its development role.⁵³

⁵⁰ The Government also agreed that Departments should put a "PDF" version of Statutory Instruments signed by their Minister on their website as soon as possible after signature.

⁵¹ See <http://www.betterregulation.ie/eng/index.asp?docID=100>

⁵² HMSO with its core activities of management of Crown copyright and database rights, publication of legislation and provision of official publishing guidance continues to operate from within the OPSI. Publishing now takes place under contract. The current contract is with TSO (The Stationery Office) Ltd. The OPSI also conducts editorial work on the Chronological Tables of the Statutes.

⁵³ The template was initially designed by TSO but the OPSI team has added to it and ownership is now with them.

(a) Statutory Instrument Manual and Template

1.53 The Statutory Instrument Manual and Template were introduced in 2001 and began full operation in 2002.

1.54 The manual is intended primarily for the use of civil servants and others concerned with the preparation and making of Statutory Instruments and the parliamentary procedures relating to them.⁵⁴ It also contains a selection of forms and precedents that may be followed in the drafting of secondary legislation.

1.55 The template has been developed for authoring Statutory Instruments. The use of the Statutory Instrument template for the drafting and production of instruments ensures production in a consistent form, eliminates the time required for production of printers proofs and provides for speedier production and hence earlier publication and availability. In addition, where the template is capable of being used and government departments opt to use traditional production methods then TSO can levy additional charges on departments for the production of proofs etc.

1.56 The drafting template is said to be 95% suitable for any purpose. It is based on an XML schema. It contains all necessary elements for those drafting Statutory Instruments. The elements are set out and coded in the correct manner to generate specific outputs. The template, and information about its use for drafting, can be downloaded from the OPSI website.⁵⁵ Once a government department has completed a draft of a Statutory Instrument using the template they can upload it onto the Statutory Instrument Validation Tool and within ten minutes they can confirm the validity of the uploaded document.

1.57 The most difficult aspect of implementing the template for the OPSI was to ensure drafters of Statutory Instruments would accept it. Concerns were expressed that lawyers would only be employed as typesetters if a template were introduced, however the template has ultimately been accepted as the best way forward for consistent and efficient publication. By 2007, 96-97% of Statutory Instruments were drafted using the template. The Head of Publishing Services at the OPSI meets with the heads of legal services in every government department every six months to monitor progress and satisfaction in this area.

(b) Registration Procedure

1.58 Immediately after the making⁵⁶ of a Statutory Instrument it is to be sent to HMSO⁵⁷ who is responsible for the registration of Statutory Instruments. Statutory Instruments used to be delivered by hand and the OPSI still receives a minority in paper form, however, 99% now arrive as electronic copies. On receipt by HMSO, the Statutory Instrument will be printed for examination. If the examination shows that everything is correct, the Statutory Instrument will be registered and numbered. Particulars of each instrument are entered against its number in the register. The register is now held in the form of a computerised database. In the event of any errors being found in the instrument, the matter will be

⁵⁴ This relates to United Kingdom Statutory Instruments. A separate manual has been produced for instruments made by the National Assembly for Wales. This sets out the procedures of the Assembly. The manual also does not apply to Scottish Statutory Instruments for which a separate Practice Manual has been prepared by the Scottish Executive. HMSO *Statutory Instrument Practice, A manual for those concerned with the preparation of Statutory Instruments and the parliamentary procedures relating to them*, (4th ed November 2006) at 1

⁵⁵ <http://www.opsi.gov.uk/si/template>. A username and a password are necessary to access the site

⁵⁶ In practice, "immediately after making" has been defined as within 24 hours for departments based in London and 48 hours for departments located elsewhere

⁵⁷ Section 2(a) *Statutory Instruments Act 1946*

HMSO *Statutory Instrument Practice, A manual for those concerned with the preparation of Statutory Instruments and the parliamentary procedures relating to them*, 4th edition (November 2006) at 40

brought to the attention of the department. Any errors must be made good before the registration process can be completed.⁵⁸

1.59 As soon as possible after a Statutory Instrument has been registered, copies of it are to be printed and sold by TSO on behalf of the Queen's Printer. HMSO also arrange for all instruments to be published on the OPSI website simultaneously with the print edition.⁵⁹

(3) Publication of Secondary Legislation in Australia

1.60 In Australia, the publication of secondary legislation is governed by statute. The Federal Register of Legislative Instruments (FRLI) was established on 1 January 2005 under section 20 of the *Legislative Instruments Act 2003*. All legislative instruments that are made on or after 1 January 2005 must be registered on the Federal Register to be enforceable. In addition, all in force legislative instruments that were made before 1 January 2005 must be registered on the Register if they are to remain in force. The ComLaw website provides online access to all legislative instruments on the Register. ComLaw is an integral part of the Australian Law Online initiative to bring low- or no-cost access to the law to the community and is maintained by the Australian Attorney-General's Department.⁶⁰

1.61 The PDF version of a Legislative Instrument on the Federal Register of Legislative Instruments marked by the FRLI logo is authoritative⁶¹ and can be relied upon in court proceedings. Under section 22 of the *Legislative Instruments Act 2003*:

- the Register is, for all purposes, to be taken to be a complete and accurate record of all legislative instruments that are included in the Register;
- and a compilation⁶² that is included in the Register and that relates to a particular legislative instrument is to be taken, unless the contrary is proved, to be a complete and accurate record of that legislative instrument as amended and in force at the date specified in the compilation.

1.62 The first *Legislative Instruments Bill* was introduced into the Australian Parliament in 1994, in response to concerns about the lack of clear and consistent principles and procedures for making legislative instruments and for ensuring good public access to them. After three Bills and substantial changes, the *Legislative Instruments Act 2003* was enacted and commenced on 1 January 2005. Section 3 of the Act provides that the objective of the Act is to provide a comprehensive regime for the management of Commonwealth legislative instruments by:

- a) establishing the Federal Register of Legislative Instruments (FRLI) as a repository of Commonwealth legislative instruments, explanatory statements and compilations;
- b) encouraging rule-makers to undertake appropriate consultation before making legislative instruments;
- c) encouraging high standards in the drafting of legislative instruments to promote their legal effectiveness, their clarity and their intelligibility to anticipated users;
- d) improving public access to legislative instruments;

⁵⁸ *Ibid* at 43

⁵⁹ *Ibid* at 44

Publishing companies such as Lexis-Nexis and Westlaw take daily feeds of data from the OPSI so they also get the information at the same time it is published.

⁶⁰ <http://www.comlaw.gov.au/comlaw/comlaw.nsf/frli?OpenForm&Expand=1.1>

⁶¹ However, Acts on ComLaw are not authoritative. See Attorney-General's Department *A Proposal for Authorised Electronic Versions of Commonwealth Acts* (January 2006). Available at http://www.ag.gov.au/www/agd/agd.nsf/Page/Publications_AuthorisedelectronicActsconsultationpaper-January2006

⁶² See below at Chapter 4, paragraph 4.18 for further discussion of the ComLaw website.

- e) establishing improved mechanisms for Parliamentary scrutiny of legislative instruments;
- f) establishing mechanisms to ensure that legislative instruments are periodically reviewed and, if they no longer have a continuing purpose, repealed [sunsetting].

1.63 The Act also requires two reviews to be conducted of its operation. The first review is currently under way and a second review will take place in 2017 with a specific focus on sunsetting.

1.64 Before the Act commenced, there was no systematic requirement for legislative instruments to be published and some had no publication requirements at all. As a result, some instruments were virtually impossible for either lawyers or the public to locate. Since the Act created the FRLI, public demand for access to FRLI information has grown massively. The FRLI is now being accessed online by up to 12,000 visitors a day, and up to 3,000 visitors use the FRLI at least 15 times a month. There is no charge for access to FRLI information even though the cost of maintaining the FRLI is described as significant. Some of this cost is offset by way of fees charged to bodies lodging legislation to the Register. It is also considered that fees could be charged if new “value-added” services were made available on the site.⁶³

(4) The Problem of Legislative Scatter and Buried Amendments

1.65 Another primary cause of the difficulty encountered by users of the Irish Statute Book in accessing the law on a particular topic is that the relevant provisions are hardly ever contained in one single statute. They may be scattered among a Principal Act, amending Acts and various Statutory Instruments. The user may often have to piece together the various texts to ascertain the current state of the law.

1.66 Often the amending provisions will be contained in an Act that deals with issues other than those with which the user is primarily concerned and whose short title gives no clue to the casual reader of their relevance. This may be described as the “buried amendment phenomenon”. It can arise due to expediency in effecting required changes to the law as an add-on to legislation which is already in train or by the use of measures dealing with “miscellaneous provisions”. This reflects a pragmatic solution to the realities of awaiting a more opportunely titled piece of legislation given the demands of the Government Legislative Programme and the heavy work schedule of the Office of Parliamentary Counsel to the Government.

1.67 For example, the *Investment Funds, Companies and Miscellaneous Provisions Act 2005* amends legislation which is in the sphere of consumer law rather than financial services or company law. Section 83(b), which is within Part 7 (Miscellaneous Amendments) of the Act, amends section 7(3) of the *Package Holidays and Travel Trade Act 1995* by increasing the timeframe within which a prosecution may be taken under that Act from 12 months to 2 years. This is not an isolated example.

1.68 The Commission has previously commented on these issues. In the Commission’s *Consultation Paper on Statutory Drafting and Interpretation: Plain Language and the Law*,⁶⁴ the Commission attributed much of the confusion facing the reader of Irish legislation to “the frequent and piecemeal amendment of legislation.”⁶⁵

1.69 It is clear that the joint problems of legislative scatter and buried amendments contribute to the inaccessibility of legislation and create a clear risk that even a relatively diligent researcher will not be aware of a relevant affecting provision. This illustrates the need for the Legislation Directory,⁶⁶ which by tracking modifications to existing enactments, serves to improve the accessibility of legislation. The method in which the Legislation Directory fulfils this function will be examined in Chapter 2.

⁶³ See Attorney-General’s Department *Review of the Legislative Instruments Act 2003* (9 April 2008). Available at <http://www.ag.gov.au/lia-review>

⁶⁴ LRC CP14-1999.

⁶⁵ *Ibid.* at paragraph 2.26.

⁶⁶ For further discussion of this area see Law Reform Commission *Consultation Paper Statute Law Restatement* (LRC CP45-2007) at 25

(5) Other Methods of Improving Accessibility

1.70 The Commission now turns to a consideration of other methods which may be used to improve the accessibility of the Irish Statute Book. A number of initiatives have been implemented by Government to improve the regulatory environment in Ireland and make the law more accessible. These include the pre-1922 Statute Law Revision project in the Office of the Attorney General, the Statute Law Restatement project in the Law Reform Commission, the *Regulating Better White Paper* (2004),⁶⁷ the Information Society Action Plan *New Connections, A Strategy to realise the potential of the Information Society* (2002),⁶⁸ and the Government's report which laid out an action programme for regulatory reform *Reducing Red Tape – An Action Programme of Regulatory Reform in Ireland* (1999).⁶⁹

(a) Statute Law Revision

1.71 In the United Kingdom during the 19th century and early 20th century an enormous amount of legal reform took place, the effects of which still remain in early 21st century Ireland. In terms of legislation, this included the enactment of statute law which repealed and at the same time replaced many common law rules and also repealed older legislation; and the removal of lists of obsolete legislation. The removal of obsolete legislation was done by enacting a series of Statute Law Revision Acts. The first of these Acts, the *Statute Law Revision Act* 1856 dubbed the "Sleeping Statutes Act" repealed 120 statutes. In 1861, a bolder measure repealed 900 "sleeping statutes".⁷⁰ A number of similar Acts followed.⁷¹

1.72 Later, the Statute Law Committee⁷² which was appointed by Lord Cairns in 1868 paved the way for the publication of a revised edition of the statutes to reflect the slimmed-down Statute Book. The result was a series of volumes which were published between 1870 and 1878 as a first Revised Edition of the Statutes.⁷³ A second edition followed in 1888.⁷⁴

1.73 When the Irish Free State (Saorstát Éireann) was established in 1922, Article 73 of the 1922 Constitution carried over many of the laws that applied in Ireland up to that date. Article 50 of the 1937 Constitution contained a similar provision.⁷⁵ The State did not, therefore, begin life with a blank legislative canvas but carried over much of the statute law enacted by the Parliaments which had exercised control

⁶⁷ *Regulating Better, A Government White Paper setting out six principles of Better Regulation* (16 January 2004) at 25. Available at www.betterregulation.ie

⁶⁸ *New Connections, A Strategy to realise the potential of the Information Society* (Government Action Plan, March 2002). Available at www.taoiseach.gov.ie. This was followed by *New Connections 2nd Progress Report* (29 April 2004) (Department of the Taoiseach 2004). Available at www.taoiseach.ie

⁶⁹ *Reducing Red Tape – An Action Programme of Regulatory Reform in Ireland* (Department of the Taoiseach July 1999). Available at www.betterregulation.ie

⁷⁰ Statute Law Revision Act 1861 (24 & 25 Vict.) c. 101. See Grossmann, *Legal Research: Historical Foundations of the Electronic Era* (Oxford University Press 1994) at 133

⁷¹ See Ilbert, *Legislative Methods and Forms* (Oxford 1901) Chapter IV

⁷² The work of the Statute Law Committee fell under four heads: Indexing, Expurgation (repeal), Republication, and Consolidation. While the present discussion focuses on statute law revision, it should be noted that considerable work was also carried out in the area of consolidation. See Ilbert, *Legislative Methods and Forms* (Oxford 1901) Chapter IV.

⁷³ See further Ilbert "The English Statute Book" (1900) 2 *Journal of the Society of Comparative Legislation* at 75

⁷⁴ The online UK Statute Law Database (SLD) is the current official revised edition of the primary legislation of the United Kingdom. The SLD has its roots in the work of the Statute Law Committee, set up in 1868. See www.statutelaw.gov.uk.

⁷⁵ This has been discussed above at paragraph 1.06.

over Ireland, or which were deemed to have done so. It is estimated that in excess of 26,000 Public General statutes were passed by these various Parliaments prior to 1922.⁷⁶

1.74 Between the 1920s and the 1950s, a certain amount of reform of the laws of Ireland occurred but there was no systematic approach to the issue. The first major change in approach occurred with the publication in 1962 by the Department of Justice of a Programme of Law Reform.⁷⁷ The 1962 Programme noted that the Government was “conscious of the desirability of removing from the Statute Book all obsolete and unnecessary enactments”.⁷⁸ This led to the *Statute Law Revision (Pre-Union Irish Statutes) Act 1962*, which repealed (in whole or in part) over 160 pre-1800 Acts.⁷⁹ A further Act followed in 1983.⁸⁰

1.75 There has been a renewed interest in tidying or modernising the Irish Statute Book in recent years. This commitment to reform was signalled by the establishment of the Statute Law Revision Unit (SLRU) within the Attorney General’s Office in 1999. That Unit’s mandate was to draw up a programme of statute law revision and consolidation. The ultimate aim of the project is the codification of the Irish Statute Book.⁸¹ Prior to that initiative, responsibility for statute revision rested with the Statute Law Reform and Consolidation Office in the Attorney General’s Office. That body was established in 1951 but had effectively ceased to function in the 1980s.

1.76 The SLRU carried out a comprehensive review of all public general statutes enacted between 1235 and 1922 which were still in force and relevant to Ireland. It made proposals to the Attorney General and the Taoiseach as to how this body of law might be modernised. The *Statute Law Revision Act 2007* now contains a “white list” of 1,364 pre-1922 Acts which continue in force in whole or in part at the time of its passage into law.⁸²

1.77 The SLRU has now embarked on the second phase of this project. It will examine Local and Personal Acts and Private Acts initially and subsequently Charters and Letters Patent and Statutory Rules and Orders. The category of Local and Personal Acts and Private Acts comprises more than 33,000 statutes. The intention is in the first instance to bring forward a Bill by 2010 which would repeal any pre-1922 Local and Personal Acts and Private Acts that are now obsolete. The SLRU is also examining a limited number of post-1922 Acts that are clearly spent and unnecessary. It is envisaged that such Acts will be formally repealed in due course.⁸³

1.78 This is not the only initiative which will have a significant impact on pre-1922 legislation. On enactment, the *Land Law and Conveyancing Law Reform Bill 2006* will repeal - in whole or in part – 150 pre-1922 statutes and provides for their replacement where appropriate.⁸⁴

⁷⁶ Much of this information was collected by the Pre-Independence Project within the Office of the Attorney General leading to the enactment of the *Statute Law Revision Act 2007*.

⁷⁷ Department of Justice, *Programme of Law Reform* (Pr. 6379), laid by the Minister for Justice before the Houses of the Oireachtas, January 1962.

⁷⁸ *Ibid* at 16.

⁷⁹ The programme was not confined to Statute Law Revision but proposed reform of the law in a number of areas. For a more detailed discussion of this topic including the role of the Law Reform Commission see Law Reform Commission, *Consultation Paper Statute Law Restatement (LRC CP 45-2007)* at 12.

⁸⁰ *Statute Law Revision Act 1983*

⁸¹ See <http://www.attorneygeneral.ie/slru/slrp.html>

⁸² As of 8 May 2007

⁸³ See <http://www.attorneygeneral.ie/slru/slrp.html>

⁸⁴ Law Reform Commission *Land Law and Conveyancing Law Reform Bill 2006, Explanatory and Financial Memorandum*. This Bill is the result of a joint project undertaken by the Law Reform Commission and the department of Justice, Equality and Law Reform.

1.79 Other specific areas where statute law is being modernised include the reform of the Courts Acts which is the subject of a joint initiative by the Department of Justice Equality and Law Reform and the Law Reform Commission,⁸⁵ as well as landlord and tenant law, by means of a Bill to implement the Report of the Law Reform Commission on the matter.⁸⁶

(b) Statute Law Restatement⁸⁷

1.80 In 1999, the Government adopted the recommendations in *Reducing Red Tape – An Action Programme of Regulatory Reform in Ireland*.⁸⁸ 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”.⁸⁹ 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”.⁹⁰ This national programme of regulatory reform contributed to the development and enactment of the *Statute Law (Restatement) Act 2002*.⁹¹

1.81 A Statute Law Restatement, as provided for in the *Statute Law (Restatement) Act 2002*, is an administrative consolidation of an Act, as amended subsequently, which is made 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 as amended. After certification, the restatement must be laid before each House of the Oireachtas and it can then be published 21 sitting days later.⁹² A restatement does not have the force of law and therefore does not alter the substance of the law.⁹³ Because of this it does not actually require Oireachtas time to debate its terms, but it can be cited in court as evidence of the relevant law.⁹⁴

1.82 The most obvious benefit of a restatement is that it provides an up-to-date account of the law in question. It also improves the transparency of legislation and enhances accountability of the law.

1.83 The Commission sees statute law restatement as one element of the various projects aimed at the eventual introduction of a comprehensive eLegislation strategy, in turn an important element of regulatory reform. Thus, the Commission is committed to ensuring that its Programme of Statute Law Restatement will be fully compatible with the ongoing development of the eLegislation project.⁹⁵

Law Reform Commission *Reform and Modernisation of Land Law and Conveyancing Law* [LRC CP 34-2004].
Law Reform Commission *Reform and Modernisation of Land Law and Conveyancing Law including a draft Land Law and Conveyancing Bill* [LRC 74 – 2005].

⁸⁵ Law Reform Commission *Consultation Paper on Consolidation and Reform of the Courts Acts* (LRC CP46-2007)

⁸⁶ Law Reform Commission *Report – The Law of Landlord and Tenant* (LRC 85-2007)

⁸⁷ For a more detailed examination of this area see the Law Reform Commission’s *Consultation Paper Statute Law Restatement* (July 2007) (LRC CP45-2007). A Law Reform Commission Report on this area is also due for publication shortly.

⁸⁸ *Reducing Red Tape – An Action Programme of Regulatory Reform in Ireland* (Department of the Taoiseach July 1999). Available at www.betterregulation.ie

⁸⁹ *Ibid* at 6

⁹⁰ *Ibid*

⁹¹ It also contributed to the establishment of the Expert Group on the Codification of the Criminal Law. The work of this group is discussed at paragraph 1.90 below.

⁹² Section 8 of the 2002 Act

⁹³ Section 4 of the 2002 Act

⁹⁴ Section 5 of the 2002 Act

⁹⁵ eLegislation is discussed in more detail in Chapter 4.

1.84 Restatement can also be seen in the specific context of law reform, as a precursor to consolidation, reform and codification of a particular area.⁹⁶ Restatement complements future consolidation and other major statutory reform projects by offering a more immediate way of assembling a coherent picture of the law in appropriate areas. For example, many areas, such as planning law and employment law are prime candidates for consolidation work. A restatement of the legislation governing these two areas of law would assist a subsequent consolidation project.

(c) Consolidation

1.85 The term “consolidation” as applied to statute law, means the combination in a single measure of enactments relating to the same subject-matter, but scattered over different Acts.⁹⁷ The need for consolidation of the Statute Book was recognised as early as 1549 when the House of Commons proposed that the statute laws should be digested into one body under titles and heads, and put into good Latin. In the following year, Edward VI expressed a desire that “the superfluous and tedious statutes were brought into one sum together, and made plain and short”.⁹⁸

1.86 Consolidation is a much more difficult undertaking than is usually understood. There is a common fallacy that the task of consolidating Acts is mainly mechanical, and is little more than a “cut and paste” exercise. This erroneous belief greatly underestimates the complexity of the task involved. An experienced drafter, when consolidating a number of texts, must decide how to deal with the problems caused by modifications, restrictions, constructions and the other devices used in drafting the law. Close consultation will also be needed with the department official responsible for the area.⁹⁹ Ilbert has commented that

“The work of consolidation involves intimate acquaintance with past as well as with existing laws and institutions, involves the rewriting and not merely the placing together of laws, the substitution of modern for antiquated language and machinery, the harmonising of inconsistent enactments, and yet the performance of this work in such a way as to effect the minimum of change in expressions which have been made the subject of judicial decisions and on which a long course of practice has been based. The performance of such a task with the degree of accuracy required by Parliament requires minute examination and careful deliberation, and imposes a heavy burden, not merely on the draftsman, but on numerous members of the official administrative staff.”¹⁰⁰

1.87 The consolidation process brings considerable benefits. For example, the *Taxes Consolidation Act 1997* collated the law on income tax, capital gains tax and corporation tax, in the process reducing its bulk: provisions that were contained in 40 separate statutes are now found in one Act; over 2000 different sections have been compressed into 1104 sections; and material that occupied 50 schedules is now

⁹⁶ For a more detailed examination of this area see the Law Reform Commission's *Consultation Paper Statute Law Restatement* (July 2007) (LRC CP45-2007). A Law Reform Commission Report on this area is also due for publication shortly.

⁹⁷ Ilbert, *Legislative Methods and Forms* (Oxford, 1901), p. 111

⁹⁸ Neither of these was done. See Bennion, *Statute Law* (3rd ed Harlow: Longman 1990) at 66-68 which contains a discussion of the efforts to consolidate the British Statute Book since that time.

⁹⁹ Donelan “As clear as mud?” (2003) 97 (4) LSG 28 at 30

¹⁰⁰ Ilbert *Legislative Methods and Forms* (Oxford, 1901) at 112

contained in 32 schedules.¹⁰¹ Moreover, the consolidated law was drafted and structured with the user, principally tax practitioners in mind: its more coherent format eases the task of finding the law.¹⁰²

1.88 However, to have a tangible effect on the Irish Statute Book as a whole, consolidation must be carried out on a regular basis and across the Statute Book. Unfortunately, this has not been the case in Ireland. There are a total of 6 Consolidation Acts currently on the Irish Statute Book¹⁰³ with a number of proposed Consolidation Bills, including the *Companies Consolidation Bill* planned for future publication¹⁰⁴. This is notwithstanding the existence of Standing Orders of Dáil Éireann and Seanad Éireann providing for special parliamentary procedure to expedite the enactment of Consolidation Bills.¹⁰⁵

1.89 The dearth of Consolidation Bills is undoubtedly due in part to the time commitment required of the drafter and department officials in the preparation of this type of legislation. This is coupled with the fact that there may also be little political appetite for Consolidation Bills. Ilbert has commented that

“No minister expects to obtain much credit from passing a measure of consolidation. Such measures are not eagerly demanded by the constituencies, and do not figure as items in any political programme...Hence a minister is naturally unwilling to introduce such a measure except on an assurance that it will pass unopposed, and will not encroach on the scanty time available for proposals looming more largely in the public eye.”¹⁰⁶

(d) Codification

1.90 Another method of making legislation more accessible involves the use of a codifying statute.¹⁰⁷ The modern idea of codification is a creature of the European enlightenment.¹⁰⁸ Some commentators make the point that although originally of civilian provenance, codification in the modern sense has long been a flourishing technique in the common law tradition.¹⁰⁹ They note that transplanted

¹⁰¹ Hennessy and Moore *Taxes Consolidation Act 1997: The Busy Practitioner's Guide* (Dublin 1997) at 3. This publication contains detailed analysis of the background to and preparation of this piece of consolidated legislation.

¹⁰² *Ibid* at 15

¹⁰³ *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*. An example of part-consolidation is the *Sea-Fisheries and Maritime Jurisdiction Act 2006*, Part 3 of which consolidates the *Maritime Jurisdiction Acts 1959 to 1988* and repealed 15 Acts in their entirety as well as repealing a number of Acts in part. Despite this part-consolidation, the 2006 Act retained a number of significant Acts in place, albeit with substantial amendments.

¹⁰⁴ For a more detailed examination of this area see the Law Reform Commission's *Consultation Paper Statute Law Restatement* (July 2007) (LRC CP45-2007), p 27-28, paras 2.17-2.20

¹⁰⁵ See for example Seanad Éireann, Standing Orders relative to Public Business (2007), Standing Order No. 134ff

¹⁰⁶ Ilbert *Legislative Methods and Forms* (Oxford, 1901) at 113

¹⁰⁷ The *Succession Act 1965* is an example of a codifying measure in Ireland.

¹⁰⁸ For a detailed discussion of codification from Babylonian times to the modern day see the *Report of the Expert Group on the Codification of the Criminal Law: Codifying the Criminal Law* (Department of Justice, Equality and Law Reform 2004), Chapter 1.

¹⁰⁹ Ireland's historical connection with the United Kingdom has resulted in the inheritance of a Common Law system. In a Common Law legal system, the courts have traditionally played a key role in developing legal principles and rules. Statute law has been a second source of these principles and rules. Nonetheless, increasingly from the 17th century onwards, statute law began to replace common law rules. This process of gradual replacement has accelerated with the passage of time, though this has mostly been done on a topic-by-topic (Act-by-Act) basis, without the benefit of a code superstructure or architecture into which the reforming provisions can be placed.

to the common law during the age of codification in the nineteenth century, its reception was genuine and has proved to be long-lasting. In the two hundred years since the enactment of the Code Napoléon, in 1810, common law criminal codes have proliferated with the fecundity of their civil law counterparts. There is therefore nothing alien or inappropriate about the process of codification in a common law context.¹¹⁰

1.91 An authoritative definition for “codification” is difficult to locate. Ilbert notes that the term codification is sometimes employed loosely so as to include consolidation of statutes. However, he believes that in its

“...stricter and narrower sense it means an orderly and authoritative statement of the leading rules of law on a given subject, whether those rules are to be found in statute law or in common law.”¹¹¹

The 2004 Report of the Expert Group on the Codification of Criminal Law¹¹² states that although the modern concept of codification has several stable components, there is no such thing as a definitive canonical model of codification.¹¹³

1.92 Commenting in the context of the accessibility, comprehensibility, consistency and certainty of the criminal law¹¹⁴, they noted that the justifying aims traditionally associated with codification in the common law system were:

- (i) that it brings order to the sources of the criminal law where formerly there was chaos and confusion;
- (ii) that it improves access to the criminal law by digesting it into a single authoritative instrument;
- (iii) that it provides an opportunity to reinforce the democratic legitimacy of the criminal law by recasting it in the form of a modern enactment binding judges and citizens alike;
- (iv) that it enhances comprehension of the criminal law by rendering it in a uniform drafting style and intelligible idiom;
- (v) that it promotes conceptual consistency and logical development throughout the general and special parts of the criminal law;
- (vi) that it requires the moral ranking of criminal offences in terms of their relative seriousness and fixes the maximum levels of punishment accordingly; and
- (vii) that it engenders a process of systematic review leading to the identification and removal of uncertainties and lacunae in the criminal law.¹¹⁵

¹¹⁰ See the *Report of the Expert Group on the Codification of the Criminal Law: Codifying the Criminal Law* (Department of Justice, Equality and Law Reform 2004) at 13

¹¹¹ Ilbert *Legislative Methods and Forms* (Oxford, 1901) at 128

¹¹² Arising from the Expert Group's Report a Criminal Codification Advisory Committee has been established under Part 14 of the *Criminal Justice Act 2006*. Their task is to compile a draft criminal code. The scoping stage of the project was completed in 2004 and the Committee are now working on the compilation exercise. The Statute Law Restatement project being carried out by the Commission will complement the work of that Committee.

