

Member State law - Ireland

This page gives you information on the legal system in Ireland.

Legal Order

1. Legal Instruments/Sources of Law

1.1. National Sources

The Constitution of Ireland (in the Irish language, Bunreacht na hÉireann), which came into force on 29th December 1937, is the basic or fundamental law in the State. It establishes the institutions and apparatus of State and provides for the tripartite separation of powers into Executive, Legislative and Judicial. It also guarantees fundamental rights which have been subjected to rigorous interpretation and extension by the courts.

Primary legislation consists of Acts adopted by the Oireachtas (Parliament), consisting of the President of Ireland, Seanad Éireann (Upper House) and Dáil Éireann (Lower House). Primary legislation is divided into: Acts to amend the Constitution, which must be accepted by the people in a Referendum to become effective; Public General Acts, which are of general application; and Private Acts, which are directed towards the behaviour of a particular individual or group of individuals.

Secondary legislation is a mechanism by which the Oireachtas may delegate legislative powers to a Minister of Government or a particular authority. The power to make delegated legislation must be expressly conferred by primary legislation and stringent conditions govern its exercise – the principles and policies to be implemented must be clearly and unambiguously stated in the parent act and strictly followed by the authority making the secondary legislation. Statutory Instruments are the most common form of secondary legislation but they can also take the form of Regulations, Orders, Rules, Schemes or Bye-laws.

By virtue of Article 50 of the Constitution, pre-1922 laws relating to Ireland (e.g. Acts of the United Kingdom Parliament) and measures adopted by the Irish Free State (1922 – 1937), which are not inconsistent with the Constitution remain in force. Many of the pre-1922 laws which had no ongoing relevance to Ireland were repealed by the Statute Law Revision Acts 2005-2012.

The Irish legal system is a common law system and this means that Judge-made law is an important source of law. Under the doctrine of precedent, or stare decisis, a court is bound to follow decisions in former cases, particularly decisions of higher courts. However, this is a policy and not a binding unalterable rule. This body of law includes rules, general principles, canons of construction and maxims. The doctrine of stare decisis draws a distinction between ratio decidendi, the binding part of a decision which must be followed, and obiter dictum, observations made by a judge in a case on issues which were present, or not material, in the case, or which arose in such a manner as not to require a decision. The obiter dictum is not binding in future cases but may be persuasive.

1.2. European Union Law

As Ireland is a member of the European Union (EU), EU law is an important part of the domestic legal order of the State. The obligations of EU membership entail that the Constitution and other national laws are subordinate to EU law whenever the Community has competence. An amendment of the Constitution was required to authorise the State to join the EU and to avoid a clash between provisions of the Constitution and EU law.

1.3. International Sources

Ireland is a signatory to many International Agreements and Treaties and is a member of many International Organisations. The Constitution provides that Ireland accepts the generally recognised principles of international law as governing relations between States.

Ireland is a dualist State and in order to have formal legal standing within the State, as opposed to between States, International Agreements must be incorporated into domestic law by the Oireachtas.

Ireland is a signatory to the European Convention on Human Rights since 1953 and since then, by way of the State's international legal obligations, citizens could rely upon its provisions before the European Court of Human Rights. Domestic legal effect has been given to the Convention's provisions by way of the European Convention on Human Rights Act 2003 which incorporated the ECHR into Irish law.

2. Other Sources

In the absence of formal legal rules, scholarly writing may be cited by counsel during a case and by a court in reaching its decision. Although there is debate as to whether it should apply at all and its influence may have waned in recent years, natural law and natural rights have been relied upon by the Courts in interpreting the Constitution and in the enumeration of constitutional rights not specifically provided for in the text of the Constitution.

3. Hierarchy of Legal Sources

The Constitution is at the apex of Ireland's legal system. Legislation, governmental and administrative decisions and practice may be reviewed against the Constitution for compliance.

The Constitution provides however, that it will not invalidate any acts or measures which are necessitated by membership of the EU. This is provided for in Article 29.4.6 of the Constitution. Thus EU law takes precedence over all national laws including the Constitution. Due to the fact that EU law provides that the methods of its implementation are to be determined by national procedural requirements, instruments implementing EU law must still be in accordance with procedural Constitutional requirements.

