

**SOURCES OF LAW OF THE CHURCH OF IRELAND:
IDENTIFICATION, INVESTIGATION AND REFORM**

A THESIS SUBMITTED BY

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This work has not been submitted in substance for any other degree or award at this or any other university or place of learning, nor is being submitted concurrently in candidature for any degree or other award.

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Summary

Since the disestablishment of the Church of Ireland in 1871 there has been negligible academic exploration and scrutiny of its laws. This enterprise seeks to advance scholarship of that law generally. As an initial contribution, the sources of law of the Church of Ireland, until now never the subject of singular study, are identified and investigated.

Part One identifies the sources: in the law of the State; in the Church's primary and secondary sources; and in tertiary sources (quasi-legislation and soft law), including putative sources – custom, the wider Anglican legal economy, and ecumenical input.

In Part Two, case studies in each of the arenas – civil, primary and secondary, and tertiary – investigate three concerns. First, the increasing impact of civil law on church law is evaluated as a recent phenomenon. Second, the internal church sources are examined to assess their accessibility, a test fundamental to the Rule of Law. Third, the extensive materials of recent decades are scrutinised and demonstrate an ever-growing reliance on informal instruments – quasi-legislation and soft law – governing the life of the Church.

A detailed survey of the opinions and knowledge of church members undertaken in 2011 tests and informs the analysis of the sources. Throughout the study, however, the principal reliance is on a formidable array of primary materials: a broad spectrum of State laws; contemporary ecclesiastical legal materials (national and local); a wide range of historical documents, including the original papers of the General Convention 1870, the Minutes of the Legal Committee, one-hundred and forty-four Journals of the General Synod, eight centuries of pre-disestablishment statutes, and one thousand and fifty-four statutes of the General Synod.

This identification and investigation of the sources of law of the Church of Ireland highlights weaknesses and makes the case for reform. The conclusion sets out the proposals for reform.

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Dedication

I dedicate this work to my late parents – George and Kay Colton –
who gave their all for my education,
remembering how, even on her last day, my mother enquired,
‘Have you got that thing finished yet?’

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Abbreviations

Abbreviations marked * are utilised in footnotes only

ACC	Anglican Consultative Council
*ACNS	Anglican Communion News Service
ACLAN	Anglican Communion Legal Advisers' Network
* Arm	Church of Ireland Diocese of Armagh
* <i>Australia</i>	<i>The Constitution of the Anglican Church of Australia</i> (June 2003)
BCE	Before the Common Era
BCP	<i>The Book of Common Prayer</i>
BEGSCI	Board of Education of the General Synod of the Church of Ireland
* <i>Canada</i>	<i>Handbook of the General Synod of the Anglican Church of Canada</i> (16 th edition, 2010)
CE	Common Era
CCI	Constitution of the Church of Ireland (Church of Ireland 2003)
* CCL	The Code of Canon Law of the Roman Catholic Church
* CCR	Church of Ireland Dioceses of Cork, Cloyne and Ross
* C&O	Church of Ireland Dioceses of Cashel and Ossory
CICPB	Church of Ireland Clergy Pensions Board
CICPF	Church of Ireland Clergy Pension Fund
* Clo	Church of Ireland Diocese of Clogher
* Conn	Church of Ireland Diocese of Connor
CPF	Clergy Pensions Fund
CRAB	Clergy Remunerations and Benefits Committee
* D&D	Church of Ireland Dioceses of Down and Dromore
* D&G	Church of Ireland Dioceses of Dublin and Glendalough
* D&R	Church of Ireland Dioceses of Derry and Raphoe
* E&A	Church of Ireland Dioceses of Elphin and Ardagh
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
* <i>England</i>	<i>The Canons of the Church of England</i> (6 th ed., Church House Publishing 2000)
* ENS	Episcopal News Service
EU	European Union

HLE	Halsbury's Laws of England
* HoB	House of Bishops of the Church of Ireland
* <i>Indian Ocean</i>	<i>La Constitution de la Province Ecclésiastique de l'Océan Indien</i> (1973)
JGS	Journal of the General Synod of the Church of Ireland
JLG	Joint Liturgical Group
* <i>Hong Kong</i>	<i>Constitution and Canons of the Province of Hong Kong Sheng Kung Hui</i> (October 2001)
* KEA	Church of Ireland Dioceses of Kilmore, Elphin and Ardagh
* KIL	Church of Ireland Diocese of Kilmore
LARSN	Law and Religion Scholars Network, Centre for Law and Religion, Cardiff University Law School
LAC	Liturgical Advisory Committee
* L&K	Church of Ireland Dioceses of Limerick and Killaloe
* M&K	Church of Ireland Dioceses of Meath and Kildare
* <i>Melanesia</i>	<i>The Constitution of the Church of the Province of Melanesia</i> (2002)
* <i>New Zealand</i>	<i>Code of Canons and Constitution of the Anglican Church in</i> <i>Aotearoa, New Zealand and Polynesia</i> (September 2004)
* <i>Nigeria</i>	<i>The Constitution of the Church of Nigeria (Anglican Communion)</i> (2002)
PCLCCAC	<i>The Principles of Canon Law Common to the Churches of the Anglican</i> <i>Communion</i> (Anglican Consultative Council 2008)
PRSA	Personal Retirement Savings Account
RCB	Representative Church Body
SEC	Secondary Education Committee
SGS	Statute of the General Synod of the Church of Ireland
* <i>Scotland</i>	<i>Code of Canons and Digest of Resolution of the Scottish Episcopal</i> <i>Church</i> (General Synod of the Scottish Episcopal Church 2009)
* <i>Southern</i> <i>Africa</i>	<i>Constitution and Canons of the Church of the Province of Southern</i> <i>Africa</i> (CPSA 2004)
* <i>Sudan</i>	<i>The Constitution of the Province of the Episcopal Church of the Sudan</i> (2002)
TD	<i>Teachta Dála</i> (Member of the Lower House of the Irish Parliament)
TEC	The Episcopal Church (of the United States of America)

- * *TEC* *Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America* (Church Publishing 2003)
- * TKA Church of Ireland Dioceses of Tuam, Killala and Achonry
- UDHR Universal Declaration of Human Rights
- * *Wales* *The Constitution of the Church in Wales* (Two Vols.) (Church in Wales 2005)
- * *West Africa* *Constitution and Canons of the Church of the Province of West Africa* (Anglican Press 1990)

Glossary of Irish Language Terms

<i>An t-Árd Chláraitheoir</i>	The Registrar-General
<i>An Bord Pinsean</i>	The Irish Pensions Board
<i>An Bord Pleanála</i>	The Irish Planning Appeals Board
<i>Bunreacht na hÉireann</i>	The Constitution of Ireland 1937
<i>Ceann Comhairle</i>	The Speaker of <i>Dáil Éireann</i>
<i>Dáil Éireann</i>	The House of Representatives or Lower House of the Irish Parliament
<i>Dúchas</i>	The Heritage Service
<i>Iris Oifigiúil</i>	The Irish State Gazette
<i>Leas Ceann Comhairle</i>	The Deputy Speaker of <i>Dáil Éireann</i>
<i>Oireachtas</i>	Irish Parliament
<i>Saorstát</i>	Free State
<i>Saorstát Éireann</i>	Irish Free State
<i>Seanad Éireann</i>	The Senate or Upper House of the Irish Parliament
<i>Tánaiste</i>	The Deputy Prime Minister of Ireland
<i>Taoiseach</i>	The Prime Minister of Ireland
<i>Teagasc</i>	The Irish Agriculture and Food Development Authority
<i>Uachtaráin na hÉireann</i>	The President of Ireland

Table of Cases

Ireland

- A v Governor of Arbour Hill Prison [2006] IESC 45 ~ 208n
- AG v Becher, [1910] 2 IR 251 ~ 197n
- AG (Society for the Protection of Unborn Children (Ireland) Ltd) v Open-Door Counselling Ltd [1988] IR 593 ~ 21n.
- Arnott v Arnott [1906] 1 IR 127 ~ 197n
- Article 26 and the Employment Equality Bill 1996, In re [1997] IR 321 ~ 11, 39n
- Article 26 and the Regulation of Information (Services Outside the State for the Termination of Pregnancies) Bill 1995 [1995] 1 IR 1 ~ 56n
- Bishop of Kildare v Archbishop of Dublin [1724] 2 Bro Parl Cas 179 ~ 229n
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- Boulter, In Re, Representative Church Body v Cave and others [1930] IR 589 ~ 71n
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- Carmody v The Minister for Justice, Equality and Law Reform [2010] 1 IR 635, [2009] IESC 71 ~ 44n
- City View Press Ltd v *An Comhairle Oiliúna* [1980] IR 381 ~ 18
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- Gloria (Ireland's Lesbian and Gay Choir) v Cork International Choral Festival Ltd
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- Henry Denny & Sons (Ireland) Ltd v Minister for Social Welfare [1998] 1 IR 34
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- Howley's Estate, Re [1940] IR 109 ~ 197n
- Incorporated Society in Dublin for Promoting English Protestant Schools in Ireland v
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- Irish Shell Ltd v Elm Motors Ltd [1984] IR 200 ~ 19n
- JD v The Residential Institutions Redress Review Committee [2010] 1 IR 262, [2009]
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- K(M) v Minister for Justice, Equality and Law Reform [2005] IEHC 247 ~ 44n
- Kelly v Walsh [1948] IR 388 ~ 197n
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- Kirwan v Technical Engineering and Electrical Union [2005] ELR 177 (HC) ~ 165n
- Kylemore Bakery Ltd v Minister for Trade, Commerce and Tourism [1986] ILRM 526;
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Wright v Day [1895] 2 IR 337 ~ 24n, 167n, 168

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Bishop of Exeter v Marshall (1868) LR 3 HL 17 ~ 60

Bishop of Natal v Gladstone LR 3 Eq 1 ~ 12, 15 68n

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Blackpool Corporation v Locker [1948] 1 KB 349 ~ 214, 281, 282n,

Brown v Bishop of Carlisle (2003) 7 EccLJ 239 ~ 24n, 170n

Le Case de Tanistry (1608) Davis Law Reports 28; 80 Eng Rep 516 ~ 127

Caus, Re [1934] Ch 162 ~ 197n

Chalcroft v Bishop of Norwich (1995) Unreported ~ 24n, 167n, 170n

Churchwardens of Market Bosworth v Rector of Market Bosworth (1699) 1 Ld Raym.
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Coker v Diocese of Southwark [1995] ICR 563 ~ 169, 169n

Combe v De la Bere (1881) 6 PD 157 ~ 81n

Commissioners for Special Purposes of Income Tax v Pemsel [1891] AC 531
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Copinger v Crehane (1877) LR 11 Eq 429 ~ 197n

Davies v Presbyterian Church of Wales [1986] 1 WLR 323, [1986] 1 All ER 705
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Diocese of Southwark and Others v Coker [1998] ICR 140 ~ 24n, 169n, 170n,

Elphinstone v Purchas [1870] L.R. 3 A & E 66 ~ 73n

Employment of Church of England Curates, Re [1912] Ch 563 ~ 24n, 167n

Employment of Ministers of the United Methodist Church, Re (1912) 107 LT 143

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Forbes v Eden [1867] LR 1HL Sc and Div 568 ~ 11, 68n

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General Assembly of the Free Church of Scotland v Lord Overtoun [1904] AC 515 ~ 11

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Guru Nanak Sikh Temple v Sharry EAT 21/12/90 (145/90) ~ 169n

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Kemp v Wickes (1809) 3 Phillim. 264 ~ 82n

Johnson v Sargant [1918] 1 KB 101 ~ 213

Long v The Bishop of Capetown 1 Moo P C (NS) 411 ~ 11n, 15

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Mercer v Denne [1905] 2 Ch 538 ~ 127

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Morice v Bishop of Durham [1803-1813] All ER Rep 451 ~ 196n, 197n

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Newbery v Goodwin (1811) 1 Phillim 282 ~ 81n

Parker v Orr [1966] 1 ITR 488 ~ 167n

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Pathak v The Hindu Centre [2001] UKEAT 0730_01_0911 ~ 169n

Percy v Church of Scotland Board of National Mission 2001 SC 757, 2001 SLT 497

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Percy v Church of Scotland Board of National Mission (2005) UKHL 73 ~ 170, 172

Pharmaceutical Society of Great Britain v Dickson [1970] AC 403 ~ 110n

Powell v Representative Body of the Church in Wales [1957] 1 All ER 400

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President of the Methodist Church v Parfitt [1983] 3 All E R 747 ~ 24n, 169n, 169

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- Preston (formerly Moore) v The President of the Methodist Conference [2012] QB 735, [2011] EWCA Civ 1581 ~ 171
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- R v Coney and Others (1881-82) LR 8 QBD 534 ~ 104n
- R v Criminal Injuries Compensation Board, ex parte Schofield [1971] 1 WLR 926 ~ 278n
- R v Home Secretary, ex parte Hosenball [1977] 1 WLR 766 ~ 111, 277n
- R v Liverpool Corporation, ex parte Liverpool Taxi Fleet Operators Association [1972] 2 QB 299 ~ 279n
- R v Registrar General, ex parte Segerdal [1970] 2 QB 697 ~ 10n
- R v Secretary of State for Foreign and Commonwealth Affairs [1982] 2 WLR 641 [1982] QB 892 [1982] 2 All ER 118 ~ 126n
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- R v Secretary of State of the Home Department ex parte Ram [1979] 1 WLR 148 ~ 277n
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- Rogers v Booth [1937] ICR 900 ~ 24n, 167n
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- St Mary's, Westwell, Re [1968] 1 WLR 513 ~ 60
- St Thomas, Pennywell, Re [1995] 4 All ER 167 ~ 81n
- Schmidt v Secretary of State [1969] 2 Ch 149 ~ 10n
- Scottish Burial Reform and Cremation Society Ltd v Glasgow City Corporation [1968] AC 138 ~ 196n
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- Sheppard v Bennett (1869-72) LR 3 A&E 16, (1871-73) LR 4 PC 350, (1871-73) LR 4 PC 371 ~ 100
- Shipdam's Case 2 Rolle Abr 221 ~ 133n

Singh v Gurdwara [1990] LC 309 ~ 169n

Sumner v Wix [1870] L.R. 3 A & E 58 ~ 73n

Thornber v Wilson (1855) 3 Dr 245 ~ 197n

Turns v Smart, Carey and the Bath and Wells Diocesan Board of Finance [1991] ICR 140 ~ 167n

Van Duyn v The Home Office [1975] Ch 358 ~ 10n

Westerton v Liddell [1855] Moore's Special Reports 133 ~ 73n

Wolstanton Ltd and A-G of Duchy of Lancaster v Newcastle-under-Lyme Corporation [1940] AC 860, 876 ~ 127

Wyld v Silver [1963] Ch 243 ~ 128n

Yewens v Noakes (1880-81) LR 6 QBD 530 ~ 168n

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Autio v Finland (App. 17086/90), Decision of 6th December 1991, (1992) 72 DR 245
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Barry v Ireland [2005] ECHR 865 ~ 45n

The Belgian Linguistic Case (No.2) Judgment of 23rd July 1968, Series A, No. 6;
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Bosphorus Airways v Ireland [2005] ECHR 440 ~ 45n

Buscarini and others v San Marino (App. 24645/94), Judgment of 18th February 1999,
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Campbell and Cosans v United Kingdom Judgment of 25th February 1982, Series A,
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Chappell v United Kingdom (App. 12587/86) Decision of 14th July 1987, (1987) 53 DR 241 ~ 46n

Church of X v United Kingdom (App. 3798/68), Decision of 17th December 1968 (1969) 12 Yearbook 306 ~ 46n

Cyprus v Turkey (App. 25781/94), Judgment of 10th May 2001; (2002) 35 EHRR 731 ~ 45n

D v France (App. 10180/82), Decision of 6th December 1983, (1983) 35 DR 199 ~ 46n

Dahlab v Switzerland (App. 42393/98), Admissibility Decision of 15th February 2001 ~ 46n

DG v Ireland [2002] ECHR 44 ~ 45n

Grandrath v Federal Republic of Germany (App. 2299/64), Report of commission, 12th December 1966, Decision of Committee of Ministers, 29th June 1967, (1967) 10 Yearbook 626 ~ 46n

Hasan and Chaush v Bulgaria (App. 30985/96), Judgment of 26th October 2000; (2002) 34 EHRR 1339 ~ 46n, 185n

Heaney and McGuinness v Ireland (2001) 33 EHRR 12 ~ 45n

Independent News and Media and Independent Newspapers Ireland Ltd v Ireland [2005] ECHR 402 ~ 45n

ISKCON and others v United Kingdom (App. 20490/02), Decision of 8th March 1994, (1994) 76-A DR 41 ~ 46n

Johnston v Ireland (1987) 9 EHRR 203 ~ 38, 45n

Kalaç v Turkey (App. 20704/92), Judgment of 1 July 1997, (1999) 27 EHRR 552 ~ 46n

Karaduman v Turkey (App. 16278/90), Decision of 3rd May 1993, (1993) 74 DR 93

~ 46n

Keegan v Ireland (1994) 18 EHRR 342 ~ 45n

Kjeldsen and other v Denmark, Judgment of 7th December 1976, Series A, No. 23;

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Knudsen v Norway, Decision of 8th March 1985, (1985) 42 DR 247 ~ 46n

Kokkinakis v Greece Judgment of 25th May 1993, Series A, No. 260-A; (1994) 17

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Larissis and others v Greece (Apps. 23772/94, 26377/94 and 23678/94), Judgment of

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Lautsi v Italy App no 30814/06 (ECtHR, 18 March 2011) ~ 161n

Lawless v Ireland (1961) 1 EHRR 13 ~ 36n, 45n

Manoussakis and others v Greece (App. 18748/91), Judgment of 26th September 1996,

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² Secondary ecclesiastical legislation, together with quasi-legislation and soft law provisions are listed in the Bibliography page 398; in addition, a detailed analysis of delegated legislation, quasi-legislation and soft law provisions is contained in Appendix G page 372.

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⁴ There are 1054 Statutes; a comprehensive index to the Statutes is to be found in JGS [2012] 361-95.

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INTRODUCTION

A lawyer must know where to find particular rules which apply to the problem with which he or she is presented and where those rules fit into the overall scheme and if there is a conflict, which prevails.¹

This is no less true of church lawyers and church law. Robert Phillimore, in 1895, summarising the sources of law for the Church of England, said:

The law of the Church of England is, then, derived from the leading general councils of the undivided church, from a practice and usage incorporating portions of the general canonical jurisprudence, from provincial constitutions, from canons passed by her clergy and confirmed by the crown in convocation, and from statutes enacted by parliament, that is, the crown, the spirituality and the temporality of the realm.²

The twenty-first century canon lawyer and ordinary Church member alike, face a more complex pursuit than that delineated by Phillimore, as they seek to establish the sources of ‘the laws of the Church of Ireland’: a term used by the Church of Ireland³ itself.⁴ Fundamentally, sources of law should be identifiable and publicly accessible.⁵

In its linguistic sense, ‘source’ is either ‘the point or place from which something originates’; or ‘a spring that forms the starting point’; or ‘a person, book, organisation’ which ‘creates, issues, or originates something’ or ‘from which information, evidence etc is obtained.’⁶ It is a point of origin: a ‘body or process by which energy or a component enters a system.’⁷ In Latin, ‘source’ is *fons* (a spring, fountain or origin) with related etymology in *fundus* (the lowest part, the bottom, the ground, the foundation or the authority).

¹ Raymond Byrne and J Paul McCutcheon, *The Irish Legal System* (Butterworths 2003) 5.

² Sir Robert Phillimore, *The Ecclesiastical Law of the Church of England* (2nd edn, Sweet and Maxwell 1895) 16.

³ The Church of Ireland, as a national church, encompasses two legal jurisdictions: Northern Ireland and the Republic of Ireland. For the purposes of delimiting the scope of this study, the primary focus in this thesis is the legal framework and jurisdiction of the Republic of Ireland, albeit with references to Northern Ireland and other jurisdictions where relevant.

⁴ See eg JGS [2010] 43.

⁵ *Fothergill v Monarch Airlines Ltd.* [1981] AC 251, 279-80 Lord Diplock: ‘Elementary justice or, ... the need for legal certainty demand that the rules by which the citizen is to be bound should be ascertainable by him (or, more realistically, by a competent lawyer advising him) by reference to identifiable sources that are publicly accessible.’

⁶ *Collins English Dictionary* (6th edn, HarperCollins 2003).

⁷ *Concise Oxford English Dictionary* (12th edn, OUP 2011).

Many legal texts, but by no means all, set out the sources of law in a particular area.⁸ Some legal disciplines, such as International Law, set out the sources of law.⁹ In contrast, nowhere in the formal codes or literature of the Church of Ireland are the sources of law for the church set out, delimited or delineated. In setting out to identify *The Principles of Canon Law Common to the Churches of the Anglican Communion* (hereinafter ‘PCLCCAC’)¹⁰ the Anglican Communion Legal Advisers’ Network defined the parameters of a ‘principle of canon’ law’ as:

(...) a foundational proposition or maxim of general applicability which has a strong dimension of weight, is induced from the similarities of the legal systems of the churches, derives from the canonical tradition or other practices of the church, expresses a basic theological truth or ethical value, and is about, is implicit in, or underlies canon law.¹¹

‘Source’ may be used in a variety of ways. Colloquially, it is the legal origins of rules, knowing where and how to find the law and how to determine the relationship between laws.¹² ‘Where to find the law’ of the Church of Ireland, is a primary motivation of this project. The question of validity and the binding force of law cannot be disconnected from the enterprise. Different, but closely related, are the questions of ‘whether or not legally binding force has been attributed to them’ and legal effect:¹³ core concerns in relation to tertiary sources.¹⁴

A source may be categorised as the idea in which the law originates (a *material source*); as the place where the law is found (a *formal source*); as that from which the law derives its force and validity (an *institutional source*, in terms of the body - political or socio-legal - which has competence to make the law); or as the form which the law takes (an *instrumental source*).

⁸ Contrast eg, on the one hand, Raymond Byrne and J Paul McCutcheon, *The Irish Legal System* (4th edn, Butterworths 2003) ch 1, and Maeve Regan ‘Sources and Institutions’ in Maeve Regan (gen ed), *Employment Law* (Tottel Publishing 2009) ch 1, and Mark Hill, *Ecclesiastical Law* (3rd edn, OUP 2007) ch 1, with, on the other hand, Dympna Glendenning, *Education and the Law* (2nd edn, Bloomsbury Professional 2012), and B McMahon and W Binchy, *Law of Torts* (3rd edn, Tottel Publishing 2005).

⁹ Statute of the International Court of Justice, Article 38(1): treaties and conventions, international custom, general principles of law and the ‘subsidiary sources’ (judicial decisions and legal teachings); see generally Hugh Thirlway, ‘The Sources of International Law’ in Malcolm D Evans (ed), *International Law* (2nd edn, Oxford University Press 2006) ch 4.

¹⁰ *The Principles of Canon Law Common to the Churches of the Anglican Communion* (Anglican Consultative Council 2008).

¹¹ PCLCCAC, Definitions, 94-95.

¹² See eg Thomas O’Malley, *Sources of Law* (2nd edn, Round Hall Sweet & Maxwell 2001).

¹³ Linda Senden, *Soft Law in European Community Law* (Hart Publishing 2004) 36 and 240.

¹⁴ See Part One: Chapter Three and Part Two: Chapter Three.

Legal systems utilize additional categorisations. The body of principles and rules in a legal system are, normatively, classified as *primary* and *secondary* (delegated or subsidiary), with a third category - *tertiary sources* - embracing elements such as historical, quasi-legislation, soft law and nebulous sources. A further distinction may be made between *external* and *internal* sources: for the purposes of this study, the expression ‘external law’ denotes the civil law (the law of the State, European and International Law) and ‘internal law’ denotes the juridical instruments of the Church of Ireland.

The sources of law for the post-disestablishment Church of Ireland have never been the subject of specific identification or investigation. Prior to 1871, commentaries either treated of the entirety of church law or were handbooks for specific audiences.¹⁵ Through identification and investigation of the sources of law this dissertation seeks to enhance an understanding of the law of the Church of Ireland. This study undertakes a systematic identification of those sources in order to obviate uncertainty, generate understanding, stimulate awareness, and open up the possibility of reform. The broader intention is to advance the study of the law of the Church of Ireland generally.¹⁶

This is achieved by identification and evaluation of the primary materials (Part One), and in the case of each sphere of source a particular challenge is investigated in order to present the case for raising awareness and possible reform (Part Two). By means of a survey undertaken in June 2011, problems associated with the legal sources are identified (and alluded to throughout both Parts).¹⁷

The survey attests to a positive affirmation of the place and role of law within the Church of Ireland: that it is relevant;¹⁸ that it is part and parcel of the work of the church;¹⁹ that it does not obstruct that work;²⁰ that it assists the church;²¹ and, that it is

¹⁵ For a commentary see eg Edward Bullingbrooke, *Ecclesiastical Law or, the Statutes, Constitutions, Canons, Rubricks, and Articles of the Church of Ireland methodically digested under Proper Heads with a Commentary Historical and Juridical: Two Volumes* (Boulter Grierson 1770); for a handbook see eg Edward A Stopford *A Handbook of Ecclesiastical Law and Duty for the Use of The Irish Clergy* (Hodges, Smith and Co 1861).

¹⁶ Similarly, the starting point of a recent study of the basis of the legal authority of the Anglican Church in New Zealand is the setting out of ‘sources of authority’: Noel Cox, *Church and State in the Post-Colonial Era: the Anglican Church and the Constitution in New Zealand* (Polygrapha Ltd 2008) ch 1 (ecclesiastical sources) and ch 2 (secular sources); Noel Cox, ‘Legal aspects of Church-State relations in New Zealand’ [2010] ALRS; (2010) 8(1) *Journal of Anglican Studies* 9.

¹⁷ The basis of the survey and the entirety of its outcomes are presented in Appendix A.

¹⁸ Bishops – 90%; chancellors – 88%; registrars – 82%; clergy – 90% and laity 91%.

¹⁹ Bishops- 90%; chancellors – 100%; registrars – 100%; clergy – 94.5% and laity – 92%.

considered essential to the church's ministry and mission.²² Equally, the survey establishes that there are uncertainties about what, in fact, are the church's sources of the law.

Part One: Chapter One delimits the over-arching scope and dominance of civil law sources on the life of the church. Turning to internal sources of law these are separated into primary sources and secondary sources (set out in Part One: Chapter Two) and tertiary sources, including quasi-legislation or soft law together with a variety of intangible or putative sources (Part One: Chapter Three).

Drawing on the sources and on specific laws governing spheres of the church's life and activity, the case for reform is made in Part Two in which three case studies are undertaken and the sources investigated.

Part Two: Chapter One examines further the civil law sources set out in Part One: Chapter One and, shows that these sources have more than ever, in recent decades, had an impact on the Church of Ireland. In certain respects this has made the church self-preoccupied, uncertain and fearful in relation to the civil law. The second case study, stimulated by the delineation of the internal primary and secondary sources of church law set out in Part One: Chapter Two, examines (in Part Two: Chapter Two) the issue of accessibility of those sources with a special focus on the pre-disestablishment ecclesiastical law. The final case study (in Part Two: Chapter Three) turns afresh to the tertiary sources considered in Part One: Chapter Three and seeks to show that the Church of Ireland is increasingly relying on quasi-legislation and soft law, and that this posits challenges.

The conclusion not only summarises the attainments of both Parts, but provides impulses for reform including the possibility that this presentation of sources might provide a basis for formal review of the multifarious and multifaceted sources of law for the Church of Ireland. There are too many sources: in a small, voluntary unincorporated association this tends towards confusion and uncertainty. The clear identification and setting out of the sources serves as an impetus for education and awareness-raising throughout the church in general, amongst its ecumenical partners, and those who wish

²⁰ Bishops – 90%; chancellors – 88%; registrars – 82%; clergy – 81% and laity – 78%.

²¹ Bishops – 90%; chancellors – 100%; registrars – 100%; clergy – 86% and laity – 87% .

²² Bishops – 100%; chancellors – 88%; registrars – 100%; clergy – 81% and laity – 79%.

to understand more about the law of the Church of Ireland, particularly the practitioners of law in the State and those who are called upon to assist the church in the administration of its law.

The three case studies in Part Two provide the impetus for reform. Each of the issues – the impact of the civil law, the inaccessibility of sources, and the growing reliance on quasi-legislation and soft law – needs to be addressed so that the Church of Ireland can more fully understand its experiences in the contemporary world. The question of accessibility prompts a specific review of ecclesiastical law as a source and raises the possibility of further consolidation or codification. In response to the dilemmas posed by quasi-legislation and soft law, specific tests are suggested and recommendations are made. Collectively these three case studies are important in terms of the church's self-understanding, as a catalyst of education and review of the law of the church.

PART ONE

IDENTIFICATION OF THE SOURCES

PART ONE: CHAPTER ONE

CIVIL LAW SOURCES OF LAW FOR THE CHURCH OF IRELAND

Introduction

Law governing the life of the Church emanates from two principal sources: the law of the State and laws made by the Church itself. The simplicity of this statement belies the complexity and variety of sources that the Church has depended on, and increasingly relies on today. The apparent polarity of the two obscures the historic connectedness between the common law on the one hand and canon law on the other: canon law is, after all, one of the sources of the Common Law.¹

The Church's sources of laws pose issues, as will be manifest in the case studies in Part Two garnered from analysis of the narrative which needs first to be set out in Part One. This account begins with a challenging reality: there is uncertainty within the Church of Ireland regarding the sources of its own law, which is exacerbated by a lack of awareness of the breadth of those sources.

This uncertainty and lack of awareness will be attested to at each stage of Part One with reference to the survey. More important, they render imperative the task of identifying the sources of the law of the Church of Ireland. Then the scene is set for the investigation by way of case studies. These, in turn, provide signposts for reform.

This chapter commences that task by engaging with the civil law sources, a starting-point warranted by the priority of the civil law. This supremacy presupposes a clear grasp of certain preliminary, defining matters: the State's approach to religious institutions, the principle of non-interference in the internal affairs of those bodies, the legal status of religious entities and the State's view of canon law.

Then, for clarity, the framework of sources of Irish law will be described. The interaction between these and religious institutions such as the Church of Ireland is explained with reference to *Bunreacht na hÉireann* (hereinafter 'the Irish Constitution');² as well as primary and secondary sources. State law foundational to the

¹Per Kennedy CJ, in *O'Callaghan v O'Sullivan* [1925] 1 IR 90, 108.

² *Bunreacht na hÉireann* - The Constitution of Ireland 1937; referred in the main text, hereinafter as 'the Constitution' (to be distinguished from the *Constitution of the Church of Ireland* for which the abbreviation CCI is used); see generally Gerard Hogan and Gerry Whyte, *J M Kelly: The Irish*

Church of Ireland is specified. In the final section of this chapter, the international law and human rights setting is outlined.

Establishing the Priority of the Civil Law Sources

The State and Religious Institutions in Ireland

The long-standing Christian denominations - Roman Catholicism, Anglicanism, Presbyterianism, Methodism, Baptists, Lutheranism and the Society of Friends – have been active in Ireland for centuries. That history reflects a universal timeline: pre-Reformation Christianity, reform, counter-Reformation, religious controversy, disunity, uniformity, toleration, suppression, emancipation, leading ultimately to the pluralism and post-modernism that are manifest today. Similarly there has been a Jewish community in Ireland since the eleventh century.

According to the Census 2011 Ireland had a population of 4,588,252.³ Ireland is predominantly a Roman Catholic country.⁴ In 2011, that church represented 84.2% of the total population.⁵ Much smaller (with 2.92%) the second largest denomination is the Church of Ireland.⁶ The third largest religious grouping was Muslims (1.1%). Through net migration, all of the main Christian denominations have increased in the past two decades. Most significant had been the growth between two earlier censuses (those of 1991 and 2002) in the number of newer Christian denominations in Ireland and in adherents of the world's other faiths.⁷ In 2011, 6% of the population stated they had no religion.

Constitution (4th edn, LexisNexis Butterworths 2003); James Casey, *Constitutional Law in Ireland* (Round Hall Sweet and Maxwell 2000).

³ Central Statistics Office < www.cso.ie > accessed on 30 January 2013.

⁴ See generally JH Whyte, *Church and State in Modern Ireland 1923 – 1979* (2nd edn, Gill and McMillan 1980), Dermot Keogh, *Ireland and the Vatican: The Politics and Diplomacy of Church-State Relations 1922-1960* (1995 Cork University Press 1995), Dermot Keogh, *The Vatican, the Bishops and Irish Politics 1919-39* (Cambridge University Press 2004), Daithí Ó Corráin, *Rendering to God and Caesar: The Irish churches and the two states in Ireland, 1949-73* (Manchester University Press 2006).

⁵ While the number of Roman Catholics had increased since the previous censuses in 2002 and 2006, the overall increase in Ireland's population resulted in a small percentage decrease in the number of Roman Catholics as a proportion of the total.

⁶ For a full analysis of the census figures in relation to the Church of Ireland see Malcolm Macourt, *Counting the People of God? The Census of Population and the Church of Ireland* (Church of Ireland Publishing 2008).

⁷ eg Orthodox, Evangelical, Pentecostal, Lutheran (increased in that period by 2815%, 362%, 1006% and 203% respectively); and Muslims, Hindus, Buddhists and adherents of other stated religions (increased by 394%, 225%, 295% and 306% respectively). Since then, between 2002 and 2006, the number of Orthodox Christians doubled.

The State appears to have acquiesced in the existence of religious entities – long-standing and more recent - as an historical and sociological reality.⁸ Since 1871 no religious institution has been established.⁹ Article 44 of the Irish Constitution, taken as a whole, appears to prohibit ‘any legal establishment, in the sense of setting up or recognising a national church.’¹⁰

This acquiescence was seen, for example, in 2004, in the inclusiveness of the proposal to formalise dialogue between the State and religious bodies in Ireland.¹¹ The ill-fated draft Treaty establishing a Constitution for Europe had placed the obligation on the Union itself to ‘maintain an open, transparent and regular dialogue with (...) churches and organisations.’¹² Article 16(c)(3) of the Lisbon Treaty 2007 provided for such ‘open, transparent and regular dialogue.’ The Minister for Foreign Affairs announced arrangements for dialogue in Ireland ‘with philosophical and non-confessional organisations.’¹³ The Roman Catholic Archbishop of Dublin had also called for ‘new forms of structural dialogue’ between Church and State. ‘Times have changed,’ he said ‘since the early days of the State, when the interests of the Catholic Church in Ireland were so “entwined” as to be almost indistinguishable.’¹⁴

Announcing the precise framework for the dialogue, the *Taoiseach* said:

The views being sought on the proposed structured dialogue are those of the Roman Catholic Church, the Church of Ireland, the Presbyterian Church, the Methodist Church, the Religious Society of Friends, the Salvation Army, the Unitarian Church, the Lutheran Church of Ireland, the Moravian Church, the Baptist Church, the Orthodox Church, which is the Coptic, Greek, Romanian and Russian Church, the Church of Jesus Christ of Latter-Day Saints, Jehovah’s Witnesses, the Jewish community, the Islamic foundation of Ireland, the Baha’i Faith, the Buddhist centres

⁸ Christianity is widely considered to have begun to establish itself in Ireland in the middle of the 5th century.

⁹ Irish Church Act 1869 (32 & 33 Vict c 42).

¹⁰ James Casey, *Constitutional Law in Ireland* (Sweet and Maxwell 2000) 686, 695; see also *Campaign to Separate Church and State v Minister for Education* [1998] 2 ILRM 81.

¹¹ For the practicalities and dynamics of the relationship between Church and State in Ireland prior to 2004 see generally James Casey, ‘State and Church in Ireland’ in Gerhard Robbers (ed), *State and Church in the European Union* (2nd edn, Baden-Baden, Nomos 2005) 187-208; also Paul Colton, ‘Religion and Law in Dialogue in Ireland’ in Richard Puza and Norman Doe (eds), *Religion and Law in Dialogue: Covenantal and Non-Covenantal Cooperation between State and Religion in Europe* (Peeters 2006) 93-113.

¹² Article I-52(3) Draft Treaty establishing a Constitution for Europe Vol 47 [16 December 2004] OJ C 310/01 (In 2005 that Treaty was rejected by plebiscite in both France and The Netherlands. It was superseded by the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community Vol 50 [13 December 2007] OJ C 306/01).

¹³ ‘Church welcomes Minister’s plan for dialogue’ *Irish Times* (Dublin, 15 November 2004).

¹⁴ ‘Archbishop calls for a new form of Church/State dialogue’ *Irish Times* (Dublin, 13 November 2004).

and the Association of Irish Humanists. We are happy to engage with other churches and faith communities that may wish to be involved (...).¹⁵

This appears to be a list of those *de facto* religious entities in Irish society; a manifestation of a *laissez-faire* and acquiescent approach. The principal omission was the Church of Scientology.¹⁶

At one level, the State acknowledges, as a matter of reality, that these bodies exist and work in Ireland: their presence is noted. There is no register of churches/religious bodies in Ireland, nor is there a requirement that they be registered *qua* church/religious body, except insofar as they may be required to register in order to fulfil certain roles (e.g. to solemnise marriages) or comply with specific legislation (education, planning or charity law) or to avail themselves of certain advantages (e.g. exemption from rates).¹⁷

Principle of Non-Interference

The State appears to pay little attention to how these religious groupings were constituted, or came to be in Ireland: they are accepted as existing. In the majority of cases, it is likely the State's obligations under Article 44 of the Irish Constitution (which deals with religion) 'would be discharged through a policy of non-interference with religious views and practices.'¹⁸

The autonomy of religious denominations is guaranteed under the Irish Constitution in relation to the management of their own affairs,¹⁹ and 'the primary aim of the constitutional guarantee is to give vitality, independence and freedom to religion.'²⁰

More than that, there is a common law presumption against the interference by the Courts in Church affairs. In *State (Colquhoun) v d'Arcy*²¹ (quoting Lord Davey in

¹⁵ *An Taoiseach* (Prime Minister), Bertie Ahern, TD at question time in *Dáil Éireann* (the lower house of the Irish Parliament – *Oireachtas*), Dail Debates Vol 595 14 December 2004.

¹⁶ For determinations that the Church of Scientology is not religion, see eg in the UK *Schmidt v Secretary of State* [1969] 2 Ch 149; *Van Duyn v The Home Office* [1975] Ch 358; *R v Registrar General, ex parte Segerdal* [1970] 2 QB 697; and in the case of Sweden see *X and Church of Scientology v Sweden*, (1979) 16 DR 68, E Com HR.

¹⁷ Marriage: Civil Registration Act 2004, s53; education: Education Act 1998, s 8; planning: Planning and Development Act 2000, s51 and s52(2); charity: Charities Act 2009, s 39; and exemption from rates: Valuation Act 2001, s 15(2) and Schedule 4(16).

¹⁸ Gerard Hogan and Gerry Whyte, *J M Kelly: The Irish Constitution* (4th edn, LexisNexis Butterworths 2003) 2045, 7.8.40.

¹⁹ *Bunreacht na hÉireann*, Article 44.2.5.

²⁰ Henchy J in *McGrath and Ó Ruairc v Trustees of the College of Maynooth* [1979] ILRM 166, 187.

²¹ *State (Colquhoun) v D'Arcy* [1936] IR 641.

*General Assembly of the Free Church of Scotland v Lord Overtoun*²²) Hanna J,²³ said of voluntary associations (in this situation, the Free Church of Scotland) that:

it is, indeed almost a truism that an unestablished religious association is free from State control as regards doctrine, government and discipline.²⁴

This view has, in the main, prevailed. In *Buckley v Cahal Daly*²⁵ Campbell J underlined the principle of non-interference (in the instance of the Roman Catholic Church):

There is no direct power in the Courts to decide whether A or B holds a particular station according to the rules of a voluntary association.²⁶

Quoting *Forbes v Eden*²⁷ (with reference to the Scottish Episcopal Church) he continued:

A Court of Law will not interfere with the rules of a voluntary association unless to protect some civil right or interest which is said to be infringed by their operation.²⁸

The acknowledgement of the initiative and independence of religious bodies on the one hand and the corresponding acquiescence of the State is seen in *Re Article 26 and the Employment Equality Bill 1996*²⁹ in which it was considered that the term ‘religious denomination’ was ‘intended to be a generic term wide enough to cover the various churches, religious societies or religious congregations under whatever name they wished to describe themselves (...) [and also] that each religious denomination should be respected when it says what its ethos is.’³⁰

This principle of non-interference, allied with both the non-existence of a process of registration and also the acquiescent approach to religious activity, ought emphatically not to be taken as implying a legal vacuum in which religious entities such as the Church of Ireland regulate themselves to the exclusion of the laws of the State. There has always been a definite body of law governing religion and affecting religious bodies, which, in contemporary terms, Sandberg has styled ‘religion law’: itself a legal

²² *General Assembly of the Free Church of Scotland v Lord Overtoun* [1904] AC 515.

²³ He also cited *Long v The Bishop of Capetown* 1 Moo P C (NS) 411.

²⁴ *General Assembly of the Free Church of Scotland v Lord Overtoun* [1904] AC 515, 648.

²⁵ *Buckley v Cahal Daly* [1990] NIJB 8.

²⁶ *Buckley v Cahal Daly* [1990] NIJB 8.

²⁷ *Forbes v Eden* [1867] LR 1HL Sc and Div 568 per Lord Colonsay at 588.

²⁸ *Buckley v Cahal Daly* [1990] NIJB 8.

²⁹ *In re Article 26 and the Employment Equality Bill 1996* [1997] IR 321.

³⁰ *In re Article 26 and the Employment Equality Bill 1996* [1997] IR 321, 354, 359.

sub-discipline distinguishable from ‘religious law’ (the internal legal regimes of religious entities).³¹ Indeed, according to Doe there are such principles of religion law common to the States of Europe.³²

Religious Entities in Irish Law

It is fundamental to recognise that churches in Ireland (and by analogy other faith communities), none of which is established, are voluntary and unincorporated associations. The formation of such ‘associations’ is also a right protected generally by the Irish Constitution.³³ Freedom of expression and assembly are also protected.³⁴ All three rights are subject to public order and morality.³⁵

In *State (Colquhoun) v d’Arcy*,³⁶ in the High Court, citing Barry J in *O’Keeffe v Cullen*,³⁷ Sullivan P set out clearly the place of Irish churches as voluntary associations in which the members are bound to each other by consensual compact.³⁸ He described the status of a church not established by law as:

the status of a voluntary association the members of which subscribe or assent to certain rules and regulations and bind themselves to each other to conform to certain laws and principles, the obligation to such conformity and observance resting wholly in the mutual contract of the members enforceable only as a matter of contract by the ordinary tribunal of the land.³⁹

In Northern Ireland, the Roman Catholic Church has been referred to juridically as a voluntary association.⁴⁰

Unincorporated associations ‘do not, in general, possess legal personality and are not considered to be distinct from their members. The property is jointly held by each of the members, rather than the association itself. Acts performed and transactions entered into on behalf of the group are considered to be the joint (all the members) and several

³¹ Russell Sandberg, *Law and Religion* (Cambridge University Press 2011).

³² Norman Doe, *Law and Religion in Europe: A Comparative Introduction* (Oxford University Press 2011) 1.

³³ *Bunreacht na hÉireann*, Article 40.6.1.iii.

³⁴ *Bunreacht na hÉireann*, Article 40.6.1.i and Article 40.6.1.ii.

³⁵ *Bunreacht na hÉireann*, Article 40.6.1.

³⁶ *State (Colquhoun) v D’Arcy* [1936] IR 641.

³⁷ *O’Keeffe v. Cullen* IR 7 CL 319, 339.

³⁸ See *Bishop of Natal v Gladstone* LR 3 Eq 1, 35-36 per Lord Romilly: ‘Where there is no State religion established by the legislature ... the members of [a church] are, by implied agreement, bound by all its laws...’; see also *Forbes v Eden* [1867] LR 1HL Sc and Div 568.

³⁹ *State (Colquhoun) v D’Arcy* [1936] IR 641, 650.

⁴⁰ *Buckley v Cahal Daly* [1990] NIJB 8, per Campbell J.

(any particular member) responsibilities of the members. In theory any individual member could be held liable for all the acts of the association in his or her own right.⁴¹

The principal characteristic of voluntary associations is, therefore, the absence of homogeneity in their legal type. As such, churches and religious bodies in Ireland are known to manifest a variety of legal forms: unincorporated voluntary associations, public and private trusts, a friendly society, unlimited companies, statutory trusts, chartered companies and registered companies. Many smaller and newer churches have no manifest legal form.⁴² In addition, and separately, most Irish churches attract charitable status. Trusts for the advancement of religion are presumed to satisfy the public benefit test innate to charity law.⁴³

In the case of the Church of Ireland, the Representative Church Body (RCB), a body with legal personality and perpetual succession and a chartered corporation with trustee functions, principally fulfils the church's legal activity.⁴⁴

This understanding of the status of the Church of Ireland as a voluntary association within a wider civil legal economy, subject, as of first importance, to the law of the State, is vital as a first step in the delineation and exposition of the sources of the law of the church. The civil sources are superior to the internal sources of church law. Of necessity, therefore, the view which the civil law takes of the church's own internal laws needs to be clarified as a next step.

Civil Law and Canon Law

The civil law, with its own sources of law, is the primary repository of law for the Church of Ireland as a voluntary association. What then is the understanding, in State law, of Canon Law?

In 1923, in *O'Callaghan v O'Sullivan*⁴⁵ the Reverend James O'Callaghan, a Roman Catholic Parish Priest in Eeyeries, County Cork, brought an action against the Bishop of Kerry who had removed him from his office by Decree of Removal. Father

⁴¹ Raymond Byrne and J Paul McCutcheon, *The Irish Legal System* (Butterworths 2003) 12-13.

⁴² See generally Paul Colton, 'Religious Entities as Legal Persons in Ireland' in Lars Friedner (ed), *Churches and Other Religious Organisations as Legal Persons* (Peeters 2007) 125-38.

⁴³ Charities Act 2009, s 3(4).

⁴⁴ Irish Church Act 1869 (32 & 33 Vict c 42), s 22; Charter of Incorporation on 15th October 1870.

⁴⁵ *O'Callaghan v O'Sullivan* [1925] 1 IR 90.

O’Callaghan sought *inter alia* a declaration that the Decree of Removal was ‘illegal, unauthorised, *ultra vires*, and void’ and an injunction restraining the bishop from acting upon the Decree and directing the bishop to restore him to his office and benefice. His appeal was dismissed in the High Court and he appealed further to the Supreme Court.

On Father O’Callaghan’s behalf, it was admitted that the relationship between the parties was contractual and that it was governed by the ‘laws, ordinances and canon laws’ of the Roman Catholic Church. However, Father O’Callaghan denied the charges in the Decree of Removal and contended that the Decree was void; under Canon Law, a citation must first be issued and he ought to have been afforded the opportunity to respond to the charges; or, alternatively, that the making of a Decree without notice was contrary to natural justice. Expert witnesses in Canon Law provided evidence that, according to Canon Law, the service of such a citation was not required.

In his judgment Kennedy CJ described Roman Catholic Canon Law as ‘foreign law’:

I am clearly of opinion that the Canon Law of the Roman Catholic Church is, in these Courts of the Saorstát, ‘foreign law’ (...) and, therefore, that the Canon Law applicable to the circumstances of a particular case must be proved as a fact in the particular case, and that it must be so proved by the testimony and opinion of competent expert witnesses shown to possess the skill and knowledge, scientific or empirical, required for stating, expounding, and interpreting that law.⁴⁶

The Supreme Court ruled that Father O’Callaghan, was bound, as a matter of contract, by the Canon Law of the Roman Catholic Church (foreign law, the provisions of which were to be interpreted by expert witnesses) and, that the foreign law in question regulated their respective offices. Since (as established by the expert witnesses) a citation was not required before the issuing of the Decree of Removal, Father O’Callaghan’s appeal was dismissed; the Court ruled that since no case of want of notice had been established the actions of the bishop were not contrary to natural justice.

Kennedy CJ underlined the supremacy in Ireland of the laws of the State:

In my opinion, all law is foreign to these Courts other than the laws which these Courts have been set up under the Constitution of Saorstát Éireann to administer and enforce, that is to say, other than the laws given force and validity by Article 73 of

⁴⁶ *O’Callaghan v O’Sullivan* [1925] 1 IR 90, 112.

the Constitution and the enactments of the Oireachtas made after the coming into operation of the Constitution.⁴⁷

In the earlier case of *O’Keeffe v Cullen*⁴⁸ Fitzgerald J had emphatically asserted the supremacy of the law of the State and stressed that no one could be above that law:

There can be no doubt that if the rule in question, or the rule of any Church, had for its object the exemption of the clergy from secular authority, or their immunity from civil jurisdiction or civil punishment, it would be our duty at once to declare that such a rule was utterly illegal. Upon this there ought to be, as there is, no doubt. No Church, no community, no public body, no individual in the realm, can be in the least above the law, or exempted from the authority of its civil or criminal tribunals. The law of the land is supreme, and we recognise no authority as superior or equal to it. Such ever has been, and is, and I hope will ever continue to be, a principle of our Constitution.⁴⁹

*O’Keeffe v Cullen*⁵⁰ was cited with approval by Kennedy CJ in *O’Callaghan v O’Sullivan*. He underlined the position of the Church as a voluntary association. Quoting section 20 of the Irish Church Act 1869, and imputing its relevance to the Roman Catholic Church in the present case, he drew attention to the voluntary submission of Church of Ireland members to the canon law of the church:

The legal status of the Roman Catholic Church, as a non-established Church in this country was elaborately examined and defined in (...) *O’Keeffe v Cullen*. (...) The position as there laid down, and accepted ever since, as that of a voluntary association of persons who agree to accept and to be bound by certain doctrine and discipline and to submit to the authority of certain voluntary ecclesiastical tribunals, these tribunals in the case of the Catholic Church, administering and applying the body of law and system of procedure to the Roman Canon Law. The corresponding position of members of the Church of Ireland after the disestablishment of that Church, was defined in Section 20 of the Irish Church Act 1869 which may be cited as a useful enunciation of the principle:

‘20. The present ecclesiastical law of Ireland, and the present articles, doctrines, rites, rules, discipline, and ordinances of the said Church, with and subject to such (if any) modification or alteration as after the first day of January, 1871, may be duly made according to the constitution of the said Church for the time being, shall be deemed to be binding on the members for the time being thereof in the same manner as if such members had mutually contracted and agreed to abide by and observe the same (...)’⁵¹

More recently, the place of canon law, and its relationship to the law of the State, have come into the public eye. An official Government, but non-statutory, inquiry into the

⁴⁷ *O’Callaghan v O’Sullivan* [1925] 1 IR 90, 108.

⁴⁸ *O’Keeffe v Cullen* IR 7 CL 319.

⁴⁹ *O’Keeffe v Cullen* IR 7 CL 319, 371.

⁵⁰ *O’Keeffe v Cullen* IR 7 CL 319.

⁵¹ *O’Callaghan v O’Sullivan* [1925] 1 IR 90, 113-14; see also *Long v Bishop of Capetown* (1863) 1 Moore PCNS 411, 461-62; *Bishop of Natal v Gladstone* LR 3 Eq 1.

sexual abuse of children by Roman Catholic priests in the Diocese of Ferns produced its report (The Ferns Report) in October 2005. Reflecting on Canon Law it reiterated the approach adopted by the court in *O'Callaghan v O'Sullivan* and developed the thinking further:

The Irish legal system recognizes Canon law as a scientific legal system and body of law, both substantive and adjective. It is a body of rules emanating from a legislative authority for the ordering of the conduct, regulating the social and domestic relations and punishing the disobedience of those who recognise that authority, and which speaks and gives judgement through its own tribunals. Canon law regulates the relationship between a Bishop and a priest of his diocese. As both Bishop and priest, by their ordination agree to be bound by Canon law, the relationship between them might be seen, in practical terms, as consisting of a contract comprising the material provisions of Canon law. The strict legal position is otherwise. Both parties are seen as being bound by Canon law which, in Irish jurisprudence, is a foreign law and like any foreign law, its provisions must be established in the event of a dispute by witnesses expert in that system. Again like all other foreign laws, Canon law is without coercive power because the machinery of coercion is, in this State, kept in the exclusive control of the civil government and parliament for compelling obedience to such laws only as its parliament enacts. No foreign law could exempt a person resident in this State from compliance with an obligation imposed by the Constitution or the laws enacted thereunder.⁵²

The State, therefore, is seen to recognise Canon Law as a body of law, but it is not the law of the State. Although commenting on the canon law of the Roman Catholic Church, the Ferns Report emphasised that Canon Law is a body of rules governing those 'who recognise that authority' and that '[n]o foreign law could exempt a person resident in this State from compliance with an obligation imposed by the Constitution or the laws enacted thereunder.'⁵³ The internal laws of the Church of Ireland cannot be described as 'foreign law' in the same way. However, the anatomy of the relationship delineated here – the Constitutional obligation on members of the Church of Ireland to comply with State law - applies *mutatis mutandis* to the Church of Ireland.

It needs to be understood, therefore, that the Church of Ireland is a voluntary association within a civil society. No matter how high a view is taken of the canonical inheritance of the church, the laws of the State are the supreme source of law for the church and its members. The laws of the State are enjoined on the church in the same way that they are enjoined on any other person or institution in society. This point is made explicit in the law of the Church of Ireland at a number of points. For example, the *Constitution of the Church of Ireland* (hereinafter 'CCI') specifically underlines that, in holding

⁵² The Ferns Report (Government Publications 2005) 37-38.

⁵³ The Ferns Report (Government Publications 2005) 37-38.

property and exercising its trust objects, the RCB is ‘subject to the order and control of the General Synod in all matters not provided for by the laws of the State.’⁵⁴

Sources of Irish Law

Since the law of the State is the supreme source of law for the Church of Ireland, the sources of that law need, for lucidity, to be identified.⁵⁵ The principal formal sources of Irish law are the Irish Constitution,⁵⁶ legislation (primary and secondary⁵⁷), the common law (case law⁵⁸), and European Union law.⁵⁹ The latter, in turn, has its own sources of law: the treaties (primary legislation), secondary legislation (Regulations, Directives, Decisions, Recommendations and Opinions) and European case law.⁶⁰

Article 15.2.1^o of the Irish Constitution lays down that ‘[t]he sole and exclusive power of making laws for the State is hereby vested in the *Oireachtas*: no other legislative authority has power to make laws for the State.’⁶¹ Even such a clear constitutional position is moderated by necessity, and the approach taken by the courts to secondary or delegated legislation has been pragmatic.⁶² The delegation of legislative power to Ministers and others has been recognised as ‘a long-standing phenomenon, and in the complex, intricate and ever-changing situations which confront the modern state, an understandable one’ provided constitutional limits are not transgressed.⁶³ Principles and policies are, however, exclusively a matter for the *Oireachtas*.

⁵⁴ CCI ch X, s 9.

⁵⁵ See generally Thomas O’Malley, *Sources of Law* (2nd edn, Dublin, Round Hall Sweet & Maxwell, 2001); also Raymond Byrne and J Paul McCutcheon, *The Irish Legal System* (Butterworths 2003).

⁵⁶ See generally Raymond Byrne and J Paul McCutcheon, *The Irish Legal System* (Butterworths 2003) ch 15.

⁵⁷ See generally Raymond Byrne and J Paul McCutcheon, *The Irish Legal System* (Butterworths 2003) ch 13.

⁵⁸ See generally Raymond Byrne and J Paul McCutcheon, *The Irish Legal System* (Butterworths 2003) ch 12.

⁵⁹ See generally Raymond Byrne and J Paul McCutcheon, *The Irish Legal System* (Butterworths 2003) ch 16.

⁶⁰ See generally Thomas O’Malley, *Sources of Law* (2nd edn, Round Hall Sweet & Maxwell 2001) 143-52.

⁶¹ See also Offences Against the State Act 1939, s 6 (it is a felony to usurp the legislative function of the *Oireachtas* or to conspire to do so).

⁶² See generally Gerard Hogan and Gerry Whyte, *J M Kelly: The Irish Constitution* (4th edn 2003, LexisNexis Butterworths 2003), 234-54 paras 4.2.09-4.2.13 and 256-64, paras 4.2.55 to 4.2.71; see also Gerard Hogan and David Gwynn Morgan, *Administrative Law in Ireland* (4th edn, Round Hall Thomson Reuters 2010) 32-56; see also Statutory Instruments Act 1947, s 3(1); Interpretation Act 1937, s 9(2).

⁶³ James Casey, *Constitutional Law in Ireland* (Round Hall Sweet and Maxwell 2000), 223; for the development of delegated legislation in England see generally: SA de Smith, ‘Delegated Legislation in England’ in (1949) vol 2 no 4 *The Western Political Quarterly* 514; Jack Beatson, ‘Legislative Control of Administrative Rule Making’ in (1979) 12 *Cornell International Law Journal* 199; for its development more generally in a contemporary context see: Mark Aronson ‘The Great Depression, This Depression and Administrative Law’ [2009] vol 37 *Federal Law Review* 165.

In *City View Press Ltd v An Comhairle Oiliúna*, Higgins CJ set out the Supreme Court's understanding of delegated legislation:

The giving of powers to a designated Minister or subordinate body to make regulations or orders under a particular statute has been a feature of legislation for many years. The practice has obvious attractions in view of the complex, intricate and ever-changing situations which confront both the Legislature and the Executive in a modern State. Sometimes, as in this instance, the legislature, conscious of the danger of giving too much power in the regulation or order-making process, provides that any regulation or order which is made should be subject to annulment by either House of Parliament. This retains a measure of control, if not in Parliament as such, at least in the two Houses. Therefore, it is a safeguard.

Nevertheless, the ultimate responsibility rests with the Courts to ensure that constitutional safeguards remain, and that the exclusive authority of the National Parliament in the field of law-making is not eroded by a delegation of power which is neither contemplated nor permitted by the Constitution. In discharging that responsibility, the Courts will have regard to where and by what authority the law in question purports to have been made. In the view of this Court, the test is whether that which is challenged as an unauthorised delegation of parliamentary power is more than a mere giving effect to principles and policies which are contained in the statute itself. If it be, then it is not authorised; for such would constitute a purported exercise of legislative power by an authority which is not permitted to do so under the Constitution. On the other hand, if it be within the permitted limits - if the law is laid down in the statute and details only are filled in or completed by the designated Minister or subordinate body - there is no unauthorised delegation of legislative power.⁶⁴

It is for the *Oireachtas* alone, therefore, to determine principles and policies, and to legislate for them, provided such are consonant with the Irish Constitution itself.⁶⁵

The Statutory Instruments Act 1947 regulates the publication of all delegated legislation, identifies orders, regulations, rules, schemes and bye-laws as delegated legislation and embodies them in the generic category of Statutory Instrument.⁶⁶ Statutory Instruments may be made by the President, the Government, any member of the Government, any Parliamentary Secretary, any person or body, whether corporate or unincorporate, exercising throughout the State any function of government (or discharging throughout the State any public duties in relation to public administration), or any authority having for the time being power to make rules of court.⁶⁷ Delegated legislation (statutory instruments) of this kind must be laid before both or either of the Houses of the *Oireachtas*, or be 'of such a character as affects the public generally or

⁶⁴ *City View Press Ltd v An Comhairle Oiliúna* [1980] IR 381, 398-99; see also *Lauretiu v Minister for Justice* [1999] 4 IR 26.

⁶⁵ *Bunreacht na hÉireann* Article 15.4.

⁶⁶ Statutory Instruments Act 1947, s 1(1).

