

Statute Law Revision Bill 2006

Screening Regulatory Impact Assessment

A – POLICY CONTEXT

Summary of the measure

The purpose of the proposed *Statute Law Revision Bill 2006* (“the Bill”) is to greatly reduce the amount of obsolete regulation on the Irish statute book, and to provide certainty to citizens and legal professionals as to exactly what statutes from the period prior to the foundation of the State continue to apply.

Background: the content of the statute book

The phrase “the statute book” is loosely used to describe the complex and often obscure body of legislation which has built up in relation to Ireland since the Norman invasion in 1169. Many of these laws have ceased to have any practical effect but have never been repealed. Their presence adds to the regulatory burden on the economy because they add uncertainty as to the precise state of the law. Many of these statutes enacted prior to 6th December 1922 are written in archaic language that is nowadays considered impenetrable, ambiguous or offensive. Furthermore, many were passed by parliaments which were foreign to and / or unrepresentative of the Irish people and therefore the statutes lack the democratic pedigree which our modern republic is entitled to expect. In addition, significant numbers of these statutes are effectively unavailable to the public, as they can only be found in publications which are out of print and difficult to locate.

Statute law revision

The process of *statute law revision* is concerned with repealing laws which are obsolete, spent or which have no continuing relevance. This is to be contrasted with *law reform*, which is concerned with changing the substantive content of law. Because the Bill is a statute law revision measure, it does not entail any change

in policy. It does not impose any regulatory burden in any way. Conversely, the removal of such obsolete statutes from the statute book reduces existing regulatory burdens on regulators and citizens alike, because such a process provides greater clarity as to the legislation that applies within the State.

The “White List”

Traditional statute law revision measures simply repeal old laws; they do not refer at all to the laws which remain. The novel feature of the Bill is that its effect will be to repeal all laws pre-dating the establishment of the Irish Free State on 6th December 1922 with the exception of those laws which are contained in a “white list”. Instead of listing what is to be *repealed*, the Bill will list what is to be *retained*. This will provide certainty about the state of the Irish statute book from prior to that date and will therefore reduce the regulatory burden. For ease of reference, the Acts consequentially repealed will also be appended to the Act, but the operative part is the “white list”. The Bill will retain in force 1,355 statutes, which will have the effect of repealing 3,135 statutes.

Other provisions in the Bill

The Bill also provides that all the Acts being retained in the “white list” are to be conferred with a short title. A number of early statutes do not have short titles. The conferring of such short titles will facilitate the citation and identification of statutes and will further facilitate regulatory reform.

The Bill will also allow courts to take account of historical sources of legislation. This is necessary because the original copies of many statutes were destroyed in 1922, and only copies now remain.

B – STATEMENT OF OBJECTIVES

The Taoiseach’s ultimate objective is to ensure that Ireland has a transparent modern code of laws passed by the constitutionally elected representatives of the

Irish people, that is easily accessible by all citizens. To that end, he is working towards the ultimate repeal of all legislation enacted prior to 6th December 1922, albeit that the content of some such legislation will need to be re-enacted in modern legislation.

The Taoiseach's immediate objectives are:

- (a) to repeal all public general legislation enacted prior to 6th December 1922 which is entirely obsolete, and
- (b) to identify all public general legislation enacted prior to 6th December 1922 which continues to apply.

The immediate objectives are clearly important steps toward the achievement of the ultimate objective. A process of repeal and re-enactment in more modern form of public general statutes contained on the "white list" will follow. Private, local and personal Acts passed by various pre-independence parliaments will require subsequent consideration.

C – IDENTIFICATION OF OPTIONS/CHOICES

Option 1 - do nothing. This would entail abandoning the Taoiseach's objectives and leaving a large volume of obsolete pre-independence legislation on the statute book.

Option 2 - pursue the traditional method of statute law revision, which is merely to repeal specific Acts. This would reduce the volume of obsolete regulation but would fail to identify the statutes which remain in force.

Option 3 - pursue the "white list" policy outlined above. This will have the effect both of eliminating obsolete legislation and of providing citizens, regulators and legal professionals with certainty as to the laws which apply in Ireland.

D – IDENTIFICATION OF COSTS AND BENEFITS

Option 1 entails no direct costs but no benefits. A certain amount of indirect cost to the economy which currently exists would continue; this is the cost arising out of uncertainty in relation to the statute book.

