

Researching the Law of Northern Ireland

Abstract: This paper is based on the presentation given by Heather Semple of the Northern Ireland Law Society to the 39th Annual BIALL Conference held in Dublin in June 2008 and covers the historical and constitutional background to the country. The paper then considers sources of legislation and case law and provides helpful tips on how to undertake research within the complicated and difficult system of legislative publishing.

Keywords: Northern Ireland; law reports; legislation

Introduction

Northern Ireland is a distinct and separate legal jurisdiction within the UK with its own devolved legislative assembly and system of courts. However, researching the law of Northern Ireland can be daunting. Complex constitutional arrangements, combined with the commercial constraints of publishing in a small jurisdiction, can make life more difficult for the law librarian otherwise familiar with time and labour saving resources available in other parts of the United Kingdom.

Constitutional and historical background

The legislative process is dependant on the prevailing constitutional arrangements in any common law jurisdiction. Since its inception in 1921, Northern Ireland has either been governed locally via devolved Government by the Northern Ireland Parliament (NIP) until 1972 and, since 1999, by the Northern Ireland Assembly (NIA) sitting in Stormont or, in times of unrest or political stalemate, directly from Westminster under the Order in Council procedure.

1800–1921

Until 1921 the whole of Ireland was part of the United Kingdom and was governed directly from Westminster.

1921–1972

Between 1921 and 1972 the NIP at Stormont legislated on matters within its own competence, as laid down in the Government of Ireland Act 1920. When Parliament was prorogued in March 1972, shortly after the Troubles

broke out, the legislative powers of the Parliament reverted to Westminster. Legislation applying directly to Northern Ireland was then passed as an Order in Council of the Westminster Parliament (Westminster).

1999 onwards

Devolved Government by the NIA under the Northern Ireland Act 1998 began on 2 December 1999. Most primary legislation enacted during this period passed from a Bill to an Act and was given individual chapter numbers. Devolution was suspended from 14 March 2002, and between then and 2007 the Order in Council procedure operated from Westminster.

Devolved powers were restored to the NIA on 8 May 2007, with most primary legislation from then on appearing as Acts.

1921 – 1972	Acts
1972 – 2000	Orders in Council
2000 – 2002	Acts and Orders in Council
2003 – 2007	Orders in Council
2007 onwards	Acts

Westminster legislation

The United Kingdom consists of England, Wales, Scotland and Northern Ireland. There are various instances whereby Acts made in Westminster apply to Northern Ireland:

1. **Excepted matters** – these are areas in which Westminster legislates for the whole of the United Kingdom. They include foreign policy, defence, taxation and the Armed Forces and are all listed in the Northern Ireland Act 1998 c.47 Sch.2.
2. **Reserved matters** – these are areas in which Westminster **may** devolve the power to legislate to the NIA. At the time of writing, negotiations are ongoing as to whether policing and criminal justice matters should be transferred to the NIA. The complete list of reserved matters is contained in the Northern Ireland Act 1998 c.47 Sch.3.
3. **Transferred matters** – these are functions of Government which are devolved to the NIA and include education, health, environment and agriculture.

Checking the “extent” section of Westminster legislation will establish authoritative coverage. Should a Westminster Act apply to Northern Ireland, any statutory instrument made thereunder will automatically apply. It is also worth noting that Great Britain does not include Northern Ireland.

Northern Ireland legislation

Acts

When primary legislation is made locally by the NIA it is an **Act**. An Act of the Assembly changes the general law of Northern Ireland. It is introduced as a Bill and becomes an Act when it has been passed by the Assembly and received Royal Assent, just as in the rest of the UK. Explanatory notes are also available.

Orders in Council

When primary legislation is made in Westminster it is an **Order in Council** (also known as an **Order**). Orders in Council are issued as a sub-series of the UK Statutory Instruments. They are mostly made pursuant to the Northern Ireland Act 1974 and the Northern Ireland Act 1988 and equate to primary legislation which might have been enacted by the previous Northern Ireland Parliament or Assembly, or for which powers were not devolved to the NIA in 1999 (such as policing and criminal justice). During periods of suspension of devolved Government in Northern Ireland, legislation that would normally be passed by the Northern Ireland Assembly may, under powers conferred in the Northern Ireland Act 2000, be made by Order in Council.

You will find that Orders in Council have an NI number, usually in brackets, as well as a Statutory Instrument Number. Explanatory memoranda are also produced for Orders in Council.

Statutory Rules and Orders

Often referred to as secondary, delegated or subordinate legislation, Statutory Rules are a form of legislation made under the powers conferred by, or under, an Act of the UK Parliament or an Act of the NIA. They include regulations, rules and orders. Explanatory memoranda are available.

