

Ireland – the Name of the State

This article by John Furlong attempts to provide a context and a background for the various names ascribed to the jurisdictional entity of Ireland.

Introduction

Turbulent history, the assertion of sovereignty and complex political relations have all played a part in the confusion that occasionally attaches to the name of the most westerly jurisdiction within the European Union. The island of Ireland¹ now comprises two jurisdictional entities. Ireland is an independent sovereign state and Northern Ireland² forms part of the United Kingdom. The correct name of this jurisdiction in the English language is Ireland.³ Political and constitutional complexities mean that lawyers and researchers will occasionally come across references to Éire, Southern Ireland, Republic of Ireland, Irish Free State, Irish Republic etc as alternative if incorrect titles and descriptions.

The wording of the relevant constitutional provisions which states “the name of the State is Éire, or in the English language, Ireland”⁴ is somewhat unclear. In referring to the recurrent misuse of the term “Éire” in English as the name of the State, the Committee on the Constitution pointed to the wording of Article 4 itself as a possible justification since the word “or” in the English text of the Article indicates “Ireland” is merely an alternative English form of the name. The Committee accepted that there is “at least an ambiguity in the Article that provides a colourful pretext for this misuse.” The Committee recommended a revision of the text to remove the ambiguity.⁵ For greater clarity, the Report of the Constitution Review Group 1996⁶ recommended that the English language text of the Constitution should be amended to state that “the name of the State is Ireland” and the Irish language text be amended to state “Éire is ainm don Stát”.

The Republic of Ireland Act 1948 added somewhat to the confusion by describing the jurisdiction as “Republic of Ireland” whilst it retains its constitutional name of Ireland. Some measure of the pertinence and constitutional significance of the name of the jurisdiction can be gleaned from two judgments⁷ where the courts had to consider the use of the term “Ireland” in pre-1922 Acts of the United Kingdom as they applied in a post-1922 context.

Historical context

By the end of the eighteenth century the island of Ireland had moved from a legal system derived from the ancient Brehon laws to substantive governance by England. The short-lived Grattan’s Parliament between 1783 and 1800 provided a brief and final taste of home rule before the establishment of the United Kingdom of Great Britain and Ireland by the Act of Union of 1800.⁸

Ireland remained de jure part of this United Kingdom until the establishment of the Irish Free State in 1922.⁹ During this time came the Proclamation of Independence in 1916 and the establishment of a Provisional Government of the Irish Republic in 1919 during the War of Independence. Various proposals for home rule in the early part of the twentieth century would have led to the establishment of a quasi-independent Ireland. In the last of the home rule initiatives, the Government of Ireland Act 1920 proposed the creation of two entities on the island of Ireland – to be called “Southern Ireland” and “Northern Ireland” which would also co-operate on various matters through a Council of Ireland.¹⁰ However, political turmoil and the continuation of the War of Independence determined that only the entity of Northern Ireland was established under the Act. Elections in “Southern Ireland” were used to elect members to the second Dáil Assembly under the Provisional Government. The War of Independence ended with a truce in July 1921 and the subsequent Anglo-Irish Treaty of December of that year. This provided for the establishment of the Irish Free State. The constitutional basis for the new entity came in the Constitution of the Irish Free State (Saorstát Éireann) Act 1922.¹¹ In the same year, the Westminster Parliament enacted the Irish Free State (Constitution) Act 1922.¹² This repealed the Government of Ireland Act 1920 insofar as it applied to what had been called “Southern Ireland.”¹³

In 1937, the people of the Irish Free State adopted by referendum a new constitution (Bunreacht Na hÉireann), which with subsequent amendments provides the supreme legal authority within the jurisdiction. In 1948, Ireland declared itself a republic.¹⁴ Further developments relevant to the naming of the jurisdiction came with the Ireland Act 1949¹⁵ and measures

related to Anglo-Irish Agreement of 1985 and the Belfast Agreement of 1998.