⁶⁷ Statutory Instruments Act 1947, s 2(1)(b).

any particular class or classes of the public, and (d) is not a statutory instrument which is required by a statute to be published in the *Iris Oifigiúil*.⁶⁸

In the case of the law-making role of the courts, in *McGrath v McDermott*, Finlay CJ, expressed the unanimous view of the Supreme Court:

The function of the courts in interpreting a statute of the Oireachtas is, however, strictly confined to ascertaining the true meaning of each statutory provision, resorting in cases of doubt or ambiguity to consideration of the purpose and intention of the Legislature to be inferred from other provisions of the statute involved, or even of other statutes expressed to be construed with it. The courts have not got a function to add to or delete from express statutory provisions so as to achieve objectives which to the courts appear desirable. In rare and limited circumstances words or phrases may be implied into statutory provisions solely for the purpose of making them effective to achieve their expressly avowed objective.⁶⁹

As will be seen in the next chapter, pre-1871 Ecclesiastical Law is of particular import for the Church of Ireland. Article 50 of the Irish Constitution continues in force all pre-1922 laws not inconsistent with it.⁷⁰ Since there were many Ecclesiastical Law cases before the courts prior to disestablishment, it should be noted that the courts have taken the view that pre-1922 decisions of the House of Lords are binding unless their effect has been altered by the legislature or they are illogical, unjust or unconstitutional but, the Supreme Court may depart from such authority.⁷¹

The importance for the church of Ecclesiastical Law warrants a particular interest in statute law reform. On 25th November 2004 the *Taoiseach* announced a programme of statute law revision within Ireland, during which the Church of Ireland was consulted. Many pre-1922 ecclesiastical statutes were repealed (and a number deliberately retained) as set out in Appendix B.⁷² (As will be seen in Part Two: Chapter Two, the list underlines the diffuseness, intangibility and inaccessibility of the ecclesiastical law of the Church of Ireland; it illustrates the challenge of ascertaining precisely what the pre-1871 ecclesiastical law is).

⁶⁸ *Iris Oifigiúil* (The Irish State Gazette). Statutory Instruments Act 1947, s 2(1)(c) and (d).

⁶⁹ *McGrath v McDermott* [1988] IR 258, 276.

⁷⁰ See generally Gerard Hogan and Gerry Whyte, *J M Kelly: The Irish Constitution* (4th edn, LexisNexis Butterworths 2003) 2143-57 para 8.2.82-8.2.114.

⁷¹ *Exham v Beamish* [1939] IR 336; *Minister for Finance v O'Brien* [1949] IR 91, (1950) 84 ILTR 95; *Vone Securities v Cooke* [1979] IR 59; *Irish Shell Ltd v Elm Motors Ltd* [1984] IR 200.

⁷² For a full listing of these and analysis see Appendix B; see also the Statute Law Revision Act 2005; Statute Law Revision Act 2007; Statute Law Revision Act 1983; Statute Law Revision (Pre-Union Irish Statutes) Act 1962.

Ireland espouses the dualist approach to international law. Article 29.3 declares that the State ‘accepts the generally recognised principles of international laws as its rule of conduct in its relations with other States.’⁷³ Article 29.6 prescribes that ‘no international agreement shall be part of the domestic law of the State save as may be determined by the *Oireachtas*.’⁷⁴

In addition to these formal sources, others (not formal) are to be noted as they may have shaped the law (such as custom or canon law); or may influence interpretation of the law (e.g. commentaries and scholarly writing); or be incorporated into the law (e.g. international law, such as the European Convention on Human Rights).⁷⁵ As will be seen, the European Convention on Human Rights Act 2003 sets out how Irish courts are to interpret any statutory provision or rule of law in a manner compatible with the State’s obligations under the European Convention on Human Rights (ECHR) provisions.⁷⁶

Alongside these principal sources of Irish law there is a growing body of secondary and tertiary sources such as non-statutory, administrative rules, circulars, codes of practice, and notes of guidance: quasi-legislation and soft law instruments which, while not in themselves law in the strict sense (unless expressly provided for in an enabling statute), have, nonetheless, immense impact. They may state the law, create administrative machinery and indicate how statutory discretion is to be exercised.⁷⁷

Civil Law Sources of General Applicability to the Church of Ireland

In the survey not insignificant numbers of respondents worryingly indicated that they do not see the law of the State as a source of law for the church: 10% of bishops, 9% of registrars, 4% of clergy and over 9% of laity did not consider the civil law to be a source of law for the church.

⁷³ See generally Gerard Hogan and Gerry Whyte, *J M Kelly: The Irish Constitution* (4th edn, LexisNexis Butterworths 2003) 492-503, para 5.3.02-5.3.25.

⁷⁴ See generally Gerard Hogan and Gerry Whyte, *J M Kelly: The Irish Constitution* (4th edn, LexisNexis Butterworths 2003) 547-58, para 5.3.116-5.3.135.

⁷⁵ Hereinafter the ECHR (incorporated into Irish law by the European Convention on Human Rights Act 2003).

⁷⁶ European Convention on Human Rights Act 2003, s 2(1).

⁷⁷ See generally Gerard Hogan and David Gwynn Morgan, *Administrative Law in Ireland* (Round Hall Thomson Reuters 2010) 57-74.

Having already set out the position of the Church of Ireland within the State legal framework it is necessary to specify the bearing these civil law sources have on the church: the constitutional framework as it applies to religion; and the application of civil law to church life and specific legislation concerning the Church of Ireland. These are considered in turn.

The Irish Constitution

An overarching source governing the practice of religion in Ireland is the Irish Constitution. The Preamble commences with an invocation of the ‘Name of the most Holy Trinity, from Whom is all authority and to Whom, as our final end, all actions both of men and States must be referred.’ It has been pointed out in the courts that this reflects ‘a firm conviction that (...) [the Irish people] are a religious people (...) a Christian people;’⁷⁸ and also that the people ‘were proclaiming a deeply religious conviction and faith and an intention to adopt a Constitution consistent with that conviction and faith and with Christian beliefs.’⁷⁹

Article 44 of the Irish Constitution deals with religion. Freedom to profess and practise one’s religion is guaranteed, subject to public order and morality.⁸⁰ This fundamental right is consonant with Article 9 of the ECHR. The State is precluded from endowing any religion,⁸¹ from discriminating not only on the ground of religious profession, belief or status,⁸² but also where there is legislation providing State aid for schools under the management of different religious denominations it shall not discriminate between those schools.⁸³ The autonomy of each religious denomination is guaranteed in relation to the management of its own affairs.⁸⁴ ‘[T]he primary aim of the constitutional guarantee is to give vitality, independence and freedom to religion.’⁸⁵ Restrictions are placed in

⁷⁸ per Walsh J in *Quinn’s Supermarket Ltd v Attorney General* [1972] IR 1, 23; for similar inferences from the Preamble see also *Maguire v Attorney General* [1943] IR 238; *McGee v Attorney General* [1974] IR 284 (Walsh J at 317-8); *Norris v Attorney General* [1984] IR 36 (O’Higgins CJ); *Attorney General (Society for the Protection of Unborn Children (Ireland) Ltd) v Open-Door Counselling Ltd* [1988] IR 593.

⁷⁹ Per O’Higgins CJ in *Norris v Attorney General* [1984] IR 36, 64.

⁸⁰ *Bunreacht na hÉireann* Article 44.2.1; for a consideration of religious freedom in Ireland in the context of the Church-State relationship see generally Eoin Daly, *Religion, Law and the Irish State* (Clarus 2012) ch 2.

⁸¹ *Bunreacht na hÉireann* Article 44.2.2.

⁸² *Bunreacht na hÉireann* Article 44.2.3.

⁸³ *Bunreacht na hÉireann* Article 44.2.4.

⁸⁴ *Bunreacht na hÉireann* Article 44.2.5.

⁸⁵ Henchy J in *McGrath and Ó Ruairc v Trustees of the College of Maynooth* [1979] ILRM 166, 187.

principle, subject to certain exceptions, on State acquisition of the property of religious denominations and educational institutions.⁸⁶

Article 44.1 of the Irish Constitution states that ‘[t]he State acknowledges that the homage of public worship is due to Almighty God. It shall hold His Name in reverence, and shall respect and honour religion.’⁸⁷ While this has been interpreted as underpinning Christianity,⁸⁸ the courts have also made clear that the benefits are not confined to Christians.⁸⁹ (Article 44 originally recognised the special place of the ‘Holy Catholic Apostolic and Roman Church’ together with the existence of certain other churches and the Jewish Congregation in Ireland. This special position, deemed to confer no juridical privilege,⁹⁰ was removed by referendum in 1972⁹¹ and the universal nature of the constitutional guarantees has subsequently been reiterated).⁹²

The current constitutional position was well summarised in *Quinn’s Supermarket v Attorney General* by Walsh J:

The effect of these various guarantees is that the State acknowledges that the homage of public worship is due to Almighty God. It promises to hold his name in reverence and to respect and honour religion. At the same time it guarantees freedom of conscience, the free profession and practice of religion and equality before the law to all citizens, be they Roman Catholics, Protestants, Jews, Muslims, agnostics or atheists. But Article 44.1 goes further and places the duty on the State to respect and honour religion as such. At the same time the State is not placed in the position of an arbiter of religious truth. Its only function is to protect public order and morality.⁹³

Barrington J quoted this, with approval, in *Corway v Independent Newspapers (Ireland) Ltd.*⁹⁴

⁸⁶ *Bunreacht na hÉireann* Article 44.2.6.

⁸⁷ *Bunreacht na hÉireann* Article 44.1.

⁸⁸ *Norris v Attorney General* [1984] IR 36.

⁸⁹ *McGee v Attorney General* [1974] IR 284; *Norris v Attorney General* [1984] IR 36.

⁹⁰ see *Quinn’s Supermarket v Attorney General* [1972] IR 1; *McGee v Attorney General* [1974] IR 284; *Campaign to Separate Church and State Ltd v Minister for Education* [1998] 3 IR 321, [1998] 2 ILRM 81.

⁹¹ Fifth Amendment of the Constitution Act 1972, curiously, the provisions according special status to the Roman Catholic Church were never, it seems, criticised by the Church of Ireland and, indeed, received favourable comment – see Daithí Ó Corráin, ‘Articles 41 and 44: Minority Religious opinion 1937-1986’ in Oran Doyle and Eoin Carolan (eds), *The Irish Constitution: Governance and Values* (Thomson Round Hall 2008) 57.

⁹² *Corway v Independent Newspapers (Ireland) Ltd* [1999] 4 IR 484.

⁹³ *Quinn’s Supermarket v Attorney General* [1972] IR 1, 23-24.

⁹⁴ *Corway v Independent Newspapers (Ireland) Ltd* [1999] 4 IR 484.

The Constitutional Review Group, by majority decision, called in 1996 for the deletion of Article 44.1 and its replacement by the phrase ‘The State guarantees to respect religion.’⁹⁵ Since then, and against the background of controversy and scandal, there is a changed attitude to the place of institutional religion in Irish society.⁹⁶

Primary and Secondary Sources, and the Church of Ireland

Every aspect of human and communal activity within the church comes within the scope of the civil law. Statutory instruments,⁹⁷ policies and guidelines,⁹⁸ codes,⁹⁹ regulations,¹⁰⁰ rules,¹⁰¹ schemes¹⁰² and a plethora of sources and instruments of law-making have an impact on many spheres of the church’s activities, as do the decisions of the State courts.¹⁰³

In particular areas, this interface between the civil law and the church’s work is seen self-evidently: employment law, equality law, marriage, burials, child protection, education, charity law, general administration, property management, pensions law and finance, and disability legislation. The following overview indicates the depth and scope of that interaction.

A variety of persons or entities within the church (individual clergy or bishops, select vestries, diocesan councils or the RCB) may be employers, and in that capacity are regulated by the array of law governing employment matters.¹⁰⁴ The extent to which, if

⁹⁵ *Report of the Constitution Review Group* (1996, PN 2632), 378.

⁹⁶ Deaglan de Bréadún and Paddy Clancy, ‘No reporting exemption for clergy, says Taoiseach’ *Irish Times* (Dublin, 15 July 2011); Paul Cullen, ‘Vatican relationship at new low’ *Irish Times* (Dublin, 21 July 2011, Dublin) ‘Martin calls on Taoiseach to explain his Vatican claims’ *Irish Times* (4 September 2011); Lorna Siggins, ‘Taoiseach stands by Vatican criticism’ *Irish Times* (Dublin, 6 September 2011); Paul Melia, ‘Criticism of the church is “legitimate” admits Martin’ *Irish Independent* (Dublin, 2 January 2012) 23.

⁹⁷ See eg Occupational Pension Schemes (Disclosure of Information) Regulations 2006 – SI No 301/2006.

⁹⁸ See eg ‘Children First: National Guidelines for the Protection and Welfare of Children’ (Department of Health and Children 1999).

⁹⁹ See eg ‘Our Duty to Care: the principles of good practice for the protection of children and young people’ (Department of Health and Children 2002); ‘Child Protection: Guidelines and Procedures’ (Department of Education and Science 2001).

¹⁰⁰ See eg Planning and Development Regulations 2001 (SI 600/2001).

¹⁰¹ See eg Rules for National Schools 1965.

¹⁰² eg Schemes under the Educational Endowments (Ireland) Act 1885.

¹⁰³ It is not practicable in this chapter to annotate each area of the laws referred to with an enumeration of every case that is a source of law in that connection. Please refer to the Table of Cases or to the footnotes in each subject chapter.

¹⁰⁴ The principal legislation includes: Adoptive Leave Act 1995, Carers Leave Act 2001, Employees (Provision of Information and Consultation) Act 2006, Employment Equality Act 1998, Employment Permits Act 2006, Equal Status Act 2000, Equality Act 2004, Maternity Protection Acts 1994 and 2004, Maternity Protection (Amendment) Act 2004, Minimum Notice and Terms of Employment Act 1973,

at all, employment law extends to ordained persons as atypical workers is a separate matter, and one of on-going debate.¹⁰⁵ In Part Two: Chapter One this will be examined as a contemporary preoccupation of the Church of Ireland.

As will also be seen in Part Two: Chapter One, the interface between internal church law and equality legislation is clearer but retains some residual ambiguity, including on delineation of when the church is a provider of services, and also when the legislative exemption on the provision of religious goods and services pertains.¹⁰⁶

Increasingly, the legislative and regulatory activity of the State impinges on core ecclesiastical activities, including pastoral work. In the case of marriage and registration of marriages this is not a new development, although there have been recent changes. Marriage presents a clear example of the interplay between civil and church law sources. Canon 31(2) requires that '[e]very member of the clergy who is approached with a view to solemnising a marriage is required to fulfil the statutory requirements of the state in which the marriage is to take place and must comply also with such Church

National Minimum Wage Act 2000, Organisation of Working Time Act 1997, Parental Leave Act 1998, Parental Leave (Amendment) Act 2006, Payment of Wages Act 1979, Payment of Wages Act 1991, Protection of Employees (Fixed-Term work) Act 2003, Protection of Employees (Part-time Work) Act 2001, Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007, Protection of Employment Act 1977, Protection of Young Persons (Employment) Act 1977, Protection of Young Persons (Employment) Act 1996, Redundancy Payments Act 2003, Safety, Health and Welfare at Work Act 1989, Safety, Health and Welfare at Work Act 2005, Taxes Consolidation Act 1997, Terms of Employment (Information) Act 1994 and Unfair Dismissals Act 1993.

¹⁰⁵ *Wright v Day* [1895] 2 IR 337; *O'Callaghan v O'Sullivan* [1925] 1 IR 90; *Dolan v K* [1994] IR 470; *O'Dea v Briain* [1992] ILRM 364; *Millen v Presbyterian Church in Ireland* [2000] 11 ELR 292; *Representative Church Body v Frazer* [2005 EAT] 16 ELR 292; see also Department of Trade and Industry (UK) Discussion Document, 'Employment Status in Relation to Statutory Employment Rights' July 2002 URN 02/1058 DTI; in UK see *Re Employment of Church of England Curates* [1912] Ch 563; *Rogers v Booth* [1937] ICR 900; *Parker v Orr* [1966] 1 ITR 488; *President of the Methodist Church v Parfitt* [1983] 3 All E R 747; *Davies v Presbyterian Church of Wales* [1986] 1 WLR 323, [1986] 1 All ER 705; *Turns v Smart, Carey and the Bath and Wells Diocesan Board of Finance* [1991] ICR 140; *Chalcroft v Bishop of Norwich* (1995) Unreported; *Diocese of Southwark and Others v Coker* [1998] ICR 140; *R v Bishop of Stafford, ex parte Owen* (2000) 6 Ecc LJ 83; *Brown v Bishop of Carlisle* (2003) 7 EccLJ 239; and *Tyler v United Kingdom*, Application 21283/93, 5 April 1994 (unreported) E ComHR; *Scottish Insurance Commissioners v Paul* [1914] SC 16; *Percy v The Board of National Mission of the Church of Scotland* [2001] SLT 497; *New Testament Church of God v Stewart* (2007) IRLR 178. [2008] ICR 282; *MacDonald v Free Presbyterian Church of Scotland* [2010] UKEAT S/0034/09/BI; *Moore v The President of the Methodist Conference* [2011] EWCA Civ 1581; in Northern Ireland see *Buckley v Cahal Daly* [1990] NIJB 8; see also internal Church of Ireland cases *Bishop of Meath v Furlong* [2003] JGS 446; *Reid and others v Frazer* [2003] Diocesan Registry of Meath and Kildare.

¹⁰⁶ Equal Status Act 2000 and Equality Act 2004; it would appear that a church building made available for entertainment open to the public loses its exemption as a provider of religious services (Equal Status Act 2000 s5(2)(e)) and is brought within the ambit of the equality legislation: see *Gloria (Ireland's Lesbian and Gay Choir) v Cork International Choral Festival Ltd* DEC-S2008-078 (available on < www.equalitytribunal.ie > accessed on 16 February 2009), a case which was lost solely because the complainant was not an individual person and it was determined that the choir as a group did not have *locus standi*; see also 'Gay Choir may sue over Choral Festival Posters' *Sunday Tribune* (Dublin, 23 November 2008).

of Ireland Marriage Regulations as may be provided.¹⁰⁷ Another activity of the church – burials – is also, in part, regulated by civil law.¹⁰⁸ A most notable recent development is in the area of child protection.¹⁰⁹

A labyrinthine area, governed in the main until the late 1990s by rules,¹¹⁰ departmental regulation, and ministerial order (communicated most usually by administrative circular¹¹¹) is education.¹¹² There had been some legislation in previous centuries; the Educational Endowments (Ireland) Act 1885 is still depended upon.¹¹³ Schemes framed under that Act continue to govern Diocesan Boards of Education and some schools with church connections.¹¹⁴

The Education Act 1998, introduced following consultation in the 1990s, represents a cathartic shift in the management and operation of the 4021 schools in Ireland, the majority of which are under the patronage of churches.¹¹⁵ Since then more transforming legislation has been introduced: the Education (Welfare) Act 2000, Teaching Council Act 2001, Education of Persons with Special Educational Needs Act 2004, Teaching Council (Amendment) Act 2006, and Education (Miscellaneous Provisions) Act 2007.¹¹⁶ Regulations, rules, circulars, handbooks and guidelines continue to be a mainstay of the regulatory framework governing education.¹¹⁷

¹⁰⁷ CCI, ch IX, s 31(2) (Canon 31(2)).

¹⁰⁸ Burials (Ireland) Act 1824 (5 Geo IV c 25); Burials (Ireland) Act 1868 (31 & 32 Vict c 103); Coroners (Amendment) Act 1927; Coroners (Amendment) Act 1947; Coroners (Amendment) Act 2005; Coroners Act 1962; Local Government (Sanitary Services) Act 1948; Civil Registration Act 2004.

¹⁰⁹ See eg CCI ch IX s 27 (Canon 27) – teaching the young; CCI ch IX s 28 (Canon 28) – Confirmation; CCI ch XVI (Ministry with Children; and in State law see eg Casual Trading Act 1995; Child Care Act 1991; Protections for Persons Reporting Child Abuse Act 1998; Sex Offenders Act 2001; Children Act 2001; Ombudsman for Children Act 2002; ‘Children First: National Guidelines for the Protection and Welfare of Children’, (Department of Health and Children 1999); ‘Our Duty to Care: the principles of good practice for the protection of children and young people’ (Department of Health and Children, 2002); ‘Child Protection: Guidelines and Procedures’ (Department of Education and Science 2001).

¹¹⁰ Rules for National Schools 1965.

¹¹¹ A full list is available at < www.education.ie > accessed 25 March 2012.

¹¹² See generally Dympna Glendenning *Education and the Law* (Butterworths 1999), Dympna Glendenning, *Education, Religion and the Law* (Tottel 2008), Dympna Glendenning and William Binchy *Litigation against Schools* (First Law 2006), Mary Meaney, Nessa Kiernan and Karl Monahan, *Special Educational Needs and the Law* (Thomson Round Hall 2005), Conor O’Mahony, *Educational Rights in Irish Law* (Thomson Round Hall 2006).

¹¹³ Educational Endowments (Ireland) Act 1885 (48 & 49 Vict c 78).

¹¹⁴ eg CCR Board of Education (Scheme 66) ; D&D and Conn Board of Education (Scheme 89); Middleton College (Scheme 105).

¹¹⁵ For the history of the development of the Irish educational system see John Coolahan, *Irish Education: history and structure* (Institute of Public Administration 1981).

¹¹⁶ See also Teaching Council Act 2001 and Teaching Council (Amendment) Act 2006.

¹¹⁷ see eg ‘Boards of Management of National Schools Constitution of Boards and Rules of Procedure’ (Department of Education and Science 2011) and ‘Primary Boards of Management: Information Manual’ (Department of Education and Science 2007).

Diocesan Boards of Education, the Church of Ireland College of Education and a number of post-primary schools are established in accordance with schemes under the Educational Endowments (Ireland) Act 1885.¹¹⁸ Within a system that is overwhelmingly denominational in character, an increasing number of Church of Ireland children are attending vocational education secondary schools, a sector governed by additional legislation.¹¹⁹

The Irish State relies on Christian charities for core services, notably in education,¹²⁰ healthcare and the relief of poverty.¹²¹ Charitable status is highly desirable and many benefits accrue from such recognition.¹²² The law governing the work of the churches as charities and their associated charitable activities is convoluted.¹²³ The Charities Act 2009 provides a new regulatory framework for all charities including the charitable activities of churches and establishes a Charities Regulatory Authority.¹²⁴

In company with all other organisations in society, the church and its members are affected by modern legislation governing health and safety,¹²⁵ the management of property and development of new properties,¹²⁶ care of heritage buildings and sites,¹²⁷

¹¹⁸ Educational Endowments (Ireland) Act 1885 (48 & 49 Vict c 78) eg Diocesan Board of Education of Dublin and Glendalough, Diocesan Board of Education of Cork Cloyne and Ross and Midleton College (Midleton Endowed School).

¹¹⁹ Vocational Education Act 1930; Vocational Education (Amendment) Acts 1936-2001.

¹²⁰ The majority of the 4021 primary and second level schools in the State are under the patronage of either the Roman Catholic Church or the Church of Ireland.

¹²¹ For a comparison of aspects of the law of charity as and between the Republic of Ireland and Northern Ireland see generally Kerry O'Halloran, 'Charity, the Law and Social Need: The Public Benefit as a Measure of Jurisdictional Difference in Charitable Activity on the Island of Ireland' in (2001) 23 Dublin University Law Journal 97.

¹²² For a summary of those benefits see Hilary Delaney, *Equity and the Law of Trusts in Ireland* (Thomson Round Hall 2003) 291-93.

¹²³ See generally Kerry O'Halloran, *Charity Law* (Round Hall Sweet and Maxwell 2000); Kerry O'Halloran, *Charity Law*, (2nd edn, Thomson Reuters 2009); also Statute of Charitable Uses 1601 (43 Eliz I c 4), Statute of Charitable Uses 1634 (10 Car 1 Sess c 1), Charities Act 1961, Charities Act 1973, Companies Act 1959, Companies Act 1963; Companies Act 1990; Charities Act 2009.

¹²⁴ Charities Act 2009 (and in Northern Ireland, Charities Act (Northern Ireland) 2008). The relevant sections of the Charities Act 2009 have not yet been commenced or implemented.

¹²⁵ Safety, Health and Welfare at Work Act 1989; Safety, Health and Welfare at Work Act 2005.

¹²⁶ Local Government (Planning and Development) Acts 1963-1999, Planning and Development Act 2000, Planning and Development Regulations 2001 (SI No 600/2001), Planning and Development (Amendment) Act 2002, Planning and Development (Amendment) Regulations 2002 (SI No 70/2002), Planning and Development Act 2006, Building Control Act 2007, Building Control Regulations 1997 – 2004 (SI No 496/1997, SI No 10/2000 and SI No. 85 of 2004), Building Regulations 1997-2008 (SI No 497/1997, SI No 179/2000, SI No 249/2000, SI No 441/2000, SI No 284/2002, SI No 581/ 2002, SI No 872/2005, SI No 666/2006, SI No 854/2007, SI No 229/2008 and SI No 259/2008), Landlord and Tenant Acts 1967-2005, Residential Tenancies Act 2004.

¹²⁷ Including the following: National Monuments Acts 1930-2004, Local Government (Planning and Development) Acts 1963-1999, Planning and Development Act 2000, ss 51-92; Planning and Development Regulations 2001 (SI No 600/2001) Articles 51-55; Planning and Development Regulations 2006 (SI No 685/2006) Articles 9-10; Heritage Act 1995.

the keeping of records and processing of data,¹²⁸ the Church's archives,¹²⁹ the personal finances of clergy,¹³⁰ trusts,¹³¹ company law,¹³² and clergy taxation.¹³³

The Church of Ireland Clergy Pensions Fund¹³⁴ (hereinafter 'CICPF') is a 'scheme' and a 'defined benefit scheme' for the purposes of the Pensions Act 1990; and is an approved scheme for the purposes of the Taxes Consolidation Act 1997.¹³⁵ The Explanatory Booklet of the CICPF is prescribed by statutory instrument.¹³⁶ In the case of the investment policy of the CICPF the civil law requires that a policy be devised and adhered to.¹³⁷ Particular charitable enterprises undertaken by the church attract legislation specific to a sector, for example, healthcare charities.¹³⁸

Emerging areas of legislative activity by the State will undoubtedly become new sources of laws. One notable example - disability legislation - has recently been recognised by the General Synod.¹³⁹

In Part Two: Chapter One, the church's response to these specific areas will be analysed in order to prove the contention that since 1996, and more than any other period in the

¹²⁸ Data Protection Act 1988; Data Protection (Amendment) Act 2003; see also Data Protection Act 1998 (Section 16(1)) Regulations 2007 (SI No 657/2007) which sets out who must register.

¹²⁹ National Archives Act 1986.

¹³⁰ Taxes Consolidation Act 1997.

¹³¹ See generally Hilary Delaney, *Equity and the Law of Trusts in Ireland* (Thomson Round Hall 2003).

¹³² eg some schools (Bandon Grammar School Ltd, Midleton College Ltd, Kilkenny College Ltd), some charities (eg Saint Luke's Home (Cork) Incorporated, Bishops' Appeal (NI) Ltd., Avenue Properties Ltd); Companies Acts 1963-2001.

¹³³ Taxes Consolidation Act 1997, s 19 (2).

¹³⁴ CCI, ch XIV.

¹³⁵ Taxes Consolidation Act 1997, ch 1 pt 30.

¹³⁶ Occupational Pension Schemes (Disclosure of Information) Regulations 2006 – SI No 301 of 2006.

¹³⁷ Occupational Pension Schemes (Investment) Regulations 2006 (SI No 294 of 2006) and Pensions Act 1990, s 59(1)(b).

¹³⁸ Coroners Act 1962, Health Act 2004, Health Act 2007, Health (Family Planning) Act 1979, Health (Family Planning)(Amendment) Acts 1985-1993, Irish Medicines Board (Miscellaneous Provisions) Act 2006, Mental Health Act 2001, Misuse of Drugs Act 1977, Misuse of Drugs Act 1984, Nurses Act 1985, Powers of Attorney Act 1996, European Communities (Clinical Trials on Medicinal Products for Human Use, Amendment No.2 2006, European Communities (Quality and Safety of Human Blood and Blood Components) Regulations, 2005, Medicinal Products (Licensing and Sale) Regulations 1998 (SI No 142/1998), Medicinal Products (Prescription and Control of Supply) Regulations 2003 (SI No 540/2003), Medicinal Products (Prescription and Control of Supply) (Amendment) Regulations 2005 (SI No 510/2005), Medicinal Products (Prescription and Control of Supply) (Amendment) Regulations 2007 (SI No 201/2007), Misuse of Drugs Regulations 1988 (SI No 328/1988), Misuse of Drugs (Amendment) Regulations 1993 (SI No 342/1993), Misuse of Drugs (Supervision of Prescriptions and Supply of Methadone) Regulations 1998 (SI No 225/1998), Misuse of Drugs (Amendment) Regulations 2007 (SI No 200/2007), Nursing Homes (Care and Welfare) Regulations 1993 (SI No 226/1993); 'National Quality Standards for Residential Care Settings for Older People in Ireland' (Health Information and Quality Authority 2007).

¹³⁹ JGS [2002] 28.

Church's history since disestablishment, these areas of the civil law are impacting ever more greatly on the Church of Ireland.

Civil Law Specifically Governing the Church of Ireland

In addition to this multi-faceted and comprehensive array of general civil law provisions, there are civil law sources - both from before and after disestablishment – which pertain specifically to the Church of Ireland.

Chief among these is the Irish Church Act 1869.¹⁴⁰ It dissolved the union between the Churches of England and Ireland and 'put an end to the Establishment of the Church of Ireland'.¹⁴¹ With the exception of 3% of the clergy all respondents to the survey understood the Irish Church Act 1869 to be, or sometimes to be, a source.¹⁴²

Many sections of the Act have already been fulfilled, and are spent (they could be repealed without practical consequences, but were not). They provided the mechanism for disestablishing the Church of Ireland and set up the means of transition to the new ecclesiastical polity. Their effects and influence shaped the emerging disestablished church and are still being felt today. These include: the Commissioners of Church Temporalities in Ireland (appointment,¹⁴³ quorum,¹⁴⁴ appointment of officers and agents,¹⁴⁵ salaries and expenses,¹⁴⁶ powers,¹⁴⁷ administrative rules,¹⁴⁸ duration of office,¹⁴⁹ restrictions and prohibitions,¹⁵⁰ management of property,¹⁵¹ stewardship of

¹⁴⁰ Irish Church Act 1869 (32 & 33 Vict c 42); for a contemporaneous commentary on the Irish Church Act 1869 see George Atkins, *The Irish Church Act (1869) Carefully Annotated* (Ponsonby 1869); Charles H Todd, *Irish Church Act 1869 with Observations* (Hodges, Foster and Co 1869).

¹⁴¹ Irish Church Act 1869 (32 & 33 Vict c 42) Long Title and s 2; for the history of the disestablishment of the Church of Ireland see generally RB McDowell, *The Church of Ireland 1869-1969* (Routledge and Kegan Paul 1975), Hugh Shearman, *Privatising a Church: the Disestablishment and Disendowment of the Church of Ireland* (Ulster Society 1995); Alan Acheson, *A History of the Church of Ireland, 1691 – 2001* (Columba Press 2002); for the aftermath of disestablishment see generally HE Patton, *Fifty Years of Disestablishment* (APCK 1922), Michael Hurley (ed), *Irish Anglicanism 1869-1969* (Allen Figgis Ltd 1970).

¹⁴² 'Sometimes a source': at appropriate points in the survey respondents were asked to designate categories as being either 'a source', 'sometimes a source' or 'not a source'; a classification designed to assess degrees or levels of certitude and confidence among the respondents in declaring the various categories to be sources or otherwise.

¹⁴³ Irish Church Act 1869 (32 & 33 Vict c 42), s 3.

¹⁴⁴ Irish Church Act 1869 (32 & 33 Vict c 42), s 4.

¹⁴⁵ Irish Church Act 1869 (32 & 33 Vict c 42), s 5.

¹⁴⁶ Irish Church Act 1869 (32 & 33 Vict c 42), s 6.

¹⁴⁷ Irish Church Act 1869 (32 & 33 Vict c 42), s 7, ss 51-64.

¹⁴⁸ Irish Church Act 1869 (32 & 33 Vict c 42), s 8.

¹⁴⁹ Irish Church Act 1869 (32 & 33 Vict c 42), s 9.

¹⁵⁰ Irish Church Act 1869 (32 & 33 Vict c 42), ss 9 and 10.

finance¹⁵² and sundry supplemental provisions¹⁵³), the vesting of the property of the Ecclesiastical Commissioners in the new Commissioners of Church Temporalities in Ireland (the Commissioners),¹⁵⁴ the vesting of all other church property in the Commissioners,¹⁵⁵ restrictions on the undertaking of repairs on such properties,¹⁵⁶ compensation to ecclesiastical persons,¹⁵⁷ compensation to others (e.g. schoolmasters, clerks and sextons, and also to lay patrons¹⁵⁸), redemptions of annuities and life interest,¹⁵⁹ transfer of church buildings,¹⁶⁰ transfer of burial grounds,¹⁶¹ transfer of ecclesiastical residences,¹⁶² transfer of other land,¹⁶³ transfer of endowments and all moveable chattels,¹⁶⁴ regulations concerning the payment of commutation and annuities,¹⁶⁵ making temporary arrangements¹⁶⁶ and, establishing a mechanism for arbitration.¹⁶⁷ In order to avert the possibility of a constitutional challenge based on the Act of Union,¹⁶⁸ section 71 provided that nothing in the Irish Church Act affected the Act of Union ‘except in so far as relates to the union of the churches of England and Ireland, and except as expressly herein-before provided.’¹⁶⁹ A small number of sections, no less important, relate to other churches.¹⁷⁰

¹⁵¹ Irish Church Act 1869 (32 & 33 Vict c 42), s 31 (purchase of fee simple), s 32 (sale of tithe rent charges to landowners), s 33 (purchase the surrender or assignment of leases), s 34 (to sell property vested in them): see also ss 52-57.

¹⁵² Irish Church Act 1869 (32 & 33 Vict c 42), s 35 (conveyances and payment of stamp duty), s 36 (banking and investment), s 37 (preparation of accounts), s 51 (payments of commutation and annuity), s 52 (power to accept mortgages), s 53 (power to pay by instalments), s 55 (arrear of rent), s 56 (dealings with persons under disability), s 57 (dealings with incapacitated owners), s 59 (power to raise money), s 60 (power to Treasury to advance money to the Commissioners), s 61 (power to treasury to guarantee an advance to the Commissioners).

¹⁵³ Irish Church Act 1869 (32 & 33 Vict c 42), s 43 (transfer of office at 24 Upper Merrion Street, Dublin), s 44 (compensation to the Ecclesiastical Commissioners and their officers), s 45 (compensation to vicars-general, chancellors and registrars), s 47 (handing over of books, deeds and documents).

¹⁵⁴ Irish Church Act 1869 (32 & 33 Vict c 42), s 11.

¹⁵⁵ Irish Church Act 1869 (32 & 33 Vict c 42), s 12.

¹⁵⁶ Irish Church Act 1869 (32 & 33 Vict c 42), ss 48-49.

¹⁵⁷ Irish Church Act 1869 (32 & 33 Vict c 42), ss 14 and 15.

¹⁵⁸ Irish Church Act 1869 (32 & 33 Vict c 42), ss 16, 17 and 18.

¹⁵⁹ Irish Church Act 1869 (32 & 33 Vict c 42), ss 23-4.

¹⁶⁰ Irish Church Act 1869 (32 & 33 Vict c 42), s 25.

¹⁶¹ Irish Church Act 1869 (32 & 33 Vict c 42), s 26.

¹⁶² Irish Church Act 1869 (32 & 33 Vict c 42), s 27.

¹⁶³ Irish Church Act 1869 (32 & 33 Vict c 42), s 29.

¹⁶⁴ Irish Church Act 1869 (32 & 33 Vict c 42), ss 29 and 30.

¹⁶⁵ Irish Church Act 1869 (32 & 33 Vict c 42), ss 51, 67 and 68.

¹⁶⁶ Irish Church Act 1869 (32 & 33 Vict c 42), s 66 (vacancies between the passing of the Act and 1st January 1871).

¹⁶⁷ Irish Church Act 1869 (32 & 33 Vict c 42), s 65.

¹⁶⁸ Act of Union 1800 (39 & 40 Geo. III c.67), s 5.

¹⁶⁹ Irish Church Act 1869 (32 & 33 Vict c 42), s 71.

¹⁷⁰ Irish Church Act 1869 (32 & 33 Vict c 42), ss 38-39 (the discontinuing of the annual parliamentary grant – *Regium Donum* – to non-conformist ministers and consequent compensation to them, and also the option of commutation of payment of annuities), ss. 40-42 the repeal of all but sections 4 and 5 of the Maynooth College Act 1800 (40 Geo III c 85), compensation for the loss of certain annual grants, and provision for appeal by aggrieved persons.

A number of provisions of the Act are still highly relevant. The Act dissolved all ecclesiastical corporations.¹⁷¹ Four sections - 19, 20, 21 and 22 - have immense significance for the work of the church.

Section 19 repealed any legislation considered to be an impediment to the holding of synods, assemblies and conventions.¹⁷² The last recorded meeting of the Irish convocation was on 22 December 1713.¹⁷³ A new convocation was elected in 1715, but appears to have never met and ‘had faded from memory’ by 1760.¹⁷⁴ Accordingly, section 19 provided, in the 1869 Act, the mechanism for the formation of a general synod and the holding of a general convention to frame ‘constitutions and regulations for the general management and good government of the said Church, (...)’ and for the formation of a body to manage ‘the property and affairs thereof (...)’.¹⁷⁵

Crucially, section 20 describes the nature of the legal relationship of the members of the church with each other and with the ecclesiastical law of Ireland:

The present ecclesiastical law of Ireland, and the present articles, doctrines, rites, rules, discipline, and ordinances of the said Church, with and subject to such (if any) modification or alteration as after the first day of January one thousand eight hundred and seventy-one may be duly made therein according to the constitution of the said Church for the time being, shall be deemed to be binding on the members thereof in the same manner as if such members had mutually contracted and agreed to abide by and observe the same, and shall be capable of being enforced in the temporal courts in relation to any property which under and by virtue of this Act is reserved or given to or taken and enjoyed by the said Church or any members thereof, in the same manner and to the same extent as if such property had been expressly given, granted, or conveyed upon trust to be held, occupied, and enjoyed by persons who should observe and keep and be in all respects bound by the said ecclesiastical law, and the said articles, doctrines, rites, rules, discipline, and ordinance of the said Church, subject as aforesaid; but nothing herein contained shall be construed to confer on any archbishop, bishop, or other ecclesiastical person any coercive jurisdiction whatsoever (...).¹⁷⁶

¹⁷¹ Irish Church Act 1869 (32 & 33 Vict c 42), s 13.

¹⁷² Convention Act 1793 in Ireland (33 Geo III c 29); Convocations could not be convened except by Royal Writ and Provincial Synods by Royal Licence; although bishops had power to convene diocesan synods, decisions of those synods required Royal sanction; see generally Charles H Todd, *Irish Church Act 1869 with Observations* (Hodges, Foster and Co 1869) 38-39.

¹⁷³ Gerald Bray (ed), *Records of Convocation* vol xviii Ireland 1690-1869 pt 1 (The Boydell Press 2006) 23.

¹⁷⁴ Gerald Bray (ed), *Records of Convocation* vol xviii Ireland 1690-1869 pt 1 (The Boydell Press 2006) 24.

¹⁷⁵ See also Irish Convention Act 1793 (33 Geo III c 29).

¹⁷⁶ See also *O’Keeffe v Cullen* IR 7 CL 319; *O’Callaghan v O’Sullivan* [1925] 1 IR 90.

Section 21 abolishes the ecclesiastical law as civil law and the ecclesiastical courts. The efficacy of both continue within the church, however, subject to any modifications or alterations made by the General Synod:

[A]ll jurisdiction, whether contentious or otherwise, of all the ecclesiastical, peculiar, exempt, and other courts and persons in Ireland at the time of the passing of this Act having any jurisdiction whatsoever exercisable in any cause, suit, or matter, matrimonial, spiritual or ecclesiastical, or in any way connected with or arising out of the ecclesiastical law of Ireland, shall cease (...) and the ecclesiastical law of Ireland, except in so far as relates to matrimonial causes and matters, shall cease to exist as law.

Section 22 enabled the setting up of the RCB:

If at any time it be shown to the satisfaction of Her Majesty that the bishops, clergy, and laity of the said Church in Ireland, or the persons who, for the time being, may succeed to the exercise and discharge of the Episcopal functions of such bishops, and the clergy and laity in communion with such persons, have appointed any persons or body to represent the said Church, and to hold property for any uses of purposes therefore, it shall be lawful for Her Majesty by charter to incorporate such body, with power, notwithstanding the statutes of mortmain, to hold lands to such extent as is in this Act provided, but not further or otherwise.

Section 69 provides that references to the United Church of England and Ireland in any enactments, deeds and other documents are to be read distributively in respect of the Church of England on the one hand, and the Church of Ireland on the other (only the latter being subject to the provisions of the Irish Church Act).

Section 70 lays down that nothing in the Irish Church Act ‘shall affect the patronage or right of presentation to any proprietary or district parochial church or endowed chapel of ease which has been endowed out of private funds, or affect the property in any such church or chapel (...) or property held for such churches, or ‘affect the continuance of the trust relating thereto as originally constituted.’ Thus the pre-disestablishment trusts founding trustee churches and the rights of trustees were protected and endured post-1871.

In 1936, in *Colquhoun v Fitzgibbon*¹⁷⁷ both sections 69 and 70 of the Irish Church Act were considered by the High Court. The plaintiff - the Reverend Samuel Colquhoun - was incumbent of a proprietary church¹⁷⁸ founded on foot of a Deed of Endowment of 1st April 1850. The Deed provided that the clergy appointed to officiate in the church

¹⁷⁷ *Colquhoun v Fitzgibbon* [1937] IR 555.

¹⁷⁸ Saint John the Evangelist, Sandymount, Dublin.

should be subject to the jurisdiction of the Archbishop of Dublin, and that the liturgy and rites of the United Church of England and Ireland as by law established should be used and observed in the church and none other. In 1934 the plaintiff, in response to charges brought against him in the church courts, had objected to the jurisdiction of the Court of the General Synod, and sought an order of prohibition from the High Court. The High Court held that prohibition did not lie to the Court of the General Synod.¹⁷⁹ The plaintiff subsequently sought a declaration *inter alia* that the continuance of the trust, under which the church in which he ministered was built, and on foot of which he was appointed, was not affected by the provisions of the Irish Church Act 1869, or by the provisions of the CCI.

The High Court ruled that the provisions of the Deed of Endowment were preserved by section 70 of the Irish Church Act, but that that jurisdiction did not exclude the jurisdiction of the Court of the General Synod. Section 70 had not given the trust any greater effect than it had had prior to the passing of the Irish Church Act. Moreover, in that the trust did not previously oust the jurisdiction of the former Ecclesiastical Courts, it did not now oust the jurisdiction of the tribunals of the Church of Ireland. The Court found that the Deed of Endowment was inherently capable of existing alongside the jurisdiction of the tribunals of the Church of Ireland.¹⁸⁰ The High Court also held that the provisions of the Deed of Endowment must be interpreted distributively in accordance with section 69 of the Act, which means that the liturgy and ritual of the Church of Ireland, as prescribed by the CCI, and none other, were to be used in the church.¹⁸¹

Other examples of State legislation, which govern primarily the Church of Ireland, are the Irish Church Act 1869 (Amendment) Act 1872,¹⁸² the Glebe Lands Representative Church Body (Ireland) Act 1875 (which extended and delineated further the activities of the RCB in relation to property, investment and bequests¹⁸³), the Irish Church

¹⁷⁹ *State (Colquhoun) v D'Arcy* [1936] IR 641.

¹⁸⁰ *Colquhoun v Fitzgibbon* [1937] IR 555 per Meredith, J, 574.

¹⁸¹ *Colquhoun v Fitzgibbon* [1937] IR 555 per Meredith, J, 576-78.

¹⁸² Irish Church Act 1869 (Amendment) Act 1872 (35 & 36 Vict c 90) - this Act amended the Irish Church Act 1869 in order to extend the value of life annuity of beneficiaries and set out an additional mechanism for administering the annuity scheme.

¹⁸³ Glebe Lands Representative Church Body (Ireland) Act 1875 (38 & 39 Vict c 42) – this Act enabled the Representative Church Body purchase, hold and sell land for the purposes of providing glebes for Irish clergy.

(Amendment) Act 1881¹⁸⁴ and the Trustee Churches (Ireland) Act 1884.¹⁸⁵ The last of these enabled trustees of trustee churches to put an end to any such trust and to transfer the church and property of the trust to the RCB.

Deeds of Trust

The implications of *Colquhoun v Fitzgibbon*,¹⁸⁶ for the interpretation of all pre-disestablishment trusts, are plain. Those trust deeds are, in themselves, a subsidiary source of law for the Church of Ireland and are binding on trustees and beneficiaries. The relevance of the law of trusts is seen in the context, foremost, of the work of the RCB. Indeed, the internal law of the church underscores, at times, the importance of compliance with the terms of any trust: the CCI specifically provides that the members of the select vestry or a trustee church have an overriding duty to fulfil their role in a manner consistent with the terms of the trust.¹⁸⁷

Charter of Incorporation

Section 22 of the Irish Church Act 1869 empowered the bishops, together with the clergy and laity of the Church of Ireland who were in communion with the bishops, to appoint persons or a body of persons to represent the Church and to hold property for any uses or purposes thereof; and also made it lawful for that body to be incorporated by Royal Charter.¹⁸⁸

The Irish Church Act had provided for an incorporated body with two key functions: to represent the church and to hold its property (as trustee). It was to have no function as a governing body, or as legislature (other than insofar as might be delegated by the General Synod), and none in relation to the regulation of the Church's teaching and discipline.¹⁸⁹ These are functions properly fulfilled by the General Synod of the Church of Ireland.¹⁹⁰ The role of the incorporated body was to be practical management.¹⁹¹

¹⁸⁴ Irish Church (Amendment) Act 1881 (44 & 45 Vict c 71) – this Act made provision for the transfer of the duties vested in the Commissioners of Church Temporalities in Ireland (under the Irish Church Act 1869) to the Irish Land Commission.

¹⁸⁵ Trustee Churches (Ireland) Act 1884 (47 & 48 Vict c 10) – this Act made provision for the vesting by trustees of Trustee Churches in the Representative Church Body.

¹⁸⁶ *Colquhoun v Fitzgibbon* [1937] IR 555.

¹⁸⁷ CCI, ch V, s 6.

¹⁸⁸ Irish Church Act 1869 (32 & 33 Vict c 42), s 22.

¹⁸⁹ Irish Church Act 1869 (32 & 33 Vict c 42), s 22; see also Charles H Todd, *Irish Church Act (1869): With Observations* (Hodges, Foster and Co 1869) 48.

¹⁹⁰ Irish Church Act 1869, 32 & 33 Vict c 42, s 19.

¹⁹¹ George Atkins, *The Irish Church Act (1869), Carefully Annotated* (Ponsonby 1869) 25.

The Charter of Incorporation of the Representative Church Body was granted on 19th October 1870. The Charter, as a source of law, lays down the structure and membership of the RCB, and also delineates its powers and responsibilities.

It is a foundation document that is worked out in the provisions of the Constitution of the Church of Ireland.¹⁹² The Charter is a civil law source that typifies the interface between civil law and church law. In the survey, 9% of registrars, 3% of clergy and 4.5% of laity indicated that they do not consider it to be a source.

International Law and Human Rights Sources¹⁹³

It has already been pointed out that, constitutionally, Ireland accepts the principles of international laws and, arising from its dualist approach, the *Oireachtas* determines the inclusion, or otherwise, of international agreements in domestic law.¹⁹⁴

It is important to underscore the International and European Human Rights and Fundamental Rights Law context in which Ireland and, in consequence, the Church of Ireland, subsists.¹⁹⁵ The international legal economy is an increasingly formative dynamic in nurturing the relationship between law and religion generally, and as such, has to be regarded as an important source. The increasing impact of this source on the church will be considered in Part Two: Chapter One.

It is widely noted that the Irish Constitution reflects the provisions in international instruments articulating fundamental and human rights: the Universal Declaration of Human Rights (UDHR),¹⁹⁶ the Charter of Fundamental Rights of the European Union¹⁹⁷

¹⁹² CCI, ch X.

¹⁹³ For human rights, Christianity and religious associations generally see Julian Rivers, *The Law of Organized Religions* (Oxford University Press, 2010) ch2; also Michael J Perry, 'Christianity and human rights' in John Witte Jr and Frank S Alexander, *Christianity and the Law* (Cambridge University Press, 2008) 237-48; also David Little, 'Religious Liberty' in John Witte Jr. and Frank S Alexander, *Christianity and the Law* (Cambridge University Press 2008) 249-70.

¹⁹⁴ *Bunreacht na hÉireann* Articles 29.3 and 29.6; see generally Gerard Hogan and Gerry Whyte, *J M Kelly: The Irish Constitution* (4th edn, LexisNexis Butterworths 2003) 492-503, para 5.3.02-5.3.25.

¹⁹⁵ See generally Ursula Kilkelly (ed), *ECHR and Irish Law* (2nd edn, Jordans, 2009); Donncha O'Connell 'Ireland' in Robert Blackburn and Jörg Polakiewicz, *Fundamental Rights in Europe* (Oxford University Press 2001) 423-73; see also Norman Doe 'Canonical Approaches to Human Rights in Anglican Churches' in Mark Hill (ed), *Religious Liberty and Human Rights* (University of Wales Press 2002) 185-206.

¹⁹⁶ Universal Declaration of Human Rights Article 18 (Freedom of thought, conscience and religion), Article 19 (freedom of expression) and Article 26 (Right to education); see generally Paul M Taylor, *Freedom of Religion: UN and European Human Rights Law and Practice* (Cambridge University Press 2005).

and the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).¹⁹⁸ These afford particular protection to religious belief and expression.

Article 18 of the UDHR provides:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19 (the right to freedom of opinion and expression) and Article 20 (the right to freedom of peaceful assembly and association) of the UDHR situate the right to religious belief and expression in a wider setting. While this is a Declaration and not a binding treaty, it may now, however, be said to have become part of customary international law.¹⁹⁹

Ireland is a member of the European Union. On 7th December 2000 the Presidents of the European Parliament, the Council and the Commission signed and proclaimed the Charter of Fundamental Rights of the European Union. Referring to the common values of the peoples of Europe, the Preamble alludes to our ‘spiritual and moral heritage.’²⁰⁰ Article 10 relates to freedom of thought, conscience and religion, and states:

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

¹⁹⁷ Charter of Fundamental Rights of the European Union Articles 10 (freedom of thought, conscience and religion), Article 11 (freedom of expression and information) and Article 14 (Right to Education).

¹⁹⁸ Known as the European Convention on Human Rights (hereinafter ECHR); text available at < <http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm> > accessed 26 January 2012; see generally Clare Ovey and Robin CA White, *Jacobs and White: The European Convention on Human Rights* (4th edn, Oxford University Press 2006); Alastair Mowbray, *Cases and Materials on the European Convention on Human Rights* (Oxford University Press 2001).

¹⁹⁹ Thomas O’Malley, *Sources of Law* (2nd edn, Round Hall Sweet & Maxwell 2001) 171; see also Paul M Taylor, *Freedom of Religion: UN and European Human Rights Law and Practice* (Cambridge University Press 2005),

see also the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief (25 November 1981) A/RES/36/55 available at < <http://www.un.org/documents/ga/res/36/a36r055.htm> > accessed 15 February 2012; the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious or Linguistic Minorities (18 December 1992) A/RES/47/135 available at < <http://www.un.org/documents/ga/res/47/a47r135.htm> > accessed 15 February 2012.

²⁰⁰ Charter of Fundamental Rights of the European Union, available at < http://www.europa.europa.eu/charter/default_en.htm > accessed 25 March 2012.

Articles 11 (freedom of expression and information) and Article 12 (freedom of assembly and association) mirror similar provisions in other charters.

Likewise, Articles 10 and 11 of the ECHR guarantee freedom of expression and freedom of assembly and association, respectively, while Article 9 states:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 2 of the First Protocol is a relevant source also, for it deals with religious education:

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and teaching, the State shall respect the right of parent to ensure such education and teaching in conformity with their own religious and philosophical convictions.²⁰¹

The ECHR, adopted by the Council of Europe, was signed by the Irish Minister for External Affairs on 4th November 1950 and ratified on 25th February 1953. Ireland was affirming of the ECHR from the outset: at the time of entry into force of the ECHR in September 1953 it was one of only two states that had granted the right of petition to its citizens.²⁰² The first case before the European Court of Human Rights (ECtHR) was against Ireland.²⁰³

Ironically perhaps, Ireland being the religious country that it is, Article 9 of the ECHR has not been argued in any of the cases involving churches or religious institutions, either before or since incorporation of the ECHR.²⁰⁴ Where religion arose it was not Article 9 that was relied on but other Articles.

²⁰¹ See generally Clare Ovey and Robin CA White, *Jacobs and White: The European Convention on Human Rights* (4th edn, Oxford University Press 2006) ch 16.

²⁰² The other was Sweden. The right was granted in Germany in 1957, the United Kingdom in 1965 and in France in 1975.

²⁰³ *Lawless v Ireland* (1961) 1 EHRR 13.

²⁰⁴ For Article 9 of the ECHR generally see Carolyn Evans, *Freedom of Religion under the European Convention on Human Rights* (Oxford University Press 2001); Malcolm D Evans, *Religious Liberty and International Law in Europe* (Cambridge University Press 1997).

For example, in *Murphy v Independent Radio and Television Commission*²⁰⁵ the case was argued in the domestic courts on the basis of the Irish Constitution and Article 10 of the ECHR. It was only when it came to the ECtHR that reliance was placed also on Article 9. The Independent Radio and Television Commission had refused to broadcast an advertisement on independent radio which had been submitted by a Pastor from the Irish Faith Centre on the basis that to do so would infringe s.10(3) of the Radio and Television Act 1988.²⁰⁶ The advertisement submitted would have read as follows:

What think ye of Christ? Would you, like Peter, only say that he is the son of the living God? Have you ever exposed yourself to the historical facts about Christ? The Irish Faith Centre are presenting for Easter week an hour long video by Dr. Jean Scott PhD on the evidence of the resurrection from Monday 10th - Saturday 15th April every night at 8.30 p.m. and Easter Sunday at 11.30 a.m. and also live by satellite at 7.30 p.m.

The Supreme Court upheld the ruling of Geoghegan J in the High Court that the prohibition on this particular advertisement was not an attack on freedom of conscience or the free practice of religion. It was held that the advertisement itself ‘might be an intrusion on the quiet possession of religious beliefs.’²⁰⁷ Nor, he held, could the advertisement be regarded as a discrimination made on the grounds of religious profession, belief or status contrary to Article 44.2.3 of the Irish Constitution. Barrington J agreed:

There is no question of any form of discrimination or distinction being made by s. 10(3) on the grounds of religious profession belief or status. The ban contained in sub-s. (3) is directed at material of a particular class and not at people who profess a particular religion. All people in the same position are treated equally. The fact that people who wish to advertise motor cars or tinned beans may be treated differently is not relevant. (...) It is sufficient to admit that the ban on religious advertising is a restriction, however limited, on the freedom of the citizen to profess, express or practise his religion and to inquire whether, in the circumstances of the case, the restriction is justified.²⁰⁸

Before the ECtHR Murphy alleged an interference with his rights under both Articles 9 and 10.²⁰⁹ The Court determined, however, that the case did not relate to an interference

²⁰⁵ *Murphy v Independent Radio and Television Commission* [1999] 1 IR 12.

²⁰⁶ ‘No advertisement shall be broadcast which is directed towards any religious or political end or which has any relation to an industrial dispute.’ See, however, recent developments: ‘Controls on religious ads for broadcast to be relaxed’ *Irish Times* (Dublin, 1 April 2009); and ‘Religious groups welcome adverts pledge’ *Irish Times* (Dublin, 2 April 2009).

²⁰⁷ *Murphy v Independent Radio and Television Commission* [1999] 1 IR 12, 16.

²⁰⁸ *Murphy v Independent Radio and Television Commission* [1999] 1 IR 12, 22-23.

²⁰⁹ *Murphy v Ireland* (2004) 38 EHRR 13.

with Murphy's profession or manifestation of religion under Article 9 and that there had been no violation of Article 10 of the ECHR.

In *Johnston v Ireland*²¹⁰ one of the applicants, a member of the Society of Friends, alleged that his religion was not opposed to divorce, and that as no divorce was available in Ireland, his inability to live other than in an extra-marital relationship was contrary to his conscience and that, therefore, he was the victim of a violation of Article 9. The ECtHR said that the non-availability of divorce under Irish law was a matter to which Article 9 cannot, in its ordinary meaning, be taken to extend.

In the nature of things, religious outlook has impinged on, or been argued, in some cases before the Irish courts. In *Norris v Attorney General*,²¹¹ in which the plaintiff was seeking a declaration that sections 61 (buggery) and 62 (attempted buggery) of the Offences Against the Person Act 1861 were incompatible with the Irish Constitution, the religious perspective was adduced, from opposite viewpoints in two judgements (both majority and minority judgments). By majority verdict the Supreme Court dismissed Norris' appeal. O'Higgins CJ said:

[F]rom the earliest days, organised religion, regarded homosexual conduct, such as sodomy and associated acts with a deep revulsion as being contrary to the order of nature, a perversion of the biological functions of the sexual organs and an affront both to society and to Gods. With the advent of Christianity this view found clear expression in the teachings of St. Paul, and has been repeated over the centuries by the doctors and leaders of the Church in every land in which the Gospel of Christ has been preached.²¹²

In contrast, Henchy J referred to the evidence given by two theologians – one Roman Catholic and another Church of Ireland - both of whom had proffered the view that, in their expert opinion, the legislation in question was unchristian. Subsequently when the ECtHR decided in favour of *Norris*²¹³ it did so on the grounds that there had been an interference of his right to respect for his private life under Article 8.

²¹⁰ *Johnston v Ireland* (1987) 9 EHRR 203.

²¹¹ *Norris v Attorney General* [1984] IR 36.

²¹² *Norris v Ireland* (1989) 13 EHRR 186.

²¹³ *Norris v Ireland* (1989) 13 EHRR 186.

The fact remains that in cases such as this one, Article 9 of the ECHR was not argued.²¹⁴ Instead, cases have turned on the provisions of the Irish Constitution, principally Article 44 (religious freedom).²¹⁵ These cases concerned: freedom of conscience;²¹⁶ free practice and profession of religion;²¹⁷ the status (lay or ordained) of a teacher;²¹⁸ the receipt of State funding and the right of a religious group to manage its own affairs;²¹⁹ freedom of expression and the constitutionality of a statutory restriction on religious broadcasting;²²⁰ the constitutionality of derogations from certain provisions of employment equality legislation to religious institutions;²²¹ the funding of the salaries of chaplains at community schools;²²² and an allegedly blasphemous cartoon.²²³

The Constitution Review Group expressed the view that the ECHR provisions concerning religion ‘...guarantee substantially the same rights with regard to free practice of religion as those contained in Article 44.’²²⁴ However, a majority of the group recommended that the qualifying language of Article 44.2.1^o ²²⁵ should be modelled on Article 9 (2) of the ECHR, and reformulated along these lines:

The exercise of these rights and freedoms may be subject only to such limitations as may be imposed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health and morals, or for the protection of the rights and freedoms of others.²²⁶

²¹⁴ *Quinn’s Supermarket v Attorney General* [1972] IR 1; *McGrath and Ó Ruairc v Trustees of the College of Maynooth* [1979] I.L.R.M. 166; *Mulloy v Minister for Education* [1975] IR 88; *Murphy v Independent Radio and Television Commission* [1997] 2 ILRM 467; *Murphy v Independent Radio and Television Commission* [1999] 1 IR 12; *Article 26 and the Employment Equality Bill 1996* [1997] IR 321; *Campaign to Separate Church and State Ltd v Minister for Education* [1998] 3 IR 321, [1998] 2 ILRM 81; *Corway v Independent Newspapers (Ireland) Ltd* [1999] 4 IR 484.