¹¹³ A code will be a comprehensive instrument, which is easy to access and understand and whose provisions are mutually consistent and reasonably certain.

See the *Report of the Expert Group on the Codification of the Criminal Law: Codifying the Criminal Law* (Department of Justice, Equality and Law Reform 2004) at 31

¹¹⁴ The reader should note that although this discussion focuses on the criminal law, the use of codifying statutes is not confined to this branch of the law.

1.93 It is clear that codification can also assist users of the Irish Statute Book by improving its accessibility. However, codes can also become quickly out of date and must be maintained.

D Conclusion

1.94 In this chapter, the Commission has considered the historical development of the Irish Statute Book and Legislation Directory. The Commission also considered the accessibility of the Irish Statute Book for users. It examined how the manner in which legislation, in particular secondary legislation, is produced and published can impede accessibility. The Commission also considered the production and publication of secondary legislation outside of Ireland. The Commission then examined how the method in which legislation is amended can further contribute to the inaccessibility of the Irish Statute Book. It then turned to a consideration of the role of the Legislation Directory in improving ease of access to the Irish Statute Book. Finally, the Commission examined other methods which can improve the accessibility of legislation.

1.95 The Commission is concerned about the inaccessibility of the Irish Statute Book for its users. This is particularly true in relation to secondary legislation. The Commission welcomes the eSIs and will return to an assessment of its success in the Report to follow this Consultation Paper.

1.96 The Commission looks forward to contributing towards improving the accessibility of the Irish Statute Book through its role in the Legislation Directory, Statute Law Restatement and general law reform. The Commission also welcomes other measures in the area of consolidation and codification which it believes will greatly enhance the accessibility of the Irish Statute Book in respect of the areas which those projects touch on. The Commission would welcome further similar initiatives. However, the Commission believes that ultimately the difficulties associated with accessibility of the Irish Statute Book can only be properly addressed by way of a comprehensive eLegislation project. The Commission will discuss eLegislation in Chapter 4.

¹¹⁵ See the *Report of the Expert Group on the Codification of the Criminal Law: Codifying the Criminal Law* (Department of Justice, Equality and Law Reform 2004) at 31. The justifying aims listed above were compiled in a criminal law context. These may vary depending on the branch of the law involved.

CHAPTER 2 THE LEGISLATION DIRECTORY IN PRACTICE

A Introduction

2.01 Chapter 1 of this Consultation Paper provided a contextual introduction to the Legislation Directory to set the scene for evaluation of its operation in practice. This chapter will discuss the current operation of the Legislation Directory. Part B will provide an introduction to the electronic Irish Statute Book (eISB) online. This website hosts the Legislation Directory and is now the primary resource for those who wish to access the Legislation Directory. Thus, this Consultation Paper will concentrate on an examination of the information available from this resource. Part C will examine the content of the Legislation Directory homepage. Part D will outline the current content and functionality of the individual listings on this homepage and make suggestions for improvement. Part E will consider whether the Legislation Directory should include details of the effect of case law on legislation.

B Introduction to the electronic Irish Statute Book (eISB) online

2.02 The Legislation Directory is hosted on the eISB online, a free to access website managed by the Office of the Attorney General.¹ The eISB website opens with a disclaimer entered by the Office of the Attorney General.² The user must accept the disclaimer before proceeding to the homepage of the eISB.

2.03 The homepage consists of a left hand navigation pane and three main navigation boxes, which guide the user to its three main content areas:

- (i) Acts of the Oireachtas from 1922 to 2006 as passed in HTML format;
- (ii) Statutory Instruments from 1922 to No. 350 of 2005 as passed, in HTML format. There is also a link to Statutory Instruments for 2007 and 2008 as passed, in PDF format as part of the eSIs (electronic Statutory Instrument system);³
- (iii) Legislation Directory 1922 to 2005.⁴

The homepage of the website also contains details of a helpdesk service available for users of the eISB online (or the CD-ROM).⁵ There is also a search function (see *Figure 1* below).

¹ www.irishstatutebook.ie

² The disclaimer reads as follows:

"Whilst every effort has been made to ensure the accuracy of the information/material contained on the web site, the State and Attorney General, its servants or agents assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided on the web site and do not accept any liability whatsoever arising from any errors or omissions.

Users are warned that the publication of legislation on this web site does not indicate that any particular provision in a statute or Statutory Instrument was, or is currently, in force. Primary legislation after 2006 and secondary legislation arising after 2005 are not available on this site."

³ This system is discussed in Chapter 1.

⁴ In January 2008, the Office of the Attorney General completed its final maintenance responsibilities in respect of the Legislation Directory. The resource was updated to reflect all Acts of the Oireachtas and affecting provisions made to 31 December 2005.

2.04 There is an additional navigation box entitled “Other Sources of Irish Legislation” which provides hyperlinks to other sources of Irish legislation away from the eISB. These are:

- i) Acts of the Oireachtas 1997 - 2008 in PDF format;⁶
- ii) Bilingual Acts of the Oireachtas.⁷

2.05 By choosing the first of these hyperlinks, the user can access Acts of the Oireachtas from 1997 onwards. Some of the Acts of the Oireachtas from 1992 to 1997 are also included at this link. This is not a complete list, however, as PDF versions for all Acts of the Oireachtas from 1992 to 1997 are not available.

2.06 The second hyperlink leads to a database containing Acts of the Oireachtas in Irish and English from 1922 to 2003. The different language versions of each Act are linked together so the user can move from a particular section in an Act in one language to the same section in the other language. Additionally, searches can be carried out for words and phrases in the two languages, i.e. Irish language words can be searched for within the Irish language database and English language words in the English language database. At present, some Irish language versions of Acts are not included in the database (especially Acts passed between 1993 and 1997) but it is intended to include these. Where an Irish language version is not available no link will appear in the English version. There is also a split screen function to view the Irish and English Acts side by side. It is, however, not intended to update the Acts beyond 2003 as these are available in PDF format only. It is not possible to use the split screen or link function with the PDF versions of the Acts.



Figure 1: The eISB online homepage

C Legislation Directory Homepage

2.07 The Legislation Directory is accessed from the eISB online homepage. The user clicks on the Legislation Directory navigation box and proceeds to the Legislation Directory homepage (see Figure 2

⁵ This information is also included alongside the opening disclaimer referred to in paragraph 2.02.

⁶ See <http://www.oireachtas.ie/ViewDoc.asp?DocId=-1&CatID=87&m=a>.

⁷ See <http://www.acts.ie>

below). The user is presented with a long set of options in the form of links to different lists of information available for consultation. The first of these links are as follows:

- i) A list of abbreviations;
- ii) A chronological list of the Public General Acts enacted from 6 December 1922 to 31 December 2005;
- iii) An alphabetical list of Acts in force, which were brought into operation either in whole or in part by Orders made on or before 31 December 2005;
- iv) An alphabetical list of collective citations;
- v) An alphabetical list of Orders made under section 6 (1) of the Ministers and Secretaries (Amendment) Act 1939, on or before 31 December 2005;
- vi) A chronological list of Regulations made under section 3 of the European Communities Act 1972, on or before 31 December 2005;
- vii) A chronological list of the Private Acts from 6 December 1922 to 31 December 2005.

2.08 The user is also provided with tables of pre-Independence legislation as affected by any primary or secondary legislation enacted from 6 December 1922 to 31 December 2005. These tables are divided according to the various Parliaments who were responsible for the enactment of legislation pertaining to Ireland. These are:

- i) Pre-Union Irish Statutes (1236 - 1800);
- ii) English Statutes (1226 - 1707);
- iii) Pre-Union British Statutes (1707- 1800);
- iv) British Public Statutes (1801- 1922);
- v) British Local and Private Statutes (1801- 1922).


2.09 The Legislation Directory goes on to provide a list of amendments to the Local Government (Application of Enactments) Order 1898, and the Local Government (Adaptation of Irish Enactments) Order 1899.

2.10 The Legislation Directory then provides a Table of Expressions (in alphabetical order) used in British Statutes (Public Statutes and Local and Private Statutes) or Saorstát Éireann Statutes that have been adapted by the Orders made before 1 January 2003, under the Adaptation of Enactments Act 1922 (No. 2 of 1922), or the Constitution (Consequential Provisions) Act 1937 (No. 40 of 1937).

2.11 Finally, the Legislation Directory provides an alphabetical list of all Acts in the Legislation Directory and an alphabetical list of all Acts by decade.

2.12 Towards the bottom of the homepage, the user is alerted to the following:

- i) Where an affecting provision (including a repealing provision) is governed by a commencement provision, the commencement provision is referred to. Users are advised to check whether the affecting provision has been commenced.
- ii) This database does not refer to amendments effected prior to 1922.
- iii) Attention is drawn to Part 6 (sections 26 and 27) of the Interpretation Act 2005 (No. 23 of 2005), in relation to the effects of repeals and revocations in Acts of the Oireachtas and instruments made partly or wholly thereunder.
- iv) Attention is also drawn to section 2 of the European Communities Act 1972, which provides that the Treaties and other acts of the Communities are binding on the State and are part of its domestic law.



Irish Statute Book

Produced by the Office of the Attorney General

Quick Search
Search for word(s) / phrase in Title of Act or Statutory Instrument

Enter Search ☐ Acts ☐ SI

[More Search Options](#) [Help](#) [Feedback](#)

[Home](#)

[Search](#)

[Acts of the Oireachtas](#)

[Statutory Instruments](#)

[Legislation Directory](#)

[Print an Act](#)

[Feedback](#)

[Site Map](#)

Text Size

[Default](#) | [Large](#)

Legislation Directory

The purpose of this database is to enable users of the Irish Statute Book to identify whether a particular provision has been amended or otherwise affected since its enactment.

The database contains –

- [A list of abbreviations](#)
- [A chronological list of the Public General Acts enacted from 6 December, 1922 to 31 December, 2005.](#)
- [An alphabetical list of Acts in force, which were brought into operation either in whole or in part by Orders made on or before 31 December 2005.](#)
- [An alphabetical list of collective citations](#)
- [An alphabetical list of Orders made under section 6 \(1\) of the Ministers and Secretaries \(Amendment\) Act 1930, on or before 31 December, 2005.](#)
- [A chronological list of Regulations made under section 3 of the European Communities Act 1972, on or before 31 December, 2005.](#)
- [A chronological list of the Private Acts from 6 December, 1922 to 31 December, 2005.](#)

Tables of the legislation set out in the next paragraph as affected by any primary or secondary legislation enacted from 6 December, 1922 to 31 December, 2005, namely –

- [Pre-Union Irish Statutes \(1236 – 1800\)](#)
- [English Statutes \(1226 – 1707\)](#)
- [Pre-Union British Statutes \(1707– 1800\)](#)
- [British Public Statutes \(1801– 1922\).](#)
- [British Local and Private Statutes \(1801– 1922\)](#)
- [The Local Government \(Application of Enactments\) Order 1898, and](#)
- [The Local Government \(Adaptation of Irish Enactments\) Order 1899](#)
- [A Table of Expressions \(in alphabetical order\) used in British Statutes \(Public Statutes and Local and Private Statutes\) or Saorstát Éireann Statutes that have been adapted by the Orders made before 1 January 2002, under the Adaptation of Enactments Act 1922 \(No. 2 of 1922\), or the Constitution \(Consequential Provisions\) Act 1937 \(No. 40 of 1937\)](#)
- [An alphabetical list of all Acts in the Legislation Directory](#)
- [An alphabetical list of all Acts by decade](#)

Users should be aware of the following:

Where an affecting provision (including a repealing provision) is governed by a commencement provision, the commencement provision is referred to. Users are advised to check whether the affecting provision has been commenced.

This database does not refer to amendments effected prior to 1922.

Attention is drawn to [Part 6 \(sections 26 and 27\) of the Interpretation Act 2005 \(No. 23 of 2005\)](#), in relation to the effects of repeals and revocations in Acts of the Oireachtas and instruments made partly or wholly thereunder.

Attention is also drawn to [section 2 of the European Communities Act 1972](#), which provides that the Treaties and other acts of the Communities are binding on the State and are part of its domestic law.

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Figure 2: The Legislation Directory Homepage

2.13 The Legislation Directory homepage is the first page a user encounters when accessing the Legislation Directory. The Commission is concerned lest the volume of information provided on the homepage cause confusion for users and go so far as to discourage use of the resource. The Commission believes that the homepage should be an easy to read map or doorway to the information provided in the Legislation Directory. The Commission proposes to streamline the Legislation Directory homepage. It suggests that the homepage would contain a limited number of links. It proposes that certain core functions of the Legislation Directory be accessed by way of these links on the homepage but that some listings, which are referenced more infrequently be relocated to secondary webpages. Further, it discusses the removal of some listings into the future. With this in mind, the Commission will now turn to a detailed consideration of the content and utility of the individual listings.


2.14 *The Commission is concerned that the large volume of information on the Legislation Directory homepage may cause confusion for users. The Commission provisionally recommends that the Legislation Directory homepage be streamlined and reorganised to improve ease of use.*

D Legislation Directory Functionality

(1) List of Abbreviations

(a) Current Position

2.15 The Commission notes the importance of formulating conventions to be followed when reflecting the type of effect produced by affecting provisions on existing legislation. At present, this is addressed by means of the use of a lengthy list of abbreviations. This is the first listing which the user encounters on the Legislation Directory. There are currently 119 abbreviations included on this listing. An extract from this listing can be found at *Figure 3* below.



Irish Statute Book

Produced by the [Office of the Attorney General](#)

Home

Search

Acts of the Oireachtas

Statutory Instruments

Chronological Tables

Print an Act

Feedback

Site Map

Text Size

Default | Large

List of Abbreviations

Abbreviation	Full word
adapt.	adapted.
addit.	additional
Agric.	Agriculture.
alt.	altered, alteration.
am.	amend, amended, amendment.
appl.	applied.
applic.	applicable, application.
appt.	appoint.
Art, art(s).	Article, article(s).
B.O.H.	Board of Health.
Bd.	Board.
Boro.	Borough.
c., ch(s).	chapter(s).
cert.	certain, certificate.

Figure 3: An Extract from the list of abbreviations

2.16 This list compares unfavourably with some other jurisdictions where abbreviations are kept to a minimum and a preference is made for using the whole word. Only 17 abbreviations are used in the New Zealand Legislation in Force⁸ database and 30 abbreviations are used in the Tables of Effect in Scotland for 2006.⁹ It should be noted that the Legislation Directory is not alone in having amassed a large number of abbreviations. The United Kingdom chronological tables also use a large number of abbreviations which are listed on the website of the Office of Public Sector Information.¹⁰ The Commission has previously stated that “sometimes brevity does not imply clarity”.¹¹ Accordingly, the Commission intends to substantially reduce the number of abbreviations in use in the Legislation Directory.

2.17 Further, there are many abbreviations listed in the Legislation Directory which are out of date, not easily recognisable or are specific to a particular period of time. Examples include D.A.T.I. as an abbreviation for Department of Agriculture and Technical Instruction for Ireland, P & T as an abbreviation for Posts and Telegraphs, E.C.O. as an abbreviation for Executive Council Order and R.I.C. as an abbreviation for Royal Irish Constabulary. These abbreviations may not always be immediately understood by the user of the Legislation Directory.

2.18 There are also examples of abbreviations in use on the Legislation Directory where it would be more efficient to use the whole word. The evolution of these particular abbreviations came about due to space constraints when the Legislation Directory was published in hard copy. These considerations do not apply in the case of electronic publication. Examples of such abbreviations include “genly.” as an abbreviation for the word “generally”, “rl.” as an abbreviation for the word “rule” and “vest.” as an abbreviation for the word “vested”. These abbreviations do little to aid the ease with which the user can access and interpret the Legislation Directory.

2.19 The Commission also notes that there has been a lack of consistency in the formulation and use of abbreviations. For example, there is the lack of a consistent convention for the pluralisation of abbreviations. The standard method is to add the letter “s” to the abbreviations as is the case when the word “number /no” is pluralised “numbers/nos”. However, this rule has not been consistently applied. For example, the word “order” abbreviated with a simple “o” is abbreviated in the plural as “oo” rather than “os”. The Commission proposes the use of a single method of pluralisation of abbreviations. It may be practical to establish such conventions when the list of abbreviations to be used is defined and limited numerically.

2.20 Further, in some cases, the same abbreviation has been used in respect of different terms. For example, the abbreviation “cert.” is used to abbreviate the words “certain” and “certificate”. The abbreviation “col.” is used to abbreviate the words “column” and “council”.¹² This use of the same abbreviation for different words may cause confusion for users of the Legislation Directory.

2.21 It is also the case that different abbreviations or differing formats of an abbreviation may be used in respect of the same word or idea. According to the list of abbreviations, the letter “r” is often used to denote that legislation has been repealed but the abbreviation “rep.” is also widely used. The use of an upper case letter “R” is often used to denote that a whole Act has been repealed whereas the lower case letter “r” means that only a section has been repealed. This is not explained to the user. When a part of an Act has been repealed, there may be an entry for “Part X repealed”, however sometimes the sections contained in the repealed Part are also included in brackets, for example, “Part X (sections 41 to 50)

⁸ <http://www.legislation.govt.nz>

⁹ <http://www.oqps.gov.uk/legislation/tables-of-effect>

¹⁰ <http://www.opsi.gov.uk/chron-tables/chron-table-abbreviations.pdf>

¹¹ Law Reform Commission *Statutory Drafting and Interpretation: Plain Language and the Law* (LRC 61 – 2000) at 76

¹² See also the discussion below at paragraph 2.44

repealed". Another convention which has not been consistently followed is the practice of italicising the short title of an Act when it is repealed.¹³

(b) Proposals for the Future

2.22 The Commission suggests that for each legislative effect a standard term (and only if necessary an abbreviation) be universally used to communicate that particular effect. This will improve the coherency of the Legislation Directory and assist users to understand individual entries. It will ultimately improve the accessibility of the Legislation Directory for users.

2.23 The Commission is conscious of the importance of coordinating any approach taken with that of the Statute Law Restatement project. The Commission will ensure cooperation between the Legislation Directory and the Statute Law Restatement teams in identifying suitable commentary types for inclusion on the Legislation Directory. In its Report on *Statute Law Restatement*¹⁴ the Commission has identified three commentary types for use in restatement - C-notes, E-notes, and F-notes. C-notes or cross reference notes are to be used in non-textual amendments because they make amendments which are only discernable by cross reference to another text. E-notes are to be used for editorial purposes. F-notes will be used as footnotes for textual amendments.¹⁵ The terms currently planned for use in that project are outlined below.

C-note commentary templates

Affected by
Not affected by
Amended by
Construed by
Defined by
Excluded by
Not excluded by
Exempted by
Explained by
Extended by
Interpreted by
Modified by
Restricted by
Not restricted by

E-note commentary templates

Previous affecting provision:
Power exercised () pursuant to section by
Amended section substituted as per F

F-note commentary templates

Added by
Amended by
Inserted by
Omitted by
Repealed by
Substituted by

2.24 The Commission will reconsider this area in the Report to follow this Consultation Paper. This is because although the Commission would like to maintain consistency between the Statute Law Restatement and Legislation Directory projects, in practice it may not be entirely satisfactory to replicate

¹³ An example of where this practice has not been followed is the *Births and Deaths Registration Act (Ireland) 1880*

¹⁴ (LRC 91-2008)

¹⁵ Law Reform Commission *Report Statute Law Restatement* (LRC 91-2008)

the entirety of the Restatement notes system in the Legislation Directory. For example, repeals will be shown in a Restatement as a previous affecting provision in an “E-note” or editorial note. It may be easier for the purposes of the Legislation Directory to simply include the accompanying word “repealed” beside the affecting provision entered in the affected provision’s field.

2.25 The Commission is also aware that changes in terminology may not always integrate successfully into the existing database. An amalgamation of the new and old systems might cause further confusion for users. The Commission thus considers that it is appropriate to introduce the new terminology only in respect of primary legislation enacted after 31 December 2005. However, the Commission will keep this matter under review and will return to consider it in the Report to follow this Consultation Paper.

2.26 However, the Commission decides to proceed, it also considers that it will be necessary to maintain access for users to the current list of abbreviations as these will continue to apply in relation to the Legislation Directory as currently compiled.

2.27 *The Commission provisionally recommends that, where possible, the use of abbreviations should be avoided on the Legislation Directory but invites submissions on useful abbreviations that should be retained or introduced to the database.*

2.28 *The Commission provisionally recommends the use of standardised conventions on the Legislation Directory and also invites submissions on the possible phrases which should be adopted as conventions for describing the legislative effects on the Legislation Directory.*

2.29 *The Commission provisionally recommends that the new system be introduced in respect of primary legislation enacted after 31 December 2005.*

2.30 *The Commission provisionally recommends that the current list of abbreviations should be retained on the Legislation Directory as an aid to users in interpreting legislation currently included on the database.*

(2) A Chronological List of the Public General Acts enacted from 6 December 1922 to 31 December 2005

(a) Locating an Act Table

2.31 The core functionality provided by the Legislation Directory is the provision of information concerning how primary legislation has been affected by subsequent legislative developments. If a user wishes to establish whether an Act has been amended, the first step is to locate the relevant Act table¹⁶ in the Legislation Directory.

2.32 In respect of the Public General Acts, the first option¹⁷ open to the user is to locate the Act table by a chronological search. This requires the user to know the year of enactment. The user then chooses the following listing from the Legislation Directory.

“A chronological list of the Public General Acts enacted from 6 December, 1922 to 31 December, 2005”

Where this listing is selected, a page with the years 1922 to 2005 appears. Each year is hyperlinked and on clicking on a year, the user is brought to a page showing the tables of the Acts passed in that particular year. *Figure 4* below shows an extract from the cumulative Chronological Act Tables for 2004.

¹⁶ The Act table shows in tabular format the effects of subsequent legislation on a particular Act.

¹⁷ The second option is by alphabetical search. See paragraph 2.141 below.

first followed by effects on the various individual sections. If the affecting provision is a section of an Act, it is possible to view that Act and section concerned via a hyperlink.¹⁹ Further, while the numbers of the affecting provisions are displayed, the short titles are not. The user must click on the hyperlinks to ascertain this information.

2.40 In the example chosen, it can be seen in the “How Affected” field that the first effect listed applies the entire 2004 Act to sections 198(4) and 364(1) of Act No. 26 of 2005. The abbreviation “appl.” is used in the “How Affected” field. According to the list of abbreviations on the Legislation Directory, this always means “applied”. In the “Affecting Provision” field the user can see, by clicking on the hyperlink, that the affecting provision is section 198(4) of the *Social Welfare Consolidation Act 2005* and that section 364(1) of that Act provides for the commencement of the Act upon such day as the Minister shall appoint by order.

2.41 Commencement provisions will be discussed later in this chapter. However, the Commission notes at this juncture that it is not clear to the user from the display of the affecting provisions whether those provisions relate to substantive modifications of the 2004 Act or to commencement information relating to such substantive modifications - there is no delineation between general affecting provisions and commencement provisions. It is up to the user to investigate what type of provision is at issue by clicking on the relevant hyperlinks.

2.42 The second effect on the *Immigration Act 2004* is that section 6 (2) has been applied to “S. I. No. 57 of 2004, art. 2, sch.”.²⁰ It is possible to click on the hyperlink to section 6 of the *Immigration Act 2004* to ascertain what section 6(2) contains. It states:

“(2) Such ports as may be prescribed shall be approved ports for the purposes of subsection (1).”

The user can then hyperlink to Statutory Instrument No. 57 of 2004 which is the *Immigration Act 2004 (Approved Ports) Regulations 2004* and scroll to article 2, to view the following:

“2. The ports specified in the Schedule to these Regulations are prescribed for the purposes of section 6(2) of the Immigration Act of 2004 (No. 1 of 2004).”

The schedule to the regulations then sets out a list of the prescribed ports.

2.43 The third and final effect listed for the *Immigration Act 2004* in the Legislation Directory concerns section 9(5). The text provided in the “How Affected” field is

“S.9(5), form of reg. cert. prescribed under.”

2.44 It is clear that the abbreviation “reg.” can only mean regulation under the list of abbreviations on the Legislation Directory. This can be seen in the same example by way of the abbreviation used to describe the affecting provision, “S. I. No. 95 of 2004, reg. 2 (1)”. However, upon inspection of the affecting provision, which is the *Immigration Act 2004 (Registration Certificate) Regulations 2004*, it is clear that the abbreviation “reg.” in the first text refers to registration. The affecting provision reads as follows:

“2. (1) The form of a registration certificate specified in Part 1 of the Schedule to these Regulations is prescribed for the purposes of section 9(5) of the Immigration Act 2004 (No. 1 of 2004).”

Thus, in this individual entry, the abbreviation “reg” means both registration and regulation.

2.45 The Commission believes that these and other inconsistencies identified in the compilation of this listing should, as far as possible, be avoided in the future compilation of the Legislation Directory.

2.46 Further, as the update in January 2008 brought the Legislation Directory up to 31 December 2005 only, there have been a number of subsequent affecting provisions which are not included in the

¹⁹ See paragraph 2.49 below in relation to the inconsistent presentation of affecting provisions.

²⁰ The Commission notes that the secondary legislation referred to is a set of regulations. Therefore, it would be more appropriate to refer to “regulation 2” rather than “article 2”.

Legislation Directory. For example, €100 is prescribed as the applicable fee under section 19(1)(b) of the *Immigration Act 2004* by Regulation 3 of S.I. No. 253 of 2006, the *Immigration Act 2004 (Registration Certificate Fee) Regulations 2006*. The user is thus required to make their own enquiries as to the existence of these additional affecting provisions. The Commission believes that this is unsatisfactory for users and that it is desirable that this listing as a core component of the Legislation Directory be targeted for regular updates. Ideally, the Commission believes that this should occur side by side with a wider scheme of eLegislation. This will be discussed in Chapter 4.

2.47 The Commission also believes that this listing is the most important to users of the Legislation Directory. However, on the Legislation Directory homepage the listing is currently undistinguishable from the other listings in terms of font or text size and is not highlighted visually or textually as being one of the key features of the Legislation Directory. The Commission is of the view that this listing, along with the “alphabetical list of all Acts in the Legislation Directory”,²¹ which currently appears towards the end of the homepage, should be listed adjacent to each other and highlighted for users.

(c) Miscellaneous Issues

(i) "Affecting Provisions" Subsequently Amended

2.48 It is also essential for users of the Legislation Directory to ascertain whether an amending provision (i.e. an affecting provision) listed on this chronological table has, in turn, been subsequently amended or indeed repealed; otherwise the user is not clear on what the current law actually is. Currently, where an affecting provision has been subsequently repealed, the details of the repeal will not appear in the Legislation Directory beside the Table for the Principal Act. The user has to conduct further research to see whether any of the affecting provisions have been subsequently affected or repealed by looking at the Table of the amending legislation. The Commission believes that the attention of users of the Legislation Directory should be drawn to the need to check whether affecting provisions have in turn been affected.

(ii) Inconsistent Presentation of Affecting Provisions

2.49 There is inconsistency in the presentation of the affecting provisions. At present, the sections of an Act which contain affecting provisions are hyperlinked, however, the schedules of Acts that contain similar provisions are not. This presents a significant navigational barrier. For example, section 2(1) of the *Capital Acquisitions Tax Consolidation Act 2003* was amended by section 89 and schedule 3(2)(a) of the *Finance Act 2004*

2.50 There is a hyperlink to section 89 of the 2004 Act which states as follows:

“89.—The enactments specified in Schedule 3 are amended to the extent and in the manner specified in that Schedule.”

The user then needs to examine Schedule 3 to determine the extent of the amendment. There is, however, no hyperlink to Schedule 3. This means that the user must click on the hyperlink to the *Finance Act 2004* and scroll down the page to the relevant link to Schedule 3 and then find paragraph (2)(a) of that schedule (see *Figure 5* below). This is an exercise that the Commission believes should be avoidable. The Legislation Directory currently offers a level of hyperlink granularity to section level. While this appears satisfactory for amendments at section level, difficulties arise when vital details are included in a schedule.