Constitutional position

The Constitution of Ireland (Bunreacht Na hÉireann) is the supreme legal authority. Article 4 of the Constitution confirms that the name of the State is Éire or in the English language, Ireland.¹⁶

There were lengthy debates regarding the naming of the State during the parliamentary passage of the 1937 Constitution before it was presented to the people for referendum. Considerable confusion appears to have arisen from the procedure where the text of the proposed Constitution was being drafted in Irish, but being debated and examined in English.¹⁷ The main architect of the 1937 Constitution, Eamon DeValera, was very keen that the name Éire would be used in both the English and the Irish language text.¹⁸ It is worth noting that while both the English and Irish texts of the Constitution are officially recognised, in the event of conflict between the texts, it is the Irish language text which will prevail.¹⁹

The word Ireland is derived from the combination of the Irish language “Éire” and the German word for “land”. It is believed that the word or name Éire first appeared as the Greek descriptor *Ierne* from around the 5th Century BC. Ptolemy used the term “Iouernia” in his early map and the Latin form “Hibernia” appears in the works of Caesar.²⁰

Ireland is the official name of the jurisdiction used in its international relations. Ireland is a member of the European Union, the United Nations and various other international bodies and it is Ireland which enters into international treaties.²¹

An interesting insight into the practice applied in various bilateral treaties between the UK and Ireland was provided in response to a Parliamentary Question in the House of Commons in 1985. The response outlined the different terms used to describe both the United Kingdom and Ireland in various treaties, commencing from the Anglo-Irish Treaty of 1921 to the Anglo-Irish Agreement of 1985.²²

In 1948, Ireland declared itself a republic. The Republic of Ireland Act 1948 provides that the description of the country is the Republic of Ireland or, in the Irish language, Poblacht Na hÉireann. The constitutional name, which has precedence, remained as Ireland (or in the Irish language Éire).²³

At the second stage reading of the Republic of Ireland Bill 1948 the Taoiseach Costello, J stated:-

“Deputies will recall that under the Constitution the name of the State is Éire or according to Article 4, the name of the State is Éire, or in the English language, Ireland. Now this section does not purport, as it could not, to repeal the Constitution. There is the name of the State and there is the description of the State. The name of

the State is Ireland and the description of the State is the Republic of Ireland. That is the description of its constitutional and international status.”²⁴

Costello was adamant that the legislation would provide a clear and internationally recognised description for the jurisdiction and would prevent what he described as the use of “derogatory terms” to describe Ireland.²⁵

This point was judicially emphasised by McCarthy J in *Ellis v O’Dea* when he noted

“it should be unnecessary to point out that S. 2 of the Republic of Ireland Act 1948 by which it was declared that the description of the State shall be the Republic of Ireland did not, in any fashion, affect the name of the State, as prescribed by Article 4 of the Constitution.”²⁶

The twofold purpose of the 1948 Act was to sever Ireland’s relationship with the Commonwealth²⁷ and to assert its status as a Republic. The 1937 Constitution established a republic in all but name, but failed to make this explicit statement.²⁸ At the time, the President of the Executive Council indicated that the absence of a declaration of a republic was due to the ongoing constitutional problems relating to Northern Ireland.²⁹

Judicial confirmation

The name of the jurisdiction has been considered by the Supreme Court on two occasions. In *Kutcher v Buckingham*³⁰ Walsh J described the reference in a contract to “Republic of Ireland” as an “error in the English language version of the name of the State”. In *Ellis v O’Dea*³¹ Walsh J and McCarthy J both commented on an incorrect practice of referring to the jurisdiction in extradition warrants as “the Republic of Ireland”. It is worth repeating the obiter dicta comments of Walsh J. regarding the effect of the Republic of Ireland Act 1948:-

“it does not purport to change the name of the State nor could the Oireachtas (Parliament) do so even if it so wished. An amendment to the Constitution would be required for a change in name. Foreign diplomatic representatives in this State cannot be accredited to the President of “the Republic of Ireland”. All plenary summonses are issued over the name of the Chief Justice of Ireland. In all of the treaties of Accession to the European Communities the name of the State appears (in the English language) as Ireland and is so recognised by all the member states in these treaties. Such is also the case in other international agreements and treaties. If there is any confusion in the United Kingdom courts possibly it is due to

the terms of the United Kingdom statute named the Ireland Act 1949 which of course is of no force or effect in this State. That enactment purported to provide that this State should be “referred to... by the name attributed to it by the law thereof, that is to say, as the Republic of Ireland (emphasis supplied). That of course is an erroneous statement of the law of Ireland. It is difficult to know what could have caused such an error to be made except perhaps an incomplete knowledge of our law. Historically it is even more difficult to explain. There is only one State in the world named Ireland since it was so provided by Article 4 of the Constitution in 1937 and that name was acknowledged by a communiqué from No. 10 Downing Street, London in 1937.”³²