²¹⁵ For a full treatment and analysis of Article 44 of *Bunreacht na hÉireann* (The Irish Constitution) see: Gerard Hogan and Gerry Whyte, *J.M. Kelly: The Irish Constitution* (4th edn, LexisNexis 2004), 2029-75; James Casey, *Constitutional Law in Ireland* (Sweet and Maxwell 2000) 685-708.

²¹⁶ *McGee v Attorney General* [1974] IR 284.

²¹⁷ *Quinn’s Supermarket v Attorney General* [1972] IR 1.

²¹⁸ *Mulloy v Minister for Education* [1975] IR 88.

²¹⁹ *McGrath and Ó Ruairc v Trustees of the College of Maynooth* [1979] ILRM 166.

²²⁰ *Murphy v Independent Radio and Television Commission* [1997] 2 ILRM 467; *Murphy v Independent Radio and Television Commission* [1999] 1 IR 12.

²²¹ *Re Article 26 and the Employment Equality Bill 1996* [1997] IR 321.

²²² *Campaign to Separate Church and State Ltd v Minister for Education* [1998] 3 IR 321, [1998] 2 ILRM 81.

²²³ *Corway v Independent Newspapers (Ireland) Ltd* [1999] 4 IR 484.

²²⁴ *Report of the Constitution Review Group* (Dublin, Government Publications, 1996) 370.

²²⁵ Constitution Article 44.2.1^o ‘Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.’

²²⁶ *Report of the Constitution Review Group* (Government Publications 1996) 380.

If one were to anticipate future developments, there is little doubt that the increasing religious pluralism in Ireland, allied to an increasingly secular outlook, will pose challenges.²²⁷

Ireland had the dubious distinction of being the last State to incorporate the ECHR into domestic law.²²⁸ By the time it did so, the United Kingdom had passed the Human Rights Act 1998 five years beforehand.²²⁹ Under The Belfast Agreement²³⁰ it was agreed that:

The Irish Government will also take steps to further strengthen the protection of human rights in its jurisdiction. The Government will (...) bring forward measures to strengthen and underpin the constitutional protection of human rights. These proposals will draw on the European Convention on Human Rights and other international legal instruments in the field of human rights and the question of the incorporation of the ECHR will be further examined in this context.²³¹

Introducing the Second Reading of the European Convention on Human Rights Bill 2001 in *Dáil Éireann* on 14th June 2001, the Minister for Justice Equality and Law Reform²³² highlighted the Irish constitutional position:

As a nation, we are fortunate in being one of the few states to have a formal written Bill of Rights enshrined in our 1937 Constitution. Indeed, it has to be acknowledged from the outset that Ireland is unique among the member states of the European Union, and among the other signatory states of the convention, in having a written Constitution which embodies a system of fundamental rights chosen by the people, which are unalterable save by the wish of the people, and which are made superior and justiciable at the instance of the individual over all other law, both in theory and in practice. Our excellent human rights record before the Court of Human Rights in Strasbourg is due in no small measure to these factors.

The hallmark of our protection of fundamental rights in the Constitution has been their development by the superior courts through the doctrine of un-enumerated

²²⁷ For corroboration of this view see *Report of the Constitution Review Group* (Government Publications 1996) 375.

²²⁸ European Convention on Human Rights Act 2003.

²²⁹ For the Human Rights Act 1998 generally see John Wadham, Helen Mountfield, Elizabeth Prochaska and Christopher Brown, *Blackstone's Guide to the Human Rights Act 1998* (6th edn, Oxford University Press 2011); Steven Greer, 'A Guide to the Human Rights Act 1998' in (1999) 24(1) *ELRev* 3; for the Human Rights Act 1998 and religion see: Mark Hill, 'The Impact for the Church of England of the Human Rights Act 1998' in (1998-2000) 5 *EccLJ* 431; Mark Hill, 'A New Dawn for Freedom of Religion: Grounding the Debate' in Mark Hill (ed), *Religious Liberty and Human Rights* (University of Wales Press 2002) 1-13; Mark Hill, 'The Permissible Scope of Legal Limitations on the Freedom of Religion in the United Kingdom' (2005) 19(2) *Emory International Law Review* 1129; Julian Rivers 'From Toleration to Pluralism; Religious Liberty and Religious Establishment under the United Kingdom's Human Rights Act' in Rex J Ahdar (ed), *Law and Religion* (Ashgate, 2000) 133-61.

²³⁰ Also known as the Good Friday Agreement, signed on 10th April 1998 and available at < <http://www.nio.gov.uk/agreement.pdf> > accessed on 15 February 2012.

²³¹ Belfast Agreement 1998, 22 par 9.

²³² John O'Donoghue, TD.

personal rights largely by means of judicial review of legislation. The drawing up of international human rights texts by the United Nations and the Council of Europe has also influenced that process.²³³

Hogan highlights the vibrant corpus of constitutional jurisprudence in Ireland, as well as the fact that Irish courts have, since 1937, ‘been working within a system of judicial review of legislation which confers on them far-reaching powers of review (...) [And to] complete the picture, it has to be said that there is a very high degree of overlap between the Irish Constitution’s guarantees and those of the ECHR.’²³⁴ While the overlap between the fundamental rights guaranteed by the Irish Constitution and those articulated in the ECHR is recognised, so too there is acknowledgement that the list of rights enunciated is incomplete.²³⁵ The Constitution Review Group reached this conclusion with reference, *inter alia*, to the ECHR.²³⁶

By the time of incorporation of the ECHR into domestic law in 2003 one could say that ‘the practice of the courts interpreting either the provisions of the Constitution by reference to the European Convention on Human Rights itself or the case law of the European Court itself [was by then] well established.’²³⁷ The courts by then also acknowledged a presumption that Irish Law is in conformity with the ECHR.²³⁸ By the end of 1998, O’Connell argued that until then the courts took a too restrictive view of Articles 15.2 (the *Oireachtas* has sole law-making power for the State) and 29.6 (No international agreement shall be part of the domestic law of the State save as may be determined by the *Oireachtas*) of the Irish Constitution:

While both provisions point clearly to the need for legislative incorporation to maximize the domestic effect of international conventions, nothing in the Constitution prevents the judiciary from having regard to international instruments and decisions of international courts and commissions as persuasive authorities even in matters of constitutional interpretation.²³⁹

²³³ Dáil Reports, Volume 538, 14 June, 2001.

²³⁴ Gerard Hogan, ‘Incorporation of the ECHR: Some issues of Methodology and Process’ in Ursula Kilkelly (ed), *ECHR and Irish Law* (Jordans 2004) 12-24, 14-15.

²³⁵ *Report of the Constitution Review Group* (Government Publications 1996) 214.

²³⁶ *Report of the Constitution Review Group* (Government Publications 1996); with reference to Article 40.6.1^o i (Freedom of Expression) see 298.

²³⁷ Gerard Hogan and Gerry Whyte, *J M Kelly: The Irish Constitution* (4th edn, LexisNexis Butterworths 2003) 38, 1.1.70 and 551-2, 5.3.123.

²³⁸ See *Desmond v Glackin (No 1)* [1993] 3 IR 1; *State (DPP) v Walsh* [1981] IR 412 per Henchy J, 440. However, see also *Norris v Attorney General* [1984] IR 36, 66.

²³⁹ Donncha O’Connell, ‘Ireland’ in Robert Blackburn and Jörg Polakiewicz *Fundamental Rights in Europe* (Oxford University Press 2001) 423-73, 434-35.

The incorporation, albeit at sub-constitutional level, of the ECHR into domestic Irish law, by means of the European Convention on Human Rights Act 2003 requires Irish courts to interpret Irish law in a manner compatible with the State's obligations under the ECHR, in so far as is possible.²⁴⁰ The Act came into force on 31st December 2003. Its stated intention was 'to enable further effect to be given, subject to the Constitution, to certain provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms.'²⁴¹ The all-embracing effect on Irish law of the ECHR renders it of undoubted relevance as a source of law for the church.

The anticipated effect of the proposed incorporating legislation was summarised well by Donal Barrington, President of the Irish Human Rights Commission:

In some ways incorporation does not mean anything very new. We are already bound by the Convention. If someone's rights are clearly violated, s/he can get a decision from the Strasbourg Court and the Government will, with varying degrees of enthusiasm, obey the ruling and change the law or practice that has been condemned. The big difference would be that when the Convention is made part of domestic law, it will be accessible to the man or woman in the street (...) In other words, we hope it will develop a culture of human rights at all levels in our public life. There is nothing here for us to be afraid of. Our courts already have a record of defending the rights protected by the Constitution. Now we hope there will be a fruitful dialogue or interaction between the Constitution and Convention rights and jurisprudence, leaving us all the richer as a result.²⁴²

Section 2 of the Act provides that, courts are - subject to the rules of law relating to interpretation and application - and *in so far as is possible*,²⁴³ to interpret any statutory provision or rule of law (including the common law;²⁴⁴ and both existing and future statutory provisions²⁴⁵), in a manner compatible with the State's obligations under the Convention provisions.²⁴⁶

Section 3(1) provides that 'every organ of the State shall perform its functions in a manner compatible with the State's obligations under the Convention provisions', subject, however, 'to any statutory provision (other than this Act) or rule of law.' 'Statutory provision' is defined as 'any provision of an Act of the Oireachtas or of any

²⁴⁰ European Convention on Human Rights Act, 2003, s 2.

²⁴¹ European Convention on Human Rights Act 2003, Long Title; for the import of this in the Irish legal system see *JMcD v PL and BM* [2010] 2 IR 199, [2008] IEHC 96, [2009] IESC 81.

²⁴² 'Submission on the European Convention on Human Rights Bill 2001 to the Joint Oireachtas Committee on Justice, Equality, Defence and Women's Rights' (Irish Human Rights Commission 2002) 3.

²⁴³ *Emphasis added.*

²⁴⁴ European Convention on Human Rights Act 2003, s 1 (1).

²⁴⁵ European Convention on Human Rights Act 2003, s 2 (2).

²⁴⁶ European Convention on Human Rights Act 2003, s 2 (1).

order, regulation, rule, licence, bye-law or other like document made, issued or otherwise created thereunder or any statute, order, regulation, rule, licence, bye-law or other like document made, issued or otherwise created under a statute which continued in force by virtue of Article 50 of the Constitution.’²⁴⁷ Excluded from the definition of ‘organ of State’ are the President, the *Oireachtas* (or either house or a committee thereof) and the courts.²⁴⁸ However, a person who suffers injury, loss or damage arising from the breach by an ‘organ of State’ of section 3(1), and if no other remedy in damages is available, may institute proceedings to recover damages,²⁴⁹ and the Circuit Court or High Court may award appropriate damages.²⁵⁰

In addition, the Act (section 4) provides that judicial notice is to be taken of the Convention provisions. When interpreting and applying Convention provisions, courts (at all levels) are ‘to take due account’ of any declaration, decision, advisory opinion or judgment of the European Court of Human Rights; and any decision of opinion of the European Commission on Human Rights; and any decision of the Committee of Ministers established under the Statute of the Council of Europe.²⁵¹

Lastly, it is open to the High Court or Supreme Court, (on the application of a party or of its own motion) having regard to section 2 of the Act,²⁵² and ‘where no other legal remedy is adequate and available, make a declaration (referred to in this Act as ‘a declaration of incompatibility’) that a statutory provision or rule of law is incompatible with the State’s obligations under the Convention provisions.’²⁵³

A declaration of incompatibility does not affect the validity, operation or enforceability of the statutory provision in question.²⁵⁴ Such a declaration is not equivalent to a

²⁴⁷ European Convention on Human Rights Act 2003, s 1 (1).

²⁴⁸ European Convention on Human Rights Act 2003, s 1(1); ‘Unlike in England, courts are not expressed to be organs of the State which are obliged to comply with the Convention’ – see Gerard Hogan and David Gwynn Morgan, *Administrative Law in Ireland* (4th edn, Round Hall Thomson Reuters 2010) 27 n106.

²⁴⁹ European Convention on Human Rights Act 2003, s 3(2).

²⁵⁰ European Convention on Human Rights Act 2003, s 3(3).

²⁵¹ European Convention on Human Rights Act 2003, s 4; see generally Ursula Kilkelly (ed), *ECHR and Irish Law* (2nd edn, Jordans 2009; see also *Doherty v South Dublin County Council* [2007] IEHC 4.

²⁵² s 2 (1): ‘In interpreting and applying any statutory provision or rule of law, a court shall, in so far as is possible, subject to the rules of law relating to such interpretation and application, do so in a manner compatible with the State’s obligations under the Convention provisions.’

²⁵³ European Convention on Human Rights Act 2003, s 5.

²⁵⁴ European Convention on Human Rights Act 2003, s 5(2)(a).

finding that a provision is unconstitutional.²⁵⁵ Where a court makes such a declaration of incompatibility: the *Taoiseach*²⁵⁶ is obliged to lay a copy of the declaration before each House of the *Oireachtas* within 21 days.²⁵⁷ Although there is no onus on the *Taoiseach*, in doing so, to indicate what remedial action needs to be taken,²⁵⁸ nonetheless, it is to be inferred from the legislation that where a court makes such a declaration of incompatibility ‘a political will may exist to alter relevant legislation in favour of compatibility.’²⁵⁹ In the case of the 2003 Act, it appears that there is ‘a low take-up (...) compared with the position in the UK’²⁶⁰ A number of applications for a declaration of incompatibility have been made but have not succeeded.²⁶¹ A transgender woman, Lydia Foy, secured the first declaration of incompatibility in 2005.²⁶²

A party to the proceedings may apply to the Attorney General seeking an award of compensation²⁶³ and the Government has a discretionary power to award an *ex gratia* payment.²⁶⁴

²⁵⁵ See Gerard Hogan, ‘Incorporation of the ECHR: Some issues of Methodology and Process’ in Ursula Kilkelly (ed), *ECHR and Irish Law* (Jordans 2004) 12-34, 21-28.

²⁵⁶ Prime Minister.

²⁵⁷ European Convention on Human Rights Act 2003, s 5(3).

²⁵⁸ Per Kearns J in *Dublin City Council v Fennell* [2005] IR 604.

²⁵⁹ Per Charleton, J in *Doherty v South Dublin County Council* [2007] IEHC 4 (22nd January 2007).

²⁶⁰ Michael Farrell, ‘The Challenge of the ECHR’ A Paper delivered at a conference (Rebalancing Criminal Justice in Ireland) organised by the Centre for Criminal Justice and Human Rights at University College Cork on 29 June 2007 as found at < <http://www.ucc.ie/law/docs/UCC-paper-final-Michael-Farrell.doc> > accessed 15 February 2012.

²⁶¹ *McCoppin v Kennedy* [2005] 4 IR 66; *Dublin City Council v Fennell* [2005] 1 IR 604; *Superwood Holdings Plc v Ireland* [2005] 3 IR 398 (concerning s390 of the Companies Act 1963); *K.(M.) v Minister for Justice, Equality and Law Reform* [2005] IEHC 247; *Law Society of Ireland v Competition Authority* [2006] 2 IR 262 (in the Order of *Certiorari* the applicant already had an adequate legal remedy); *Doherty v South Dublin County (No.2)* [2007] 2 IR 696, [2007] IEHC 4 (re Housing Acts 1966 to 2004); *Zappone and Gilligan v The Revenue Commissioners, Ireland the AG* [2008] 2 IR 417, [2006] IEHC 404 (no violation of rights under the ECHR); *Grace v Ireland* [2007] IEHC 90; *Bode and Bode v The Minister for Justice, Equality and Law Reform* [2008] 3 IR 663, [2007] IESC 62 (immigration case in which the Supreme Court reversed High Court decision on the basis that there had been no infringement of constitutional or convention rights); *Walsh v The Minister for Justice, Equality and Law Reform* [2010] 2 IR 463, [2009] IEHC 102 (Criminal Justice (Legal Aid) (Tax Clearance Certificate) Regulations 1999 (SI 135/1999) not incompatible); *Carmody v The Minister for Justice, Equality and Law Reform* [2010] 1 IR 635, [2009] IESC 71 (the general question of constitutionality should be decided before that of incompatibility of s.2 of the Criminal Justice (Legal Aid) Act 1962 (No. 12)); *JD v The Residential Institutions Redress Review Committee* [2010] 1 IR 262, [2009] IESC 59 (definition of a child under s2 of the Residential Institutions Redress Act 2002 not incompatible); see also, however, *O’Shea v Ireland* [2007] 2 IR 313, [2006] IEHC 305 (in which – at 316 - it was stated *obiter* per Laffoy J that had the ECHR been invoked, the ECHR Act 2003 would have been applicable).

²⁶² *Foy v An t-Ard Chláraitheoir & Others (No. 2)* [2007] IEHC 470; see also ‘State drops transgender challenge’ *Irish Times* (Dublin, 6 June 2010).

²⁶³ European Convention on Human Rights Act 2003, s 5 (4)(b).

²⁶⁴ European Convention on Human Rights Act 2003, s 5 (3)(c); see also ECHR Article 41.

Since the inception of the ECHR and as a consequence of decisions of the ECtHR Ireland has had to amend its law: to provide for civil legal aid;²⁶⁵ to decriminalise homosexuality;²⁶⁶ to abolish discrimination against children born outside marriage;²⁶⁷ to provide limited information about abortion;²⁶⁸ and, to provide for the rights of natural fathers in the adoption process.²⁶⁹ In a number of cases where ECHR rights were violated by Ireland damages were awarded.²⁷⁰ Of the unsuccessful cases against Ireland,²⁷¹ one had invoked articles 9 (freedom of religion) and 10 (freedom of expression).²⁷²

O'Connell asserts that 'it is too soon to reach any firm conclusions as to the likely impact of the ECHR Act 2003.'²⁷³ Nonetheless, the incorporation of the ECHR into Irish law underscores the importance of the jurisprudence of the ECtHR for churches in as Irish courts 'take due account' of it.²⁷⁴ This potential is illustrated by the scope of the case law which deals with the following: the importance of freedom of religion in a democratic society;²⁷⁵ the connection between freedom of religion and freedom of expression;²⁷⁶ the tension between peaceable enjoyment of religion, tolerance and pluralism;²⁷⁷ who is protected by Article 9;²⁷⁸ the definition of religion and belief;²⁷⁹

²⁶⁵ *Airey v Ireland* (1980) 2 EHRR 305.

²⁶⁶ *Norris v Ireland* (1989) 13 EHRR 186; see also Criminal Law (Sexual Offences) Act 1993.

²⁶⁷ *Johnston v Ireland* (1987) 9 EHRR 203; see also Status of Children Act 1987.

²⁶⁸ *Open Door Counselling v Ireland* (1993) 15 EHRR 244; see also Fourteenth Amendment of the Constitution Act 1992.

²⁶⁹ *Keegan v Ireland* (1994) 18 EHRR 342; see also Adoption Act 1998.

²⁷⁰ See eg *Pine Valley Developments Ltd and Others v Ireland* (1992) 14 EHRR 319; *Heaney and McGuinness v Ireland* (2001) 33 EHRR 12; *Quinn v Ireland* [2000] ECHR 690, *DG v Ireland* [2002] ECHR 447; *McMullen v Ireland* [2004] ECHR 404; *O'Reilly and others v Ireland* [2004] ECHR 407; *Barry v Ireland* [2005] ECHR 865.

²⁷¹ See eg *Lawless v Ireland* (1961) 1 EHRR 13; *McElhinney v Ireland* (2002) 34 EHRR 322; *Murphy v Ireland* (2004) 38 EHRR 13; *Independent News and Media and Independent Newspapers Ireland Ltd v Ireland* [2005] ECHR 402; *Bosphorus Airways v Ireland* [2005] ECHR 440.

²⁷² *Murphy v Ireland* (2004) 38 EHRR 13.

²⁷³ Donncha O'Connell 'Watched Kettles Boil (Slowly): the Impact of the ECHR Act 2003' in Ursula Kilkelly (ed), *ECHR and Irish Law* (2nd edn, Jordans 2009) 19.

²⁷⁴ See generally Clare Ovey and Robin CA.White, *Jacobs and White: The European Convention on Human Rights* (4th edn, Oxford University Press 2006) 300-316; Mark W Janis, Richard S Kay and Anthony W Bradley, *European Human Rights Law: Texts and Materials* (3rd edn, Oxford University Press 2008) 323-72; Robert Blackburn and Jörg Polakiewicz, *Fundamental Rights in Europe: The ECHR and its Members States, 1950 – 2000* (Oxford University Press 2001); Malcolm D Evans, *Religious Liberty and International Law in Europe* (Cambridge University Press 1997); Ursula Kilkelly (ed), *ECHR and Irish Law* (2nd edn, Jordans 2009); Alastair Mowbray, *Cases and Materials on the European Convention on Human Rights* (Oxford University Press 2001) 417-582.

²⁷⁵ *Kokkinakis v Greece* Judgment of 25th May 1993, Series A, No. 260-A; (1994) 17 EHRR 397; *Cyprus v Turkey* (App. 25781/94), Judgment of 10th May 2001; (2002) 35 EHRR 731; *Serif v Greece* (App. 38178/97), Judgment of 4th December 1999; (2001) 31 EHRR 561.

²⁷⁶ *Otto-Preminger Institute v Austria*, Judgment of 20th September 1994, Series A No 295-A; (1994) 19 EHRR 34.

²⁷⁷ *Otto-Preminger Institute v Austria*, Judgment of 20th September 1994, Series A No 295-A; (1994) 19 EHRR 34.

beliefs not covered by Article 9;²⁸⁰ the meaning of ‘sect’;²⁸¹ the distinction between belief and acts motivated by belief;²⁸² the recognition of religious groups;²⁸³ obligations placed on individuals which offend their religious beliefs;²⁸⁴ the meaning of ‘manifesting’ religion;²⁸⁵ proselytising;²⁸⁶ legitimate limitations on the manifestation of religious belief;²⁸⁷ the religious rights of prisoners;²⁸⁸ religious education;²⁸⁹ and conscientious objection.²⁹⁰

²⁷⁸ *Hasan and Chaush v Bulgaria* (App. 30985/96), Judgment of 26th October 2000; (2002) 34 EHRR 1339; *Church of X v United Kingdom* (App. 3798/68), Decision of 17th December 1968 (1969) 12 Yearbook 306; *Pastor X and the Church of Scientology v Sweden*, Decision of 5th May 1979, (1979) 22 Yearbook 244; *Chappell v United Kingdom* (App. 12587/86) Decision of 14th July 1987, (1987) 53 DR 241.

²⁷⁹ *Campbell and Cosans v United Kingdom* Judgment of 25th February 1982, Series A, no.48; (1982) 4 EHRR 293; *Pretty v United Kingdom* (App. 2346/02), Judgment of 29th April 2002 (2002) 35 EHRR 1; Christian denominations of many kinds: *Knudsen v Norway*, Decision of 8th March 1985, (1985) 42 DR 247. Jehovah’s Witnesses: *Kokkinakis v Greece* Judgment of 25th May 1993, Series A, No. 260-A; (1994) 17 EHRR 397, *Manoussakis and others v Greece* (App. 18748/91), Judgment of 26th September 1996, (1997) 23 EHRR 387; Judaism: *D v France* (App. 10180/82), Decision of 6th December 1983, (1983) 35 DR 199; Islam: *Karaduman v Turkey* (App. 16278/90), Decision of 3rd May 1993, (1993) 74 DR 93; Hinduism: *ISKCON and others v United Kingdom* (App. 20490/02), Decision of 8th March 1994, (1994) 76-A DR 41; Sikhism: *X v United Kingdom* (App. 8231/78), Decision of 6th March 1982 (1982) 28 DR 5; Buddhism: *X v France* (App. 5442/72), Decision of 20th December 1974, (1974) 1 DR 41; Atheism: *Angelini v Sweden* (App. 10491/83), Decision of 3rd December 1986, (1986) 51 DR 41; Druidism: *Chappell v United Kingdom* (App. 12587/86) Decision of 14th July 1987, (1987) 53 DR 241; Divine Light Zentrum: *Omkarananda and the Divine Light Zentrum v Switzerland* (App. 8118/77), Decision of 19th March 1981, (1981) 25 DR 105; Church of Scientology: *Pastor X and the Church of Scientology v Sweden*, Decision of 5th May 1979, (1979) 22 Yearbook 244.

²⁸⁰ Light worship: *X v Germany* (App 4445/70), Decision of 1st April 1970, (1970) 37 CD 119. Wicca Religion: *X v United Kingdom* (App. 7291/75), Decision of 4th October 1977, (1977) 11 DR 55.

²⁸¹ *Manoussakis and others v Greece* (App. 18748/91), Judgment of 26th September 1996, (1997) 23 EHRR 387; *Kalaç v Turkey* (App. 20704/92), Judgment of 1 July 1997, (1999) 27 EHRR 552.

²⁸² *Arrowsmith v United Kingdom* (App. 7050/75), Decision of 12th October 1978 (1980) 19 DR 5; and *Pastor X and the Church of Scientology v Sweden*, Decision of 5th May 1979, (1979) 22 Yearbook 244.

²⁸³ *Metropolitan Church of Bessarabia v Moldova* (App. 45701/99), Judgment of 14th December 2001, (2002) 35 EHRR 306.

²⁸⁴ *Buscarini and others v San Marino* (App. 24645/94), Judgment of 18th February 1999, (2000) 30 EHRR 208.

²⁸⁵ *Kokkinakis v Greece* Judgment of 25th May 1993, Series A, No. 260-A; (1994) 17 EHRR 397.

²⁸⁶ *Kokkinakis v Greece* Judgment of 25th May 1993, Series A, No. 260-A; (1994) 17 EHRR 397. *Larissis and others v Greece* (Apps. 23772/94, 26377/94 and 23678/94), Judgment of 24th February 1998; (1999) 27 EHRR 329.

²⁸⁷ *Kalaç v Turkey* (App. 20704/92), Judgment of 1 July 1997, (1999) 27 EHRR 552 (judge in Turkish Air Force with fundamentalist opinions); *Pichon and Sajous v France* (App. 49853/99), Admissibility Decision of 2nd October 2001 (refusal of pharmacists to supply contraceptives on grounds of their religious beliefs) and a number of cases concerning Islamic dress: *Dahlab v Switzerland* (App. 42393/98), Admissibility Decision of 15th February 2001; *Şahin v Turkey* (App. 4474/98) Judgment of 29th June 2004; (2007) 14 EHRR 5; see also Anastasia Vakulenko ‘Islamic Dress in Human Rights Jurisprudence: A Critique of Current Trends’ in [2007] *HRLR* 1-23.

²⁸⁸ *X v Federal Republic of Germany* (App. 2413/65), Decision of 16th December 1966, (1967) 23 CD 1; *X v Austria* (App. 1753/63), Decision of 15th February 1965, (1965) 8 Yearbook 174; *X v United Kingdom* (app. 5442/72), Decision of 20th December 1974, (1975) 1 DR 41; *X v United Kingdom* (App. 6886/75), Decision of 18th May 1976, (1976) 5 DR 100; *X v United Kingdom* (App. 8231/78), Decision of 6th March 1982, (1982) 28 DR 5.

²⁸⁹ see Article 2 of the First Protocol; and also *Kjeldsen and other v Denmark*, Judgment of 7th December 1976, Series A, No. 23; (1979-80) 1 EHRR 711; *Valsamis v Greece* (app. 21787/93), Judgment of 18 December 1996; (1997) 24 EHRR 294.

²⁹⁰ *Grandrath v Federal Republic of Germany* (App. 2299/64), Report of commission, 12th December 1966, Decision of Committee of Ministers, 29th June 1967, (1967) 10 Yearbook 626; *Autio v Finland*

As will be seen in Part Two: Chapter One, developments in the field of education are especially preoccupying for the Church of Ireland. The relatively little case law (and even less concerning the interaction between education and religion) dealing with the religious education provision of Article 2 of the First Protocol of the ECHR is of importance for the church.²⁹¹ In *Kjeldsen, Busk Madsen and Pedersen v Denmark*²⁹² (in which three married couples objected to the integration of sex education in the curriculum in primary schools) the ECtHR, while concluding that the proposed sex education did not violate the Article 2 rights of parents said, nonetheless, that:

(...) the second sentence of Article 2 must be read together with the first which enshrines the right of everyone to education. It is on this fundamental right that is grafted the right of parents to respect for their religious and philosophical conviction, and that the first sentence does not distinguish, any more than the second, between State and private teaching (...) The second sentence of Article 2 aims in short at safeguarding the possibility of pluralism in education which possibility is essential for the preservation of 'democratic society' as conceived by the Convention.²⁹³

In *Valsamis v Greece*²⁹⁴ a Jehovah's Witness child, ordinarily excused attendance at religious education classes and Orthodox Mass, was required, with the other children, to take part in a parade marking National Day, which (as she informed the school Principal) she believed to be contrary to the pacifist beliefs of her religion. She was suspended from school. The ECtHR could 'discern nothing, either in the purpose of the parade or in the arrangements for it, which could offend the applicants' pacifist convictions to an extent prohibited by the second sentence of Article 2 [of Protocol 1].'²⁹⁵ Of significance in the judgment is the assertion that respecting the rights of parents 'means more than "acknowledge" or "take into account". (...) [I]t implies some positive undertaking on the part of the State.'²⁹⁶

(App. 17086/90), Decision of 6th December 1991, (1992) 72 DR 245; *Thlimmenos v Greece* (App. 34369/97), Judgment of 6th April 2000; (2001) 31 EHRR 411.

²⁹¹ For the general approach of the ECtHR see *The Belgian Linguistic Case* (No.2) Judgment of 23rd July 1968, Series A, No. 6; (1979-80) 1 EHRR 252.

²⁹² *Kjeldsen, Busk Madsen and Pedersen v Denmark* Judgment of 7th December 1976, Series A, No. 23; (1979-80) 1 EHRR 711.

²⁹³ *Kjeldsen, Busk Madsen and Pedersen v Denmark* Judgment of 7th December 1976, Series A, No. 23; (1979-80) 1 EHRR 711, par 50.

²⁹⁴ *Valsamis v Greece* (app. 21787/93). Judgment of 18th December 1996; (1997) EHRR 294.

²⁹⁵ The Court found no breaches of Articles 3 or 9 either, but did find a breach of Article 13 (no effective national remedy).

²⁹⁶ *Valsamis v Greece* (app. 21787/93). Judgment of 18th December 1996; (1997) EHRR 294, par 27.

Conclusion

This quest for the sources of laws of the Church of Ireland establishes the pre-eminence, for the church, as for any voluntary, consensual association in society, of the civil law sources. The Church of Ireland (an unincorporated association) fulfils its mission in an increasingly pluralist society characterised by religious freedoms protected in the Irish Constitution. It is a context in which the Church of Ireland is firmly established and recognised in law, where dialogue between Church and State (hitherto predominantly informal) is being channelled through an increasingly formal mechanism. Under the Irish Constitution, the autonomy of the Church of Ireland, as for other religious groupings, is guaranteed by a principle of non-interference.

The State itself (and increasingly so) distinguishes between the civil law and church law and emphasises the supremacy of the civil law. In civil law terms, the Church of Ireland is a consensual society, and internal Church law is contractual in nature, binding its adherents voluntarily. State law, in its various forms (the Irish Constitution, primary and secondary legislation, the common law, and European Union law), applies to the Church of Ireland. The interface between Church and State, as well as the impact on the Church of State law in a significant array of areas has been outlined.

Some State law provisions specifically govern the Church of Ireland (the Irish Church Act 1869, deeds of trust, and the Charter of Incorporation of the RCB). By virtue of being civil law, these instruments, in the hierarchy of laws, are a primary legal starting point for the Church of Ireland's legal framework. More widely, the import - current and potential - of International and European Human Rights law is a significant development since the middle of the last century.

This identification of the civil law, external sources of law, sets the scene for the first case study (Part Two: Chapter One) in which the increasing impact of this civil law on the Church of Ireland will be investigated.

Next, as a further step in this enterprise, the internal sources of the law of the Church of Ireland need to be identified: in the next chapter, the primary and secondary sources, and then in the following chapter, the tertiary sources.

PART ONE: CHAPTER TWO
SOURCES OF CHURCH LAW:
PRIMARY AND SECONDARY CHURCH SOURCES

Introduction

In the previous chapter, the civil law phenomenon of primary and secondary sources was identified. The same categories are found in the internal law of the Church of Ireland. As part of the identification of the sources of law for the Church of Ireland, this chapter sets out those primary and secondary sources. The starting point for any religious institution is its system of belief (itself a material source): the stimulus and foundation for all that the Church is. The theological, canonical and historical milieux are, therefore, set out. The primary sources are then considered in turn: ecclesiastical law; the Preamble and Declaration; the Constitution of the Church of Ireland (CCI); a category styled ‘Articles, doctrines, rites, rubrics, and formularies’; the *Book of Common Prayer*; rubrics; and, Statutes of the General Synod. It also indicates the respective authorities or institutional sources of those laws: the organ that makes them.

Secondary sources are defined: standing orders; constitutions of ecclesial bodies; regulations; rules; glebe rules; rules and orders of Diocesan Courts and Registries; by-laws; diocesan rules and regulations; the declaration for subscription; certain procedures and forms; and, resolutions and motions. This sets the scene for the case study in Part Two: Chapter Two of the accessibility of sources.

A Theological, Canonical and Historical Milieu

*Theology and Law*¹

The Church is a religious institution espousing beliefs through a system of faith and worship, putting them into practice in a way of life and proclamation.² Belief is a

¹ See generally John Witte Jr and Frank S Alexander, *Christianity and the Law* (Cambridge University Press 2008); for the place of law in Scripture see Bernard S Jackson, ‘Law’ in R.J Coggins and J.L Houlden, *A Dictionary of Biblical Interpretation* (SCM 1990) 383-6; for law in the Old Testament world see Joseph Blenkinsopp, *Wisdom and Law in the Old Testament* (Revised edn, Oxford University Press 2003); Roland de Vaux, *Ancient Israel: its Life and Institutions* (DLT 1978) ch 10; Hans Jochen Boecker, *Law and the Administration of Justice in the Old Testament and Ancient East* (SPCK 1980); Barnabas Lindars (ed), *Law and Religion: Essays on the Place of the Law in Israel and Early Christianity* (J Clark and Co 1988); for law in the New Testament era see EP Sanders, *Paul, the Law and the Jewish People* (Fortress Press 1985); AN Sherwin-White, *Roman Society and Roman Law in the New Testament* (Clarendon Press 1963); Anthony Bash, ‘Ecclesiastical Law and the Law of God in Scripture’ in (1998) 5 *EccLJ* 7; Anthony Bash, ‘The New Testament, Mosaic Law and Ecclesiastical Law Today’ in (2005) *EccLJ*, 60.

material source in that it is articulated and realised in laws as set out in formal and instrumental sources.

Many church members have an innate suspicion of law.³ It is not always appreciated that the law is not to be an end in itself.⁴ A church does need laws ‘to order, and so facilitate, its public life and to regulate its own affairs for the common good.’⁵ A certain scriptural literalism endorses the ambivalence of some to law: ‘the law was given through Moses; grace and truth came through Jesus Christ.’⁶ Such a view frequently caricatures law and faith as opposites. According to Ombres, one reason for this is that ‘law making is remote and alien to most people, it comes from outside.’⁷ Henry VIII’s permanent suspension of the study in English universities of canon law in October 1535⁸ also shaped the Protestant mindset.

Chancellor Moore saw no such disjunction between law and faith. His *Introduction to English Canon Law* opens confidently with the first words ‘In the beginning God created the heaven and the earth.’⁹ He proclaims this to be the starting point of the study of canon law:

[I]n the study of moral theology we are concerned with the whole of God’s law in so far as it is immediately relevant to man. In the study of the canon law we are concerned with so much of the moral law as is enforced, directly or indirectly, by human sanctions. The basis of the canon law is theological.¹⁰

The Report of the Archbishop’s Commission in the Church of England in 1947 also rooted church law in its divine and scriptural origins:

² See generally R Ombres, ‘Canon Law and Theology’ in (2012) 14(2) *EccLJ* 164; see also ‘church’ and ‘religion’ in eg *Collins English Dictionary* (6th edn, 2003); *Concise Oxford English Dictionary* (12th edn, Oxford University Press 2011).

³ See the survey, Appendix A, responses in tables at 292.

⁴ *The Principles of Canon Law Common to the Churches of the Anglican Communion* (Anglican Consultative Council 2008) - hereinafter, PCLCCAC; PCLCCAC, Principle 1.3: ‘Law is not an end in itself.’

⁵ PCLCCAC, Principle 1.2: ‘A church needs within its laws to order, and so facilitate, its public life and to regulate its own affairs for the common good.’

⁶ John 1.17; see, however, Anthony Bash, ‘Ecclesiastical Law and the Law of God in Scripture’ in (1998) 5 *EccLJ* 7-13; and Anthony Bash, ‘The New Testament, Mosaic Law and Ecclesiastical Law Today’ in (2005) 8 *EccLJ* 60-6.

⁷ Robert Ombres, ‘Why then the Law?’ in [1974] *New Blackfriars* 296, 302.

⁸ Mark Hill, ‘Judicial Review of Ecclesiastical Courts’ in Norman Doe, Mark Hill and Robert Ombres (eds), *English Canon Law* (University of Wales Press 1998) 104; Diarmaid McCulloch, *Reformation* (Allen Lane 2003).

⁹ Genesis 1.1.

¹⁰ Timothy Briden and Brian Hanson, *Moore’s Introduction to English Canon Law* (3rd edn, Mowbray 1992) 1.

The right of the Church to make rules and regulations for its own members, or *jus statuendi* as it is called, rests upon the commission given by our Lord to his Apostles to 'bind' and to 'loose', i.e. 'to declare forbidden' and to 'declare allowed' (...) and its exercise can be traced from the earliest days of the Christian community.¹¹

The basis of the canon law is, indeed, theological.¹² As Moore said, 'it is possible to be a theologian without being a canonist; but it is impossible to be a canonist without being a theologian.'¹³ Law, in the church, 'should reflect the revealed will of God.'¹⁴ It 'should reflect but cannot change Christian truths.'¹⁵ It 'has a historical basis and a theological foundation, rationale and end.'¹⁶ This is succinctly expressed in the Roman Catholic tradition where 'an overall obligation of theological origin exists prior to any law (...)':¹⁷

The *place* of the law is in the Church of Christ where the drama of our redemption is enacted; the *role* of the law is to assist the people in the reception of God's saving mysteries (...).¹⁸

The intention is that the law expresses 'publicly the theological self-understanding and practical policies of a church.'¹⁹ It can be seen as 'applied ecclesiology'.²⁰ This practical outworking is succinctly expressed in the PCLCCAC:

Law in a church exists to uphold the integrity of the faith, sacraments and mission, to provide good order, to support communion amongst the faithful, to put into action Christian values, and to prevent and resolve conflict.²¹

In the Church of Ireland, law was referred to as 'a handmaid to the gospel' in 1973 in a report submitted by the Select Committee on the Canons adopted by the General

¹¹ *The Canon Law of the Church of England* Report of the Archbishops' Commission on Canon Law (SPCK 1947) 3.

¹² See generally Ladislav Örsy, *Theology and Canon Law* (Collegeville 1992); Teodoro Urresti, 'Canon law and theology: two different sciences' in (1967) 8 (3) *Concilium* 10.

¹³ *Church Times*, 15 June 1990.

¹⁴ PCLCCAC, Principle 2.2.

¹⁵ PCLCCAC, Principle 3.1.

¹⁶ PCLCCAC, Principle 2.3.

¹⁷ Ladislav Örsy, 'Theology and Canon Law' in John P Beal, James A Coriden and Thomas J Green (eds), *New Commentary on the Code of Canon Law* (Paulist Press 2000) 7.

¹⁸ Ladislav Örsy, 'Theology and Canon Law' in John P Beal, James A Coriden and Thomas J Green (eds), *New Commentary on the Code of Canon Law* (Paulist Press 2000) 1.

¹⁹ PCLCCAC, Principle 2.4.

²⁰ Robert Ombres, 'Why then the Law?' in [1974] *New Blackfriars* 296 at 298; see also Norman Doe, 'Towards a critique of the role of theology in English ecclesiastical and canon law' in (1992) 2 *EccLJ* 328-46; Mark Hill, 'Gospel and Order' in (1997) 4 *EccLJ*, 659-63; and David Hope, 'The letter killeth but the spirit giveth life' in (1997) 4 *EccLJ* 694.

²¹ PCLCCAC, Principle 2.5.

Synod.²² It may even ‘articulate immutable truths and values’.²³ The law exists to assist a church in its mission and witness.²⁴ It is the church’s servant.²⁵

Divine Law: Scripture, Reason and Tradition

As Cox emphasises, ‘canon law has validity only within the framework of its principal and parent, the divine law, as the authority of the church to make laws is not absolute.’²⁶ Like other churches in the Anglican Communion, the Church of Ireland - at once Reformed and Catholic - accords primary place to the Holy Scriptures.²⁷ In the survey, while bishops and chancellors were clear that the Bible is a source of law of the Church of Ireland (90% and 100% respectively) others were less certain: registrars (55%), clergy (70.5%) and laity (64%). Some - registrars (18%), clergy (9%) and laity (9.5%) - considered the Bible not to be a source.

The primacy of the Scriptures is consonant with Article VI of the Thirty-Nine Articles. This is reflected in the first clause of the Preamble and Declaration adopted at the General Convention in 1870:

The Church of Ireland doth, as heretofore, accept and unfeignedly believe all the Canonical Scriptures of the Old and New Testament, as given by inspiration of God, and containing all things necessary to salvation; and doth continue to profess the faith of Christ as professed by the Primitive Church.²⁸

It is underscored in Article VI of the Thirty-Nine Articles (which the Church of Ireland also ‘receives and approves’²⁹), in the promises made by those who are being ordained,³⁰ in the declarations subscribed by those entering upon office,³¹ and is manifest in the reports of the General Synod between 1871 and 2012 as well as in its

²² ‘Report of the Select Committee on the Canons’ in JGS [1973] 247.

²³ PCLCCAC, Principle 3.6.

²⁴ *The Principles of Canon Law Common to the Churches of the Anglican Communion* (London, Anglican Consultative Council, 2008) – hereinafter PCLCCAC – Principle 1.1.

²⁵ PCLCCAC, Principle 2.1.

²⁶ Noel Cox, *Church and State in the Post-Colonial Era: the Anglican Church and the Constitution in New Zealand* (Polygrapha Ltd 2008) 32.

²⁷ For the place of Scriptures within Anglicanism generally see Louis Weil, ‘The Gospel in Anglicanism’ in Stephen Sykes, John Booty, Jonathan Knight (eds), *The Study of Anglicanism* (SPCK 1998) 55-86; Reginald H Fuller, ‘Scripture’ in Stephen Sykes, John Booty, Jonathan Knight (eds), *The Study of Anglicanism* (SPCK 1998) 87-99; see also CH Dodd, *The Authority of the Bible* (Revised edn, Collins 1960).

²⁸ Preamble and Declaration, para I (1).

²⁹ Preamble and Declaration, para II; see also CCI, ch IV, s 67 and The Schedule ‘Declaration for Subscription’.

³⁰ Book of Common Prayer ‘Ordination Services’ 518-90.

³¹ CCI, ch IV, s 67 and The Schedule ‘Declaration for Subscription’.

legislative activity.³² Indeed, Anglicanism has been described as ‘reformed or scriptural catholicism.’³³ Resolution 11 of the Lambeth Conference 1888 identified four principles which were to be the basis of ‘home reunion’ within the church, the first of which was: ‘the Holy Scriptures of the Old and New Testaments, as “containing all things necessary to salvation,” and as being the rule and ultimate standard of faith.’³⁴

The complex issues which stem from the use of Scripture as a source of law are intertwined with the fraught area of personal, as well as academic, approaches to the interpretation of scripture: the hermeneutical challenge. In addressing this challenge the Church of Ireland Bishops’ Advisory Commission on Doctrine affirmed the place of Scripture within the life of a contemporary church.³⁵ The amenability of Scripture to varieties of interpretation according to religious and intellectual outlook means, however, that its use as a formal source is qualified or, at least, in relation to certain subjects, open to disputation.

The Anglican position places scripture in relationship with reason and tradition as a source of authority.³⁶ Resolutions of the Lambeth Conference 1958 stated that ‘the Church is (...) both guardian and interpreter of Holy Scripture (...);’³⁷ and acknowledged ‘the host of devoted scholars who, worshipping the God of Truth, have enriched and deepened our understanding of the Bible, not least by facing with intellectual integrity the questions raised by modern knowledge and modern criticism.’³⁸ In 1998 the Conference urged ‘that the Biblical text should be handled respectfully, coherently, and consistently, building upon our best traditions and scholarship believing

³² Journals of the General Synod [1871-2012].

³³ Reginald H Fuller, ‘Scripture’ in Stephen Sykes, John Booty, Jonathan Knight (eds), *The Study of Anglicanism* (SPCK 1998) 87-99, 97.

³³ Preamble and Declaration, para I (1).

³⁴ Lambeth Conference 1888 Resolution 11 as found at www.lambethconference.org (accessed 1st March 2009); see also Lambeth Conference 1930 Resolution 3 (‘We affirm the supreme and unshaken authority of the Holy Scriptures as presenting the truth concerning God and the spiritual life in its historical setting and in its progressive revelation, both throughout the Old Testament and in the New.’); Lambeth Conference 1958 Resolutions 1-12; Lambeth Conference 1998 Resolution III.1; Lambeth Conference Report 2008 Section G.100; and PCLCCAC, Principle 4.1 (‘Scripture, tradition and reasons are fundamental authoritative sources of law’).

³⁵ *The Authority of Scripture* A report of the Church of Ireland Bishops’ Advisory Commission on Doctrine (Church of Ireland Publishing 2006).

³⁶ For Tradition generally see Henry Chadwick, ‘Tradition, Fathers and Councils’ in Stephen Sykes, John Booty, Jonathan Knight (eds), *The Study of Anglicanism* (SPCK 1998) 100-114; for Reason see AS McGrade, ‘Reason’ in Stephen Sykes, John Booty, Jonathan Knight (eds), *The Study of Anglicanism* (SPCK 1998) 115-30.

³⁷ Lambeth Conference 1958, Resolution 3.

³⁸ Lambeth Conference 1958, Resolution 4.

that the Scriptural revelation must continue to illuminate, challenge and transform cultures, structures, and ways of thinking, especially those that predominate today.³⁹

Biblical scholarship has also been affirmed by successive resolutions of the Lambeth Conference. The bishops of the Anglican Communion articulated the interrelatedness between scripture, tradition and reason in 2008:

As Anglicans we acknowledge the joy of engaging with the scriptures in setting forth the authentic proclamation of God's Word. We are attentive to scripture in our worship, prayer and study, seeking the guidance of the Holy Spirit so that scripture may form us and shape our worship, our doctrine and our community life. We believe the scriptures to be primary and we read them informed by reason and tradition and with regard for our cultural context. We value the place of biblical scholarship as a critical tool, recognising nevertheless that this leads to divergent interpretations across our many and varied contexts, and of listening to our sister churches as they interpret the same scriptures. The over-arching issue with which we wrestle in relation to the scriptures is the interpretation of the Bible in our ongoing life.⁴⁰

*Natural Law*⁴¹

While Church of Ireland instruments do not formally acknowledge natural law as a source of law, divine law is often equated with natural law. Concepts of natural law derive also from secular interpretation.⁴² For this reason, some have referred to it as the *Ius Divinum* of the non-believer.⁴³

Natural law theories seek 'to evaluate human law in the light of higher sources of aspirations.'⁴⁴ According to Murdoch's *Irish Legal Companion* natural law is 'law which is based on value judgments which emanate from some absolute source e.g. God's revealed word.'⁴⁵

Natural law theories have a well-established provenance in the canonical tradition. Gratian's *Treatise on Laws*, for example, opens with the words:

³⁹ Lambeth Conference 1998, Resolution III.1; see also 'The Anglican Communion Covenant', par 1.2.5.

⁴⁰ Lambeth Conference Report 2008 Section G, 100; see also Frank Cranmer and Tom Heffer, 'Necessary to Salvation? The Canon Law of the Church of England and the Interpretation of Scripture' in (2008) 10 *EccLJ* 137-60.

⁴¹ For fuller consideration of the idea of natural law see eg AP d'Entrèves, *Natural Law* (2nd edn, Hutchinson 1979); John Finnis, *Natural Law and Natural Rights* (Clarendon Press 1980); HLA Hart, *The Concept of Law* (Clarendon Press 1961) 181-207; Lon L Fuller, *The Morality of Law* (revised edn, Yale University Press 1968) 96-106.

⁴² Eoin Daly, *Religion, Law and the Irish State* (Clarus 2012) 35.

⁴³ Mark Hill, *Ecclesiastical Law* (3rd edn, Oxford University Press 2007) 22.

⁴⁴ Raymond Byrne and John P McCutcheon, *The Irish Legal System* (Butterworths 2003) 17.

⁴⁵ Brian Hunt, *Murdoch's Dictionary of Irish Law* (5th edn, Tottel Publishing 2009) 816.

[T]he human race is ruled by two things, namely, natural law and usages. Natural law is what is contained in the Law and the Gospel. By it, each person is commanded to do to others what he wants done to himself and prohibited from inflicting on others what he does not want done to himself.⁴⁶

According to Gratian, all human law is custom: ‘a written law is instituted by promulgation but is conformed by the custom of those who use it and abrogated by their disuse of it.’⁴⁷ In time, distinctions were drawn between the two. Natural law was defined as an innate human inclination to do good and avoid evil. Divine law was the rules found in the Scriptures.⁴⁸

Natural law has had a place within historic Anglicanism also. In the *Laws of Ecclesiastical Polity* Richard Hooker referred to the Law of Nature as ‘meaning thereby the Law which human Nature knoweth itself in reason universally bound unto (...) comprehendeth all those things which men by the light of their natural understanding evidently know.’⁴⁹

During the Enlightenment, even natural law theories with their rationalistic foundation, were ‘heavily imbued with the spirit of Christianity.’⁵⁰ In post-independence Ireland the views of the Roman Catholic Church greatly influenced legislators.⁵¹ Daly describes it as a ‘quasi-religious legitimation of the Constitution itself’ which ‘markedly influenced subsequent jurisprudence.’⁵² Since then, from the 1990s onwards, natural law appears only to have ‘limited application’ in the context of Irish Constitutional law.⁵³ Daly refers to this as the ‘secularisation of constitutional adjudication and constitutional

⁴⁶ Gratian, *The Treatise on Law* (Augustine Thompson (tr), Washington, Catholic University of America Press 1993) Distinction One, 3.

⁴⁷ Eric Waldram Kemp, *An Introduction to Canon Law of the Church of England* (Hodder and Stoughton 1957) 25.

⁴⁸ James A Brundage, *Medieval Canon Law* (Longman 1995) 157.

⁴⁹ Richard Hooker, *Laws of Ecclesiastical Polity* (Reprint, JM Dent and Co 1907) Book I, VIII [9]; see generally, McAdoo HR, *The Spirit of Anglicanism* (A and C Black 1965) ch 1.

⁵⁰ AP d’Entrèves, *Natural Law* (2nd edn, Hutchinson 1979) 55.

⁵¹ See generally JH Whyte, *Church and State in Modern Ireland 1923 – 1979* (2nd edn, Gill and McMillan 1980); Dermot Keogh and Andrew McCarthy, *The Making of the Irish Constitution 1937* (Mercier Press 2007).

⁵² Eoin Daly, *Religion, Law and the Irish State* (Clarus 2012) 35; see also eg *McGee v Attorney General* [1974] IR 284 per Walsh J, 310 (‘the Constitution acknowledges God as the ultimate source of all authority’); *Ryan v Attorney General* [1965] IR 294 (Kenny, J cited the papal encyclical *Pacem in Terris*; *Norris v Attorney General* [1984] IR 36 (‘a Constitution ... consistent with Christian beliefs’).

⁵³ Gerard Hogan and Gerry Whyte, *JM Kelly: The Irish Constitution* (4th edn, LexisNexis Butterworths 2003) 32; for the natural law approach in Irish constitutional law see generally Gerard Hogan and Gerry Whyte, *JM Kelly: The Irish Constitution* (4th edn, LexisNexis Butterworths 2003) 31-32 (1.1.55 -1.1.56) and also 1249-65 (7.1.08 – 7.1.44); James Jeffers, ‘Dead or alive? The Fate of Natural Law in Irish Constitutional Jurisprudence’ in (2003) Vol 2 Galway Student Law Review 2-16.

discourse.’⁵⁴

Within the Church of Ireland, the equating of natural law with divine law would, in the nature of things, be persuasive for some, as might that outlook equating divine law *simpliciter* with the scriptures.

The Canonical and Historical Inheritance

The rootedness of the law of the church in the pre-disestablishment ecclesiastical law must be acknowledged. The law before 1871, and since, is infused by the Irish Church’s rich canonical and historical inheritance:⁵⁵ the Scriptures; the Councils of the early Church;⁵⁶ Irish Brehon law (many of the old-texts of which were compiled by clergy, and were ‘half secular and half-ecclesiastical’);⁵⁷ the Penitentials of the Celtic Church in the seventh and eight centuries;⁵⁸ the *Collectio Canonum Hibernensis*;⁵⁹ the *Corpus Juris Canonici*;⁶⁰ the reforming Irish Synods (Cashel [1101 and 1172], Ráith Bressail [1111] and Kells-Mellifont [1152]);⁶¹ the Reformation;⁶² the Canons, 1603;⁶³ and the Irish Canons 1634.⁶⁴

⁵⁴ Eoin Daly, *Religion, Law and the Irish State* (Clarus 2012) 41-50; see eg *Zappone and Gilligan v The Revenue Commissioners, Ireland the AG* [2008] 2 IR 417, [2006] IEHC 404 (Dunne, J did not define ‘marriage’, in the Constitution, in relation to a religious view); *Re Article 26 and the Regulation of Information (Services outside the State for the Termination of Pregnancies) Bill 1995* [1995] 1 IR 1 (objections based on theological considerations were specifically rejected by the Court).

⁵⁵ See generally Dáibhí Ó Cróinín (ed), *A New History of Ireland: Prehistoric and Early Ireland Vol 1* (Clarendon Press 2005).

⁵⁶ See generally Christopher M Bellitto, *The General Councils* (Paulist Press 2002), Leo Donald Davis, *The First Seven Ecumenical Councils (325-787)* (The Liturgical Press 1983), Richard Price and Michael Gaddis (trs), *The Acts of the Council of Chalcedon Vols I-III* (Liverpool University Press 2007).

⁵⁷ Catherine Thom, *Early Irish Monasticism* (T and T Clark 2006) 43; James F Kenney, *The Sources for the Early History of Ireland: Ecclesiastical* (Four Courts Press 1997) 235-50, 237; see generally Dáibhí Ó Cróinín, *Early Medieval Ireland, 400-1200* (Longman 1995) ch 5; Fergus Kelly, *A Guide to Early Irish Law* (Institute for Advanced Studies 2005).

⁵⁸ See generally Catherine Thom, *Early Irish Monasticism* (T and T Clark 2006) 36-76; Michael Richter, *Medieval Ireland: The Enduring Tradition* (Gill and Macmillan 1988) 75-78; *The Canon Law of the Church of England* ‘The Garbett Report’ SPCK 1946) 10 and 11; James A Brundage, *Medieval Canon Law* (Longman 1995) 24-26.

⁵⁹ James F Kenney, *The Sources for the Early History of Ireland: Ecclesiastical* (19 (ed.) 97, Four Courts Press,) 247-50; Dáibhí Ó Cróinín, ‘Hiberno-Latin Literature to 1169’ in Dáibhí Ó Cróinín (ed), *A New History of Ireland: Prehistoric and Early Ireland Vol. 1* (Clarendon Press 2005) 371-404.

⁶⁰ See generally James A Brundage, *Medieval Canon Law* (Longman 1995).

⁶¹ See generally JA Watt, *The Church and the Two Nations in Medieval Ireland* (Cambridge University Press 1970); Michael Richter, *Medieval Ireland: The Enduring Tradition* (Gill and Macmillan 1988) 126-29; John Fleming, *Gille of Limerick (c.1070-1145): Architect of a Medieval Church* (Four Courts Press 2001).

⁶² For the Reformation generally see Diarmaid MacCulloch, *Reformation* (Allen Lane 2003); for the Reformation in Ireland see Alan Ford, *The Protestant Reformation in Ireland* (Four Courts Press 1997); Diarmaid MacCulloch, *Reformation* (2003, Allen Lane, London) 394-99; S. Ellis, *Ireland in the Age of the Tudors, 1447 – 1603* (Longman 1995) 190-241; Colm Lennon, *Sixteenth Century Ireland* (Gill and Macmillan 2005) 114-66; Diarmaid MacCulloch, ‘The Birth of Anglicanism’ in (2004) *EccLJ* 418-28; Eamon Duffy, ‘The Shock of Change: Continuity and Discontinuity in the Elizabethan Church of England’ in (2004) 7 *EccLJ* 429-46.

Many of these were imbued with the genetic material of a wider canonical economy: the *Didascalia*, the *Constitutiones apostolicae*, Papal decretals, the *Dionysiana* of Dionysius Exiguus, the *Hispana*, penitentials, Pseudo-Isodorian Decretals, *Hadriana*, the work of canonists such as Burchard, Ivo of Chartres and Gratian, *Liber Extra*, *Liber Sextus* and the *Extravagantes of John XII* to proffer but a limited selection.⁶⁵

The Church of Ireland's continuity with this inheritance and tradition was emotionally expressed by the Archbishop of Armagh at the General Convention in 1870:

Our Church still retains all that is essential to its existence (...) In doctrine and in discipline we are unchanged. We have not, therefore, to create, but to restore; not to build up a new Church but to supply such supports as the State has taken away from the old.⁶⁶

The question arises as to what extent any of these, in a contemporary sense, can be described as a source of law for the Church of Ireland. They are, nonetheless, an ancient inheritance and intrinsic to the canonical DNA of a modern church. To the extent that some may have been either abrogated or superseded by modern church law, a number cannot be styled as sources in the strict sense. Others were at the heart of the development and consolidation of the modern law, such as some of the Reformation statutes and the Canons (1603 and 1634).⁶⁷

One example of a modern day legal requirement, which traces its origins to the earliest discipline of the Church, is Canon 20. It provides that:

[a]ny person seeking to be admitted into holy orders shall first exhibit to the bishop of the diocese in which that person seeks to be ordained a certificate of a nomination to some curacy or ecclesiastical preferment then vacant or shortly to become vacant in that diocese, or to some church therein where that person may attend the cure of souls and execute that person's ministry (...).⁶⁸

This is a clear embodiment of the principle laid down by Canon 6 of the Council of Chalcedon 451 which provided that '[n]o one is to be ordained absolutely, neither a presbyter nor deacon nor anyone at all of ecclesiastical status, unless the one ordained is

⁶³ The text of these Canons may be found in Gerald Bray, *The Anglican Canons 1529-1947* (The Boydell Press 1998) 258-453.

⁶⁴ The text of these Canons may be found in Gerald Bray, *The Anglican Canons 1529-1947* (The Boydell Press 1998) 485-531.