²¹ This listing is discussed in detail at paragraph 2.141 below.


<div> <div>  <div> Irish Statute Book Produced by the Office of the Attorney General </div> </div> <div> <div>Quick Search</div> <div>Search for word(s) / phrase in Title of Act or Statutory Instrument</div> <div> <input type="text"/> <input type="button" value="Search"/> </div> <div> <input checked="" type="checkbox"/> Acts <input checked="" type="checkbox"/> Stat. <input type="button" value="Search"/> </div> <div> More Search Options Help </div> </div> </div>				
<div> <div>Home</div> <div>Search</div> <div>Acts of the Oireachtas</div> <div>Statutory Instruments</div> <div>Chronological Tables</div> <div>Print an Act</div> <div>Feedback</div> <div>Site Map</div> <div>Text Size</div> <div>Default Large</div> </div>	Year and Number 2003	Short Title Capital Acquisitions Taxes Consolidation Act 2003	How Affected Access to information for admin. under. S.2 (1) am. S.2 (5) am. S.6 (1) (b) am. S.18 (5) del. S.25, s. S.45 (2) (b) (i) am. S.45A, new s. S.46, (in pt.) specified. S.46 (3) (b) am. S.46 (7A) (7B), subsecs. ins. S.46A, new s.	Affecting Provision 3/2004, ss. 1 (2), 66 (1) (h) 8/2004, s. 89, sch. 3, 2 (a) 8/2004, s. 77 8/2004, s. 89, sch. 3, 2 (b) 3/2003, ss. 145 (1) (a) (2), 153 3/2003, ss. 146 (1) (a) (2), 153 5/2005, s. 147, sch. 6 3/2003, ss. 147 (1) (b) (2), 153 S. I. No. 443 of 2003, reg. 2 8/2004, s. 89, sch. 3, 2 (c) 3/2003, ss. 145 (1) (b) (2), 153 3/2003, ss. 146 (1) (c) (2), 153

Figure 5: Entry showing amendments to Capital Acquisitions Taxes Consolidation Act 2003

2.51 A difficulty also arises in relation to Statutory Instruments. If an affecting provision is a Statutory Instrument, then the hyperlink is to the Statutory Instrument only. The user must look for the affecting provision within the Statutory Instrument themselves.

2.52 The Commission proposes to examine the current structures within the Legislation Directory to ascertain if these deficits can be remedied.

(iii) Associated Secondary Legislation Field

2.53 Another issue which arises is the lack of a chronological list to chart the effects of Statutory Instruments. Essentially, this means that if the Statutory Instruments cited above have been amended or repealed, there is no formal mechanism within the Legislation Directory to ascertain this information. The Commission believes that this is unsatisfactory. However, at the present time, the compilation of an additional chronological list to capture Statutory Instruments does not lie within the remit of the Legislation Directory project assigned to the Commission.

2.54 However, the Commission does propose to include a new field in each Act table to be entitled "Associated Secondary Legislation". This field will list all secondary legislation made pursuant to an enabling power in the Act. The Commission proposes adding this field to Act tables created in respect of legislation enacted after 31 December 2005.²² It is proposed to detail the enabling power in the Act, the name and number of the relevant Statutory Instrument and to provide a hyperlink to the Statutory Instrument.

2.55 *The Commission considers the chronological listing of the Public General Acts to be of central importance to the Legislation Directory. The Commission provisionally recommends increasing the prominence of this listing on the homepage of the Legislation Directory to highlight it to users.*

2.56 *The Commission provisionally recommends a redesign of the presentation of Act tables to allow for the creation of a separate Act table for each individual Act.*

2.57 *The Commission provisionally recommends that inconsistencies in the compilation of entries to this listing should be addressed.*

²² At the present time, the Commission does not intend to expand Act tables created in respect of legislation enacted before this date to include an "Associated Secondary Legislation Field". Such an expansion is not within the current ambit of the project transferred to the Commission and at the present time the Commission does not have sufficient resources to take on this additional workload.

2.58 *The Commission provisionally recommends that this listing should be updated on a regular basis and should form an integral part of any wider eLegislation project.*

2.59 *The Commission provisionally recommends that the attention of users of the Legislation Directory should be drawn to the need to check whether affecting provisions have in turn been affected.*

2.60 *The Commission provisionally recommends that consideration should be given as to whether inconsistencies in the presentation of affecting provisions can be remedied.*

2.61 *The Commission provisionally recommends the inclusion on the Legislation Directory of details of associated secondary legislation made pursuant to an enabling power in primary legislation. This would be confined to legislation enacted after 31 December 2005.*

(3) *An Alphabetical List of Acts in Force, which were brought into operation either in whole or in part by Orders made on or before 31 December 2005*

(a) *Introduction*

2.62 This listing refers to Acts which have been commenced by way of Commencement Orders. Commencement Orders are important to users of the Legislation Directory. It may be essential to the user to be able to ascertain the date that an Act or a provision of an Act came into force. Conversely, the user may wish to confirm that a particular provision has not come into force. It also is important that the user is aware of the distinction between the date of enactment and date of commencement of a piece of legislation.

(b) *The Law Governing Commencement of Primary Legislation*

2.63 Article 25.4.1° of Bunreacht na hÉireann reads as follows:

“Every Bill shall become and be law as on and from the day on which it is signed by the President under this Constitution, and shall, unless the contrary intention appears, come into operation on that day”.

Section 15(1) of the *Interpretation Act 2005* also provides that the date of the passing of an Act of the Oireachtas is the date of the day on which the Bill for the Act is signed by the President. This is known as its date of enactment. This can be contrasted with the date on which a legislative provision actually enters into force. This is known as its commencement date which may or may not coincide with the date of enactment. The commencement of legislation is further provided for in section 16 of the *Interpretation Act 2005* which permits provisions to be commenced in two different ways.

(i) *Commencement on Enactment*

2.64 Where there are no instructions as to the commencement of a legislative provision contained in the relevant Act of the Oireachtas, this silence is understood as indicating that the Act will commence on its enactment. Section 16(1) of Interpretation Act 2005 states that “[s]ubject to subsection (2), every provision of an Act comes into operation on the date of its passing.”

(ii) *Delayed Commencement*

2.65 However, commencement may be delayed. This may be to allow the Minister and relevant authorities to prepare secondary legislation or to make other necessary arrangements before the Act comes into force.²³

2.66 An Act of the Oireachtas will usually address delayed commencement in one of two ways. It may specifically provide that the Act or a provision of the Act is to commence on a particular date. Alternatively, the Act may confer a power, usually on the relevant Minister, to designate the

²³ In this regard, section 17(b) of the *Interpretation Act 2005* provides that

“[I]f, for the purposes of the Act or the provision, the Act confers a power to make a statutory instrument or do any act or thing, the making or doing of which is necessary or expedient to enable the Act or provision to have full force and effect immediately on its coming into operation, the power may, subject to any restriction imposed by the Act, be exercised at any time after the passing of the Act.”

commencement date, typically by means of a Commencement Order. In each case where delayed commencement is provided for, section 16(2) of the *Interpretation Act 2005* provides that the relevant provision or Act comes into operation at the end of the day before the designated commencement day.

2.67 Section 17(a) of the *Interpretation Act 2005* provides for an open-ended discretion in relation to the exercise of such commencement powers. It states that where an Act or a provision of an Act is expressed to come into operation on a day subsequent to the date of the passing of the Act then

“(a) [I]f the day on which the Act or the provision comes into operation is to be fixed or ascertained in a particular manner, the statutory instrument, act or thing whereby the day is fixed or ascertained may, subject to any restriction imposed by the Act, be made or done at any time after the passing of the Act.”²⁴

2.68 The problematic nature of open-ended legislative commencement provisions has resulted in several cases being brought to the courts. Section 60(7) of the *Civil Liability Act 1961* stated that the section 60 of that Act “shall come into operation on such day, not earlier than the 1st day of April 1967, as may be fixed therefor by order made by the Government”. The failure of the Government to commence section 60 was challenged in the *State (Sheehan) v the Government of Ireland*.²⁵ In that case, the Supreme Court held that the particular wording of the section enabled Government to commence the provision but did not amount to a mandatory duty to commence it. The only limit imposed was that the provision could not come into effect before the specified date and the Government’s discretion was otherwise unfettered.

2.69 The Supreme Court looked at this issue again in *Rooney v Minister for Agriculture and Food*.²⁶ In this case, the Plaintiff’s cattle were slaughtered as they were infected with bovine tuberculosis. His compensation was assessed on the basis of a non-statutory scheme. The *Diseases of Animals Act 1966* contained a more favourable scheme but the relevant provisions had not been commenced. The Plaintiff argued that the Minister should have done so. However, the Supreme Court accepted the Minister’s contention that it was prudent not to commence the relevant provisions in order to safeguard Exchequer funds.²⁷

2.70 These cases illustrate the wide ambit of discretion afforded in respect of commencement powers. Indeed, some provisions or Acts have never been commenced.²⁸

(c) Commencement Provisions and the Legislation Directory

2.71 It is clear that Commencement Orders are important to the users of the Legislation Directory. As discussed above, there is an obvious need to ascertain the exact date that an Act or a provision of an Act came into force and equally to know whether a particular provision has not come into force, if that is the case. At present there is no comprehensive system for showing if an Act or a provision thereof has come into force. While the Legislation Directory provides an alphabetical list of Acts in force, which were brought into operation either in whole or in part by Orders made on or before 31 December 2005, Acts which were commenced on enactment or have not been commenced are not recorded on this list. The user must then investigate further to ascertain into which category an Act falls.

²⁴ Section 10 of the *Interpretation Act 1937* contained a similar provision.

²⁵ [1987] IR 550

²⁶ [1991] 2 IR 539

²⁷ Byrne and McCutcheon make the point that while in *Rooney* the Minister could not be compelled to commence the statute, the decision might require reconsideration in the light of more recent judicial utterances that have questioned the use of non-statutory schemes in preference to those that are statutorily funded.

Byrne and McCutcheon *The Irish Legal System* (4th ed Butterworths 2001) at 432.

²⁸ The *Health (Mental Services) Act 1981* is an example of an entire Act which was not commenced.

2.72 The Commission will now examine how this listing works in practice. When a user clicks on the listing, the user is directed to the following page (see Figure 6 below).

The screenshot shows the 'Irish Statute Book' website. The header includes the title and 'Produced by the Office of the Attorney General'. A 'Quick Search' box is present with a search bar and checkboxes for 'Acts' and 'SIs'. A sidebar on the left contains navigation links: Home, Search, Acts of the Oireachtas, Statutory Instruments, Chronological Tables (highlighted), Print an Act, Feedback, Site Map, Text Size (Default | Large), and a search bar. The main content area displays a table of Acts and their Commencement Orders.

Short Title and Number	Date or number of Order bringing Act, or portion thereof, into operation
A ACC Bank Act, 1992 (No. 6). ACC Bank Act, 2001 (No. 12).	S. I. No. 97 of 1992. S. I. No. 278 of 2001. S. I. No. 69 of 2002. S. I. No. 150 of 1989. S. I. No. 88 of 1992. S. I. No. 380 of 1952. S. I. No. 64 of 1995. S. I. No. 49 of 1978. S. I. No. 90 of 1956. S. R. & O. No. 65 of 1933. S. I. No. 2 of 1962. S. I. No. 205 of 1961. S. R. & O. No. 59 of 1930.
Abattoirs Act, 1988 (No. 8).	
Adoption Act, 1952 (No. 25).	
Adoptive Leave Act, 1995 (No. 2).	
Agricultural Credit Act, 1978 (No. 2).	
Agricultural Produce (Cereals) (Amendment) Act, 1956 (No. 5).	
Agricultural Produce (Cereals) Act, 1933 (No. 7).	
Agricultural Produce (Cereals) Act, 1961 (No. 47).	
Agricultural Produce (Eggs) Act, 1961 (No. 15).	
Agricultural Produce (Fresh Meat) Act, 1930 (No. 10).	

Figure 6: An extract from the alphabetical list of Acts brought into force by Commencement Orders

2.73 On the left hand side, the Acts are listed alphabetically by short title and number. The number of the relevant Statutory Instrument (Commencement Order) appears opposite. The name of the Statutory Instrument does not appear. Further, the Legislation Directory only provides a link to the Statutory Instrument. It is necessary for the user to read the Statutory Instrument and the Act itself to ascertain what arrangements for commencement were passed within the Act and then whether or not the Act or any part thereof has been commenced in the manner provided for.

2.74 This can become a complicated exercise in the case of larger pieces of legislation where there may be multiple Commencement Orders. The difficulties faced by the user can be illustrated by reference to the *Criminal Justice Act 2006*.²⁹ At time of writing, there were no less than 9 commencement orders in respect of this piece of legislation.³⁰ Elements of the Act were still to be commenced.

2.75 As matters currently stand, users of the Legislation Directory are obliged to make their own enquiries as to commencement. Some users may make mistaken assumptions that provisions which have been enacted have been commenced. The Commission's survey of practice in other jurisdictions indicates that the current position does not represent international best practice in the area. In the United Kingdom, the Statute Law Database incorporates "Coming into Force" information in the Legislative Tables. Similar methods are used in Manitoba and Ontario.³¹

²⁹ The first commencement was in 2006 so details do not yet appear in the Legislation Directory.

³⁰ S.I. No. 390 of 2006 - Criminal Justice Act 2006 (Commencement) Order 2006; S.I. No. 529 of 2006 - Criminal Justice Act 2006 (Commencement) (No. 2) Order 2006; S.I. No. 586 of 2006 - Criminal Justice Act 2006 (Commencement) (No. 3) Order 2006; S.I. No. 622 of 2006 - Criminal Justice Act 2006 (Commencement) (No. 4) Order 2006; S.I. No. 689 of 2006 - Criminal Justice Act 2006 (Commencement) (No. 5) Order 2006; S.I. No. 025 of 2007 - Criminal Justice Act 2006 (Commencement) Order 2007; S.I. No. 065 of 2007 - Criminal Justice Act 2006 (Commencement) (No. 2) Order 2007; S.I. No. 600/2007 - Criminal Justice Act 2006 (Commencement) (No. 3) Order 2007; S.I. No. 848/2007 - Criminal Justice Act 2006 (Commencement) (No. 4) Order 2007

³¹ <http://www.gov.mb.ca/chc/statpub/index.html>; <http://www.e-laws.gov.on.ca/navigation?file=home&lang=en>

2.76 The Commission regards the inclusion of comprehensive commencement information as a deliverable which should be within the remit of the Legislation Directory. As discussed above, the failure to provide ready access to legislative commencement information has consequences for users of the Irish Statute Book of both a practical and legal nature. Indeed, the Commission is aware of anecdotal evidence of sections, which have never been commenced, being purportedly relied on by parties to litigation.

2.77 The Commission is anxious that accurate and easily accessible commencement information will be available in the Legislation Directory. It is thus proposed that the commencement status of each Act be included in a new field on each Act table for primary legislation enacted after 31 December 2005.³²

2.78 The Commission envisages that this would involve ascertaining which method of commencement applies to each incoming legislative provision. This would be entered in the Legislation Directory and updated as appropriate. If an Act comes into force immediately on enactment, then the whole Act will be listed as commenced with the date of signature of the Act by the President entered as the commencement date. If an Act has a provision or provisions that are expressed to come into operation on a particular day, a hyperlink will be provided to the relevant commencement provision in the Act. Commencement provisions may also state that an Act or provisions thereof shall come into operation on such a date as the Minister shall appoint by Order. This will be reflected by a hyperlink to the relevant commencement provision in the Act and if a particular provision has not been commenced a note will be included in the commencement field to this effect. Otherwise, details of the relevant Commencement Order will be given along with a hyperlink to the Order.

2.79 The Commission also recognises, however, that the current listing on the Legislation Directory would continue to be of relevance in relation to the body of legislation enacted before 31 December 2005 and currently referenced on the database. Thus, the current listing will be retained. Further, parts of this body of legislation have been commenced while others may remain to be commenced. The Commission believes that it would introduce confusion to the database if the proposed commencement system were applied to legislation enacted before 31 December 2005.

2.80 *The provision of commencement information is crucial to users of the Legislation Directory. The Commission believes that the current listing does not meet the needs of users. The Commission provisionally recommends the inclusion of detailed commencement information in individual Act tables in respect of primary legislation enacted after 31 December 2005.*

(4) An Alphabetical List of Collective Citations

2.81 The next listing on the Legislation Directory is an alphabetical listing of collective citations. If the user chooses the listing relating to collective citations, the following screen appears (see *Figure 7* below).

³² The Commission considers that it may be problematic to introduce the new system in respect of existing legislation as it could introduce inconsistencies into the presentation of legislation on the Legislation Directory in circumstances where legislation has been enacted but not yet commenced or remains only partially commenced.

Alphabetical list of collective citations.

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z	
Collective Citation	Act Containing Citation
A	
ACC Bank Acts, 1978 to 1999.	No. 29 of 1999, s. 9 (2).
Acquisition of Land (Allotments) Acts, 1926 and 1934.	No. 7 of 1934, s. 14 (3).
Adoption Acts, 1952 to 1988.	No. 10 of 1998, s. 18 (2).
Adoptive Leave Acts, 1995 and 2005.	No. 25 of 2005, s. 22 (2).
Agricultural Credit Acts, 1978 to 1992.	No. 6 of 1992, s. 14 (2) (3).
Agricultural Produce (Cereals) Acts, 1933 to 1961.	No. 47 of 1961, s. 2 (2).
Agricultural Produce (Fresh Meat) Acts, 1930 to 1988.	No. 8 of 1988, s. 1 (4).
Agriculture (An Chomhairle Oiliúna Talmhaíochta) Acts, 1979 and 1987.	No. 7 of 1987, s. 2 (2).
Agriculture (An Chomhairle Oiliúna Talmhaíochta) Acts, 1979 and 1987.	No. 7 of 1987, s. 2 (2).
Agriculture Acts, 1931 to 1980.	No. 12 of 1980, s. 4 (2).
Agriculture Credit Acts, 1978 to 1988.	No. 6 of 1988, s. 6 (2).
Air Companies Acts, 1966 to 1993.	No. 38 of 1993, s. 19 (2) (a).
Air Navigation (Eurocontrol) Acts, 1963 to 1983.	No. 38 of 1983, s. 16 (2).
Air Navigation and Transport Acts, 1936 to 1998.	No. 24 of 1998, s. 1 (2).
Air-raid Precautions Acts, 1939 and 1946.	No. 28 of 1946, s. 9 (3).
Airports and Aviation Acts 1936 to 2004.	No. 32 of 2004, s. 1 (2).
Alginite Industries (Ireland) Limited (Acquisition of Shares) Acts, 1949 and 2002.	No. 11 of 2002, s. 4 (2).
An Bord Bia Acts 1994 to 2004.	No. 14 of 2004, s. 1 (2).
Arbitration Acts, 1954 to 1998.	No. 14 of 1998, s. 1 (2).
Army Pensions Acts, 1923 to 1980.	No. 21 of 1980, s. 9 (2).
Arramara Teoranta (Acquisition of Shares) Acts, 1949 to 2002.	No. 11 of 2002, s. 4 (2).
Arterial Drainage Acts, 1925 and 1929.	No. 18 of 1929, s. 3.
Arterial Drainage Acts, 1945 and 1995.	No. 14 of 1995, s. 16 (2).
Arts Acts, 1951 and 1973.	No. 33 of 1973, s. 15 (2).
Auctioneers and House Agents Acts, 1947 to 1973.	No. 22 of 1973, s. 4 (2).
Aviation Regulation Acts 2001 to 2004.	No. 32 of 2004, s. 1 (4).
B	
B & I Line Acts, 1965 to 1990.	No. 4 of 1990, s. 2 (2).
B&I Line Acts, 1965 to 1988.	No. 4 of 1988, s. 3 (2).

Figure 7: An extract from the alphabetical list of collective citations

An alphabetical list of collective citations appears on the left hand side of the screen while a hyperlink to the Act containing the relevant citation appears opposite. The short title of the Act does not appear. However, the number of the Act and the relevant section are given. If the user clicks on the hyperlink, the user proceeds directly to the relevant section.

2.82 Collective citations are not always found in the most obvious location. For example, section 1 of the *Criminal Justice Act 2007* contains the following collective citations:

- i) Ball Acts 1997 and 2007;
- ii) Misuse of Drugs Acts 1977 to 2007;
- iii) Firearms Acts 1925 to 2007;
- iv) Garda Síochána Acts 2005 to 2007;
- v) Sea-Fisheries Acts 2003 to 2007.

2.83 Thus, the Commission believes that this separate listing of collective citations is a useful resource but would welcome submissions on the desirability of maintaining it into the future. The Commission considers that the listing should be maintained at a secondary location away from the Legislation Directory homepage.

2.84 The Commission believes that the inclusion on the Legislation Directory of a listing of collective citations along with the source of each citation is a useful resource and provisionally recommends maintaining it into the future.

(5) Orders made under Section 6 (1) of the Ministers and Secretaries (Amendment) Act 1939.

2.85 The next listing available to the user is an alphabetical list of orders made under section 6 (1) of the *Ministers and Secretaries (Amendment) Act 1939* (see Figure 8 below).

2.86 Under section 6 (1) of the *Ministers and Secretaries (Amendment) Act 1939*, the Government has the power to alter by Order the name of any Department or the title of any Minister; to transfer the administration of any public service between Departments or to transfer functions between Ministers; to

prescribe the organisation of any Department of State or to allocate to any Department the administration of a public service not expressly allocated to a Department; and to make adaptations of enactments as shall appear to be consequential on anything done under the subsection. This list records those Orders up to 2003.

2.87 When the user selects this listing, the following screen appears. An alphabetical list of orders appears on the left hand side. A hyperlink to the relevant Statutory Instrument appears opposite.

Irish Statute Book
Produced by the Office of the Attorney General

Quick Search
Search for words / phrases in Title of Act or Statutory Instrument
Enter Search [Go] [Add] [Etc] [Search]
More Search Options [More]

Home
Search
Acts of the Oireachtas
Statutory Instruments
Chronological Tables
Print an Act
Feedback
Site Map
Text Size
Default | Large

Alphabetical list of orders made under section 6 (1) of the Ministers and Secretaries (Amendment) Act, 1939.

Title	Number and Year of Order
Agricultural Education (Transfer of Departmental Administration and Ministerial Functions) Order, 1987.	No. 122 of 1987.
Agriculture (Alteration of Name of Department and Title of Minister) Order, 1965.	No. 146 of 1965.
Agriculture (Alteration of Name of Department and Title of Minister) Order, 1987.	No. 97 of 1987.
Agriculture (Transfer of Departmental Administration and Ministerial Functions) (Wheat and Flour Subsidy) Order, 1949.	No. 78 of 1949.
Agriculture and Fisheries (Alteration of Name of Department and Title of Minister) Order, 1977.	No. 31 of 1977.
Agriculture and Food (Alteration of Name of Department and Title of Minister) Order, 1993.	No. 11 of 1993.
Agriculture and Food (Alteration of Name of Department and Title of Minister) Order, 1999.	No. 307 of 1999.
Agriculture and Health (Transfer of Departmental Administration and Ministerial Functions) Order, 1947.	No. 417 of 1947.
Agriculture, Food and Forestry (Alteration of Name of Department and Title of Minister) Order, 1997.	No. 302 of 1997.
Agriculture, Food and Rural Development (Alteration of Name of Department and Title of Minister) Order, 2002.	No. 306 of 2002.
Air-raid Precautions Services (Compensation for Personal Injuries) (Transfer of Departmental Administration and Ministerial Functions) Order, 1973.	No. 78 of 1973.
Allocation of Administration (Genealogical Office) Order, 1943.	No. 207 of 1943.
Allocation of Administration (Oifig na gCeantar gCung) Order, 1954.	No. 128 of 1954.
Allocation of Administration (Oil Pollution Clearance) Order, 1970.	No. 277 of 1970.
Aran Islands Transport (Transfer of Departmental Administration and Ministerial Functions) Order, 1996.	No. 66 of 1996.
Aran Islands Transport (Transfer of Departmental Administration and Ministerial Functions) Order, 1997.	No. 331 of 1997.
Arramara Teoranta (Transfer of Departmental Administration and Ministerial Functions) Order 2003.	No. 361 of 2003.

Figure 8: An extract from the listing of Orders made under section 6 (1) of the Ministers and Secretaries (Amendment) Act 1939

2.88 This list can be of assistance to a user in a number of ways. If, for example, a piece of legislation contains a reference to particular function of a Government Minister, which is no longer carried out by that Minister, the list can facilitate the user by indicating which Minister is now responsible for that function.

2.89 For example, the *Arts and Culture (Transfer of Departmental Administration and Ministerial Functions)(No. 2) Order 1993* transferred functions by or under the *Temple Bar Renewal and Development Act 1991* or any instrument made thereunder, from the Minister for Arts, Culture and the Gaeltacht to the Minister for the Environment. The Statutory Instrument goes on to provide that references to the Minister for Arts, Culture and the Gaeltacht contained in any statute or instrument made thereunder and relating to any functions transferred by that Article shall, on and after the commencement of the Order, be construed as references to the Minister for the Environment.

2.90 However, a significant amount of the information included in this listing is already contained in each individual Act table on the Legislation Directory. For example, if the user consults the entry for the *Temple Bar Renewal and Development Act 1991*, the user will see this information. It is arguable that this location provides a better environment for the provision of this information. A person who consults the Act by means of the Act table and then looks at any modifications detailed on the Act table will be able to understand the context of the modifications. A user who directly consults the list of Orders made under section 6 (1) of the *Ministers and Secretaries (Amendment) Act 1939* may not be able to do so.

2.91 On the other hand, the blanket nature of many of the amendments contained in this listing means that amendments to individual pieces of legislation could be overlooked. The separate listing provides some degree of back-up for users of the Legislation Directory should this be the case.

2.92 The listing also details changes in title of individual Government departments or Ministers. It may be of assistance to a limited number of users that this aspect of the listing be retained. An example of such an Order is the *Agriculture and Food (Alteration of Name of Department and Title of Minister) Order 1999*.

2.93 However, the Commission also believes that this listing is not a core function of the Legislation Directory and should be located at a secondary location away from the Legislation Directory homepage.

2.94 The Commission notes the inclusion on the Legislation Directory of an alphabetical list of orders made under section 6 (1) of the Ministers and Secretaries (Amendment) Act 1939. The Commission provisionally recommends that this listing be maintained for the time being but that the situation be reviewed at a later date. The Commission would welcome submissions in this regard. The Commission provisionally recommends that, if retained, the listing should be relocated to a secondary location away from the Legislation Directory homepage.

(6) Regulations made under Section 3 of the European Communities Act 1972

2.95 The next listing to appear on the Legislation Directory is a chronological list of regulations made under section 3 of the *European Communities Act 1972*. This provision relates to the power of a Minister to make regulations to allow the implementation of Community measures into domestic law. There is particular need for this type of resource as these regulations are regarded as having statutory effect on a par with an Act of the Oireachtas.³³

2.96 These regulations are listed up to and including 2005. When the user chooses this listing, the following screen appears.

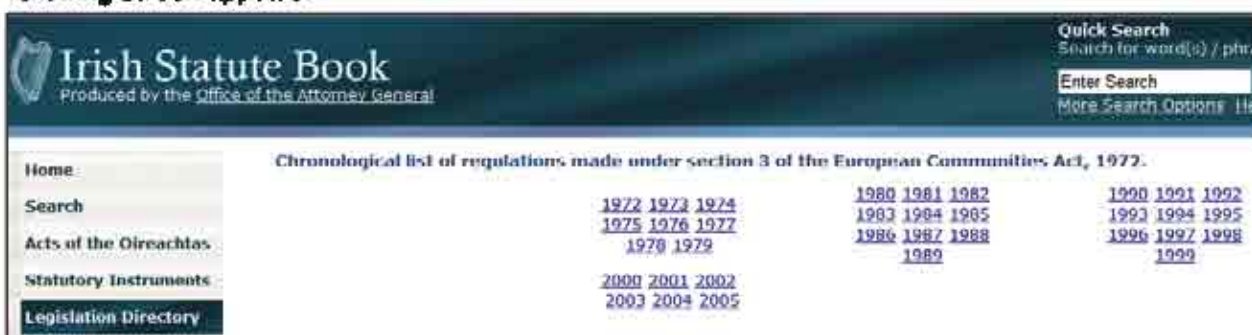


Figure 9: Regulations made under section 3 of the European Communities Act 1972 collected by year

2.97 The user can click on a hyperlink to each individual year. If, for example, the user chooses 1972, the following screen appears.