The state

The description or term “the State” is commonly used in legislation and elsewhere to refer to the jurisdiction of Ireland.³³ The 1937 Constitution provides that Ireland is a sovereign democratic State.³⁴ The Constitution does not define what the State comprises. At the time of adoption of the 1937 Constitution Ireland was then the Irish Free State. The Constitution of 1922 established the Irish Free State and refers to “the State” in an apparent shorthand for the full name.³⁵ In the landmark decision in *Byrne v Ireland*, the Supreme Court confirmed that the State is a juristic person. Budd J noted that the legal nature of the State is not defined in the Constitution and the nature of the State must be discovered in indirect fashion from the various Articles.³⁶ There are many references to “the State” in legislation, regulations, judicial pronouncements and commentaries and they are taken to mean references to Ireland.³⁷ The State may sue and be sued – appropriate defendants being the Attorney General and Ireland.³⁸

Other descriptions

• Irish Free State

This is the entity which was established by the Constitution of the Irish Free State (Saorstát Éireann) Act 1922.³⁹ The Irish Free State ceased to exist with adoption of the 1937 Constitution⁴⁰.

• Southern Ireland

This was the name to be given to the entity to be formed as part of the proposals for Home Rule prior to 1921. In fact the entity never came into existence.

• The island of Ireland

In order to provide neutral terminology when referring to the two jurisdictional entities, the term “Island of Ireland” is used in a number of significant documents, including the British Irish Agreement 1998 (the “Good Friday Agreement”). These documents also use similar politically neutral terminology, such as “North/South” and “British/Irish” to describe relationships between different parts of the islands of Great Britain and Ireland⁴¹.

• Irish Republic

This description is essentially of historical relevance.⁴²

The Proclamation made at the start of the 1916 Easter Rising in Dublin was of an “Irish Republic”. This term favoured by Wolfe Tone and the Fenians had been in use since at least the late 16th century. The Irish Republican Brotherhood established in 1858 swore allegiance to the “Irish Republic”. The armed forces of the Provisional Government of the Irish Republic, proclaimed in 1919, were styled the “Irish Republican Army” and the members of the Dáil assembly declared allegiance to the “Irish Republic.”⁴³

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References

¹The island of Ireland is the third largest island in Europe. In relation to the island of Ireland the mainland is the European continental land mass and not the island of Great Britain.

²The accepted name of the other jurisdictional entity on the island of Ireland is Northern Ireland – recognised in various international and domestic legal instruments. The description Ulster although used occasionally is not jurisdictionally or legally correct. It refers to the ancient province of Ulster which comprises six counties within Northern Ireland and three counties within Ireland. The terms “six counties” to refer to Northern Ireland or the “twenty six counties” to refer to Ireland are outdated. See judgment of Henchy J on judicial recognition of Northern Ireland in the Supreme Court judgment in *State (Gilsenan) v McMorrow* [1978] IR 360. The term “North of Ireland” is a geographic description and has no legal status.

³In the Irish language, Éire.

⁴Article 4, Bunreacht na hÉireann, Constitution of Ireland 1937.

⁵Report of the Committee on the Constitution December 1967 (Stationery Office, Dublin) at p.6.

⁶The Report is available on the website of The All Party Oireachtas Committee on the Constitution (www.constitution.ie).

⁷*The People (AG) v Rutledge* [1978] IR 376 and *The State (Gilsenan) v McMorrow* [1978] IR 360.