⁶⁵ For an exposition of these elements see eg James A Brundage *Medieval Canon Law* (Longman 1995).

⁶⁶ *Journal of the General Convention of the Church of Ireland* (1870) 2.

⁶⁷ See generally Gerald Bray G (ed), *The Anglican Canons 1529-1947* (The Boydell Press 1998).

⁶⁸ CCI, ch IX, s 20 (Canon 20).

appointed to a particular church in a city or village or martyrrium or monastery.’⁶⁹ Another, more local example, is the division of Ireland into administrative units (dioceses) at the Synods of Rathbreasail in 1111 and that held at Kells-Mellifont in 1152 which has endured, in the main, until the present day.⁷⁰

*Canon Law and the Reformation*⁷¹

While these examples illustrate strongly the continuity between church law today and the ancient canonical tradition, the status of pre-Reformation law in the period following the Reformation has been the subject of debate in England since the late nineteenth century. The Reformation failed in Ireland.⁷² Nonetheless the Church of Ireland passed through and was indelibly shaped by the Reformation efforts in Ireland and the wider Reformation movement. The pursuit of clarity about the status of pre-Reformation law demands, therefore, that the core of this discussion be addressed briefly.

The argument, historically, has contended between two perspectives. On the one hand is Maitland’s contention that before the Reformation the English Church had relied on the Roman Canon Law. On the other, Stubbs held that before the Reformation the English Church possessed her own body of ecclesiastical law which had binding authority in the English Church courts.⁷³

⁶⁹ Richard Price and Michael Gaddis (trs), *The Acts of the Council of Chalcedon Vols I-III* (Liverpool University Press 2007) vol III, 96.

⁷⁰ JA Watt, *The Church and the Two Nations in Medieval Ireland* (Cambridge University Press 1970) 28-34.

⁷¹ See generally *The Canon Law of the Church of England* Report of the Archbishops’ Commission on Canon Law (SPCK 1947), 45-68; Cyril Garbett, *Church and State in England* (Hodder and Stoughton 1950) 228-33; Gerald Bray (ed), *Documents of the English Reformation* (James Clark and Co 1994).

⁷² See generally Alan Ford, *The Protestant Reformation in Ireland* (Four Courts Press 1997); Diarmaid MacCulloch, *Reformation* (Allen Lane 2003).

⁷³ See Frederic William Maitland, *Roman Canon Law in the Church of England* (Methuen and Co 1898); Arthur Ogle, *The Canon Law in Medieval England* (John Murray 1912); Christopher Hill, ‘Rome, Canterbury and the Law’ in (1990-92) 2 *EccLJ* 164-71, 168-9; Brian Ferme, ‘William Lyndwood and the Provinciale: Canon Law in an Undivided Western Church’ in (1996-97) 4 *EccLJ* 615-28, 623-8; Charles Donahue Jr, ‘Roman Canon Law in the Medieval English Church; Stubbs vs. Maitland re-examined after 75 years in the light of some records from the Church courts’ in 72 (1973-1974) *Mich L Rev.* 647-716; RH Helmholtz, *Roman Canon Law in Reformation England* (Cambridge University Press 1990) 12-20; *Report of the Commissioners appointed to inquire into the Constitution and Working of the Ecclesiastical Court* (London 1883); Eric Waldram Kemp, *An Introduction to the Canon Law in the Church of England* (Hodder and Stoughton 1957) 11-29.

The reality is, it would appear, more complex.⁷⁴ Paradoxically, among Protestant churches, and notably within Anglicanism, after the Reformation, and in spite of having rejected medieval canon law, many regulations and policies from the medieval period were retained.⁷⁵ The period during and after the Reformation has been described, for the purposes of canon law, as the ‘period of mixed sources.’⁷⁶ As to the heated debate, Helmholz concludes:

All of this means, not that Maitland was wrong and Stubbs was right, but that the Roman canon law in England on the eve of the Reformation shared in a characteristic common to the canon law throughout western Europe. It did not function the way we expect an appellate legal system based on binding statute law to function. It left more scope for freedom in interpreting and developing legal principles. It left more room for judges whose ‘hands were free’ from temporal bindings to follow local traditions and needs, sometimes even where decretal law appeared to direct the contrary. That sort of freedom, far from making the English Church ‘insular’, shows that it was fully a part of Continental legal traditions.⁷⁷

In England, section 1 of the Submission of the Clergy Act 1533, provided that clergy might only assemble in convocation ‘with the King’s writ’ and that:

they will never from henceforth presume to attempt, allege claim or put in use or enact, promulgate or execute any new canons constitutions, ordinance, provincial or other, or by whatsoever other name they shall be called in the convocation, only the King’s most royal assent and licence may to them be had to make promulgate, and execute the same, and that his Majesty do give his most Royal assent and authority in that behalf.⁷⁸

The important qualification was laid down in section 3:

Provided always that no canons, constitutions or ordinance shall be made or put in execution within this Realm by authority of the convocation of the clergy, which shall be contrary or repugnant to the King’s prerogative Royal or the customs, laws or statutes of this Realm; anything contained in this act to the contrary hereof notwithstanding.⁷⁹

⁷⁴ See eg Ecclesiastical Licences Act 1533 (25 Hen VIII c 21); Brian Ferme, ‘William Lyndwood and the Provinciale: Canon Law in an Undivided Western Church’ in (1996-97) 4 EccLJ 615-28, 623ff; *The Canon Law of the Church of England* Report of the Archbishops’ Commission on Canon Law (SPCK 1947) 45-68; RB Outhwaite, *The Rise and Fall of the English Ecclesiastical Courts, 1500-1860* (Cambridge University Press 2006); GD Squibb, *Doctors’ Commons: A History of the College of Advocates and Doctors of Law* (Clarendon Press 1977); Eamon Duffy, ‘The Shock of Change: Continuity and Discontinuity in the Elizabethan Church of England’ in (2004) 7 EccLJ 429-46.

⁷⁵ James A Brundage, *Medieval Canon Law* (Longman 1995) 183; *Halsbury’s Laws of England* vol 34 (5th edn, 2011) para 4 and para 8.

⁷⁶ *The Canon Law of the Church of England* Report of the Archbishops’ Commission on Canon Law (SPCK 1947) 45.

⁷⁷ RH Helmholz, *Roman Canon Law in Reformation England* (Cambridge University Press 1990) 19.

⁷⁸ 25 Hen. VIII c 19.

⁷⁹ Submission of the Clergy Act 1533 (25 Hen. VIII c 19); it continues in force in England and is embodied in the Synodical Government Measure 1969, s 1(3)(b).

The tension and continuity as and between the pre- and post-Reformation canon law was seen in 1736, in *Middleton v Crofts*.⁸⁰ The court took the view that the 1603 Canons did not, of themselves, bind the laity, but that the laity were bound by those provisions in the canons that ‘were declaratory of the ancient usage and law of the Church of England’:

We are all of opinion, that the canons of 1603, not having been confirmed by parliament, do not *proprio vigore* bind the laity; I say *proprio vigore*, by their own force and authority; for there are many provisions contained in these canons, which are declaratory of the ancient usage and law of the church of *England*, received and allowed here, which, in that respect, and by virtue of such ancient allowance, will bind the laity; but that is an obligation antecedent to, and not arising from, this body of canons.⁸¹

In England, in *Bishop of Exeter v Marshall*,⁸² it was made clear that where an ancient or pre-Reformation law was being relied on, it was necessary to show that such law had been:

the invariable usage of the church from the earliest times down to the Reformation, (which would be evidence of its being a law of the Church) and that it had been continued and uniformly recognised and acted upon by the bishops of the Anglican Church since the Reformation, (which might have shown it to have been received and adopted as part of the law ecclesiastical recognised by the common law) (...).⁸³

This was the standing of the ecclesiastical law on the matter on 1st January 1871 when the Irish Church Act 1869 came into force and thus was carried forward as a matter of the internal law of the Church of Ireland.

In 1968, in England, in a faculty application *In Re St Mary's Westwell* before the Commissary Court of the Diocese of Canterbury, it was held that ‘no directive, rule or usage of pre-Reformation canon law is any longer binding on this court unless pleaded and proved to have been recognised, continued and acted upon in England since the Reformation.’⁸⁴ While not a ruling of an Irish court or a court of the Church of Ireland, this judgment would be of persuasive authority in Ireland.

⁸⁰ *Middleton v Crofts* 2 Atkins 650; see also Richard Helmholz, ‘The Canons of 1603: the Contemporary Understanding’ in Norman Doe Mark Hill and Robert Ombres (eds), *English Canon Law* (University of Wales Press 1998) 23-35.

⁸¹ *Middleton v Crofts* 2 Atkins 650 per Lord Hardwicke, 653; Richard Helmholz, ‘The Canons of 1603: the Contemporary Understanding’ in Norman Doe Mark Hill and Robert Ombres (eds), *English Canon Law* (University of Wales Press 1998) 23-35.

⁸² *Bishop of Exeter v Marshall* (1868) LR 3 HL 17.

⁸³ *Bishop of Exeter v Marshall* (1868) LR 3 HL 17, 54-5.

⁸⁴ *Re St Mary's, Westwell* [1968] 1 WLR 513, 516.

A particular difficulty, for lawyers and historians alike, is identifying which Reformation ecclesiastical legislation had force in Ireland.⁸⁵ Holloway contends that the Irish ecclesiastical legislation was ‘with a few differences in detail parallel to that of England.’⁸⁶ The existence of two Irelands, one Anglo-Norman represented by the Irish parliament and the other Celtic where the old system of Brehon Law prevailed, was one of the factors which curtailed the impact of the Reformation. According to Holloway, in the reigns of Henry V and Henry VI, ‘the English Parliament asserted the right to make laws to bind Ireland, but the Irish Parliament, in the latter reign, decided against such a claim, and the English Parliament does not seem to have actually legislated for Ireland until the reign of Edward VI.’⁸⁷

The Primary Sources of Law for the Church of Ireland

Having explained the nexus between canon law and theology (including the divine and natural laws), also the canonical and historical inheritance, and, having addressed the peculiar issue of the status of the pre-Reformation canon law (all of which confer the heredities and genetics on the contemporary church law system), it is appropriate now to turn to the substantive, present-day, primary and secondary sources of law for the Church of Ireland.

Ecclesiastical Law

The first of these, in chronological terms, is ecclesiastical law. Until 1869 the term ‘ecclesiastical law’ had that meaning in Ireland which it still has in England. In England, ‘ecclesiastical law’ refers, in a general sense, to ‘the law relating to any matter concerning the Church of England administered and enforced in any court; [and] in its technical sense it means the law administered by ecclesiastical courts and persons.’⁸⁸ It is part of the law of the State.⁸⁹ It is this meaning which the term ‘ecclesiastical law’ has in the context of its use in the Irish Church Act 1869 and it is necessary, therefore, to continue to use it in that sense: the State law which generally and technically governed the Church in Ireland during the period of establishment until 1871.⁹⁰

⁸⁵ See generally Henry Holloway, *The Reformation in Ireland: A Study of Ecclesiastical Legislation* (SPCK 1919).

⁸⁶ Henry Holloway, *The Reformation in Ireland: A Study of Ecclesiastical Legislation* (SPCK 1919) 7.

⁸⁷ Henry Holloway, *The Reformation in Ireland: A Study of Ecclesiastical Legislation* (SPCK 1919) 16.

⁸⁸ *Halsbury’s Laws of England* (5th edn, 2011) para 1; see generally Lynne Leeder, *Ecclesiastical Law Handbook* (Sweet & Maxwell 1997) ch 1.

⁸⁹ *Halsbury’s Laws of England* vol 34 (5th edn, 2011) para 2.

⁹⁰ *Halsbury’s Laws of England* vol 34 (5th edn, 2011) para 1.

Injudicious use of contemporary English sources of Ecclesiastical Law and its commentaries has been known to give rise to confusion in the Church of Ireland. A precise definition of the term and a clear understanding of its distinctive use in the Church of Ireland context are crucial if misunderstanding is to be avoided.

Today, ‘Ecclesiastical law’, as a term, has a different, but no less exact, meaning in Ireland.⁹¹ This stems specifically from the provisions of the Irish Church Act 1869. Section 21 of the act provided that from 1st January 1871 the ecclesiastical courts were to be abolished. Furthermore, it laid down (and this warrants distinctive setting out) that the:

ecclesiastical law of Ireland, except in so far as relates to matrimonial causes and matters, shall cease to exist as law.⁹²

However, from the same date, under Section 20 of the Act the:

ecclesiastical law of Ireland, and the present articles, doctrines, rites, rules, discipline, and ordinances of the said Church, shall be deemed to be binding on the members for the time being thereof in the same manner as if such members had mutually contracted and agreed to abide and observe the same, and shall be capable of being enforced in the temporal courts in relation to any property (...).⁹³

It is important to notice that the ecclesiastical law, while abolished *as State law*, does not, in fact, cease to exist in the life of the church. It continues to be enjoined on those who choose membership of the Church of Ireland. It ‘continues to govern the Church (subject to modification and alteration by the legislative body of the church).’⁹⁴

Although ecclesiastical law then ceased to exist as the law of the land, section 20 of the Irish Church Act ‘continues the whole of the present Ecclesiastical law, and the present teaching and discipline of the Church, even after the 1st January, 1871, subject to such alterations, if any, as the Church itself may introduce’⁹⁵

Ecclesiastical law, as far as the Church of Ireland is concerned today, is such ecclesiastical law from the pre-disestablishment period which has not been abrogated,

⁹¹ And in Wales too since the commencement of the Welsh Church Act 1914; see Norman Doe, *The Law of the Church in Wales* (University of Wales Press 2002) 17; in contrast, for England, see *Halsbury’s Laws of England* vol 34 (5th edn, 2011) para 1.

⁹² Irish Church Act 1869 (32 & 33 Vict c 42), s 21; for the analogous situation in the Church in Wales see *Powell v Representative Body of the Church in Wales* [1957] 1 All ER 400.

⁹³ Irish Church Act 1869 (32 & 33 Vict c 42), s 20.

⁹⁴ George Atkins, *The Irish Church Act 1869: Carefully Annotated* (Ponsonby 1869) 28.

⁹⁵ Irish Church Act 1869 (32 & 33 Vict c 42), s 20; see also Charles H Todd, *Irish Church Act (1869) with Observations* (Hodges, Foster and Co 1869) 42.

altered or modified by the General Synod of the Church of Ireland, to which members of the church are currently bound by virtue of their membership of the church and their ‘mutual contract’ each with the other. Ecclesiastical law, defined in this particular way, is a primary source of law for the Church of Ireland.

In the survey, some hesitancy is evidenced in the greater number opting to designate it only as ‘sometimes a source’:⁹⁶ bishops (10%); chancellors (37.5%); registrars (9%); clergy (27%) and laity (23%). It is worrying that not insignificant minorities have no sense of it as a source: registrars (18%); clergy (5%) and laity (3%).

Judge Warren⁹⁷ in his essay – *Laws of the Church of Ireland* - writing in 1895, identified the sources of the ecclesiastical law in force at disestablishment as:

(1) in Imperial Statutes and Canons not repealed by Parliament or altered by the General Synod; (2) in the reports of the judgments and decisions of the Civil and Ecclesiastical Courts of England and Ireland, and (3) in treatises of recognised authority such as Gibson’s “Codex,” Burns’s “Ecclesiastical Law,” edited by Phillimore; Phillimore’s “Ecclesiastical Law,” 1873, and in the writings of Stephens, Cripps, and Archdeacon Stopford.⁹⁸

He was writing at closer remove from disestablishment. His perspective on the meaning of the term ‘ecclesiastical law’ and the way it should be understood since 1871 is insightful. He said:

The most important Imperial Statute bearing on the subject is the Act of Union, passed on the 2nd July, 1800. In the Fifth Article we find this:- “that it be the Fifth Article of Union that the Church of England and Ireland, as now by law established, be united into one Protestant Episcopal Church, to be called the United Church of England and Ireland, and that the *doctrine, worship, discipline* and *government* of the said United Church shall be and shall remain in full force for ever as *the same are now by law established for the Church of England.*”

The words “doctrine, worship, discipline, and government” are not identical with the words of the Irish Church Act, 1869 – “The Present Ecclesiastical Law of Ireland and the present articles, doctrines, rules, discipline, and ordinances of the said Church.” But they are substantially equivalent, and the true construction appears to be that by virtue of its Fifth Article of Union, the Ecclesiastical Law of the Church of England in 1800 was made Ecclesiastical Law of the United Church, including the Church of Ireland; and the Ecclesiastical Law of the Church of Ireland as it existed in 1800 was repealed, so far as it was inconsistent with the Law of the Church of England. Statutes on matters of Ecclesiastical Law which, prior to the Union, were only English Statutes, and did not apply to Ireland, were extended, in

⁹⁶ As noted previously, ‘sometimes a source’ see Part One: Chapter 1, 28, n142.

⁹⁷ The Right Hon Robert R Warren LLD, Chancellor of Cashel and Waterford, Killaloe and Clonfert.

⁹⁸ Robert R Warren, *The Law of the Church of Ireland; An Essay* (Stevens and Haynes 1895) 13; note that the italics are as in the original text.

their operation to Ireland, and the Canons of the Church of England became Canons of the United Church. Possibly, it may be held that the effect of the Fifth Article was yet more extensive, and that not only were those parts of the Ecclesiastical Law of Ireland which were inconsistent with that of England repealed, but that the whole of the Ecclesiastical Law of Ireland existing prior to the Union was repealed by the general substitution of the English for the Irish code. Probably it was the intention of the Legislature that the Ecclesiastical Law of the United Church should be the same in Ireland and England – one Church one Law. But in the absence of decision it would be rash to dogmatise on the point.⁹⁹

By virtue of the Act of Union, the Ecclesiastical Law of England became law for the United Church of England and Ireland (subsuming the Church of Ireland) in the period 1801 to 1871. The Court of the General Synod adopted this view in *Campbell v Hunt*.¹⁰⁰ The prosecution in that case was entirely based on a pre-Union English statute (13 Eliz I c 12), which until 1801 had no application in Ireland. Four communicants petitioned the Court in 1893 charging that the respondent (their rector) ‘advisedly maintained and affirmed doctrines directly contrary or repugnant to the Articles of the Church of Ireland.’ The Court took the view that the Statute (13 Eliz I c 12) ‘formed part of the law regulating the doctrine, worship, discipline, and government of the Church of Ireland at the passing of the Act of Union.’¹⁰¹

Interestingly, Warren also identified commentaries (‘treatises of recognised authority’) as one of the sources of law in force at the moment of disestablishment. He specifically mentioned ‘Gibson’s “Codex,” Burns’s *Ecclesiastical Law*, edited by Phillimore; Phillimore’s *Ecclesiastical Law*, and the writings of Stephens, Cripps, and Archdeacon Stopford.’¹⁰² To these, has to be added the work of Bullingbrooke.¹⁰³ The question arises, as to the extent to which these may be described as sources of law. Nonetheless, they are useful compendiums and commentaries on the ecclesiastical law throughout the period prior to disestablishment. Recourse may be had to these to ascertain what the law was at a particular time, how that law originated, unfolded and was interpreted by the courts. While not themselves sources of law, they are a useful ally in determining what the ecclesiastical law was on 1st January 1871.

⁹⁹ Robert R Warren, *The Law of the Church of Ireland; An Essay* (Stevens and Haynes 1895) 13.

¹⁰⁰ *Campbell v Hunt* (Court of the General Synod of the Church of Ireland JGS [1895] 217.

¹⁰¹ *Campbell v Hunt* (Court of the General Synod of the Church of Ireland JGS [1895] 217, 218.

¹⁰² Robert R Warren, *The Law of the Church of Ireland; An Essay* (Stevens and Haynes 1895) 13.

¹⁰³ Edward Bullingbrooke, *Ecclesiastical Law or, the Statutes, Constitutions, Canons, Rubricks, and Articles of the Church of Ireland methodically digested under Proper Heads with a Commentary Historical and Juridical: Two Volumes* (Boulter Grierson 1770).

Using Archdeacon Stopford's *A Handbook of Ecclesiastical Law and Duty of the Use of the Irish Clergy*¹⁰⁴ as an example, one can see the breadth of pre-1871 sources on which he relies to illustrate the ecclesiastical law as it then pertained. He refers to the Scriptures,¹⁰⁵ Ecumenical Councils of the early Church,¹⁰⁶ the Irish Canons of 1634, commentaries (Gibson's *Codex Iuris Ecclesiastici Anglicani*,¹⁰⁷ Burns' *Ecclesiastical Law*,¹⁰⁸ Stephens' *Laws of the Clergy*,¹⁰⁹ Phillimore *Ecclesiastical Law*¹¹⁰), statutes (as set out in Appendix C¹¹¹), Lyndwood's *Provinciale*,¹¹² Thorpe's *Ancient Laws and Institutes of England*,¹¹³ Hooker's *Laws of Ecclesiastical Polity*,¹¹⁴ court cases,¹¹⁵ the *Book of Common Prayer* (BCP),¹¹⁶ the rubrics¹¹⁷ and the custom of the Church.¹¹⁸ This attests to the breadth, variety of multiplicity of sources, pre- and post-Reformation on which a practitioner of Ecclesiastical Law routinely relied in decades prior to the enactment of the Irish Church Act 1869.

¹⁰⁴ Edward A Stopford, *A Handbook of Ecclesiastical Law and Duty for the Use of The Irish Clergy* (Hodges, Smith and Co 1861).

¹⁰⁵ Edward A Stopford, *A Handbook of Ecclesiastical Law and Duty for the Use of The Irish Clergy* (Hodges, Smith and Co 1861) eg 149, 180, 236 and 241.

¹⁰⁶ Edward A Stopford, *A Handbook of Ecclesiastical Law and Duty for the Use of The Irish* (Hodges, Smith and Co 1861) eg 2, 90.

¹⁰⁷ Edward A Stopford, *A Handbook of Ecclesiastical Law and Duty for the Use of The Irish Clergy* (Hodges, Smith and Co 1861) eg 3, 57, 67.

¹⁰⁸ Edward A Stopford, *A Handbook of Ecclesiastical Law and Duty for the Use of The Irish Clergy* (Hodges, Smith and Co 1861) eg 6, 64, 82, 83, 86, 88, 104, 256,

¹⁰⁹ Edward A Stopford, *A Handbook of Ecclesiastical Law and Duty for the Use of The Irish Clergy* (Hodges, Smith and Co 1861) eg 66, 69, 89, 94, 95, 190, 211, 239, 240, 243, 246, 248,, 252-6, 287, 289, 301, 312, 315.

¹¹⁰ Edward A Stopford, *A Handbook of Ecclesiastical Law and Duty for the Use of The Irish Clergy* (Hodges, Smith and Co 1861) eg 91.

¹¹¹ See eg Edward A Stopford, *A Handbook of Ecclesiastical Law and Duty for the Use of The Irish Clergy* (Hodges, Smith and Co 1861) 16 (6 Geo. I c.13); 22 (5 Geo. IV c.91),23 (40 Geo. III c.27, 5 Geo. IV c.91), 30 (57 Geo. III c.99), 32 (1 & 2 Vict. c.106), 34 (Act of Uniformity, 17 & 18 Car.II c.6), 38 (9 statutes), and many others throughout the *Handbook* listed at Appendix C.

¹¹² Edward A Stopford, *A Handbook of Ecclesiastical Law and Duty for the Use of The Irish Clergy* (Hodges, Smith and Co 1861) eg 10, 21, 171, 203.

¹¹³ Edward A Stopford, *A Handbook of Ecclesiastical Law and Duty for the Use of The Irish Clergy* (Hodges, Smith and Co 1861) 47.

¹¹⁴ Edward A Stopford, *A Handbook of Ecclesiastical Law and Duty for the Use of The Irish Clergy* (Hodges, Smith and Co 1861) eg 75, 190.

¹¹⁵ Edward A Stopford, *A Handbook of Ecclesiastical Law and Duty for the Use of The Irish Clergy* (Hodges, Smith and Co 1861) eg *Palmer v Peterborough* at 66; *London v Fftyche*, 93; *Fletcher v Sondes*, 94; *Shipdham's Case*, 151f; *Hutchins v Denziloe*, 164; *Steward v Crommelin*, 165; *Gilbert v Guzzard*, 255; *Westerton v Liddell*, 292-95.

¹¹⁶ Edward A Stopford, *A Handbook of Ecclesiastical Law and Duty for the Use of The Irish Clergy* (Hodges, Smith and Co 1861) eg 147.

¹¹⁷ Edward A Stopford, *A Handbook of Ecclesiastical Law and Duty for the Use of The Irish Clergy* (Hodges, Smith and Co 1861) eg 172, 174, 176-8, 180-93, 205-11, 213, 219, 222, 237, 292.

¹¹⁸ Edward A Stopford, *A Handbook of Ecclesiastical Law and Duty for the Use of The Irish Clergy* (Hodges, Smith and Co 1861) eg 149-55.

Since 1871 the General Synod has ‘chief legislative power’ in the Church of Ireland.¹¹⁹ In itself, it is an institutional source of law. The General Synod has ‘chief’ not ‘sole’ or ‘exclusive’ legislative power. The General Synod has power to make any regulations necessary for the order, good government, and efficiency of the Church of Ireland.¹²⁰

By virtue of the CCI, the General Synod’s powers as chief legislator may also be delegated (to Diocesan Synods and Diocesan Councils, to Standing Committee, to the Representative Church Body (RCB) and to other levels of administration and responsibility within the Church). This enterprise directs attention now to these primary and secondary sources, commencing with the Preamble and Declaration to the CCI.

*The Preamble and Declaration to the Constitution of the Church of Ireland*¹²¹

Such was the importance of Preamble and Declaration that, on the fifth day of the General Convention, the members stood, removed their hats, and a draft which had been prepared by Archdeacon Lee of Dublin, was read by the Bishop of Cork.¹²² This special status has unfolded over the years. Although in theory it can be revised, it has not yet been the subject of an amendment, and in 1946 the editor of the CCI argued - mistakenly - that:

[t]he essential difference between the Preamble and the rest of the Constitution has always been recognised by the General Synod. Provisions enacted by the General Synod have been altered and modified from time to time, (...) but the provisions of the Preamble always, and rightly, have been left untouched.¹²³

When the church considered its stance on the proposed Anglican Communion Covenant, one of the questions was whether that text is consonant with the Preamble and Declaration. In its preliminary response to *The Windsor Report* in January 2005, the Church of Ireland pointed to the ‘remarkable covenant’ implicit already in the Preamble and Declaration.¹²⁴ Before bringing the Anglican Communion Covenant to the General Synod for subscription, a formal opinion was sought by Standing Committee from the archbishop and bishops seeking advice as to whether it is consonant with the doctrines

¹¹⁹ *Preamble and Declaration*, IV.

¹²⁰ CCI, ch I, s 28.

¹²¹ Hereinafter ‘the Preamble and Declaration’.

¹²² Journal of the General Convention [1870] I, 18: ‘The following Preamble and Declaration was then read by the Bishop of Cork, the members of the Convention standing uncovered; ...’.

¹²³ *The Constitution of the Church of Ireland* (APCK 1946) vi.

¹²⁴ JGS [2005] 192.

and formularies of the Church of Ireland. In January 2011, the House of Bishops communicated that they were of that opinion.¹²⁵

In the survey, the Preamble and Declaration is not universally understood to be the foundational source that it is. Substantial numbers see it as only ‘sometimes a source’:¹²⁶ bishops (10%); chancellors (12.5%); registrars (18%); clergy (11%) and laity (13%). Not insignificant minorities do not see it as a source at all: chancellors (12.5%); registrars (9%); clergy (7%) and laity (4.5%).

In fact, the Preamble and Declaration contain elemental characteristics of the Church. It is a church which is, on the one hand ‘the Ancient Catholic and Apostolic Church of Ireland’¹²⁷ and, on the other, ‘a reformed and Protestant Church.’¹²⁸ It ‘accepts and unfeignedly believes all the Canonical Scriptures of the Old and New Testaments, as given by inspiration of God, and containing all things necessary to salvation; and doth continue to profess the faith of Christ as professed by the Primitive Church.’¹²⁹ It commits the church to ‘continue to minister the doctrine, and sacraments, and the discipline of Christ (...) and maintain inviolate the three orders of bishops, priests or presbyters, and deacons in the sacred ministry.’¹³⁰

The Preamble and Declaration commits the church to ‘receive and approve’ certain documents and formularies - the Articles of Religion, the BCP and the Ordinal - and to continue their use, subject to any alterations that may be made in them at any stage ‘by the lawful authority of the Church.’¹³¹ Communion is to be maintained ‘with the sister Church of England, and with all other Christian Churches, agreeing in the principles of this Declaration.’¹³²

Importantly, the Preamble and Declaration established the principle that the Church of Ireland accords ‘chief legislative power (...) consistent with its Episcopal constitution’

¹²⁵ JGS [2011] 219; see also PCLCCAC, Principles 49 (sources of doctrine) and 50 (the development of doctrinal formularies).

¹²⁶ As noted previously, ‘sometimes a source’ see Part One: Chapter 1, 28, n142.

¹²⁷ Preamble and Declaration to the CCI, First Schedule, 3; The Preamble.

¹²⁸ Preamble and Declaration to the CCI, First Schedule, 3, I (3).

¹²⁹ Preamble and Declaration to the CCI, I (1).

¹³⁰ Preamble and Declaration to the CCI, I (2).

¹³¹ Preamble and Declaration to the CCI, II.

¹³² Preamble and Declaration to the CCI, III.

to a ‘General Synod (...) consisting of the archbishops and bishops and of representatives of the clergy and laity.’¹³³

The Constitution of the Church of Ireland

The CCI is understood by almost all the respondents to the survey to be a source of law.¹³⁴ The CCI was first drawn up by the General Convention in 1870 and since has been, and can only be, amended or augmented by authority of the General Synod.¹³⁵

In *State (Colquhoun) v D’Arcy* O’Byrne J described the authority of the CCI in this way:

It seems to me that a constitution so drawn up is binding upon the parties thereto, not by its own inherent force or by virtue of the statute, but by virtue of such parties having agreed to be bound by it.¹³⁶

This consensual compact, legislated for in section 20 of the Irish Church Act 1869, is not embodied in any formal instrument for lay members of the church, but it is implicit in the Declaration for Subscription made by clergy upon entering office.¹³⁷ It is also recognised in jurisprudence.¹³⁸

The CCI is divided into sixteen chapters treating of: the General Synod,¹³⁹ dioceses and diocesan organisation,¹⁴⁰ parishes and parochial organisation,¹⁴¹ appointment to and tenure of cures,¹⁴² non-parochial churches,¹⁴³ archbishops and bishops,¹⁴⁴ cathedrals,¹⁴⁵ ecclesiastical tribunals and discipline,¹⁴⁶ the canons,¹⁴⁷ the RCB,¹⁴⁸ the Central Church

¹³³ Preamble and Declaration to the CCI, IV.

¹³⁴ Bishops – 90%; chancellors – 100%; registrars – 91%; clergy – 95% and laity – 89.5%.

¹³⁵ CCI, ch I.

¹³⁶ *State (Colquhoun) v D’Arcy and Others* [1936] IR 641, 673.

¹³⁷ CCI, ch IV, Schedule.

¹³⁸ *Bishop of Natal v Gladstone* LR 3 Eq 1, 35-36 per Lord Romilly: ‘Where there is no State religion established by the legislature ... the members of [a church] are, by implied agreement, bound by all its laws...’; *Forbes v Eden* [1867] LR 1HL Sc and Div 568; *O’Keeffe v. Cullen* IR 7 CL 319; *State (Colquhoun) v. D’Arcy* [1936] IR 641.

¹³⁹ CCI, ch I.

¹⁴⁰ CCI, ch II.

¹⁴¹ CCI, ch III.

¹⁴² CCI, ch IV.

¹⁴³ CCI, ch V.

¹⁴⁴ CCI, ch VI.

¹⁴⁵ CCI, ch VII.

¹⁴⁶ CCI, Ch VIII.

¹⁴⁷ CCI, ch IX.

¹⁴⁸ CCI, ch X.

Fund,¹⁴⁹ management of burial grounds,¹⁵⁰ management of property,¹⁵¹ the Clergy Pensions Fund (CPF),¹⁵² the Supplemental Fund,¹⁵³ and ‘Ministry with Children’.¹⁵⁴

Other documents are included in the published edition of the CCI: the Preamble and Declaration, the Standing Orders of the General Synod, the Constitution Duties and Powers of the Standing Committee of the General Synod, the Constitution of the Board of Education of the General Synod and a number of extracts from relevant legislation such as the Irish Church Act 1869.¹⁵⁵ Each of these is a source.

The CCI emerged from the crucible of disestablishment. A draft constitution, sent in advance to every member before the first day of the General Convention¹⁵⁶ was described as:

a striking document which owes much of its effectiveness to the skill of the lawyers, especially the judges, who played a significant part in its construction (...).¹⁵⁷

An undercurrent was the protestant ethos of the church. Exemplifying these concerns was a memorial to the General Convention,¹⁵⁸ expressing the earnest hope that:

the Committee which has been appointed to revise the Canons and Laws of our Church (...) will recommend the adoption of all such precautions as may be necessary to preserve our Church from the encroachments of modern Ritualism...and to guard us against the introduction of superstitious novelties tending to assimilate any of our services to those of the Church of Rome.¹⁵⁹

These fears came to the fore in the work of the Revision Committee on the BCP.¹⁶⁰ Analysis of legislation,¹⁶¹ journals,¹⁶² presidential addresses, and, the Canons,¹⁶³ serves

¹⁴⁹ CCI, ch XI.

¹⁵⁰ CCI, ch XII.

¹⁵¹ CCI, ch XIII.

¹⁵² CCI, ch XIV.

¹⁵³ CCI, ch XV.

¹⁵⁴ CCI, ch XVI.

¹⁵⁵ The Constitution of the Church of Ireland is available in folder format (General Synod of the Church of Ireland 2003) or online at www.ireland.anglican.org.

¹⁵⁶ 15th February 1870.

¹⁵⁷ Gabriel Daly, “Church Renewal: 1869-1877” in Michael Hurley (ed) *Irish Anglicanism 1869-1969* (Allen Figgis Ltd 1970) 23, 28.

¹⁵⁸ Representative Church Body Library: MS 4/6: Hand-written address to the General Convention, together with printed copy of the same, from the clergy and registered vestrymen of the Church of Ireland (hundreds of signatures).

¹⁵⁹ Robert Walsh *Proceedings of Church of Ireland* vol 2 (Cutting books of the Reverend Robert Walsh 1869-1871, Representative Church Body Library) 258.

¹⁶⁰ The revision of the *Book of Common Prayer* following Disestablishment is a full study in itself, and may be pursued in William Sherlock, ‘The Story of the Revision of the Irish prayer book’ [1910] *Irish Church Quarterly* vol III, 12,144; Richard L Clarke, ‘The Disestablishment Revision of the Irish Book of

to identify the factors which have contributed to the formation and development of the CCI. At disestablishment these included the role of the bishops, the place of the laity, and evangelical concerns about ritualism. Four major periods (1870s, 1920s, 1970s and 1980s, and early 2000s) of liturgical revision,¹⁶⁴ financial vulnerability, pension obligations, structural reviews,¹⁶⁵ and administrative reforms¹⁶⁶ have all been seminal influences.

Ecumenical relations have had a marked effect. In the wake of the Lambeth 1920 appeal to all Christian people,¹⁶⁷ ecumenism was a regular theme of Archbishops' speeches. Canons 10, 11 and 11A emerged from that ecumenical energy. Canons 26 and 27 were altered in 1974 to reflect greatly improved relations between churches. When similar changes were introduced in 1962 the legislation referred to ecumenism more euphemistically:

[T]he lapse of years and the exigencies of present times and circumstances have made advisable some relaxation of the provisions (...).¹⁶⁸

The mind of the convention in framing the CCI may be discerned not only in the resolutions adopted, but also in those rejected and amended. Some of the subject matter of the Canons of 1634 which were not to be included in the revision of 1871, found their way:

into other chapters of the Constitution – the three-level system of government in Chs. I-III, and the system of Ecclesiastical Courts into Ch. VIII. Some parts (...) [of the Canons] were no longer relevant to a disestablished Church.¹⁶⁹

Fourteen revisions of the CCI have been necessitated by this prodigious legislative activity.¹⁷⁰ That of 1889 corrected slight inconsistencies in that of 1879. A cheap and

Common Prayer' (unpublished PhD Thesis, Trinity College Dublin 1989); Michael C Kennedy, 'The Theological Implications of Recent Liturgical Revision in the Church of Ireland' (unpublished PhD Thesis, Trinity College Dublin 1987).

¹⁶¹ Statutes of the General Synod of the Church of Ireland (1871-2011).

¹⁶² Journal of the General Convention (1871-2011); Journals of the General Synod of the Church of Ireland (1871-2011).

¹⁶³ CCI, ch IX.

¹⁶⁴ The *Book of Common Prayer* (1878 and 1926); the *Alternative Prayer Book* (1984) and the *Book of Common Prayer* (2004).

¹⁶⁵ See, among others, JLB Deane, 'General Synod/Standing Committee Structures' in JGS (1994), 110; and reports of the 'Synodical Structures Working Group' in JGS (1999), 119 and 203-31; JGS (2000), 127 and 155-59; JGS (2001), 143 and 211-14.

¹⁶⁶ 'Administration 1967' (Dublin University Press 1967).

¹⁶⁷ Lambeth Conference 1920, resolution at www.anglicancommunion.org/acns/archive/1920/1920.htm accessed 21 February 2012.

¹⁶⁸ Statute of the General Synod of the Church of Ireland 1962, c iii.

¹⁶⁹ 'Report of the Select Committee on the Canons' JGS [1973], 248.

readily available edition was called for in 1909. All but three chapters were amended in 1919. Following the special synod a year later, the 1926 revision was extensive (incorporating legislation providing for a Central Church Fund and light duty parishes).

Chapter XI¹⁷¹ was omitted from the 1934 edition having been repealed as a result of a decision of the Supreme Court in 1932.¹⁷² In 1946, for ease of reference, the Standing Orders of the General Synod, provisions relating to Standing Committee, and sections of Acts of Parliament (1875¹⁷³ and 1884¹⁷⁴) were included. The editor asserted that ‘the Constitution purports to be a complete code of the legislation passed by the General Synod other than statutes relating to the Book of Common Prayer.’¹⁷⁵

The 1960 revision, which added the *Constitution of the Board of Education of the General Synod* (approved in 1955), illustrates the standard approach: the former CCI was repealed and the new one contained in a first schedule, but preceded by the Preamble and Declaration (unaltered).

In 1961 the General Synod set up the Constitution Committee. The Minutes set out its goal: ‘[I]t was agreed that the committee should examine the Constitution section by section and deal, not only with matters requiring new legislation, but also with sections and passages needing clarification by way of rewording or transposal.’¹⁷⁶ All sections were subject to amendment. The unpublished minute books indicate the size of the task.¹⁷⁷ A sign of the times, the formation of Unions and Groups of parishes became a Chapter in its own right.

Legislative activity, including the revision of the Canons,¹⁷⁸ the Clergy Pension Fund, and the ordination of women to the diaconate,¹⁷⁹ necessitated revisions in 1978 and

¹⁷⁰ 1877, 1879, 1889, 1899, 1909, 1919, 1926, 1934, 1946, 1960, 1972, 1978, 1988 and 2003.

¹⁷¹ The Boulter and Robinson Funds.

¹⁷² *In re Boulter, Representative Church Body v Cave and others* [1930] IR 589; see also *The Constitution of the Church of Ireland* (Hodges, Figgis and Co 1934) vii.

¹⁷³ Glebe Lands, Representative Body (Ireland) Act 1875 (38 & 39 Vict c 42).

¹⁷⁴ Trustee Churches (Ireland) Act 1884 (47 & 48 Vict c 10).

¹⁷⁵ ‘The Constitution of the Church of Ireland’ (APCK 1946) viii.

¹⁷⁶ Minutes of The Constitution Committee’, (1961) Unpublished Minute Book at the RCB Library, Dublin, 16th October 1961.

¹⁷⁷ Interview with JLB Deane (Editor of the *Constitution of the Church of Ireland*, 1972, 1978 and 1988; and member of The Constitution Committee, 1961-1971) on 4th February 2004.

¹⁷⁸ Statute of the General Synod 1974 c i.

¹⁷⁹ Statute of the General Synod 1984 c i.

1988 (the first ‘...for which modern technology was employed...’¹⁸⁰). Further legislative change - pensions, the ordination of women to the priesthood and episcopate,¹⁸¹ the remarriage in church of divorcees,¹⁸² and adoption of inclusive language – generated the 2003 edition.¹⁸³

When the Constitution Committee (1961 to 1971) turned its attention to Chapter IX (the Canons) it put forward the view that some of the sections of that chapter ‘are not of sufficient importance to warrant their being treated as Canons of the Church while other sections would be more fittingly placed in Chapters dealing with the same subject’. The Committee noticed ‘that several of the Canons were no longer universally observed despite the penalties prescribed in Canon 48’.¹⁸⁴ A Select Committee on the Canons was established and its efforts focussed on what had been achieved in 1871. This led to a detailed review of the Canons, a further primary source.

The Canons

A brief examination of the development of the Canons illustrates the centrality they have as a source of law for the Church of Ireland. Canons are enacted by statute of the General Synod.¹⁸⁵ The proportions of respondent to the survey who understand them as invariably a source are high: bishops (80%), chancellors (75%), registrars (100%), clergy (91%) and laity (77.5%).

The Bill to provide a new set of canons was introduced at the General Synod on the fourth day of its first session - 17th April 1871 – and was finally passed on 16th May.¹⁸⁶ The General Convention had set up a committee to work on them one year previously.¹⁸⁷

The Irish Canons of 1634 (together with the five supplementary Irish canons of 1711¹⁸⁸) had been abrogated by the Act of Union 1801. This had the consequence of asserting, in

¹⁸⁰ ‘Constitution of the Church of Ireland’ (General Synod of the Church of Ireland 1988) The Preface.

¹⁸¹ Statute of the General Synod 1990 c i.

¹⁸² Statute of the General Synod 1996 c i.

¹⁸³ Interview with Brenda Sheil (editor of ‘The Constitution of the Church of Ireland’ [2003]) on 27th January 2004.

¹⁸⁴ Minutes of ‘The Constitution Committee’ (1965 to 1971) Unpublished Minute Book at the RCB Library, Dublin at 15th July 1968.

¹⁸⁵ CCI, ch I.

¹⁸⁶ Statute of the General Synod of the Church of Ireland 1871, c iv.

¹⁸⁷ Journal of the General Convention [1870] 176 -77.

¹⁸⁸ See Gerald Bray (ed), *The Anglican Canons 1529-1947* (The Boydell Press 1998) 833-35.

Ireland, the English Canons of 1603 during the period 1801 to 1871.¹⁸⁹ As part of an attempt to bolster the argument for establishment the Irish Canons again came to the fore with their renewed publication in 1864.¹⁹⁰ It was on these (rather than those of 1603) that drafters chose to rely in the wake of disestablishment.

The fifty-four Canons of 1871 followed the numbering of 1634, which had omitted forty-four of the Canons of 1603.¹⁹¹ Fifty-six of the 1634 Canons were then omitted in 1871.¹⁹² In many ways the draftsmen of 1871 seem to have used what they needed from the earlier Canons in the chapters of the CCI itself and ‘grouped what was left into Ch. IX’.¹⁹³

There were two significant groups of additional Canons. First, were three Canons unique to the Irish Canons of 1634 and included again in 1871 as four Canons: Canons 5-6 (dealing with the ordering of the Services), Canon 17 (Archdeacons) and Canon 24 (patrons of ecclesiastical benefices). Second were those Canons adopted in response to the ritualist controversy being played out in the ecclesiastical courts in England.¹⁹⁴ ‘The draftsmen of 1870 were at pains to “write into” the new Canons all these negative judicial decisions.’¹⁹⁵ Their inclusion in the Canons was not necessarily a deterrent as attested by subsequent cases.¹⁹⁶

In 1871 the status of all earlier Canons was clarified: ‘[T]he Canons hereafter expressed and enacted, and none other, shall henceforth have full force and effect as the Canons of

¹⁸⁹ For accounts of the development of the English Canons of 1603 see *Canon Law of the Church of England* Report of the Archbishops’ Commission on Canon Law (SPCK 1947) 71-8; see generally Submission of the Clergy Act 1533 (25 Hen. VIII c.19); Gerald Bray, ‘The Strange Afterlife of the *Reformatio Legum Ecclesiasticarum*’ in Norman Doe, Mark Hill and Robert Ombres (eds), *English Canon Law* (University of Wales Press 1998) 36-47; Richard H Helmholz, ‘The Canons of 1603: the Contemporary Understanding’ in Norman Doe, Mark Hill and Robert Ombres (eds), *English Canon Law* (University of Wales Press 1998) 23-35; for the text of the Irish Canons of 1634 see Gerald Bray (ed), *The Anglican Canons 1529-1947* (The Boydell Press 1998), 485-531.

¹⁹⁰ Gerald Bray (ed), *The Anglican Canons 1529-1947* (The Boydell Press 1998) lxviii.

¹⁹¹ For the complete list see Gerald Bray (ed), *The Anglican Canons 1529-1947* (The Boydell Press 1998) 895-96.

¹⁹² Gerald Bray (ed), *The Anglican Canons 1529-1947* (The Boydell Press 1998) lxviii, fn 105 (lists these as 1-2, 5, 10, 12-13, 19-20, 22-24, 26-28, 44-45, 48-87, 89-90 and 96-9).

¹⁹³ ‘Report of the Select Committee on the Canons’ JGS [1973] 248.

¹⁹⁴ *Westerton v Liddell* [1855] Moore’s Special Reports 133, 156; *Martin v Machonockie* [1868] LR 2 A&E 116; *Elphinstone v Purchas* [1870] L.R. 3 A & E 66, 96-97; *Sumner v Wix* [1870] L.R. 3 A & E 58; *Hebbert v Purchas* [1871] LR 3 PC 605; the controversies continuing to be addressed in later years in *Ridsdale v Clifton* [1877] 2 PD 276; *Read v Bishop of Lincoln* [1892] AC 644; see generally Gary W Graber, *Ritual Legislation in the Victorian Church of England* (Edwin Mellen Press 1993).

¹⁹⁵ ‘Report of the Select Committee on the Canons’ JGS [1973] 248.

¹⁹⁶ *Grant v Smith and others* JGS [1895] 204; *Chamney and others v Simpson* JGS [1928] 367; *Christie and others v Colquhoun* JGS [1937] 355; and *State (Colquhoun) v. D’Arcy* [1936] IR 641.

the Church of Ireland.¹⁹⁷ A minor revision adding six Canons in 1877 was also undertaken because doubts had ‘been entertained as to whether some of the Canons enacted by the General Synod of 1871, c 4, have been duly enacted’¹⁹⁸

Between 1877 and 1974 ten statutes altered some of the Canons. In 1923, the Canon concerning assignment of church pews was moderated.¹⁹⁹ An attempt in 1930 to set up a committee to make the Canons less restrictive in the area of worship was rejected.²⁰⁰ Reflecting emerging ecumenism, between 1944 and 1966, the Canons allowing clergy of recognised Christian denominations to preach in Church of Ireland churches and to take some Services were implemented.²⁰¹ The prohibition on crosses was lifted in 1964.²⁰² The numbering of the Canons was revised in 1971²⁰³ and a full revision enacted in 1974.²⁰⁴

In successive revisions, and notably when the numbering of the Canons was revised in 1971,²⁰⁵ the opportunity was taken to transfer matters dealing with church organisation to the appropriate chapters of the CCI. Canon 13 (baptismal and burial registers) was transferred to Chapter III section 25; Canon 17 (Archdeacons) to Chapter II sections 38 to 41 and Chapter VII section 5; Canon 23 (institution to benefices) to Chapter IV sections 24 to 26; Canon 24 (patrons of benefices) to Chapter IV sections 22 to 23; Canon 26 (incumbent’s residence) to Chapter IV sections 37 to 39; Canon 28 (neglected duty) to Chapter IV sections 34 and 35; Canon 29 (Curates) to Chapter IV sections 49 and 50; Canon 42 (churchwardens’ duties) to Chapter 3 section 26; Canon 44 (repair of churches and churchyards) to Chapter III section 24(2); Canon 45 (church furnishings) to Chapter III section 24(6); Canon 46 (communion requisites) to Chapter III section 24 (6)[j]; and Canon 48 (the authority of the General Synod) was subsumed in Chapter I. Included in this list of re-located canons are two of those three unique Irish Canons of 1634 (adopted also in 1871).²⁰⁶ This illustrates the genesis and development of contemporary sources from earlier materials.

¹⁹⁷ Statute of the General Synod of the Church of Ireland 1871, c iv in JGS [1871] 164.

¹⁹⁸ Statute of the General Synod of the Church of Ireland 1877, c xiv in JGS [1877] 63.

¹⁹⁹ Statute of the General Synod of the Church of Ireland 1923, c vii.

²⁰⁰ JGS [1930] lxxiv.

²⁰¹ Statutes of the General Synod of the Church of Ireland 1945, c ii and vii; 1962, c iii; 1966, c i.

²⁰² Statute of the General Synod of the Church of Ireland 1964, c xi.

²⁰³ Statute of the General Synod of the Church of Ireland 1971, c ii.

²⁰⁴ Statute of the General Synod of the Church of Ireland 1974, c i.

²⁰⁵ Statute of the General Synod of the Church of Ireland 1971, c ii.

²⁰⁶ Canons 17 and 24.

The making of the 1974 revision illustrates a new mindset within the church arising as a combination of the decline in numbers, the changed political scenario, the pervasiveness of ecumenism and the industry of the liturgical movement. A Select Committee on the Canons, appointed in 1971, presented its report in 1973.²⁰⁷

It affirmed the centrality of ‘a framework of law in such a way that the law becomes a handmaid to the gospel.’²⁰⁸ The committee outlined the principles which had guided it: first:

that the life and worship of the Church cannot be controlled in every detail by laws (...) [Second], that as far as possible rules must be made flexible (...) [Third, it is] the intention of this revision (...) neither to sweep away many existing Canons (...) nor to freeze the life of our Church (...) into an unnatural immobility, but to allow for a controlled relaxation of some rules (...) and to bring others up to date (...) and [Fourth] that these Canons (...) do not constitute an exhaustive body of Canon Law.²⁰⁹

The authors wrote:

In our review of the Canons (...) we have tried to treat them as a developing code of practice and not as an ossification of the position as at some past date.²¹⁰ Some canons had been ignored by common consent and were in need of repeal (e.g. that relating to processions). The work on liturgical revision had resulted in a body of opinion favouring change. In addition, the committee sought to phrase canons in permissive rather than in prohibitive phraseology, and also modified those canons which reflected “...the social conditions existing in 1870...” and which no longer pertained.²¹¹

As part of its methodology the opinion of the House of Bishops on matters of doctrine was sought. In relation to the wearing of stoles, the Bishops wrote that ‘in the present century, the use of the words “stole” or “scarf” has no doctrinal significance.’²¹² The Canons of the Church of England (adopted in 1969) were relied upon as a material source,²¹³ especially those relating to admission of notorious sinners to the Holy Communion (B16) and teaching the young (B26).²¹⁴

²⁰⁷ ‘Report of the Select Committee on the Canons’ JGS (1973) 246-73.

²⁰⁸ ‘Report of the Select Committee on the Canons’ JGS (1973) 246-47.

²⁰⁹ ‘Report of the Select Committee on the Canons’ JGS (1973) 247.

²¹⁰ ‘Report of the Select Committee on the Canons’ JGS (1973) 249.

²¹¹ ‘Report of the Select Committee on the Canons’ JGS (1973) 250.

²¹² ‘Minutes of The Select Committee on the Canons’ 1971-1974, Unpublished Minute Book at the RCB Library, Dublin – letter of 5th December 1973, appended to the minutes.

²¹³ ‘Minutes of The Select Committee on the Canons’ 1971 to 1974, Unpublished Minute Book at the RCB Library, Dublin.

²¹⁴ *The Canons of the Church of England* (Church House Publishing 2000).

The numbering of the Canons²¹⁵ today is broadly that of the 1974 revision. Notable alterations since 1974 are: the ordination of women (Canon 22); the marriage in church of divorced persons (Canon 31); the onus on clergy to comply with the civil law in solemnising marriages (Canon 31(2)); the removal of the reference to suicide in connection with the burial of the dead (Canon 32); provision for part-time deployment in stipendiary ministry (Canon 34(4)); and allowance for payments to auxiliary clergy (Canon 34(5)).

A tabular analysis at Appendix D (page 358) of the Canons currently in force, showing the provenance of each from earlier Canons, and, where appropriate, noting developments since 1871, illustrates the continuity of the Canons with the ecclesiastical law of previous eras as well as their on-going development.²¹⁶

Articles, Doctrines, Rites, Rubrics and Formularies

Chapter I of the CCI refers to ‘the articles, doctrines, rites, rubrics and formularies of the church.’ While the terminology is broad, they are a primary source of internal church law. So closely are they related to the theological and scriptural framework that they are accorded a protected status. A Special Resolution and Bill of the General Synod (a two year process) is required in order to modify them.²¹⁷

Undoubtedly this category includes the Creeds, the Thirty-Nine Articles, the BCP, the Ordinal, the Rubrics and the Catechism. The formularies are referred to in the law of the church. For example, in the case of ecclesiastical apparel, Canon 12 (4) underscores that the church ‘does not attach any doctrinal significance to the diversities of apparel permitted (...) and the apparel worn by members of the clergy (...) is not to be understood as implying any doctrines other than those contained in the formularies of the Church.’²¹⁸

‘Formularies’ is a particularly nebulous term. In its dictionary sense it refers to ‘books or systems of prescribed formulas, especially relating to religious procedure or

²¹⁵ CCI, ch IX.

²¹⁶ For the comparison between the Canons of 1603, 1634 and 1871 I have relied on Gerald Bray (ed), *The Anglican Canons 1529-1947* (The Boydell Press 1998) 892-894; the comparison between 1871 and today, together with the commentary have been extrapolated from the *Journals of the General Synod* (1871-2011) and the Statutes of the General Synod of the Church of Ireland 1871-2011.

²¹⁷ CCI, ch I, s 26.

²¹⁸ CCI, ch IX, s 12(4) (Canon 12(4)).

doctrine.’²¹⁹ It is one of the forms ‘in which religious beliefs are expressed’.²²⁰ It includes the Creeds, the Articles of Religion, any prescription or formula which relates to doctrine, a rite, a rubric or a catechism, for example, but in the praxis of the Church of Ireland, would appear not to include the Canons Ecclesiastical in their entirety. (A distinction is drawn between Canons adjudged to require a two-year Bill process to revise them, and those which do not).²²¹

This nebulous area - doctrinal formularies - was by no means the subject of universal consensus in the survey. In the case of the Thirty-Nine Articles, for example, bishops and chancellors were clear that they are a source of law of the Church of Ireland (90% and 100% respectively). Others were less overwhelmingly certain: registrars (64%), clergy (65%) and laity (72%).

The identification of the place of ‘formularies’ in the law of the church is, therefore, important. At ordination, or upon entering an office, clergy make the following declaration:

I assent to the Thirty-nine Articles of Religion, and to the Book of Common Prayer, and of the Ordering of Bishops, Priests, and Deacons. I believe the doctrine of the Church of Ireland, as therein set forth, to be agreeable to the Word of God; (...).²²²

Collectively ‘the articles, doctrines, rites, rubrics and formularies’ are at the heart of the church’s life. It is to these that the promises at Ordination refer when the candidate deacon, priest or bishop is required to confirm that s/he believes and accepts ‘the doctrine of the Christian faith as the Church of Ireland has received it.’²²³ They are articulations of belief and doctrine, teaching and law, and are entwined with and afforded every protection of the law of the church.

The creeds²²⁴ acquire their standing as much because they are part of the currency of daily liturgy as for their provenance in the general councils of the Church.²²⁵

²¹⁹ Collins English Dictionary (HarperCollins 2003).

²²⁰ *Halsbury’s Laws of England* vol 34 (5th edn, 2011) para 38.

²²¹ ‘Report of the Select Committee on the Canons’ JGS [1973] 246, 250.

²²² CCI, ch IV, s 67 and the Schedule.

²²³ BCP ‘Ordination Services Two’ Deacons 556, Priests 566, Bishops 577, see also ‘Declaration for Subscription’ CCI, ch IV, s 67 and ch IV, Schedule.

²²⁴ ‘The Three Creeds, Nicene Creed, Athanasius’ Creed, and that which is commonly called the Apostles’ Creed,...’ Article VIII, Thirty-Nine Articles; see also ‘Confessing the One Faith: an Ecumenical Explication of the Apostolic Faith as it is Confessed in the Nicene-Constantinopolitan creed (381)’ Faith and Order Paper No. 153 (World Council of Churches 1991).

Moreover, ‘they may be proven by most certain warrants of Holy Scripture.’²²⁶ They are formularies of the faith. In the survey sizeable numbers of respondents do not see them as a source.²²⁷ In law, they are an instrumental source.

As the creeds evolved as formularies in early centuries of the Church, so the Thirty-Nine Articles evolved in the course of the Reformation.²²⁸ Ten Articles had been drawn up in 1536 in England.²²⁹ They represented the mind of the Church of England until 1543.²³⁰ In England new sets of Articles were issued: Forty-Two Articles in 1553, Eleven Articles in 1559, Thirty-Eight Articles in 1563 and Thirty-Nine Articles 1571.²³¹

Irish clergy who lived in areas controlled by the English appear to have followed the English clergy in acquiescing in the reforms. Irish Articles (twenty in number) were adopted by a Synod in Dublin in 1615: but they seem to have been ignored in favour of the English Thirty-Nine Articles adopted by Convocation in Dublin in 1634.²³² These too are formularies.²³³ Bullingbrooke said of the Articles ‘tho’ originally made in convocation, [they] are properly a part of the statute law, as they are required to be assented to by several acts of Parliament, as well as by the modern canons.’²³⁴

According to Bicknell, like the creeds, they are ‘theological statements of belief.’²³⁵ However, they are more than that, insofar as, in England, they are recognised by statute.²³⁶ In the Church of Ireland the Articles of Religion are ‘received and approved’ under section II of the Preamble and Declaration. Mention must also be made of the

²²⁵ See generally Oliver Chase Quick, *Doctrines of the Creed* (Nisbet and Co 1938); Alan Richardson, *Creeds in the Making* (SCM 1935); Luke Timothy Johnson, *The Creed* (DLT 2003).

²²⁶ Article VIII, Thirty-Nine Articles of Religion.

²²⁷ Bishops -10%; registrars - 27%; clergy - 14%; laity - 13%.

²²⁸ BJ Kidd, *The Thirty-nine Articles: their History and Explanation* Two Vols. (Rivington’s 1911); EJ Bicknell, *The Thirty-Nine Articles* (3rd edn., HJ Carpenter (rev), Longmans, Green and Co, 1955); Peter Toon, ‘The Articles and Homilies’ in Stephen Sykes, John Booty, Jonathan Knight (eds), *The Study of Anglicanism* (SPCK 1998) 144-54; see also *Halsbury’s Laws of England* (5th edn, 2011) para 52.

²²⁹ For the text of the Ten Articles see Gerald Bray (ed), *Documents of the English Reformation* (James Clarke and Co 1994) 163-74.

²³⁰ EJ Bicknell, *The Thirty-Nine Articles* (3rd edn, HJ Carpenter (rev), Longmans, Green and Co, 1955) 9.

²³¹ For the texts see Gerald Bray (ed), *Documents of the English Reformation* (James Clarke and Co 1994) 284-311.