Examples of statutory references

Reference	Meaning	Status
1997 SR 451	Statutory Rule	Secondary legislation
Age-Related Payments (NI) Order 2004 No.1987 (N.I.11)	Order in Council	Primary legislation (NI)
		Secondary legislation (UK)
Justice and Security (Northern Ireland) Act 2007 c.4	Westminster Act	Primary legislation
Pensions Act (Northern Ireland) 2008 c. 1	Stormont Act	Primary legislation

Official sources of Northern Ireland legislation published by OPSI

Primary legislation

Acts/Orders in Council

These are now published simultaneously in hard and soft copy. They are the legislation as passed, with no annotations or editorial input, and are contained in an annual binder which is supplemented by a title page, index and table of arrangements.

Indexes to the Orders in Council

A detailed Index to Orders in Council currently exists up to 1996. Arranged by subject and heavily cross-referenced, this is the only authoritative source. It is supplemented by a Cumulative Index from 1997–2008 in which Orders in Council and Acts are listed alphabetically, and has been produced by the library of the Law Society of Northern Ireland.

Updaters

Chronological Table of Statutes of Northern Ireland

This is a compendium of all the statute law which affects, or has affected, Northern Ireland. It includes Acts passed prior to 1801. Each statute is listed chronologically by year and chapter number and is fully annotated as to its status. The Chronological Table is updated annually and covers all legislation (currently up to 2005) and indicates whether each statute has been repealed, amended or otherwise affected by later legislation. It also includes details of the application of the statutes, as well as statutory reference to the appointed days of each statute. **It does not provide annotated legislation.**

Statutes Revised and Cumulative Supplement to the Statutes Revised

This is a 9 volume loose-leaf publication listing the statutes of Northern Ireland up until 1982 and indicating whether each statute has been repealed, amended or otherwise affected by later legislation. These are subsequently amended on an annual basis via the Cumulative Supplement to the Statutes Revised, which is currently up to date to the end of 2005.

The last edition of the Statutes Revised has now been published, and provides the catalyst for using the Northern Ireland Statute Law Database. You will no longer be able to check in hard copy up to date amendments for legislation passed since 1921.

Statute Law Database

Statute Law Database	www.statutelaw.gov.uk	<ul style="list-style-type: none"> • Primary legislation from the formation of NI to the end of 2007 (in revised format for legislation prior to 1 January 2006) • Westminster legislation of NI application only up to date to 2002 • No secondary legislation
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Secondary legislation

Northern Ireland Statutory Rules

These are now produced in hard and soft copy and are bound into (up to 12) separate parts for each year, the last part containing an alphabetical subject arrangement. The Table and Index Part also contains useful tables on the effects of statutory rules on primary and secondary legislation.

Index to Statutory Rules

This was last updated in 1993 and is arranged alphabetically by power and exercise, together with comprehensive cross-references.

Commercial sources of Northern Ireland legislation

The following table lists Northern Ireland legislative coverage by commercial sources well known to the UK law librarian:

BAILII	www.bailii.org	Primary legislation from 1987 onwards
Justis	www.justis.com	Orders in Council from 1972 onwards
		Provides lists of amendments
CLI LRDI	http://cli.sweetandmaxwell.co.uk/	1994 onwards <ul style="list-style-type: none"> • Bills as they progress through the NI Assembly • SRs • Links to source and applicable dates
Lawtel	www.lawtel.com	<ul style="list-style-type: none"> • All primary and secondary legislation from 1984 onwards • Consolidation of primary and secondary legislation planned in the near future
Westlaw	www.westlaw.co.uk	<ul style="list-style-type: none"> • Based on Statutes in Force and therefore excludes NI legislation • Full text of legislation with UK-wide application • Orders in Council

In addition to these UK sources, there are several home-grown Northern Ireland resources available both commercially and non-commercially;

LSNI Libero database

Libero	www.lawsoc-ni.org	<ul style="list-style-type: none"> • All Orders in Council since 2002 • All Statutory Rules and Orders since 2002 • All NIA Acts since 2002
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Heather Semple

This is the database of the Law Society of Northern Ireland library, and has been designed as a portal to legal information of use to practising solicitors. Each record is prefaced by an edited abstract of key information, and all fields are fully searchable. All legislation since is included in Libero, and value is added to the data by linking primary to secondary legislation, linking commencements to their relevant Acts and Orders in Council, and linking implementing legislation to their appropriate EU Directive.

Bulletin of Northern Ireland Law

Published by SLS, a small legal publishing company based at Queens University Belfast, the Bulletin is primarily a current awareness tool, available to subscribe to commercially.

