

Biography

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Free and Easy: a Guide for Occasional Users to the Irish Legal System and Resources

Abstract: The purpose of this article, written by John Furlong, is to provide a comparative overview of the Irish legal system with that of the jurisdictions of the United Kingdom and will cover the range of free-to-use resources that are available in respect of Irish case law, legislation and commentaries. The content is aimed at librarians and legal information professionals who are required from time to time, to understand and source Irish law. The article is based on a paper presented at BIALL's 45th Annual Conference, which was held in Harrogate in 2014.

Keywords: legal systems; legal research; legal sources; Ireland

Although the bitterness of recent political history might suggest otherwise, there have always been strong ties bonding the islands of Britain and Ireland. There are long standing social, familial and cultural links. Trade and business between the two islands is significant; the United Kingdom¹ is Ireland's biggest export market and Ireland is the UK's fifth biggest market². In other areas, there are initiatives and plans to increase co-operation; the energy supply sector, joint trade missions, communications and tourism being examples of areas in which there is noticeable interaction.

This strong interdependency is emphasised by a shared and sometimes brutal history. The modern political history of the United Kingdom and Ireland – starting with the Act of Union 1800 – has resulted in a significant

similarity in legal systems and laws. The parliament of the United Kingdom of Great Britain and Ireland passed a wide range of measures, which generally and specifically affected Ireland. Public health, education, land reform and criminal law were among the areas affected and a substantial amount of the legislation continues in effect today.

The similarity has been further added to by the harmonising elements of European law. Ireland and the United Kingdom are the only two English speaking common law members of the European Union.

With the similarities come also notable differences. The purpose of this article is to identify the key elements and issues within the Irish legal system which are relevant to any comparative research with the laws and systems of the United Kingdom. From time to time,



Figure 1: Four Courts, Dublin. The main courts system comprises 4 main tier.

legal research within the United Kingdom may require an informed examination of equivalent Irish measures. This may be for comparative purposes or for precedent or for informing UK business investment and business in Ireland³.

THE IRISH POLITICAL SYSTEM

The revolutionaries who founded the Irish Free State following the Anglo Irish Treaty of 1921 had a pragmatic streak. While asserting nationhood and independence, they largely preserved the political, judicial and administrative structures that existed prior to independence⁴. Thus, Ireland is a common law jurisdiction with a bicameral legislature based to some extent on the old Westminster model.

THE CONSTITUTION

One of the most significant differences between the two legal systems is the existence of a written Irish Constitution. Since the founding of the Irish Free State in 1921⁵, Ireland has had a written constitution – the current Constitution being adopted by referendum in 1937⁶. With many amendments since then, it is the primary domestic legislative Act, defining the functions and duties of the State and its agencies, providing for separation of powers and setting out fundamental rights for Irish citizens. All other domestic law is subservient and constitutional challenges are a regular issue before the Irish courts. While the Constitution sets out specific rights for citizens, there has also been an identification and expansion of further

additional un-enumerated rights through decisions of the High Court and the Supreme Court⁷. In the modern era, the supremacy of the constitution has been reduced by the requirements imposed on Ireland through membership of the (now) European Union.

In the interpretation of Irish domestic law or in seeking judicial remedies, Irish lawyers will consider any constitutional implications or arguments that might be raised. This contextualisation of the constitutional dimension has also fed into a notable and developed body of Irish administrative law⁸.

NAMES AND LANGUAGE

The constitutional name of the jurisdiction is Ireland although there can still be confusion in references and citations⁹. This is not helped by the Republic of Ireland Act 1948 which introduced a ‘description’ of Republic of Ireland. However, international recognition and treaty participation is afforded to Ireland and a number of testy judicial decisions have also underscored the need to use the correct citation.

Under the constitution, Irish is the first official language while English is recognised as the second official language. In reality, while the Irish language has a significant cultural status, English is the daily language of business, commerce and the law. There are additional legal requirements as to official use and recognition of the Irish language¹⁰ and citizens are of course entitled to use Irish in dealing with government, official agencies and the courts. Most official texts including Acts of the



Figure 2: Government Buildings, Dublin. Ireland is a common law jurisdiction with a bi-cameral legislature based to some extent on the old Westminster model.