Option 2 entails minimal costs, being only the costs of the research for, and enactment of, the revision Bills. No costs would continue after enactment. There would be some economic benefit in the reduction of the volume of regulation enacted prior to 6th December 1922.

Option 3 entails the same costs as Option 2 (i.e. minimal costs). The benefits would be more substantial as, in addition to reducing the volume of regulation, it would also provide certainty as to the extent of the statute book and would facilitate further measures to streamline the body of existing regulation. For these reasons, Option 3 has been chosen. The Bill will implement this choice.

The actual costs of the project to examine legislation enacted prior to 6th December 1922 primarily comprise wage costs, which amounted to €79,800 in 2005 and are expected to amount to less than €150,000 in 2006. Costs have also arisen in relation to advertising of the public consultation process in relation to the original pre-Union repeal process. The total amount of such advertising costs have been €29,348.55.

Summary of Costs Table:

Year	Initial Costs to Exchequer	Initial Costs to Third Parties	Staff Costs (industry)	Compliance Costs (Industry)	Costs to consumers	Total

0	79,800	0	0	0	0	79,800
1	179,350	0	0	0	0	179,350
Total	259,150	0	0	0	0	259,150

As indicated previously, benefits arise in relation to the greater clarity that will be afforded to regulators, citizens and the legal profession, as regards that legislation that continues to apply in Ireland. Regulators and the legal profession will be able to say definitively what legislation that pre-dates the foundation of the State continues to apply in Ireland. This will also make it easier for regulators to identify legislation enacted prior to 6th December 1922 that needs to be re-enacted in more modern form.

E – IMPACTS OF THE BILL AS PROPOSED

The Bill will have a positive impact on the rights of citizens by effecting the repeal of numerous old statutes which are not consistent with modern norms.

The Bill will have a marginally positive impact on national competitiveness by reducing and clarifying the regulatory burden on the economy.

The Bill will have no impact on socially excluded groups or vulnerable groups, the environment, or economic markets.

The Bill will not impose any compliance burden.

F – CONSULTATION

Two phases of substantial public consultation have taken place; one each in relation to statutes passed:

- (a) prior to 1st January 1801, and then

(b) between 1st January 1801 and 5th December 1922.

These phases of consultation have resulted in submissions and inquiries from, and communications with, 141 individuals and bodies. The most significant submissions were from interested parties who were anxious to ensure that legislation which is still relevant to them is not being proposed for repeal. For example, there was a detailed correspondence with the Order of Malta in which it was demonstrated to the Order that none of the Acts which related to them and which were proposed for retention have any continuing relevance.

One school (Wilson's Hospital School in County Westmeath) made representations to the project because a statute that established the school was not listed in the schedule of Acts to be retained. The reason why it was not in the list was that the statute in question was a private Act. This is a category of legislation which will not be affected by the proposed Bill. However, arising from this submission and in order to clarify the situation for others in a similar situation, notices were put to on the website of the Office of the Attorney General, so that interested bodies can be reassured that private legislation relating to them is being retained.

All of the bodies who were concerned about the retention of their legislation have been reassured that statutes which are still relevant will be retained.

There is a detailed and ongoing process of consultation with the Church of Ireland. Because this was the established Church in Ireland for many centuries, many matters which would otherwise have been the subject of internal rules and procedures were actually governed by legislation. This would include the organisation of parishes and matters relating to Church property. Some of that legislation – particularly as it relates to land ownership and trusts – remains relevant and will be retained. The Bill will only repeal statutes which the Church of Ireland is satisfied are entirely obsolete.

Some of the inquiries during the consultation were for copies of Acts which had been highlighted in the media when the public consultation phase was announced. For example, the Irish Jewish Museum received copies of Acts relating to Jews which had been received media attention.

A number of academic and legal institutions contacted the project as a result of the consultation. The most notable of these is a unit in Queen's University Belfast, called the Irish Legislation Project, which has offered significant help and reassurance to the project which is examining legislation enacted prior to 6th December 1922.

A number of the inquiries were made in Irish, and these were answered in Irish.

An intensive process of consultation with Government Departments and other State bodies is nearing completion. The draft schedules of the Bill have been amended to take these strands of consultation into account.

G – ENFORCEMENT AND COMPLIANCE

There will be no need for any measure relating to enforcement or compliance.

F – REVIEW

Once the Bill has been enacted, the Office of the Attorney General, in consultation with the relevant Departments, will keep the “white list” under review with a view to repealing or re-enacting in modern language the remaining statutes, at the earliest opportunity.