The European Convention on Human Rights Act 2003 enables individuals to rely on the provisions of the ECHR before Irish Courts. The ECHR has been incorporated at sub-constitutional level and the Constitution retains primacy. The Act requires that the courts interpret and apply national provisions, as far as is possible, in accordance with the precepts contained in the ECHR. If domestic legislation is not in accordance with the ECHR a Declaration of Incompatibility will issue.

The courts have held that principles of customary international law form part of domestic law by virtue of Article 29.3 of the Constitution, but only to the extent to which they do not conflict with the Constitution, legislation or common law. International Agreements may only be ratified if they are in accordance with the Constitution, otherwise a referendum will be required.

Legislation can be replaced or amended by subsequent legislation. Secondary legislation may be superseded by primary legislation, as may the power of delegation to make secondary legislation, but secondary legislation can not override primary legislation. The courts may strike down legislation on the ground that it is invalid having regard to the provisions of the Constitution (post-1937 legislation) or that it is inconsistent with the Constitution (pre-1937 legislation). There is a presumption that post-1937 legislation is consistent with the Constitution.

Decisions of courts can be superseded by legislative or constitutional enactments and subsequent decisions of courts of equal or higher rank.

4. Entry into Force of Supranational instruments

The Constitution as originally drafted was not compatible with the European Community law. For example, it provided that the Oireachtas was the sole legislating body in the State. For this reason a provision was inserted into the Constitution providing that it will not invalidate any law, act or measure necessitated by membership of the EU. However, it has been held that if the scope and objectives should change, for example, by way of a new Treaty, this must be put by way of referendum to the people and, if accepted by the people, a provision will be inserted confirming that the State may ratify such Treaty.

If EU law requires transposition by the State this is implemented by primary legislation or more usually by Statutory Instrument made by the Government or a Government Minister.

According to the Constitution, international agreements will become a part of domestic law if the Oireachtas so determine. This will usually be by way of an Act and an example is the European Convention on Human Rights Act. 2003. by which the Convention became incorporated into domestic law, with the result that individuals may rely on its provisions before domestic courts.

5. Authorities empowered to adopt rules of law

The Constitution provides that the Oireachtas, which is comprised of the Dáil (Lower House) and Seanad (Upper House) and the President, has 'the sole and exclusive power of making laws for the State' subject to the obligations of Community membership as provided for in the Constitution. Proposed legislation in the form of a Bill must be signed into law by the President in order to take

effect and if the President is in doubt as to the constitutionality of the Bill of proposed legislation he may convene the council of state, and if necessary refer the Bill to the Supreme Court for determination pursuant to Article 26 of the Constitution. .

As mentioned above the Oireachtas may delegate the power to make legislation to a Minister of Government or other authority and this power is strictly circumscribed by the delegating instrument. EU Directives are usually implemented by way of Statutory Instrument made by a Minister. The power to legislate may be delegated to a variety of bodies such as Government Ministers, statutory boards, semi-state bodies, regulatory bodies, expert bodies and local authorities.

Under the Constitution the Government are responsible for conducting external relations and may sign International Treaties and Agreements and join International organisations subject to constitutional requirements.

Under the common law system Judge-made law is binding.

6. Process of adoption of rules of law

6.1. Constitution

The first stage in making an amendment to the Constitution, under Article 46, is to initiate a Bill in the Dáil. This Bill must be passed by both Houses of the Oireachtas and must then be submitted in a referendum to the people for their affirmation or rejection. The proposal will be held to have been approved by the people if a majority of the votes cast are in favour of its enactment into law. A proposal put to referendum which is not to amend the Constitution will be vetoed where a majority of votes are against the proposal and the votes cast against the proposal amount to not less than one-third of the voters on the register. The Bill must be expressed as 'An Act to amend the Constitution' and must not contain any other proposal. If approved by the people, the President must sign the Bill and it 'shall be duly promulgated by the President as a law.'

6.2. Legislative procedure

The first step in making primary legislation is usually for a Bill to be initiated in either House of the Oireachtas. Every Bill initiated in the Dáil must be sent to the Seanad for consideration and amendments may be made which the Dáil is obliged to consider. However, if a Bill is initiated and passed in the Seanad, and is subsequently amended by the Dáil, it is deemed to have been initiated by the Dáil and must return to the Seanad for consideration.