Oireachtas are produced bi-lingually. Many state bodies are known by their Irish names.

THE JUDICIAL SYSTEM

The main courts system comprises 4 main tiers:

- The Supreme Court which is the court of final appeal, guardian of the constitution and a court of unlimited jurisdiction. The Supreme Court will soon be augmented and assisted by a Court of Appeal due to be established in late 2014.
- The High Court has original unlimited jurisdiction in civil matters. The High Court sits in Dublin but also on occasional circuit outside the capital. In civil matters, the High Court sits without a jury except for a number of specified actions including defamation. In criminal matters, it sits as the Central Criminal Court. The High Court also operates a Commercial List (usually referred to as the Commercial Court) which hears high value commercial cases subject to a strict case management protocol.
- The Circuit Court. As its name suggests, the Circuit Court sits in a number of designated areas around the country. These circuits were usually based on county

boundaries. The Circuit Court has limited jurisdiction¹¹ in criminal and civil matters and can hear specified matters on appeal from the District Court.

- The District Court generally deals with lesser offences and has a limited monetary jurisdiction in civil matters. It is based in specific geographical locations. While the District Court usually deals with summary or non minor offences it can also deal with indictable offences in certain circumstances.

Constitutionally, all members of the judiciary are independent. Administrative, logistical and secretariat support is provided within the court system by the Courts Service. The management of court work is supervised in the Superior Courts and the Circuit Court by Registrars and in the District Court by District Court Clerks.

From a legal research perspective, it is the Courts Service which maintains the primary database of judgments from the Superior Courts (Supreme Court, Court of Criminal Appeal and High Court). The website also provides access to the rules of court for all of the court jurisdictions.¹²

Where to Find Irish Court Decisions and Judgments Online

The **Courts Service website**¹⁶ is the primary source of recent judgments for the Superior Courts (Supreme Court, Court of Criminal Appeal and High Court). It contains written judgments made available by the Supreme Court from the year 2001, the Court of Criminal Appeal from the year 2004 and the High Court from the year 2004.

BAILII¹⁷ also provides access to recent judgments for the Superior Courts and also includes decisions dating from before the Courts Service database. It holds decisions from 1997/1998 to date. The database also includes a number of landmark decisions from earlier years.

Citation of Unreported Cases:

Older unreported cases are correctly cited by party names followed by details of the court and the date:

Turner v Pilotage Committee of Dublin, Pilotage Authority, (High Court, Barron J, 14 June 1998).

Irish case citations are adapting to a neutral citation model. For example, note the neutral citation for the following Supreme Court case.

Crofter Properties Limited v Genport Limited [2005] IESC 20.



Figure 3: House of the Oireachtas, Dublin. The makeup of legislation and the procedures for making it are quite similar to the Westminster model and will be familiar to those who deal with UK legislation. Primary legislation is enacted through the House of the Oireachtas (Parliament).

Although not part of the judicial system, there are a number of important related bodies involved in quasi-judicial decision making. These include the **Personal Injuries Assessment Board (PIAB)**¹³, an official body established to assess claims for compensation for anyone who has been in an accident and suffered an injury. PIAB has produced a useful quantum database in respect of personal injury assessments. The **Insolvency Service of Ireland (ISI)**¹⁴ is a statutory body which deals with personal insolvency arrangements outside of the bankruptcy regime.

The Irish legal system also provides for the use of different types of tribunal - expert tribunals which have quasi-judicial powers and tribunals of enquiry which are tasked to establish facts. A number of high profile tribunals of enquiry have sat in recent years to investigate various aspects of Irish life and business¹⁵.

KEY PLAYERS IN THE LEGAL SYSTEM

The **Attorney General**¹⁸ is a constitutional officer who sits in cabinet to offer primary legal advice to the Government. The Attorney General advises on the making of legislation and her¹⁹ office is heavily involved in drafting Bills of the Oireachtas. The Office of the Attorney General maintains the Irish Statute Book online. The Attorney also represents the State in legal proceedings.