Number and Year in S.I Series	Title
No. 311 of 1972	European Communities (Motor Vehicles) Regulations, 1972.
No. 312 of 1972	European Communities (Crystal Glass) Regulations, 1972.
No. 314 of 1972	European Communities (Shipbuilding) Regulations, 1972.
No. 320 of 1972	European Communities (Rules of Court) Regulations, 1972.
No. 325 of 1972	European Communities (Textiles) Regulations, 1972.
No. 329 of 1972	European Communities (State Financial Transactions) Regulations, 1972.
No. 331 of 1972	European Communities (Enforcement of Community Judgements) Regulations, 1972.
No. 333 of 1972	European Communities (Aliens) Regulations, 1972.
No. 334 of 1972	European Communities (Customs) Regulations, 1972.
No. 339 of 1972	European Communities (National Catalogue of Agricultural Plant Varieties) Regulations, 1972.
No. 341 of 1972	European Communities (Judicial Notice and Documentary Evidence) Regulations, 1972.

Figure 10: Regulations made under section 3 of the European Communities Act 1972 in the year 1972

2.98 The relevant Statutory Instruments are displayed as a hyperlink on the left hand side of the screen. The name of the Statutory Instrument appears opposite. The user can click on the hyperlink and proceed to the Statutory Instrument.

2.99 Although, the Statutory Instruments are listed up to 2005, not all instruments from that year are hyperlinked. Instruments after No. 347 of 2005 *European Communities (Transport of Dangerous Goods*

³³ See further *Quinn v Ireland* (No2) [2007] 2ILRM 101

by Rail) (Amendment) Regulations 2005 are not hyperlinked.³⁴ The missing instruments for 2005 are not available in any location on the eISB online so the user is obliged to source a copy themselves. Also, instruments from 2006 onwards are not listed, although if the user knows the title or number of an instrument from 2007 or 2008, they may be able to locate it on the eSIs, which is available by hyperlink from the eISB.

2.100 Further, the user is not alerted to the enactment of the *European Communities Act 2007*. Section 4 of the 2007 Act contains a power to give effect to European acts under statutes other than the Act of 1972.

Section 4 (1) reads as follows:

“4.—(1) A power to make a Statutory Instrument conferred on a Minister of the Government by a provision of a statute may be exercised for the purpose of giving effect to a European act if the obligations imposed on the State under the European act concerned relate, in whole, to matters to which that provision relates.”

Section 4(2) further cements the wide ambit of this supplementary power. It reads:

“(2) A statutory instrument made for a purpose referred to in subsection (1) may contain such incidental, supplementary and consequential provisions as appear to the Minister of the Government making the statutory instrument to be necessary for the purposes of the statutory instrument (including provisions repealing, amending or applying, with or without modification, other law, exclusive of this Act, the Act of 1972 and the provision of the statute under which the statutory instrument is made).”

2.101 The Commission believes that it is desirable that the effect of this enhanced power is reflected in the Legislation Directory. However, it remains unclear whether the ambit of this new power will give rise to practical difficulties in tracking this body of legislation. The Commission notes section 4(3) of the 2007 Act, which provides as follows:

“(3) Where a statutory instrument is made for a purpose referred to in subsection (1), the statutory instrument, or the preamble or recital to the statutory instrument, shall specify the European act to which the statutory instrument gives effect.”

2.102 The Commission also notes that section 5 of the 2007 Act goes on to retrospectively validate certain instruments. It provides as follows:

“5.—(1) Every Statutory Instrument made before the passing of this Act—

- (a) under a provision of a statute that did not provide for the exercise of the power conferred by that provision for the purpose of giving effect to a European act, and
- (b) that purported to give effect to a European act, shall, in so far as it purported to give such effect, have statutory effect as if it were an Act of the Oireachtas.”³⁵

2.103 The Commission will keep this matter under review and will return to consider it in the Report to follow this Consultation Paper. In the interim, it proposes to maintain the current listing. It also proposes that the listing be retained on the Legislation Directory homepage. The Commission will also explore appropriate measures of tracking any expanded body of relevant Statutory Instruments. The Commission may require cooperation from stakeholders in this regard.

2.104 *The Commission notes the desirability of centrally documenting Statutory Instruments which give effect to Ireland's European obligations. The Commission notes the inclusion on the Legislation*

³⁴ Although, it would appear to a user that some later instruments are hyperlinked, at the time of writing this was not in fact the case.

³⁵ However, section 5(2) goes on to provide as follows:

“(2) If subsection (1) would, but for this subsection, conflict with a constitutional right of any person, the operation of that subsection shall be subject to such limitation as is necessary to secure that it does not so conflict but shall otherwise be of full force and effect.”

Directory of a chronological list of regulations made under section 3 of the European Communities Act 1972. The Commission provisionally recommends maintaining the current listing. The Commission also provisionally recommends that its current location on the Legislation Directory homepage remain unchanged. The Commission notes the enactment of the European Communities Act 2007 and would welcome submissions on the expansion of Legislation Directory and the tracking of relevant Statutory Instruments to reflect this change.

(7) Chronological Table of Private Acts from 6 December 1922 to 31 December 2005.

2.106 The next listing available to the user is a chronological table of the Private Acts from 6 December 1922 to 31 December 2005. When the user chooses this option, the following screen appears.



Figure 11: Private Acts collected by year

2.106 The user can click on a hyperlink to each individual year. If, for example, the user chooses 1924, the following screen appears.

Year and Number	Short Title	Remarks
1924		
1 P.	Sligo Lighting and Electric Power Act, 1924.	Relief from obligation to supply gas: S.I. No. 168 of 1968.
2 P.	Pilotage Orders Confirmation Act, 1924.	New Ross and Sligo Pilotage Orders, 1924. Trans. of cert. functns. under: S. I. No. 91 of 1987 , art. 4, sch.

Figure 12: Private Acts passed in 1924

2.107 The year and number of the Act is given along with the short title and remarks. The short title is provided by way of a hyperlink. If the user clicks on this, the user is brought to the text of the Act.

2.108 It is immediately clear that the style and layout of this list varies from that used in respect of the chronological list of Public General Acts. In that list, the year, number and short title are given but it also includes the categories "How Affected" and "Affecting Provision". These latter two would appear to be encompassed in "Remarks" on the list of Private Acts. "Remarks" includes information on the affecting legislation and in some cases a hyperlink to the instrument in question. There is also inconsistency in the amount of information provided in relation to affecting provisions. In some circumstances, the affecting provision is given while other entries are less specific and name the affecting instrument only.

2.109 The Commission believes that this listing should be maintained. The Commission also believes that the listing should remain on the Legislation Directory homepage as it directly relates to primary legislation. Also, while there are a limited number of these Private Acts, it would be preferable if, into the future, the style used in the compilation of the chronological list of Public General Acts was also used here.

2.110 A chronological list of the Private Acts from 6 December 1922 to 31 December 2005 is available on the Legislation Directory. The Commission provisionally recommends maintaining this listing.

2.111 The Commission also provisionally recommends that this listing should remain in its current location.

2.112 The Commission provisionally recommends that into the future the style used in the compilation of this listing should be consistent with the style used in the chronological listing of the Public General Acts.

(8) Integration of pre-1922 and post-1922 Legislative Provisions

2.113 In Chapter 1, the Commission discussed the transposition into Irish law of pre-1922 legislation. As a consequence, the corpus of statute law applicable in this jurisdiction reflects the historical legacy of pre-Independence statute law of the United Kingdom.³⁶

2.114 However, this is not reflected in the Legislation Directory. The only pre-1922 Acts listed are those which have been affected by post-1922 legislation. This means that if a pre-1922 Act has not been affected by post-1922 legislation it is not included in the Legislation Directory, even though it may still be in force in Ireland. Further, if a pre-1922 Act has been affected by post-1922 legislation, the Legislation Directory will only list its post-1922 legislative history. The fact that it may have been amended pre-1922 will not be evident to the user. The aforementioned problems are compounded by the cataloguing on the Legislation Directory of pre-1922 Acts which have been affected by post-1922 affecting provisions in Tables which are separate from those for post-1922 Acts.

(9) Pre-1922 Act Unaffected by Post-1922 Legislation

2.115 The Commission notes that where a pre-1922 Act has not been affected by post-1922 legislation, it is not included in the Legislation Directory, although it may still be in force in Ireland. This can cause considerable difficulties for the user of the Legislation Directory. This was particularly the case prior to the enactment of the *Statute Law Revision Act 2007*. This Act will now assist the user as it has identified a “white list” of 1,364 pre-1922 Public Acts which remain on the Statute Book. However, to determine the extent to which such an Act is in force, the reader must consult the pre-1922 Chronological Tables of the Statutes. These tables are not available online, are difficult to access elsewhere and are also very different in style and presentation to the modern Tables.³⁷

2.116 The *Evidence Act 1851* illustrates the effect of these difficulties. This Act remains in force in Ireland, however, there have been no post-1922 amendments made to it so it does not appear on the Legislation Directory.³⁸ This is not to say that it has never been amended. In fact, as many as seven sections were repealed prior to 1922 and others have been part repealed.³⁹ As mentioned above, it is necessary for the user to find a hard copy of the pre-1922 Chronological Tables to ascertain the legislative history of the Act.

³⁶ See Chapter 1, Part B

³⁷ *Chronological Table and Index of the Statutes Vol I Chronological Table of All the Statutes* (37th ed) (HMSO London 1921). These Chronological Tables of the Statutes are out of print.

³⁸ Reference is made to the Act, however, in a number of Statutory Instruments on the eISB e.g. *Supreme Court and High Court (Fees) Order 2005*, S.I. No. 70 of 2005

³⁹ For example, section 4 of this Act was repealed by the *Evidence Further Amendment Act 1869*.

(10) Pre-1922 Act affected by both pre and post-1922 Legislation

2.117 In circumstances where a pre-1922 Act has been affected by post-1922 legislation, the Legislation Directory only lists the post-1922 legislative history. Modifications made prior to 1922 are not included in the Legislation Directory thus giving the user a misleading impression of the law.

2.118 The *Civil Bill Courts (Ireland) Act 1851* is a relevant example. If a user were to consult only the Legislation Directory, they may believe that the first affecting provision was section 17 of the *Courts of Justice Act 1928* (see Figure 13 below). However, this Act was extensively amended prior to 1922.⁴⁰ An examination confined solely to the Legislation Directory could lead to the mistaken conclusion that they remain in force. This is not an isolated example.

British Public Statutes Affected			
Session and Chapter	Short Title or Subject Matter	How Affected	Affecting Provision
14 & 15 Vic. c. 13	<i>Arctic Act, 1851.</i>	Rep. prosp.	12/1961, ss. 21, 22 (2), sch.
14 & 15 Vic. c. 19	<i>Prevention of Offences Act, 1851.</i>	Ss. 5, 14 rep.	14/1997, ss. 1, 16, sch. 3
14 & 15 Vic. c. 21	<i>Bridges (Ireland) Act, 1851.</i>	Rep.	24/1946, s. 5, sch.
14 & 15 Vic. c. 35	<i>Naval Apprentices (Ireland) (1851).</i>	Rep.	11/1983, s. 1, sch., pt. 4
14 & 15 Vic. c. 42	<i>Crown Lands Act, 1851.</i>	S. 20 rep.	11/1983, s. 1, sch., pt. 4
14 & 15 Vic. c. 57	<i>Civil Bill Courts (Ireland) Act, 1851.</i>	S. 2 rep. S. 31 am. Ss. 49-57 rep. S. 60 rep. S. 82, juris. of Dist. Ct.	11/1983, s. 1, sch., pt. 4 S. 1 No. 174 of 1992, reg. 2 S. 1 No. 193 of 1992, reg. 3 27/1965, ss. 8, 9, sch. 2, pt. 3 48/1916, s. 3, sch. 1, pt. 1 15/1928, s. 17

Figure 13: The Legislation Directory's post-1922 entries for the *Civil Bill Courts (Ireland) Act 1851*

(11) Sub-division of Pre-1922 Acts

2.119 As previously mentioned, the Legislation Directory is divided into pre-1922 and post-1922 Act Tables. This may cause confusion for the user. This is compounded by the further subdivision of the pre-1922 Tables. The pre-1922 Act Tables are subdivided into Pre-Union Irish Statutes (1236-1800), English Statutes (1226-1707), Pre-Union British Statutes (1707-1800), British Public Statutes (1801-1922) and British Local and Private Statutes (1801-1922) (see Figure 14 below). This is to reflect the various Parliaments that legislated for Ireland from 1236. The Commission is of the view that the division of the legislation by Parliament is an unnecessary feature on the Legislation Directory homepage. The Commission proposes to amalgamate these individual listings into one list of pre-1922 legislation that has been amended post-1922. The Commission proposes that this amalgamated listing remain on the Legislation Directory homepage as it directly relates to primary legislation.

⁴⁰ In this regard see the extensive list of amendments detailed in the *Chronological Table and Index of the Statutes Vol I Chronological Table of All the Statutes* (37th ed) (HMSO London 1921) at 333.

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Legislation Directory
The purpose of this database is to enable users of the Irish Statute Book to identify whether a particular provision has been amended or otherwise affected since its enactment.
The database contains:
• [A list of abbreviations](#)
• [A chronological list of the Public General Acts enacted from 6 December, 1922 to 31 December, 2005.](#)
• [An alphabetical list of Acts in force, which were brought into operation either in whole or in part by Orders made on or before 31 December 2005.](#)
• [An alphabetical list of collective citations](#)
• [An alphabetical list of Orders made under section 6 \(1\) of the Ministers and Secretaries \(Amendment\) Act 1939, on or before 31 December, 2005.](#)
• [A chronological list of Regulations made under section 3 of the European Communities Act 1972, on or before 31 December, 2005.](#)
• [A chronological list of the Private Acts from 6 December, 1922 to 31 December, 2005.](#)

Tables of the legislation set out in the next paragraph as affected by any primary or secondary legislation enacted from 6 December, 1922 to 31 December, 2005, namely:

- [Pre-Union Irish Statutes \(1736 - 1800\)](#)
- [English Statutes \(1226 - 1707\)](#)
- [Pre-Union British Statutes \(1707- 1800\)](#)
- [British Public Statutes \(1801- 1922\)](#)
- [British Local and Private Statutes \(1801- 1922\)](#)
- [The Local Government \(Application of Enactments\) Order 1898, and](#)
- [The Local Government \(Adaptation of Irish Enactments\) Order 1899](#)
- [A Table of Expressions \(in alphabetical order\) used in British Statutes \(Public Statutes and Local and Private Statutes\) or Saorstát Éireann Statutes that have been adapted by the Orders made before 1 January 2003, under the Adaptation of Enactments Act 1922 \(No. 2 of 1922\), or the Constitution \(Consequential Provisions\) Act 1937 \(No. 40 of 1937\)](#)
- [An alphabetical list of all Acts in the Legislation Directory](#)
- [An alphabetical list of all Acts by decade](#)

Users should be aware of the following:
Where an affecting provision (including a repealing provision) is governed by a commencement provision, the commencement provision is referred to. Users are advised to check whether the affecting provision has been commenced.
The database does not refer to amendments effected prior to 1922.
Attention is drawn to [Part 8 \(sections 26 and 27\) of the Interpretation Act 2005 \(No. 23 of 2005\)](#), in relation to the effects of repeals and revocations in Acts of the Oireachtas and instruments made partly or wholly thereunder.
Attention is also drawn to [section 2 of the European Communities Act 1972](#), which provides that the Treaties and other acts of the Communities are binding on the State and are part of its domestic law.

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Figure 14: Presentation of pre-1922 legislation on the homepage of the Legislation Directory

(12) Integration of Pre-1922 Legislative Effects

2.120 The Commission has outlined its immediate proposals in relation to the presentation of pre-1922 legislation on the Legislation Directory. However, the Commission recognises that the development of a best practice model for the Legislation Directory necessitates the consolidation of the pre and post 1922 legislative tables. The Commission recognises the benefits of having one single repository for all primary statute law currently in force in Ireland. However, the Commission is also aware that this process is not without difficulties of a practical nature.

2.121 A key issue in relation to expanding the information provided in the Legislation Directory in respect of pre-1922 legislation is that of sourcing copies of the legislation. While, the text of most legislation enacted post-1922 is hyperlinked on the Legislation Directory, the text of legislation enacted prior to 1922 is not available on the eISB. Pre-Independence legislation is not currently available online in a comprehensive, centralised resource and hard copies may be difficult to obtain.⁴¹ However, the Commission notes that this situation may improve as during the Oireachtas debate on the *Statute Law*

⁴¹ The Commission proposes to include information for users on sourcing copies of pre-1922 Chronological Tables to enable the identification of any relevant modifications to legislation effected prior to 1922. This would be included in the "User Awareness" section on the homepage. See paragraph 2.150 below.

Revision Bill 2007, the Government stated that it intended that all pre-1922 Acts which remain on the Irish Statute Book five years after the passing of the 2007 Act will be made available on-line.⁴²

2.122 Currently, the most convenient way of tracking pre-1922 statutes is through collected editions.⁴³ There have been various compilations of both Irish and British statutes. An example of an early Irish collection of legislation is Grierson's *Statutes at Large Passed by the Parliaments held in Ireland from 1310 to 1786*.⁴⁴ An example of a British compilation is *The Statutes at Large* the Runninton or "Ruffhead's Edition".⁴⁵ Other collections include *The Statutes of the Realm*.⁴⁶

2.123 Despite the sourcing difficulties outlined, the task of integrating the pre-1922 and post-1922 Tables has been made easier by developments in recent times. It has been Government policy for many years to replace pre-1922 legislation with Acts of the Oireachtas.⁴⁷ This commitment to review all pre-1922 legislation was reiterated in the White Paper, *Regulating Better*.⁴⁸ The process of reviewing pre-1922 legislation has accelerated in recent years. For example, the *Statute Law Revision Act 2007* now contains a "white list" of 1,364 pre-1922 Public Acts which continue in force in whole or in part. However, as previously discussed, the 2007 Act does not show the extent to which these Acts are in force. Thus, a deficit remains in relation to pre-1922 Acts.

2.124 A number of other initiatives have been undertaken. These include the *Land Law and Conveyancing Law Reform Bill 2006*, which will repeal - in whole or in part - 150 pre-1922 statutes.⁴⁹ Also, since 2006, the Commission has been involved in the Statute Law Restatement project. A small amount of the pre-1922 legislation will be included as part of this project.⁵⁰

2.125 However, sourcing is not the only difficulty. There are problems with the current presentation of the pre-1922 Tables on the Legislation Directory. To understand the data as presented, the modern user needs to be well versed in the constitutional and administrative history of Ireland and the United Kingdom. This is such a hindrance that various institutions have published interpretation guides for students and practitioners.⁵¹

2.126 The most obvious problem is caused by the use of regnal years. This is one of the aforementioned differences in format between pre-1922 Tables and post-1922 Tables. This system

⁴² See Dáil Éireann Committee Stage debate on the Statute Law Revision Bill 2007, Select Committee on Finance and the Public Service, 13 March 2007, available at www.oireachtas.ie

⁴³ O'Malley *Sources of Law: An Introduction to Legal Research and Writing* (2nd ed Round Hall/Sweet and Maxwell 2001) at 56

⁴⁴ *The statutes at large, passed in the parliaments held in Ireland : from the third year of Edward the Second, A.D. 1310 to the twenty sixth year of George the Third, A.D. 1786 inclusive : with marginal notes, and a complete index to the whole : published by authority in eighteen volumes*, (Vol. 8 Dublin 1799). This was printed by Grierson printer to the Crown.

⁴⁵ Ruffhead *The statutes at large, from Magna Charta to the forty-first year of the reign of King George the Third*, (Eyre, Strahan & Woodfall London 1786-1800)

⁴⁶ *The statutes of the realm*. Printed by command of His Majesty King George the Third. In pursuance of an address of the House of Commons of Great Britain. From original records and authentic manuscripts (London: Record Commission, 1810-28)

⁴⁷ Programme of Law Reform, Department of Justice, Equality and Law Reform 1962.

⁴⁸ *Regulating Better, A Government White Paper setting out six principles of Better Regulation* (16 January 2004). Available at www.betterregulation.ie

⁴⁹ See Chapter 1 for a more detailed discussion on the various initiatives in relation to reform in this area.

⁵⁰ Law Reform Commission *Consultation Paper Statute Law Restatement* (LRC CP 45-2007) at 63-67

⁵¹ Harvard university library and Rutgers university library both offer guides to interpreting British legislation dating from the Magna Carta onwards.
http://www.law.harvard.edu/library/services/research/guides/international/uk/british_statutes.php

involves the use of the names and years of British monarchs' reigns to date Acts rather than the years in the Gregorian calendar. Acts are also referred to as Chapters. The format follows the following sequence - year of the monarch's reign and an abbreviation of the monarch's name in brackets followed by a Chapter number. An example of this is "(5 Vict.) c.1".⁵² This system becomes further complicated when the Chapter was enacted by a parliamentary session that overlapped two years of the reign of a particular monarch, for example, (1 & 2 Will. 4) c. 33⁵³ Yet another variation of this system arises when the parliamentary session overlaps the reign of two monarchs. In such a situation the citation reads as follows (7 Will. 4 & 1 Vict.) c.2.⁵⁴ When this methodology is employed, the user needs to be very familiar with the periods of reign of the British monarchs from 1066 until 1922. The intermittent use of Latin can also add to the inaccessibility of these tables.

2.127 *The Commission believes that there are deficits in the Legislation Directory as regards pre-1922 legislation. The Commission recognises the benefits and the challenges of creating one single depository of all primary legislation which is currently in force in Ireland. The Commission notes the existence of some listings of pre-1922 legislation on the Legislation Directory. The Commission provisionally recommends the amalgamation of these current individual listings into one single listing. The Commission provisionally recommends that this amalgamated listing remain on the Legislation Directory homepage. The Commission invites submissions on the integration of pre-Independence legislative effects to the Legislation Directory to form a united database.*

(13) Local Government (Application of Enactments) Order 1898 and Local Government (Adaptation of Irish Enactments) Order 1899


2.128 The Local Government (Application of Enactments) Order 1898 applies certain provisions of English and Scottish Acts (set out in Fourth Schedule to the *Local Government (Ireland) Act 1898*) to Ireland. It does this by way of setting out the texts as applied. The Local Government (Adaptation of Irish Enactments) Order 1899 adapts certain Irish Acts specified in the Fifth Schedule to Local Government Act 1898. Some of these amendments are made by means of free standing text (i.e. not all are textual amendments). These are rather unusual Orders in that they amended Acts or applied with amendments to other Acts. They have been included to date in the Legislation Directory because of their hybrid nature. If both Orders had textually amended the Acts concerned, it would be possible (in a comprehensive Legislation Directory i.e. not just from 1922) to insert the application or adaptation into the relevant Act table. However, many of the provisions are not done by way of textual amendment but are set out in full with only a marginal note as to origin (see *Figures 15 and 16 below*).⁵⁵

⁵² Crown Lands Act 1841

⁵³ *Public Works (Ireland) Act 1831*

⁵⁴ *Grand Jury (Ireland) Act 1837*

⁵⁵ See further Vanston *The Law Relating to Local Government in Ireland* (2nd edition Vol 1 Ponsonby 1909-1915) at 159 and 323



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Local Government (Application of Enactments) Order, 1898

Title	How Affected	Affecting Provision
Local Government (Application of Enactments) Order, 1898	Art. 25, saving for:	7/1895 , ss. 1 (6), 21 (4).
	Schedule:-	
	Arts. 3, 4 r.	26/1950 , s. 1, sch.
	Arts. 5-7 r.	19/1963 , s. 2, sch. 1.
	Art. 8 (in pt.) r.	26/1950 , s. 1, sch.
	Arts. 9, 10, 11 (1)-(5) r.	19/1963 , s. 2, sch. 1.
	Art. 12 (except sub-art. (9)) appl. to Cttees. of Agric. and Voc. Educ. Cttees.	9/1944 , s. 2.
		3/1944 , s. 2.
	Art. 12 appl. to Lough Corrib Trustees.	37/1945 , s. 6.
	Art. 12 restrict.	35/1934 , s. 11 (3);
		25/1935 , s. 10 (2).
	Art. 12 appl.	21/1926 , s. 15 (5).
	Art. 12 (2) (in pt.), (3) (4) (in pt.) r.	26/1950 , s. 1, sch.
	Art. 12 (4) (a) am.	8/1974 , s. 24.

Figure 15: An extract from the listing in relation to the Local Government (Application of Enactments) Order 1898



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The Local Government (Adaptation of Irish Enactments) Order 1899

Title	How Affected	Affecting Provision
Local Government (Adaptation of Irish Enactments) Order, 1899	Schedule:-	
	Art. 37 (d) am.	S.I. No. 265 of 1984 , art. 3.
		S.I. No. 245 of 1974 , art. 4, sch. 2, pt. 2.
	Art. 37 (f) (n) am.	S.I. No. 265 of 1984 , art. 4.
	Arts. 3 (5)-(7), (12) (14), 8-12, 14, 10 r.	26/1950 , s. 1, sch.
	Art. 37 (f) am.	S.I. No. 241 of 1979 , art. 2.
	Art. 37 (h)-(i) substt.	S.R. & O. No. 47 of 1925 , arts. 2, 4, sch. 2, pt. 5.
	Art. 37 (m) (in pt.) r.	26/1950 , s. 1, sch.
	Art. 37 (n) am.	S.I. No. 241 of 1979 , art. 2.
	Art. 38-41 r.	26/1950 , s. 1, sch.

Figure 16: An extract from the listing in relation to the Local Government (Adaptation of Irish Enactments) Order 1899

2.129 The Commission notes that the last update to the listing on the Legislation Directory in relation to the Local Government (Application of Enactments) Order 1898 was in 1985 and that the Order was revoked by the *Local Government Act 2001*.⁵⁶ The last entry on the listing relating to the *Local Government (Adaptation of Irish Enactments) Order 1899* was in 1984. The *Local Government Act 2001* revoked Articles 4 to 7, 13, 15 to 17, 19 to 36 and 42 to 45 of this Order.⁵⁷ However, it would appear that aspects of the Order are still in force.

2.130 The Commission believes that in the interim it may be useful to retain these listings, in particular the second listing. However, the Commission would welcome submissions on the continued utility of these listings. The Commission also believes that, if maintained, both listings should be located on a secondary webpage away from the main Legislation Directory homepage. Further, the Commission believes that these listings are currently provided without context. There is no access to the texts of the two Orders on the Legislation Directory. If the listings are maintained then this should be remedied. Further, the *Local Government Act 1898* (or relevant provisions thereof) should be included on the

⁵⁶ See section 5(2) and Part 2 of Schedule 3. This information does not appear in the Legislation Directory.

⁵⁷ See section 5(2) and Part 2 of Schedule 3. This information does not appear in the Legislation Directory.

Legislation Directory. The Commission also believes that additional signposting is necessary to enable the user appreciate the content and purpose of the listings.

2.131 The Commission notes the inclusion on the Legislation Directory of a listing of Orders made under the Local Government (Application of Enactments) Order 1898 and Local Government (Adaptation of Irish Enactments) Order 1899. The Commission provisionally recommends the retention of these listings but would welcome submissions on their continued utility.