Before a Bill is promulgated, it must be approved by both Houses of the Oireachtas and must be signed by the President into law. During the course of its legislative passage, a Bill may be subjected to amendments in the Dáil and the Seanad. However, the Constitution consolidates the supremacy of the popularly elected Dáil; Article 23 provides that where the Seanad has rejected or amended a Bill contrary to the wishes of the Dáil it is open to the Dáil to pass a resolution within 180 days deeming the Bill to have been passed by both Houses. The Seanad has the power to delay a Bill by up to 90 days but does not have the power to prevent it becoming an Act or to change it unless the Dáil agrees.

The vast majority of Bills are initiated in Dáil Éireann by a Government Minister.

Money Bills (e.g. Bills that deal with the imposition, repeal, remission or alteration or regulation of taxation and Bills that involve a charge on public funds) can only be initiated and passed by Dáil Éireann. This type of Bill is sent to the Seanad for 'recommendations'.

The final step in the legislative procedure is for the President to sign the Bill into law. The President may, following consultation with the Council of State, refer a Bill, or a particular section of a Bill, to the Supreme Court for determination of constitutionality. This is known as an Article 26 Reference. Once the Supreme Court decides that the Bill is constitutional, it can never again be challenged on constitutional grounds in the courts and the President is required to sign it into law. If it is determined that the Bill is repugnant to the Constitution, the President must decline to sign it into law.

6.3. Secondary Legislation

It is commonly provided for in parent statute that the delegated legislation it authorises may be annulled or approved by the Oireachtas. These provisions generally provide that instruments be 'laid before' either or both Houses of the Oireachtas who may annul it within a stated period of time. All secondary legislation implementing EU measures is subject to this annulment mechanism. Following enactment, certain statutory instruments must be deposited in designated libraries and a notice of their enactment must be published in the official Irish State gazette [Iris Oifigiúil](#).

6.4. International Law

The government may sign International Treaties or Agreements or join International Organisations, however it has been held that the government may not do so if it were to fetter the exclusive law-making power given to the Oireachtas or otherwise

breach the Constitution. For this reason, the courts have held that Treaties changing the scope and objectives of the European Union may not be assented to by the Government unless accepted by the people in a constitutional referendum.

7. Entry into force or national rules

Amendments to the Constitution enter into force after they have been accepted by the people and the Bill proposing the amendment has been signed by the President.

A Bill becomes law on the day that it is signed by the President and shall come into effect on that day unless the contrary is provided for in the Act. The President does not usually sign a Bill earlier than the 5th day or later than the 7th day after it has been presented. An Act may specify the date from which it is to take effect or may provide that a Minister may make a 'commencement order' (secondary legislation) to bring the Act, or part of the Act, into force. The President is obliged to promulgate a Bill by publication of a notice in *Iris Oifigiúil* stating that it has become law.

Secondary legislation will specify the date on which it is to come into operation.

Court decisions generally have force from the day on which they are made.

8. Means of resolution of conflicts between different legal sources

It is for the courts to determine any conflicts between different legal rules or sources.

Subject to the superior position of EU law, the Constitution is the fundamental law of the State and it takes precedence in any conflict with other laws. According to Article 34 of the Constitution, individuals may challenge the constitutional validity of legislation before the High Court. Such a decision may be appealed to the Supreme Court. Individuals may also claim that their constitutional rights or constitutional procedure have been breached by the actions of the State.

It is presumed that legislation made after the adoption of the 1937 Constitution is in accordance with the Constitution until the contrary is established.

Circumstances may arise in which provisions of the Constitution, particularly fundamental rights provisions, may conflict to some degree. The courts have employed several mechanisms to reach decisions in these cases including literal or grammatical interpretation, the historical approach, the purposive or harmonious approach, the doctrine of proportionality, the hierarchy of rights approach and the commitment to natural law and natural rights approach.

There have been instances when, consequent upon an unpopular constitutional determination or interpretation by the Courts, a referendum has been held to amend the Constitution.

If an individual claims that his or her rights under the European Convention on Human Rights have been breached by legislation he or she may seek a Declaration of Incompatibility from the courts.

EU law enjoys constitutional immunity as the Constitution provides that it will not invalidate any acts or measures necessitated by membership, although the means of implementing these acts or measures must abide by the Constitution.

Aside from constitutional questions, the validity of delegated legislation will be judged by its compliance with its parent statute.

Further information on the Irish legal system, legislation and the Constitution can be found at the following sites:

- <http://www.taoiseach.ie/>
- <http://www.courts.ie/Judgments.nsf/Webpages/HomePage?OpenDocument>
- <http://www.irishstatutebook.ie>
- <http://www.bailii.org/>

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