The **Chief State Solicitor**²⁰ is a constituent part of the Attorney General's Office. The Chief State Solicitor provides litigation and other legal transaction services to the Attorney General and to government departments and some agencies.

The **Director of Public Prosecutions**²¹ is an independent statutory office which enforces the criminal law

in the courts. The Director also directs and supervises public prosecutions on indictment and gives general direction and advice to the Garda Síochána (national police force) in relation to summary cases and specific direction in such cases where requested.

The **Law Reform Commission**²² is a significant player in the development of modern Irish law. The Commission is an independent body tasked to keep the law under review and to conduct research with a view to the reform of the law. Many of the Commission's proposals have resulted in significant reforms of Irish law in recent decades. Its consultation papers provide a rich source of information on current Irish law.

The divided structure for lawyers in Ireland is similar to that in England and Wales²³. Solicitors form one division of the legal profession; the other being the profession of barrister. Solicitors are currently regulated by the **Law Society of Ireland**²⁴ and barristers are regulated by the **Bar Council of Ireland**²⁵. This regulatory structure will change substantially with the expected establishment of the Legal Services Regulatory Authority²⁶. Both the Law Society and the Bar Council provide extensive library and research resources for their respective members.

THE LEGISLATIVE SYSTEM

The makeup of legislation and the procedures for making it are quite similar to the Westminster model and will be familiar to those who deal with UK legislation. Primary legislation is enacted through the House of the Oireachtas (Parliament)²⁷ in the form of Acts of the Oireachtas. Draft legislation in the form of Bills goes through a five stage process in each House – the Dail (House of Representatives identified as the lower House)

Where to Find Irish Legislation Online

The **Irish Statute Book**²⁸ has electronic texts of all Acts of the Oireachtas from 1922 to date as well as a selection of pre 1922 statutes which are still in effect in the jurisdiction. It hosts pdf format texts of Acts from 1996 onwards. The Irish Statute Book also provides access to the **Legislation Directory**²⁹ which allows users to check whether a particular provision has been amended or otherwise affected since its enactment.

The **Irish Statute Book** also hosts electronic texts of Statutory Instruments from 1922 onwards with Instruments from early 2007 onwards also available in pdf format. Listing is by year and number. For Statutory Instruments, the **Legislation Directory** provides a limited capability for users to check whether a particular Instrument has been amended or otherwise affected since its making.

The **Houses of the Oireachtas**³⁰ website provides access to pdf texts of Acts from 1997 onwards. It also gives access to the parliamentary record of draft legislation or Bills from 1997 including initial and amended drafts and text of relevant parliamentary speeches and debates.

BAILI³¹ replicates the electronic texts of Acts of the Oireachtas and Statutory Instruments (by year and by title) from 1922 onwards.

International Treaties to which Ireland is a Party

For information on international treaties to which Ireland is a party, the Department of Foreign Affairs and Trade maintains a database³² giving details of all general treaties and including the text of all treaties published in the Irish Treaty Series since 1998. For double tax treaties, the Revenue Commissioners maintain a database³³ of all current treaties with access to the domestic implementing provisions.



Figure 4: General Post Office, Dublin. The revolutionaries who founded the Irish Free State following the Anglo Irish Treaty of 1921 had a pragmatic streak. While asserting nationhood and independence, they largely preserved the political, judicial and administrative structures that existed prior to independence.

and the Seanad (Senate or Upper House). Under the Constitution, certain types of Bill (for example a Bill to amend the Constitution) must be initiated in the Dail.

Usually between 40 and 50 Public Acts of the Oireachtas are enacted each year. When a Bill has passed all stages in the Oireachtas and completed its parliamentary process, it is forwarded to the President for signature. Certain constitutional arrangements attend the signing by the President and he has a right to consult and refer any Bill to the Supreme Court to adjudge its constitutionality before signing it into law.