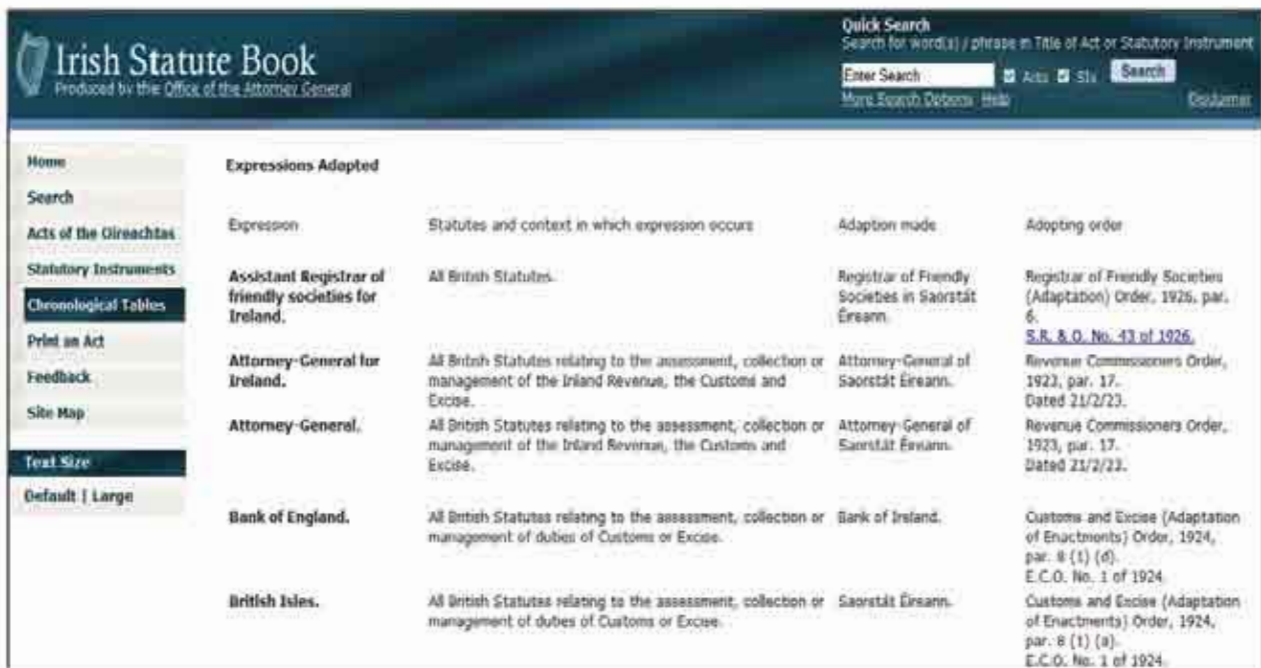
2.132 The Commission provisionally recommends the relocation of these listings to a secondary page away from the Legislation Directory homepage.

2.133 The Commission provisionally recommends that additional signposting be provided to enable the user appreciate the content and purpose of the listings.

(14) Expressions Adapted from Pre-1922 Legislation and Legislation of Saorstát Éireann

2.134 The next listing is a Table of Expressions (in alphabetical order) used in British Statutes (Public Statutes and Local and Private Statutes) or Saorstát Éireann Statutes that have been adapted by the Orders made before 1 January 2003, under the *Adaption of Enactments Act 1922* or the *Constitution (Consequential Provisions) Act 1937*.

2.135 The user is presented with 3 hyperlinks. If the user clicks on the first hyperlink then the following screen appears.



The screenshot shows the 'Irish Statute Book' website. At the top, there is a search bar and navigation links. On the left, a sidebar contains links like 'Home', 'Search', 'Acts of the Oireachtas', 'Statutory Instruments', 'Chronological Tables', 'Print an Act', 'Feedback', 'Site Map', 'Text Size', and 'Default | Large'. The main content area is titled 'Expressions Adapted' and contains a table with five columns: 'Expression', 'Statutes and context in which expression occurs', 'Adaption made', and 'Adopting order'.

Expression	Statutes and context in which expression occurs	Adaption made	Adopting order
Assistant Registrar of friendly societies for Ireland.	All British Statutes.	Registrar of Friendly Societies in Saorstát Éireann.	Registrar of Friendly Societies (Adaptation) Order, 1925, par. 6. S.R. & O. No. 43 of 1926 .
Attorney-General for Ireland.	All British Statutes relating to the assessment, collection or management of the Inland Revenue, the Customs and Excise.	Attorney-General of Saorstát Éireann.	Revenue Commissioners Order, 1923, par. 17. Dated 21/2/23.
Attorney-General.	All British Statutes relating to the assessment, collection or management of the Inland Revenue, the Customs and Excise.	Attorney-General of Saorstát Éireann.	Revenue Commissioners Order, 1923, par. 17. Dated 21/2/23.
Bank of England.	All British Statutes relating to the assessment, collection or management of duties of Customs or Excise.	Bank of Ireland.	Customs and Excise (Adaptation of Enactments) Order, 1924, par. 8 (1) (d). E.C.O. No. 1 of 1924.
British Isles.	All British Statutes relating to the assessment, collection or management of duties of Customs or Excise.	Saorstát Éireann.	Customs and Excise (Adaptation of Enactments) Order, 1924, par. 8 (1) (a). E.C.O. No. 1 of 1924.

Figure 17: Expressions in British or Saorstát Éireann Statutes adapted by Orders made before 1 January 2003 under the *Adaption of Enactments Act 1922* or the *Constitution (Consequential Provisions) Act 1937*

2.136 Figure 17 above contains a list of the expressions from British statutes or Saorstát Éireann Statutes which have been adapted under the *Adaption of Enactments Act 1922* or the *Constitution (Consequential Provisions) Act 1937*.

2.137 The particular expression, which has been adapted, appears on the left hand side of the screen. This is followed by a column showing the context in which the expression occurs. The adapted expression then follows along with details of the order which adopted this expression. In a few cases a hyperlink is provided to the relevant order.

2.138 The user will see that the first entry detailed above refers to the adapted expression "Assistant Registrar of Friendly Societies for Ireland", which was an expression which appeared in all British

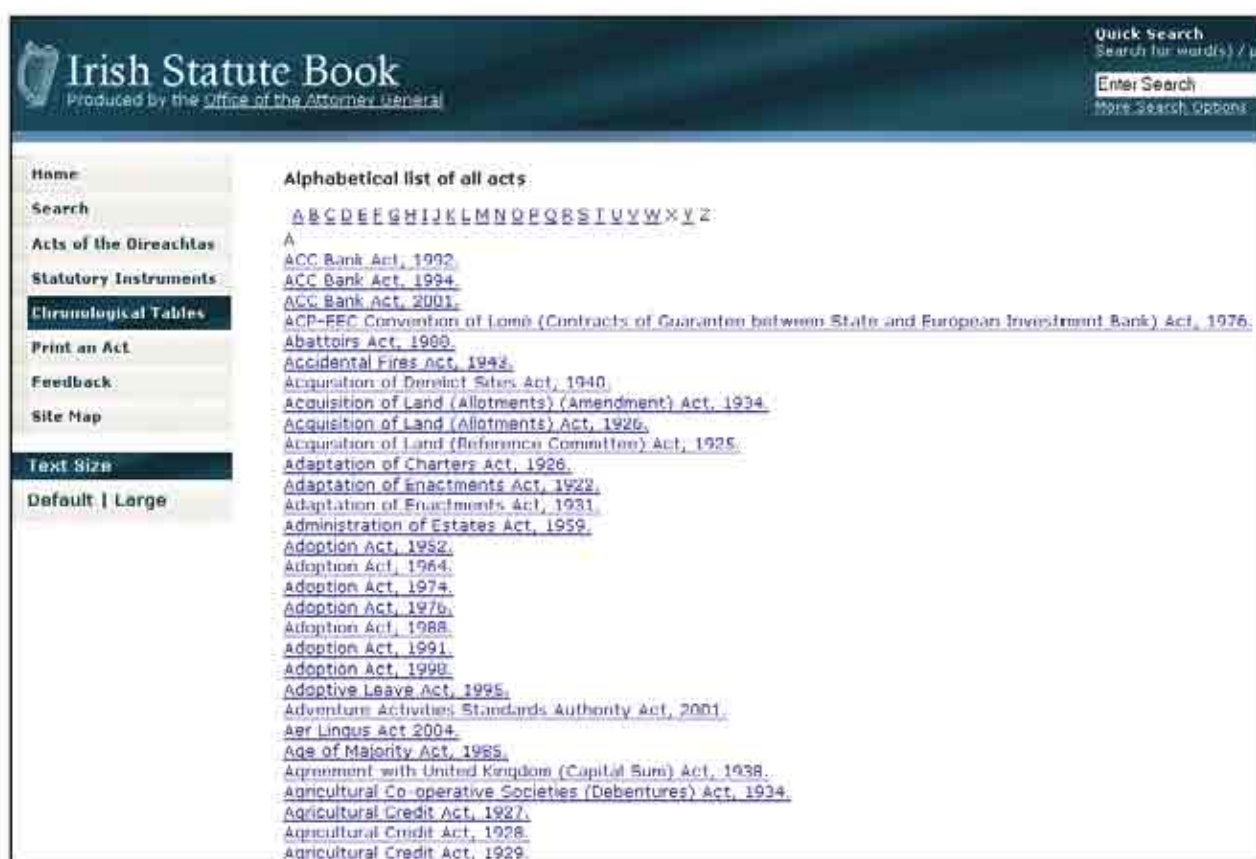
Statutes. This was replaced with "Registrar of Friendly Societies in Saorstát Éireann" by virtue of paragraph 6 of the *Registrar of Friendly Societies (Adaptation) Order 1926*.

2.139 The Commission notes that the Legislation Directory contains a listing of expressions in British or Saorstát Éireann Statutes adopted by Orders made before 1 January 2003 under the *Adaption of Enactments Act 1922* or the *Constitution (Consequential Provisions) Act 1937*. The Commission considers that this listing is of benefit to users of the Legislation Directory and provisionally recommends that it should be maintained.

2.140 The Commission also provisionally recommends that the listing be relocated to a secondary page away from the Legislation Directory homepage.

(15) An Alphabetical List of all Acts in the Legislation Directory

The next listing for the user is an alphabetical list of all Acts in the Legislation Directory. When the user clicks on the hyperlink the following screen appears.



The screenshot shows the 'Irish Statute Book' website. The header includes the title 'Irish Statute Book' and 'Produced by the Office of the Attorney General'. A 'Quick Search' box is in the top right. A left sidebar contains navigation links: Home, Search, Acts of the Dáil, Statutory Instruments, Chronological Tables (highlighted), Print an Act, Feedback, Site Map, Text Size (Default | Large), and a list of acts. The main content area is titled 'Alphabetical list of all acts' and features a list of acts under the letter 'A', each preceded by a hyperlink. The acts listed include ACC Bank Act, 1992; ACC Bank Act, 1994; ACC Bank Act, 2001; ACP-EEC Convention of Lomé; Abattoirs Act, 1989; Accidental Fires Act, 1943; Acquisition of Derelict Sites Act, 1940; Acquisition of Land (Allotments) (Amendment) Act, 1934; Acquisition of Land (Allotments) Act, 1926; Acquisition of Land (Reference Committee) Act, 1925; Adaptation of Charters Act, 1926; Adaptation of Enactments Act, 1928; Adaptation of Enactments Act, 1931; Administration of Estates Act, 1959; Adoption Act, 1952; Adoption Act, 1964; Adoption Act, 1974; Adoption Act, 1976; Adoption Act, 1988; Adoption Act, 1991; Adoption Act, 1998; Adoptive Leave Act, 1995; Adventure Activities Standards Authority Act, 2001; Aer Lingus Act 2004; Age of Majority Act, 1985; Agreement with United Kingdom (Capital Sum) Act, 1938; Agricultural Co-operative Societies (Debentures) Act, 1934; Agricultural Credit Act, 1927; Agricultural Credit Act, 1928; Agricultural Credit Act, 1929.

Figure 18: An extract from the alphabetical list of Acts contained in the Legislation Directory

2.141 Each Act is presented as a hyperlink that takes the user to the entry for that Act in the chronological tables.⁵⁸ This list is thus an alternative route to sourcing an entry on these tables if the user does not know the year of enactment of a piece of legislation.

2.142 Currently, only Acts up to 2004 are included on this alphabetical list. This means that if the date of enactment falls after this time, the user cannot use this particular route to access the chronological information.

2.143 As mentioned previously, the Commission considers this listing of central importance to the Legislation Directory. Currently, this listing is located towards the end of the screen whereas the

⁵⁸ The chronological list of the Public General Acts enacted from 8 December 1922 to 31 December 2005.

chronological list of the Public General Acts is located towards the top of the screen. The alphabetical list may thus be overlooked by users. The Commission believes that it should be located towards the top of the homepage. Further, given the interplay between this listing and the chronological list of the Public General Acts, it would be preferable if they were located adjacent to each other.

2.144 *The Commission considers the alphabetical list of all Acts in the Legislation Directory to be one of the most useful listings on the Legislation Directory. However, it may be overlooked due to its location on the homepage. The Commission provisionally recommends the relocation of this listing to a more prominent position on the Legislation Directory homepage. The Commission provisionally recommends that it should appear adjacent to the chronological list of the Public General Acts.*

(16) Alphabetical List of all Acts by decade

2.145 The next listing is an alphabetical list of all Acts by decade. When the user chooses this option, the following screen appears.



Figure 19: An extract from the alphabetical list of Acts by decade

2.146 Each decade is presented as a hyperlink. When the user clicks on a hyperlink, for example, 1920-1929⁵⁹ the following screen appears.

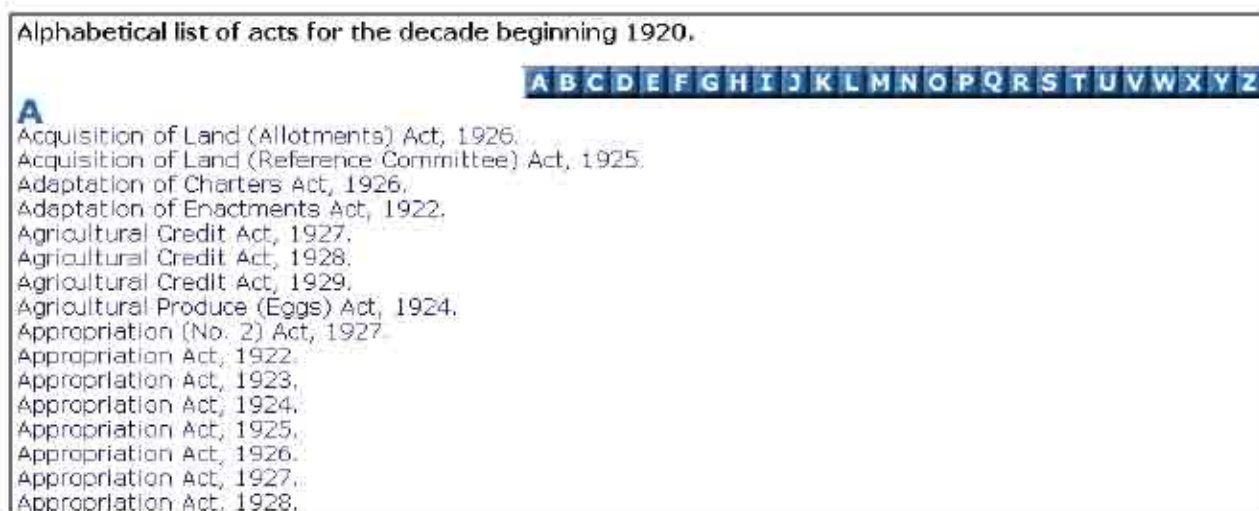


Figure 20: An extract from the alphabetical list of Acts in the Legislation Directory passed during the 1920s

⁵⁹ For the decade 1920-1929, the Acts are listed from 1922 onwards.

2.147 Each Act is then presented as a hyperlink. When the user clicks on the hyperlink, the user is (as with the alphabetical list of Acts discussed above) taken to the entry for that Act in the chronological tables. Thus, there would appear to be an overlap in functionality between this listing and the preceding one. However, the latter listing requires the user to know the decade of enactment. On the other hand, this latter listing does include the Acts of 2005.⁶⁰ The Commission believes that this listing generally represents an unnecessary duplication of information and should not be separately maintained into the future. However, the Commission would welcome submissions in this regard.

2.148 The Commission believes that the inclusion of an alphabetical list of all Acts by decade on the Legislation Directory represents a duplication of information. The Commission provisionally recommends that this listing should not be maintained into the future. However, the Commission would welcome submissions in this regard.

(17) User Awareness

2.149 Beneath the individual listings on the Legislation Directory homepage, the user's attention is drawn to the following items (see Figure 21 below).

Irish Statute Book
Produced by the Office of the Attorney General

Quick Search
Search for words(s) / phrase in title of Act or Statutory Instrument
Enter Search [x] Acts [x] SI [x] Search
More Search Options Help Disclaimer

Home
Search
Acts of the Oireachtas
Statutory Instruments
Legislation Directory
Print an Act
Feedback
Site Map
Text Size
Default | Large

Legislation Directory

The purpose of this database is to enable users of the Irish Statute Book to identify whether a particular provision has been amended or otherwise affected since its enactment.

The database contains -

- A list of abbreviations
- A chronological list of the Public General Acts enacted from 6 December, 1922 to 31 December, 2005.
- An alphabetical list of Acts in force, which were brought into operation either in whole or in part by Orders made on or before 31 December 2005.
- An alphabetical list of collective citations
- An alphabetical list of Orders made under section 6 (1) of the Ministers and Secretaries (Amendment) Act 1939, on or before 31 December, 2005.
- A chronological list of Regulations made under section 3 of the European Communities Act 1972, on or before 31 December, 2005.
- A chronological list of the Private Acts from 6 December, 1922 to 31 December, 2005.

Tables of the legislation set out in the next paragraph as affected by any primary or secondary legislation enacted from 6 December, 1922 to 31 December, 2005, namely -

- Pre-Union Irish Statutes (1226 - 1800)
- English Statutes (1226 - 1707)
- Pre-Union British Statutes (1707- 1800)
- British Public Statutes (1801- 1922)
- British Local and Private Statutes (1801- 1922)
- The Local Government (Application of Enactments) Order 1898, and
- The Local Government (Adaptation of Irish Enactments) Order 1899
- A Table of Expressions (in alphabetical order) used in British Statutes (Public Statutes and Local and Private Statutes) or Statút Éireann Statutes that have been adapted by the Orders made before 1 January 2003, under the Adaptation of Enactments Act 1921 (No. 2 of 1922), or the Constitution (Consequential Provisions) Act 1937 (No. 40 of 1937)
- An alphabetical list of all Acts in the Legislation Directory
- An alphabetical list of all Acts by decade

Users should be aware of the following:

Where an affecting provision (including a repealing provision) is governed by a commencement provision, the commencement provision is referred to. Users are advised to check whether the affecting provision has been commenced.

This database does not refer to amendments affected prior to 1922.

Attention is drawn to Part 6 (sections 26 and 27) of the Interpretation Act 2005 (No. 23 of 2005), in relation to the effects of repeals and revocations in Acts of the Oireachtas and instruments made partly or wholly thereunder.

Attention is also drawn to section 2 of the European Communities Act 1972, which provides that the Treaties and other acts of the Communities are binding on the State and are part of its domestic law.

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Figure 21: The information highlighted for user awareness

⁶⁰ However, the last Act of that year the *Development Banks Act 2005* (No. 34 of 2005) was missing at the time of writing.

2.150 The first item states that “[w]here an affecting provision (including a repealing provision) is governed by a commencement provision, the commencement provision is referred to. Users are advised to check whether the affecting provision has been commenced.” As previously discussed, the Commission proposes to include commencement information into individual Act tables in respect of primary legislation enacted after 31 December 2005. This should clarify the status of each piece of legislation or provision thereof. However, the current alert will remain relevant in respect of the existing body of legislation on the Legislation Directory. Therefore, the Commission considers it important to retain this statement on the Legislation Directory, perhaps in a modified form, to reflect the changes in the provision of commencement information from the date of assumption of control of the Legislation Directory by the Commission

2.151 The second item states that “[t]his database does not refer to amendments effected prior to 1922”. This is an important statement that the Commission feels could be elaborated on. The Commission proposes to include information for users on sourcing copies of pre-1922 chronological tables to enable the identification of any relevant modifications to legislation effected prior to 1922.

2.152 The third item states that “[a]ttention is drawn to Part 6 (sections 26 and 27) of the *Interpretation Act 2005*, in relation to the effects of repeals and revocations in Acts of the Oireachtas and instruments made partly or wholly thereunder.”

Section 26 reads as follows:

“26.—(1) Where an enactment repeals another enactment and substitutes other provisions for the enactment so repealed, the enactment so repealed continues in force until the substituted provisions come into operation.

(2) Where an enactment (“former enactment”) is repealed and re-enacted, with or without modification, by another enactment (“new enactment”), the following provisions apply:

(a) a person appointed under the former enactment shall continue to act for the remainder of the period for which the person was appointed as if appointed under the new enactment;

(b) a bond, guarantee or other security of a continuing nature given by a person under the former enactment remains in force, and data, books, papers, forms and things prepared or used under the former enactment may continue to be used as before the repeal;

(c) proceedings taken under the former enactment may, subject to section 27 (1), be continued under and in conformity with the new enactment in so far as that may be done consistently with the new enactment;

(d) if after the commencement of this Act—

(i) any provision of a former enactment, that provided for the making of a statutory instrument, is repealed and re-enacted, with or without modification, as a new provision, and

(ii) such statutory instrument is in force immediately before such repeal and re-enactment,

then the statutory instrument shall be deemed to have been made under the new provision to the extent that it is not inconsistent with the new enactment, and remains in force until it is repealed or otherwise ceases to have effect;

(e) to the extent that the provisions of the new enactment express the same idea in a different form of words but are in substance the same as those of the former enactment, the idea in the new enactment shall not be taken to be different merely because a different form of words is used;

(f) a reference in any other enactment to the former enactment shall, with respect to a subsequent transaction, matter or thing, be read as a reference to the provisions of the new enactment relating to the same subject-matter as that of the former enactment, but where there are no provisions in the new enactment relating to the same subject-matter, the former enactment shall be disregarded in so far as is necessary to maintain or give effect to that other enactment.”

Section 27 reads as follows:

“27.—(1) Where an enactment is repealed, the repeal does not—

- (a) revive anything not in force or not existing immediately before the repeal,
- (b) affect the previous operation of the enactment or anything duly done or suffered under the enactment,
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the enactment,
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence against or contravention of the enactment which was committed before the repeal, or
- (e) prejudice or affect any legal proceedings (civil or criminal) pending at the time of the repeal in respect of any such right, privilege, obligation, liability, offence or contravention.

(2) Where an enactment is repealed, any legal proceedings (civil or criminal) in respect of a right, privilege, obligation or liability acquired, accrued or incurred under, or an offence against or contravention of, the enactment may be instituted, continued or enforced, and any penalty, forfeiture or punishment in respect of such offence or contravention may be imposed and carried out, as if the enactment had not been repealed.”

2.153 The Commission believes that it is important for users to be aware of the effect of repeals and revocations of legislation. Thus, the Commission believes that this information should be retained on the Legislation Directory.

2.154 The final item states that “[a]ttention is also drawn to section 2 of the *European Communities Act 1972*, which provides that the Treaties and other acts of the Communities are binding on the State and are part of its domestic law.” The Commission has already discussed the importance of this piece of the legislation. The Commission believes that this alert should be maintained on the Legislation Directory. In light of the Commission’s observations in relation to the *European Communities Act 2007*, it may be appropriate to expand the content of this particular alert.

2.155 The Commission acknowledges the importance of the inclusion of certain user information on the Legislation Directory. However, the Commission believes that the current presentation of this information adds to the overcrowding of the Legislation Directory homepage. Also, this information is located towards the bottom of the homepage and is not highlighted in any way. There is a risk that it may be overlooked by users. It may be more appropriate to include a highlighted listing in a more central location on the homepage and to relocate the detailed text to a secondary location. The Commission proposes that the new listing be entitled “User Alerts” so as to emphasise its importance to users.

2.156 *The Commission notes the existence of a number of items of information on the homepage of the Legislation Directory, which highlight issues of which a user ought to be aware when accessing the database. The Commission believes that these provide valuable guidance to users of the Legislation Directory. The Commission provisionally recommends retaining all of these current items of information albeit in some cases in a modified form.*

2.157 The Commission provisionally recommends the inclusion of a centrally located highlighted listing entitled "User Alerts" on the Legislation Directory homepage with the relocation of detailed text to a secondary location.

E Effect of Case Law on Legislation

(f) Rulings of Unconstitutionality

2.158 There is no specific listing on the Legislation Directory separately dealing with the effect of case law on legislation. This is because the Legislation Directory is designed to track modifications to legislation effected by other pieces of legislation. As such, its function is not to provide a guide as to how such provisions might be interpreted. However there are certain circumstances in which judgments directly affect the validity of legislative provisions and where it may be desirable to reflect these rulings in the Legislation Directory.

2.159 In the current version of the Legislation Directory, cases are shown in which the Irish courts have held that legislative provisions are unconstitutional. These cases are listed in the individual Act tables on the chronological list of the Public General Acts. The Commission believes that it is desirable that this practice continue. However, the Commission will require the assistance of other stakeholders in tracking this body of case law. The Commission believes that appropriate systems and protocols should be put in place to ensure that the Commission is informed of relevant decisions in a timely manner. The Commission proposes to consult with bodies such as the Office of the Attorney General and the Courts Service in this regard and will reconsider this topic in the Report to follow this Consultation Paper.

2.160 The Commission also notes that to date, these decisions have been recorded on the Legislation Directory in an inconsistent manner. The screenshots below illustrate this point (see Figures 22 and 23 below).

Year and Number	Short Title	Year Affected	Affecting Provisions
1967	Export Promotion (Amendment) Act, 1962.	Rep.	24/1966, ss. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.
1967	Institute for Advanced Studies (Amendment) Act, 1962.	Not Affected	
1967	Landlord and Tenant (Ground Rents) Act, 1962.	Appl.	16/1970, ss. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.
1967	Local Government (Dublin) Act, 1962.	Appl.	16/1970, ss. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349,

20	<u>Livestock Marts Act, 1967.*</u>	Ctncl. of officers.	<u>2/2000</u> , ss. 1 (5), <u>30</u> (1) (i)
		Delegation of Min. functns. under.	<u>S. I. No. 409 of 2002</u> , art. 2, sch. 1 <u>S. I. No. 778 of 2004</u> , art. 2 (a), sch. 1
		Saving for.	<u>2/2000</u> , ss. 1 (5), <u>5</u> , <u>31</u> , sch. 2, pt. 5
		S. <u>3</u> , revocation of licence under.	<u>2/2000</u> , ss. 1 (5), <u>16</u> , <u>17</u> , <u>32</u> (1) (g) (2)
		S. <u>3</u> (5) - (8), subsecs. del.	<u>2/2000</u> , ss. 1 (5), <u>36</u> (a)
		Ss. <u>3A</u> , <u>3B</u> , new ss. ins.	<u>2/2000</u> , ss. 1 (5), <u>36</u> (b)
		S. <u>8</u> (3), subsec. substit.	<u>2/2000</u> , ss. 1 (5), <u>36</u> (c)
		S. <u>9A</u> , s.	<u>2/2000</u> , ss. 1 (5), <u>36</u> (d)
* : S. 4 (1) (2) in pt. unconstitutional: <i>East Donegal Co-operative v. Attorney General</i> [1970] I.R. 317.			

Figure 22: extract from the chronological list of the Public General Acts for 1967

Figure 23: Further extract from the chronological list of the Public General Acts for 1967

2.161 These are extracts from the entry on the chronological list of the Public General Acts for 1967. There is no relevant entry in relation to the *Income Tax Act 1967*. However, in the case of *Murphy v Attorney General*⁶¹ the Supreme Court held that certain provisions of that Act were unconstitutional (see Figure 22 above). In contrast, the Commission notes that the case of *East Donegal Cooperative v Attorney General*⁶² is recorded. In that case the Supreme Court ruled that aspects of section 4 of the *Livestock Marts Act 1967* were unconstitutional (see Figure 23 above).⁶³ The Commission believes that a level of consistency must be achieved in relation to the recording of these rulings.

(2) *Rulings in Relation to the European Convention on Human Rights*

2.162 Currently, rulings of the European Court of Human Rights (ECtHR) are not recorded on the Legislation Directory. The Commission does not currently intend to change this practice. This is because rulings of that court do not have the same effect on Irish legislation as rulings of unconstitutionality in cases before the Irish courts. A judgment of the European Court of Human Rights is “essentially declaratory” and “cannot of itself annul or repeal” inconsistent national law or judgments.⁶⁴ While contracting parties undertake to abide by the judgments of the court in any case to which they are parties, a state is free to implement a judgment in accordance with rules of its national legal system.⁶⁵ The matter was dealt with by McGuinness J. in *Gilligan v Criminal Assets Bureau*⁶⁶ where she stated that while there could be no question “but that this court is entitled to have regard to decisions of the European Court of

⁶¹ [1982] IR 241

The Supreme Court held that the imposition, in certain circumstances, of tax on a married couple living together at a higher rate than one be imposed on two single persons living together, in circumstances where both couples enjoyed identical incomes, was a breach by the State of its undertaking under Article 41.3 of the Constitution to guard with special care the institution of marriage and to protect it against attack.