⁸See Byrne R. and McCutcheon P. (2001) *The Irish Legal System*, (Dublin, Butterworths) page 32ff. For more general reading on modern Irish history see Coogan, TP (2003) *Ireland in the 20th Century*, (Hutchinson, London), Foster, RF (1988)

Modern Ireland 1600–1972 (Allen Lane, London), Foster, RF (1992) *The Oxford History of Ireland* (Oxford University Press, Oxford), Kee, R (2003) *Ireland – a History* (Abacus, London), Lee, J (1989) *Ireland 1912–1985: Politics and Society* (Cambridge University Press, Cambridge, Lyons, FS (1971) *Ireland Since the Famine* (Weidenfeld and Nicolson, London), Murphy, JA (1975) *Ireland in the 20th Century* (MacMillan, London).

⁹From 1800 to 1922, Ireland was identified as the whole island of Ireland within the United Kingdom. Many United Kingdom statutes applied only in Ireland (ie the whole island) for example; Local Registration of Title (Ireland) Act 1891 (54 & 55 Vic ch.66), Local Government (Ireland) Act 1898 (61 & 62 Vic ch.37), Intermediate Education (Ireland) Act 1913 (3 & 4 Geo 5 ch.29).

¹⁰The idea of a Council of Ireland was revisited as part of the failed Sunningdale Agreement of December 1973. The Sunningdale Agreement does not explicitly refer to “Ireland” but it is stated to be an agreement between the “British and Irish Governments (and other parties)” and related to matters in “the two parts of Ireland”.

¹¹One of the first legislative enactments of the Dáil following the signing of the Anglo Irish Treaty of 1921.

¹²13 Geo. 5, ch. 1.

¹³Northern Ireland remained constitutionally subject to the provisions of the Government of Ireland Act 1920 until the eventual repeal of the Act by the Northern Ireland Act 1998. Under the terms of the Anglo-Irish Treaty of 1921, Ireland remained a member of the Commonwealth until severing its connections in 1948.

¹⁴Republic of Ireland Act 1948.

¹⁵An Act of the United Kingdom (12 & 13 Geo. 6 ch.41) recognising the effects of passing by the Irish Parliament of the Republic of Ireland Act 1948.

¹⁶Article 4.

¹⁷See for example:

- Proceedings of Dáil Éireann, Volume 67 at Column 30, (11 May 1937),
- Proceedings of Dáil Éireann, Volume 67 at Column 942 (25 May 1937),
- Proceedings of Dáil Éireann, Volume 67 at Column 969 (25 May 1937),
- Proceedings of Dáil Éireann, Volume 68 at Column 115 (9 June 1937).

¹⁸Proceedings of Dáil Éireann, Volume 67 at Column 969, 25 May 1937. A detailed comparison of the English and Irish texts is available in *Bunreacht na hÉireann, A Study of the Irish Text* (1999) O’Cearúil, M (Stationery Office, Dublin). The document is available at www.constitution.ie.

¹⁹See Kelly, JM (2003) *The Irish Constitution* Hogan and Whyte (Eds) (4th ed, Lexis Nexis Butterworths, Dublin) at para 4.5.46 and Forde, M (2004) *Constitutional Law* (2nd ed. Firstlaw, Dublin) at p. 56.

²⁰Facts about Ireland – Department of Foreign Affairs, Dublin (<http://www.foreignaffairs.gov.ie>).

²¹For example see the titling of the Belfast Agreement – *Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and Government of Ireland 1998*. The Anglo-Irish Agreement 1985 between the Government of Ireland and the Government of the United Kingdom appears in the UK Treaty Series Number 62 (1985) as “an agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Ireland” (sic.).

²²Sir John Biggs Davison noted the political reasons for the practice of using different terms in the Irish and UK version of the same agreements (HC Deb. Col 132w, 17 December 1985) as referred to in Hadden T. and Boyle K. (1989) *The Anglo-Irish Agreement – Commentary Text and Review* (London; Sweet & Maxwell). Casey, J notes diplomatic tensions arising from the terminology used in accreditation of Commonwealth diplomats to Ireland. Casey J (2000) *Constitutional Law in Ireland* (3rd ed. Round Hall Sweet and Maxwell, Dublin) at p. 32. The differences in nomenclature as used in tax treaties between Ireland and the United Kingdom is examined in detail in a two part article “What’s in a Name?” Walsh M and Oliver JB, *Irish Tax Review* 2003, 16 (6) and 2004, 17 (1).