Subordinate or secondary legislation in the form of Statutory Instruments is made by Ministers of government or authorised agencies under the authority of a parent statute. Again, the makeup and procedures will be broadly familiar to those who deal with UK law. Usually between 500 and 700 statutory instruments are made each year. The volume of these instruments coupled with a lack of centrality and consolidation can make them difficult to track or identify as to their currency or applicability.

The statutory instrument system has been heavily used to transpose European Directives into Irish law. These transposing instruments are made under the authority of European Communities Acts 1972 to 2012 which allows them to amend or repeal primary legislation (ie Acts of Parliament) to achieve transposition of the relevant European measure. Not surprisingly, this procedure has been the subject of discussion and debate as well as judicial challenge.³⁴

KEY ADMINISTRATIVE REGULATORS AND ENFORCERS

In addition to fulfilling a domestic central bank function, the **Central Bank of Ireland**³⁵ is the regulator for a wide range of financial services providers including banks and credit institutions; insurance undertakings; investment firms and bureaux de change. The Bank has extensive regulatory and supervisory powers and produces a wide range of regulatory and guidance material for financial service providers.

Under new legislation, the Competition and Consumer Protection Commission will be established in late 2014. The new Commission will deal with certain consumer protection issues as well as the work of the current **Competition Authority**³⁶ in enforcing Irish and European competition law (anti-competitive practices, price-fixing, anti-competitive business mergers, operation of cartels etc.).

The **Office of the Director of Corporate Enforcement**³⁷ is a statutory body established in 2001 to enforce the provisions of the Companies Acts and to improve compliance with company law requirements.

The **Commission for Energy Regulation**³⁸ was established in 1999 and regulates activity across the energy sectors including electricity, gas, water and wastewater. The **Commission for Communications Regulation (Comreg)**³⁹ is the independent regulator for regulation of the electronic communications sector (telecommunications, radio communications and broadcasting transmission) and the postal sector.

THE IMPACT OF FREEDOM OF INFORMATION

The Freedom of Information Act 1997 has had a significant impact on the availability of official information to the public and for use in legal and other research. In broad terms, the legislation provides for access to records held by government departments and other designated bodies. The Act has greatly enhanced access to official information and has to some extent removed much of the official secrecy of the past⁴⁰. It has informed a more open approach to use of official information in terms of consultation, reference and further use. In addition, bodies designated under the Act are required to produce manuals on the manner in which they carry out their functions providing a useful source of informed commentary and guidance on the application of law and regulation in the public sector.

SOME STARTING POINTS FOR IRISH LEGAL INFORMATION

The longstanding web resource *Irishlaw.org*⁴¹ continues to provide an excellent central and comprehensive directory for Irish legal resources and also includes research guides dealing with the specifics of the Irish legal system.

*Citizensinformation.ie*⁴² is a government sponsored website which collates material from official sources to provide easily understood information on public services and entitlements. It provides a very useful and easy way to obtain basic information on all aspects of Irish public services usually with links to the supporting primary sources.

*MerrionStreet.ie*⁴³ is the Irish Government News Service providing useful news and current awareness by bringing together in one place, all important press releases and other official announcements. The intention is to provide official information in 'the language of a news bulletin'. The site interacts with all of the main social media services and includes links to all government RSS feeds.

*Iris Oifigiuil*⁴⁴ published bi-weekly is the official state gazette (broadly similar to the UK's Gazette) and provides a source for publication of official and statutory

notices as well as promulgation of statutes and statutory instruments.