This situation was remedied by the *Finance Act 1980* which substituted a new Part IX into the *Income Tax Act 1967* in relation to assessments to income tax for the year 1980-81 and any subsequent year of assessment. This is also not reflected in the 1967 entry.

⁶² [1970] IR 317

⁶³ The Supreme Court held that the power of the national parliament under Article 40.1 of the Constitution to have due regard in its enactments to differences in capacity and social function did not extend to the delegation of that power to a Minister of State so as to enable him to exempt a particular individual from the operation of the Act of 1967 in the circumstances contemplated by section 4 of that Act and that the parts of section 4 which purported to authorise such exemption were invalid having regard to the provisions of the Constitution.

⁶⁴ *Marckx v. Belgium* (1979) 2 EHRR 330. See Harris O’Boyle and Warbrick *Law of the European Convention on Human Rights* (Butterworths London 1995) at 26

⁶⁵ *Vermeire v. Belgium* (1991) 15 EHRR 488

⁶⁶ [1998] 3 IR 185

Human Rights in construing provisions of the Constitution”, this did not mean a decision of the ECtHR in and of itself furnished “a basis for declaring legislation unconstitutional”.⁶⁷

2.163 It is accepted that a ruling of the ECtHR may often be a catalyst for change.⁶⁸ As Harris, O’Boyle and Warbrick point out, Strasbourg judgments have proven to be very effective “lever[s] to help overcome local opposition to law reform”.⁶⁹ However, any change to legislation as result of a ECtHR ruling can be entered on the Legislation Directory in the normal manner.

2.164 On a domestic level, the *European Convention of Human Rights Act 2003* entitles the High Court or the Supreme Court to declare that a piece of legislation is incompatible with the obligations of the Convention.⁷⁰ However, such a declaration does not render the legislation invalid. Section 5(2)(a) of the 2003 Act states that a declaration of incompatibility shall not “affect the validity, continuing operation or enforcement of the statutory provision or rule of law in respect of which it is made”. Thus, the Commission does not propose to record such decisions on the Legislation Directory. However, if the Oireachtas subsequently decides to amend legislation as a result of a finding of incompatibility, this will be reflected in the Legislation Directory in the normal way.

(3) Rulings at European Level

2.165 Article 29.4.10° of the Constitution reads as follows:

“No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State which are necessitated by the obligations of membership of the European Union or of the Communities, or prevents laws enacted, acts done or measures adopted by the European Union or by the Communities or by institutions thereof, or by bodies competent under the Treaties establishing the Communities, from having the force of law in the State”.

Thus, provided that they are “necessitated by the obligations of membership” Article 29.4.10° grants the European regime precedence over Irish law including the Constitution itself.⁷¹

2.166 In turn, the European Court of Justice (ECJ) has held that in accordance with the doctrine of supremacy,⁷² national courts are obliged to ignore or set aside any national law, which could impede the application of EC law. The requirement to “set aside” conflicting national law does not entail an obligation to nullify national law, which may continue to apply in any situation which is not covered by a conflicting provision of Community law.⁷³ This distinction between disapplying and nullifying national law was emphasised in the *IN.CO.GE’90* case. The ECJ rejected the Commission’s argument the incompatibility of EC law with a subsequently adopted rule of national law must render the national rule non-existent.⁷⁴

2.167 The effect of EC law on domestic law is not currently reflected in the Legislation Directory. As outlined above, there is no obligation to nullify a piece of national law in the event of a conflict with EC

⁶⁷ [1998] 3 IR 185 at 202

⁶⁸ An example of this is the change in the laws on homosexuality that came about in Northern Ireland and in this jurisdiction after the rulings in *Dudgeon v United Kingdom* (1982) 4 EHRR 149 and *Norris v Ireland* (1991) 13 EHRR 186.

⁶⁹ Harris O’Boyle and Warbrick *Law of the European Convention on Human Rights* (Butterworths London 1995) at 30

⁷⁰ Section 5(1) *European Convention on Human Rights Act 2003*

⁷¹ Forde *Constitutional Law* (2nd ed FirstLaw 2004) at 262

⁷² Case 6/64 *Flaminio Costa v ENEL* [1964] ECR 585

⁷³ Further considerations of legal certainty may mean that the inapplicability of the national law will not expose those who relied on it to penalties - Case C-198/01 *CIF v Autorità Garante della Concorrenza del Mercato* [2003] ECR I-8055.

⁷⁴ Cases C-10-22/97 *Ministero delle Finanze v IN.CO.GE. ’90 Srl* [1998] ECR I-6307, paragraph 21

law. Thus, as the law remains on the Statute Book, it is arguable that no modification to the Legislation Directory is required. On the other hand, the conflict requires the domestic law to be disapplied in certain circumstances. It would be of assistance to the user of the Statute Book to be alerted to situations where this has occurred. The Commission notes, however, that this would also be an area where the assistance of other stakeholders would be required in relation to the tracking of this body of case law.

2.168 The Commission will return to a consideration of this topic in the Report to follow this Consultation Paper. In the interim the Commission would welcome submissions on the inclusion of effects of this body of case law on the Legislation Directory.

2.169 *The Commission provisionally recommends continuing the practice of noting cases on the Legislation Directory where a finding of unconstitutionality has been made by the Irish courts in relation to a piece of legislation. The Commission will require the assistance of other stakeholders in tracking this body of case law.*

2.170 *The Commission provisionally recommends that appropriate systems and protocols should be put in place to ensure that the Commission is informed of relevant decisions in a timely manner.*

2.171 *At this provisional stage, the Commission does not recommend the inclusion of details of rulings of incompatibility of legislation with the European Convention on Human Rights whether by the European Court of Human Rights or at a domestic level. The Commission would welcome submissions on the inclusion of the effect of European case law on the Legislation Directory.*

F Conclusion

2.172 In this chapter the Commission discussed the current operation of the Legislation Directory. It provided an introduction to the electronic statute book (eISB) online. The Commission also examined the Legislation Directory homepage. The Commission outlined its concern that the large volume of information on the Legislation Directory homepage may cause confusion for users. It proposed the reorganisation of the homepage.

2.173 The Commission then looked at the current content and functionality of the Legislation Directory and the individual listings which it contains.

2.174 The Commission discussed the importance of using conventions in a consistent manner when compiling the Legislation Directory. It examined the current use of abbreviations on the Legislation Directory and made proposals for change.

2.175 The Commission emphasised the importance of the chronological list of Public General Acts which it considered to be crucial to users of the Legislation Directory. It looked at the need to compile this listing in a consistent manner, on a regular basis and to highlight the existence of this listing to users.

2.176 The Commission noted that the compilation of a chronological table of Statutory Instruments, while desirable, was not within the remit of the Legislation Directory project assigned to the Commission. The Commission proposed, however, to include details on the Legislation Directory of associated secondary legislation made pursuant to an enabling power in primary legislation. This would apply in the case of primary legislation enacted after 31 December 2005.

2.177 The Commission outlined the difference between the date of enactment and the date of commencement of a piece of legislation. It emphasised the importance for users of being able to determine whether a piece of legislation is in force or not. It outlined the current provision of commencement information on the Legislation Directory. It proposed the inclusion of a new commencement field in each Act table created in respect of primary legislation enacted after 31 December 2005.

2.178 The Commission looked at the inclusion on the Legislation Directory of a listing of collective citations of legislation. The Commission believed this to be a useful resource to be maintained into the future.

2.179 The Commission then examined the listing of Orders made under section 6 (1) of the *Ministers and Secretaries (Amendment) Act 1939*. The Commission considered that ideally modifications to an Act

should appear in the Act table concerned. However, it recognised that the use of blanket amendments might prevent effective tracking of amendments. Also, it noted that it might be desirable for some users if amendments to the titles of Ministers or Departments were tracked on the database.

2.180 The Commission then outlined the desirability of centrally documenting Statutory Instruments which give effect to Ireland's European obligations. The Commission also noted the enactment of the *European Communities Act 2007* and that this piece of legislation might have implications for the Legislation Directory. The Commission proposed to re-examine this matter in its Report to follow this Consultation Paper. The Commission noted that it, in the case of any alteration to this listing, that the cooperation of other stakeholders might be required.

2.181 The Commission then detailed the listing of Private Acts on the Legislation Directory. The Commission considered that this listing should be maintained but that into the future the style of compilation should mirror that of the chronological list of Public General Acts.

2.182 The Commission also examined the deficits in the Legislation Directory as regards pre-1922 legislation. The Commission discussed the benefits and the challenges of creating one single depository of all primary legislation which is currently in force in Ireland.

2.183 The Commission then detailed the provision of information in relation to the *Local Government (Application of Enactments) Order 1898* and *Local Government (Adaptation of Irish Enactments) Order 1899*. The Commission considered whether these listings should be maintained and if such was the case whether the provision of contextual information might be of assistance to users of the Legislation Directory.

2.184 The Commission also discussed the Table of Expressions used in British or Saorstát Éireann Statutes that have been adapted by the Orders under the *Adaption of Enactments Act 1922* or the *Constitution (Consequential Provisions) Act 1937*. The Commission felt that this listing might be of assistance to users of the Irish Statute Book.

2.185 The Commission then considered the alphabetical list of all Acts in the Legislation Directory. The Commission considered this listing to be one of the most useful on the Legislation Directory but felt that its location on the Legislation Directory might cause users to overlook it. It proposed to locate this listing in a more prominent position on the Legislation Directory homepage adjacent to the chronological table of the Public General Acts.

2.186 The Commission then turned to a consideration of the alphabetical list of all Acts on the Legislation Directory by decade. The Commission believed that there was an overlap of functionality between this listing and the preceding one. The Commission believed that this represented an unnecessary duplication of information and the alphabetical listing of Acts by decade should not be separately maintained into the future.

2.187 The Commission then examined a number of items of user information on the homepage of the Legislation Directory. The Commission believed that these provide valuable guidance to users of the Legislation Directory. The Commission proposed to retain all of these current items of information albeit in some cases in a modified form. The Commission proposed the inclusion of a centrally located highlighted listing entitled "User Alerts" on the Legislation Directory homepage with the relocation of detailed text to a secondary location.

2.188 The Commission finally discussed the practice of noting cases on the Legislation Directory where a finding of unconstitutionality had been made by the Irish courts in relation to a piece of legislation. The Commission believed that these cases must be recorded in a consistent manner. The Commission noted that it would require the assistance of other stakeholders in tracking this body of case law. The Commission did not propose to include details of rulings of incompatibility of legislation with the European Convention on Human Rights whether by the European Court of Human Rights or at a domestic level. The Commission sought submissions in relation to the inclusion on the Legislation Directory of details of European case law, which had an effect on Irish legislation.

2.189 In this chapter, the Commission has considered the current content and functionality of the Legislation Directory and made proposals for its future. This Consultation Paper will now turn to a

discussion of the methodology of the Commission in building a Legislation Directory which is in line with the objectives set out above.

CHAPTER 3 BUILDING THE LEGISLATION DIRECTORY

A Introduction

3.01 This Chapter focuses on the methodology of the Commission in building a Legislation Directory which is in line with the objectives set in Chapter 2. Part B considers project management issues for the Commission concerning workflows and quality assurance. Part C considers the reliability of the substantive content of the existing database with particular emphasis on the handling of errors and omissions. Part D considers the varying types of affecting provisions which may be reflected in the Legislation Directory. Part E emphasises the importance for the Commission of sourcing accurate copies of legislation as this forms the raw material from which the added value provided by the Legislation Directory can be delivered. Part F discusses the Commission's approach to sourcing the appropriate technology to underpin the redesigned Legislation Directory and the interaction between this technology and the existing eISB and Legislation Directory.

B Workflows and Quality Assurance

(1) *The Rationale for Formulating Structured Processes*

3.02 The Commission's goal in accepting responsibility for the Legislation Directory is to efficiently deliver a reliable and accurate resource to assist users of the Irish Statute Book. The dual elements of workflow and quality assurance are central in this respect. The use of standardised workflows and quality assurance controls will assist in minimising and managing the risk of errors and omissions on the Legislation Directory.

3.03 A workflow is a reliably repeatable pattern of activity enabled by a systematic organisation of resources, defined roles and information flows, into a work process that can be documented and learned. Workflows are designed to achieve processing intents, such as service provision, or information processing. The term is used in computer programming to capture and develop human to machine interaction. Workflow software aims to provide end users with an easier way to orchestrate or describe complex processing of data in a visual form, much like flowcharts but without the need to understand computers or programming.¹ In the present context, workflows provide a structured set of steps to be undertaken in the addition of information to the Legislation Directory.

3.04 Quality assurance involves the development of appropriate protocols to be followed and the incorporation of suitable checks and balances to a system to help ensure that the information entered is accurate and is presented in an appropriate and consistent manner. Quality assurance for the purposes of the Legislation Directory is divided between verifying accuracy of existing data and the future input of data.

(2) *The Workflow for Incoming Acts of the Oireachtas*

3.05 The Commission will now examine the workflow to be followed on receipt of a new Act of the Oireachtas.

3.06 *Figure 1* below details the workflow for incoming Acts.

¹ See further Dolin *Exploring Digital Workflow* (Delmar Thomson Learning 2005) and Fischer *2007 BPM & Workflow Handbook Methods, Concepts, Case Studies and Standards in Business Process Management and Workflow* (Future Strategies Inc. 2007).

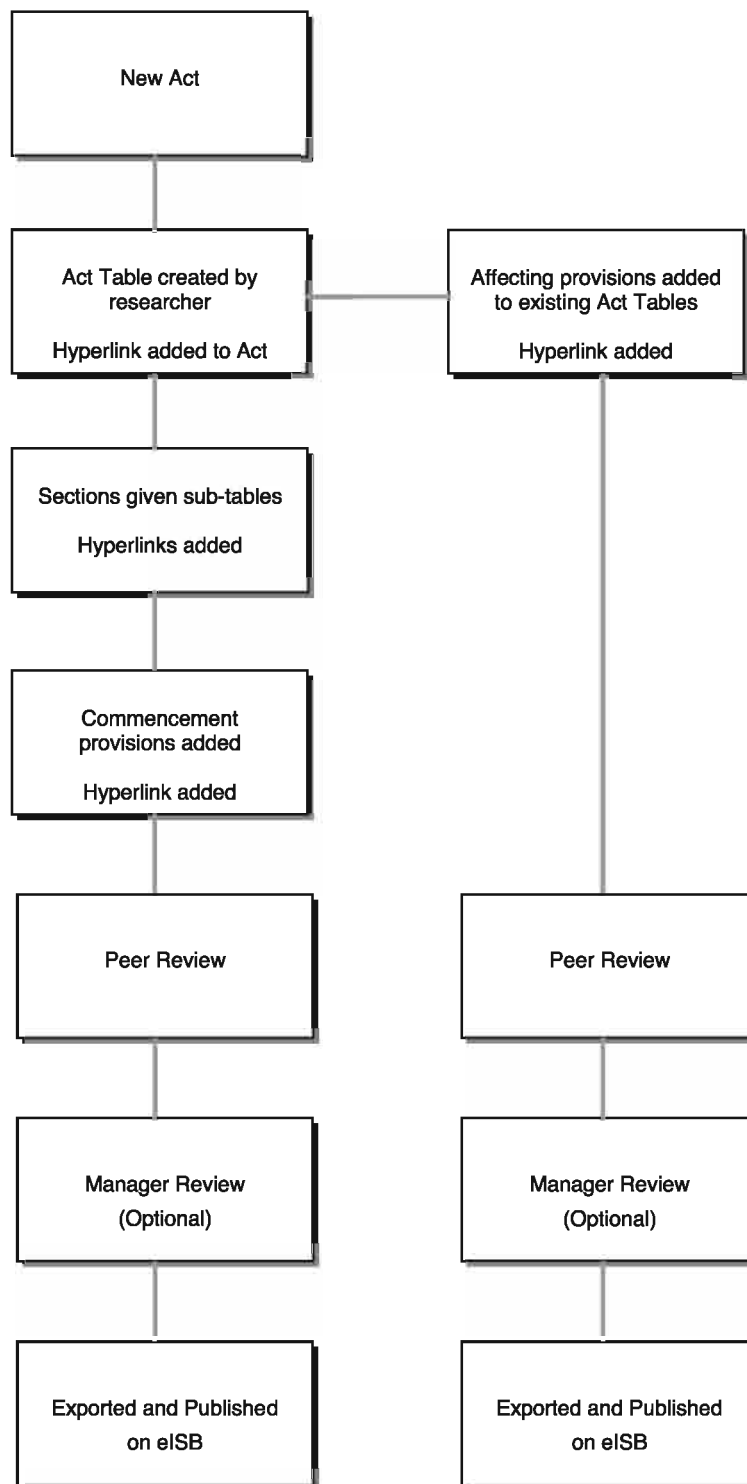


Figure 1: Incoming Acts Workflow

On receipt of a newly-published Act of the Oireachtas, there are two primary activities that must be carried out in respect of the Legislation Directory. First, a new Act table must be created for each new Act. Second, the affecting provisions in the new Act must be recorded in the affected existing Act tables. To illustrate this workflow, the *Copyright and Related Rights (Amendment) Act 2007* is used as an example below.

(a) **The Creation of an Act Table**

(i) **Data Entry**

3.07 When a new Act arrives in the Commission a new Act table will be created by a legal researcher using the authoring tool commissioned for this project. This separate table will be capable of being integrated into the main Legislation Directory on the eLSB. The Commission has devised a preliminary model of the proposed layout of the individual Act tables.

<u>Copyright and Related Rights (Amendment) Act 2007</u>				
Affected Provision	Commencement Information	How Affected	Affecting Provision	Associated Secondary Legislation
Whole Act	Commenced December 4 2007			
Section 1				
Section 2				
Section 3				

Figure 2: Proposed layout of the individual Act tables

3.08 There will be a hyperlink to the text of the Act (as enacted) as a whole and to individual sections. Ideally, it is envisaged that the sections of the Act will be given individual sub-tables within the main table so that any future affecting provisions, which relate to a particular section, may be recorded. For example, the *Copyright and Related Rights (Amendment) Act 2007* has fourteen sections. The first three sections have been included in the diagram above but on the Legislation Directory each of these fourteen sections would be given an individual sub-table which would be displayed when the Act table was opened.

3.09 Commencement information will then be added in a separate field for each section of the Act.² However, if the entire Act comes into force on enactment then it may be more efficient to note this information at the top of the Act table as applying to the whole Act rather than duplicating the same details at section level. The *Copyright and Related Rights (Amendment) Act 2007* came into operation on enactment so the whole Act can be noted as commenced, with the date of signature of the Act by the President entered as the commencement date.³

3.10 If an incoming Act has a provision or provisions that are expressed to come into operation on a particular day, a hyperlink will be provided to the relevant commencement provision in the Act. An example of one such Act is the *Social Welfare Act 2007*. Section 2 comes into operation on a number of specified dates so a hyperlink will be provided to section 2(2) of that Act which sets out these dates.⁴

² See further the discussion on the commencement of primary legislation in Chapter 2 above. The Commission proposes the introduction of a dedicated commencement field in respect of legislation enacted after 31 December 2005.

³ December 4 2007

⁴ Section 2(2) reads as follows:

“(2) This section comes into operation—

3.11 Commencement provisions may also state that an Act or provisions thereof shall come into operation on such a date as the Minister shall appoint by order. An example of this may be found in section 1 of the *Criminal Justice Act 2006*. Section 1(2) reads as follows:

“(2) This Act, other than Parts 11 and 13, shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.”

In the Legislation Directory, this will be reflected by a hyperlink to the above section and if a provision has not been commenced a note will be included in the commencement field to this effect. Otherwise, details of the relevant commencement order will be given with a hyperlink to the order.

(ii) Review

3.12 Following the creation of the table for the new Act and the addition of the commencement information, it is envisaged that the next step in the workflow is a peer review stage. Peer review is a process of subjecting an author's work to the scrutiny of others who are experts in the same field; in this instance, specialist legal researchers employed by the Commission. The peer review process has a normative function and reduces the data error margin significantly. Apart from leading to the discovery of errors, the peer review process will also provide the opportunity to learn from how the error occurred and to make changes to the working protocols followed by the Legislation Directory team where necessary. Thus, it is an important element of the Commission's overall commitment to quality assurance. A further step in the quality assurance process is the optional review by the project manager. This may consist of spot-checks based on recognised sampling methods or may arise based on an escalation to project manager level arising from the peer review process.

(iii) Publication

3.13 The table for the new Act will then be exported and published on the public user view of the eISB. The cooperation of stakeholders will be required to enable timely and accurate uploading of data to this website.

(b) Recording Affecting Provisions

3.14 The second primary activity involved in the workflow for incoming Acts is the addition of affecting provisions in a new Act to existing Act tables affected by the incoming provisions.

(i) Data Entry

3.15 The relevant legal researcher will add the affecting provisions to the tables of existing Acts. In order to carry out this process, the researcher will be able to open up the text of the new Act within the authoring tool. The researcher will identify any sections of the new Act that affect previous Acts using a search function which will look for words commonly associated with affecting provisions, such as “amend” and will also check the new Act manually. Once the researcher has located all the affecting provisions they will be added to the table(s) of the affected Acts where the citation of the affecting provision will be noted alongside the provision affected. A hyperlink will also be provided to the relevant text in the new Act.

(a) in so far as it relates to jobseeker's benefit, on 27 December 2007,

(b) in so far as it relates to illness benefit, health and safety benefit, injury benefit and disablement gratuity, on 31 December 2007,

(c) in so far as it relates to carer's benefit, State pension (transition), invalidity pension and a payment referred to in paragraph (a) of the definition of “relevant payment” in section 178 of the Principal Act, on 3 January 2008, and

(d) in so far as it relates to disablement pension, death benefit under section 81, 82 or 83 of the Principal Act, State pension (contributory), widow's (contributory) pension, widower's (contributory) pension and guardian's payment (contributory), on 4 January 2008.”

3.16 The *Copyright and Related Rights (Amendment) Act 2007* has a number of affecting provisions. These provisions affect the *Copyright and Related Rights Act 2000* and the *Local Government Act 2001*. Sections 3-13 of the 2007 Act affect the *Copyright and Related Rights Act 2000* and section 14 affects the *Local Government Act 2001*. These affecting provisions will be inserted in the Tables for the existing Acts. For example, section 40 of the *Copyright and Related Rights Act 2000* is textually amended by section 5 of the *Copyright and Related Rights (Amendment) Act 2007*. It states as follows:

“5.—Section 40 of the Principal Act [*Copyright and Related Rights Act 2000*] is amended in subsection (1)(g) by deleting the words ‘without the payment of remuneration to the owner of the copyright in the work’.”

This will be reflected in the workflow by inserting the appropriate commentary e.g. “amended by” in the “How Affected” field next to section 40 in the Act Table for the *Copyright and Related Rights Act 2000*. The “Affecting Provision” field will read “section 5 *Copyright and Related Rights (Amendment) Act 2007*” and a hyperlink will be provided to the text of the affecting section.

(ii) Review

3.17 Once all the affecting provisions have been added the next step in the workflow is peer review. Again, this accounts for the possibility of human error in the data entry process and is part of the quality assurance process to minimise the margin for error. Once more, a further step in the quality assurance process is the optional review by the project manager.

(iii) Publication

3.18 Once the appropriate level of review has been conducted, the affecting provisions will be exported and published on the eISB website. Once again, the cooperation of stakeholders will be required to enable timely and accurate uploading of data to this website. It is envisaged that the Table for the new Act and the affecting provisions it adds to existing Acts will be published simultaneously.

(3) Incoming Statutory Instruments - Associated Secondary Legislation

3.19 There are two primary activities involved in the workflow for incoming Statutory Instruments. The first involves adding any relevant commencement information to the appropriate field in an Act table. This has been discussed above. The second involves making entries in the “Associated Secondary Legislation” field (see *Figure 3* below).⁵

3.20 The “Associated Secondary Legislation” field is an additional field which the Commission proposes to enter in Legislation Directory Act tables. This field will list all secondary legislation made pursuant to an enabling power in an Act.⁶

3.21 It is intended to provide a listing of the name and number of the relevant Statutory Instrument and the provision of a hyperlink to that instrument. The workflow will involve a legal researcher entering the name of the Statutory Instrument in the “Associated Secondary Legislation” field of the associated Act and creating a hyperlink to the Statutory Instrument. For example, Regulations have been made in exercise of the powers conferred on the Minister by sections 44 and 59 of the *National Oil Reserves Agency Act 2007*. These are the *National Oil Reserves Agency Act 2007 (Returns and Levy) Regulations 2007*, S.I. No. 567 of 2007. The existence of these regulations would be reflected in the Legislation Directory in the Table for the *National Oil Reserves Agency Act 2007* in the “Associated Secondary Legislation” field and a hyperlink would be provided to the Statutory Instrument. Once these entries have been made, a peer review process with optional manager review will be carried out followed by export of data and publication on the eISB as before.

⁵ It should be noted that while the Commission does propose to document the existence of these pieces of secondary legislation on the Legislation Directory, it is not proposed to create a separate chronological table of secondary legislation.

⁶ The Commission proposes adding this field to Act tables created in respect of primary legislation enacted after 31 December 2005. See further the discussion in Chapter 2 at paragraph 2.53.

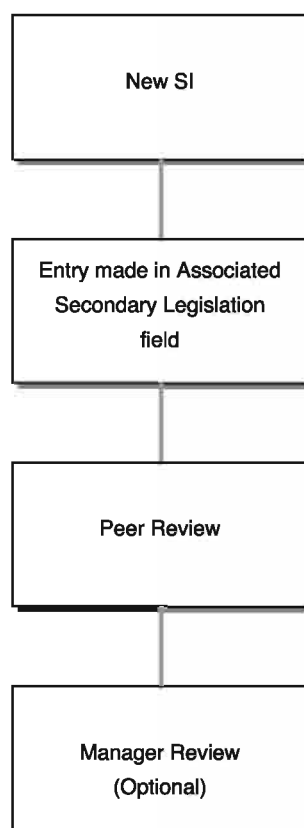


Figure 3: Incoming Statutory Instruments Workflow

(4) Aspects of Quality Assurance

3.22 As mentioned above, quality assurance involves the development of appropriate protocols to be followed and the incorporation of suitable checks and balances to a system to help ensure that the information entered is accurate and is presented in an appropriate and consistent manner. Quality assurance for the purposes of the Legislation Directory is divided between verifying accuracy of existing data and the future input of data.

3.23 Members of the Legislation Directory team will be required to follow agreed and regularly reviewed protocols in relation to entering information in the Legislation Directory. This will minimise the risk of errors and omissions. Applying consistent workflow and quality assurance procedures will not only minimise the error margin but it will ensure continuity and consistent uniformity in the production of the Legislation Directory and ensure consistency despite staff turnover. Within the limits of available resources, the Commission is committed to implementing robust quality control procedures to ensure that users can rely on the accuracy of the Legislation Directory.

3.24 The workflow already outlined contains a number of incorporated measures which are designed to reinforce quality assurance. As detailed above, the use of peer review and project manager review is the quality assurance method favoured by the Commission. The authoring tool which has been commissioned in respect of this project will facilitate version tracking, document change management and access control to further improve the quality assurance model. It will also facilitate a verification method or report which will show where affecting and amending provisions are incorporated and it will prepare a final quality assurance report for each new entry or edit of an existing entry detailing the authoring stages that were completed, who they were completed by, the date of each authoring activity and a final check that all affecting provisions have been correctly and completely applied.

3.25 The Commission researched a number of methodologies in the area of quality control including the double-blind method. Double-blind is an especially stringent way of conducting workflow with the objective of eliminating subjective bias or presumptions of accuracy. The double-blind method for the purposes of the Commission would involve two legal researchers simultaneously inputting the same information but independently of each other. A comparison would then determine if errors or omissions

had been made by either party. This method would be time-consuming and would result in a strain on limited resources. By contrast, a peer review process can involve the review of steps undertaken to determine whether an entry is accurate. The Commission conducted informal discussions with those involved in maintaining similar public legal databases in Canada, England and Northern Ireland. All of these discussions indicated that a double-blind workflow method is not favoured and that good results are obtained from using a well-defined methodology and appropriate spot-checking. This will be a matter of discretion for the researchers and project manager, particularly in the initial stages of content delivery. At present, the Commission has a small team of two researchers and a project manager. The size of the team will naturally impact on both output and the determination of which quality control measures are feasible to implement. Therefore a combination of peer review and selected project manager review is the current model in contemplation.

