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Researching Irish Legislation

Abstract: In this article, **Sinéad Curtin**, Legal Knowledge Manager in the Chief State Solicitor's Office, provides a guide to the free and subscription sources for researching Irish legislation. She explains how legislation is enacted, how to determine if it's in force and whether it's been amended. She also looks at tracking legislation, the transposition of EU directives and statutory interpretation in general. The article concludes with a list of sources for Irish legislation.
Keywords: legal research; legal sources; Ireland

INTRODUCTION

This article is in part an update of an article I co-wrote in 2011, 'Researching Irish Law: Guide to Legislation, Caselaw and Commentary Sources'.[1] This article deals only with Irish legislation; Irish caselaw is covered elsewhere in this issue (see page 153). The 2011 article expressed the hope that the resources would continue to improve. Reader, they have.

As stated in 2011:

> 'Irish legislation is complex, as it is comprised of the acts of the Oireachtas (Irish Parliament) from 1922 onwards and the statutes of any previous parliament that had jurisdiction in Ireland. Previous parliaments included the Parliament of Ireland prior to 1800, the Parliament of England so far as it applied individual statutes to Ireland from approximately 1600 to 1800 and the Parliament of the United Kingdom of Great Britain and Ireland from 1800 to 1922.'[2]

PRIMARY LEGISLATION

HOW LEGISLATION IS MADE

Before looking at enacted legislation, it is useful to understand how it is enacted.[3] The starting point for both aspects is the same: the Irish Statute Book website (eISB).[4] Next to each Act on eISB, there's a 'Bill History button' (see Figure 1), which leads to the entry for the corresponding Bill on the Houses of the Oireachtas website (Oireachtas.ie).[5]

The Houses in question are Dáil Éireann and Seanad Éireann, but the Oireachtas also includes the President.[6] Bills can generally start in either House and must pass five stages in each. At First Stage, the Bill is presented and the debate is usually no more than a statement of this. At Second, the principles behind the Bill are debated. At Third Stage, known as Committee Stage, detailed scrutiny occurs and amendments can be introduced. Amendments can also be made at Fourth Stage, known as Report Stage, but only amendments which arise from Committee Stage. The Fifth or Final Stage usually follows immediately after and consists of concluding comments and a vote on the Bill. If passed, the Bill moves to Second Stage (First is omitted) in the other House and continues through the stages. If a Bill initiated in the Dáil is amended by the Seanad, the Bill must be returned to the Dáil for consideration of those amendments and vice versa.

If passed by both Houses, the Bill goes to the President to be signed and that must be done within five to seven days of receipt, or sooner if there is a motion for earlier signature. Upon signature, it becomes an Act, ie it is enacted. It is also in force on that date unless there is a provision to the contrary within the Act. Mention must also be made of Article 26 of the Constitution. This enables the President, following consultation with the Council of State, to refer a Bill to the Supreme Court to decide whether the Bill or particular sections of it are repugnant to the Constitution. If any provision is found to be unconstitutional, the Bill cannot be signed. Otherwise, the President must sign it and, somewhat controversially, the constitutionality of the validated provisions cannot be challenged thereafter.[7]

COMMENCEMENT, AMENDMENTS AND CONSOLIDATIONS

As stated above, an Act comes into force on the date that it is signed by the President, unless there is a provision to the contrary within the Act. The date of signature can be found after the long title. The usual wording of a commencement provision, 'This Act shall come into operation on such day or days as the Minister may appoint by order or orders […]' means that a statutory instrument is required to bring any section into force. One of the great advances in recent years is that commencement information is available behind the

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Figure 1: Research tools on eISB

'Commencements, Amendments button' attached to each Act (see Figure 1). It lists the status of every section, its commencement date if commenced, as well as linking to the commencement provision. Note the 'updated to' date at the top of the page (see Figure 2). If any sections are listed as not yet commenced, the commencement information can be verified as up-to-date by browsing the latest statutory instruments (SIs) on eISB. At the time of writing, there are only 20 SIs after the 'updated to' date.

Checking whether legislation has been amended has also become a much easier task. Beneath the commencement information, amendments are listed by section, with links to the relevant provisions of the amending legislation. Acts and SIs published after the last updated date should also be checked, in case they amend the Act. Note also that amendments are only effective if the amending legislation is itself in force and so its commencement must be verified. This guidance also applies to the list of collective citations of acts maintained on eISB: the legislation which amends a citation must be in force for the amended citation to apply.[8]

The most significant development of all, however, is the publication and maintenance of over 500 revised acts by the Law Reform Commission (LRC). The LRC has consolidated almost all amended acts of 2004 onwards, as well as over 200 of the most-used older acts.[9] These consolidations are available on the LRC website or via the 'Revised Act button' (see Figure 1) attached to each such act on eISB. Another very useful resource on the LRC website is the classified list of legislation, an index of in-force acts and statutory instruments organised under 36 subject headings.[10]

Compared to the progress made on amended legislation, there has been little change in legislation as enacted; only a couple of the Acts of the Oireachtas from 1922 to 1995 have been digitised. This is also in marked contrast to pre-1922 legislation.