SOME STARTING POINTS FOR IRISH BUSINESS INFORMATION

All of the daily broadsheet newspapers – The Irish Independent, The Examiner and The Irish Times provide good business coverage. *The Irish Times*⁴⁵ has the best archival database with limited free access. The Sunday Business Post provides excellent coverage of business news on a weekly basis and also provides free- to-access daily news through *The Daily Business Post*.⁴⁶

COMMERCIAL PROVIDERS ONLINE

This article is concerned with free to use resources for occasional research. It is also worth identifying the key players in the provision of commercial databases on a subscription basis:

*Murdochs Irish Legal Companion*⁴⁷ provides a mini encyclopaedia of Irish law including cross reference of related terms and links to relevant legislation, reports and case law;

*Better Regulation*⁴⁸ provides consolidated texts of legislation with related materials and a current awareness service in certain key areas – tax, company law, financial services and pensions law;

*Lexis Library*⁴⁹ includes The Irish Reports and a range of recent and older unreported Irish case law;

*Westlaw IE*⁵⁰ provides access to a selection of annotated legislation⁵¹; selected consolidated texts of legislation; case law including The Irish Law Reports Monthly (ILRM) and full or abstracted texts of selected Irish legal periodicals;

*Justis*⁵² includes access to selected legislation, case law from 1997 and Employment Appeal Tribunal decisions from 1998 onwards;

*Bloomsbury*⁵³ provides two significant commentary services – on Irish property law and on Irish company law.

Further Reading

- Raymond Byrne and Paul McCutcheon. *The Irish Legal System*. 5th ed., Bloomsbury 2009.
- Jennifer Schweppe & Ors. *How to Think, Write and Cite*. Thomson Reuters (Professional) Ireland Limited 2011.
- Thomas O'Malley. *Round Hall Guide to the Sources of Law*. Round Hall Sweet & Maxwell 1993.

Footnotes

¹ For convenience, reference will be made throughout to the UK. Unless otherwise stated, any comparison with UK law is with the laws of England.

² Source : Department of Foreign Affairs and Trade, Dublin

³ Precedent may be significant – Ireland was the first jurisdiction to regulate smoking in public areas and in the workplace and to introduce a levy on plastic bags in the retail sector. It may be the first jurisdiction in Europe to introduce plain packaging

requirements for tobacco products. Following on the economic crash of 2008, Ireland has developed a substantial body of legislation and case law on distressed assets.

⁴ Article 73 of the Constitution of the Irish Free State (Saorstát Éireann) 1922 provided that subject to the Constitution and to the extent to which they were not inconsistent therewith, the laws in force in the Irish Free State (Saorstát Éireann) at the date of the coming into operation of the Constitution would continue to be of full force and effect until the same or any of them were to be repealed or amended by enactment of the Oireachtas. Article 50 of Bunreacht na hÉireann 1937 contains similar provisions to provide for the continuance of the laws of Saorstát Éireann. See also, for example, the Adaption of Enactments Act 1922 (<http://www.irishstatutebook.ie/1922/en/act/pub/0002/print.html>)

⁵ See the Constitution of The Irish Free State (Saorstát Eireann) Act, 1922 (<http://www.irishstatutebook.ie/1922/en/act/pub/0001/print.html>)

⁶ Bunreacht na hÉireann – the current text inclusive of amendments is available at <http://www.constitution.ie>

⁷ For a full treatment of the provisions of the Constitution, see Hogan, G & Whyte, G (eds.) (2006) Kelly: The Irish Constitution 4th ed. Dublin, Tottel Publishing.

⁸ Gerard Hogan and David Gwynn Morgan (2010) Administrative Law in Ireland (4th ed. Round Hall, 2010)

⁹ For a full treatment of this topic, see Furlong, John (2006): Ireland The Name of The State, Legal Information Management, 6 (4), 297–301

¹⁰ See Official Languages Act 2003 (<http://www.irishstatutebook.ie/2003/en/act/pub/0032/print.html>)

¹¹ The monetary jurisdiction of the Circuit Court in civil matters is currently €75,000. The monetary jurisdiction of the District Court in civil matters is currently €15,000.

¹² The Courts Service databases are available at <http://www.courts.ie>

¹³ <http://www.injuriesboard.ie/eng/>

¹⁴ <http://www.isi.gov.ie/>

¹⁵ Tribunal of Inquiry (Evidence) Act 1921 as amended. For example, the Mahon Tribunal (formerly Flood) into planning permissions (1997–2012); the Lindsay Tribunal into the infection with HIV and Hepatitis C of Persons with Haemophilia and Related Matters (1999–2002); the Harding Clark inquiry into the medical practice of obstetrician Dr Michael Neary (2003–2006).