C Errors and Omissions

3.26 The Commission's primary role is the addition of new entries to the Legislation Directory as these arise. However, the Commission has inherited the data already existing on the Legislation Directory and as with any database, there is always a risk that errors and omissions may affect it. Given the size of the Legislation Directory database, the prioritisation of updating the Legislation Directory to reflect developments since 2005, and staffing constraints, it is not feasible for the Commission to conduct a complete verification exercise in respect of all existing data in the Legislation Directory as inherited. Rather, the Commission proposes to rely on a combination of sampling and correction of notified errors.

(1) Assessing Database Error Rate

3.27 The Commission has examined some methods of database sampling that may be suitable for its purposes. Fox, Levitin & Redman⁷ list the components of database quality as accuracy, completeness, consistency and currency. In relation to inaccuracies, they suggest that as well as recording the existence of an inaccuracy, the magnitude of the inaccuracy should also be assessed. Errors may be classed as major or minor. In the case of a very large database such as the Legislation Directory, the use of sampling techniques permits an informed assessment to be made based on representative but incomplete information. Sampling involves choosing both the size of the sample and the methodology for choosing the records to form the sample. If a random sampling method is chosen, each record in a database has an equal probability of being selected. A computerised database can generate a random sample of records. An alternative method of sampling is the systematic sample which involves records chosen from the database at a fixed interval; for example, at every fiftieth Act in a chronological dataset. In relation to the size of the sample, the size should not be so large as to be beyond the available human resources, nor should it be so small in relation to the overall size of the database as to be lacking in representativeness.

3.28 The Commission proposes to devote further consideration to the issues concerning the sampling of the Legislation Directory data set and would welcome submissions in this regard.

(2) Notified Errors and Omissions

(a) Types of Errors and Omissions

3.29 Some errors and omissions have been uncovered by the Commission in the course of research for this Consultation Paper and in the preparation of Statute Law Restatements. Others have been brought to the attention of the Commission by interested parties and users of the Legislation Directory.

3.30 An analysis of some errors already notified to the Commission reveals that a number of these are not in fact errors in the strictest sense of the word. They are problems that arise mainly as a result of the lack of consistent conventions and the lack of integration between the pre-1922 and post-1922 Chronological Tables. These matters have been discussed in Chapter 2. Actual errors in the Legislation Directory fall into two categories: data entry errors and data omissions.

⁷ Fox, Levitin and Redman "The Notion of Data and its Quality Dimensions" (1994) *Information Processing and Management* 30 at 9-19.

(i) Data Entry Errors

3.31 Data entry errors are textual input errors in the Legislation Directory. They are made following the incorrect input of data. An example of a data entry error is found in the Table for the *Summary Jurisdiction (Ireland) Act 1851*. The Legislation Directory states that section 15 of the Act was amended by and applied to the *Housing (Private Rented Dwellings) Act 1982* by sections 1(2), 7 of the 1982 Act when in fact it was sections 1(2) and 17 of that Act.

(ii) Data Omissions

3.32 In contrast to data entry errors detailed above, data omissions are not textual errors in the Legislation Directory, but rather omissions of relevant affecting provisions due to human oversight. This should be minimised by putting in place appropriate workflows.

(b) Rectification of Errors and Omissions in Entries in the Legislation Directory

3.33 The Commission will have responsibility for rectifying known errors that have already been notified to the Commission and future errors that may be notified to the Commission. Once the technology is in place to allow the Commission to begin the maintenance of the redesigned Legislation Directory, the Commission will encourage users of the Legislation Directory to notify errors and omissions to the Commission so that the necessary corrections can be made speedily when discovered.

3.34 The Commission will process notified errors or omissions through the central collation of a "Table of Inaccuracies" that will be updated as the Commission is made aware of any further errors or omissions. This will allow errors and omissions to be systematically addressed and resolved. The influx of errors and omissions will be monitored and every submission made to the Commission will be checked by a legal researcher to see whether the error or omission described is legitimate. Once an error or omission is found to be legitimate and warranting action, it will be filed with the other errors and omissions pending rectification. It is envisaged that there will be a "Data Entry Error" file and a "Data Omissions" file.

3.35 The correction of a "Data Entry Error" will involve a legal researcher going to the relevant Act table in the Legislation Directory, deleting the incorrect information and replacing it with the revised correct information. Once again, a peer review process will be carried out on an entry, which may also be subject to review by the project manager. The entry will then be exported and sent for publication to the eLSB website.

3.36 The correction of a "Data Omission" will follow a similar process. The only difference is that the entry made for a data omission will be a new entry in the Legislation Directory and will not be replacing existing information. This may be an amendment to an Act that was omitted from the Legislation Directory. The legal researcher will have to create a new amendment opposite the relevant section of the Act. Again this will be subject to the peer and optional manager review process. Once the appropriate level of review has been carried out, the entry will be exported and published on the eLSB website.

3.37 The Commission considers that it may be a more efficient use of resources and time for a researcher to rectify a set number of data entry errors or data omissions, as the case may be, before submitting them for review and publication.

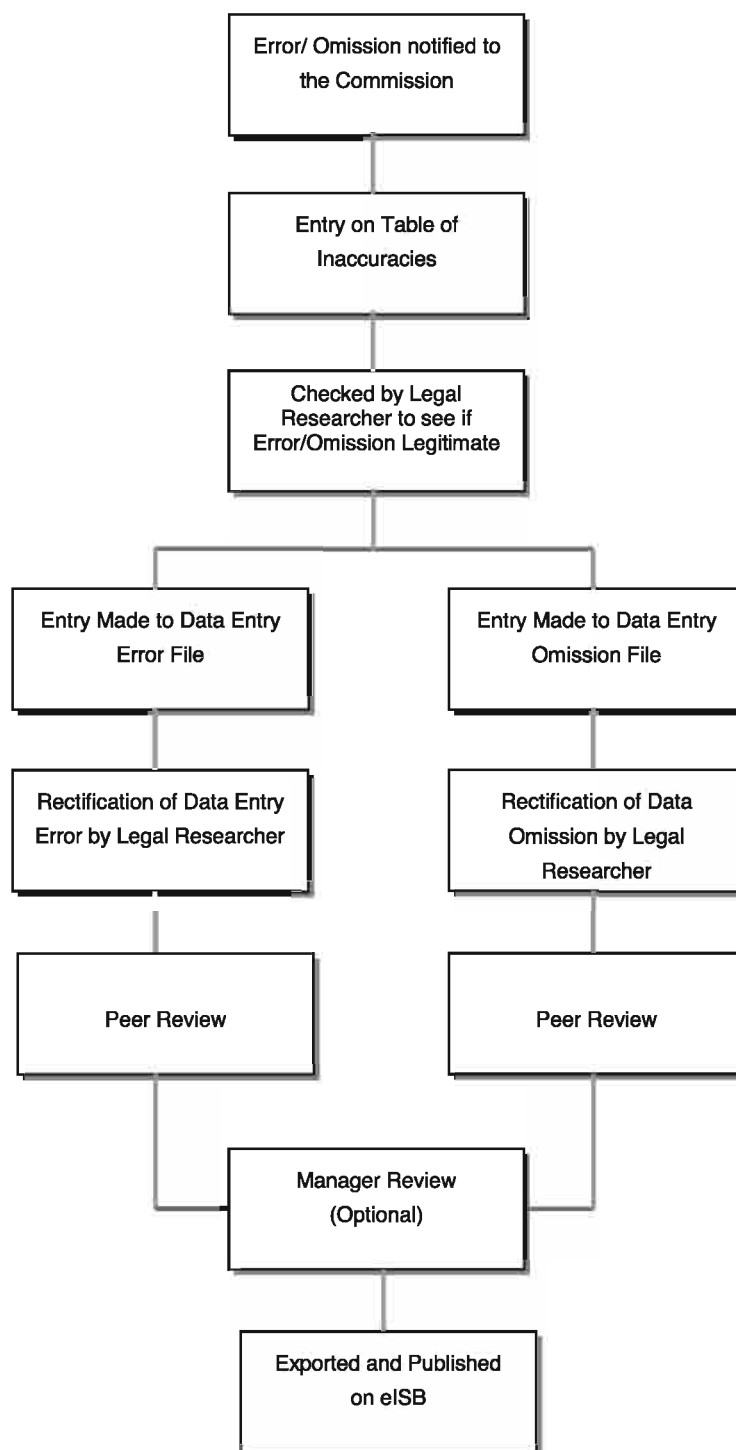


Figure 4: Processing of Errors and Omissions Workflow

D Reflecting Affecting Provisions in the Legislation Directory

3.38 The Legislation Directory team must be able to accurately interpret the different types of affecting provisions which can impact on primary legislation. This ability is at the core of the legal cognitive input into the preparation of the Legislation Directory prior to data entry. However, it should be emphasised that the Commission's role in providing the Legislation Directory is not to provide a guide as how an affecting provision might be interpreted. Rather, the role of the Legislation Directory is to provide the user with the relevant signposting to locate affecting provisions, the purport of which they must then

assess for themselves.⁸ Consequently, a discussion of the rules governing statutory interpretation is outside the scope of this Consultation Paper⁹ other than in relation to the more general context of the categorisation of different types of affecting provisions.

(1) Types of Affecting Provision

3.39 Provisions which have an effect on how an existing legislative provision is to be read or interpreted are known as “affecting provisions”. Some of the most common ways in which an Act may be affected are:

- Repeal of the entire Act;
- Replacement of existing wording within an Act by the substitution of new wording;
- Addition of a new section, sub-section or paragraph;
- Application of existing legislative provision to new circumstances;
- Restriction of the application of an existing legislative provision.

3.40 The manner in which affecting provisions, other than express repeals, operate varies and includes:

- Textual amendment;
- Non-textual amendment;
- Referential amendment.

(2) Textual Amendment

3.41 A textual amendment expressly inserts substitutes or deletes words, sections, sub-sections or paragraphs in an Act. An example of a textual amendment is found in section 14 of the *Irish Nationality and Citizenship Act 1956*. It was amended by section 8(a) of the *Irish Nationality and Citizenship Act 2001* which begins as follows:

“The Act of 1956 is hereby amended –

(a) in section 14, by the substitution for ‘an alien’ of ‘a non-national’...”

3.42 The effect of the amendment was to expressly replace the term “an alien” with “a non-national” in section 14 of the 1956 Act.¹⁰

3.43 The disadvantage of our system of affecting textual amendments is that the change made to the law is not immediately intelligible to the user. In order to understand the amendment and what it does, it is necessary for the user to read the text of the amended legislation with the amendment incorporated into it.¹¹ In most jurisdictions, a comprehensive explanatory note is provided so that the user

⁸ In contrast, commercial publications of annotated statutes often seek to assist the reader by providing a commentary on the effect of the relevant legislative provisions.

⁹ See generally, Law Reform Commission *Report on Statutory Drafting and Interpretation: Plain Language and the Law* (LRC 61-2000).

¹⁰ Section 9(4) of the 2001 Act contains a commencement provision which applies to section 8.

¹¹ In some jurisdictions, parliamentary counsel include in their amending Bills a note showing what a provision will look like when the amendment is incorporated. This is called a Keeling Schedule. Keeling Schedules are in use in the UK and were recommended in the 1930s by E.H. Keeling MP. A Keeling Schedule shows in the schedule to a Bill how the law will look once it has been amended. However, the idea of Keeling Schedules did not prosper. Since the early seventies there had never been more than one Act per session containing a Keeling Schedule. See further the Report of the Renton Committee *The Preparation of Legislation* (Cmnd 6053) at para 13.21 and 13.22.

can immediately see what the existing law is; what the amendment does to that law; and what effect the amendment has on the existing law. In the Commission's *Report on Statutory Drafting and Interpretation: Plain Language and the Law*,¹² it was recommended that an explanatory memorandum be provided to accompany an Act's enactment rather than simply to reflect the Bill as drafted.¹³ This could assist the user in the interpretation of textual amendments.

3.44 In the context of the Commission's role in maintaining the Legislation Directory, direct textual amendments do not generally give rise to any real difficulties of handling since their effect is clear from the express statutory instruction given in the relevant affecting provision.

(3) Non-Textual Amendment

(a) The Operation of Non-Textual Amendments

3.45 Non-textual amendments to legislation, as opposed to textual amendments, operate indirectly. They do not directly alter a statutory provision but indirectly affect it by means of a narrative or discursive statement in the amending legislation stating the effect of the amendment. For example, a non-textual amendment is made where an amending Act instructs the reader to "construe" a particular provision or phrase in a Principal Act in a particular way e.g. the word "men" to be construed as "persons".¹⁴ For example, section 3(1)(b) of the *Property Values (Arbitrations and Appeals) Act 1960* provided that references in section 33 of the *Finance Act (1909-1910) 1910* "to a referee selected under that section shall be construed as references to a property arbitrator nominated under this section".

3.46 One advantage of non-textual amendments is the possibility of affecting, in one measure, the blanket amendment of a number of different provisions. Non-textual amendments are often used to make global changes. Byrne and McCutcheon note that this type of use eliminates the necessity to enact separate textual amendments and so can save time and avoid potential legislative oversight.¹⁵

3.47 However, non-textual amendments have fallen from favour in recent times. Byrne and McCutcheon also note that "the supposed advantage of a non-textual amendment is that it should make sense when standing alone... [T]he reader should be in a position to discern the effect of the amendment." However, they rightly conclude that "[t]he consequence, however, of over-reliance on the method of non-textual amendments is that a set of cross-references, interpretations and qualifications develops which adds to the complexity and lack of intelligibility of the Statute Book".¹⁶

3.48 Further, a policy decision was made to eliminate the use of non-textual amendments in legislative drafting where possible. The Action Programme for Better Regulation states that, "[a]s a matter of good practice, Departments/Offices will be encouraged to amend legislation by textual amendments and avoid the use of non-textual amendments as far as possible. This statement was based on the principle of transparency, one of the six principles of better regulation."¹⁷

(b) Blanket Amendments

3.49 As mentioned above, blanket or silent amendments are a significant body of law that amend large numbers of Acts without changing their text. These Acts typically provide that wherever a certain

See also <http://www.justice.gov.uk/guidance/electoral-admin-keeling.htm>

¹² (LRC 61-2000)

¹³ *Ibid* at para 6.38-6.40. At time of writing the Commission had sight of the first nine Acts published in 2008. Only the *Criminal Justice (Mutual Assistance) Act 2008* had an explanatory memorandum to accompany the Act.

¹⁴ *Modernising Legislation in Ireland, A Guide to Restatement*, Statute Law Revision Unit, Office of the Attorney General, Policy Paper No. 2 (January 2002) at 7.
Available at www.attorneygeneral.ie/slr/Restatement_Guide_FEB2003.doc.

¹⁵ See Byrne and McCutcheon *The Irish Legal System* (4th ed Butterworths 2001) at 436

¹⁶ *Ibid*.

¹⁷ See *Regulating Better, A Government White Paper setting out six principles of Better Regulation* (16 January 2004), at 34. Available at www.betterregulation.ie

word occurs, it is to be given a meaning different to that given by the original statutory text. Section 3 of the *Adaptation of Enactments Act 1922* for example, provided that all pre-1922 Statutes were to be construed so as to reflect the changed political situation. It reads as follows:

“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.”

Another example of a more recent blanket amendment may be found in section 66 of the *Health Act 2004*, which states as follows:

“66.—Subject to this Act, references (however expressed) to a specified body in any Act passed before the establishment day, or in any instrument made before that day under an Act, are to be read as references to the Executive, unless the context otherwise requires.”

3.50 The Commission has taken the view that blanket amendments will not be reflected in restatements. Two considerations were the basis of this decision. Identifying and annotating blanket changes would be a heavy burden on limited resources, without any proportionate benefit and the Commission considers that the changes being made are generally both relatively trivial and readily predictable.

3.51 This raises the question of the possibility and usefulness of reflecting blanket amendments in the Legislation Directory. It would be a difficult and time consuming process to update the Table of every Act affected by a blanket amendment because it is not an easy task to quantify exactly how many existing legislative provisions are affected by any given blanket amendment. The Commission proposes firstly noting the existence of a blanket provision in the table of any new Act. In relation to seeking to reflect the affected provisions, it may be possible for the Legislation Directory team to conduct a search for affected provisions within the scope of a blanket amendment provision. The schedules of many Acts that contain blanket amendments have lists of the principal Acts that the amendment affects. In such cases, it would be feasible for the Commission to insert the effect of a blanket amendment on any named Acts. The Commission is of the view that this would be a helpful exercise for the user. However, any application of a blanket amendment across the Legislation Directory will need to be subject to the inclusion of an express proviso alerting the Legislation Directory user to the possibility that not all affected provisions have been identified.

(4) Referential Amendment

3.52 Referential amendments are not amendments in the true sense as they have no effect on the Act being referenced. They simply show the Act in the context of its relationship with other pieces of legislation.

3.53 An example of a referential amendment can be seen in the *Customs and Excise (Mutual Assistance) Act 2001 (Section 8) (Protection of Manual Data) Regulations 2004*, S.I. No. 254 of 2004. Regulation 10(3) reads as follows:

“(3) Section 12 of the Data Protection Act 1988 applies to these Regulations and the reference in subsection (1) of section 12 of that Act to the performance by the Commissioner of his functions includes a reference to the performance by him of his functions under these Regulations.”

3.54 In the Consultation Paper and Report on Statute Law Restatement¹⁸ the Commission discussed the inclusion of referential amendments in the compilation of restatements. The Commission considered annotating these references as R-notes, or Reference notes. However, in the course of annotating the *Data Protection Acts 1988 and 2003*, the Commission found that 60% of the annotations were referential amendments (105 of a total of 174). The Commission then reviewed the use of R-notes in restatements in the light of this experience and decided that they should not be included. There were a number of reasons for this decision.

¹⁸ Law Reform Commission *Consultation Paper Statute Law Restatement* (LRC CP 45-2007); Law Reform Commission *Report Statute Law Restatement* (LRC 91-2008)

3.55 The Commission considered that the inclusion of referential amendments would have a negative effect on restatements. Restatements would go out of date more quickly, as a wider variety of changes outside of the ambit of the restated legislation would impact on the restated legislation.

3.56 As detailed above, the Commission also had to have regard to the increased workload associated with the tracking of referential amendments. This was balanced against the relatively small group of users who might be expected to benefit from the inclusion of this information. For this reason, the Commission has also decided not to include referential amendments in the Legislation Directory.

3.57 *The Commission provisionally recommends the inclusion of textual amendments and non-textual amendments in the Legislation Directory. In the latter case, the Commission provisionally recommends the inclusion of a warning proviso in relation to the documenting of blanket amendments.*

3.58 *The Commission provisionally recommends the exclusion of referential amendments from the Legislation Directory.*

E Sourcing Primary and Secondary Legislation

3.59 Chapter 1 examined in some detail the ways in which legislation, both primary and secondary is enacted and published. While the purpose of the Legislation Directory is to provide improved access to legislation and accurate information as to the current state of the law to front-end users, it is important to note the crucial nature of having full access to legislation for the Commission's Legislation Directory team – the back-end users. To enable Legislation Directory content to be efficiently and accurately compiled, the Commission requires ready access to official copies of all primary and secondary legislation. This access must be provided in a timely manner so as to ensure an up-to-date Legislation Directory and the access must be complete in order to ensure that all relevant legislative effects are captured. Indeed, as Berry notes:

“From the perspective of both the state and its citizens, it is vital that up-to-date versions of the legislation relevant to an issue that concerns them are capable of being identified and accessed. If legislation is not readily and immediately accessible, finding it will prove to be a task that is beyond not only lay people but also competent and experienced lawyers.”¹⁹

3.60 Ultimately, without access to a centralised, comprehensive easily accessible and authoritative source for legislation, the compilation of an up-to-date Legislation Directory is likely to consume a great deal of time and resources than would otherwise be the case. Consequently, the Commission considers that timely access to all primary and secondary legislation to be the foundation for the Commission's work in accordance with the mission outlined in this Consultation Paper. The Commission will keep this issue under review in the course of compilation of the Legislation Directory and will return to it in the Report to follow this Consultation Paper.

F Technology

3.61 The Commission is very conscious of the importance of “getting the technology right” in relation to delivering a best practice Legislation Directory model. The technology is crucial to achieving the Commission's mission and ensuring that the integrity of the database is maintained. Detailed consideration by the Commission of technological requirements has already occurred in the related context of the Commission's assumption of responsibility for Statute Law Restatement.²⁰ Consequently, the relevant issues are not canvassed in as much detail in the present Consultation Paper.

3.62 This topic was first examined in the Consultation Paper on Statute Law Restatement. The Commission's views on this area have solidified since then based on the submissions received in response to that Consultation Paper and the Commission's experiences while designing the technology to

¹⁹ Berry “Keeping the Statute Book up-to-date: A personal view” (2007) *The Loophole* 3 at 33.

²⁰ See further Law Reform Commission *Consultation Paper Statute Law Restatement* (LRC CP 45-2007) Chapter 5.

support that project and the Legislation Directory. The topic was revisited in detail in the Report on Statute Law Restatement and many of the matters discussed in that context have equal relevance here.

(1) Authoring Functionality

3.63 There are two principal activities carried out in the preparation and maintenance of the Legislation Directory which require to be supported by an appropriate technological solution: the creation of and inputting of data to new Act tables for newly enacted Acts of the Oireachtas and the application of new affecting provisions to existing Act tables in the Legislation Directory. The Commission has identified the requirement for a custom-built authoring tool which will allow the Commission to author and edit the Legislation Directory and which will include a sophisticated search facility to assist the Legislation Directory team in locating primary and secondary legislation and legislative amendments as well as commencement orders and other forms of secondary legislation.

(2) Choosing a Supporting Software Platform

3.64 Lotus Notes (an IBM application) was the platform used for compilation of the Legislation Directory under the auspices of the Office of the Attorney General over the last number of years. The Commission is satisfied of the desirability of moving away from a Lotus Notes platform to a more flexible solution which will better serve the preparation, editing and publications needs of the Legislation Directory including the roll-out of new presentational formatting and additional content discussed in this Consultation Paper. After consideration of a number of different options, the Commission was satisfied that an XML-based-system²¹ is suited to the Legislation Directory and would feed into the single-source, multi-purpose objective in relation to the provision of technology which will service the distinct but inter-related Restatement and the Legislation Directory functions of the Commission.²² The Commission considered the issue of future-proofing in the Consultation Paper on Statute Law Restatement and acknowledged that this is inherently difficult to do but nevertheless concluded that “it may well be wise to select the option which appears the most stable and resilient in the current technology environment.”²³ In this regard, the Commission's research indicates that XML repositories are favoured in a legislative and database context in many jurisdictions²⁴ and that Ireland's Bills Office uses XML to produce Bills and amendments thereto in the legislative process. In that Consultation Paper the Commission concluded:

“the XML language has fast become the industry standard and it is envisages that technology solutions into the future will continue to be built around XML. In the Commission's view, a legislative database with the core repository of data in XML format and with appropriate user-friendly software appears the ideal solution for Ireland.”²⁵

The Commission affirms this view in the present context.

(3) Roll-Out of the new Authoring System

3.65 In November/December 2007 the Commission completed a public tender process for a technology solution to support both Statute Law Restatements and the Legislation Directory. The Stationery Office Ltd (TSO), a company experienced in the design of the UK's Statute Law Database, was awarded the tender to provide this technology solution to the Commission and work is now underway to roll it out for both the Restatement and Legislation Directory functions. TSO will deliver an XML-based software solution in accordance with the Commission's requirements. This solution will support both the Restatement and Legislation Directory functions and ensure compatibility with the eISB. The system will

²¹ “XML” is used to describe Extensible Markup Language, a leading language in relation to the provision of legislation databases.

²² For a discussion of relevant technological issues in the context of statute law restatement see Law Reform Commission *Consultation Paper Statute Law Restatement* (LRC CP 45-2007) Chapter 3.

²³ *Ibid* at paragraph 3.20.

²⁴ A notable example is the UK's Statute Law Database which provides a similar publicly accessible service albeit with somewhat differing functionality: see www.statutelaw.gov.uk.

²⁵ Law Reform Commission *Consultation Paper Statute Law Restatement* (LRC CP 45-2007) at paragraph 3.67.

also facilitate interaction between the Restatement and Legislation Directory functions so as to enable information acquired in one function to be applied to the other and thereby minimise unnecessary duplication of work.

3.66 Delivery of this technology solution is currently underway. A key element of the project is the successful import and validation of source data from the eISB in XML format (the repository of Acts) and xHTML format (the Legislation Directory) so as to ensure a standardised and consistent approach to “tagging” or categorising the various types of information provided in an Act. As the Commission noted in the Consultation Paper on Statute Law Restatement:²⁶

“Tagging describes the process of marking raw data within the database. The tags ... serve to construct the parameters of the database. In other words, tagging can assist greatly in providing, for instance, a flexible search capacity.”²⁷

3.67 Another central component of this technology solution will be the installation and configuration of a customised ActiveText content management system to meet the Commission’s requirements. It is envisaged that the ActiveText solution will be capable of importing primary and secondary legislation and Legislation Directory data, validating such data against pre-defined schemas in the form of Document Type Definitions (DTD), controlling the processes for amending the data as held within the system and publishing all authorised or completed data in the form of the Legislation Directory. It will permit the export of content in a variety of formats so as to facilitate the publishing of the Legislation Directory in a number of different media, if necessary.

(4) Data Quality Issues

3.68 As mentioned above, a key element in the delivery of a technology solution to the Commission is the successful import and validation of source data from the eISB in XML format (the repository of Acts) and xHTML format (the Legislation Directory) so as to ensure a standardised and consistent approach to “tagging” or categorising the various types of information provided in an Act.

3.69 The Commission was made aware of a significant data problem in May 2008 which will impede progress with the Statute Law Restatement and Legislation Directory Projects. The Commission was unaware of the scale of this difficulty at the time of acceptance of the transfer of these projects from the Office of the Attorney General to the Commission.

3.70 The problem concerns the mark-up of the Acts on the eISB. Specifically the difficulty relates to Acts between 1922 and 1997, which are marked up in accordance with the “docbook” document type definition (docbook.dtd). These cannot be edited using the XML authoring tool being developed by the Commission. This difficulty does not arise in relation to the Acts from 1998 to 2008, which are marked up in accordance with the “legislation” document type definition (legislation.dtd). The Commission must now look for an appropriate solution to enable the successful progression of the Statute Law Restatement and Legislation Directory Project.

(5) Export of Data from the Commission to the eISB

3.71 The Legislation Directory is hosted on the eISB. As already mentioned in this chapter, once the Commission has successfully completed updates to the Legislation Directory, it will be necessary to export this data for publication on the eISB. The Commission will require the cooperation of stakeholders to ensure that this process functions correctly. In particular, the Commission is anxious that the integrity of exported data is safeguarded and that updates to the eISB will be processed on an ongoing basis and in a timely manner.

3.72 *The Commission provisionally recommends that appropriate systems and protocols be put in place with stakeholders to ensure the integrity of data exported from the Commission for publication on the eISB is safeguarded and that updates to the eISB are processed on an ongoing basis and in a timely manner.*

²⁶ Law Reform Commission *Consultation Paper Statute Law Restatement* (LRC CP 45-2007).

²⁷ *Ibid* at paragraph 3.16.

G Conclusion

3.73 In this chapter, the Commission examined project management issues in relation to work flows and quality assurance in the compilation of the Legislation Directory. The Commission believes that the use of standardised workflows and quality assurance controls will assist in minimising and managing the risk of errors and omissions on the Legislation Directory.

3.74 The Commission then considered the reliability of the substantive content of the existing Legislation Directory database with particular emphasis on the handling of errors and omissions. The Commission believes that it is not feasible to conduct a verification exercise in respect of all existing data in the Legislation Directory. Rather, the Commission proposes to rely on a combination of sampling and correction of notified errors. The Commission proposes to devote further consideration to the issues concerning the sampling of the Legislation Directory data set and would welcome submissions in this regard.

3.75 The Commission then discussed how varying types of affecting provisions should be reflected in the Legislation Directory. The Commission will include both textual and non-textual amendments in the Legislation Directory. However, the Commission notes the difficulties associated with the latter and that this type of amendment has fallen out of favour in recent times. In the case of non-textual amendment by the use of blanket amendment provisions, the Commission proposes include a proviso to each affecting provision noting the possibility that further relevant affected provisions may not have been identified. The Commission will not include referential amendments in the Legislation Directory.