²³² Irish Canons 1634, Canon 1; see generally Gerald Bray (ed), *Documents of the English Reformation* (James Clarke and Co 1994) 437 and for the text of the articles 438-52.

²³³ EJ Bicknell, *The Thirty-Nine Articles* (3rd edn, HJ Carpenter (rev), Longmans, Green and Co, 1955) 7.

²³⁴ E. Bullingbrooke, *Ecclesiastical Law or, the Statutes, Constitutions, Canons, Rubricks, and Articles of the Church of Ireland methodically digested under Proper Heads with a Commentary Historical and Juridical: Two Volumes* (Boulter Grierson 1770) vol I, xiv.

²³⁵ EJ Bicknell, *The Thirty-Nine Articles* (3rd edn., HJ Carpenter (rev), Longmans, Green and Co 1955) 18.

²³⁶ Clerical Subscription Act 1865 (28 & 29 Vict c 122) ss 1,4 5; see also *Halsbury’s Laws of England* vol 34 (5th edn, 2011) para 52 fn6 and Church of England Canon A2.

Homilies. These are listed in Article XXXV as containing ‘a godly and wholesome Doctrine’.²³⁷

In 1999, the General Synod adopted a resolution which puts a gloss on the church’s understanding of the Thirty-Nine Articles and its historical formularies in general:

The Church of Ireland is part of the one, holy, catholic, and apostolic Church, worshipping the one true God, Father, Son, and Holy Spirit. It professes the faith uniquely revealed in the Holy Scriptures and set forth in the catholic creeds: which faith the Church is called upon to proclaim afresh in each generation. Led by the Holy Spirit, it has borne witness to Christian truth in its historic formularies, the Thirty-nine Articles of Religion, the Book of Common Prayer, the Ordering of Bishops, Priests and Deacons and the Declaration prefixed to the Statutes of the Church of Ireland (1870).

These historic formularies are a definition of the faith as proclaimed by the Church of Ireland, and thus form an important part of the inheritance through which this Church has been formed in its faith and witness to this day. The formularies that have been passed on are part of a living tradition that today must face new challenges and grasp fresh opportunities.

Historic documents often stem from periods of deep separation between Christian Churches. Whilst, in spite of a real degree of convergence, distinct differences remain, negative statements towards other Christians should not be seen as representing the spirit of this Church today.

The Church of Ireland affirms all in its tradition that witnesses to the truth of the Gospel. It regrets that words written in another age and in a different context should be used in a manner hurtful to or antagonistic towards other Christians.

The Church of Ireland seeks the visible unity of the Church. (...).²³⁸

In affirming the contemporary importance of the Thirty-Nine Articles, this resolution contextualised certain condemnatory (or even sectarian) expressions within the text in the historical controversies of the era in which they were fashioned.

The Book of Common Prayer (BCP)

The BCP comes within the embrace of ‘rites, rubrics and formularies of the church.’ It is ‘the law of the Church.’²³⁹ It is surprising that, in the survey, and, in spite of the fact

²³⁷ For a text of the Homilies see *Certain Sermons or Homilies appointed to be read in Churches in the Time of Queen Elizabeth* (SPCK 1938); see also *Halsbury’s Laws of England* vol 34 (5th edn, 2011) para 743 fn 3.

²³⁸ JGS [1999] xcvi.

²³⁹ Edward A Stopford, *A Handbook of Ecclesiastical Law and Duty for the Use of The Irish Clergy* (Hodges, Smith and Co 1861) 156.

that it emerges from Statutes of the General Synod, the BCP is not universally perceived as a source of law for the Church of Ireland.²⁴⁰

Its development over the centuries embodies the essence of worship in the Anglican tradition, and is a yardstick of both belief and spirit.²⁴¹ It is the product, not only of liturgical creativity, but also of law, and is the law of the church.²⁴² As such, it is a source both of belief and of law: *lex orandi – lex credendi*.²⁴³ In *Martin v Mackonochie* Lord Cairns described the purpose of the Acts of Uniformity as to produce ‘an universal agreement in the public worship of Almighty God (...)’.²⁴⁴ The legal out-working of this principle was articulated in *Westerton v Liddell*: ‘In the performance of the services, rites, and ceremonies ordered by the Prayer Book, the directions contained in it must be strictly observed; no omission and no addition can be permitted.’²⁴⁵

Clergy undertake ‘to use the form in the said Book prescribed, and none other, except so far as shall be allowed by the lawful authority of the Church.’²⁴⁶ The lawful authority

²⁴⁰ Sometimes a source: bishops - 10%; registrars - 18%; clergy - 23%; laity - 14%; and not a source: registrars - 9%; clergy - 9.5% and laity - 13.5%.

²⁴¹ For the development of Anglican Liturgy see GJ Cuming, *A History of Anglican Liturgy* (Macmillan 1969); David Holeton and Colin Buchanan *A History of the International Anglican Liturgical Consultations 1983-2007* Joint Liturgical Studies No. 63 (SCM-Canterbury Press, 2007); the work of the International Anglican Liturgical Consultation reviewed at <http://www.anglicancommunion.org/resources/liturgy/index.cfm> accessed 21 February 2012; for the development of the Book of Common Prayer see generally *The First and Second Prayer Books of Edward VI* (The Prayer Book Society 1999); Arthur J Dobb, *The Services of Worship in the English Parish Church* (Churchman Publishing 1987); Kenneth Stevenson and Bryan Spinks (eds) *The Identity of Anglican Worship* (Morehouse Publishing 1991); Marion J Hatchett, ‘Prayer Books’ in Stephen Sykes, John Booty, Jonathan Knight (eds), *The Study of Anglicanism* (SPCK 1998) 131-43; John Fenwick and Bryan Spinks, *Worship in Transition: the Twentieth Century Liturgical Movement* (T and T Clark 1995); and for the Book of Common Prayer worldwide see Charles Hefling and Cynthia Shattuck (eds), *The Oxford Guide to The Book of Common Prayer: a Worldwide Survey* (Oxford University Press 2006); for the Book of Common Prayer in Ireland see Michael Kennedy, Richard Clarke, Edgar Turner and Brian Mayne, *The Prayer Books of the Church of Ireland 1551-2004* (The Columba Press 2004); Harold Miller, *The Desire of our Soul* (The Columba Press 2004); the revision of the *Book of Common Prayer* following Disestablishment is a full study in itself, and may be pursued in William Sherlock. ‘The Story of the Revision of the Irish prayer book’ in [1910] *Irish Church Quarterly* vol III, 12; Richard L Clarke, ‘The Disestablishment Revision of the Irish Book of Common Prayer’ (unpublished PhD Thesis, Trinity College Dublin 1989) and Michael C Kennedy, ‘The Theological Implications of Recent Liturgical Revision in the Church of Ireland’ (unpublished PhD Thesis, Trinity College Dublin 1987).

²⁴² CCI, ch IX; Act of Uniformity 1560 (Ireland) (2 Eliz I c 2); Act of Uniformity 1665 (Ireland) (17 & 18 Chas II c 6).

²⁴³ W Taylor Stevenson, ‘Lex Orandi - Lex Credendi’ in Stephen Sykes, John Booty, Jonathan Knight (eds), *The Study of Anglicanism* (SPCK 1998) 187-202.

²⁴⁴ *Martin v Mackonochie* (1868) LR 2 PC 365, 383.

²⁴⁵ *Westerton v Liddell* (1857) Moore’s Special Report 1, 187; CCI, ch IX ss 1,2, 4 and 5(1) (Canons 1,2,4 and 5.1).

²⁴⁶ CCI, ch IV, s 67 and the Schedule.

of the church has now introduced considerable flexibility and discretion.²⁴⁷ This transition from uniformity is much evidenced by the prefaces to successive Books of Common Prayer in Ireland,²⁴⁸ as well as by the aspiration ‘to facilitate an acceptable flexibility.’²⁴⁹

Rubrics

In this spirit of flexibility, another source of law - rubrics - today are ‘deliberately kept to a minimum.’²⁵⁰ This contemporary approach sits in uncomfortable tension with the rigorous adherence to rubrics which the courts historically laid down,²⁵¹ and which the CCI prescribes, albeit in a moderated form.²⁵²

Referring to rubrics and the BCP in 1770, the Irish authority, Bullingbrooke said that ‘being both of them established by act of parliament, are to be esteemed as part of the statute law.’²⁵³ Although rubrics are kept to ‘a deliberate minimum’ in the current BCP, this limitation, of itself, emphasises their canonical importance where they are retained.

‘Rubric’ is not defined. However, in England, according to section 5(2) of the Church of England (Worship and Doctrine) Measure 1974, the rubrics of the BCP ‘include all directions and instructions contained in the said Book, and all tables, prefaces, rules, calendars and other contents thereof.’ Rubrics can be taken, in Ireland, to comprehend this definition also. This mitigates any confusion that might arise from the interchangeable use of the words ‘rubrics’ and ‘notes’ in the most recent BCP as well as the use of other categories such as ‘General Directions’.²⁵⁴

²⁴⁷ CCI, ch IX ss 5-8 (Canons 5-8); Lambeth Conference 1908 Resolutions 24 and 27.

²⁴⁸ The Book of Common Prayer 7-17.

²⁴⁹ The Book of Common Prayer 75 (note 3).

²⁵⁰ *The Book of Common Prayer* 75 (note 3); for a similar emerging ‘elasticity’ in England see *Re St Thomas, Pennywell* [1995] 4 All ER 167; *Re St John the Evangelist, Chopwell* [1996] 1 All ER 275; see generally Rupert DH Bursell, *Liturgy, Order and the Church* (Clarendon Press 1996) 14-15 and Mark Hill *Ecclesiastical Law* (3rd edn, Oxford University Press 2007) 277-78, 7.12.

²⁵¹ *Newbery v Goodwin* (1811) 1 Phillim. 282; *Martin v Mackonchie* (1868) LR 2 PC 365, 383; *Combe v De la Bere* (1881) 6 PD 157 per Lord Penzance, 173 ‘Exact observance of the Prayer Book is enjoined by the Act of Uniformity...’.

²⁵² CCI, ch IX, s 4 (Canon 4): ‘All clergy shall use and observe the orders rites and ceremonies prescribed in the Book of Common Prayer as well in reading the holy scriptures and saying of prayers as in administration of the sacraments without either diminishing or adding anything in the matter or form thereof, save as hereinafter provided.’

²⁵³ Edward Bullingbrooke, *Ecclesiastical Law or, the Statutes, Constitutions, Canons, Rubricks, and Articles of the Church of Ireland methodically digested under Proper Heads with a Commentary Historical and Juridical: Two Volumes* (Boulter Grierson 1770) vol I, viii.

²⁵⁴ See eg *Book of Common Prayer*, 75 and 75 n3.

Rubrics are more than directions and instructions: they include also matters of church order and teaching.²⁵⁵ In one notable instance a rubric cross-references to quasi-legislative material: '[I]n the case of the committal of ashes on land or at sea the *Guidelines* of the House of Bishops currently in force should be followed.'²⁵⁶ The reference to these guidelines in a rubric which has formed part of a Special Bill passed by the General Synod would appear to elevate them to a status (in spite of the nomenclature) greater than guidelines might otherwise have.

Rubrics today are, therefore, more than choreographic notes or guidance. Having appeared as part of the liturgical text in the various schedules to the Bills placed before the General Synod and having been passed as Statutes, they become law.²⁵⁷ They are, in themselves, law.²⁵⁸

This clarity is vital. In the survey, while 80% of bishops indicated that rubrics are a source, only 50% of chancellors, 55% of registrars, 50% of clergy and 48% of laity understand them to be a source. Indeed, 9% of registrars, 15% of clergy and 11% of laity indicated that they are not a source of law.

Statutes of the General Synod

Statutes of the General Synod (the church's chief legislative and administrative body) constitute a major primary source of law for the Church of Ireland.²⁵⁹ In exercising its law-making jurisdiction, the General Synod follows a parliamentary bills procedure.²⁶⁰ One thousand and fifty-four statutes have been passed by the General Synod since 1870: affecting the CCI (486 statutes), relating to the *Book of Common Prayer and Revised Services* (322 statutes), and covering a variety of other areas (246 statutes) – as seen in these tables:

²⁵⁵ See eg *Book of Common Prayer* 'Confirmation One' 356: 'And there shall none be admitted to the Holy Communion, until such time as he be confirmed, or be ready and desirous to be confirmed.'

²⁵⁶ 'Funeral Services Two' *Book of Common Prayer*, 503.

²⁵⁷ For this principle in England see *Martin v Mackonchie* (1868) LR 2 A & E 116 (rubrics have the same standing as Acts of Parliament).

²⁵⁸ *Kemp v Wickes* (1809) 3 Phillim. 264 per Sir John Nicholl, 269: 'The rubric then, or the directions of the Book of Common Prayer, form part of the statute law of the land.'

²⁵⁹ Preamble and Declaration, IV.

²⁶⁰ CCI, ch I, ss 25-27, and Standing Orders of the General Synod, so 22 to 30: Bills may be either Ordinary Bills or Special Bills (dealing with modifications in doctrine or formularies, in which case the procedure for Ordinary Bills is elongated over a two year period, commencing with a resolution seeking leave to introduce the Bill in the first year and completing the Bills Procedure in the second year), and the Procedure encompasses a First Reading, a Second Reading, a Committee Stage, a Consideration on Report, a Third Reading, after which, if passed, the Bill becomes a Statute (certified by the Records Committee and published in the Journal of the General Synod).

Table 1: Statutes affecting the CCI

Subject Matter of Statutes affecting the CCI²⁶¹	
Consolidation of the <i>Constitution</i>	14
Preamble and Declaration	1
General Synod	30
Dioceses and Diocesan Organisation	22
Parish and Parochial Organisation	34
Appointment to and Tenure of Cures	41
Finance (including Stipends, Church Funds, Pensions, Annuities)	161
Ministry (including light duty parishes, auxiliary ministry, Archdeacons)	12
Episcopacy	43
Cathedrals	30
Glebes, Buildings and Burial Grounds	30
Representative Church Body	14
Canons	24
Ecclesiastical Tribunals	26
Miscellaneous	4
Total	486

Table 2: Statutes affecting the Book of Common Prayer

Statutes affecting the <i>Book of Common Prayer</i> and Revised Services²⁶²	322
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Table 3: Statutes dealing with other subjects

Subjects of Other Statutes²⁶³	
Bible	4
Cathedrals	91
Commissions	31
Diocesan Organisation and Synods	84

²⁶¹ Figures extrapolated from Journal of the General Convention [1870] and Journals of the General Synod of the Church of Ireland (1871-2012).

²⁶² Figures extrapolated from Journal of the General Convention (1870) and Journals of the General Synod of the Church of Ireland (1871-2012).

²⁶³ Figures extrapolated from Journal of the General Convention (1870) and Journals of the General Synod of the Church of Ireland (1871-2012).

Theological College	2
Episcopacy	11
Finance, Property and Legislation	14
Ministry and Parochial Organisation	7
Pastoral	2
Total	246

Secondary Sources²⁶⁴

The primary legal sources ordering the internal life of the Church of Ireland, like all legal systems, contemplate, indeed necessitate, secondary legal materials in order to fulfil their provisions and to enable the ministry and administrative activity of the church. As in the civil law, this is styled delegated or secondary legislation. These include principally: standing orders, constitutions (of Standing Committee, of the General Synod Board of Education, of other ecclesial bodies), regulations, rules, glebe rules, rules of the Court of the General Synod, by-laws, diocesan rules and regulations, the Declaration for Subscription, procedures and forms, and, potentially, in some instances, resolutions and motions.

*Standing Orders*²⁶⁵

Among these, the Standing Orders of the General Synod are, perhaps, of greatest significance. The General Synod is empowered to make standing orders to regulate its procedure.²⁶⁶ In 1870, the General Convention adopted standing orders on parliamentary lines, and articulated them as such: ‘that the rule of the House of Commons, (...) be observed.’²⁶⁷

The Standing Orders make provision for: the procedure and schedule of the Synod,²⁶⁸ the election of honorary secretaries,²⁶⁹ the appointment of an assessor,²⁷⁰ the presidency of the Synod,²⁷¹ rules of debate,²⁷² the bills procedure,²⁷³ motions,²⁷⁴ amendments,²⁷⁵

²⁶⁴ Also referred to as subsidiary, or subordinate, or delegated sources.

²⁶⁵ CCI, ch I, s 18, s 24; for the first Standing Orders – those of the General Convention – see Journal of the General Convention [1870] 6-8.

²⁶⁶ CCI ch I, s 24.

²⁶⁷ Journal of the General Convention (1870) 6.

²⁶⁸ Standing Orders of the General Synod 1-6 and 55-57.

²⁶⁹ Standing Orders of the General Synod 7.

²⁷⁰ Standing Orders of the General Synod 8.

²⁷¹ Standing Orders of the General Synod 9-14.

²⁷² Standing Orders of the General Synod 15-21.

²⁷³ Standing Orders of the General Synod 22-30.

closure or adjournment of debate,²⁷⁶ voting procedure,²⁷⁷ setting up of committees of the synod,²⁷⁸ requests for information,²⁷⁹ allocation of money in the hands of the RCB,²⁸⁰ the separate consideration of matters by the House of Bishops,²⁸¹ the consideration of the general state of the Church,²⁸² and, petitions.²⁸³

Similarly, diocesan synods are empowered to make their own standing orders, which must be consistent with the provisions of the CCI.²⁸⁴

Constitutions of Standing Committee and of the General Synod Board of Education

The Standing Committee of the General Synod is governed by a constitution.²⁸⁵ Its duties and powers are set out in the CCI and are laid down by resolution of the General Synod.²⁸⁶ This provides for the establishment of the Standing Committee, the election of members, the filling of casual vacancies, the co-option of members and the delegation of certain powers and duties to it, including deliberation and conferring ‘upon all matters affecting the interests of the Church of Ireland and cognizable by the General Synod’ (matters not previously sanctioned by the General Synod being subject to its approval at its subsequent session), and watching State legislation or proposals for it.²⁸⁷

²⁷⁴ Standing Orders of the General Synod 31-34.

²⁷⁵ Standing Orders of the General Synod 35-40.

²⁷⁶ Standing Orders of the General Synod 41-43.

²⁷⁷ Standing Orders of the General Synod 44-45.

²⁷⁸ Standing Orders of the General Synod 46-50.

²⁷⁹ Standing Orders of the General Synod 51.

²⁸⁰ Standing Orders of the General Synod 52.

²⁸¹ Standing Orders of the General Synod 53-54.

²⁸² Standing Orders of the General Synod 58-64.

²⁸³ Standing Orders of the General Synod 65.

²⁸⁴ CCI, ch 2, s 31, see also below in this chapter ‘Diocesan Rules and Regulations’.

²⁸⁵ ‘The Constitution, Duties and Powers of the Standing Committee of the General Synod’, CCI, 18.1.

²⁸⁶ ‘The Constitution, Duties and Powers of the Standing Committee of the General Synod’, Part II, 9-10.

²⁸⁷ ‘Constitution Duties and Powers of the Standing Committee of the General Synod’, Part II, 11-12; additional specific powers are also set out in 13-22 and the Appendix: acting as a permanent committee on educational endowments (13), making arrangements for meetings of the General Synod (14), responsibility for the Synod Hall (15), paying expenses (16), paying the Registrar of the Court of the General Synod (17), appointing auditors for the accounts of the RCB (18), administration of a Priorities’ Fund (19), appointment of a Legal Advisory Committee (20), setting a quorum, appointing delegates and appointing sub-committees (21), reporting to the General Synod (22), sanctioning the experimental use of Services (Appendix, 1), altering diocesan boundaries (Appendix, 2), sanctioning the appointment of two archdeacons in any diocese (Appendix, 3), determining fees for searches in registers (Appendix, 4), election of the members of the Court of the General Synod (Appendix, 5), and filling casual vacancies on the Church of Ireland Pensions Board (Appendix, 6).

Again, by resolution of the General Synod, the Constitution and Duties of the Board of Education of the General Synod of the Church of Ireland were put in place.²⁸⁸ They provide for the setting up of separate Boards of Education in Northern Ireland and in the Republic of Ireland, and also of an executive committee.

Constitutions of other ecclesial bodies

Normatively, the Committees or Select Committees of the General Synod, or committees and working groups established by the Standing Committee, are established by resolutions as provided for in section 32(1) of Chapter I of the CCI.²⁸⁹ These delineate the constitution and lay down the terms of reference of each committee. The Marriage Council,²⁹⁰ the Commission on Ministry,²⁹¹ the Church of Ireland Youth Department,²⁹² the Committee for Christian Unity,²⁹³ the Central Communications Board,²⁹⁴ the Covenant Council,²⁹⁵ and the Church of Ireland Council for Mission,²⁹⁶ are all recent examples. Committees established to fulfil a specific task are constituted in a similar fashion and the resolution provides their constitutional framework: a good example is the Hymnal Revision Committee.²⁹⁷

Regulations

Regulations are another secondary source of law. These may be made by a number of bodies and individuals within the church, including the General Synod, and, on foot of the authority of the General Synod, the Standing Committee, an archbishop, a bishop, diocesan synods, a diocesan council, a select vestry, the RCB (in its exercise of ‘the practical management of the Church property, and of the details of business’²⁹⁸) and the Church of Ireland Clergy Pensions Board (CICPB) may, in certain instances also make regulations.

²⁸⁸ ‘Constitution and Duties of the Board of Education’ in ‘Constitution of the Church of Ireland’ (Church of Ireland 2003).

²⁸⁹ ‘It shall be lawful for the General Synod to appoint such committees as it may deem fit...’ CCI, ch I, s 32(1).

²⁹⁰ JGS [1996] 327-8 and cxxii – cxxiii.

²⁹¹ JGS [1996] cxxiv-cxxvi.

²⁹² JGS [1989] civ – cix; JGS [1999] lxxxvi – lxxxvii; JGS [2007] c – cii.

²⁹³ JGS [1995] cii and 258 and JGS [2007] ciii.

²⁹⁴ JGS [2001] cviii.

²⁹⁵ JGS [2003] cxxxv – cxxxvi.

²⁹⁶ JGS [2004] lxxvii – lxxix.

²⁹⁷ JGS [1994] lxxxvii-lxxxviii.

²⁹⁸ George Atkins, *The Irish Church Act (1869) Carefully Annotated* (Ponsonby 1869) 25.

The General Synod has specific responsibility for making regulations in certain matters. It has power to make general regulations ‘as to how and by whom all patronage shall be exercised; and generally to make all such regulations as shall be necessary for the order, good government, and efficiency of the Church of Ireland.’²⁹⁹ It has done so, for example, in laying down regulations, pursuant to Canon 31, governing the remarriage in church of divorced persons.³⁰⁰ Regulations were also adopted following the introduction of new marriage law provisions in Northern Ireland and in the Republic of Ireland.³⁰¹ A diocesan synod may make regulations governing cathedrals or matters not provided for in Chapter VII.³⁰²

Similarly, the power of making regulations has, in certain instances, been deputed by the General Synod to the Standing Committee. The most significant example of this is the delegation of responsibility for framing marriage regulations under Canon 31(2).³⁰³

Specific authorisation is given to the Archbishops of Armagh and Dublin jointly, from time to time, to make, rescind and vary regulations for matters relating to the convening, holding and procedure of Electoral Colleges where they are not provided for in Chapter VI of the CCI.³⁰⁴

The liturgical role of licensed readers, while governed by Canon, and by regulations framed by the Bishops in 1909 (and reported to the General Synod)³⁰⁵ is also subject to any regulations which a bishop may make.³⁰⁶

The CCI specifically delegates authority to diocesan synods to provide for and regulate certain matters.³⁰⁷ Moreover:

[e]very diocesan synod may exercise all such powers and make all such regulations as to the temporalities of the Church appertaining to the diocese (not being repugnant to any law of the Church or to any regulation of the General Synod or to

²⁹⁹ CCI, ch I, s 28.

³⁰⁰ JGS [1996] cxxviii – cxxxii.

³⁰¹ JGS [2005] xcvi –ci; Marriage Regulations (NI) 2004; ‘Marriage Regulations (Republic of Ireland) 2007.

³⁰² CCI, ch VII, s 19.

³⁰³ CCI, ch IX, s 31(2) (Canon 31(2)), Marriage Regulations (NI) 2004; ‘Marriage Regulations (Republic of Ireland) 2007.

³⁰⁴ CCI, ch VI, s 17.

³⁰⁵ JGS [1909] lii-liv.

³⁰⁶ CCI, ch IX, s 35(2)(b) (Canon 35(2)(b)).

³⁰⁷ CCI, ch I, s 5(1) and ch II, s 32.

any special trusts on which such temporalities may be held) as the synod may deem necessary for the welfare of the Church in such diocese.³⁰⁸

Regulations such as these of diocesan synods may, however, be controlled, altered, repealed or superseded by the General Synod in order to protect the common interest of the church.³⁰⁹

Diocesan synods are obliged to make regulations for the mode of voting at elections of synod members, for determining the validity of disputed returns and for ensuring the proper conduct of the elections.³¹⁰ They may make regulations concerning subscriptions as a qualification of vestry members.³¹¹ They are to determine the number of synod members to be elected in respect of each cure or cathedral (but how is not prescribed).³¹² They may make regulations affecting the control and charge by the select vestry of all parochial charity and churches funds (other than those excluded by virtue of the fact that they are from particular trusts).³¹³

A diocesan council (the body each diocesan synod is obliged to appoint to fulfil such functions as it may, by rule, assign to it)³¹⁴ may make regulations concerning the provision by a select vestry of carpets, curtains and equipment in ecclesiastical residences.³¹⁵ It shall make regulations for the payment of expenses of office allowance to clergy, and those regulations must include a right of appeal ‘where either the incumbent of the select vestry is aggrieved at the amount so determined.’³¹⁶

Chapter XII of the CCI envisages that a select vestry may make regulations governing the management of burial grounds at local level. The entitlement of the select vestry of a cathedral parish to claim the use of the cathedral for parochial service is to be governed by regulations ‘to be agreed between the select vestry and the chapter, with a right of appeal to the diocesan council in case of disagreement’.³¹⁷

³⁰⁸ CCI, ch II, s 32 – as provided for in Irish Church Act 1869 (32 & 33 Vict c 42) s 19.

³⁰⁹ CCI, ch I, s 29.

³¹⁰ CCI, ch II, s 8.

³¹¹ CCI, ch II, s 3.

³¹² CCI, ch II, s 5.

³¹³ CCI, ch III, s 24 (1).

³¹⁴ CCI, ch II, ss 34-37.

³¹⁵ CCI, ch III, s 24(5).

³¹⁶ CCI, ch IV, s 51 (4).

³¹⁷ CCI, ch VII, s 14.

The RCB, mandated by the General Synod, may make regulations concerning the duties and rates of remuneration of clergy deployed in the part-time stipendiary ministry³¹⁸ and concerning houses occupied by clergy other than incumbents.³¹⁹

Regulations, specifically adopted for the purposes of administering the CICPF are necessitated by the CCI.³²⁰ Similarly, the CICPB is required to make rules and regulations for the proper administration of The Supplemental Fund established to assist retired clergy.³²¹ It also regulates the purchase of additional years of service.³²²

Rules

The CCI does not elucidate the distinction between regulations and rules. As in the case of regulations, a range of bodies or persons are empowered or deputed to make rules. These are a secondary source of church law. Sometimes the two terms are used side by side, such as the authority given to the RCB to make ‘rules and regulations’ governing the administration and distribution of the Church Fabric Fund.³²³

The term ‘rules’ is used generically: ‘rules or other act of the General Synod.’³²⁴ The term is also used to refer to specific sets of rules. The General Synod may adopt rules determining the number of members of the RCB together with rules governing the qualifications, election or retirement of such members.³²⁵ The General Synod is to lay down rules regulating the particulars contained in the accounts of the RCB to be reported annually to the General Synod.³²⁶ The RCB may make rules, such as those governing movable property.³²⁷ It has adopted rules relating to payments to auxiliary clergy.³²⁸ In the exercise of its powers, a diocesan council is subject to such rules as

³¹⁸ CCI, ch IX, s 34(4) (Canon 34(4)); JGS [2000] 21 and 58-62. See also Statute of the General Synod of the Church of Ireland 1999 c IV; they were also notified to the Church of Ireland Pensions Board, JGS [2000] 73 at para 13.

³¹⁹ CCI, ch XIII, s 10.

³²⁰ CCI, ch XIV, s 2 and s 16(3).

³²¹ CCI, ch XV.

³²² Pensions (Purchase of Additional Years of Service)(Amendment) Regulations 1998.

³²³ CCI, ch X, s 24.

³²⁴ CCI, ch I s 34(2).

³²⁵ CCI, ch X, s 8.

³²⁶ CCI, ch X, s 18(1).

³²⁷ CCI, ch X, s 11(5).

³²⁸ ‘Rules Governing Remuneration, Expenses and Other Matters relating to Payments to Persons Serving in the Auxiliary Ministry’ JGS [2010] 99-101.

may be prescribed by the diocesan synod.³²⁹ CICPB rules govern the voluntary contributions scheme.³³⁰

Rules governing episcopal elections may be ‘framed from time to time’ by the Rules Committee of Ecclesiastical Tribunals.³³¹ Rules relating to clergy incapacitated by permanent mental infirmity are also to be made by the Rules Committee.³³²

An unusual category of rules are those which are not strictly speaking rules but are ‘rules for guidance’ - rules for the guidance of diocesan councils concerning appointments to and tenure of cures.³³³ What the standing of ‘rules for guidance’ may be is unclear.

*‘Glebe Rules’*³³⁴

In several instances – Glebe Rules and Rules of the Court of the General Synod – a specific institutional source of rules is referred to. Rules (and schedules) annexed to Chapter XIII of the CCI ‘shall be binding and have effect in the same manner and to the same extent as if they had been expressly enacted.’³³⁵ These rules (twenty-two in number) are referred to as ‘Glebe Rules’ and apply, in the main, to glebes.³³⁶ Rules 21 (b) and (c), however, concern trees in churchyards and graveyards. Glebe Rules govern the vesting of glebes,³³⁷ loans for purchase or building of glebes,³³⁸ the use of the proceeds of the sale of a glebe,³³⁹ diocesan glebes committees,³⁴⁰ the roles of glebewardens,³⁴¹ the appointment of architects,³⁴² commissions of repair and vacancies,³⁴³ annual inspections,³⁴⁴ urgent repairs,³⁴⁵ procedure³⁴⁶ and trees.³⁴⁷

³²⁹ CCI, ch II, s 36.

³³⁰ ‘The Church of Ireland Voluntary Contributions Scheme: Rules’ 22 April 2002.

³³¹ CCI, ch VI, s 39 and ch VIII, s 11.

³³² CCI, ch IV, s 34.

³³³ CCI, ch IV, s 72.

³³⁴ CCI, ch XIII, s 1(d): ‘A glebe’ includes a ‘residence, with or without lands, vested in the Representative Body as such and occupied by a member of the clergy, licensed to serve in a parish.’

³³⁵ CCI ch XIII, s 2.

³³⁶ CCI, ch XIII, Glebe Rule 1.

³³⁷ CCI, ch XIII, Glebe Rule 2.

³³⁸ CCI, ch XIII, Glebe Rule 3.

³³⁹ CCI, ch XIII, Glebe Rule 4.

³⁴⁰ CCI, ch XIII, Glebe Rules 6-9.

³⁴¹ CCI, ch XIII, Glebe Rule 10.

³⁴² CCI, ch XIII, Glebe Rule 11.

³⁴³ CCI, ch XIII Glebe Rule 12-17.

³⁴⁴ CCI, ch XIII Glebe Rule 18.

³⁴⁵ CCI, ch XIII Glebe Rule 19.

³⁴⁶ CCI, ch XIII Glebe Rule 20.

³⁴⁷ CCI, ch XIII Glebe Rule 21.

*Rules of the Court of the General Synod*³⁴⁸

The implementation of Chapter VIII of the CCI (ecclesiastical tribunals) necessitates the existence of a Rules Committee.³⁴⁹ It is charged with making rules to give effect to the system of ecclesiastical discipline, and in particular, ‘for regulating all matters relating to procedure, practice, costs, expenses, and fees, giving security for costs, the pronouncement of judgments and sentences, the validity of proceedings notwithstanding irregularity or defects of form, proceedings in the case of persons who cannot be found or served, the liability and recovery of costs and expense, the forms to be used, and all matters incidental or connected with the administration of the ecclesiastical law of the Church of Ireland.’³⁵⁰ The most recent edition is that of 1934.³⁵¹

*Rules and Orders of Diocesan Courts and Registries in Ireland*³⁵²

The same booklet contains further secondary legislation: the Rules and Orders of Diocesan Courts and Registries in Ireland. Schedule A of that booklet contains fifty-eight forms for use in the legal and administrative life of the church in both contentious and non-contentious proceedings.³⁵³

By-Laws

The RCB is empowered, subject to the approval of the General Synod, to make by-laws for the regulation of its own procedure,³⁵⁴ and for the regulation ‘of all transactions relating to glebes and other land and buildings (...).’³⁵⁵ The most recent By-Laws of the RCB were published in 2010.³⁵⁶ The By-Laws regulate the meetings of the RCB,³⁵⁷ lay down the order of business,³⁵⁸ constitute its committees,³⁵⁹ establish and delineate the

³⁴⁸ ‘Rules of the Court of the General Synod and Rules and Orders of Diocesan Courts and Registries in Ireland’ (Church of Ireland 1934).

³⁴⁹ CCI, ch VIII, s 11.

³⁵⁰ CCI, ch VIII, s 11.

³⁵¹ Rules of the Court of the General Synod and Rules and Orders of Diocesan Courts and Registries in Ireland’ (Church of Ireland 1934).

³⁵² ‘Rules of the Court of the General Synod and Rules and Orders of Diocesan Courts and Registries in Ireland’ (Church of Ireland 1934).

³⁵³ The complete list of forms may be found in Appendix E, 366.

³⁵⁴ CCI, ch X, s 17(f).

³⁵⁵ CCI, ch XIII, s 11.

³⁵⁶ *An Overview of the Representative Body of the Church of Ireland* (Church of Ireland 2010) Appendix A – By-Laws; JGS [1993] xciv – c and 49-53; JGS [1997] cxii – cxiii and 48-9; JGS [2000] xcix – c and 29.

³⁵⁷ By-Laws of the RCB, 1.00 – 1.09.

³⁵⁸ By-Laws of the RCB, 2.

³⁵⁹ By-Laws of the RCB, 3.0 and 3.03.

powers of an Executive Committee,³⁶⁰ set up a Legal Advisory Committee,³⁶¹ and make provision for a declaration of interest where appropriate.³⁶²

Similarly, diocesan synods are to make ‘by-laws for the guidance and control of the diocesan glebes committee, such by-laws to be subject to the approval of the Representative Body.’³⁶³

The diocesan synod is to ‘define the powers and duties of the general vestry, the select vestry, and the churchwardens (...)’ in relation to all matters not specifically provided for in the CCI.³⁶⁴ The legal form of such definition is not prescribed.³⁶⁵

Diocesan Rules and Regulations

The out-working of the authority and responsibility delegated by General Synod (or in certain respects, by diocesan synods themselves) to diocesan bodies is seen in a thorough examination of the rules and regulations of diocesan synods within the Church of Ireland.³⁶⁶ Usually, these Rules and Regulations include the Diocesan Financial Scheme.³⁶⁷ The Financial Scheme is frequently a stand-alone document.³⁶⁸ Typically it includes provisions governing: the union or separation of synods in united dioceses;³⁶⁹ the standing orders of the diocesan synod;³⁷⁰ the order of proceedings of the diocesan synod;³⁷¹ the constitution of the diocesan council,³⁷² elections within the diocese, to the

³⁶⁰ By-Laws of the RCB, 3.02.

³⁶¹ By-Laws of the RCB, 3.04.

³⁶² By-Laws of the RCB, 3.05.

³⁶³ CCI, ch XIII, Glebe Rule 7.

³⁶⁴ CCI, ch III, s 35.

³⁶⁵ CCI, ch III, s 35.

³⁶⁶ I am grateful to the Bishops of the Church of Ireland and to the Diocesan Secretaries of the Dioceses for supplying copies of the Rules and Regulations, as well as copies of guidelines, instructions, information sheets and other local quasi-legislative materials.

³⁶⁷ CCR ‘Diocesan Regulations and Rules to order the Diocesan Synod’ Chapter III; D&D ‘Diocesan Regulations, The Financial Scheme 1988 and Diocesan Glebes Regulations’ 14-26; D&R ‘Diocesan Rules’ Section C; Conn ‘Diocesan Regulations and Financial Scheme’ 1990 16-25; Arm ‘Rules and Regulations of the Diocese of Armagh’ (1998) Arm ‘Rules and Regulations of the Diocese of Armagh’ (1998); TKA ‘Diocesan Regulations’ (2007) Appendix 3.

³⁶⁸ L&K ‘The Financial Scheme of Limerick, Killaloe and Ardfert, 1992’; E&A ‘Diocese of Elphin and Ardagh Financial Scheme 1966’; Kil ‘Financial Scheme Diocese of Kilmore 2005’.

³⁶⁹ CCR ‘Diocesan Regulations and Rules to order the Diocesan Synod’ ch 1, s 1; C&O ‘Diocesan Rules 2004’ 1 and 11; L&K ‘Standing Orders of the United Diocesan Synod of Limerick, Killaloe and Ardfert’ Preamble.

³⁷⁰ CCR ‘Diocesan Regulations and Rules to order the Diocesan Synod’ ch 1, s 2; D&D ‘Diocesan Regulations, The Financial Scheme 1988 and Diocesan Glebes Regulations’ 2-3; C&O ‘Diocesan Rules 2004’ 1-2 and 9-11; D&R ‘Diocesan Rules’ s A; L&K ‘Standing Orders of the United Diocesan Synod of Limerick, Killaloe and Ardfert’ ch 2; Conn ‘Diocesan Regulations and Financial Scheme 1990’ 2-3; Arm ‘Rules and Regulations of the Diocese of Armagh 1998’ 3-7; TKA ‘Diocesan Regulations 2007’ app 1.

³⁷¹ CCR ‘Diocesan Regulations and Rules to order the Diocesan Synod’ ch 1, s 3; D&D ‘Diocesan Regulations, The Financial Scheme 1988 and Diocesan Glebes Regulations’ 1; C&O ‘Diocesan Rules

diocesan council, to the General Synod, episcopal electors and to the committee of patronage;³⁷³ the appointment of diocesan curates;³⁷⁴ the appointment of a diocesan canon in the National Cathedral;³⁷⁵ parishes (union and division, vestry minutes, the revision of the list of vestry members, parochial accounts and boards of nomination);³⁷⁶ additional regulations governing diocesan boards of education;³⁷⁷ local provisions affecting cathedral chapters and the voting rights of canons;³⁷⁸ the diocesan court,³⁷⁹ appeals to the diocesan council;³⁸⁰ the constitution of a diocesan glebes committee and glebes regulations;³⁸¹ the constitution of a finance committee;³⁸² other boards and committees of a diocesan synod;³⁸³ and governing diocesan offices.³⁸⁴ Some diocesan councils are empowered to make by-laws regulating their procedures.³⁸⁵

2004' 9; Conn 'Diocesan Regulations and Financial Scheme 1990' 1; Arm 'Rules and Regulations of the Diocese of Armagh 1998' 7-8; TKA 'Diocesan Regulations 2007' pt 2.

³⁷² CCR 'Diocesan Regulations and Rules to order the Diocesan Synod' ch II, s 1; C&O 'Diocesan Rules 2004' 2, 5; D&R 'Diocesan Rules' s A (47)-(69); L&K 'Standing Orders of the United Diocesan Synod of Limerick, Killaloe and Ardfert' ch 3; Conn 'Diocesan Regulations and Financial Scheme 1990' 5-6 and 11-12; Arm 'Rules and Regulations of the Diocese of Armagh 1998' 13-14 and 19-20; TKA 'Diocesan Regulations 2007' pt 3.

³⁷³ CCR 'Diocesan Regulations and Rules to order the Diocesan Synod' ch 1, ss 4-7; D&D 'Diocesan Regulations, The Financial Scheme 1988 and Diocesan Glebes Regulations' 4-6, and 12-3; D&R 'Diocesan Rules' s A 35-46; L&K 'Standing Orders of the United Diocesan Synod of Limerick, Killaloe and Ardfert' ch 3; Conn 'Diocesan Regulations and Financial Scheme 1990' 6-11; Arm 'Rules and Regulations of the Diocese of Armagh 1998' 9-13; TKA 'Diocesan Regulations 2007' pt 2,15-17.

³⁷⁴ CCR 'Diocesan Regulations and Rules to order the Diocesan Synod' ch 1, s 8; D&D 'Diocesan Regulations, The Financial Scheme 1988 and Diocesan Glebes Regulations' 4-5.

³⁷⁵ CCR 'Diocesan Regulations and Rules to order the Diocesan Synod' ch 1, s 9; D&D 'Diocesan Regulations, The Financial Scheme 1988 and Diocesan Glebes Regulations' 12; D&R 'Diocesan Rules' s D, 139; Conn 'Diocesan Regulations and Financial Scheme 1990' 12.

³⁷⁶ CCR 'Diocesan Regulations and Rules to order the Diocesan Synod' ch V; D&D 'Diocesan Regulations, The Financial Scheme 1988 and Diocesan Glebes Regulations' 8-9; D&R 'Diocesan Rules' s A, 79-87, s B, 88-113; s D, 143-150; L&K 'Standing Orders of the United Diocesan Synod of Limerick, Killaloe and Ardfert Regulation's; Arm 'Rules and Regulations of the Diocese of Armagh 1998' 15, 21-23; TKA 'Diocesan Regulations 2007' pt 4; pt 6.

³⁷⁷ CCR 'Diocesan Regulations and Rules to order the Diocesan Synod' ch VI, s 1; Arm 'Rules and Regulations of the Diocese of Armagh 1998' 34-35.

³⁷⁸ CCR 'Diocesan Regulations and Rules to order the Diocesan Synod' ch VI, s 2-3; D&R 'Diocesan Rules' s D.

³⁷⁹ TKA 'Diocesan Regulations 2007' pt 5; Arm 'Rules and Regulations of the Diocese of Armagh 1998' 14.

³⁸⁰ TKA 'Diocesan Regulations 2007' pt 7; Conn 'Diocesan Regulations and Financial Scheme 1990' 10-11; D&D 'Diocesan Regulations, The Financial Scheme 1988 and Diocesan Glebes Regulations' 10-11; Arm 'Rules and Regulations of the Diocese of Armagh 1998' 15, 22-23; CCR 'Diocesan Regulations and Rules to order the Diocesan Synod' ch 2, s 1(7).

³⁸¹ D&D 'Diocesan Regulations, The Financial Scheme 1988 and Diocesan Glebes Regulations' 27-30; D&R 'Diocesan Rules' 151-158; Conn 'Diocesan Regulations and Financial Scheme 1990' 13-14; Arm 'Rules and Regulations of the Diocese of Armagh 1998' 24-6; TKA 'Diocesan Regulations 2007' pt 3 27-30.

³⁸² L&K 'Standing Orders of the United Diocesan Synod of Limerick, Killaloe and Ardfert' ch 3.

³⁸³ Arm 'Rules and Regulations of the Diocese of Armagh 1998' 16-18; Arm 'Constitution of the Armagh Diocesan Youth Council' March 2007; Arm 'Constitution of the Armagh Diocesan Committee of the Church's Ministry of Healing' 16 October 2007; TKA 'Diocesan Regulations 2007' pt 3.

³⁸⁴ Arm 'Rules and Regulations of the Diocese of Armagh 1998' 20.

³⁸⁵ CCR 'Diocesan Regulations and Rules to order the Diocesan Synod' ch II s 1.6 and s 2; D&R 'Diocesan Rules' s A, 70-78; L&K 'Standing Orders of the United Diocesan Synod of Limerick, Killaloe and Ardfert - Bye-Laws'.

Before the child protection code of the Church of Ireland was embodied in the CCI, one diocese had enforced the code through its diocesan regulations.³⁸⁶

The Declaration for Subscription

The Declaration for Subscription which is to be made prior to ordination, licensing or institution, embodies key legal principles:³⁸⁷ expression of approval and agreement with the Preamble and Declaration of 1870; assent to the Thirty-Nine Articles, the BCP, and the Ordering of Bishops, Priests and Deacons; belief in the doctrine of the Church of Ireland; solemn declaration of intent to use the authorised forms of service of the Church; declaration against simony and pluralism; oath of canonical obedience and submission to the authority of the Church of Ireland, its laws and tribunals.³⁸⁸ Underpinned by section 20 of the Irish Church Act 1869 (consensual compact) the declaration is contractual in nature and is binding on the clergyperson who makes it.

Procedures and Forms

Procedures or forms may have status as a primary or secondary source. For example, Irish Pensions legislation requires a pensions scheme to have an Internal Dispute Resolution (IDR) Procedure.³⁸⁹ Such a procedure, undergirded by the civil law, is an internal source of law.³⁹⁰

In addition, there are some examples of forms, not founded in Statute, but which in the absence of specific provision in the CCI, or elsewhere, have emerged from the ecclesiastical law. Notably, while the CCI provides skeletally for the election of a dean to the National Cathedral in section 25 of Chapter VII, no procedure is detailed. The gap is filled in the Cathedral's own manual: *The Form and Manner of Making a Dean and other Forms*.³⁹¹

*Resolutions and Motions*³⁹²

The status of resolutions and motions is not immediately certain. It is clear that under section 26(1) of Chapter I of the CCI no legal change can be effected to 'the articles,

³⁸⁶ CCR 'Diocesan Regulations and Rules to order the Diocesan Synod' ch IV.

³⁸⁷ CCI, ch IV, s 67 and ch IV, Schedule.

³⁸⁸ CCI, ch IV, s 67 and ch IV, Schedule.

³⁸⁹ Pensions Ombudsman Regulations 2003 (SI 397/2003); Pensions Act 1990, s 132; Pensions (Amendment) Act 2002, s 5.

³⁹⁰ 'Clergy Pensions Fund: Internal Dispute Resolution (IDR) Procedure' JGS [2010] 196-99.

³⁹¹ *The Form and Manner of Making of a Dean and Other Forms* (Ponsonby and Gibbs 1912).

³⁹² CCI, ch I s 5(1); Standing Orders of the General Synod, SO 31.

doctrines, rites, rubrics or formularies of the Church' other than by the passing of a bill. Resolutions cannot, therefore, purport to deal with these areas.

It would seem, therefore, that they may of themselves be secondary sources of law depending on how they are framed, or may advance a secondary source (for example, by giving effect to an ecumenical or international agreement), or may fall into that category which is to be considered in the next chapter (tertiary sources). The same applies to resolutions or motions of diocesan synods, filling a gap in or consonant with the primary law of the Church of Ireland.

In 1994, for example, the General Synod passed a resolution in the following terms:

That the Church of Ireland General Synod recommends to the Standing Committee that it refers to the Role of the Church Committee consideration of the cessation of the use of Tropical Hardwoods, except those from managed forests, church buildings.³⁹³

The following year the Standing Committee reported that it had done so and that it had noted the report of the Role of the Church Committee. No further resolution or legislation followed, so the intent of the resolution carried no regulatory authority.

Similarly, a resolution presupposing action was passed in 2006 in relation to Fairtrade:

That this Synod, recognising the contribution made by Fairtrade practices to the achievement of justice for the poor, calls on the whole Church of Ireland:

1. To use, where possible, products that comply with the objectives of Fairtrade at all events held on church premises or under church auspices;
2. Encourages the display of notices promoting the Fairtrade objectives at all church premises so as to indicate commitment to Fairtrade.
The Synod further requests that the substance of this resolution be conveyed to Diocesan Synods with a view to action.³⁹⁴

In contrast, other resolutions have resulted in definite outcomes such as the subscription of the Porvoo Agreement in 1995,³⁹⁵ and, in 2011, the subscription of the Anglican Communion Covenant.³⁹⁶ Yet other resolutions have been quietly ignored.³⁹⁷

³⁹³ JGS [1994] xcii.

³⁹⁴ JGS [2006] cii.

³⁹⁵ JGS [1995] 143.

³⁹⁶ JGS [2011] xcv.

³⁹⁷ see eg resolution opposing raffles and bazaars, JGS [1902] lxii; resolution discouraging Sunday employment, JGS [1902] lxii; resolutions re Sunday Observance, JGS [1902] lxii; JGS [1903] lxii, JGS [1907] lx, JGS [1912] lxxxvi.

Conclusion

The Church derives its ultimate authority and inspiration from God. Theology, divine law (Scripture, Tradition and Reason) and natural law are the prime movers of all that the Church, including its legal framework, is. The contemporary law of the Church of Ireland derives from a rich canonical inheritance. Not only its origins, but many of its current precepts, are traceable in the historical sources that have shaped church law. The Church of Ireland has always emphasised its continuity with this tradition.

Like the civil law, the church distinguishes primary and secondary sources which are given expression in many forms. The primary sources internal to the Church of Ireland are ecclesiastical law (in the specific sense set out in the Irish Church Act 1869); the Preamble and Declaration to the Constitution (treated of separately because of its elevated status within the consciousness of the Church of Ireland); the CCI; the Canons; Articles, doctrines, rites, rubrics and formularies; the BCP; and Statutes of the General Synod.

The secondary sources comprehend: standing orders; the constitutions of the Standing Committee and of the General Synod Board of Education; the constitutions of other ecclesial bodies; regulations; rules; glebe rules; rules and orders of diocesan courts and registries; by-laws; diocesan rules and regulations; the Declaration for Subscription; procedures and forms; and, resolutions and motions. The authority for these secondary sources derives directly from the General Synod or bodies (such as diocesan synods, the RCB, or Standing Committee) to which it has specifically delegated authority. Within the hierarchy of internal sources they are subsidiary to the primary sources, as well as to the external sources explored in Part One: Chapter One.

It should give pause for thought to note that participants in the survey are unclear about the status of many of the secondary sources. Very significant minorities do not see these as sources: regulations of the RCB;³⁹⁸ regulations of a diocesan synod;³⁹⁹ regulations made by a diocesan council;⁴⁰⁰ and rules made by a select vestry.⁴⁰¹ Many fail to understand that regulations made by an individual bishop have their basis in ecclesiastical discipline in general, and in the oath of canonical obedience in particular.

³⁹⁸ Chancellors – 25%; registrars – 18%; clergy – 8% and laity – 10%.

³⁹⁹ Bishops – 20%; chancellors – 12.5%; registrars – 36%; clergy – 14% and laity – 18%.

⁴⁰⁰ Bishops- 20%; chancellors – 12.5%; registrars – 54.5%; clergy – 17.5% and laity – 26.5%.

⁴⁰¹ Bishops – 40%; chancellors – 37.5%; registrars – 82%; clergy – 55%; and laity – 66%.

With the exception of chancellors, only small percentages confidently declare such regulations to be a source of law.⁴⁰² Large numbers assuredly declare them not to be a source, including nearly 40% of bishops themselves.⁴⁰³

The development of the internal sources - primary and secondary - through the generations points to an ecclesiastical legal framework that has responded and still responds to the challenges of the day. The internal sources themselves are manifold and diverse. This presents a challenge addressed in the second case-study in Part Two: Chapter Two, which contends that the inaccessibility of the internal sources is problematic.

The uncertainty also vindicates the importance of the on-going enterprise of clearly identifying the sources of law for the Church of Ireland. Having established the civil law (external) sources (in the first chapter) and also now, in this chapter, described the primary and secondary (internal) sources, it is necessary to turn to an emerging and rapidly unfolding area: tertiary sources.

⁴⁰² Bishops – 10%; chancellors – 62.5%; registrars – 18%; clergy 28.5% – and laity 25%.

⁴⁰³ Bishops – 40%; chancellors – 37.5%; registrars – 46%; clergy – 27% and laity – 30%.

PART ONE: CHAPTER 3

SOURCES OF CHURCH LAW: TERTIARY INTERNAL SOURCES

Introduction

The legal ordering of an institution frequently depends on sources of law not found among the primary and secondary sources, either of the civil law, or of its own internal legal system.

Primary and secondary sources themselves insinuate the potential existence of other legal material. For example, Sunday observance is required by Canon 1, not only by reference to ‘God’s holy will and pleasure’ (divine law), but also on the basis of the undefined term ‘the order of this Church’ (human law). What the ‘order of this Church’ is cannot be understood without reference to the law of the church generally. A similar phrase is utilised in relation to the giving of permission for the participation by ministers of other Christian denominations in the liturgies of the Church of Ireland: such permission ‘shall be without prejudice to the normal maintenance of the recognised rules of church order.’¹ Variations in forms of service ‘shall neither be contrary to nor indicative of any departure from the doctrine of the Church.’² In this instance ‘the doctrine of the Church’ is the normative reference point for the legal framework.

The CCI utilises vague phrases without specifying the means of implementation. The appointment of diocesan councils is enjoined on diocesan synods, but no instrument is laid down: ‘The diocesan synod shall make provision for the appointment from among its members of a diocesan council (...).’³ Disputed elections are to be resolved ‘in such manner as the diocesan synod shall provide’.⁴ A similarly intangible phrase empowers diocesan councils to make ‘special arrangements’ for the return of separate synod members for churches or chapels within a cure which have separate registers of vestry members.⁵ It may determine whether the elections of synod members are to be held at a specified time other than at the Easter general vestry.⁶

¹ CCI, ch IX s 10 (Canon 10).

² CCI, ch IX s 4(3) (Canon 4(3)).

³ CCI, ch II s 34.

⁴ CCI, ch III s 36.

⁵ CCI, ch II s 6.

⁶ CCI, ch II s 7.

The rubric at the end of the Funeral Service in the Book of Common Prayer (BCP) presupposes that the House of Bishops will issue ‘guidelines’ concerning the interment of ashes or their dispersal at sea.⁷ Similarly, the Declaration for Subscription, which embodies and articulates the principle of canonical obedience, presupposes that those who subscribe the Declaration will obey the ‘lawful and honest commands’ of the bishop.⁸

Examples such as these fall into the category of secondary sources. However, detailed analysis of all the Journals of the General Synod of the Church of Ireland as well as diocesan materials reveals reliance on a third area – tertiary sources – which is set out in this chapter.

The chapter considers initially two areas: the question of precedent and the decisions of the courts and tribunals of the Church of Ireland together with material emanating from the Legal Advisory Committees (and the church’s canonists). The second section examines in detail the development of the phenomenon of quasi-legislation within legal systems and illustrates, with examples, the many ways in which these instruments are used in the contemporary Church of Ireland. This provides the catalyst for the third case-study in Part Two: Chapter Three in which the question is tested as to whether the Church of Ireland is relying increasingly in recent years on such tertiary material.

The final section of this chapter will consider the possibility of other nebulous sources: custom, putative Anglican sources (wider Anglicanism, the Anglican Covenant and the PCLCCAC) and also, ecumenical and international agreements.

Decisions of Courts and Tribunals of the Church of Ireland and Opinions of the Legal Advisory Committees

*Courts and Tribunals: Precedent*⁹

Neither Roman law nor canon law acknowledged a doctrine of precedent.¹⁰ With the exception of the Church of England, in common with much of the rest of Anglicanism,

⁷ ‘Funeral Services Two’ *Book of Common Prayer*, 503; HoB: ‘Guidelines for the Interment of Ashes and their Dispersal at Sea’ (16th October 2003).

⁸ CCI, ch IV, s 67 and Schedule.

⁹ For the Doctrine of Precedent in secular common law generally see, Raymond Byrne and J Paul McCutcheon *The Irish Legal System* (4th edn, Butterworths 2003) 323-405; Rupert Cross and JW Harris, *Precedent in English Law* (4th edn, Clarendon Press 1991).

the internal law of the Church of Ireland is silent on the matter.¹¹ The PCLCCAC suggests that there is no consistency in Anglicanism on the matter: it affirms that ‘[t]he decision of a church court or tribunal has such binding or persuasive authority for other church courts or tribunals as may be provided for in the law.’¹² The doctrine of *Stare Decisis*¹³ appears not to exist in church law. One element of a doctrine of precedent – a hierarchy of courts – is, however, in place.¹⁴

Since 1871 the Court of the General Synod has heard thirty-eight cases (Appendix F).¹⁵ It is difficult to reach conclusions from even a forensic examination of the reported cases. Reporting is not standardised. Full judgments are given only in a few cases. It seems clear that there is no expectation that those reports will be used as a basis for on-going legal analysis or practice.

In *Re Meath Episcopal Election*¹⁶ the court thought it proper ‘to act in analogy to cases heard before her Majesty’s Privy Council in England.’ In his dissenting judgment in *Grant v Smith*,¹⁷ the Primate adduced the ‘law in force in England’ and suggested that his interpretation ‘has been generally acted on in such cases since 1869.’¹⁸ In 1895, in *Campbell and others v Hunt*, the judgment referred to the English case of *Sheppard v Bennett*¹⁹ and acknowledged that as a post-disestablishment case it was not part of the ecclesiastical law of the Church of Ireland. Nonetheless the court took the view that since it was ‘a legal judgment of conclusive authority in England, (...) [it is] of the highest authority for us (...)’.²⁰ The judgment in *Caithness v Colquhoun* states that from ‘a careful examination of the cases cited before us and of other cases which we have

¹⁰ James A Brundage, *Medieval Canon Law* (Longman 1995) 159.

¹¹ For the Church of England: *Halsbury’s Laws of England* vol 34 (5th edn, 2011) para 1032; Norman Doe, *The Legal Framework of the Church of England* (Clarendon Press 1996) 155-57; Norman Doe, *Canon Law in the Anglican Communion* (Clarendon Press 1998) 98; Ecclesiastical Jurisdiction Measure 1963 s 45(3), s 48(5) and s 48(6) concerning precedent and a Commission of Review.

¹² PCLCCAC, Principle 24 (13) and (14); Norman Doe, *Canon Law in the Anglican Communion* (Clarendon Press 1998) 98.

¹³ The doctrine of precedent: the doctrine by which previous judicial decisions must be followed, a policy, and not a binding, unalterable rule, see also *State (Quinn) v Ryan* [1965] IR 70, *JD v Connellan* [2004 HC] 1 ILRM 202 (the circumstances in which a court may depart from the principle of *stare decisis* are extremely rare).

¹⁴ CCI, ch VIII.

¹⁵ The Court did also sit on sundry dates in 1923 ‘...to hear appeals from the Decisions of the Commissioners appointed under Statute 1920 (Special Session) c iii, in respect of Final Schemes framed by them.’ JGS [2007] 425.

¹⁶ *Re Meath Episcopal Election* JGS [1886] 169.

¹⁷ *Grant v Smith and others* JGS [1895] 204.

¹⁸ *Grant v Smith and others* JGS [1895] 204, 213.

¹⁹ *Sheppard v Bennett* (1869-72) LR 3 A&E 16, (1871-73) LR 4 PC 350, (1871-73) LR 4 PC 371.

²⁰ *Campbell and others v Hunt* JGS [1895] 217, 226.

consulted we agree with the conclusions of law in the judgment of His Grace the Archbishop.²¹

It is unlikely that one can treat the decisions or reports of these cases as a contemporary source of law for the Church of Ireland. They are not creative of law, but are interpretations of it. Nonetheless, it is very clear that, in practice, determinations of courts of the church as well as of its legal advisory committees, albeit given as opinions, carry considerable weight as elucidations of church law. A measure of the importance attached to them is the fact that a table of the cases is included annually in the Journal of the General Synod.²²

On this basis, it is suggested that decisions of previous Courts of the General Synod, although binding on the parties, and even if not binding on the court itself or lower courts (and while not in themselves a source) are seen as illustrative and persuasive interpretations of the law of the church.