²³See a brief and personal case for using ‘Republic of Ireland’ in “Éire, Ireland or the Republic of Ireland – What’s in a Name”, Cahillane, L, *Irish Law Times* (19) 2005, 303.

²⁴Proceedings of Dail Eireann, Vol. 113 at Column 394 (24 November 1948).

²⁵Proceedings of Seanad Éireann, Vol. 36 at Col. 25 and Col. 28, 9 December 1948.

²⁶[1989] IR 530 at 542.

²⁷Prime Minister Clement Atlee’s acceptance of Ireland’s severance from the Commonwealth was generous but persisted in referring to ‘Éire’ throughout. HC Debates Vol 458 Cols 1414–1415 (25 November 1948).

²⁸See O’Reilly, A and Redmond, M (1980) *Cases and Material in the Irish Constitution*, (Incorporated Law Society,, Dublin) at p. 168. The Report of the Committee on the Constitution 1967 (op. cit.) recommended a constitutional amendment to declare the State as a Republic. See also Proceedings of Seanad Éireann – Vol 36 at 3, 9 December 1948 on the Second Stage reading of the Republic of Ireland Bill 1948.

²⁹See paragraph 15 *Report of the Committee on the Constitution 1967* (op. cit.).

³⁰*Kutchera v Buckingham International Holdings Limited* [1988] IR 61.

³¹[1989] IR 530.

³²[1989] IR 530 at 540. Walsh J further noted...“it is worth recalling that The Report of the Law Enforcement Commission presented to the United Kingdom Parliament in May 1974 and published by Her Majesty’s Stationery Office (Cmnd 5627) was addressed “to the Secretary of State for Northern Ireland and the Minister for Justice of Ireland”.

³³For a detailed overview on what constitutes a ‘State’ see *Chapter 3 of Doolan, B (1994) Constitutional Law and Constitutional Rights in Ireland* (3rd Ed. Gill and MacMillan, Dublin).

³⁴Article 5.

³⁵Constitution of the Irish Free State (Saorstát Éireann) Act 1922, Article 11.

³⁶[1972] IR 241 at 290. See also the points of the judgment noted in Kelly JM (2003) (op. cit.) at p. 85.

³⁷For example: s.8 Aviation Authority Act 2001; s.2 Companies Act 1963; s.23 Charities Act 1961; s.2 State Property Act 1954; s.9 Midwives Act 1944; s.11 Mines and Minerals Act 1931.

³⁸See Collins AM and O’Reilly J (2004) *Civil Proceedings and the State* (Thomson Roundhall, Dublin) at page 179.

³⁹Related legislation is found in the Irish Free State (Constitution) Act 1922 of the Westminster Parliament which repealed the Government of Ireland Act 1920 as it related to the new state.

⁴⁰The Irish Free State (and subsequently Ireland) remained a member of Commonwealth until 1948. A diplomatic communiqué forwarded by the Government of the United Kingdom to the Government of Ireland in 1937 stated “His Majesty’s Government in the United Kingdom have considered the position created by the new constitution which was approved by the Parliament of the Irish Free State in June 1937 and came into force on December 29th. They are prepared to treat the new Constitution as not affecting a fundamental alteration in the position of the Irish Free State, in future to be described under the new Constitution as Éire or Ireland, as a member of the British Commonwealth of Nations” (as referred to in Proceedings of Seanad Éireann Vol. 36 at Col. 11, 9 December 1948).

⁴¹Geographically, the island of Ireland forms part of the British Isles, although many Irish commentators would find the use of this term politically unacceptable.

⁴²In relation to its absence from the 1937 Constitution see Murphy, John A ‘The 1937 Constitution – Some Historical Reflections’ in *Ireland’s Evolving Constitution 1937–1997* Murphy and Twomey (Eds) (Hart Publishing, Oxford 1998) and Fanning, R ‘Mr de Valera Drafts a Constitution’ in ‘DeValeras Constitution and Ours’ Brian Farrell (Ed.) (Gill and MacMillan) Dublin 1988. See also Chubb, B (1978) *The Constitution and Constitutional Change in Ireland* (IPA, Dublin).

⁴³See especially *Ireland Since the Famine*, (op. cit.).