Figure 2: Note the 'updated to' date on eISB

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PRE-1922 LEGISLATION

A report by the LRC, published in 2020, noted that there were then about 3000 acts in force and that about 1200 (40%) of those were enacted prior to 1922.[11] Most of the pre-1922 acts which are still in force in Ireland are on eISB, but in many cases are revised versions from the late 19th Century, rather than the legislation as enacted. The Statutes Project website fills most of this gap, as it has collated scanned volumes of British public statutes from the 12th Century up to 1970.[12] Most Local and Personal Acts are on legislation.gov.uk. Amendments to the pre-1922 statutes which are still in force in Ireland are listed on eISB. This includes pre-1922 amendments insofar as those amendments extended to Ireland.[13]

SECONDARY LEGISLATION

Statutory instruments (called statutory rules and orders prior to 1948) are available as enacted from 1922 onwards on eISB, but are only in pdf from 2007 onwards. Digitised versions are available via the Oireachtas library catalogue, as part of its documents laid collection, but they are watermarked.[14] It's also possible to browse SIs by enabling act – a list follows the commencement and amendment information for each such act on eISB. Regarding commencement, an SI comes into force on the date that it is signed, unless another date is specified in the text. There is also an 'Amendments button' next to each SI, updated to the same date as the information for Acts (see Figure 3). Consolidations of SIs are not yet widely available for free, but it is an encouraging sign that nine of the most complex have been consolidated by the LRC.[15]

Another significant collection of SIs are the rules governing court procedure: the District Court Rules; the Circuit Court Rules and the Rules of the Superior Courts. The latter regulate procedure in the High Court, the Court of Appeal and the Supreme Court. The court rules are consolidated by Vizlegal[16] and annually in the Blackhall Publishing series of books.[17] The court rules are on the Courts Service website also but, unfortunately, they are only partly consolidated.[18] Another provider, for corporate law, is Better Regulation, which consolidates primary and secondary legislation in the areas of company law, financial services and employment law.[19]

EU LEGISLATION

EUR-Lex is the official source of EU legislation.[20] Each entry contains links to the amendment history and consolidated versions and indicates how the legislation has been transposed (if necessary) in each of the Member States. For legislation of 2013 onwards, only the online version of the e-OJ has official legal status.[21]

STATUTORY INTERPRETATION

For the benefit of UK readers, it should be noted that *Pepper v Hart* principles of statutory interpretation do not apply in Irish law.[22] In *Crilly v Farrington*, the Supreme Court ruled that Oireachtas debates could not be used as an aid to statutory interpretation.[23] Nevertheless, they are a good source of background information. See also the explanatory memorandum and the Bill digest, available on Oireachtas.ie. The Interpretation Act 2005 is also worth reading, for the general principles of statutory interpretation. Some useful books are Dodd on Statutory Interpretation; Kelly on the Constitution; Hogan and Morgan on Administrative Law.[24] The classic UK texts – Bennion on Statutory Interpretation and Craies on Legislation – are also helpful.[25]

TRACKING AND SEARCHING LEGISLATION

Tracking is an area where subscription services offer more. Changes to particular legislation can be monitored on Better Regulation, albeit in selected areas such as company law, financial services law and employment law.



Figure 3: Amendments to statutory instruments are listed on eISB

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Subject-area updates are also available, which include updates from regulators such as the Central Bank as well as legislation. In addition, Vizlegal alerts subscribers to changes in the court rules. For tracking legislation in general, it is useful to subscribe to the weekly Oireachtas schedule and to check *Iris Oifigiúil*, the official state gazette, which is published twice-weekly and announces primary and secondary legislation.[26]

A search of Oireachtas.ie can often answer questions about future developments, such as the expected transposition date for a directive. See the advanced searching tips at www.oireachtas.ie/en/debates/debates-search-tips/ to efficiently search the site. Similarly, deploying the advanced search tips on eISB – www.irishstatutebook.ie/eli/faq.html – can reduce the number of irrelevant results.

SOURCES … OF CONFUSION

The sources listed below are recommended based on the assumption that the best source of legislation as enacted is a pdf reproduction of the hard copy, the second-best the hard copy. For amended legislation, the LRC's revised versions are recommended as they are widely used and have been cited in judgments.[27]

They are also 'sources of confusion' as online versions do not have official status.[28] Certainty around this is needed. The LRC has recommended that the online version of an Act published on eISB or Oireachtas.ie, and of a Revised Act published on the LRC website should have "prima facie evidential status of the content of the Act, subject to an electronic signature being attached".[29] Subject to the digitisation of the hard copy sources listed below, I agree.