The Church's Canonists and Lawyers

The canonists of the Church of Ireland have been similarly influential. From the outset, the disestablished Church of Ireland has relied on lawyers. In anticipation of disestablishment an Organization Committee²³ had been formed and met from 5th to 28th January 1870. Meeting for only four days each week, it achieved an amazing feat. At the outset the Primate proposed six subjects: standing orders, the RCB, the CCI, finance, the election of bishops and diocesan courts. A seventh was added by amendment - a Preamble and Declaration²⁴ - and consequently seven committees set to work on drafting on each topic.²⁵

²¹ *Caithness and others v Colquhoun and others* JGS [1941] 406, 409.

²² eg JGS [2012] 396-400.

²³ Representative Church Body Library – General Convention Papers MS 1/6: Minute book of the ‘committee of organisation’, which met during January 1870, including first draft “Act of constitution of the Church of Ireland”. January 1870.

²⁴ Representative Church Body Library – General Convention Papers MS 1/6: Minute book of the ‘committee of organisation’, which met during January 1870, including first draft “Act of constitution of the Church of Ireland” at 5th January 1870, 20.

²⁵ Representative Church Body Library – General Convention Papers MS 1/6: Minute book of the ‘committee of organisation’, which met during January 1870, including first draft “Act of constitution of the Church of Ireland” at 5th January 1870, 21 – names of the members of the Sub-Committees.

Five judges together with other lawyers and experts were co-opted to the Organization Committee providing it with significant expertise.²⁶ They were not the entirety of legal input to that committee: among those representing the dioceses were two Queen's Counsel, the holder of a doctorate in laws, and William Brooke (a Master in Chancery). This trend of legal input continued at the General Convention ensuring 'that its complex legal and financial business was competently handled (...)'.²⁷

The Archbishop of Armagh's first act at the conclusion of his opening speech to the General Convention, was to appoint two assessors (lawyers) to assist him. He appointed the Right Honourable Dr JT Ball (Armagh) and Dr R Longfield (Cloyne). While these, and generations of canon lawyers before and since are not sources of law, nonetheless, a study remains to be done of them and their work. Their interpretation and implementation of the law has exerted immense influence on its practice and development within the Church of Ireland.²⁸

The Legal Advisory Committees

Setting aside the influence of individuals, their collective work on, first the Legal Committee, and subsequently on either of the two Legal Advisory Committees (one of the RCB and the other of the General Synod) is notable. Again, the opinions given are not, of themselves, sources of law, but have been seen to have had an enduring place as interpretations of the church's law and, in certain respects, stimulated the development of laws.²⁹

Opinions of the Legal Advisory Committee of the General Synod are published in the reports of the Standing Committee and tabled at General Synod; those of the Legal Advisory Committee of the RCB are included in its reports.³⁰ Experience and empirical observation shows that when a legal issue is encountered it is normative practice to ascertain whether the matter has been previously considered by either of the Legal

²⁶ For membership of the Committee see Journal of the General Convention (1870), xxiv and xxv: The Lord Chief Justice of the Court of the Queen's Bench, the Right Hon, Sir Joseph Napier, Bart., The Right Hon. Judge Keatinge, the Right Hon, Judge Warren, the Right Hon, Judge Longfield, the Right Hon, Sir Frederick Shaw, Bart., the Right Hon. J.T. Ball, M.P., the Hon. Judge Harrison, Dr Battersby, Dr Todd, Dr Elrington, T. Lefroy, Esq., Q.C and the Rev. J.A. Galbraith, F.T.C D.

²⁷ Alan Acheson, *A History of the Church of Ireland 1691 – 2001* (Columba 2002) 203.

²⁸ In more recent times the role of the following might be examined eg Sir Anthony Campbell, Lyndon MacCann, Graham Richards, William Prentice, Canon Brenda Lady Sheil, John Barry Deane, the Lord Eames of Armagh, Edgar Turner and Michael Davy.

²⁹ see eg a full list of the opinions of the Legal Advisory Committee of the RCB, JGS [2011] 494-96.

³⁰ For a list see JGS [2010] 560-62.

Advisory Committees. If so, such opinions are adduced and, where appropriate, tabled and depended upon.

Quasi-Legislation³¹ and Soft Law

Quasi-legislation and soft law embrace not only decisions made under delegated functions, but also categories such as codes of practice, circulars, executive orders, guidelines,³² schemes,³³ ‘mutual arrangements’,³⁴ forms,³⁵ handbooks, explanatory booklets,³⁶ policies,³⁷ protocols, checklists,³⁸ advice,³⁹ local practice, local interpretations⁴⁰ and procedures.⁴¹ They are much in evidence within the administrative activity in the Church of Ireland. This phenomenon will form the basis of the case study in Part Two: Chapter Three.

The survey attests to the importance of setting out clearly the development of quasi-legislation and soft law. With the exception of the bishops and chancellors, 100% and 75% of whom respectively, indicated that they were familiar with both the terms quasi-legislation and soft law; in the main, all other categories – registrars, clergy and laity – replied that they were not familiar with the two terms.⁴² In the light of this, it is important that the nature and development of quasi-legislative and soft law instruments in civil law be understood.

³¹ See generally Norman Doe, *The Legal Framework of the Church of England* (Clarendon Press 1996) 19-21.

³² eg D&D: ‘Revised Guidelines for Institution Services’ – Form ‘D’ (February 2002); D&D: ‘Guidelines for Orders of Service’ – Form ‘E’ (January 2002); D&D: ‘Guidelines regarding Faculties and Dedications for Furnishings, Plaques and Flags – Form B’ (October 1999); D&D: ‘Guidelines for Funerals – Form C’ (January 2002); D&D: ‘Confirmation Guidelines – Form A’ – (February 2002); CCR: ‘Guidelines for Nominators’; CCR ‘Guidelines for Ecumenical and Inter-Faith Services in Cork’.

³³ CCR: ‘Training for Ministers of the Eucharist’.

³⁴ CCI, ch I s 3, s 4.

³⁵ CCR: ‘Marriage Application and Notification Form’.

³⁶ ‘Benefit structure of The Church of Ireland Clergy Pensions Fund’.

³⁷ eg CCR: ‘Annual Study Leave and Retreats for Clergy’; CCR: ‘Sabbatical Leave’; CCR: ‘Policy on Lay Liturgical Assistants’.

³⁸ See eg CCR: ‘Confirmation Checklist’.

³⁹ See eg CCR: ‘Infection Control – Advice for Hospital Chaplains and Visitors’.

⁴⁰ D&D: ‘Remarriage of Divorced Persons – Form F2’ (February 2002).

⁴¹ D&R ‘The Proposed Procedure for Boards of Nomination’

⁴² Quasi-legislation: registrars – 55%; clergy – 44%; laity – 40%; Soft Law: registrars - 18%; clergy - 28%; laity - 33%.

What are Quasi-Legislation and Soft Law?

According to Ganz, the line between law and quasi-law is ‘blurred’.⁴³ It has to be distinguished from both primary, and secondary/delegated legislation. Baldwin and Houghton offer a three-tiered distinction:

Three types of rule can be distinguished from primary legislation. First, there is delegated legislation, in the case of which it is usual both for the parent statute to confer power on a minister to make rules and regulations and for the statute to make clear that such rules shall have full legislative force. Second comes sub-delegated legislation where it may not be clear whether Parliament has delegated a power to an individual, more is it always plain whether the authorisation runs to making prescriptions of full legal force. Finally, there is the huge group comprising all those rules, guides or other statements of general applicability that are promulgated by administrators or others without express legislative mandate: these might be termed “unsanctioned administrative rules.”⁴⁴

In determining the legal force, legitimacy and authority of these tiers, the first - primary legislation - is not disputed. Delegated legislation mandated by statute is not problematic either. Defining what is enforceable quasi-legislation, as a source of law, is, however, a challenge: the term ‘quasi-legislation’ is ‘not a term of art but a matter of degree.’⁴⁵ Some quasi-legislative instruments, such as concordats, are considered ‘low in the hierarchy of rules governing administration.’⁴⁶ Sub-delegated legislation frequently lacks the specific authority of primary legislation yet, the fact that it is frequently worked out in a legal effect, has specifically given rise to concern in the courts.

In 1882, Stephen J referred to the judicial decisions of the courts of England as a ‘narrowly defined power of quasi legislation.’ ‘Every decision’, he said ‘upon a debated point adds a little to the law by making that point certain for the future.’⁴⁷

Over 60 years later Megarry is attributed with an innovative use of the phrase ‘quasi-legislation’ – what he called ‘administrative quasi-legislation’ - to describe ‘law which

⁴³ Gabriele Ganz, *Quasi-Legislation: Recent Developments in Secondary Legislation* (Sweet and Maxwell 1987) 24.

⁴⁴ Robert Baldwin and John Houghton, ‘Circular arguments: the status and legitimacy of administrative rules’ in [1986] *Public Law* 239-84, 240.

⁴⁵ Gabriele Ganz, *Quasi-Legislation: Recent Developments in Secondary Legislation* (Sweet and Maxwell 1987) 6.

⁴⁶ Richard Rawlings, ‘Concordats of the Constitution’ (2000) 116 LQR 257-86, 280.

⁴⁷ *R v Coney and Others* (1881-82) LR 8 QBD 534, 550; for the role of contemporary Irish courts in making law and how that, on the one hand measures against Article 15.2.1 of the Constitution and, on the other, does not trespass on the domain of the *Oireachtas*, see generally James Casey *Constitutional Law in Ireland* (Round Hall Sweet and Maxwell 2000) 228-30.

is not-a-law'.⁴⁸ He labelled it an 'expanding universe' of instruments which 'are technically not law.'⁴⁹ Megarry nominated two forms of what he styled 'administrative quasi-legislation':

First, there is the State-and-subject type, consisting of announcements by administrative bodies of the course which it is proposed to take in the administration of particular statutes. (...) The second category (...) is the subject and subject type, consisting of arrangements made by administrative bodies which affect the operation of the law between one subject and the others.⁵⁰

Megarry articulated anxiety about statutes acquiring 'an administrative gloss' or their words being 'emasculated', or 'modifications by concessions and by gentlemen's agreements', and concluded that administrative quasi-legislation is:

(...) somewhat of a curate's egg. On the one hand, announcements by official bodies on points of procedure and the way in which it is proposed to deal with doubtful points of interpretation have much in their favour, while on the other hand there are substantial objections to administrative quasi-legislation which overrides clear law or seeks to deal with matters between subject and subject.⁵¹

Megarry's prediction that '[n]o doubt this kind of near-law will be with us for some years to come; in its benign form, that is to be hoped for, in its malignant form feared' was well-founded. He warned that as long as such instruments remained:

great importance should be attached to it being readily ascertainable as statute- and case-law proper. The same applies to its jurisprudential sister, the body of quasi-law resulting from the decisions of the various administrative tribunals.⁵²

Half-a-century later, Rawlings described Megarry's article as a 'path-breaking contribution in the field of public law,' 'a stepping beyond the formal sources of primary and secondary legislation and judicial decisions': an 'expanding universe' with which lawyers would need to come to terms.⁵³

⁴⁸ RE Megarry, 'Administrative Quasi-Legislation' in (1944) 60 LQR 125-29, 127; and Gabriele Ganz, *Quasi-Legislation: Recent Developments in Secondary Legislation* (Sweet and Maxwell 1987) 1.

⁴⁹ RE Megarry, 'Administrative Quasi-Legislation', (1944) 60 LQR 125-29, 126.

⁵⁰ RE Megarry, 'Administrative Quasi-Legislation', (1944) 60 LQR 125-29, 126-7; as examples of the former (State-and-subject type) he gave the 'Practice Notes' of the War Damage Commission; and of the latter (subject-and-subject type) he cited an announcement of the Home Secretary in relation to the implementation of section 29 of the Workmen's Compensation Act 1925.

⁵¹ RE Megarry, 'Administrative Quasi-Legislation', (1944) 60 LQR 125-29, 127-28.

⁵² RE Megarry, 'Administrative Quasi-Legislation', (1944) 60 LQR 125-29, 128.

⁵³ Richard Rawlings, 'Concordats of the Constitution' (2000) 116 LQR 257-86.

To what Megarry had identified as ‘administrative quasi-legislation’,⁵⁴ others have given different labels: quasi-legislation, tertiary legislation, ‘quasi-delegated legislation’,⁵⁵ and soft law⁵⁶ (a term favoured in European law).

By 1986 the reliance on informal rules was being described as a ‘discernible retreat from primary legislation in favour of government by informal rules.’⁵⁷ Ganz wrote about ‘a population explosion’ of quasi-legislation: ‘there has been an exponential growth of statutory and extra-statutory rules in a plethora of forms.’⁵⁸ These have been referred to variously as: ‘adjuncts to legislation’;⁵⁹ ‘representative of a modern and unhealthy trend towards rules of indeterminate status’;⁶⁰ ‘the undergrowth of legislation (...) the undergrowth of circulars and other forms of extra-statutory action’;⁶¹ ‘a Trojan Horse’;⁶² ‘a form of backdoor legislation’;⁶³ and ‘the soft law option.’⁶⁴

‘Soft law’, for its part is a more recent formula.⁶⁵ It is used to refer ‘to those regulatory instruments and mechanisms of governance that, while implicating some kind of normative commitment, do not rely on binding rules or on a regime of formal sanctions.’⁶⁶ Such is the complexity and variety in forms, purposes, language and

⁵⁴ RE Megarry, ‘Administrative Quasi-Legislation’, (1944) 60 LQR 125-29, 126.

⁵⁵ See eg *R (Bapio) v Secretary of State for the Home Department* [2007] EWHC 199 (Admin) per Burnton J, para 39.

⁵⁶ Michael Zander, *The Law Making Process* (Cambridge University Press 2004) 455.

⁵⁷ John Houghton and Robert Baldwin, ‘Circular arguments: the status and legitimacy of administrative rules’ in [1986] *Public Law* 239-84, 239.

⁵⁸ Gabriele Ganz, *Quasi-Legislation: Recent Developments in Secondary Legislation* (Sweet and Maxwell 1987) 1.

⁵⁹ T St. John N Bates, ‘Parliament, Policy and Delegated Power’ in [1986] *Statute Law Review* 114-23, 120.

⁶⁰ per Lord Elwyn-Jones 469 HL Debates col 14, 9th December 1985.

⁶¹ DGT Williams, ‘Statute Law and Administrative Law’ in [1984] *Statute Law Review* 157-68, 164 and 168.

⁶² Duncan Berry ‘When does an instrument made under primary legislation have “legislative effect”’ [1997] *The Loophole* (The Newsletter of the Commonwealth Association of Legislative Council) 14-29, 25.

⁶³ Gabriele Ganz, *Quasi-Legislation: Recent Developments in Secondary Legislation* (Sweet and Maxwell 1987) 12.

⁶⁴ Andrew Le Sueur, ‘Taking the soft option? The duty of give reasons in the draft Freedom of Information Bill’ in [1999] *Public Law* 419-27.

⁶⁵ See generally CM Chinkin, ‘The Challenge of Soft Law: Development and Change in International Law’ in 38(4) *International and Comparative Law Quarterly* (1989) 850; Anna Di Robilant, ‘Genealogies of Soft Law’ in (2006) 54(3) *American Journal of Comparative Law* 499; Tadeusz Gruchalla-Wesierski, ‘A Framework for Understanding “Soft Law”’ in (1984-1985) 30 *McGill Law Journal* 37; Alan Boyle and Christine Chinkin, *The Making of International Law* (Oxford University Press 2007) ch 5; Alan Boyle, ‘Soft Law in International Law-Making’ in Malcolm N Shaw, *International Law* (6th edn, Cambridge University Press 2008) 117-19; Malcolm D Evans (ed), *International Law* (2nd edn, Oxford University Press 2006) ch 5; and Linda Senden, *Soft Law in European Community Law* (Hart Publishing 2004).

⁶⁶ Anna Di Robilant, ‘Genealogies of Soft Law’ in (2006) 54(3) *American Journal of Comparative Law* 499, 499.

subject matter of such instruments that the use of the term in a generic way has been described as ‘a misleading simplification.’⁶⁷ It is ‘a frequently misunderstood phenomenon’,⁶⁸ and far from homogenous.⁶⁹

Senden, extrapolating from a variety of articulations of soft law, offers the following definition:

Rules of conduct that are laid down in instruments which have not been attributed legally binding force as such, but nevertheless may have certain (indirect) legal effects, and that are aimed at and may produce practical effects.⁷⁰

In addition, she says that soft law instruments can only function as legislation if they have the same general characteristics as legislative instruments except for their legally binding force.⁷¹

Soft law instruments while not, in themselves, law, may indeed have legal effects or are potentially law-making or corroborative of existing law. Moreover, they may transition from soft law (not always binding) to hard law (always binding). ‘As soft law begins to interact with binding instruments its non-binding character may be lost or altered.’⁷² Within this blurry context, establishing what is law and what the legal consequences of soft law instruments are is an increasing challenge. In spite of the inherent vagueness within many soft law instruments the expectation is created that they will be respected and that they are binding.⁷³ In many senses, therefore, it is ‘a fallacy to dismiss soft law, properly understood, as not law (...)’.⁷⁴

⁶⁷ CM Chinkin, ‘The Challenge of Soft Law: Development and Change in International Law’ in (1989) 38(4) *International and Comparative Law Quarterly* 850, 850.

⁶⁸ Alan Boyle and Christine Chinkin, *The Making of International Law* (Oxford University Press 2007) 211; Alan Boyle, ‘Soft Law in International Law-Making’ in Malcolm N Shaw, *International Law* (6th edn, Cambridge University Press 2008) 117-19; Malcolm D Evans (ed), *International Law* (2nd edn, Oxford University Press 2006) 141.

⁶⁹ Linda Senden, *Soft Law in European Community Law* (Hart Publishing 2004) 23.

⁷⁰ Linda Senden, *Soft Law in European Community Law* (Hart Publishing 2004) 112.

⁷¹ Linda Senden, *Soft Law in European Community Law* (Hart Publishing 2004) 117.

⁷² Alan Boyle and Christine Chinkin, *The Making of International Law* (Oxford University Press 2007) 213.

⁷³ Tadeusz Gruchalla-Wesierski, ‘A Framework for Understanding “Soft Law”’ in (1984-1985) 30 *McGill Law Journal* 37, 46.

⁷⁴ Alan Boyle and Christine Chinkin, *The Making of International Law* (Oxford University Press 2007) 212.

First developed in the sphere of international law, soft law instruments are commonplace in European law.⁷⁵ It is an umbrella concept which includes ‘soft law’ treaties (non-binding agreements),⁷⁶ such as instruments of the United Nations General Assembly,⁷⁷ treaties which articulate principles rather than rules,⁷⁸ non-binding or voluntary resolutions, declarations,⁷⁹ guidelines and recommendations of international organisations,⁸⁰ codes of conduct of such bodies,⁸¹ preparatory and informative instruments such as Green Papers, White Papers, action programmes and information communications;⁸² statements or codifications of principles in treaties,⁸³ and general principles which carry authority and legitimacy by virtue of their endorsement of states (*opinio juris*).⁸⁴ UN Security Council Resolutions are examples of soft law which have become hard law because member states have agreed to accept and implement such decisions.

Soft law can be used to establish links of cooperation or consultation; or to avoid or resolve disputes. Advocates of soft law approaches and soft governance tout the flexibility, adaptability and problem-solving capacity of such instruments as well as their ability to cope with diversity.⁸⁵ In international law, soft law options are pursued for a variety of reasons, including, for example, as a means of attaining a compromise, of avoiding precision, of articulating content that tends to be subjective or discretionary, and even of incorporating conflicting standards and goals.⁸⁶

⁷⁵ See eg the European Employment Strategy and the Open Method of Coordination arising from the Lisbon Strategy (2000). See generally Linda Senden, *Soft Law in European Community Law* (Hart Publishing 2004).

⁷⁶ eg The Helsinki Accords 1975 of the Conference on Cooperation and Security in Europe (CSCE); the Belfast Agreement 1998 (see Hartmut Hillgenberg, ‘A Fresh Look at Soft Law’ in (1999) 10 EJIL 499, 501.

⁷⁷ eg Universal Declaration of Human Rights 1948.

⁷⁸ eg United Nations Convention on the Law of the Sea 1982 (UNCLOS) Article 87(2); and the United Nations Framework Convention on Climate Change Article 3.

⁷⁹ eg Rio Declaration on Environment and Development 1992.

⁸⁰ eg Guidelines on Environmental Impact Assessment 1987 of the United Nations Environment Programme (UNEP).

⁸¹ eg The Code of Conduct on Responsible Fisheries of the Food and Agriculture Organisation of the United Nations (FAO).

⁸² Linda Senden, *Soft Law in European Community Law* (Hart Publishing 2004) 118.

⁸³ eg The Declaration on Fundamental Principles and Rights at Work 1998 of the International Labour Organisation (ILO).

⁸⁴ Alan Boyle and Christine Chinkin, *The Making of International Law* (Oxford University Press 2007) 224.

⁸⁵ Anna Di Robilant, ‘Genealogies of Soft Law’ in (2006) 54(3) *American Journal of Comparative Law* 499, 501.

⁸⁶ CM Chinkin, ‘The Challenge of Soft Law: Development and Change in International Law’ in (1989) 38(4) *International and Comparative Law Quarterly* 850, 866.

Boyle and Chinkin point out how in international law, soft law instruments are seen to have particular advantages over binding treaties:⁸⁷

- they may make it easier to reach agreement when the form is non-binding;
- they may be easier to agree to because they avoid a domestic ratification process;
- flexibility, including the ability to supplement, amend or replace them;
- they can be used as a first step in a process of negotiation leading ultimately to a binding treaty;
- they can be used (by means of resolutions, recommendations and decisions) to give authoritative interpretation or amplifications of the terms of a treaty; and
- they facilitate progressive evolution of the law.

The greatest risk associated with soft law is that it can be abused.

Forms and Classification of Quasi-Legislation and soft law

The forms of quasi-legislation and soft law instruments are multiple and multifarious. Ganz identifies the following: ‘[C]odes of practice, guidance, guidance notes, guidelines, circulars, White Papers, development control policy notes, development briefs, practice statements, tax concessions, Health Services Notices, Family Practitioners Notices, codes of conduct, codes of ethics and conventions’.⁸⁸ Baldwin and Houghton add: approved codes, outline schemes, statements of advice and departmental circulars.⁸⁹ More recent reference includes constitutional conventions, concordats, ‘pseudo-contract’, memoranda of understanding;⁹⁰ official notices and (in the context of devolution to Scotland, Wales and Northern Ireland) ‘inter-institutional administrative agreements’;⁹¹ and internal guidance.⁹² Note needs also to be taken of a

⁸⁷ Alan Boyle and Christine Chinkin, *The Making of International Law* (Oxford University Press 2007) 214-229.

⁸⁸ Gabriele Ganz, *Quasi-Legislation: Recent Developments in Secondary Legislation* (Sweet and Maxwell 1987) 1-2. For Codes of Practice see Alec Samuels, ‘Codes of Practice and Legislation’ in [1986] *Statute Law Review* 29; Lord Campbell of Alloway, ‘Codes of Practice as an Alternative to Legislation’ in [1985] *Statute Law Review* 127.

⁸⁹ Robert Baldwin and John Houghton, ‘Circular arguments: the status and legitimacy of administrative rules’ in [1986] *Public Law* 239, 239-40.

⁹⁰ Richard Rawlings, ‘Concordats of the Constitution’ (2000) 116 *LQR* 257.

⁹¹ Richard Rawlings, ‘Concordats of the Constitution’ (2000) 116 *LQR* 257, 257.

⁹² See eg Natalie Lee, ‘Case Comment: Child benefit – share care of two children’ in (2006) vol 13(2) *Journal of Social Security Law* 119.

growing range of non-statutory powers invoked by central governments.⁹³ Such powers are an ‘integral part of modern democratic frameworks.’⁹⁴

In the case of codes of practice the distinction has usefully been drawn between statutory and non-statutory codes.⁹⁵ The latter ‘can become a factor in the deliberations of the court only insofar as it is prepared to accept it as indicative of generally accepted standards of good practice in a particular sphere of activity.’⁹⁶ More important (not least from the perspective of an unincorporated association where the members are bound by consensual compact *inter se*) contractual status may be imputed to a code of practice;⁹⁷ and particularly to those which ‘purport to represent a consensus of respectable opinion in some community of skilled practitioners.’⁹⁸ Non-statutory guidelines may, therefore, attain an indirect legal effect.⁹⁹

Baldwin and Houghton nominated eight ‘models’ – a helpful categorisation – of quasi-legislation and give examples of each:¹⁰⁰ procedural rules;¹⁰¹ interpretative guides,¹⁰² instructions to officials;¹⁰³ prescriptive/evidential rules;¹⁰⁴ commendatory rules;¹⁰⁵ voluntary codes; rules of practice, management or operation;¹⁰⁶ and consultative devices and administrative pronouncements. All of these they put in the second and third classes within a over-arching threefold schema: they are not within the first class – primary legislation. They may be, depending on their legal force (as distinct from their

⁹³ See generally Margit Cohn ‘Medieval chains, invisible links: on non-statutory powers of the executive’ in (2005) vol 25(1) Oxford Journal of Legal Studies 97.

⁹⁴ Margit Cohn, ‘Medieval chains, invisible links: on non-statutory powers of the executive’ in (2005) Vol. 25(1) Oxford Journal of Legal Studies 97,121.

⁹⁵ RB Ferguson, ‘The legal status of non-statutory codes of practice’ in (1988) Journal of Business Law 12.

⁹⁶ RB Ferguson, ‘The legal status of non-statutory codes of practice’ in (1988) Journal of Business Law 12, 13.

⁹⁷ RB Ferguson, ‘The legal status of non-statutory codes of practice’ in (1988) Journal of Business Law 12, 15.

⁹⁸ RB Ferguson, ‘The legal status of non-statutory codes of practice’ in (1988) Journal of Business Law 12, 19; *Pharmaceutical Society of Great Britain v Dickson* [1970] AC 403.

⁹⁹ Gabriele Ganz, *Quasi-Legislation: Recent Developments in Secondary Legislation* (Sweet and Maxwell 1987) 16-18.

¹⁰⁰ Robert Baldwin and John Houghton, ‘Circular arguments: the status and legitimacy of administrative rules’ in [1986] *Public Law* 239, 241-5.

¹⁰¹ Examples given: procedures laid down by the Gaming Board or the Independent Broadcasting Authority; prison rules and police codes.

¹⁰² eg official statements of departmental or agency policy.

¹⁰³ eg statements regulating internal order.

¹⁰⁴ eg interpretative guides or prescribed courses of action such as ‘The Highway Code’.

¹⁰⁵ eg recommended courses of action in an area such as Health and Safety.

¹⁰⁶ eg arrangements made by administrative bodies which affect the operation of the law.

legal form), within the second class, which is delegated legislation, or the third – sub-delegated legislation (with no express legislative mandate).¹⁰⁷

Quasi-legislation, which derives its legal standing from the exercise of statutory or delegated authority, is to be distinguished from primary legislation. It is different also from delegated legislation (where a constitution or statute confers power on another to make rules or regulations which have full legislative force). Statutory Instruments or regulations presupposed in a particular piece of legislation are clearly delegated or secondary legislation. Additionally, quasi-legislation in the narrower sense of sub-delegated legislation needs to be distinguished from delegated or secondary legislation. This, as Ganz points out, is the difficulty and, in that connection, she cites *R v Chief Immigration Officer, ex parte Bibi*¹⁰⁸ (in which, according to Roskill LJ, immigration rules were ‘just as much delegated legislation’) and *R v Home Secretary, ex parte Hosenball*¹⁰⁹ (in which, Denning, MR thought this went too far saying, ‘they are not rules in the nature of delegated legislation’).

Quasi-Legislation and Soft Law in Ireland

What then of the phenomenon of quasi-legislation and soft law in Irish law? A rising dependence by the State on secondary/delegated legislation (see Table 4) is seen to be a trend; it is a precursor to an emerging reliance on quasi-legislation and soft law approaches.

¹⁰⁷ Robert Baldwin and John Houghton, ‘Circular arguments: the status and legitimacy of administrative rules’ in [1986] *Public Law* 239, 240.

¹⁰⁸ *R v Chief Immigration Officer, ex parte Bibi* [1976] 1 WLR 979, 985f.

¹⁰⁹ *R v Home Secretary, ex parte Hosenball* [1977] 1 WLR 766, 780-81.

Table 4: Primary and Secondary Legislation in Ireland, 2000-2010¹¹⁰

Year	Public General Acts	Statutory Instruments
2000	42	490
2001	55	654
2002	33	654
2003	46	729
2004	44	913
2005	34	349
2006	42	678
2007	42	1071
2008	25	517
2009	45	506
2010	31	500

Vast tranches of Irish life are regulated, by reliance on quasi-legislation and soft law. The following is an illustrative list: agriculture;¹¹¹ architecture;¹¹² broadcasting;¹¹³ certain charitable activities;¹¹⁴ child safety on farms;¹¹⁵ corporate enforcement;¹¹⁶ data protection;¹¹⁷ the dental profession;¹¹⁸ education;¹¹⁹ emergency management;¹²⁰ employment;¹²¹ energy;¹²² environment;¹²³ equality issues;¹²⁴ explosives and

¹¹⁰ Source: << www.bailii.org >> accessed on 11th January 2011.

¹¹¹ eg 'Farm Safety Code of Practice' (Health and Safety Authority 2006); 'Guidelines on the Preparation of a Safety Statement for Farms' (Health and Safety Authority, Dublin); 'Information Booklet on Safe Slurry Handling' (*Teagasc*) < www.teagasc.ie > accessed on 11 January 2011; 'Information Sheet on the Safe Use of All-Terrain Vehicles (ATVs)' (Health and Safety Authority 2008); 'Pesticides – Voluntary Code of Good Practice' (*Teagasc*) < www.teagasc.ie > accessed on 11 January 2011; and 'Safety for Older Farmers' (Health and Safety Authority); see generally, the website of the Department of Agriculture, Fisheries and Food < www.agriculture.gov.ie/publications/ > accessed on 11 January 2011.

¹¹² 'Government Policy on Architecture 2009-2015' (Department of Environment, Heritage and Local Government 2009).

¹¹³ Broadcasting Act 2009, ss 26 and 42; 'The General Commercial Communications Code' (Broadcasting Authority of Ireland 2010) see < www.bai.ie > accessed 28 February 2012.

¹¹⁴ See < www.charitycommissioners.ie > accessed on 11 January 2011.

¹¹⁵ *Stay Safe on the Farm with Jessy* (Health and Safety Authority 2007).

¹¹⁶ see eg 'Shareholders' Rights Regulation 2009 – Guidance' (Office of the Director of Corporate Enforcement); the website of the Office of the Director of Corporate Enforcement < www.odce.ie > accessed on 12th January 2011.

¹¹⁷ See generally < www.dataprotection.ie > accessed on 13th January 2011.

¹¹⁸ Dentists Act 1985, s 66(2) and < www.dentalcouncil.ie/guidelines > accessed on 28 February 2012.

¹¹⁹ See generally Paul Colton, 'Religion in Public Education in Ireland' in Gerhard Robbers (ed), *Religion in Public Education* (European Consortium for Church and State Research 2011) 227-56.

¹²⁰ See 'A Framework for Major Emergency Management' (Department of Justice and Law Reform).

¹²¹ see generally Department of Enterprise, Trade and Innovation < www.deti.ie > accessed on 11th January 2011. For eleven codes of practice see the website of the Labour Relations Commission < <http://www.lrc.ie/ViewDoc.asp?fn=/documents/publications/codes/index.htm&CatID=23&m=u> > accessed on 11 January 2011.

fireworks;¹²⁵ fishing vessels;¹²⁶ healthcare;¹²⁷ heritage and national monuments,¹²⁸ insurance;¹²⁹ the Irish language; the medical profession;¹³⁰ planning;¹³¹ poverty;¹³² professions;¹³³ recreation;¹³⁴ revenue;¹³⁵ sport;¹³⁶ social welfare;¹³⁷ transport;¹³⁸ and the overall policy thrust of particular governments.¹³⁹ In addition a number of public bodies publish charters which, although not law, set standards against which such

¹²² see eg ‘All-Island Energy Market: A Development Framework’ (Department of Communications, Marine and Natural Resources 2004); and also ‘Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland on the Single Electricity Market (SEM) Arrangements’ (Department of Foreign Affairs 2006).

¹²³ For codes and policies relating to the atmosphere, water, environmental radiation, tidy towns and waste see generally < <http://www.environ.ie/en/Publications/Environment/> > accessed on 11 January 2011.

¹²⁴ see generally < www.equality.ie > accessed on 11 January 2011. See eg ‘Guidelines for Equal Status Policies in Enterprises’ (The Equality Authority 2005) and ‘Guidelines for Second Level Schools on Embedding Equality in School Development Planning’ (The Equality Authority 2010).

¹²⁵ See eg ‘Guidance Document for Organised Pyrotechnic Displays’ (Department of Justice and Law Reform 2006).

¹²⁶ eg ‘Design, construction and Equipment of Small Fishing Vessels of less than 15m Length overall’ (Department of Transport 2005).

¹²⁷ see eg the ‘Nursing Homes Support Scheme – A Fair Deal’ (Department of Health and Children 2010); and also ‘Immunisation Guidelines for Ireland’ (Royal College of Physicians of Ireland 2008).

¹²⁸ For codes of practice developed in this area see generally < <http://www.environ.ie/en/Publications/Heritage/NationalMonuments/> > accessed on 11 January 2011.

¹²⁹ See website of the Irish Insurance Federation < www.iif.ie > accessed on 13 January 2011.

¹³⁰ eg ‘Guide to Professional Conduct and Ethics for Registered Medical Practitioners’ (7th edn, Irish Medical Council 2009).

¹³¹ see eg ‘Guidelines on Procedures at Oral Hearings’ (*An Bord Pleanála* 2010). See also publications relating to planning guidelines at < <http://www.environ.ie/en/DevelopmentandHousing/PlanningDevelopment/Planning/PlanningGuidance/> > accessed on 12 January 2011.

¹³² see eg ‘Poverty Proofing Guidelines’ (Office for Social Inclusion 2005).

¹³³ see Chartered Accountants Regulatory Board at < www.carb.ie > accessed on 12 January 2011; see also The Regulation of Practice Committee of the Incorporated Law Society of Ireland < www.lawsociety.ie > accessed on 12 January 2011.

¹³⁴ eg ‘Code of Practice for the Safe Operation of Recreational Craft’ (Stationery Office 2006).

¹³⁵ Twenty-seven documents (guidelines, practice notes, guidance and practitioners’ information) may be found at < <http://www.revenue.ie/en/practitioner/tech-guide/index.html> > accessed on 12 January 2011; *Campus Stadium Ireland Development Ltd v Dublin Waterworld Ltd*. [2010] IESC 25.

¹³⁶ see eg ‘Tax Relief for Donations to Certain Sports Bodies – Guidelines’ (2002, Department of Tourism, Culture and Sport 2002).

¹³⁷ eg ‘Developing a Fully Inclusive Social Insurance Model’ (Department of Social and Family Affairs 2002); see also a full listing of ‘operational guidelines’ at < <http://www.welfare.ie/EN/Pages/azindex.aspx?tab=guidelines> > accessed on 12 January 2011.

¹³⁸ See eg ‘Guidelines on Auditing Rural Transport Services’ (Department of Transport 2001); also ‘Draft Guidelines for Railway Safety Cases’ (Department of Transport 2001); also ‘Airport Voluntary Commitment on Air Passenger Service’ (Department of Transport 2002); also ‘Guidance for the Control and Management of Traffic at Road Works’ (Department of Transport 2010); also ‘Guidelines for Accessible Maritime Passenger Transport’ (Department of Transport 2010); also ‘Design, construction and Equipment of Small Fishing Vessels of less than 15m Length overall’ (Department of Transport 2005); and ‘Maritime Safety Act Guidelines for Local Authorities’ (Department of Transport 2007).

¹³⁹ See eg ‘Renewed Programme for Government’ (Department of the Taoiseach 2009); and also the ‘Programme for Prosperity and Fairness’ (Department of the Taoiseach 1999).

bodies may be judged.¹⁴⁰ Some State quasi-legislation, such as that dealing with protected structures and the care of stained glass, is of specific import for churches.¹⁴¹

While many of these have a statutory provenance, equal numbers of codes, policies and guidelines may be purely voluntary and yet have a regulatory intent and outcome.¹⁴² The distinction is well illustrated in codes of practice published by the Maritime Safety Directorate of the Department of Transport. The code governing the *Design, Construction and Equipment of Small Fishing Vessels of Less than 15m Length Overall*, for example, states that it ‘contains mandatory requirements as well as recommendations. Mandatory requirements are described by the use of *shall* or *must* and recommendations are described by the use of the word *should*.’¹⁴³ Similarly, the Directorate’s *Code of Practice for the Safe Operation of Recreational Craft* is specifically divided into two parts: Part A dealing with statutory requirements, and Part B sets out ‘best practice’ for the safe operation of recreational craft.¹⁴⁴ These documents illustrate the distinction between delegated legislation and quasi-legislative instruments which are good practice guidelines and, therefore, voluntary in character albeit giving rise to the possibility of legal effects.

In the English case of *Patchett v Leathem*,¹⁴⁵ Streatfield J condemned the habitual dependence on quasi-legislation. The use of such instruments has not always met with approval in the Irish courts either. In *Kylemore Bakery Ltd v Minister for Trade, Commerce and Tourism*¹⁴⁶ Costello J, referring to the Bread Subsidy Scheme put in place by the Minister for Trade, Commerce and Tourism, said that:

[t]hese non-statutory schemes have the advantage of flexibility so that they can be easily adapted to changing circumstances but, as this case shows, their informality

¹⁴⁰ Gerard Hogan and David Gwynn Morgan *Administrative Law in Ireland* (4th edn, Round Hall Thomson Reuters 2010) 579.

¹⁴¹ David Lawrence, ‘The Care of Stained Glass’ (The Heritage Council); Cork City Council ‘A Guide to Protected Structures in Cork City 2007-2012’ (Cork City Council 2007).

¹⁴² See eg the work of the Maritime Safety Directorate at < www.transport.ie > accessed 24 February 2012; ‘Design, construction and Equipment of Small Fishing Vessels of less than 15m Length overall’ (Department of Transport 2005) 1 at 1.1.1; *Code of Practice for the Safe Operation of Recreational Craft* (Stationery Office 2006) available at < www.transport.ie > accessed on 28 February 2012.

¹⁴³ ‘Design, construction and Equipment of Small Fishing Vessels of less than 15m Length overall’ (Department of Transport 2005) 1, 1.1.1.

¹⁴⁴ *Code of Practice for the Safe Operation of Recreational Craft* (Stationery Office 2006) available at < www.transport.ie > accessed on 28th February 2012.

¹⁴⁵ *Patchett v Leathem* (1949) 65 TLR 69.

¹⁴⁶ *Kylemore Bakery Ltd v Minister for Trade, Commerce and Tourism* [1986] ILRM 526; [1986] WJSC-HC 1072, 1073.

can create considerable problems when it becomes necessary to ascertain what legal relationships arise from them when a dispute in their administration occurs.¹⁴⁷

Similarly, in *McKerring v Minister for Agriculture*¹⁴⁸ O'Hanlon J thought it 'noteworthy' that, in the case of the Bovine Brucellosis Eradication Scheme, there was:

no mention of any statutory basis for the scheme. (...) I was informed by the Departmental witness that the Scheme, which dated from 1976, was purely administrative and was funded out of an Annual Vote; that no Ministerial Order had been made regarding payment of the grants; that the only guidance to be found regarding the Grant Scheme was to be found in the conditions on the back of the Movement Permit, and that these conditions were changed from time to time. No regulations had been made at any time, and changes in the conditions were notified to the farming community by newspaper advertisement.

It all seems to be a remarkably informal way to spell out and organise a Scheme on which, apparently, hundreds of millions of pounds have already been spent. One result of that element of informality is the present litigation (...).¹⁴⁹

In *Lawlor v Minister for Agriculture*,¹⁵⁰ which concerned the implementation of a complex milk quota regime, Murphy J expressed the view that he:

would have expected to find complex administrative machinery set up by statute to introduce and police this revolutionary regime. Virtually no such administrative machinery exists. The broad concept laid down (...) is carried out administratively by the officials of the Minister for Agriculture acting as the competent authority. Indeed, the administrative basis of the scheme would appear to rest on a circular letter... Such notices were put in evidence and again it would appear astonishing that such crucial decisions could be made and recorded with such simplicity and informality.¹⁵¹

Education administration in the State has also attracted such remarks. Until 1998 the regulation of educational structures in Ireland was disparate. The law was found in a jigsaw of sources, which the courts referred to as 'unsatisfactory.'¹⁵² These were amended by departmental regulation, and ministerial order (communicated most usually by administrative circular),¹⁵³ resulting in a melting pot of inaccessibility and incomprehensibility to all but the most assiduous and persevering analyst.

This regulatory hotchpotch was referred to by Costello J in *O'Callaghan v Meath VEC* :

¹⁴⁷ *Kylemore Bakery Ltd v Minister for Trade, Commerce and Tourism* [1986] ILRM 526 at 520; [1986] WJSC-HC 1072.

¹⁴⁸ *McKerring v Minister for Agriculture* [1989] ILRM 82.

¹⁴⁹ *McKerring v Minister for Agriculture* [1989] ILRM 82, 84.

¹⁵⁰ *Lawlor v Minister for Agriculture* [1990] 1 IR 356.

¹⁵¹ *Lawlor v Minister for Agriculture* [1990] 1 IR 356, 366.

¹⁵² Per Laffoy J *O'Shiel v Minister for Education* [1999] 2 ILRM 241, 247.

¹⁵³ A full list is available at < www.education.ie > accessed on 28 February 2012.

It is a remarkable feature of the Irish system of education that the administration by the Department of Education is largely uncontrolled by statute or statutory instruments and that many hundreds, perhaps thousands, of rules and regulations, memoranda, circulars and decisions are issued and made by the Department and Minister (dealing sometimes with the most important aspects of educational policy) not under any statutory power but merely as administrative measures. These measures are not of course illegal. But they have no statutory force, and the sanction which ensures compliance with them is not a legal one but the undeclared understanding that the Department will withhold financial assistance in the event of non-compliance.¹⁵⁴

In *McCann v Minister for Education*,¹⁵⁵ Costello J reinforced his observations in the earlier case (*O'Callaghan*):

[E]xceptionally, cases may disclose defects in the law or its administration, which, if left unreformed, may lead to injustice and judges may then properly draw attention to a situation of which the legislature and the executive may be unaware. The same, I think, applies to administrative measures which affect the rights and the livelihood of those to whom they are addressed.

The law should be certain and it should be readily accessible. The same applies to non-statutory administrative measures. In the case of primary and secondary education hundreds of millions of pounds are administered annually by means of a large number of administrative measures whose existence is known only to a handful of officials and specialities, which are not readily available to the public and whose effect is uncertain and often ambiguous.¹⁵⁶

Costello J suggested that such administrative rules and regulations should be dated, identified by reference to a sub-head in the Book of Estimates (with amendments bearing the same reference), noted in a register, regularly consolidated and available to the public in order to obviate 'the danger of injustice which is inherent in the present highly informal procedures.'¹⁵⁷

It was anticipated that the Education Act 1998 would curtail reliance on this administrative approach to education and obviate the need for so many administrative circulars.¹⁵⁸ However, the practice has not abated. An examination of the website of the Department of Education and Skills illustrates that until 2009, 252 circulars, most of them issued since 1998 continue to regulate the education sector. Moreover, since 2009 a further 252 circulars have been issued.¹⁵⁹

¹⁵⁴ *O'Callaghan v Meath VEC* [1991] WJSC-HC 1037,1038; a similar observation was made by Laffoy J in *O'Sheil v Minister for Education* [1999] 2 ILRM 241, 247.

¹⁵⁵ *McCann v Minister for Education* [1997] 1 ILRM 1; [1997] WJSC-HC 1382.

¹⁵⁶ *McCann v Minister for Education* [1997] 1 ILRM 1,15; [1997] WJSC-HC 1382, 1412-13.

¹⁵⁷ *McCann v Minister for Education* [1997] 1 ILRM 1,15 ; [1997] WJSC-HC 1382, 1413.

¹⁵⁸ see Gerard Hogan and David Gwynn Morgan *Administrative Law in Ireland* (Round Hall Sweet & Maxwell 1998) 44,fn 190 and contrast with Gerard Hogan and David Gwynn Morgan *Administrative Law in Ireland* (4th edn, Round Hall Thomson Reuters 2010) 59, fn309.

¹⁵⁹ See < www.education.ie > accessed on 15 February 2013 (number of circulars counted on that date).

A scheme established on an extra-statutory basis to control the artificial insemination of cattle was condemned by the Supreme Court on the grounds that the Minister had by-passed protections afforded by legislation.¹⁶⁰ Administrative rules which are not law cannot change substantive law.¹⁶¹ In contrast, it should be noted that the abolition of corporal punishment (the amendment of the Rules for National Schools) was achieved by circulars in 1982 and 1988,¹⁶² possibly because teachers were contractually bound by them, and students had a legitimate expectation of their implementation.

In civil law certain circulars may be subject to judicial review: circulars which purport to state the law or create administrative machinery or which structure discretion are cases in point.¹⁶³ Moreover, ‘the very inaccessibility’ of administrative circulars may amount, in Ireland, to a breach of constitutional justice.¹⁶⁴

There is clearly in Irish law a growing utilisation of quasi-legislation and soft law which impinges on vast areas of life and the activities of society, all of which has not escaped scrutiny in the courts.

Tertiary Sources in the Life of the Church of Ireland

Quasi-legislation and soft law instruments cause the most indecision in the survey as to whether or not they are sources of law for the Church of Ireland. This is unsurprising. They can be intangible or mellifluous, and even where they have, or purport to have, legal effect, it is not always clear when such instruments are underpinned with legal authority. The following are candidates for inclusion in the category ecclesiastical quasi-legislation/soft law (some are clearly quasi-legislation/soft law while the status and nature of others is ambiguous): decisions; agreements; guidelines; codes; training schemes and standards; official lists; terms and conditions; prerogatives, rights, privileges or constitution of certain bodies; executive decisions and orders; forms; pastoral guidance, advice and directions; and circulars and information leaflets.

¹⁶⁰ *O’Neill v Minister for Agriculture and Food* [1998] 1 IR 539 per Keane J. at 546-47.

¹⁶¹ *Carberry v Yates* (1939) 69 ILTR 86 (an attempt circular to make the teaching of the Irish language compulsory was declared unlawful); *Donohue v Dillon* [1998] ILRM 654; *Devitt v Minister for Education* [1989] ILRM 639.

¹⁶² Circulars 09/82 and 07/88 (Department of Education and Skills).

¹⁶³ See generally Gerard Hogan and David Gwynn Morgan *Administrative Law in Ireland* (4th edn, Round Hall Thomson Reuters 2010) 70-74; *Maunsell v Minister for Education* [1940] IR 213.

¹⁶⁴ Gerard Hogan and David Gwynn Morgan *Administrative Law in Ireland* (4th edn, Round Hall Thomson Reuters 2010) 62, fn 320; *McCann v Minister for Education* [1997] 1 ILRM 1,15; [1997] WJSC-HC 1382, 1412; *Blackpool Corporation v Locker* [1948] 1 KB 349.

There is a very low affirmation of these as sources in the survey. Few accept the following as sources: guidelines;¹⁶⁵ protocols (whether of the RCB or Diocesan Councils or House of Bishops);¹⁶⁶ and advice by circular (emanating from the same bodies).¹⁶⁷ A high percentage of respondents do not recognise them as sources.¹⁶⁸ A reflection of uncertainty, others consider that they may sometimes be sources.¹⁶⁹

In the quest for clarity, it is necessary, therefore, to set out the areas of regulation of the Church of Ireland that come within the scope of this relatively recent category. In the case study in Part Two: Chapter Three, further material illustrating the increasing dependence of the Church of Ireland on quasi-legislation and soft law instruments will be set out in detail.

Decisions

The most common ‘informal’ source is decisions. From the earliest times, rescripts - judicial decisions or conclusive replies to a question given by the Pope, a bishop or other legitimate authority to a petition or request - were regarded as sources of canon law. Strictly, however, they were only applicable to the parties to a case and to a specific issue and were not regarded in the same way that precedent is in Common Law.¹⁷⁰ The CCI expects a decision of the bishop in certain instances.¹⁷¹ The diocesan synod is to determine the boundaries of an archdeaconry.¹⁷² In the case of a united diocese where the diocesan synods do not meet jointly, the diocesan councils have discretion to decide the manner of election of members of the RCB and the filling

¹⁶⁵ Bishops – 10%; chancellors – 25%; registrars – 9%; clergy – 15%; laity – 21%.

¹⁶⁶ Bishops – 10%; chancellors – 25%; registrars – 9%; clergy – 21.5%; laity – 27%.

¹⁶⁷ Bishops – 10%; chancellors – 25%; registrars – 0%; clergy – 11%; laity – 16%.

¹⁶⁸ Guidelines of the House of Bishops: bishops – 40%; chancellors – 25%; registrars – 55%; clergy – 40%; laity – 39%; protocols (whether of the RCB or Diocesan Councils or House of Bishops): bishops – 40%; chancellors – 12.5%; registrars – 64%; clergy – 31%; laity – 33%; and, advice by circular (emanating from the same bodies): bishops – 40%; chancellors – 12.5%; registrars – 55%; clergy – 42%; laity – 52.5%.

¹⁶⁹ As noted previously, ‘sometimes a source’ see Part One: Chapter 1, 28, n146; in this instance the following were designated as ‘sometimes a source’: Guidelines of the House of Bishops: bishops – 50%; chancellors – 50%; registrars – 36%; clergy – 38%; laity – 29%; Protocols (whether of the RCB or Diocesan Councils or House of Bishops): bishops – 50%; chancellors – 50%; registrars – 18%; clergy – 37%; laity – 23%; and, advice by circular (emanating from the same bodies): bishops – 40%; chancellors – 37.5%; registrars – 27%; clergy – 37%; laity – 18%.

¹⁷⁰ James A Brundage *Medieval Canon Law* (Longman 1995) 159.

¹⁷¹ CCI, ch. I s 10(2), ch II s 14; ch IX Ss 1-11 (Canons 1-11), Canon 1 (observance of Sundays and Holy Days), Canon 2 (restraint on unauthorised practices), Canon 3 (celebration of Divine Service on Sundays and Holy Days), Canon 4 (the use of the Book of Common Prayer), Canon 5 (the use of the Book of Common Prayer and variations in that use), Canon 6 (the use of prayers and hymns not in the Book of Common Prayer), Canon 7 (the duty of preaching), Canon 8 (speaking in a distinct and audible voice), Canon 9 (provision for Divine Service in the Irish language), Canon 10 (visiting ministers of churches not in communion with the Church of Ireland), Canon 11 (use of churches by other Christian denominations).

¹⁷² CCI, ch II s 39 (boundaries of archdeaconries); ch 2 s 42 (boundaries of rural deaneries).

of such casual vacancies.¹⁷³ The mode of procedure and quorum of a Board of Nomination (insofar as not prescribed by the CCI) are to be determined by decision of the diocesan synod.¹⁷⁴

Agreements

Incumbents are required to sign an agreement in reference to occupation of a glebe within two months' of their institution or licence to an incumbency.¹⁷⁵ Similar agreements are to be signed by vergers, sextons, parochial employees,¹⁷⁶ as well as clergy other than incumbents.¹⁷⁷

Guidelines

Guidelines have been issued by a variety of bodies within the church.¹⁷⁸ *Guidelines for Interfaith Events and Dialogue* were prepared by the Committee for Christian Unity and issued jointly with the House of Bishops.¹⁷⁹ The BCP requires the bishops to issue guidelines concerning the interment of ashes.¹⁸⁰ Other guidelines have been necessitated by contemporary events or circumstances.¹⁸¹ Occasionally those for other churches are looked to, as exemplars.¹⁸²

Codes

The most noteworthy code in the Church of Ireland is *Safeguarding Trust*, the code of good practice for ministry with children.¹⁸³ From its inception, this code, while necessitated by State policy, had only persuasive authority as a matter of internal church law. This was rectified by Statute of the General Synod in 2006.¹⁸⁴

Training Schemes and Standards

Training schemes setting out course materials and regulations, such as those for the Church of Ireland Theological Institute, may have considerable human and legal

¹⁷³ CCI ch X, s 3(3) and s 3(4).

¹⁷⁴ CCI, ch IV s 16.

¹⁷⁵ CCI, ch XIII s 4.

¹⁷⁶ CCI, ch XIII s 9.

¹⁷⁷ CCI, ch XIII s 10.

¹⁷⁸ See eg CCR: 'Expenses of Office Allowance: Diocesan Council Guidelines for Select Vestries.'

¹⁷⁹ *Guidelines for Interfaith Events and Dialogue* (Church of Ireland Publishing 2007).

¹⁸⁰ HoB: 'Guidelines for the Interment of Ashes and their Dispersal at Sea' (16 October 2003).

¹⁸¹ HoB: 'The H1N1 Flu Pandemic' (4 August 2009).

¹⁸² See eg 'Guidelines on the Inclusion of Students of Other Faiths in Catholic Secondary Schools' (JMB/AMCSS 2010).

¹⁸³ *Safeguarding Trust: the Church of Ireland Code of Good Practice for Ministry with Children* (Church of Ireland 2007).

¹⁸⁴ Statute of the General Synod [2006] c ii See also CCI, ch XVI 'Ministry with Children'.

consequences.¹⁸⁵ Such schemes also exist at local level in church life.¹⁸⁶ The Chaplaincy Accreditation Board has set out ‘Recognised Standards for Certification of Healthcare Chaplains’ regulating recruitment and appointment.¹⁸⁷

Official Lists

Official lists may have legal standing. The House of Bishops is obliged to specify Christian denominations not in full communion with the Church of Ireland whose ministers or accredited preachers may, in certain circumstances, deliver an address at a service in a church or cathedral; or who may read the services of Morning/Evening Prayer or any other service (except the Holy Communion).¹⁸⁸ They are also required to list recognised Christian denominations, which may, in certain circumstances, be permitted to use churches or chapels of the Church of Ireland for their own acts of worship.¹⁸⁹ The Canons envisage an approved list of specified or recognised Christian denominations.¹⁹⁰

Terms and Conditions

Terms and conditions relating to non-parochial churches, whether arising from deeds of trust or elsewhere, are a source of law.¹⁹¹ The RCB is to formulate (and report to General Synod) terms and conditions governing its grant of loans for the purchase, repair, improvement, maintenance and enhancement of any real property vested in or held by it.¹⁹²

Prerogatives, Rights, Privileges or Constitutions of Certain Bodies

One nebulous source of law includes the prerogatives, rights and privileges or constitutions of certain bodies, notably cathedrals.¹⁹³ Whether these contain legal rights or laws is uncertain, not least since the Irish Church Act specifically abolished the ancient cathedral corporations.

¹⁸⁵ See eg Church of Ireland Theological Institute

< <http://www.theologicalinstitute.ie/courseinformation/index.php> > accessed on 3 March 2012; see also ‘Internship Handbook’ (The Church of Ireland Theological Institute 2011).

¹⁸⁶ CCR: ‘Training of Ministers of the Eucharist’.

¹⁸⁷ Chaplaincy Accreditation Board, ‘Recognised Standards for Certification of Healthcare Chaplains’ (January 2010).

¹⁸⁸ CCI, ch IX s 10 (Canon 10).

¹⁸⁹ CCI, ch IX s 11 (Canon 11).

¹⁹⁰ The list specified/recognised by the House of Bishops comprises: the Roman Catholic Church, the orthodox Churches (Eastern and Oriental) and member churches of the Irish Council of Churches.

¹⁹¹ CCI, ch V s 2, s 3, s 5 and s 7.

¹⁹² CCI, ch X s 13.

¹⁹³ CCI, ch III s 37.

Executive Decisions and Orders

The absence of consensus about quasi-legislation and soft law as sources generally, is specifically seen in the survey in the case of executive decisions of a bishop. Although the legal basis for such decisions is the foundational principle of canonical obedience¹⁹⁴ and, while decisions may be worked out in binding legal consequences, it is not clear in what sense, if any, of themselves, they are a source of law. Unsurprisingly, only small numbers see these as a source of law;¹⁹⁵ and greater numbers see them as not being a source.¹⁹⁶

Executive decisions are, however, envisaged by the law of the church. These generally are binding decisions by virtue of being articulations of law. For example, archdeacons may be directed, by the bishop, to make enquiry; and they are to assist the bishop in such administration as the bishop may require.¹⁹⁷ Rural deans are to ‘perform such other duties as may be assigned to them by the bishop.’¹⁹⁸

The ordinary (who is generally, but not always, a bishop)¹⁹⁹ may ‘restrain and prohibit in the conduct of public worship any practice not enjoined in the Book of Common Prayer, or in any rubric or canon enacted by lawful authority of the Church of Ireland.’²⁰⁰ This jurisdiction embodies (and delineates) the contemporary canonical articulation in the Church of Ireland of the *Ius Liturgicum* of the bishop.²⁰¹ Related decisions of the ordinary carry equal legal force: to dispense with the requirement of Sunday worship in a particular church;²⁰² to determine the ‘convenient and usual times’ of worship in ‘suitable’ churches on Sundays and Holy-days;²⁰³ to approve the form and use of additional services not contained in the BCP and special forms of service for special occasions;²⁰⁴ to excuse an incumbent from the duty of preaching;²⁰⁵ to direct which portions of a service are to be used in the Irish language when the ‘congregation

¹⁹⁴ Obedience ‘in all lawful and honest commands’.

¹⁹⁵ Bishops – 10%; chancellors – 25%; registrars – 9%; clergy – 21%; laity – 22%.

¹⁹⁶ Bishops – 40%; chancellors – 25%; registrars – 55%; clergy – 35%; laity – 42%.

¹⁹⁷ CCI, ch II s 41.

¹⁹⁸ CCI, ch II s 44.

¹⁹⁹ The ‘ordinary’ is an ecclesiastical officer who has original jurisdiction in his/her own right and not by deputation; see *Halsbury’s Laws of England* vol 34 (5th edn, 2011) para 177.

²⁰⁰ CCI, ch. IX s 2 (Canon 2).

²⁰¹ See below in this chapter the *Ius Liturgicum* of the Bishop from which this contemporary jurisdiction derives.

²⁰² CCI, ch IX s 3 (Canon 3).

²⁰³ CCI, ch IX s 3 (Canon 3).

²⁰⁴ CCI, ch IX s 4(1) (Canon 4(1)).

²⁰⁵ CCI, ch IX s 7 (Canon 7).

consists in whole or in part of Irish speaking people',²⁰⁶ to give permission to a minister of another Christian denomination to fulfil certain liturgical functions in a Church of Ireland liturgy,²⁰⁷ to permit Christian denominations to use Church of Ireland churches for the celebration of their own liturgies,²⁰⁸ to order the regularity of the celebration of the Holy Communion;²⁰⁹ to prescribe 'conditions' under which the Holy Communion may be administered by intinction;²¹⁰ to adjudicate on the suitability or otherwise of trades or occupations engaged in by clergy;²¹¹ to make directions relating to the use of churches for purposes other than worship;²¹² to forbid or to prescribe processions,²¹³ or to forbid the carrying in procession of a flag, banner or picture.²¹⁴

Other executive decisions reserved to the bishop include: approving those circumstances when Holy Communion is administered other than in churches or to those who are ill;²¹⁵ issuing orders and directions in relation to the exclusion of a church member from the Holy Communion,²¹⁶ or their restoration to the communion of the Church,²¹⁷ and making directions about the baptism of a child where a member of the clergy has refused or unduly delayed that baptism.²¹⁸

The House of Bishops is required collectively to make decisions that carry legal force. They specify the Christian denominations, not in full communion with the Church of Ireland, whose ministers may (with the permission of the ordinary) fulfil specified roles in a Church of Ireland liturgy.²¹⁹ Likewise they 'recognise' those Christian denominations permitted to use Church of Ireland churches for the celebration of their own liturgies (with the permission of the ordinary, the incumbent and the churchwardens).²²⁰

²⁰⁶ CCI, ch IX s 9 (Canon 9).