¹⁶ <http://www.courts.ie>

¹⁷ <http://www.bailii.org/databases.html#ie>

¹⁸ <http://www.attorneygeneral.ie/>

¹⁹ At the time of writing, most of the key legal players in the Irish legal system are female – Minister for Justice, Frances Fitzgerald TD; Attorney General, Maire Whelan SC; Chief Justice Susan Denham SC; Director of Public Prosecutions, Claire Loftus; Chief State Solicitor, Eileen Creedon.

²⁰ <http://www.attorneygeneral.ie/csso/english/index.htm>

²¹ <https://www.dppiireland.ie/>

²² <http://www.lawreform.ie/>

²³ For more on the Irish legal profession, see Furlong John (2011) The Law Firm Sector in Ireland: an Overview, Legal Information Management, 11(3), 172–176

²⁴ <http://www.lawsociety.ie/>

²⁵ <http://www.lawlibrary.ie/>

²⁶ Under the provisions of the Legal Services Regulation Bill 2011 when enacted.

²⁷ The Houses of the Oireachtas website is available at <http://www.oireachtas.ie>

²⁸ <http://www.irishstatutebook.ie/home.html>

²⁹ http://www.irishstatutebook.ie/legislation_directory.html

³⁰ <http://www.oireachtas.ie/parliament/oireachtasbusiness/billslegislation/>

³¹ http://www.bailii.org/ie/legis/num_act/

³² <https://www.dfa.ie/our-role-policies/international-priorities/international-law/find-a-treaty/>

³³ <http://www.revenue.ie/en/practitioner/law/tax-treaties.html>

³⁴ See, for example, Meagher v Minister for Agriculture and Food 1994 I IR 329

³⁵ <http://www.centralbank.ie/Pages/home.aspx>

³⁶ <http://www.tca.ie/default.aspx>

³⁷ <http://www.odce.ie/>

³⁸ <http://www.cer.ie/>

³⁹ <http://www.comreg.ie/>

⁴⁰ For further information, see the website of the Freedom Information Commissioner at <http://foi.gov.ie>

⁴¹ <http://irishlaw.org/>

⁴² <http://www.citizensinformation.ie/en/>

⁴³ <http://www.merrionstreet.ie/>

⁴⁴ <http://www.irisofigiuil.ie/>

⁴⁵ <http://www.irishtimes.com/>

⁴⁶ <http://www.businesspost.ie/>

⁴⁷ <http://milc.lendac.ie>

⁴⁸ <http://www.betterregulation.com/ie>

⁴⁹ <https://www.lexisnexis.com/>

⁵⁰ <http://www.westlaw.ie/>

⁵¹ From 1984 onwards

⁵² <http://www.justis.com/>

⁵³ <http://bloomsburyprofessionalonline.com/>

Biography

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Impacts and Effects of Publishing Legal Information in a Small Jurisdiction: Privacy v Open Justice

Abstract: This paper, written by Sue du Feu and James Lambert, outlines the challenges faced by the Jersey Legal Information Board (JLIB) in providing free access to legal information. The power of modern internet search engines has implications for a small island jurisdiction wishing to make its case law available on-line (see: www.jerseylaw.je). Having established protocols and policies to ensure a balance between open justice and privacy, several years later, JLIB is faced with concerns from individuals who feel that continuing public access to their earlier misdemeanours is an unfair burden. The paper will explain how the JLIB addressed the challenge of publishing court judgments online while safeguarding the interests of the individual.

Keywords: legal information; free legal information; legal sources; Jersey

INTRODUCTION

Jersey is the largest of the Channel Islands, with a population of 100,000. The Island covers an area of 45 square miles, is 85 miles south of the English coast and 14 miles from France. Jersey is a British Crown Dependency, but

is neither a colony nor a dominion. It is not represented in the United Kingdom parliament and UK legislation applies to Jersey only if the Island expressly agrees that it should do so. The Island has its own legal system and courts of law.