Bulletin of NI law	www.sls.qub.ac.uk	<ul style="list-style-type: none"> • All Orders in Council since 1996 • All NIA Acts since 1996 • All Statutory Rules and Orders since 1996
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Valentine's All the Law of Northern Ireland

Commercially available on CD only, this is a collection of the complete text of Acts, Orders, Rules and Regulations, up-to-date (as of the date of the CD) and as applying to Northern Ireland, relating to law, procedure and evidence. It is the only source for electronic versions of the Rules of Court of Northern Ireland

All the Law of Northern Ireland	Available to purchase from OPSI	<ul style="list-style-type: none"> • All NI statutes since 1921 which are currently in force • UK Acts which have a particular importance for the law or which have a particular application to Northern Ireland. • UK Statutory Instruments of particular interest. • NI Statutory Rules & Order since 1921 which are currently in force
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The author has also written substantial texts on civil procedure in both the County Court and High Court in Northern Ireland, and the CD contains very useful abstracts from these publications where appropriate.

Northern Ireland case law

The doctrine of case law precedent applies in Northern Ireland. In addition, if a point of law is decided in a court of similar authority, or above, in any other part of the United Kingdom, it will have persuasive authority in the Courts in Northern Ireland.

Approximately one third of all cases heard in the High Court or Court of Appeal are officially reported in the *Northern Ireland Law Reports* and the *Northern Ireland Judgments Bulletin*. In addition, the following table contains coverage in UK electronic resources:

BAILII	www.bailii.org.uk	<ul style="list-style-type: none"> • Court of Appeal from 1998 • Crown Court from 2000 • Fair Employment Industrial Tribunals from 1998 • High Court from 1998 • Social Security Commissioners Decisions from 1994
LNB Professional		<ul style="list-style-type: none"> • Reported case law from 1945 onwards • Unreported case law from 1984 onwards
LNB Legal Library		<ul style="list-style-type: none"> • Reported case law from 1992 onwards • Unreported case law from 2001 onwards

The following Northern Ireland resources are also useful for reported and unreported decisions:

Libero

Libero	www.lawsoc-ni.org	<ul style="list-style-type: none"> • Full text of all written reported and unreported decisions of the High Court and Court of Appeal since 1999 • Full text of all House of Lords decisions originating in Northern Ireland • Full text of all Industrial and Fair Employment Tribunal decisions since 2002
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All decisions held on Libero are abstracted, and searchable across a wide range of fields. Cases are linked as they progress through the judicial system, such as cases stated from the Industrial Tribunals, or those appealed to higher courts.

Bulletin of Northern Ireland Law

<p>Bulletin of Northern Ireland Law</p>	<p>www.sls.qub.ac.uk</p>	<p>From 1996</p> <ul style="list-style-type: none"> • Case notes of all written judgments in the Court of Appeal, High Court, County Courts, and Magistrates Courts • Case notes of all House of Lords decisions originating in Northern Ireland • Selected case notes from the Industrial Tribunal and Employment Tribunals • Selected case notes from the Lands Tribunal • Selected case notes from the Planning Appeals and Social Security Commissions
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Reading

Books

- Dickson. *The legal system of Northern Ireland*. 5th ed. Belfast, SLS, 2005
- Valentine. *Civil proceedings – the County Court*. Belfast, SLS, 1999
- Valentine. *Civil proceedings – the Supreme Court*. Belfast, SLS, 1997
- Hadfield. *The constitution of Northern Ireland*. Belfast, SLS, 1989
- Semple. *Guide to legal research in Northern Ireland*. Belfast, LSNI, 2007

Articles etc

- BIALL Legal research pack (contains a chapter on Northern Ireland)
- Woodman: The legislative process in the Northern Ireland Assembly (2001) *Legal Information Management*, Vol.1(1) Spring, 43–45

Other websites

- Northern Ireland legislation http://www.opsi.gov.uk/legislation/northernireland/ni_legislation.htm
- Northern Ireland Assembly <http://www.niassembly.gov.uk/legislation/legislation2000.htm>

Top tip – the juxtapositioning rule

If you are faced with a reference to a Northern Ireland Act which was made at any time by devolved Government, its origin could potentially be NIP/NIA or the Westminster Parliament. The positioning of Northern Ireland in the title provides the clue as to where to locate it:

Judicature (Northern Ireland) Act 1978 c.23

“Northern Ireland” comes before the “Act”, therefore WP with only NI application

Interpretation Act (Northern Ireland) 1954 c.33

“Northern Ireland” comes after the “Act”, therefore made by NIP/NIA

Biography

Heather Semple has been a librarian at the Northern Ireland Law Society for almost 20 years, and Head of Library and Information Services for the last 11 years. She has served on the Legal Information Group of BIALL and currently serves on the PR & Promotions Committee.