²⁰⁷ CCI, ch IX s 10 (Canon 10).

²⁰⁸ CCI, ch IX s 11 (Canon 11).

²⁰⁹ CCI, ch IX s 13(1) (Canon 13(1)).

²¹⁰ CCI, ch IX s 13(5) (Canon 13(5)).

²¹¹ CCI, ch IX s 34(2) (Canon 34(2)).

²¹² CCI, ch IX s 37(2) (Canon 37(2)).

²¹³ CCI, ch IX s 41(1) (Canon 41(1)).

²¹⁴ CCI, ch IX s 41(4) (Canon 41(4)).

²¹⁵ CCI, ch IX s 14 (Canon 14).

²¹⁶ CCI, ch IX s 16(1) (Canon 16(1)).

²¹⁷ CCI, ch IX s 16(4) (Canon 16(4)).

²¹⁸ CCI, ch IX s 26 (Canon 26).

²¹⁹ CCI, ch IX s 10 (Canon 10).

²²⁰ CCI, ch IX s 11 (Canon 11); it is noteworthy that these lists are not published.

Clergy too have jurisdiction to make decisions, which carry legal force, such as making and using ‘variations which are not of substantial importance in any form of service.’²²¹ Certain executive decisions of the RCB carry legal authority such as determining the scales of expenses of committee members.²²² Where questions arise about the interpretation of glebe rules the decision of the RCB is required.²²³ The RCB may delegate its right of disposal of movable property to a diocesan council.²²⁴

These executive decisions, made by a variety of individuals and bodies, have a legal basis. They may have legal consequences in the shaping of the administrative framework of the church. It is difficult to categorise them, of themselves, as sources or as quasi-legislation properly so-called. Nonetheless, as the outworking of the law it is envisaged that they may be evinced and relied upon authoritatively within the church.

Forms

Forms may embody the law and articulate it; the Forms of Declaration reciting the qualifications for inclusion of a church member in the register of vestry members are an example.²²⁵ Other forms are required by the law, such as that for the return to the RCB of the list of ‘church plate and parochial documents’.²²⁶

Particular forms have evolved governing specific parts of the church. Saint Patrick’s Cathedral Dublin relies on a publication of 1912 – *The Form and Manner of Making a Dean and Other Forms* (known as ‘Lawlor’s Forms’) – to regulate the election and installation of the Dean of the Cathedral, the installation of dignitaries, prebendaries, minor canons and vicars choral, the admission of choir members and the enthronement of an Archbishop. The forms of declaration to be made on such and other occasions are also laid down.²²⁷

²²¹ CCI, ch IX s 4(2) (Canon 4(2)).

²²² CCI, ch X s 16.

²²³ CCI, ch XIII, s 11 see also CCI, ch XIII, s 11, Glebe Rule 2.

²²⁴ CCI, ch X, s 11(2).

²²⁵ CCI, ch III s 2.

²²⁶ CCI, ch III s 38(1).

²²⁷ *The Form and Manner of Making of a Dean and Other Forms* (Ponsonby and Gibbs 1912).

Pastoral Guidance, Advice and Directions

Where questions arise about whether variations in the liturgy are ‘of substantial importance’ the bishop ‘may give such pastoral guidance, advice or directions as is thought fit (...)’.²²⁸ When a bishop does so, this may become legally binding.

Circulars and Information Leaflets

Circulars and information leaflets are used to draw attention to, re-state, and clarify the law.²²⁹ Some lay down principles of good practice, for example, concerning parish records,²³⁰ or the re-ordering of liturgical space.²³¹

Nebulous Sources

The identification of sources of law of the Church of Ireland is incomplete without consideration of a number of putative - nebulous or intangible - sources: custom; the instruments of wider Anglicanism; and, finally, ecumenical and international agreements.

The lack of clarity seen in the survey responses in relation to quasi-legislation and soft law sources, is readily manifest in relation to custom. Notably 50% of chancellors see custom (of the Church of Ireland, diocesan and parochial) as a source and the other 50% perceive it as sometimes a source.²³² This may be accounted for by a honed and technical understanding of the place of custom in the legal framework on the part of the chancellors (the most legally qualified group of respondents to the survey).

Otherwise small numbers think of custom as a source: parish custom,²³³ diocesan custom,²³⁴ and Church of Ireland custom.²³⁵ Greater numbers are of the definite opinion that custom is not a source: parish custom,²³⁶ diocesan custom,²³⁷ and Church

²²⁸ CCI, ch IX s 5(4) (Canon 5(4)).

²²⁹ see eg ‘Graveyards vested in the Representative Church Body’ – Circular of the RCB 1st April 1968; ‘Water Services Act 2007’ Circular of the RCB 6th May 2008; CCR: ‘What is a Rural Dean?’.

²³⁰ ‘Clerical Responsibility for Parish Records’ - Library and Archives Committee of the RCB, June 2008.

²³¹ *Liturgical Space and Church Re-Ordering: Issues of Good Practice* (Church of Ireland Publishing 2010).

²³² As noted previously, ‘sometimes a source’ see Part One: Chapter 1, 28, n146.

²³³ Bishops – 10%; chancellors – 12.5%; registrars – 0%; clergy – 6%; laity – 5%.

²³⁴ Bishops – 10%; chancellors – 12.5%; registrars – 0%; clergy – 7%; laity – 5.5%.

²³⁵ Bishops – 20%; chancellors – 50%; registrars – 0%; clergy – 9.5%; laity – 10%.

²³⁶ Bishops – 80%; chancellors – 37.5%; registrars – 82%; clergy – 65%; laity – 71.5%.

²³⁷ Bishops – 70%; chancellors – 37.5%; registrars – 73%; clergy – 65%; laity – 70%.

of Ireland custom.²³⁸ Significantly, not inconsiderable numbers are open to the possibility that custom may sometimes be a source: parish custom,²³⁹ diocesan custom,²⁴⁰ and Church of Ireland custom.²⁴¹

This variety of responses to custom warrants consideration of its place as a source in contemporary law generally, as well as within canon law and in the law of the Church of Ireland.

Custom²⁴²

‘Custom within contemporary legal systems, particularly in the developed world, is relatively cumbersome, unimportant and often of only nostalgic value.’²⁴³ Nonetheless, custom is an ancient form of law-making and is acknowledged in some legal systems both as a source of law or, if not as a formal source, as playing a vital normative role.²⁴⁴ A notable example is its continued importance in some African countries.²⁴⁵ Much of the material from which the common law was developed was customary law.²⁴⁶ In Western legal systems, however, it is a subordinate source of law.²⁴⁷

In Roman law, prior to the promulgation of the *Twelve Tables* in the fifth century BCE,²⁴⁸ custom was important.²⁴⁹ The *Institutes of Justinian* in 529 CE acknowledged custom as *ius non scriptum*.²⁵⁰ ‘*Constat autem ius nostrum aut ex scripto, aut ex non*

²³⁸ Bishops – 50%; chancellors – 0%; registrars – 54.5%; clergy – 52.5%; laity – 57%.

²³⁹ Bishops – 10%; chancellors – 50%; registrars – 18%; clergy – 20%; laity – 13.5%.

²⁴⁰ Bishops – 20%; chancellors – 50%; registrars – 27%; clergy – 18.5%; laity – 13.5%.

²⁴¹ Bishops – 30%; chancellors – 50%; registrars – 45.5%; clergy – 29%; laity – 23%.

²⁴² For an overview of the role of custom in law see generally Przemyslaw Paul Polanski, *Customary Law of the Internet* (TWC Asser Press 2007) 99-141.

²⁴³ Malcolm N Shaw, *International Law* (6th edn, Cambridge University Press 2008).

²⁴⁴ eg Gideon Libson ‘On the Development of Custom as a Source of Law in Islamic Law’ (1997) 4 *Islamic Law and Society* 131.

²⁴⁵ See eg The Constitution of Zimbabwe, Article 89: ‘Subject to the provisions of any law for the time being in force in Zimbabwe relating to the application of African customary law, the law to be administered by the Supreme Court, the High Court and by any courts in Zimbabwe subordinate to the High Court shall be the law in force in the Colony of the Cape of Good Hope on 10th June, 1891, as modified by subsequent legislation having in Zimbabwe the force of law.’ See also Robert B Seidman ‘Rules of Recognition in the Primary Courts of Zimbabwe: on Lawyers’ Reasonings and Customary Law’ in 32 (1983) *International and Comparative Law Quarterly* 871; *A Study of Customary Law in Contemporary Southern Sudan* (World Vision International 2004) available at < <http://www.gurtong.org/customaryl原因.asp> > accessed on 3 December 2008.

²⁴⁶ JT Cameron, ‘Custom as a Source of Law in Scotland’ in 27 *MLR* (1964) 306, 306.

²⁴⁷ HLA Hart, *The Concept of Law* (Clarendon Press 1961) 44.

²⁴⁸ BCE – Before the Common Era.

²⁴⁹ Andrew Borkowski and Paul Du Plessis, *Textbook on Roman Law* (Oxford University Press 2005) 28.

²⁵⁰ ‘Law not written down’.

scripto.²⁵¹ ‘The unwritten law rests upon sanction of usage. For long-continued customs approved by the consent of those practising them resemble law.’²⁵² It should be noted that Justinian only refers to unwritten laws as resembling law. Custom as a formal source of law evolved in Roman Law and was perceived differently from era to era,²⁵³ nonetheless, ‘definitions of the customary law and an enumeration of the elements essential to the establishment of legal custom, (...) were taken over into medieval canonical and civil law and were subsequently developed in modern jurisprudence.’²⁵⁴

In early Irish law of the seventh and eighth centuries CE, *fénechas* (the law of the *Féni* – freeland tillers of full legal capacity), a term used also, it seems, to refer to Brehon law,²⁵⁵ is understood as customary or traditional law (native law, as opposed to Canon law or later English common law).²⁵⁶ *Fénechas* is used terminologically to distinguish between traditional law and promulgated law.²⁵⁷

Local customs pre-date the formulation of the Common Law, which, by the twelfth and thirteenth centuries was, ‘the normal rule throughout the realm and local variations soon became exceptional’.²⁵⁸ Nonetheless, custom has endured as a source of law. In 1982, in *R v Secretary of State for Foreign and Commonwealth Affairs*²⁵⁹ an application for judicial review was brought by a provincial Canadian Indian Association on the grounds, among others, that the Indian treaties constituted part of the law and custom of the constitution. Hearing the application, Lord Denning MR commented that:

in early societies custom is the basis of law. Once a custom is established it gives rise to rights and obligations which the chiefs and headmen will enforce. These customary laws are not written down. They are handed down by tradition from one generation to another. Yet beyond doubt they are well established and have the force

²⁵¹ JT Addy and Bryan Walker, *The Institutes of Justinian* (Cambridge University Press 1876) Book I, Tit. II.3: ‘Now our law has two branches, written and unwritten...’.

²⁵² JT Addy and Bryan Walker, *The Institutes of Justinian* (Cambridge University Press 1876) Book I, Tit. II.9: ‘*Ex non scripto ius venit quod usus comprobavit nam diuturni mores consensus utentium comprobati legem imitantur*’.

²⁵³ A Arthur Schiller, ‘Custom in Classical Roman Law’ in (1937-1938) 24 *Virginia Law Review* 268.

²⁵⁴ A Arthur Schiller, ‘Custom in Classical Roman Law’ in (1937-1938) 24 *Virginia Law Review* 268, 269.

²⁵⁵ Fergus Kelly, *A Guide to Early Irish Law* (Dublin Institute for Advanced Studies 2005) 56-57.

²⁵⁶ Fergus Kelly, *A Guide to Early Irish Law* (Dublin Institute for Advanced Studies 2005).

²⁵⁷ Fergus Kelly, *A Guide to Early Irish Law* (Dublin Institute for Advanced Studies 2005) 334, fn31.

²⁵⁸ *Halsbury’s Laws of England* vol 32 (5th edn, 2012) para 1.

²⁵⁹ *R v Secretary of State for Foreign and Commonwealth Affairs* [1982] 2 WLR 641 [1982] QB 892 [1982] 2 All ER 118.

of law within the community (...) In England we still have laws which are derived from customs from time immemorial (...).²⁶⁰

Halsbury defines custom as ‘a particular rule which has obtained either actually or presumptively from time immemorial in a particular locality and obtained the force of law in that locality, although contrary to, or not consistent with, the general common law of the realm.’²⁶¹ Custom as law is inherently local in definition and ambit,²⁶² but must be distinguished from prescription²⁶³ and usage.²⁶⁴

In *Le Case de Tanistry* custom was described as *ius non scriptum* and is ‘a reasonable act, iterated, multiplied and continued by the people from time out of mind. And this definition of custom has the virtue and force of law.’²⁶⁵ The *Tanistry* case laid down four essential attributes of a valid custom: first, it must be reasonable; second, it must be certain and not ambiguous; third, it must have continued without interruption from time out of mind; and fourth, it must be consonant with the Royal Prerogative.²⁶⁶

Elements of custom have evolved in contemporary law. In *Mercer v Denne*, concerning the immemorial custom of fishermen who spread their nets for drying on the land of a private landowner, Farwell J said ‘[a] custom must be certain, reasonable in itself, commencing from time immemorial, and continued without interruption.’²⁶⁷ However, in *Wolstanton Ltd and A-G of Duchy of Lancaster v Newcastle-under-Lyme Corporation* Viscount Maugham identified only three essential elements of custom:

[I]t has long been beyond dispute that to give validity to a custom it must possess three characteristics - it must be certain, reasonable in itself, and of immemorial origin. As regards the last circumstance, it means that the custom must have been in existence from a time preceding the memory of man, which has been fixed as meaning the year 1189, the first year of the reign of Richard I.²⁶⁸

²⁶⁰ *R v Secretary of State for Foreign and Commonwealth Affairs* [1982] [1982] QB 892, 909.

²⁶¹ *Halsbury's Laws of England* vol 32 (5th edn, 2007) para 1.

²⁶² *Halsbury's Laws of England* vol 32 (5th edn, 2007) para 2.

²⁶³ *Halsbury's Laws of England* vol 32 (5th edn, 2007) para 3 and 4.

²⁶⁴ *Halsbury's Laws of England* vol 32 (5th edn, 2007) para 5.

²⁶⁵ *Le Case de Tanistry* (1608) Davis Law Reports 28 at 31-32; 80 Eng Rep. 516: ‘Et issint briefement, custome est un reasonable act, iterated, multiplied & continued per le people, de temps dont memory ne Court. Et ceo est le definition de custome, que ad le vertue & force del ley’.

²⁶⁶ *Le Case de Tanistry* (1608) Davis Law Reports 28 at 33: ‘Secondment fuit dit, que tiel custome doet aver 4 unseparable properties: 1: Doet aver reasonable commencement; 2. Doet ester certeine, & nemy ambiguous; 3. Doet aver continuance sans interruption, de temps dot memory ne Court; 4. Doet ester submit al prerogative del Roy, & nient exalt encounter ceo’.

²⁶⁷ *Mercer v Denne* [1904] 2 Ch 534 at 551-2; affirmed in *Mercer v Denne* [1905] 2 Ch 538; *Halsbury's Laws of England* vol 32 (5th edn, 2012) para 6-24.

²⁶⁸ *Wolstanton Ltd and A-G of Duchy of Lancaster v Newcastle-under-Lyme Corporation* [1940] AC 860, 876.

Customary law is a source of international law,²⁶⁹ albeit one actively debated as to its value.²⁷⁰ In Ireland ‘custom still has a residual role and the common law has recognised and tolerated the existence of customs which are local or particular in nature.’²⁷¹ Its role is residual: ‘[t]he notion of customary law is weakly entrenched in modern Western legal thinking.’²⁷² It has been marginalised but not eliminated.²⁷³

‘Custom’ which has the force of law is to be distinguished from a colloquial use of the word, ‘used more loosely to denote habits and usages (...).’²⁷⁴ Some authors emphasise that custom is merely a source of law (a material source) and is not, in itself, law (an instrumental source). It only becomes law when it is interpreted, laid down or recognised by the law-maker.²⁷⁵ (This perspective is mirrored in the Roman Catholic Code of Canon Law which states that ‘[o]nly that custom introduced by a community of the faithful *and approved by the legislator* according to the norm of the following canons has the force of law’).²⁷⁶

The corollary of establishing valid law by custom is that law may, in certain circumstances become ‘undone’ by desuetude. It should be noted that an Act or any provision of an Act does not become inoperative through lack of use or passage of time, even though over a long period it is disobeyed and not enforced.²⁷⁷ In *Hebbert v Purchas* (concerning interpretation of the rubrics in the BCP) the Lord Chancellor (Lord Hatherley) said ‘[i]t is quite true that neither contrary practice nor disuse can repeal the positive enactment of a Statute, but contemporaneous and continuous usage is of the

²⁶⁹ See generally Malcolm N Shaw, *International Law* (6th edn, Cambridge University Press 2008) 72-92; Josef L Kunz ‘The Nature of Customary International Law’ in (1953) vol 47 *The American Journal of International Law*, 662-69.

²⁷⁰ Malcolm N Shaw, *International Law* (6th edn, Cambridge University Press 2008) 73; see also Nicole Roughan ‘Democratic Custom v international Customary Law’ in (2007) 38 *Victoria University Wellington Law Review* 403; Frederic L Kirgis (1981) 81, no 1, ‘Custom on a Sliding Scale’ in *The American Journal of International Law* 146-51; Theodor Meron ‘The Continuing Role of Custom in the Formation of International Humanitarian Law’ in (1996) vol 90, no 2, *The American Journal of International Law* 238-49; Arnold N Pronto ‘Some thoughts on the making of International Law’ in (2008) 19(3) *EJIL* 601-16; Niels Petersen ‘Customary Law without Custom? Rules, Principles, and the Role of State Practice in International Norm Creation’ in (2007-2008) 23 *AmUInt’ILRev.* 275-310.

²⁷¹ Raymond Byrne and J Paul McCutcheon, *The Irish Legal System* (Butterworths, 2003) 7, para 1.19.

²⁷² Przemyslaw Paul Polanski, *Customary Law of the Internet* (TWC Asser Press 2007) 111.

²⁷³ Przemyslaw Paul Polanski, *Customary Law of the Internet* (TWC Asser Press 2007) 117.

²⁷⁴ *Halsbury’s Laws of England* vol 32 (5th edn, 2012) para 1.

²⁷⁵ Kenneth Campbell, ‘Custom as a Source of Law’ in (2001) 82 *ARSP-Beiheft* 58-67.

²⁷⁶ *England Canon* 23 (emphasis added).

²⁷⁷ *Halsbury’s Laws of England* vol 96 (5th edn, 2012) para 688; see eg *Wyld v Silver* [1963] Ch 243 (the right to hold an annual fair or wake on a plot of land not taken away by disuse or waiver).

greatest efficacy in law, for determining the true construction or obscurely framed documents'.²⁷⁸

*Custom in Canon Law*²⁷⁹

While England was governed, before the Norman Invasion in the eleventh century, 'more by unwritten and variable custom than by uniform and settled law (...)',²⁸⁰ 'the church has never been without laws.'²⁸¹ According to Bede, the question of how to respond to local situations and customs perplexed Augustine:

What is to be the relation between a bishop and his clergy? And how are the offerings made by the faithful at the altar to be apportioned? And what are the functions of a bishop in his church? (...) Since we hold the same Faith, why do customs vary in different Churches? Why, for instance, does the method of saying Mass differ in the holy Roman Church and in the Churches of Gaul?²⁸²

Pope Gregory's response is insightful:

[I]f you have found customs, whether in the Church of Rome or of Gaul or any other that may be more acceptable to God, I wish you to make a careful selection of them, and teach the Church of the English, which is still young in the Faith, whatever you have been able to learn with profit from the various churches.²⁸³

Helmholz describes how 'this permissible diversity hardened into established local customs' but underlined that '[t]he openness (...) would never disappear entirely'.²⁸⁴ Customs, undoubtedly, continued in the church, in certain circumstances to become established as canon law.²⁸⁵

By the twelfth century 'Gratian maintained (...) that custom could be treated as law, but only under certain conditions.'²⁸⁶ In order to become law, a custom was not to run counter to truth, reason, the Christian faith, or natural law, and must also have been in use in a Christian community for a sufficiently long time before it acquired force: '[t]he authority of longstanding custom and practice is not insignificant; but its power is

²⁷⁸ *Hebbert v Purchas* (1869-71) LT 3 PC 605, 650.

²⁷⁹ For custom in English Canon Law see generally Rupert DH Bursell 'What is the Place of Custom in English Canon Law?' in [1987-89] 1(4) *EccLJ* 12.

²⁸⁰ JH Baker, *An Introduction to English Legal History* (4th edn, Butterworths Lexisnexis 2002) 3.

²⁸¹ RH Helmholz, *The Oxford History of the Laws of England* vol 1 (Oxford University Press 2004) 1.

²⁸² Bede, *A History of the English Church and People* (Penguin Books 1979) Book I, c 27; see also RH Helmholz, *The Oxford History of the Laws of England* vol 1 (Oxford University Press 2004) 4-6.

²⁸³ Bede, *A History of the English Church and People* (Penguin Books 1979) Book I, c 27.

²⁸⁴ RH Helmholz, *The Oxford History of the Laws of England* vol 1 (Oxford University Press 2004) 5.

²⁸⁵ RH Helmholz, *The Oxford History of the Laws of England* vol 1 (Oxford University Press 2004) 102-03, 170-74.

²⁸⁶ James A Brundage, *Medieval Canon Law* (Longman 1995) 158.

certainly not of such moment as to prevail either over reason or ordinance.²⁸⁷ For Gratian, all human law was custom: ‘a written law is instituted by promulgation but is conformed by the custom of those who use it and abrogated by their disuse of it.’²⁸⁸ ‘Custom is a sort of law established by usages and recognised as ordinance when ordinance is lacking.’²⁸⁹ Gratian’s praise of custom was qualified: ‘[w]e praise custom when, however, it is known not to impinge on the Catholic faith.’²⁹⁰

The issue was not unproblematic for the decretists who required that a custom, in order to be legally binding, would have to have been ‘known to and tolerated by the authorities who had the power to abrogate it.’²⁹¹ A further issue was the size of the community adhering to the custom. It seemed clear that ‘customary practices within administrative units, such as ecclesiastical provinces, diocese, and even parishes could acquire legal force. The same was true for the usage of institutional groups and corporations, such as cathedral chapters and monasteries.’²⁹² It was also required that the people within the community knew about the custom and consented to it: the custom should be ‘uninterrupted and unchallenged throughout the period for prescription to run its course.’²⁹³

After the Reformation, in certain respects, the ecclesiastical courts applied their own rules as to custom.²⁹⁴ In 1699, in *Churchwardens of Market Bosworth v Rector of Market Bosworth*²⁹⁵ Treby CJ said that Spiritual Courts ‘have different notions of customs, as to the time which creates them, from those that the common law hath (...)’

In 1956, Kemp identified five dynamics in the operation of custom: ‘[i]t imitates law, supplying deficiencies, it interprets law when a doubt is raised, it abrogates law, it

²⁸⁷ Gratian, Augustine Thompson (tr), *The Treatise on Laws* (Catholic University of America Press 1993) Distinction 11, C 4; Distinction 8 C 4 ‘When the truth has become manifest, let custom yield to the truth’.

²⁸⁸ Eric Waldram Kemp, *An Introduction to Canon Law of the Church of England* (Hodder and Stoughton 1957) 25.

²⁸⁹ Gratian, Augustine Thompson (tr), *The Treatise on Laws* (Catholic University of America Press 1993) Distinction 1, C 5.

²⁹⁰ Gratian, Augustine Thompson (tr), *The Treatise on Laws* (Catholic University of America Press 1993) Distinction 11 C 6, Distinction 12 C 8.

²⁹¹ James A Brundage, *Medieval Canon Law* (Longman 1995) 158.

²⁹² James A Brundage, *Medieval Canon Law* (Longman 1995) 159.

²⁹³ James A Brundage, *Medieval Canon Law* (Longman 1995) 159.

²⁹⁴ Rupert DH Bursell, ‘What is the Place of Custom in English Canon Law?’ in (1987-89) 1(4) *EccLJ* 12-26, 17-20, 25; see also *The Canon Law of the Church of England* Report of the Archbishops’ Commission on Canon Law (SPCK 1947) 46-7 and 63-8; Frederic William Maitland *Roman Canon Law in the Church of England* (Methuen 1898) 41-42.

²⁹⁵ *Churchwardens of Market Bosworth v Rector of Market Bosworth* (1699) 1 Ld Raym. 435.

derogates from existing law, it creates a presumption.²⁹⁶ He drew attention to the definition of the thirteenth century canonist Giovanni d'Andre who defined custom as 'a kind of law instituted by the usage of those who by public authority are able to make law' provided three conditions are met: frequency, consent of the majority of the people and a certain length of time to make clear the intention of those who practise the custom.²⁹⁷ Importantly, Kemp asserted that 'it can be shown that in several ways the operation of the general canon law was modified in England by custom.'²⁹⁸ He found evidence of custom in ritual, in the evolving rights of patronage of ecclesiastical benefices and in clerical taxation.

Local customs were recognised by the canon law in England 'provided they were immemorial, reasonable, and not contrary to divine law or to overriding legislation.'²⁹⁹ Again, custom is to be distinguished from local usage, and some customs have been incorporated into and given statutory and canonical expression.³⁰⁰ For example, injunctions concerning payment of church dues emerged from customary law, as did the law concerning repair of parts of parish fabric.³⁰¹

Closely related to custom, in the canonical framework, were privileges (a variation from a general rule of law granting a favour) and dispensations (executive relaxations of the ordinary operations of the law) which were also regarded as sources of law.³⁰² Kemp pointed out that in the twelfth century, Ivo, Bishop of Chartres, 'taught that it was not sufficient that a law should be just, it must harmonise with the age and country in which it was applied, and if it ceased to do so authority should dispense from its observance.'³⁰³

Bursell came to four conclusions about the place of custom in English Canon law:

²⁹⁶ Eric Waldram Kemp, *An Introduction to Canon Law of the Church of England* (Hodder and Stoughton 1957) 26.

²⁹⁷ Eric Waldram Kemp, *An Introduction to Canon Law of the Church of England* (Hodder and Stoughton 1957) 26.

²⁹⁸ Eric Waldram Kemp, *An Introduction to Canon Law of the Church of England* (Hodder and Stoughton 1957) 27.

²⁹⁹ *Halsbury's Laws of England* vol 32 (5th edn, 2012) para 45.

³⁰⁰ *Halsbury's Laws of England* vol 32 (5th edn, 2012) para 45 n11; Mark Hill *Ecclesiastical Law* (3rd edn, Oxford University Press 2007) 23-24; Churchwardens Measure 2001 (England).

³⁰¹ See also RH Helmholz *The Oxford History of the Laws of England* vol 1 (Oxford University Press 2004) 43 and 466-67.

³⁰² James A Brundage, *Medieval Canon Law* (Longman 1995) 160.

³⁰³ Eric Waldram Kemp, *An Introduction to Canon Law of the Church of England* (Hodder and Stoughton 1957) 25.

1. Prior to the Reformation the spiritual courts applied their own rules as to custom. These rules were less stringent than those required by the common law courts.
2. After the Reformation the spiritual courts continued to apply their own canonical rules as to custom but these could no longer abrogate statute law.
3. It is unlikely that the pre-Reformation canon law rules as to custom *contra legem* (or *desuetude*) or rules as to custom *praeter legem* survived the Reformation but modern ecclesiastical law recognises long usage as permitting actions not otherwise covered by positive law.
4. For at least the last 100 years there has been no judicial recognition of the application of the canon law rules as to custom and it is unlikely that these rules could now be shown to pass the test laid down by the rule of practice and pleading in the cases of the *Bishop of Exeter v Marshall* and *In re St Mary's, Westwell*.³⁰⁴

Bursell, identified thirty-one cases in which there were continuing references to canonical principles, and illustrates that progressively 'claims that (...) canonical principles should be applied became muted, if not altogether silent, as the nineteenth century progressed'.³⁰⁵

In contrast, the place of custom is expressly delineated in the Roman Catholic Code of Canon Law.³⁰⁶ It embraces a specific understanding of custom.³⁰⁷ 'A custom introduced by a community of the faithful has the force of law only if it has been approved by the legislator, in accordance with (...) [the canons].'³⁰⁸ Customs must not be contrary to divine law,³⁰⁹ they must be reasonable (never expressly disapproved by law),³¹⁰ observed by a stable, definable community capable of receiving a law,³¹¹ observed for thirty continuous years,³¹² and with the intention of introducing a law.³¹³ 'Custom is the best interpreter of laws' and may be revoked by contrary custom or law.³¹⁴ It is emphasised that custom within the Roman Catholic canonical tradition is not a law: it remains a custom but, in the circumstances prescribed by the canons, has

³⁰⁴ Rupert DH Bursell, 'What is the Place of Custom in English Canon Law?' in [1987-89] 1(4) EccLJ 12-26, 17-20, 26.

³⁰⁵ Rupert DH Bursell, 'What is the Place of Custom in English Canon Law?' in [1987-89] 1(4) EccLJ 12-26, 17-20, 17.

³⁰⁶ See generally John M Huels, 'Back to the Future: The Role of Custom in a World Church' in *Proceedings of the Fifty-Ninth Annual Convention of the Canon Law Society of America* (CLSA 1997) 1-25.

³⁰⁷ *The Canon Law Letter and Spirit* (The Canon Law Society of Great Britain and Ireland 1995) Commentary on Canon 23; see also James A Coriden, *An Introduction to Canon Law* (Paulist Pres, 1990) 159.

³⁰⁸ CCL Canon 23.

³⁰⁹ CCL Canon 24.1.

³¹⁰ CCL Canon 24.1.

³¹¹ CCL Canon 25.

³¹² CCL Canon 26.

³¹³ CCL Canon 25.

³¹⁴ CCL Canons 27 and 28.

the force of law.³¹⁵ (When the conditions set out in the canons are fulfilled, this material source can become an instrumental source).

Custom and the Law of the Church of Ireland

Writing in 1861, Stopford acknowledged that in ancient times some locally enacted canons or provisions, acquired a wider usage and appeal: they were accepted as ‘custom for the sake of their practical wisdom. The canons of Antioch, A.D. 341, and the African canons, are remarkable instances.’³¹⁶ He also held the view that custom has no legal force where a matter is provided for by Statute or rubric: ‘[C]ustom may be relevant where the rubrics are silent.’ In that connection he highlighted *Shipdam’s Case*³¹⁷ which concerned the excommunication of a woman who, when she came to church for the Churching of Women, did not observe the ‘custom’ of kneeling, facing the east for prayer, while wearing a veil, a practice which ‘was certified by divers bishops to be the common custom of the Church of England.’³¹⁸

The PCLCCAC identify custom as one of the possible ‘sources and forms of law’ within Anglicanism: ‘[h]istorical sources recognised as such in the canonical tradition, including custom, have such status within a church as may be prescribed by law.’³¹⁹

There are residual references to custom within the legal framework of the Church of Ireland; notably in the Canons.³²⁰ Archbishops and bishops are obliged ‘at all times of their public ministration of the services of the Church’ to use ‘the customary ecclesiastical apparel of their order.’³²¹ Ordinations are to be carried out on certain days ‘in accordance with the ancient customs of the Church.’³²² The notes in the Preface to the Ordinal lay down that questions concerning the form of service, or its conduct, are to be determined by the bishop ‘in accordance with the rubrics of the service and having regard to tradition and local custom.’³²³

³¹⁵ John P Beal, James A Coriden, Thomas J Green, *New Commentary on the Code of Canon Law* (Paulist Press 2000) 87.

³¹⁶ Edward A Stopford, *A Handbook of Ecclesiastical Law and Duty* (Hodges, Smith and Co 1861) 149.

³¹⁷ *Shipdam’s Case* 2 Rolle Abr 221; see also Edward A Stopford, *A Handbook of Ecclesiastical Law and Duty* (Hodges, Smith and Co 1861) 149-55.

³¹⁸ Edward A Stopford, *A Handbook of Ecclesiastical Law and Duty* (Hodges, Smith and Co 1861) 152

³¹⁹ PCLCCAC, Principle 4.3.

³²⁰ There are limited references also in the Ecclesiastical Law of England: see eg Church of England Convocations Act 1966, s 1(1); Churchwardens Measure 2001 Ss 11(2) and 12; and Canon F1, para 2 of the Canons of the Church of England.

³²¹ CCI, ch IX s 12(1) (Canon 12.1).

³²² CCI, ch IX s 18 (Canon 18).

³²³ ‘Ordination Services Two: Notes’ in *Book of Common Prayer*, 551.

In common with the rest of the church, custom has shaped the canonical tradition in Ireland. Notwithstanding residual references to custom, its scope as a source of law today is hugely limited. Custom, which once had force of law, has either been assimilated into or superseded by the post-disestablishment laws of the Church of Ireland. Again, it must not merely be confused with local practice or usage. In the modern day Church of Ireland, where the paramount legislative authority of the General Synod is expressly articulated, where the delegated modes of secondary law-making are also clear, and notwithstanding the ever-increasing dependence on quasi-legislation, custom as a source of law is curtailed.

That said, as in England, in certain circumstances, long usage could permit something where there is no positive law to the contrary. Examples of this include: the practice, in some parishes, of the ‘promotion’ of incumbent’s churchwarden to people’s churchwarden and *vice-versa*, the playing of organ voluntaries, the collection and presentation of offerings at matins and evensong, the saying of a prayer or ascription before and after the sermon, and the procession of the bread and wine for the preparation of the table at the Eucharist. The practice required by Canon 18 of the English Canons of 1603 (and which were in force in Ireland from 1801 to 1871 at which point they were abrogated) of bowing in the Creed at the name of Jesus, persists in the Church of Ireland today as a matter of long-established custom, although not prescriptively.

A particular example of custom within the Church of Ireland relates to the governance of the National Cathedral.³²⁴ *The Form and Manner of Making of a Dean and Other Forms* sets out the provenance of current practice there.³²⁵ It emphasises that it has been ‘constant practice’³²⁶ and that the documents relied on (the *Decretum Electionis* 1530 and the Sarum Order) are ‘consuetudinary’.³²⁷ Lawlor asserts that the:

greater part of the proceedings here described has been traditional at St Patrick’s for at least a considerable time: it is probable that many features have been preserved without intermission from the foundation of the Deanery (...) The form now authorized follows the custom of many years (...).³²⁸

³²⁴ The National and Collegiate Church of St Patrick, Dublin; see also CCI, ch VII.

³²⁵ *The Form and Manner of Making of a Dean and Other Forms* (Ponsonby and Gibbs 1912).

³²⁶ *The Form and Manner of Making of a Dean and Other Forms* (Ponsonby and Gibbs 1912) 24.

³²⁷ *The Form and Manner of Making of a Dean and Other Forms* (Ponsonby and Gibbs 1912) 28.

³²⁸ *The Form and Manner of Making of a Dean and Other Forms* (Ponsonby and Gibbs 1912) 29-30.

*Custom: the Ius Liturgicum of the Bishop as a Source*³²⁹

These examples of liturgical usage warrant a comment on the place in the modern-day law of the Church of Ireland on a matter closely related to custom: the ancient *Ius Liturgicum* of the bishop. This was the inherent capacity and jurisdiction of the bishop to order public worship: it is part of the allowing or forbidding of custom. In the Church in Wales, Gainer argues that (notwithstanding the Acts of Uniformity) the *Ius Liturgicum* continued to apply there in the period between the Reformation and disestablishment (in 1920 in Wales), but describes the confused situation which pertains since 1920.³³⁰

This *Ius Liturgicum* is evidenced in the Ordinal of the Church of Ireland, which lays down the bishop's role of oversight, presidency and leading the worship of the people. The Canons also embody the principle of the *Ius Liturgicum*.³³¹ This is seen in those Canons which govern public worship: the dispensing of the requirement of worship in a particular church on a Sunday;³³² concerning diminishing from or adding to the rites and ceremonies prescribed in the Book of Common Prayer;³³³ the use (or mode of use) of additional forms of service or services for special occasions;³³⁴ adjudicating whether variations in liturgies are 'of substantial importance', 'reverent and seemly' or consonant with the doctrine of the Church;³³⁵ the giving of permission not to preach,³³⁶ directing when Services are to be conducted in Irish,³³⁷ giving permission for the participation of visiting ministers of other churches,³³⁸ or for the use of churches by other Christian denominations;³³⁹ determining the suitability or otherwise of ecclesiastical apparel;³⁴⁰ the frequency of Holy Communion,³⁴¹ when and where Holy

³²⁹ See generally Jeffrey Gainer, 'The *Jus Liturgicum* of the Bishop and the Church in Wales' in Norman Doe *Essays in Canon Law* (University of Wales Press 1992) 111-32; Colin Buchanan 'Some Loose Legal Cannons' in (1996-97) 4 *EccLJ* 646-54, 647-48.

³³⁰ Jeffrey Gainer, 'The *Jus Liturgicum* of the Bishop and the Church in Wales' in Norman Doe *Essays in Canon Law* (University of Wales Press 1992) 111-32, 114.

³³¹ See also Part Two: Chapter Two, 235-39.

³³² CCI, ch IX s 3 (Canon 3).

³³³ CCI, ch IX s 4 (Canon 4).

³³⁴ CCI, ch IX s 5(1) (Canon 5.1).

³³⁵ CCI, ch IX s 5 (2)(3) and (4) (Canon 5.2,3 and 4).

³³⁶ CCI, ch IX s 7 (Canon 7).

³³⁷ CCI, ch IX s 9 (Canon 9).

³³⁸ CCI, ch IX s 10 (Canon 10).

³³⁹ CCI, ch IX s 11 (Canon 11).

³⁴⁰ CCI, ch IX s 12(3) (Canon 12.3).

³⁴¹ CCI, ch IX s 13 (Canon 13).

Communion may be celebrated other than in a church;³⁴² the covering on a communion table;³⁴³ and hearing appeals arising from exclusion from Holy Communion.³⁴⁴

While these embody the vestiges of the principle of the *Ius Liturgicum*, their existence, of themselves, curtails its exercise in the Church of Ireland. The Canons embody the vestiges of a *Ius Liturgicum* of the bishop, and delineate quite clearly how and when it is to be exercised, to the extent that it may be argued that it has been abrogated entirely by the primary sources.

Anglican Sources beyond the Church of Ireland

The law-making of the Church of Ireland does not occur in a localised vacuum. There is a wider context: the instruments of worldwide Anglicanism while not of themselves laws of the Church of Ireland are, nonetheless, persuasive norms. In his address to the 1925 General Synod, the Archbishop of Dublin,³⁴⁵ said:

We of the Church of Ireland are an independent self-governing Church. We trace our origins to the very beginnings of Irish Christianity. We have traditions peculiarly our own, and characters which have been stamped upon our system by the varied and often difficult circumstances of our history. But, though independent and self-governing, and possessing our own qualities and characteristics, we are also part of a world-wide organic whole. The Church of Christ is not limited by race, language, geographical situation or even by the most tremendous events of history. She is world-wide. Nor can we rightly understand our own position until we view it in relation to the whole (...).

In relation to Christian communions outside our own land, we are most nearly linked with the Church of England and with the whole body of local Churches which, taken all together, form the Anglican Communion. That arises out of our history (...).³⁴⁶

As it prepared for disestablishment, the Church of Ireland turned to exemplars from the Anglican world when configuring its new canonical framework, starting with the commendation of the synodical system at the Lambeth Conference in 1867.³⁴⁷ It had affirmed fundamental principles: the diocese as the primary unit; the principle of consensual compact within voluntary bodies; and synods with lay involvement. It advised that under the rules of provincial synods ‘the Bishop, Clergy, and Laity should sit together, the Bishop presiding; that votes should be taken by orders, whenever

³⁴² CCI, ch IX s 14 (Canon 14).

³⁴³ CCI, ch IX s 15 (Canon 15).

³⁴⁴ CCI, ch IX s 16(2) (Canon 16.2).

³⁴⁵ John Allen Fitzgerald Gregg.

³⁴⁶ JGS [1925] liii.

³⁴⁷ Lambeth Conference 1867; Randall Thomas Davidson (ed), *The Six Lambeth Conference, 1867 – 1920* (SPCK 1929).

demanded; and that the concurrent assent of Bishop, Clergy, and Laity should be necessary to the validity of all acts of the Synod,³⁴⁸ and also that diocesan synods are ‘bound to accept positive enactments of a Provincial Synod (...)’.³⁴⁹

The Church of Ireland relied on worldwide precedents.³⁵⁰ At the heart of this was Sherlock’s comparative study, undertaken to ‘avoid some of the dangers of a first experiment.’³⁵¹ He gave guidance concerning ‘governing bodies’ of churches: voting by orders, lay involvement and the need for a two-thirds majority in a vote by orders to alter doctrines or formularies.³⁵²

On the opening day of the General Convention³⁵³ the Archbishop of Armagh said:

In arriving at these conclusions upon the various subjects submitted to their consideration, they had the guidance and experience of those branches of our Communion which have, like ourselves, been thrown upon their own resources for legislation and sustentation. They had the eighty-five years’ experience of the church in America (...). They have had the examples of the Churches in Canada, Australia, and New Zealand, which have profited by, and improved upon, the Constitution of the American Church, and finally, they had the benefit of the united experience of all voluntary Protestant Episcopal Churches throughout the world, embodied in a report drawn up with great care at the Lambeth Conference.³⁵⁴

The Journals of the General Synod are full of references to other parts of the Anglican world: fraternal resolutions;³⁵⁵ greetings;³⁵⁶ expressions of solidarity;³⁵⁷ visits of bishops;³⁵⁸ and opportunities were taken to attend Anglican conferences.³⁵⁹ The Board

³⁴⁸ Randall Thomas Davidson (ed), *The Six Lambeth Conference, 1867 – 1920* (SPCK 1929) 59.

³⁴⁹ Randall Thomas Davidson (ed), *The Six Lambeth Conference, 1867 – 1920* (SPCK 1929) 60.

³⁵⁰ William Sherlock, *The Constitution of the Church in the United States of America, in Canada, and New Zealand* (Hodges, Smith and Foster 1868).

³⁵¹ William Sherlock, *The Constitution of the Church in the United States of America, in Canada, and New Zealand* (Hodges, Smith and Foster 1868) x.

³⁵² William Sherlock, *The Constitution of the Church in the United States of America, in Canada, and New Zealand* (Hodges, Smith and Foster 1868).

³⁵³ 15th February 1870.

³⁵⁴ Journal of the General Convention [1870] 3.

³⁵⁵ eg that upon the appointment of a former Dean of Cork, William Connor Magee as Archbishop of York: JGS [1891] lxxi and his response JGS [1892] liv; to the Nippon Seikokai on the one hundredth anniversary of its organisation as a national church JGS [1988] 96.

³⁵⁶ By telegram to that of the Protestant Episcopal in 1922 JGS [1922] lxxxii; from the Primate of Japan JGS [1965] lxi.

³⁵⁷ e.g. with the Church in Wales, JGS [1895] lxxviii; again in JGS [1913] lxxviii; and again in JGS [1920] xcvi; with the Church of the Province of Southern Africa JGS [1988] 99.

³⁵⁸ eg the Bishop of Accra (West Africa) JGS [1910] lxxviii; the Archdeacon of Southern Rhodesia JGS [1919] xci; the Bishop of Central Africa JGS [1919] xcix; the Bishop of Bloemfontein and the Archdeacon of Port Elizabeth JGS [1923] ciii; the Bishop of Fuk-Kien JGS [1925] cxiv; the Bishop of Chekiang JGS [1930] lxxi and JGS [1933] lx; the Archdeacon of Madras JGS [1933] lxxviii; the Bishop of Chota Nagpur JGS [1934] liii; the Lord Bishop in Polynesia and the Archdeacon of Monmouth JGS [1935] lxxvi; the Bishop of St. Helena JGS [1938] lxxxviii; the Bishop of Fukien JGS [1948] lxxxix; the Bishop of Bermuda JGS [1949] lxxxix; the Bishop of Carlisle JGS [1950] cxi; the Bishop of Gambia and

of Missions was a nexus with the worldwide Church.³⁶⁰ In 1905-1906, the Home Reunion Committee embarked on a comparison with 'sister churches' in other parts of the world: England, Scotland, Canada, the United States of America, the West Indies, Australia and Tasmanian and the Province of New Zealand.³⁶¹

Since then, representatives of the Church of Ireland have attended the councils and meetings of the Anglican Communion.³⁶² There are examples of the desire to ensure consonance with developments in the Church of England;³⁶³ and, equally, a preparedness to move ahead on key issues at a different pace.³⁶⁴

The connectedness with the wider Anglican polity and legal framework is attested to in a variety of ways: the impetus for fresh thinking on lay involvement;³⁶⁵ the involvement of women in the work of the Church;³⁶⁶ patronage and clergy mobility;³⁶⁷ consideration of Christian teaching about war;³⁶⁸ the introduction of Christian Stewardship;³⁶⁹ the revision of liturgy;³⁷⁰ on-going liturgical development;³⁷¹ bilateral and multilateral cooperation on liturgy;³⁷² liturgical study of Baptism, Confirmation and First Holy

the Rio Pongas JGS [1954] cxi; the Bishop of Lahore JGS [1956] cix; the Bishop of Kurunagala, Ceylon JGS [1958] ci; Assistant Bishop of Bath an Wells, formerly of Trinidad and British Honduras JGS [1961] cxv; the Bishop of Zululand JGS [1963] cxxvii; the Bishop of Cariboo JGS [1966] lx; the Bishop of Nakuru JGS [1972] lxxix; the Bishop of Karamojo JGS [1977] lxiv; the Bishop of Sodor and Man JGS [1986] l; the Suffragan Bishop of Toronto JGS [1988] xlix; the Bishop of St Asaph JGS [1989] liii; the Bishop of Coventry JGS [1989] lxxiii; Bishop of Central Tanganyika JGS [1990] lxxxi.

³⁵⁹ e.g. The Bishop of Clogher was appointed as delegate to the Anglican Theological Commission for joint doctrinal discussions with the Orthodox Church – JGS [1971] 69.

³⁶⁰ JGS [1906] xcvi; JGS [1906] 231-33.

³⁶¹ JGS [1906] 303-06.

³⁶² ACC: JGS [1971] 134; JGS [1973] 75; International Anglican Consultation: JGS [1971] lxxxvii and cix; JGS [1995] 261; JGS [1999] 317.

³⁶³ eg in relation to the hours for solemnisation of matrimony JGS [1909] lxii.

³⁶⁴ eg remarriage in church of divorced persons; and, ordination of women.

³⁶⁵ JGS [1906] lxxii.

³⁶⁶ JGS [1915] lxxxii; JGS [1917] 319-26.

³⁶⁷ JGS [1939] 385.

³⁶⁸ JGS [1948] cxii.

³⁶⁹ JGS [1960] cxi.

³⁷⁰ JGS [1965] 211.

³⁷¹ Procedure of liturgical revision in the Church in Wales JGS [1966] 175; the English Draft Order of Holy Communion JGS [1967] 152; the book 'Modern Anglican Liturgies' JGS [1969] 149; the Church of England revision of the Occasional Offices JGS [1971] 189; the expansion of the Calendar of Saints to include commemorations from the Americas, Australia and the Pacific JGS [1971] 190; the Church of England report 'Christian Initiation' on Confirmation JGS [1972] 188; the establishment of an international Joint Liturgical Group (JLG) JGS [1973] 237; authorization of the JLG Lectionary by the Episcopal Church in Scotland, the Provinces of South Africa and Central Africa JGS [1973] 238; Revised Funeral Services in England and the USA JGS [1977] 172; the role of church buildings in England JGS [1977] 173; the Alternative Service Book in England JGS [1981] 188; the Psalter – USA, Canada and Scotland JGS [2001] 290.

³⁷² eg Church of England, JGS [1974] 222; Wales and Scotland re Lectionary, JGS [1993] 314.

Communion;³⁷³ visits of officers of the Anglican Communion;³⁷⁴ an engagement with the resolutions of the ACC;³⁷⁵ formal communication;³⁷⁶ and, straightforward practical insights such as contents of churches.³⁷⁷

Specific studies have consciously turned to Anglicanism in undertaking their work: the Canons;³⁷⁸ auxiliary ministry;³⁷⁹ the remarriage of divorced persons;³⁸⁰ the ordination of women;³⁸¹ discipline and tribunals;³⁸² Communion of the baptised but unconfirmed;³⁸³ and the interchangeability of ministries and ecumenical canons.³⁸⁴ Instruments of other Anglican churches were adduced as exemplars of how similar issues were responded to canonically in other jurisdictions. Some were adopted, or adapted or rejected by the Church of Ireland.

The first formal reception (albeit without legal implication) of a document emanating from a worldwide Anglican context was in 1964: ‘The Mutual Responsibility and Interdependence in the Body of Christ’.³⁸⁵ This has been followed by the debate in the Church of Ireland about a wide range of global Anglican concerns: the nature of communion;³⁸⁶ Anglican diversity;³⁸⁷ and the disputes within Anglicanism.³⁸⁸

³⁷³ eg Canada, TEC and New Zealand, JGS [1974] 222-23; ACC, JGS [1974] 222-23; ‘The truth shall make you free’ Report of the Lambeth Conference 1988 Resolutions 76-78, JGS [1989] 212.

³⁷⁴ eg Anglican Executive Officer: JGS [1966] xliii.

³⁷⁵ eg Resolutions of ACC-8, JGS [1991] 82.

³⁷⁶ eg concerning ordination of women debate, JGS [1976] cix.

³⁷⁷ England, Wales and Scotland, followed: JGS [1988] 31.

³⁷⁸ JGS [1971] lxxxvii and cix; JGS [1973] 246-73. JGS [1974] 226-27; England followed: ‘Minutes of The Select Committee on the Canons 1971-1974’, Unpublished Minute Book at the RCB Library, Dublin; ‘Minutes of The Select Committee on the Canons 1971-1974’, Uncatalogued Minute Book at the RCB Library, Dublin (including correspondence from Chancellor, The Reverend E. Garth Moore, Corpus Christi College, Cambridge).

³⁷⁹ JGS [1973] 276; JGS [1974] 279; England followed: JGS [1974] 281-84; JGS [1974] 292-300; TEC, North India, South India and Pakistan followed: JGS [1974] 285f.

³⁸⁰ Other Christian churches followed: JGS [1974] 234; ‘the position in the Anglican Communion’: JGS [1975] 180; Lambeth Conference 1968, Resolution 23 and TEC, England, Canada, New Zealand, Australia and Central Africa followed: JGS [1975] 190-95; Scotland and the West Indies followed: JGS [1976] 188-9; Scotland and England followed: JGS [1982] 239; Scotland, Wales and England followed: JGS [1985] 249-50.

³⁸¹ No wider consciousness in first year: JGS [1978] 207; ‘consultation with others both inside and outside the Anglican Communion’: JGS [1979] 211; ‘preparatory materials for Lambeth 1978’: JGS [1979] 211-3 and Appendix A 215-16; Lambeth Conference 1968, Resolution 32, and, Canada and Wales followed: JGS [1981] 203-05; ‘other Anglican Provinces’ followed: JGS [1989] 220 and 244-45.

³⁸² New Zealand followed: JGS [2008] 247, para 17 (this author tabled the material); Australia examined: Archive of the Bishop of Cork CDC-3; compare CCI, ch VIII, s 19(b) and New Zealand Title D Canon 1 Part B(1).

³⁸³ JGS [1979] lxxxi and xcvi; JGS [1991] lxxiv; reference to ‘Anglican norms’: JGS [1993] 335 at para 3.

³⁸⁴ South India examined: JGS [2006] 319; Wales and England studied: JGS [2007] 321.

³⁸⁵ JGS [1964] lxx and lxxiii.

³⁸⁶ In the wake of ‘The Virginia Report’: JGS [2002] 123; JGS [2003] 165-67; preliminary response in 1999: JGS [2000] 132-33; ‘Anglican looseness and ambiguity as a blessing’: JGS [2000] 132; ‘a

Conversely, at times, the Church of Ireland has referred an issue of concern to the wider Anglican structures.³⁸⁹

There are examples of consonance between the law of the Church of Ireland and those resolutions.³⁹⁰ There are also resolutions, such as that of 1998 on human sexuality, which some regard as persuasive, but which have not been incorporated into the law of the Church of Ireland.³⁹¹ In contrast, there are examples of Lambeth resolutions which form the sole basis for the Church of Ireland's praxis on a particular matter: the discipline on eucharistic hospitality is not set out in the internal law of the Church of Ireland, but the practice enjoined in Resolution 45 of Lambeth 1968 is adopted locally.

In recent years there has been a growing consciousness in Anglicanism of the place of canon law. Norman Doe has been to the fore in this internationally.³⁹² Most significantly, in 1998, Doe's work - *Canon Law in the Anglican Communion* - was published.³⁹³ This was the fruit of an amassing of the constitutions, Canons and other forms of law of churches in the Anglican Communion for analysis, comparison and, crucially, the synthesis of, not only similarities and differences, but also, positing the raw material of a coherent phenomenon. His ground-breaking analysis tended to the conclusion that while there is an overall legal unity in the Anglican Communion, such an assertion 'may be made only when agreed criteria are found to give it definition.'³⁹⁴ He identified those criteria. Thus the identification of fundamental principles

necessary corollary of full communion': JGS [2003] 165-67; 'not a given to be preserved strategically at whatever the cost': JGS [2003] 165.

³⁸⁷ JGS [2003] 166.

³⁸⁸ JGS [2004] lii-liii; JGS [2004] lii (the subject was raised again in JGS [2005] lxi).

³⁸⁹ eg 'the uncharitable statements in the Thirty-Nine Articles': JGS [1975] lxxvii and JGS [1976] 75-76.

³⁹⁰ eg Lambeth Conference 1998, Resolution III.1(a), the authority of scripture.

³⁹¹ Lambeth Conference 1998, Resolution I.10.

³⁹² Norman Doe, *The Legal Framework of the Church of England* (Clarendon Press 1996); prior to this there had been a brief introduction to English Canon law: E Garth Moore, *An Introduction to English Canon Law* (Clarendon Press 1967); E Garth Moore, *An Introduction to English Canon Law* (2nd edn, Mowbray 1985); Timothy Briden and Brian Hanson, *Moore's Introduction to English Canon Law* (3rd edn, Mowbray 1992); a study of the governing liturgy: Rupert DH Bursell, *Liturgy, Order and the Law* (Clarendon Press 1996); a number of handbooks: see eg Kenneth M MacMorran, *Handbook for Churchwardens and Parochial Church Councillors* (First edition, Mowbray 1921) [There have been fourteen subsequent editions]; Lynne Leeder, *Ecclesiastical Law Handbook* (Sweet & Maxwell 1997); and some practitioners' guides: WL Dale, *The Law of the Parish Church* (Butterworths 1932) [there were subsequent editions in each of 1945, 1957, 1967, 1989 and there was an edition in 1998]; others have followed suit since: see eg Mark Hill *Ecclesiastical Law* (3rd edn, Oxford University Press 2007), James Behrens, *Practical Church Management* (Gracewing 1998); David Parrott, *Your Church and the Law* (2nd edn, Canterbury Press 2011); and similar work has been undertaken in other jurisdictions such as New Zealand: Noel Cox, *Church and State in the Post-Colonial Era: the Anglican Church and the Constitution in New Zealand* (Polygrapha Ltd 2008).

³⁹³ Norman Doe, *Canon Law in the Anglican Communion* (Clarendon Press 1998).

³⁹⁴ Norman Doe, *Canon Law in the Anglican Communion* (Clarendon Press 1998) 374.

underlying the autonomous legal systems of the global Anglican ecclesial units had its nascence.³⁹⁵

Crucially, in 2001, Doe addressed the Primates in Kanuga.³⁹⁶ His paper articulated ‘the role which the canon law of individual Anglican churches plays in the wider context of the global Anglican Communion.’³⁹⁷ It laid out the purposes of Canon Law as a servant of the Church, as a means of articulating its ecclesiology, and as a facilitator of its life and mission.³⁹⁸ It examined roles for Canon Law within an Anglicanism in the midst of conflict: as a ‘centripetal force’ promoting communion; neutral in many internal respects; or, at times, having a ‘centrifugal’ effect, thus pushing churches apart.³⁹⁹ The concept of a ‘fundamental common Anglican canon law’ was put before the Primates.⁴⁰⁰

The Primates were told that Anglican Common Law ‘exists as an abstract, objective reality.’⁴⁰¹ Alluding, implicitly, to his own work in this area, Doe said:

The constitution of the principles of the common Anglican canon law is a scientific task, based on the extraction of common provisions shared by churches in the Communion. Indeed, these coincidences, and the principles which flow from them, indicate well, even define, the nature of the Anglican Communion itself: individual canonical systems, and the common law derived from them, represent a concrete expression of the very character of Anglicanism and Anglican polity. The collective effect of similarities between individual canonical systems is fundamental Anglican canon law, the *ius commune* of the Anglican Communion, its living, unwritten, common law.⁴⁰²

Most significantly, Doe put it to the Primates, that while, ‘on balance, the existence of weaknesses would seem to suggest that centripetal law is not sufficiently developed to protect global communion and to effect responsibility in the exercise of autonomy (...)’, nonetheless canon law has the potential to develop communion, and to enhance it.⁴⁰³ Such an enterprise, it was suggested, was consonant with The Virginia Report (and specifically with Resolution III.8 of the Lambeth Conference 1998) and, crucially:

³⁹⁵ Norman Doe, *Canon Law in the Anglican Communion* (Clarendon Press 1998) 375; he developed the further in Norman Doe, ‘The Common Law of the Anglican Communion’ (2003) 7 *EccLJ* 4, 8-9 and 13.

³⁹⁶ Kanuga, North Carolina.

³⁹⁷ Norman Doe, ‘Canon Law and Communion’ (2001-02) 6 *EccLJ* 241.

³⁹⁸ Norman Doe, ‘Canon Law and Communion’ (2001-02) 6 *EccLJ* 241, 243-44.

³⁹⁹ Norman Doe, ‘Canon Law and Communion’ (2001-02) 6 *EccLJ* 241, 253-55.

⁴⁰⁰ Norman Doe, ‘Canon Law and Communion’ (2001-02) 6 *EccLJ* 241, 255.

⁴⁰¹ Norman Doe, ‘Canon Law and Communion’ (2001-02) 6 *EccLJ* 241, 255.

⁴⁰² Norman Doe, ‘Canon Law and Communion’ (2001-02) 6 *EccLJ* 241, 255.