3.76 The Commission then emphasised the importance of sourcing accurate legislation to ensure satisfactory delivery of the Legislation Directory. The Commission noted that without access to a centralised, comprehensive easily accessible and authoritative source for legislation, the compilation of an accurate and up-to-date Legislation Directory was likely to consume a greater deal of time and resources than would otherwise be the case. The Commission proposed to keep this issue under review and to return to it in the Report to follow this Consultation Paper.

3.77 The Commission then moved on to a discussion of its approach to sourcing the appropriate technology to underpin the redesigned Legislation Directory and the interaction between this technology and the existing eISB and Legislation Directory. The Commission identified significant difficulties with the aspects of the data currently contained on the eISB. The Commission noted that these difficulties would impede the progress of the Statute Law Restatement and Legislation Directory projects. The Commission is currently exploring appropriate solutions to these difficulties.

3.78 The Commission concluded by noting that the Legislation Directory is hosted on the eISB. The Commission will require the cooperation of stakeholders to allow the secure and timely export of data in relation to the Legislation Directory to this website. The Commission considered that appropriate systems and protocols should be put in place to facilitate this cooperation.

A Introduction

4.01 In Chapter 1 of this Consultation Paper the Commission traced the origins of the Legislation Directory. In Chapter 2, it examined the current operation of the database. It will now consider the future of the Legislation Directory in the wider context of eLegislation.

4.02 The Commission sees the Legislation Directory project as part of the Government's wider eLegislation strategy and it is committed to ensuring that the ongoing development of the Legislation Directory will complement and be fully compatible with the development of that project.

4.03 In Part B, the Commission will discuss the ambit of the term "eLegislation". In Part C, the Commission considers the benefits to be gained from the implementation of a comprehensive eLegislation strategy. In Part D, the Commission will examine a number of practical matters which must be considered for the successful realisation of an eLegislation project. It will first discuss the integration of technology between the Legislation Directory and a wider eLegislation project. It will then look at the requirement for consistent work practices and drafting styles among stakeholders in an eLegislation project. Finally, it will emphasise the requirement for effective management of such a project. In Part E, the Commission will outline developments in other jurisdictions that have made greater progress than Ireland in the context of eLegislation. In Part F, the Commission will look at the interaction between the Legislation Directory and a more extensive eLegislation project.

B What is eLegislation?

4.04 There is no uniformly accepted definition of the exact scope of eLegislation because the concept varies from jurisdiction to jurisdiction. In its purest form eLegislation initiatives appear to envisage the elimination of paper from the legislative process altogether. An eLegislation project can encompass all aspects of the legislative process from the drafting of legislation, to its progression through Parliament, to the publication of the legislation. Examples of advanced eLegislation strategies can be seen in Australia, Tasmania and New Zealand. These will be discussed below.

4.05 Significant elements of the eLegislation strategy are already in place in Ireland. These include the eISB, eSIs,¹ and the Legislative Workbench system in the Houses of the Oireachtas.²

C The Benefits of eLegislation

4.06 The Commission believes that the implementation of a comprehensive eLegislation strategy would bring considerable benefits to all involved in accessing legislation. This would range from those preparing or drafting legislation and those involved in the progression of legislation through the Houses of the Oireachtas, to members of the public who require access to legislation.

¹ For a further discussion on the eSIs see Chapter 1.

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

² The eLegislation system used in the Houses of the Oireachtas allows the Bills Office to process bills and amendments in an XML environment. XML output from the system is used by the printing contractor, the Houses' Translations Office for producing XML based translations of Acts and the Office of the Attorney General for producing the eISB. Bills, Acts and Amendment Lists produced by the system are published on the Oireachtas website. <http://www.oireachtas.ie/viewdoc.asp?fn=/documents/Organisation/eDemocracy.htm>

4.07 In the Introduction to this Consultation Paper, the Commission considered the fundamental obligation on a state which produces large quantities of legislation, to make this legislation accessible to the public.³ The implementation of a comprehensive eLegislation strategy would go a considerable way towards fulfilment of this obligation.

4.08 Accessibility to the Irish Statute Book can also be seen in the broader context of general regulatory reform. In 1999, the Government adopted recommendations made in *Reducing Red Tape – An Action Programme of Regulatory Reform in Ireland*.⁴ That report focused on the importance of regulation for continued economic growth and greater competitiveness. One of the key recommendations was the process of making legislation more coherent and more easily accessible to those who use it.

4.09 A report published in 2001 by the OECD also made a connection between regulatory reform in Ireland and continuing economic growth.⁵ It stated:

“[R]egulatory reform is seen as a way to open up important infrastructure and policy bottlenecks to further growth and to attain efficiency improvements that can help manage inflationary pressures.”⁶

4.10 In 2004, the Government issued a White Paper *Regulating Better*.⁷ That paper was seen as a response to the 2001 OECD Report. The White Paper considered the importance of making legislation more accessible to all and better understood. It identified clarification of legislation as playing an important role in reducing the red tape that affects small businesses. The Paper also endorsed “greater use of e-Government and IT to increase the transparency and accessibility of regulations”.⁸

4.11 The Commission believes that the implementation of a comprehensive eLegislation strategy would complement the objectives and policies set out in these documents.

D Practical Considerations in the Implementation of eLegislation

(1) Integration of Technology

4.12 As a first step in the development of the Legislation Directory, the Commission is mindful that the technology used for the project should be compatible with technological developments in the areas mentioned above. The advantages of using the same technical standards for authoring, amending and publishing legislation are already well accepted. Thus, when commissioning the development of an authoring tool for the Statute Law Restatement and Legislation Directory projects, the Commission had regard to the existing XML standards already in use in this jurisdiction. Already, in the context of the Statute Law Restatement project, this XML compatibility should ensure that restatements can be added to the existing repository of legislation without difficulty.

4.13 The Commission also wishes to ensure as far as possible that the Legislation Directory is “future proofed” in the sense that the database could be used as a component part of a fully developed eLegislation project. This consideration also played a role in the choice of an XML authoring tool.⁹

³ See paragraph 11.

⁴ *Reducing Red Tape – An Action Programme of Regulatory Reform in Ireland* (Department of the Taoiseach July 1999). Available at www.betterregulation.ie

⁵ *Regulatory Reform in Ireland* (OECD, 2001). Available at www.betterregulation.ie

⁶ *Ibid* at 15.

⁷ *Regulating Better, A Government White Paper setting out six principles of Better Regulation* (16 January 2004). Available at www.betterregulation.ie

⁸ *Ibid.* at 3

⁹ For further discussion on this area see Chapter 3 at paragraph 3.63 and Law Reform Commission *Consultation Paper Statute Law Restatement* (LRC CP-45/2007) at paras 3.04-3.07

(2) Drafting and Working Styles

4.14 In addition to compatible technology, the Commission believes that styles of drafting and working at the various stages of the legislative process must also be compatible. The development of agreed drafting and working protocols will play an important part in developing eLegislation. Manuals and written protocols for the flow of work, the rules of drafting, amending and publication, standard phrases and so on must be developed and agreed with all the stakeholders, and kept up to date and relevant by formalised, periodic reviews. As discussed in Chapter 2, the development of a drafting template for secondary legislation in the UK has shown the efficiencies which can be achieved.¹⁰

(3) Project Management

4.15 An *ad hoc* group to progress the eLegislation agenda started work in December 2007 with the Commission's participation. A scoping exercise is currently underway.

4.16 The Commission believes that the success of the work being undertaken by this group will depend on the existence of 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 in relation to the project.

E Developments in Other Jurisdictions

4.17 As mentioned above, the Commission is conscious that the Legislation Directory may be used as a component part of any future eLegislation project in Ireland. Thus, in the preparation of this Consultation Paper and the planning of the future of the Legislation Directory, the Commission examined the development of eLegislation projects in other jurisdictions. The Commission also looked at the role played by legislative tables in the wider context of eLegislation. The Commission believes that developments in other jurisdictions may prove instructive in relation to the progression and the potential of an eLegislation strategy for Ireland.

(1) Australia

4.18 ComLaw is a legal information retrieval system owned and maintained by the Australian Attorney-General's Department. As mentioned in Chapter 1, ComLaw is an integral part of the Australian Law Online initiative to bring low-cost or no-cost access to the law to the community.¹¹ In its first month of operation in January 2005, ComLaw attracted just over 20,000 visitors. ComLaw is now attracting up to 20,000 visitors a day.

ComLaw contains:

- Commonwealth of Australia primary legislation, as well as other ancillary documents and information, in electronic form, and
- The Federal Register of Legislative Instruments; an authoritative source for Legislative instruments and compilations of Legislative Instruments¹²

4.19 The website contains current and superceded (point in time)¹³ compilations of these Acts and Legislative Instruments. A compilation is a representation of an Act or Legislative Instrument as at a particular date (the compilation date). The compiled Act or Legislative Instrument incorporates all the amendments that have been made to it since the Act was first passed, or the Legislative Instrument was first made, up to and including the compilation date. The text of any amendments that are not in force on

¹⁰ See paragraph 1.53 above.

¹¹ <http://www.comlaw.gov.au/comlaw/comlaw.nsf/sh/homepage>

¹² This resource is discussed in Chapter 1. See paragraph 1.60 above.

¹³ As new, up-to-date compilations are added to ComLaw and the FRLI, the previous compilations are retained as "Historical Data". If the user wishes to see an item of legislation as it looked at a particular date, the user can consult this data. The historical data also includes legislation of the Commonwealth which is no longer in force.

the date on which the compilation is prepared can be found in a Notes section which is located at the end of the compilation. The Notes section also contains a listing of the name of each Act/Legislative Instrument that has amended (and is included in) the compilation together with commencement details and other relevant information for each amendment.

4.20 The compilations are prepared on an ongoing basis as amendments occur. The speed with which amendments appear on the website depends on a number of factors. It usually takes several days for a new amending Act to be delivered to the ComLaw compilation team after it has received the royal assent. If amending items in the Act start on assent then there is a short time delay between commencement and preparation of the revised compilation. Where prior notice is given of an amending item coming into force (eg a proclamation) then revised compilations will generally be published the same day, or the next business day following the commencement.

4.21 In tandem with the legislative compilations, the ComLaw site also maintains legislative tables. These are:

- Annual Tables of Commonwealth Acts (as made);
- Acts Table 1901-2007 (Compilation);
- Repealed Acts Table 1988-2007;
- Annual Tables of Select Legislative Instruments (as made from 1 January 2005);
- Annual Tables of Statutory Rules (as made to 31 December 2004);
- Statutory Rules Table 1903-2004 (Compilation);
- Reprints Program Table;¹⁴
- Commonwealth Acts: Published, Replaced, Repealed;
- Commonwealth Select Legislative Instruments: Published, Replaced, Repealed;
- Commonwealth Statutory Rules: Published, Replaced, Repealed.

The legislation tables are prepared separately from compilations, and, as such, do not interact with them. They are used primarily as a quick reference for users searching for a range of basic information relating to legislation eg commencement dates.

(2) Tasmania

4.22 In Tasmania, the Office of Parliamentary Counsel maintains the electronic "EnAct" database of Tasmanian legislation.

The key features of EnAct are:

- point-in-time searching of consolidated legislation;
- advanced searching and browsing capabilities with all cross-references and amendment history information stored as electronic hyperlinks;
- automatic consolidation of amended legislation on commencement of amendments;¹⁵

¹⁴ The Reprints Program Table provides details of those Commonwealth Acts and Regulations that are to be republished in hardcopy. For example, on consulting the most recent version of the table (17 April 2008), the first entry indicated that reprint no. 10 of the Interpretation Act 1901 would take place on 24 January 2008. It would incorporate all amendments made to the Act up to and including those in Act No. 133, 2005. The reprint was due to be distributed on 18 February 2008.

¹⁵ It is the automatic consolidation feature that provides perhaps the most significant benefits for site users. EnAct is the first system in the world to provide this kind of functionality. At the core of the system is an SGML database. All legislation in the database is broken up into a number of fragments (ie. one fragment per section or schedule). Each fragment contains the dates for which that piece of legislation is in force. When legislation is amended, the system automatically builds new versions of fragments that are affected by amendments and keeps the old ones for historical reference. Joining together the fragments relevant at a particular point-in-time generates consolidations.

See <http://www.thelaw.tas.gov.au/about/enact.w3p>

- innovative automated tools for drafting amendment legislation;
- the ability to present and display legislation in a variety of formats from the same data source;
- multiple format delivery for the publication of legislation allowing paper based products, CD-ROM products and HTML publishing via the Internet.

4.23 The EnAct website gives free public access to Tasmanian legislation. On the website, Acts that were in force on 1 February 1997 are available in consolidated form and Acts passed after 1 February 1997 are available in sessional and consolidated form. Statutory Rules made after May 1998 are available in sessional and consolidated form.¹⁶ Point-in-time searching is available on Acts from 1 February 1997 and Statutory Rules dating from May 1998.

4.24 Further, the *Legislation Publication Act 1996* provides that the database maintained by the EnAct system is the authorised version of legislation in force in Tasmania.

4.25 The Office of Parliamentary Counsel also maintains legislative tables of, and information guides to, Tasmanian legislation, which are updated each month.

(3) New Zealand

4.26 In New Zealand, the Public Access to Legislation (PAL) Project was completed in January 2008. This project was designed to improve the way in which New Zealand legislation is made available to the public. It involved the implementation of a new XML-based drafting and publishing system within the Parliamentary Counsel Office, and the provision of the New Zealand legislation website.¹⁷

4.27 The website of New Zealand legislation¹⁸ now includes free public access to up-to-date unofficial versions of the following New Zealand legislation:

- Acts of Parliament;
- Regulations published in the Statutory Regulations series, and Imperial subordinate legislation in force in New Zealand;
- Bills;
- Supplementary Order Papers.¹⁹

4.28 It is aimed to make legislation available on the website in accordance with the following timeframes:

- new Acts: within five working days of Royal assent;
- new Regulations: the day after the date they are notified in the Gazette;²⁰
- Bills: new Bills introduced into the House: the day after introduction;
- subsequent versions: the day after the printed version is made available to the House;
- Supplementary Order Papers: the day after they have been circulated to Members of Parliament.

4.29 Amendments to current Acts and Regulations are updated as soon as possible after the amendments are enacted/made. It is aimed to incorporate amendments within three weeks after the

¹⁶ A sessional version of an Act is the version of the document which receives the Royal Assent. For Statutory Rules, the sessional version is the version of the document as notified in the Tasmanian Government Gazette.

¹⁷ For further information on this project see the website of the Parliamentary Counsel Office.

<http://www.pco.parliament.govt.nz/pal/index.shtml>

¹⁸ <http://www.legislation.govt.nz>

¹⁹ A Supplementary Order Paper is a document that sets out proposed amendments to a Bill.

²⁰ The Gazette is the official newspaper of the Government of New Zealand. Regulations are notified in the Gazette after they are made, but before they come into force. The date of notification is given at the end of the Regulations, under the Administrative information or the Gazette information.

amendment comes into force. However, if an amendment is to come into force more than 90 days after enactment/making, it is aimed to incorporate the amendment by the date the amendment comes into force. The ability to achieve these timeframes may be affected from time to time by the number or complexity of the amendments.

4.30 Each Act or Regulation states when amendments were last incorporated. If an amendment has been enacted/made, but not yet incorporated into the principal enactment, an alert message will appear. It is aimed to make this alert message available on the website within five working days of the publication of the amendment on the website. Again, the ability to meet this timeframe may be affected from time to time by the number or complexity of amendments.

4.31 The legislation on the website is at present an unofficial version of New Zealand legislation. The Parliamentary Counsel Office will now undertake a process of "officialising" the legislation, so that the website can ultimately become an official source of New Zealand legislation. This process is expected to take around three years.²¹

4.32 In New Zealand, the Parliamentary Counsel Office also compiles Tables of New Zealand Acts and Ordinances and Statutory Regulations in Force. The Tables are usually updated four times a year. In contrast to the approach taken in Australia and Tasmania, the electronic version of these Tables was withdrawn on 31 March 2008. This is because the functions previously provided by the electronic version of the Tables are now provided by the New Zealand Legislation website. The browse feature of the New Zealand Legislation website produces alphabetical listings of legislation in force, by specified type (e.g. Act, public Act, private Act, imperial Regulation, etc). The lists generated from the New Zealand Legislation website link directly to the relevant legislation, while the electronic version of the Tables did not provide live links.

4.33 The Parliamentary Counsel Office has also conducted a survey of users of the printed version of the Tables, to gauge future demand for the publication. Results from the survey will be published on their website in due course.²²

F eLegislation and the Legislation Directory

4.34 The Commission believes that it is desirable that Ireland move towards the comprehensive implementation of eLegislation. As discussed above, the Commission is of the view that such a move could bring significant benefits to Ireland. The Commission considers that aspects of the eLegislation projects detailed above could be adopted in this jurisdiction.

4.35 The Commission believes that the Legislation Directory could play a role in the implementation of a comprehensive eLegislation model. The information contained on the database will necessarily feed into the consolidation of legislation. This relationship can already be seen in the context of the Commission's ongoing legislation projects. The Legislation Directory plays a vital role in tracking amendments to be included in restatements as part of the Statute Law Restatement Project.

4.36 However, the Commission also believes that the quality of the information contained on the Legislation Directory is critical to the success of any such implementation. The Commission has already detailed its concerns in relation to errors and omissions on the database and the difficulties in conducting a review of its entire content.²³ A complete review would require considerable resources. These are not available to the Commission at the present time.

4.37 Further, the implementation of eLegislation referred to above would itself involve commitment and resources. As a result it may be necessary to phase the project. This could be done by reference to certain time periods or by focusing on certain areas for implementation eg those which have already been

²¹ See <http://www.legislation.govt.nz/about.aspx#officiallegislation>

²² See <http://www.pco.parliament.govt.nz/legislation/tables.shtml>

²³ See Chapter 3 at paragraph 3.26 above.

addressed by the Statute Law Restatement Project.²⁴ The Legislation Directory would be required to cover the deficit in the interim.

4.38 In the alternative, a decision might be made to implement the project from a certain point in time onwards. For example, in the UK the originating text of Statute Law Database was derived mainly from the publication *Statutes in Force*,²⁵ the official edition of the revised statute book arranged according to subject matter. This was regularly updated with the effects of new legislation made until 1 February 1991. The date of this final revision became the “basedate” from which the Statute Law Database has been taken forward.²⁶ In such circumstances, the Legislation Directory would again be required to cover the deficit.

4.39 Finally, even if Ireland saw the full implementation of a comprehensive eLegislation model, there could be complementary role for the Legislation Directory as outlined above in the context of Australia.

4.40 The Commission will keep this matter under review and will return to a consideration of this topic in the Report to follow this Consultation Paper.

4.41 *The Commission provisionally recommends that Ireland move towards the implementation of a comprehensive eLegislation model.*

G Conclusion

4.42 In this chapter, the Commission discussed the implementation of eLegislation in Ireland. It noted that there is no uniform definition of the exact scope of eLegislation as the concept varies from jurisdiction to jurisdiction. Notwithstanding this, the Commission identified elements of an eLegislation strategy which were already in operation in Ireland.

4.43 The Commission then considered the benefits to be gained from the implementation of a comprehensive eLegislation strategy.

4.44 The Commission next examined some practical considerations which should be considered in the implementation of an eLegislation strategy. These included the integration of technology, the adoption of common drafting and working standards and the need for effective project management.

4.45 The Commission detailed eLegislation developments in other jurisdictions such as Australia, Tasmania and New Zealand. The Commission believed that these developments could be instructive in Ireland.

4.46 Finally, the Commission considered the ongoing role of the Legislation Directory in the context of the development of a wider eLegislation strategy. The Commission believed that the Legislation Directory could play a significant role here. However, the quality of the information contained on the database could impinge on progress.

²⁴ The Commission also noted in its *Consultation Paper Statute Law Restatement* that many projects similar to restatement in other jurisdictions have developed into eLegislation projects. One example is the New South Wales project where a full “in-force” electronic database now exists. The *Statute Law (Restatement) Act 2002* was based on a policy adopted in New South Wales in the 1970s for producing reprints of legislation. Law Reform Commission *Consultation Paper Statute Law Restatement* (LRC CP 45-2007) para 2.41 ff

²⁵ HMSO *Statutes in Force* (London 1972-1997)

²⁶ See http://www.statutelaw.gov.uk/help/Help_for_the_Statute_Law_Database.htm

CHAPTER 5 **SUMMARY OF RECOMMENDATIONS**

5.01 The Commission provisionally recommends that the Legislation Directory homepage be streamlined and reorganised to improve ease of use. [Paragraph 2.14]

5.02 The Commission provisionally recommends that, where possible, the use of abbreviations should be avoided on the Legislation Directory but invites submissions on useful abbreviations that should be retained or introduced to the database. [Paragraph 2.27]

5.03 The Commission provisionally recommends the use of standardised conventions on the Legislation Directory and also invites submissions on the possible phrases which should be adopted as conventions for describing the legislative effects on the Legislation Directory. [Paragraph 2.28]

5.04 The Commission provisionally recommends that the new system be introduced in respect of primary legislation enacted after 31 December 2005. [Paragraph 2.30]

5.05 The Commission provisionally recommends that the current list of abbreviations should be retained on the Legislation Directory as an aid to users in interpreting legislation currently included on the database. [Paragraph 2.27]

5.06 The Commission considers the chronological listing of the Public General Acts to be of central importance to the Legislation Directory. The Commission provisionally recommends increasing the prominence of this listing on the homepage of the Legislation Directory to highlight it to users. [Paragraph 2.55]

5.07 The Commission provisionally recommends a redesign of the presentation of Act tables to allow for the creation of a separate Act table for each individual Act. [Paragraph 2.56]

5.08 The Commission provisionally recommends that inconsistencies in the compilation of entries to this listing should be addressed. [Paragraph 2.57]

5.09 The Commission provisionally recommends that this listing should be updated on a regular basis and should form an integral part of any wider eLegislation project. [Paragraph 2.58]

5.10 The Commission provisionally recommends that the attention of users of the Legislation Directory should be drawn to the need to check whether affecting provisions have in turn been affected. [Paragraph 2.59]

5.11 The Commission provisionally recommends that consideration should be given as to whether inconsistencies in the presentation of affecting provisions can be remedied. [Paragraph 2.60]

5.12 The Commission provisionally recommends the inclusion on the Legislation Directory of details of associated secondary legislation made pursuant to an enabling power in primary legislation. This would be confined to legislation enacted after 31 December 2005. [Paragraph 2.61]

5.13 The provision of commencement information is crucial to users of the Legislation Directory. The Commission believes that the current listing does not meet the needs of users. The Commission provisionally recommends the inclusion of detailed commencement information in individual Act tables in respect of primary legislation enacted after 31 December. [Paragraph 2.80]

5.14 The Commission believes that the inclusion on the Legislation Directory of a listing of collective citations along with the source of each citation is a useful resource and provisionally recommends maintaining it into the future. [Paragraph 2.84]

5.15 The Commission notes the inclusion on the Legislation Directory of an alphabetical list of orders made under section 6 (1) of the Ministers and Secretaries (Amendment) Act 1939. The Commission provisionally recommends to maintain this listing for the time being but to review the

situation at a later date. The Commission would welcome submissions in this regard. The Commission provisionally recommends that, if retained, the listing should be relocated to a secondary location away from the Legislation Directory homepage. [Paragraph 2.94]

5.16 The Commission notes the desirability of centrally documenting Statutory Instruments which give effect to Ireland's European obligations. The Commission notes the inclusion on the Legislation Directory of a chronological list of regulations made under section 3 of the European Communities Act 1972 (No. 27 of 1972). The Commission provisionally recommends maintaining the current listing. The Commission also provisionally recommends that its current location on the Legislation Directory homepage remain unchanged. The Commission notes the enactment of the European Communities Act 2007 and would welcome submissions on the expansion of Legislation Directory and the tracking of relevant Statutory Instruments to reflect this change. [Paragraph 2.104]

5.17 A chronological list of the Private Acts from 6 December 1922 to 31 December 2005 is available on the Legislation Directory. The Commission provisionally recommends maintaining this listing. [Paragraph 2.110]

5.18 The Commission also provisionally recommends that this listing should remain in its current location. [Paragraph 2.111]

5.19 The Commission provisionally recommends that into the future the style used in the compilation of this listing should be consistent with the style used in the chronological listing of the Public General Acts. [Paragraph 2.112]

5.20 The Commission believes that there are deficits in the Legislation Directory as regards pre-1922 legislation. The Commission recognises the benefits and the challenges of creating one single depository of all primary legislation which is currently in force in Ireland. The Commission notes the existence of some listings of pre-1922 legislation on the Legislation Directory. The Commission provisionally recommends the amalgamation of these current individual listings into one single listing. The Commission provisionally recommends that this amalgamated listing remain on the Legislation Directory homepage. The Commission invites submissions on the integration of pre-Independence legislative effects to the Legislation Directory to form a united database. [Paragraph 2.127]

5.21 The Commission notes the inclusion on the Legislation Directory of a listing of Orders made under the Local Government (Application of Enactments) Order 1898 and Local Government (Adaptation of Irish Enactments) Order 1899. The Commission provisionally recommends the retention of these listings but would welcome submissions on their continued utility. [Paragraph 2.131]

5.22 The Commission provisionally recommends the relocation of these listings to a secondary page away from the Legislation Directory homepage. [Paragraph 2.132]

5.23 The Commission provisionally recommends that additional signposting be provided to enable the user appreciate the content and purpose of the listings. [Paragraph 2.133]

5.24 The Commission notes that the Legislation Directory contains a listing of expressions in British or Saorstát Éireann Statutes adapted by Orders made before 1 January 2003 under the Adaption of Enactments Act 1922 or the Constitution (Consequential Provisions) Act 1937. The Commission considers that this listing is of benefit to users of the Legislation Directory and provisionally recommends that it should be maintained. [Paragraph 2.139]

5.25 The Commission also provisionally recommends that the listing be relocated to a secondary page away from the Legislation Directory homepage. [Paragraph 2.140]

5.26 The Commission considers the alphabetical list of all Acts in the Legislation Directory to be one of the most useful listings on the Legislation Directory. However, it may be overlooked due to its location on the homepage. The Commission provisionally recommends the relocation of this listing to a more prominent position on the Legislation Directory homepage. The Commission provisionally recommends that it should appear adjacent to the chronological table of the Public General Acts. [Paragraph 2.144]

5.27 The Commission believes that the inclusion of an alphabetical list of all Acts by decade on the Legislation Directory represents a duplication of information. The Commission provisionally recommends

that this listing should not be maintained into the future. However, the Commission would welcome submissions in this regard. [Paragraph 2.148]

5.28 The Commission notes the existence of a number of items of information on the homepage of the Legislation Directory, which highlight issues of which a user ought to be aware when accessing the database. The Commission believes that these provide valuable guidance to users of the Legislation Directory. The Commission provisionally recommends retaining all of these current items of information albeit in some cases in a modified form. [Paragraph 2.156]

5.29 The Commission provisionally recommends the inclusion of a centrally located highlighted listing entitled “User Alerts” on the Legislation Directory homepage with the relocation of detailed text to a secondary location. [Paragraph 2.157]

5.30 The Commission provisionally recommends continuing the practice of noting cases on the Legislation Directory where a finding of unconstitutionality has been made by the Irish courts in relation to a piece of legislation. The Commission will require the assistance of other stakeholders in tracking this body of case law. [Paragraph 2.170]

5.31 The Commission provisionally recommends that appropriate systems and protocols should be put in place to ensure that the Commission is informed of relevant decisions in a timely manner. [Paragraph 2.171]

5.32 At this provisional stage, the Commission does not recommend the inclusion of details of rulings of incompatibility of legislation with the European Convention on Human Rights whether by the European Court of Human Rights or at a domestic level. The Commission would welcome submissions on the inclusion of the effect of European case law on the Legislation Directory. [Paragraph 2.172]

5.33 The Commission provisionally recommends the inclusion of textual amendments and non-textual amendments in the Legislation Directory. In the latter case, the Commission provisionally recommends the inclusion of a warning proviso in relation to the documenting of blanket amendments. [Paragraph 3.57]

5.34 The Commission provisionally recommends the exclusion of referential amendments from the Legislation Directory. [Paragraph 3.58]

5.35 The Commission provisionally recommends that appropriate systems and protocols be put in place with stakeholders to ensure the integrity of data exported from the Commission for publication on the eISB is safeguarded and that updates to the eISB are processed on an ongoing basis and in a timely manner. [Paragraph 3.72]

5.36 The Commission provisionally recommends that Ireland move towards the implementation of a comprehensive eLegislation model. [Paragraph 4.41]



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.

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