Legislation as enacted	Source (pdf or print)
Pre-1922 public statutes	Statutes Project website
Pre-1922 local acts	Legislation.gov.uk
Acts of the Oireachtas 1922–1995	Print volumes
Acts of the Oireachtas 1996 to date	eISB
Statutory instruments 1922–2006	Print volumes
Statutory instruments 2007 to date	eISB

Consolidated legislation	Source
Consolidated acts	LRC website. Otherwise,Better Regulation for corporate law
Consolidated statutory instruments	LRC website. Otherwise,Better Regulation for corporate law; Vizlegal for court rules

CONCLUSION

Thanks to the developments in free and subscription resources, researching Irish legislation has become easier. However, it still requires a careful approach. Always read the legislation; always be aware of the dates covered by the resources you are using. I hope this article has helped with both aspects.

Endnotes

[1] Sinéad Curtin and Alice Steen, 'Researching Irish Law – A Guide to Legislation, Caselaw and Commentary Sources' (2011) 11 Legal Information Management 185. Thanks to Jean Cassidy, Information Manager, Chief State Solicitor's Office, for her help with this article.

[2] Curtin and Steen (n 1) 185.

[3] <www.oireachtas.ie/en/visit-and-learn/how-parliament-works/how-laws-are-made/> accessed 3 July 2024.

[4] <www.irishstatutebook.ie> accessed 3 July 2024.

[5] <www.oireachtas.ie> accessed 3 July 2024.

[6] Constitution, Article 15.1.2.

[7] Constitution, Article 34.3.3. See Gerard Hogan and others, *Kelly: The Irish Constitution* (5th edn, Bloomsbury 2018) para 6.2.416.

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[8] <www.irishstatutebook.ie/eli/isbc/citations.html> accessed 3 July 2024.
[9] <https://revisedacts.lawreform.ie/revacts/intro> accessed 3 July 2024.
[10] <https://revisedacts.lawreform.ie/classlist/intro> accessed 3 July 2024.
[11] Law Reform Commission, *Accessibility of Legislation in the Digital Age* (LRC 125 – 2020) para 2.5.
[12] <https://statutes.org.uk/site/collections/british-and-irish/chronological/> accessed 3 July 2024.
[13] <www.irishstatutebook.ie/eli/pre-acts.html> accessed 3 July 2024.
[14] <https://opac.oireachtas.ie/knowvation> accessed 3 July 2024.
[15] <https://revisedacts.lawreform.ie/revacts/alpha> accessed 3 July 2024.
[16] <www.vizlegal.com> accessed 3 July 2024. A subscription service.
[17] *Blackhall's District Court Rules 2024, Blackhall's Circuit Court Rules 2024* and *Blackhall's Superior Court Rules 2024* (Lonsdale Law Publishing 2024).
[18] <www.courts.ie/superior-court-rules> accessed 3 July 2024.
[19] <www.betterregulation.com> accessed 3 July 2024. A subscription service.
[20] <https://eur-lex.europa.eu/homepage.html> accessed 3 July 2024.
[21] <https://eur-lex.europa.eu/content/help/oj/authenticity-eOJ.html> accessed 3 July 2024.
[22] *Pepper (Inspector of Taxes) v Hart* [1992] UKHL 3, [1993] AC 593.
[23] *Crilly v T & J Farrington Ltd* [2001] IESC 60, [2001] 3 IR 251.
[24] David Dodd, *Statutory Interpretation in Ireland* (Bloomsbury 2008); Gerard Hogan and others, *Kelly: The Irish Constitution* (5th edn, Bloomsbury 2018); Gerard Hogan, David Gwynn Morgan and Paul Daly, *Administrative Law in Ireland* (5th edn, Roundhall 2019). See also *Heather Hill v An Bord Pleanála* [2022] IESC 43 [105] – [220], [2022] 2 ILRM 313.
[25] Diggory Bailey, *Bennion, Bailey and Norbury on Statutory Interpretation* (8th edn, LexisNexis 2020); Daniel Greenberg, *Craies on Legislation* (12th edn, Sweet & Maxwell 2020).
[26] <www.irisoifigiuil.ie/currentissues/> accessed 3 July 2024.
[27] Examples include *Kerry Co Council v An Bord Pleanála* [2014] IEHC 238 [19] and *Riordan v Irish Financial Services Appeals Tribunal* [2024] IECA 3 [31].
[28] <www.irishstatutebook.ie/eli/faq.html> accessed 3 July 2024.
[29] (LRC 125 – 2020) para 6.96.

Biography

Sinéad Curtin is the Legal Knowledge Manager in the Chief State Solicitor's Office in Dublin, managing the Office's KM and legal research services. She has worked in the legal information sector for over 20 years, starting out in the Law Library, followed by the law firm McCann FitzGerald, before moving to her current role in 2021. She has served as Convenor of the BIALL Irish Group and was Chair of the Legal Information Management Editorial Board from 2019 to 2022. She is BIALL President Elect for 2024 / 2025.

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