⁴⁰³ Norman Doe, ‘Canon Law and Communion’ (2001-02) 6 *EccLJ* 241, 258-59 and 263.

global communion would become a juridical reality for each particular church. The canonical option would provide discipline at the level that matters: the particular church. If global communion and compliance with the principles of the moral order are to be taken seriously, converting them into law in each church, would mean that they would become enforceable: the use of law would promote compliance in a concrete way; it is axiomatic that response at a juridical level is stronger than at a moral level.⁴⁰⁴

The Primates were exhorted to acknowledge the existence of the common law of the Anglican Communion.⁴⁰⁵ They did, and requested that further work be undertaken, and asked that a consultation of legal advisers be convened.⁴⁰⁶ The scene was set for a consultation about those principles.⁴⁰⁷ The consultation found broad agreement on forty-four principles, and established six propositions.⁴⁰⁸ The concept of ‘the *ius commune* of the Anglican Communion’ emerged.⁴⁰⁹

The outcomes were presented to the Primates in April 2002 who ‘went so far as to suggest that the canon law of the Churches might constitute a fifth “instrument of unity”’.⁴¹⁰ Later that year, in Hong Kong the ACC unanimously welcomed the establishment of an Anglican Communion Legal Advisers Network (ACLAN) which would ‘produce a statement of principles of Canon Law common within the Communion.’⁴¹¹

⁴⁰⁴ Norman Doe, ‘Canon Law and Communion’ (2001-02) 6 *EccLJ* 241, 260.

⁴⁰⁵ Norman Doe, ‘Canon Law and Communion’ (2001-02) 6 *EccLJ* 241, 263.

⁴⁰⁶ John Rees ‘Conference Report of the Anglican Communion Legal Advisers’ Consultation: 6-13 March 2002’ in (2002) 6 *EccLJ* 399, 399. See also Report of the Primates’ Meeting 2002 paragraph 5 at <http://www.anglicancommunion.org/acns/news.cfm/2002/4/17/ACNS2959> accessed on 2 February 2012; and Anglican Communion Legal Advisers’ Network <http://www.acclawnet.co.uk/aims.php> accessed 2 February 2012.

⁴⁰⁷ John Rees ‘Conference Report of the Anglican Communion Legal Advisers’ Consultation: 6-13 March 2002’ in (2002) 6 *EccLJ* 399; Norman Doe, ‘The Common Law of the Anglican Communion’ (2003) 7 *EccLJ* 4.

⁴⁰⁸ John Rees ‘Conference Report of the Anglican Communion Legal Advisers’ Consultation: 6-13 March 2002’ in (2002) 6 *EccLJ* 399, 400-01.

⁴⁰⁹ Norman Doe, ‘The Common Law of the Anglican Communion’ (2003) 7 *EccLJ* 4, 10; a concept utilized also by RH Helmholz ‘Richard Hooker and the European *Ius Commune*’ in (2001) 6 *EccLJ* 4; see also Norman Doe, ‘The Contribution of Common Principles of Canon Law to Ecclesial Communion in Anglicanism’ in (2008) 10 *EccLJ* 71.

⁴¹⁰ John Rees ‘Conference Report of the Anglican Communion Legal Advisers’ Consultation: 6-13 March 2002’ in (2002) 6 *EccLJ* 399, 401; Report of the Meeting of the Primates of the Anglican Communion (10-17 April 2002) Canterbury Paragraph 6 as found at:

< <http://www.anglicancommunion.org/acns/news.cfm/2002/4/17/ACNS2959> > accessed 2 February 2012.

⁴¹¹ James M Rosenthal and Margaret Rodgers (compilers), *For the Life of the World: The Official Report of the 12th Meeting of the Anglican Consultative Council, Hong Kong, 2002* (Morehouse Publishing 2003), Resolution 13; *Anglican Consultative Council, Hong Kong, 2002* (Morehouse Publishing, 2003), Resolution 13; ACC-12 Resolution 13.

< <http://www.anglicancommunion.org/communion/acc/meetings/acc12/resolutions.cfm#s13> > accessed 2 February 2012.

All of this was taking place against the backdrop of emerging conflict about human sexuality;⁴¹² the blessing of same-sex partnerships;⁴¹³ ordination and homosexuality;⁴¹⁴ coordinate episcopal jurisdiction; the extra-territorial exercise of episcopal jurisdiction; lay eucharistic presidency; recognition of ministries; the ordination of women, and, to a certain extent, polygamy.⁴¹⁵ The Primates met twice in 2003.⁴¹⁶

In the specific context of discord within Anglicanism the Primates affirmed the importance of canon law generally, and the work of the ACLAN.⁴¹⁷ At their request the Archbishop of Canterbury established the Lambeth Commission on Communion in October 2003. The Commission produced *The Windsor Report 2004*.⁴¹⁸ It alluded to the work being done in the field of canon law.⁴¹⁹

Emphasising the nature of Anglicanism as a voluntary association of churches it put forward as ‘overwhelming’ the case for adoption of an Anglican Communion Covenant (hereinafter, ‘Covenant’).⁴²⁰ The journey towards a Covenant began.⁴²¹ Widespread consideration of *The Windsor Report* and the Covenant proposal, as well as diversity of

⁴¹² Stephen Bates. *A Church at War: Anglicans and Homosexuality* (IB Taurus 2004) 125; Lambeth Conference 1998, Resolution I.10.

< <http://www.lambethconference.org/resolutions/1998/1998-1-10.cfm> > accessed 2 February 2012.

⁴¹³ For the chronology and background see the website of the Diocese of New Westminster < <http://www.samesexblessing.info/cnurse/DotNetNuke/Default.aspx?tabid=72> > accessed on 1 February 2012; see explanatory website of the Diocese of New Westminster

< <http://www.samesexblessing.info/cnurse/DotNetNuke/Default.aspx?tabid=75> > accessed on 1 February 2012; < <http://www.samesexblessing.info/> > accessed on 1 February 2012.

⁴¹⁴ See generally eg Stephen Bates, *A Church at War: Anglicans and Homosexuality* (IB Taurus 2004).

⁴¹⁵ Norman Doe, ‘Canon Law and Communion’ (2001-02) 6 *EccLJ* 241, 246 fn 42.

⁴¹⁶ See < <http://www.anglicancommunion.org/acns/news.cfm/2003/5/12/ACNS3439> > accessed 2 February 2012; < <http://www.anglicancommunion.org/acns/news.cfm/2003/8/8/ACNS3544> > accessed 2 February 2012; < <http://www.anglicancommunion.org/acns/news.cfm/2003/10/16/ACNS3633> > accessed 2 February 2012.

⁴¹⁷ See < <http://www.anglicancommunion.org/acns/news.cfm/2003/10/16/ACNS3633> > accessed 2 February 2012.

⁴¹⁸ *Report of the Lambeth Commission on Communion: The Windsor Report 2004* (The Anglican Communion Office 2004) (hereinafter *The Windsor Report 2004*).

⁴¹⁹ *The Windsor Report 2004* para 113; for the recommendation of a domestic ‘Communion Law’ in each province see *The Windsor Report 2004* para 117.

⁴²⁰ *The Windsor Report 2004* para 118-20; see generally J Rees, ‘Covenant and Communion’ in (2012) 14(2) *EccLJ* 235.

⁴²¹ ‘Windsor Report Reception Process’ at

< <http://www.anglicancommunion.org/commission/process/reception/index.cfm> > accessed on 2 February 2012; Primates’ Meeting 2005 – Communiqué available at

< <http://www.anglicancommunion.org/communion/primates/history/2005/index.cfm> par.9 > accessed on 2 February 2012; *Towards an Anglican Covenant* at

< <http://www.anglicancommunion.org/commission/covenant/consultation/index.cfm> > accessed on 2 February 2012; Acc-13 Resolution 27 available at

< <http://www.anglicancommunion.org/communion/acc/meetings/acc13/resolutions.cfm#s27> > accessed 2 February 2012.

reaction gained momentum.⁴²² The Archbishop of Canterbury established a Covenant Design Group: between May 2006 and 2008 it produced a preliminary report and three drafts (Nassau,⁴²³ Saint Andrew's,⁴²⁴ and, Ridley Cambridge⁴²⁵). ACC-14 expressed the view 'that an Anglican Communion Covenant may provide an effective means to strengthen and promote our common life as a Communion';⁴²⁶ A small working group was established to finalise the text.⁴²⁷ This was presented in November 2009.⁴²⁸ The final version was sent to the churches in December 2009.⁴²⁹

The Covenant contains a preamble and four sections.⁴³⁰ The preamble sets out the reasons for the Covenant.⁴³¹ The four sections are: 'Our Inheritance of Faith' (core principles, what Anglicans believe); 'The Life We Share with Others: Our Anglican Vocation' (the purposes of Anglican churches); 'Our Unity and Common Life' (the way Anglican churches live together and the structures which enable that); and 'Our

⁴²² See eg Norman Doe, 'The Anglican Covenant Proposed by the Lambeth Commission' in (2005-06) 8 *EccLJ* 147; Jonathan Clatworthy and David Taylor (eds) *The Windsor Report: A Liberal Response* (O Books 2005); Andrew Linzey, *Has Anglicanism a Future? A Response to the Windsor Report* (LGCM 2005); Andrew Linzey and Richard Kirker (eds) *Gays and the Future of Anglicanism: Responses to The Windsor Report*, (O Books 2005); Terry Brown (ed), *Other Voices, Other Worlds: The Global Church Speaks Out on Homosexuality* (DLT 2006); Kenneth Stevenson (ed), *A Fallible Church: Lambeth Essays* (DLT 2007); Mark D Chapman (ed) *The Anglican Covenant: Unity and Diversity in the Anglican Communion* (T & T Clark 2008); Norman Doe, *An Anglican Covenant: Theological and Legal Considerations for a Global Debate* (Canterbury Press 2008); Philip Groves (ed), *The Anglican Communion and Homosexuality: A resource to enable listening and dialogue* (SPCK 2008).

⁴²³ The Nassau Draft: see < <http://www.anglicancommunion.org/acns/news.cfm/2007/2/19/ACNS4252> > accessed 2 February 2012.

⁴²⁴ Saint Andrew's Draft: see

< http://www.anglicancommunion.org/commission/covenant/st_andrews/communique.cfm > accessed 2 February 2012. This was the draft considered at the Lambeth Conference 2008: see *Lambeth Indaba: Capturing Conversations and Reflections from the Lambeth Conference 2008* available at < <http://www.lambethconference.org/resolutions/2008/> > accessed 4 February 2012.

⁴²⁵ See < http://www.anglicancommunion.org/commission/covenant/ridley_cambridge/commentary.cfm > accessed 2 February 2012.

⁴²⁶ ACC-14 Resolution 14.11

< www.anglicancommunion.org/communion/acc/meetings/acc14/resolutions.cfm#s11 > accessed 2 February 2012.

⁴²⁷ 'Anglican Covenant Working Group: Names Announced' (28 May 2009, ACNS, London) see < <http://www.anglicancommunion.org/acns/news.cfm/2009/5/28/ACNS4633> > accessed on 2 February 2012.

⁴²⁸ See < <http://www.anglicancommunion.org/commission/covenant/index.cfm> > accessed 2 February 2012.

⁴²⁹ See < <http://www.archbishopofcanterbury.org/articles.php/1504/> > accessed 2 February 2012; a Study Guide was launched in February 2011: see <

<http://www.anglicancommunion.org/acns/news.cfm/2011/2/17/ACNS4796> > accessed 3 February 2012.

⁴³⁰ An official study guide to the Covenant is available at

< http://www.anglicancommunion.org/commission/covenant/study_materials/index.cfm > accessed on 4 February 2012.

⁴³¹ The final text of the Anglican Communion Covenant is available at

< <http://www.anglicancommunion.org/commission/covenant/final/text.cfm> > accessed on 4 February 2012.

Covenanted Life Together’ (the procedures for adopting the Covenant and living by it, including practical mechanisms for resolving disputes).

The Covenant is currently being considered throughout Anglicanism. Initial responses include: no decision as yet;⁴³² adoption;⁴³³ qualified approval;⁴³⁴ regional discernment and consultation;⁴³⁵ the discouraging,⁴³⁶ rejection,⁴³⁷ and, another approved it in principle, but the decision awaits ratification.⁴³⁸ The Church of Ireland subscribed the Covenant at its General Synod on 13th May 2011.⁴³⁹

⁴³² As of 3 February 2012 this included the following provinces or regions: Bangladesh, Bermuda, Brazil, Burundi, Central Africa, Central America, Ceylon, Congo, Cuba, Falkland Islands, Honk Kong, Church of North India, Church of South India, Indian Ocean, Indonesia, Jerusalem and the Middle East, Kenya, Korea, the Lusitanian Church, Melanesia, Nigeria, Pakistan, Rwanda, Spain, Sudan, Tanzania, Uganda, Wales and West Africa.

⁴³³ Anglican Church of Mexico: < <http://anglicancommunion.org/acns/news.cfm/2010/6/30/ACNS4711> > accessed on 3 February 2012; Anglican n Church of Myanmar: noted, in passing, in this news story from ACNS < <http://www.anglicancommunion.org/acns/news.cfm/2011/1/30/ACNS4787> > accessed 3 February 2012; the Anglican Church of the West Indies: see < <http://www.anglicancommunion.org/acns/news.cfm/2011/1/30/ACNS4787> > accessed 3 February 2012; the Diocese of the Southern Cone: see < <http://www.anglicancommunion.org/acns/news.cfm/2011/12/21/ACNS5003> > accessed on 3 February 2012; and the Anglican Church of Papua New Guinea: see < <http://www.anglicancommunion.org/acns/news.cfm/2011/12/15/ACNS4998> > accessed on 3 February 2012; also ‘Anglican Church of Papua New Guinea backs Anglican Covenant’ *The Church of England Newspaper* (23 December 2011, London) 7.

⁴³⁴ The Province of South East Asia: see < <http://www.anglicancommunion.org/acns/news.cfm/2011/5/8/ACNS4858> > accessed on 3 February 2012 (however, for the ‘Preamble to the Letter of Accession’ issued by the Province see <http://www.anglican.org.sg/index.php/blog/comments/preamble_to_the_letter_of_accession_province_of_southeast_asia > accessed 3 February 2012); Church of Ireland subscribed the Covenant: see < <http://www.anglicancommunion.org/acns/news.cfm/2011/5/13/ACNS4860> > accessed on 3 February 2012.

⁴³⁵ Anglican Church of Australia: see < http://www.anglican.org.au/Web/Website.nsf/content/Media_Release_-_Australian_Anglicans_back_nationwide_debate_on_Covenant___ > accessed 3 February 2012; Anglican Church of Canada: Anglican Church of Canada, General Synod 2010, Resolution A137. See < <http://archive.anglican.ca/gs2010/resolutions/a137/> > accessed on 3 February 2012.; the Church of England: see < <http://www.anglicancommunion.org/acns/digest/index.cfm/2010/11/24/Church-of-England-General-Synod-supports-Anglican-Covenant-process> > accessed on 3 February 2012; Draft Act of Synod Adopting the Anglican Communion Covenant’ GS1809 General Synod of the Church of England: Report of Proceedings 2010 Vol.41 No.3 at 80; TEC: see 76th General Convention of TEC, Resolution D020 at < http://gc2009.org/ViewLegislation/view_leg_detail.aspx?id=954&type=Final > accessed on 3 February 2012; Japan: see ‘Japan urged to go forward with the Covenant ”warts and all”’ *The Church of England Newspaper* (10 December 2010, London) 7; New Zealand: see < <http://anglicantaonga.org.nz/News/General-Synod/covenant> > accessed 3 February 2012; Scotland: see ‘Draft Minutes of the General Synod 2011 of the Scottish Episcopal Church’ at <http://www.scotland.anglican.org/index.php/general_synod/news_entry/draft_minutes_of_general_synod_2011/ > accessed 3 February 2012.

⁴³⁶ ‘GAFCON primates vote of no confidence in the Covenant’ *The Church of England Newspaper* (3 December 2010, London) 1.

⁴³⁷ Episcopal Church in the Philippines: ‘Philippine “no” to the Anglican Covenant’ *The Church of England Newspaper* (4 August, 2011, London) 4.

⁴³⁸ See < <http://www.thinkinganglicans.org.uk/archives/004639.html> > accessed on 3 February 2012.

⁴³⁹ JGS [2011] xcv: voting House of Representative – Ayes 235 and Noes 52; House of Bishops Ayes – 9 and Noes – 1.

In parallel, work on the PCLCCAC has been on-going.⁴⁴⁰ The PCLCCAC (published in 2008) proffered one hundred ‘macro-principles’ and six hundred and fifty ‘micro-principles’ in eight parts.⁴⁴¹ The eight parts are headed: I. Church Order; II. The Anglican Communion; III. Ecclesiastical Government; IV. Ministry; V. Doctrine and Liturgy; VI. Ecclesiastical Rites; VII. Church Property; and VIII. Ecumenical Relations.⁴⁴²

According to the PCLCCAC itself, a ‘principle of canon law’ is:

a foundational proposition or maxim of general applicability which has a strong dimension of weight, is induced from the similarities of the legal systems of churches, derives from the canonical tradition or other practices of the church, expresses a basic theological truth or ethical value, and is about, is implicit in, or underlies, canon law.⁴⁴³

The convenor of the ACLAN, John Rees, has consistently emphasised that the PCLCCAC enterprise was descriptive, forensic and educational.⁴⁴⁴ The principles are ‘by their nature organic and open to development and refinement.’⁴⁴⁵ Most important of all, they ‘are *principles*, not *laws*.’⁴⁴⁶

With the exception of the Bishops, all of whom had heard of the PCLCCAC, the majority of others surveyed had not heard of them.⁴⁴⁷ That aside, a huge majority thought it either very important or important that the law of the Church of Ireland be

⁴⁴⁰ In Toronto (2005), in Nassau (2006) and in 2007. See N. Doe, ‘The Contribution of Common Principles of Canon Law to Ecclesial Communion in Anglicanism’ in 10 (2008) *EccLJ* 71; *The Principles of Canon Law Common to the Churches of the Anglican Communion* (The Anglican Consultative Council 2008) 97-111.

⁴⁴¹ *The Principles of Canon Law Common to the Churches of the Anglican Communion* (The Anglican Consultative Council 2008) 103.

⁴⁴² See generally Norman Doe, ‘The Contribution of Common Principles of Canon Law to Ecclesial Communion in Anglicanism’ in (2008) 10 *EccLJ* 71, 78-79; included also, with some minor amendments, in *The Principles of Canon Law Common to the Churches of the Anglican Communion* (The Anglican Consultative Council 2008) 97-111; for the process since see ACC-14, resolution 14.20

< <http://www.anglicancommunion.org/communion/acc/meetings/acc14/resolutions.cfm#s20> > accessed 2 February 2012.

⁴⁴³ *The Principles of Canon Law Common to the Churches of the Anglican Communion* (The Anglican Consultative Council 2008) 95-96.

⁴⁴⁴ *The Principles of Canon Law Common to the Churches of the Anglican Communion* (The Anglican Consultative Council 2008) 13.

⁴⁴⁵ *The Principles of Canon Law Common to the Churches of the Anglican Communion* (The Anglican Consultative Council 2008) 14.

⁴⁴⁶ *The Principles of Canon Law Common to the Churches of the Anglican Communion* (The Anglican Consultative Council 2008) 15.

⁴⁴⁷ Chancellors – 72%; registrars – 55%; clergy – 77.5%; laity – 67%.

consonant with the PCLCCAC.⁴⁴⁸ Some surveyed identified gaps in the law of the Church of Ireland.⁴⁴⁹ The majority thought, in addressing gaps, the appropriate methodology involved examining the example of laws in wider Anglicanism.⁴⁵⁰ Others thought that it may or may not be appropriate depending on the circumstances (indicating clear openness to such an approach).⁴⁵¹

The laws of other parts of the Anglican Communion are not sources of law, in the strict sense, for the Church of Ireland. Nonetheless, the frequent dependence of the Church of Ireland on the example of other parts of the Communion, the measuring of consonance over and against the rest of the Anglican world, the subscription of the Covenant, and the positive response to the PCLCCAC all indicate the influence these materials have on the Church of Ireland. By inverting the methodology and extrapolating from the criteria, an analysis of the laws of the Church of Ireland using the PCLCCAC as a yardstick, might identify parts of Church of Ireland law where there are diversions or even gaps according to Anglican norms.

It is clear that by subscribing the Covenant the Church of Ireland was not incorporating it or adopting it formally into its own law. It is too early to say what normative effect the subscribing of the Covenant will have. The church was, however, acknowledging the Covenant as a parallel instrument, consonant with the law of the Church of Ireland, which will be implemented by it.

*Ecumenical and International Agreements*⁴⁵²

The same is true of some international and ecumenical agreements such as the Porvoo Agreement.

The Church of Ireland was involved in the ecumenical movement from the outset of the twentieth century.⁴⁵³ Today, this is manifested at every level of the church's life:

⁴⁴⁸ Bishops – 10% very important and 80% important; chancellors – 17% very important and 83% important; registrars – 20% very important and 80% important; clergy – 14.5% very important 68.5% important; and laity – 9% very important and 79% important.

⁴⁴⁹ Bishops - 60%; chancellors - 17%; registrars - 36%; clergy - 23%; laity - 13%.

⁴⁵⁰ Bishops - 20%; chancellors - 14%; registrars - 18%; clergy - 18%; laity – 14.5%.

⁴⁵¹ Bishops - 80%; chancellors - 72%; registrars - 82%; clergy - 77%; laity – 79.5%.

⁴⁵² For texts see Harding Meyer and Lukas Vischer (eds), *Growth in Agreement* (Paulist Press 1984).

⁴⁵³ See generally Ian Ellis, *Vision and Reality: A Survey of Twentieth Century Irish Inter-Church Relations* (Institute of Irish Studies 1992).

interpersonally and parochially;⁴⁵⁴ in the local diocese; through the work of the Committee for Christian Unity and in the consultations, reports, agreements, common statements and covenants. Each of these is a manifestation of different levels of ecumenical encounter and agreement. In a complex variety of ways they articulate agreement attained, usually after long study and dialogue, on the interface between theology, ecclesiology, history, sociology and different legal systems. Other churches also have their own norms governing ecumenical engagement.⁴⁵⁵

The extent to which any of these is a source of law for the Church of Ireland depends on the nature and status of the dialogue and the degree of agreement attained. The fruits of ecumenical dialogue are problematic for lawyers.⁴⁵⁶ The dialogues may be local or international, multi-lateral or bi-lateral. The Church of Ireland is a member of a number of ecumenical organisations each of which has its own constitutions and regulations to which, as a member church, the Church of Ireland subscribes.⁴⁵⁷ The Anglican-Roman Catholic International Commission has produced a number of reports.⁴⁵⁸ The Church of Ireland has discussed these but not incorporated them formally into its legal system.⁴⁵⁹ Most usually (as was the case with *Baptism, Eucharist and Ministry*⁴⁶⁰) the Church of Ireland submits its considered comments on a document.⁴⁶¹ Clearly these should be consonant with the beliefs and laws of the Church of Ireland, but cannot be described as a source of that law.

⁴⁵⁴ See generally André Birmelé (ed) *Local Ecumenism: How Church Unity is Seen and Practised by Congregations* (World Council of Churches 1984); Flora Winfield, *Growing Together: Working for Unity Locally* (SPCK 2002).

⁴⁵⁵ See eg Pontifical Council for Promoting Christian Unity, *Directory for the Application of Principles and Norms on Ecumenism* (CTS Publications 1993).

⁴⁵⁶ For the history of ecumenism generally see Ruth Rouse and Stephen Charles Neill (eds), *A History of the Ecumenical Vol I: 1517-1948* (3rd ed, 1986 World Council of Churches 1986) and Harold E Fey (ed), *A History of the Ecumenical Movement Vol II: 1948-68* (2nd edn, World Council of Churches 1986); for ecumenical theology see: Paul Avis, *Ecumenical Theology and the Elusiveness of Doctrine* (SPCK 1986).

⁴⁵⁷ eg World Council of Churches, Conference of European Churches, Churches Together in Britain and Ireland, Irish Council of Churches and the Irish Inter-Church Meeting.

⁴⁵⁸ *Eucharist Doctrine* (1971), *Elucidations on the Eucharist* (1979), *Ministry and Ordination* (1973), *Elucidations on Ministry and Ordination* (1979), *Authority in the Church I and II*; *Salvation and the Church* (1986), *The Church as Communion* (1991), *Life in Christ: Morals, Communion and the Church* (1993), *The Gift of Authority* (1999), and *Mary: Grace and Hope in Christ* (2005).

⁴⁵⁹ For ARCIC see JGS [1968] 60, [1975] 70, [1976] 61, [1977] 62, [1983] 82, [1984] 81, [1985] 66, [1986] 87, [1987] 85, [1988] 99, [1991] 87, [1993] 99, [2001] 135, [2004] 168 and [2006] 166.

⁴⁶⁰ 'Baptism, Eucharist and Ministry Faith and Order Paper No 111' (World Council of Churches 1982)

⁴⁶¹ See 'Baptism, Eucharist and Ministry' JGS [1985] 67 and Appendix C, 90.

Three agreements stand out as different: the Porvoo Common Statement (with the Nordic and Baltic Lutheran Churches),⁴⁶² the Fetter-Lane Agreement (with the Moravian Church in Great Britain and Ireland),⁴⁶³ and the Reuilly Common Statement (with the French Lutheran and Reformed Churches).⁴⁶⁴ In each of these instances the documents were put to the General Synod for adoption and subscription, but not formally incorporated into the canonical framework.⁴⁶⁵ Nonetheless, they are presumed to be consonant with the law of the Church of Ireland, declaratory of aspects of that law and, more especially, in themselves, regulate the ecclesiastical relationships involved. The Meißen Agreement between the Evangelical Church in Germany and the Church of England (1988) is in a different category in that the Church of Ireland was not a signatory, but subsequently, the House of Bishops agreed to implement ‘the spirit of the agreement.’⁴⁶⁶ Also relevant is the Bonn Agreement of 1931, which established full communion with the old Catholic Churches.

Of more recent significance is the fact that the Church of Ireland resolved to enter into a covenant relationship with the Methodist Church in Ireland in 2002.⁴⁶⁷ This will necessitate a framework for working locally together.⁴⁶⁸ Revision of the ecumenical canons of the Church of Ireland will be necessary, principally, to make provision for interchangeability of ministry.⁴⁶⁹

Conclusion

Nebulous sources - putative and intangible – which, by their very nature, fall within a spectrum, sometimes law, sometimes not, but almost always with legal effect or impact, called tertiary sources are identifiable within the law of the Church of Ireland. The most

⁴⁶² JGS [1995] 137 and 143; see also *The Porvoo Common Statement* (Council for Christian Unity of the General Synod of the Church of England 1993); *Together in Mission and Ministry: The Porvoo Common Statement* (Church House Publishing 1993); (this author represented the Church of Ireland in these conversations).

⁴⁶³ JGS [1998] 121 and 130-1; see also *Anglican-Moravian Conversations: The Fetter-Lane Common Statement* (Council for Christian Unity of the General Synod of the Church of England 1996); (this author represented the Church of Ireland in these conversations).

⁴⁶⁴ JGS [2000] 126 and 129-31; JGS [2002] 139; see also *Called to Witness and Service: The Reuilly Common Statement* (Church House Publishing 1999).

⁴⁶⁵ In contrast, the Church in Wales has interpreted the terms of some of these agreements into its canons – see generally N Doe, *The Law of the Church in Wales* (University of Wales Press 2002) 291-93.

⁴⁶⁶ This author was the corresponding participant in the conversations on behalf of the Church of Ireland.

⁴⁶⁷ JGS [2002] cxiii-cxv.

⁴⁶⁸ The text of the Covenant is available in JGS [2002] cxiv-cxv; see also Gillian Kingston, *Working out the Covenant: Guidelines for the Journey* (Church of Ireland Publishing 2008).

⁴⁶⁹ JGS [2010] 217-18; JGS [2011] 225; Statute of the General Synod [2011] c ii makes formal provision for the regulation of ecumenical partnerships by means of an enabling canon – Canon 11(A) ie CCI ch IX s 11(A).

definite and manifest are: decisions of the courts and tribunals, and opinions of the legal advisory committees. While not, of themselves, law, their authority is weighty. Less clear, is whether or not, and if so, in what circumstances, the following may be construed as sources of law: custom, the instruments of the Anglican Communion as well as international and ecumenical agreements.

Alongside the formal sources in the Church of Ireland there are instruments which are in the nature of ecclesiastic quasi-legislation and soft law. These are widely infused in the church's legal framework. The extent of the church's reliance on that phenomenon forms the case study in Part Two: Chapter Three.

It is to this investigation - the three case studies - that this work now turns in order to chart a path of reform.

Part Two:

A CRITICAL INVESTIGATION

OF THE SOURCES:

THREE CASE STUDIES

Part Two: Chapter 1

CASE STUDY I

THE CHANGING PATTERN OF CIVIL LAW IMPACT ON THE CHURCH OF IRELAND

Introduction

Part One identified the sources of law of the Church of Ireland: civil law sources (Chapter One), primary and secondary church law sources (Chapter Two) and, tertiary sources - predominantly quasi-legislation and soft law (Chapter Three). Part Two reverts to each, in turn, by way of investigative case study. These studies expose concerns which ought to be addressed by way of reform.

This chapter – the first of three case studies - contends, that the current time in the Church of Ireland is one of unprecedented preoccupation with the law of the State. Civil law is, in recent decades, having a greater impact on the life of the church; resulting in uncertainty, vulnerability, and revision of some key components of internal church law.

This coincides with a period of controversy about religion in Irish public life.¹ The interface between religion and law is a crucible of contention. As elsewhere, religion law is emerging as a sub-category within the law.² The Church of Ireland reported that in 2007 it had become involved in structured dialogue with the State.³ A new framework was established in 2011.⁴

This case study focuses on specific areas of change in the civil law and the church's consequential responses. In practice, those include: keeping apace with legislative change, internal dialogue and research, public statement, submissions and

¹ Deaglán de Bréadún and Paddy Clancy, 'No reporting exemption for clergy, says Taoiseach' *Irish Times* (15 July 2011, Dublin); Paul Cullen, 'Vatican relationship at new low' *Irish Times* (21 July 2011, Dublin) 'Martin calls on Taoiseach to explain his Vatican claims' *Irish Times* (4 September 2011, Dublin); Lorna Siggins, 'Taoiseach stands by Vatican criticism' *Irish Times* (6 September 2011, Dublin); Paul Melia 'Criticism of the church is "legitimate" admits Martin' *Irish Independent* (2 January 2012, Dublin) 23; 'New school model still tramples on the rights of the non-religious' *Irish Times* 14th April 2009; see also Roger Trigg, 'Religion in the Public Forum' in (2011) vol 13(3) *EccLJ* 274.

² For this development in the UK see generally Russell Sandberg, *Law and Religion* (Cambridge University Press 2011).

³ JGS [2008] 146 par.13.

⁴ Archive of the Bishop of Cork: CSD-01; see also Archbishop Diarmuid Martin, World Day of Peace Homily, 1st January 2012 found at <http://www.dublindiocese.ie/content/world-day-peace-homily> last accessed 2nd January 2012.

representations, the setting up of committees and working groups, compliance, the introduction of soft law or internal quasi-legislation, training for church members, infrastructural changes, the introduction of new church law, and the review and amendment of existing church law. The examples endorse the perception, corroborated in the survey, that civil law is having an ever-greater impact on church life.

The current period is very different from the immediate post-disestablishment era. Likewise, analysis of the Journals of the General Synod indicates that the pattern of on-going engagement with the law in the intervening years (1885 to 1989) took different forms from the recent, current phenomenon.

The Post-disestablishment Period Distinguished

The current experience is distinguishable from the energetic legal activity of the early post-disestablishment period when, uniquely, the implementation of the Irish Church Act 1869 was the all-consuming concern. The focus then was creating a framework for the continuity of the Church of Ireland:

[T]he perusal of these pages, will prove that in anxious times and troublous days, Bishop, Clergy and Laity alike, under the blessing of Almighty God, were enabled to work together in a spirit of hearty good-will and mutual forbearance, in order to forward to the utmost of their power the future prosperity, stability, and unity, of the ancient and Apostolic Church of Ireland.⁵

That task moulded the legal concerns of the time: articulating a Preamble and Declaration; framing the CCI, establishing a Representative Church Body (RCB), setting out new Canons and crafting a new *Book of Common Prayer* (BCP).

An examination of the Minutes Books of the Legal Committee of the period shows that in the five years following disestablishment the Committee met on one hundred and ninety-six occasions.⁶ Ninety-one of those meetings were in the first two years. The pattern of meetings then tapered to single figures by 1889 and settled on a stable pattern of between two and five meetings each year between 1891 and 1911. By 1912 and

⁵ *Journal of the General Convention* (1870) x.

⁶ Representative Church Body Library: Representative Church Body General Convention 1870. Minute Book of the Judicature Committee; and Representative Church Body Library: Representative Church Body Legal Committee minutes books: [Vol. I, 1870 – 1872], [Vol. II, 1872 – 1874], [Vol. III, 1874 – 1876], [Vol. IV, 1876 – 1877], [Vol. V, 1877 – 1880], [Vol. VI, 1880 – 1882], [Vol. VII, 1883 – 1884], [Vol. VIII, 1885 – 1886], [Vol. IX, 1887 – 1890], [Vol. X, 1891 – 1900], [Vol. XI, 1901 – 1908], [Vol. XII, 1908 – 1917], [Vol. XIII, 1918 – 1926].

1913 there was only one meeting a year.⁷ The principal concern at those meetings was the investigation of claims for private endowments made under section 29 of the Irish Church Act 1869.⁸ The trajectory of this engagement with, principally, one piece of legislation (the Irish Church Act 1869) was internal organisation, stabilisation, continuity, and preservation.

The Intervening Years

It would be wrong, however, to assume that the newly disestablished Church of Ireland was introspective to the point of introversion. The Journals of the General Synod attest to a church consistently engaged with issues of the time from 1871 until this day. Outward-looking concern characterises responses to major world events and political situations.⁹

⁷ The pattern of meetings was as follows: 1871 (43 meetings), 1872 (44), 1873 (28), 1874 (29), 1875 (23), 1876 (25), 1877 (20), 1878 (20), 1879 (11), 1880 (16), 1881 (8), 1882 (13), 1883 (10), 1884 (14), 1885 (11), 1886 (19), 1887 (11), 1888 (12), 1889 (9), 1890 (7), 1891 (4), 1892 (3), 1894 (2), 1895 (3), 1896 (5), 1897 (2), 1898 (6), 1899 (5), 1900 (4), 1901 (5), 1902 (4), 1903 (2), 1904 (2), 1905 (5), 1906 (6), 1907 (5), 1908 (4), 1909 (4), 1910 (3), 1911 (2), 1912 (1), 1913 (1).

⁸ JGS [1872] 154 (1st July 1871 and 19th March 1872 – 224 claims, of which 161 allowed, 53 disallowed and 10 still being considered); JGS [1873] 147 (1st July 1872, 527 claims); see also JGS [1876] 104.

⁹ Home Rule: JGS [1893] lix-lx; JGS [1893] lxxv; JGS [1893] 178-79; JGS [1911] 223, see also the Petition of 12th April 1912 in JGS [1913] 238-39; San Francisco earthquake: JGS [1906] lxxvii; the sinking of the Titanic: JGS [1912] lxiv – resolution of 17th April 1912; the Irish political situation: see eg the Primate's Address in JGS [1914] xlvi; and in relation to the War of Independence see JGS [1920] liv and 202 (condemnation of outrages in Ireland); and also concerning the murder of members of the Church of Ireland see JGS [1921] lviii-lx; the outbreak and course of the First World War: the outbreak of war - JGS [1915] xlvi-xlvii; the casualties of war – JGS [1917] li and JGS [1918] lii-liii; the ending of the war and the reconstruction of society – JGS [1919] li-liii; the Easter Rising: JGS [1916] l '...the rebellion, which has brought sorrow and shame to our beloved land...'; Irish independence: JGS [1922] liii-liv; the Great Depression: JGS [1931] liii-liv; Communism: JGS [1933] lviii; the rise of Nazism: JGS [1939] lxxiv-lxxv; the outbreak of World War II and Irish neutrality: JGS [1940] lxxiv-lxxvii; World War II: JGS [1941] lxxiv – lxxix, JGS [1943] lxxv – lxxviii; the evacuation of school children: JGS [1940] 203-04; emerging awareness of the Holocaust: JGS [1945] lxxv; the World Council of Churches: JGS [1945] cxix – cxx; the devastation following war: JGS [1945] cxxiv, JGS [1946] lxxx; the atomic bomb and atomic power: JGS [1947] 161-65, JGS [1950] cxiv-cxv; the Middle East: JGS [1949] cxix; the Cold War: JGS [1952] cxviii, JGS [1953] lxxxiii; nuclear weapons and disarmament: JGS [1956] cv, JGS [1960] 90, JGS [1978] lix and lxxv, JGS [1981] 111, JGS [1983] 163-66, JGS [1986] 186; the Suez Crisis: JGS [1957] lxxxv; apartheid: JGS [1958] 164; relations between Northern Ireland and the Republic of Ireland: JGS [1966] lxiii, JGS [1977] 89-92, JGS [1978] 98-100; the Troubles in Northern Ireland: JGS [1970] xlvi, JGS [1972] 250-52, JGS [1974] 253-54 NS 262-4, JGS [1976] xli-xlii, JGS [1980] 108, JGS [1981] 84, JGS [1983] 154-60, JGS [1986] xliii-xlvii, JGS [1987] li-lv, JGS [1994] lxxiv, JGS [1996] lxxiii-lxxv; Constitutional amendments in Ireland: Article 44 (Religion) JGS [1973] 75; Divorce JGS [1987] 84; Articles 2 and 3 JGS [1990] 167-68; 8th amendment JGS [1992] 93 and JGS [1993] 103; the Dublin bombings: JGS [1974] xciii; the Papal Visit to Ireland: JGS [1980] 84-85; the H-Block hunger strikes: JGS [1981] 80-83 and 107; the New Ireland Forum: JGS [1984] 132-34 and 183-84; the Anglo-Irish Agreement: JGS [1986] 86, JGS [1991] 132-39, JGS [1992] 155-60; AIDS: JGS [1987] 145-48; JGS [1989] 119-20; JGS [1991] 127-29; environmental issues: JGS [1987] 148-46; JGS [1989] 128-33; JGS [2003] 208-09 from when it was subsumed in the work of the Church in Society Committee; the Single European Market: JGS [1990] 162-65; the first Gulf War: JGS [1991] 105-06; biotechnology: JGS [1991] 130-32; Sellafield: JGS [1992] 165-66; Parades in Northern Ireland: JGS [1996] lxxv-lxxvii, JGS [1997] lviii-lxi, JGS [1999] 137-60; the Northern Ireland peace process: JGS [1998] 123, JGS [1999] l; and engagement with trends in society generally: JGS [1986] 188-90.

Since 1871, the Church of Ireland has legislated consistently for its own internal life. A cumulative one thousand and fifty-four statutes have been passed.¹⁰ There have been fourteen revisions of the CCI.¹¹ Between 1877 and 1974 ten statutes altered some of the Canons. The numbering was revised in 1971.¹² A full revision was enacted in 1974.¹³

Key to this case study is consideration of how the church engaged with State law in the period after disestablishment up to the recent period of perceived change. It is crucial to note that the distinguishing dynamic of encounter with State law throughout those years has been that it was overwhelmingly outward in tendency: this was the Church of Ireland endeavouring to be prophetic; engaging with society and attempting to pronounce on it, or, to influence or change it. In contrast, in the current time, we see a church reacting, oftentimes fearfully or reluctantly, to the advances of civil law.

In general terms, it is noted that while the Standing Committee has been and continues to be specifically tasked with monitoring state legislation which may affect the interests of the church, now, other bodies, including significantly the RCB, have engaged on that front also.¹⁴ Such engagement with State legislation is always reported.¹⁵ The civil law provided an on-going reference point for the core activities of those bodies.¹⁶

In the intervening years the Church of Ireland is seen engaging with law reform debate;¹⁷ responding to legislation which impinges on a Christian outlook;¹⁸ addressing

¹⁰ 486 Statutes (the CCI); 322 (the *Book of Common Prayer and Revised Services*); 246 (covering a variety of other areas) - figures extrapolated from Journal of the General Convention (1870) and Journals of the General Synod of the Church of Ireland (1871 to 2012).

¹¹ 1877, 1879, 1889, 1899, 1909, 1919, 1926, 1934, 1946, 1960, 1972, 1978, 1988 and 2003.

¹² Statute of the General Synod 1971, c ii.

¹³ Statute of the General Synod 1974, c i.

¹⁴ JGS [1884] 98.

¹⁵ JGS [1993] 103 (8th Amendment of the Constitution), 104 (Criminal Justice (Legal Aid) [NI] Order 1992).

¹⁶ see eg Saorstát Éireann Land Act 1923 – JGS [1924] 21, JGS [1936] 22, JGS [1937] 22, JGS [1939] 22; Irish Church Act 1869, JGS [1980] 73, JGS [1993] 25; also, Succession Act 1965, JGS [1973] 28.

¹⁷ Abortion - JGS [1983] 100-01, JGS [1988] 162-66, JGS [1993] 103, JGS [1993] 131, JGS [1993] 185-87; Adoption - JGS [1973] 333, JGS [1977] 61; Children (Care and Protection) Bill 1985 – JGS [1986] 91-92; Child Care Bill 1988 - JGS [1990] 113 and 135-36; Commercial legislation (eg Shops Act 1911) - JGS [1913] lxxix; Criminal Justice Bill 1969 – JGS [1969] lxxiii; elementary education - JGS [1896] lxxix; Family Law Bill 1994 - JGS [1994] 83; Family Planning Bill 1973 - JGS [1974] 250; Health (Family Planning) Bill 1978 - JGS [1979] 65; Health (Family Planning) Amendment Act 1985 – JGS [1985] 72; illegitimacy - JGS [1984] 87-88; intoxicating liquor - JGS [1895] lviii, JGS [1896] lxxviii, JGS [1903] lxi; Judicial Separation and Family Law Reform Bill 1987 – JGS [1988] 93-94; licensing laws - JGS [1900] lxxiii – lxxiv; Local Taxation (Customs and Excise) Bill 1891 - JGS [1891] lxxiii; Marriages Bill 1963 - JGS [1966] 68; Marriages Bill 1972 – JGS [1971] 81; Marriages Act 1972 – JGS [1973] 83, JGS [1975] 80; Marriages (Nullity) Bill 1976 – JGS [1977] 70-75; National School System - JGS [1896] 178-86; prohibited degrees of marriage and age of marriage – JGS [1978] 67 and 76-77; Rules for

legislation with a particular import for the church;¹⁹ making representations about the implementation of legislation;²⁰ petitioning Government or urging legislative change;²¹ anticipating legislative change, proffering views on it;²² seeking clarification on administrative implementation of legislation;²³ relying on legislation for routine transactions;²⁴ and framing resolutions or statements articulating the view of the church on the regulation of issues.²⁵ In one instance the fear was of increased costs for the church.²⁶

In addition the Journals of the General Synod embody much comment and briefings on issues of the day: adoption²⁷ agriculture;²⁸ capital punishment;²⁹ child abuse;³⁰ the death penalty;³¹ disability;³² education;³³ elderly;³⁴ emigration;³⁵ Europe;³⁶ euthanasia;³⁷

National Schools – JGS [1890] lxxv; selective employment tax – JGS [1966] lxiii; Sexual Offences Act 1967 – JGS [1976] 91; status of women - JGS [1976] 91-92; taxation – JGS [1981] 21.

¹⁸ Abortion - JGS [1983] 100-01, JGS [1988] 162-66, JGS [1993] 103, JGS [1993] 131, JGS [1993] 185-87; divorce - JGS [1987] 84 and 121-30; marriage breakdown (White Paper) - JGS [1992] 96, JGS [1993] 146-51.

¹⁹ Adoption Act 1974 – JGS [1976] 59, Amendment Act 1875 - JGS [1876] 32; Public Records (Ireland) Act 1867 (31 & 32 Vict c 70); Trustee Churches (Ireland) Act 1884 (47 & 48 Vict c 10) - JGS [1885] 27-28 and 36; JGS [1886] 115, JGS [1908] 25.

²⁰ see eg Social Welfare Act 1952 – JGS [1973] 89.

²¹ Alcoholism I JGS [1907] lxiv; the Divinity School JGS [1876] 41; JGS [1879] 20-21; family planning - JGS [1971] lxxxviii; hygiene – JGS [1923] xcvi; illicit distillation of alcohol - JGS [1923] xcvi and cxi; intemperance - JGS [1875] 53; intoxicating liquor - JGS [1897] lxv, JGS [1898] lvii; intoxicating liquor in colonies - JGS [1891] lxxiv; licensing laws - JGS [1902] lxv, JGS [1936] lxviii; marriage age - JGS [1959] cxix; marriage law - JGS [1893] lxxv, JGS [1895] 177f, JGS [1900] 180; mixed- (interchurch) marriages re *Ne Temere Decree* - JGS [1908] lxi, JGS [1911] lviii-lix; opium trade - JGS [1911] lxvii, JGS [1914] xcvi; poverty - JGS [1928] lxxxvi; the sale of alcoholic drink to children - JGS [1906] xc; Sunday closing - JGS [1872(2)] 23, JGS [1875] 23, JGS [1876] 15, JGS [1891] lxix and lxxii; toxic substances - JGS [1891] lxxiii, JGS [1908] lx.

²² Denominational Education - JGS [1885] xcix; homosexuality/gay rights - JGS [1976] 91; marriage breakdown - JGS [1984] 87, JGS [1986] 165-71, JGS [1987] 84 and 121-30, JGS [1992] 96, JGS [1993] 146-51.

²³ National Insurance (Northern Ireland) Social Security Pensions Act 1975 - JGS [1979] 105; Social Welfare (Amendment) Act 1978 - JGS [1979] 105-06.

²⁴ See eg reliance on legislation for the purposes of setting fees in registers – Friendly Societies Act 1896 (59 & 60 Vict c 25), Unemployment Insurance Act (NI) 1936, Factories Act (NI) 1945, Shops Act (NI) 1946, Elections and Franchise Act (NI) 1946, National Insurance (Industrial Injuries) Act (NI) 1 Family Law [NI] Order 1992; Family Law [NI] Order 1992.

, Education Act (NI) 1947, Exchequer and Financial Provisions Act (NI) 1950, Trustee Savings Bank Act 1887 (50 & 51 Vict c 47), Widows' and Orphans Pensions Act 1935, Workmen's Compensation (Amendment) Act 1953, Social Welfare Acts 1952-1960 – all referred to in JGS [1964] 73-74.

²⁵ Blood sports - JGS [1969] lxxvii and lxxxiii; hare coursing - JGS [1931] lxxxiii; homosexuality/gay rights - JGS [1975] 79; JGS [1976] 91; JGS [1991] 146-47; the humane slaughtering of animals - JGS [1932] lxxxi; intoxicating liquor in colonies - JGS [1891] lxxiv; raffles and bazaars – JGS [1902] lxii; licensing laws - JGS [1938] xcii.

²⁶ See eg fear of rising insurance costs arising from the Malicious Injuries (Amendment) Bill 1986, JGS [1986] 32, JGS [1987] 28, JGS [1988] 30.

²⁷ Foreign adoptions JGS [1991] 141-45.

²⁸ JGS [1992] 163-4; JGS [1999] 230-32.

²⁹ JGS [1990] 172-77.

³⁰ JGS [1988] 159-62; JGS [1995] 133-34; JGS [1996] 135-36.

³¹ JGS [1981] 107-08.

³² JGS [1981] xlili; JGS [1988] 154-57.

gambling;³⁸ general state of the country;³⁹ homelessness;⁴⁰ human rights;⁴¹ human sexuality;⁴² hygiene;⁴³ intemperance;⁴⁴ international peace conferences;⁴⁵ Irish language;⁴⁶ mixed marriages;⁴⁷ migration from the land;⁴⁸ poverty;⁴⁹ racism and race relations;⁵⁰ religious equality;⁵¹ Saturday closing of public houses;⁵² school hygiene;⁵³ school transport;⁵⁴ social housing;⁵⁵ stress;⁵⁶ Sunday observance;⁵⁷ Sunday trading;⁵⁸ terrorism;⁵⁹ unemployment;⁶⁰ and the import of legislation for the church.⁶¹

Since the 1990s the civil law is having a greater impact than before, necessitating changes in the church's own internal legal framework, giving rise to uncertainty and a sense of vulnerability. New areas of legislative interest are emerging such as medical ethics,⁶² sectarianism,⁶³ and toxic waste.⁶⁴

³³ Each year since 1873 the journals contain a full report of the education work of the Church of Ireland.

³⁴ JGS [1992] 150-55.

³⁵ JGS [1909] lxxiii and lxxvii; JGS [1990] 170-71.

³⁶ JGS [1992] 160-62; JGS [2003] 203 from when it was subsumed in the work of the Church in Society Committee.

³⁷ JGS [1993] 192-99.

³⁸ JGS [1901] lxxiii; JGS [1989] 120-28; JGS [1990] 171.

³⁹ JGS [1882] lvii.

⁴⁰ JGS [1988] 149-54.

⁴¹ JGS [1978] 97.

⁴² JGS [2004] liii.

⁴³ JGS [1923] xcvi.

⁴⁴ JGS [1876] 10-11.

⁴⁵ JGS [1899] lxxi.

⁴⁶ see e.g. the compulsory teaching of Irish in schools at JGS [1927] 189.

⁴⁷ Mixed Marriages or Interchurch Marriages: JGS [1973] 97-98; JGS [1975] 94-95; JGS [1976] 92.

⁴⁸ JGS [1920] xcvi.

⁴⁹ JGS [1899] lxxvi; JGS [1906] 291; JGS [1907] 290; JGS [1987] 157-61; JGS [1989] 133-37; JGS [2006] 148-49.

⁵⁰ JGS [1976] 70 and 85-87; JGS [1986] 190-91.

⁵¹ eg Protestants in workhouses: JGS [1910] lxxvii.

⁵² JGS [1888] lxxv.

⁵³ eg JGS [1934] 225.

⁵⁴ JGS [1924] 218; JGS [1961] 111-12.

⁵⁵ JGS [1925] cxxv.

⁵⁶ JGS [1987] 301-14.

⁵⁷ JGS [1902] lxii; JGS [1903] lxii; JGS [1907] lx; JGS [1912] lxxxvi.

⁵⁸ JGS [1990] 168-70.

⁵⁹ JGS [1991] 139-41.

⁶⁰ JGS [1906] 292; JGS [1907] 291; JGS [1978] 100; JGS [1981] 110; JGS [1982] 124; JGS [1983] 161-62; JGS [1986] 194-97; JGS [1988] 157-59; JGS [1993] 189-92.

⁶¹ see eg the Purchase of Land (Ireland) Act 1885 (48 & 49 Vict c 73) – JGS [1889] 48; Saorstát Éireann Land Act 1923 – JGS [1924] 21, JGS [1936] 22; Workmen's Compensation Act 1906 (6 Edw VII c 58) – JGS [1908] 25, JGS [1909] 36.

⁶² JGS [1996] 228-30; JGS [2000] 171-74; JGS [2003] 205 from when it was subsumed in the work of the Church in Society Committee.

⁶³ JGS [1997] lxi-lxii; JGS [1997] lxxxv; JGS [1999] li; JGS [1999] 168-98.

⁶⁴ JGS [1992] 166-67.

That the 1990s marked a turning point was captured at the General Synod in 1996 by the Primate who said that his ‘call to the Synod this year is to be unafraid of change.’⁶⁵

The following year was significant.⁶⁶ In that one year, the Report of the Secondary Education Committee (SEC), for example, concerns itself with four major developments: the Education Bill 1997, Education (No.2) Bill 1997, Employment Equality Bill 1997, and Equal Status Bill 1997.⁶⁷

There is a definite perception articulated by respondents to the survey, that the present period is different. As never before, the civil law is impacting on the work of the Church of Ireland in key, determinative areas. The survey confirms that all of the bishops and all of the chancellors are of the view that State law is having a greater impact on the life of the church than it did ten years ago. Moreover all of the bishops and 75% of the chancellors believe its impact to be greater even than five years ago. Of the registrars 91% believe its impact to be greater than ten years ago and 73% than five years ago. Among clergy 81% sense the impact to be greater than ten years ago and 70% than five years ago. Laity have a similar perception: 77% than ten years ago and 65% than five years ago. There is an overwhelming sense that the law of the State is impacting on the life of the church to a greater extent than it did ten years ago or five years ago.

This is more than an impression. Those surveyed identified areas where they perceive the civil law is having that greater impact: charity law;⁶⁸ child protection;⁶⁹ civil partnerships;⁷⁰ copyright;⁷¹ data protection;⁷² education;⁷³ employment law;⁷⁴ environment law;⁷⁵ equality law;⁷⁶ the ECHR;⁷⁷ health and safety;⁷⁸ heritage legislation;⁷⁹ human rights law;⁸⁰ immigration law;⁸¹ insurance law;⁸² family law;⁸³ marriage law;⁸⁴ pensions law;⁸⁵ planning law;⁸⁶ and, tax law.⁸⁷

⁶⁵ ‘Presidential Address of the Most Reverend R.H.A. Eames’ JGS [1996] lxxxiii.

⁶⁶ 1997.

⁶⁷ ‘Report of the Secondary Education Committee’ JGS [1998] 205-07.

⁶⁸ Bishops – 100%; chancellors – 100%; registrars – 91%; clergy – 86%; laity - 72%.

⁶⁹ Bishops – 100%; chancellors – 100%; registrars – 100%; clergy – 97%; laity - 94%.

⁷⁰ Bishops – 100%; chancellors – 100%; registrars – 73%; clergy – 83%; laity - 86%.

⁷¹ Bishops – 80%; chancellors – 37.5%; registrars – 82%; clergy – 75%; laity - 63%.

⁷² Bishops – 90%; chancellors – 100%; registrars – 91%; clergy – 83%; laity - 84%.

⁷³ Bishops – 90%; chancellors – 87.5%; registrars – 82%; clergy – 66%; laity - 74%.

⁷⁴ Bishops – 100%; chancellors – 100%; registrars – 91%; clergy – 85%; laity - 78%.

⁷⁵ Bishops – 80%; chancellors – 87.5%; registrars – 73%; clergy – 70%; laity - 67%.

⁷⁶ Bishops – 100%; chancellors – 75%; registrars – 73%; clergy – 82%; laity - 79%.

⁷⁷ Bishops – 90%; chancellors – 75%; registrars – 73%; clergy – 82%; laity - 79%.

⁷⁸ Bishops – 100%; chancellors – 100%; registrars – 100%; clergy – 95%; laity - 89%.

⁷⁹ Bishops – 90%; chancellors – 87.5%; registrars – 63%; clergy – 70%; laity - 69%.

Surprisingly, given the vigorous public debate about the enduring place of blasphemy in the Irish Constitution and the passing of the Defamation Act 2009, the law of blasphemy was one of two areas in which there was only a minority view that State law has had a greater impact.⁸⁸ The second is the arena of public and constitutional law, where only a minority perceive State law as having a greater impact.⁸⁹ This is unexpected. As far back as 1996 the Constitution Review Group, by majority decision, called for the deletion of Article 44.1 of the Irish Constitution and its replacement with the phrase ‘The State guarantees to respect religion.’⁹⁰

A measure of this new reality is the fact that the new Church in Society Committee established in 2001, resolved in 2003 to operate two Legislation and Political Committees.⁹¹ One of the core functions was to examine the impact of existing and proposed legislation on the church.⁹²

Augmenting the survey, and corroborating it, the study of the journals, together with the reports of committees, illustrates also that more than previously the civil law is impacting on the church. These are now set out in turn, commencing in each instance with the State law initiative followed by the church’s response.

⁸⁰ Bishops – 100%; chancellors – 75%; registrars – 82%; clergy – 67%; laity - 62%.

⁸¹ Bishops – 100%; chancellors – 62.5%; registrars – 73%; clergy – 61%; laity - 59%.

⁸² Bishops – 90%; chancellors – 50%; registrars – 82%; clergy – 71%; laity - 60%.

⁸³ Bishops – 90%; chancellors – 100%; registrars – 36%; clergy – 58%; laity - 59%.

⁸⁴ Bishops – 90%; chancellors – 75%; registrars – 64%; clergy – 74%; laity - 69%.

⁸⁵ Bishops – 80%; chancellors – 87.5%; registrars – 73%; clergy – 57%; laity - 64%.

⁸⁶ Bishops – 90%; chancellors – 87.5%; registrars – 82%; clergy – 62%; laity - 65%.

⁸⁷ Bishops – 70%; chancellors – 62.5%; registrars – 73%; clergy – 52%; laity - 50%.

⁸⁸ Bishops – 50%; chancellors – 12.5%; registrars – 46%; clergy – 24%; laity - 22%; for a full consideration of this constitutional provision see James Casey, *Constitutional Law in Ireland* (Sweet and Maxwell 2000) 543-74; Gerard Hogan and Gerry Whyte, *J.M. Kelly: The Irish Constitution* (LexisNexis 2004) 1723-79; see also P O’Higgins, ‘Blasphemy in Irish Law’ (1960) 23 MLR 151; Law Reform Commission ‘Consultation Paper on the Crime of Libel’ (August 1991) 166; see also Defamation Act 2009, s 36 for the offence of blasphemous libel; for the debate concerning the Defamation Bill 2006 see Senator David Norris (Seanad Debate Vol. 188 No. 22) and also Minister Brian Lenihan, T.D. (Seanad Debate Vol. 188 No. 22.).

⁸⁹ Bishops – 40%; chancellors – 62.5%; registrars – 36%; clergy – 36%; laity - 37%.

⁹⁰ *Report of the Constitution Review Group* (PN 2632, Stationery Office 1996) 378.

⁹¹ One committee for each jurisdiction in Ireland: JGS [2003] 204.

⁹² JGS [2003] 204.

Human Rights⁹³ and Equality Law

The human rights developments set out in Part One: Chapter One, together with developments in equality law, depending on one's religious outlook, tend within the Church of Ireland to be seen as either being corroborative of religious justice or corrosive (in certain respects) of religious values, or delimiting religious freedoms.⁹⁴

The Employment Equality Act 1998 consolidated Irish equality law into one Act. It was innovative in that it extended the grounds on which employment-related discrimination was prohibited: gender, marital status, family status, sexual orientation, religion, age, disability, race, and membership of the traveller community.⁹⁵ The European framework incorporated a similar spectrum.⁹⁶ Further changes in EU equality legislation were incorporated in the Equality Act 2004.⁹⁷

The Equal Status Act 2000 came into force on 25 October 2000 and was amended by the Equality Act 2004. The legislation prohibits discrimination (on the same nine grounds as in the Employment Equality Act 1998)⁹⁸ by those who buy and sell a wide variety of goods, provide a wide range of services, obtain or dispose of accommodation or who attend at, or are in charge of, educational establishments.⁹⁹ The legislation also set out the prohibition on sexual harassment.¹⁰⁰

⁹³ For human rights, Christianity and religious associations see generally, Johan D van der Vyver and John Witte Jr (eds), *Religious Human Rights in Global Perspective: Legal Perspectives* (Kluwer Law International 1996); Roger Ruston, *Human Rights and the Image of God* (SCM 2004); Norman Doe and Russell Sandberg (eds) *Law and Religion: New Horizons* (Peeters 2010); John Witte Jr and Frank S Alexander *Christianity and Human Rights: An Introduction* (Cambridge University Press 2010); Julian Rivers, *The Law of Organized Religions* (Oxford University Press 2010) ch 2; also Michael J Perry, 'Christianity and human rights' in John Witte Jr and Frank S Alexander, *Christianity and the Law* (Cambridge University Press 2008) 237-48; also David Little, 'Religious Liberty' in John Witte Jr and Frank S Alexander, *Christianity and the Law* (Cambridge University Press 2008) 249-70.

⁹⁴ See generally, Rex Ahdar and Ian Leigh, *Religious Freedom in the Liberal State* (Oxford University Press 2005); Malcolm D Evans, *Religious Liberty and International Law in Europe* (Cambridge University Press 1997) ch 13; Richard O'Dair and Andrew Lewis (eds) *Law and Religion* (Oxford University Press 2001); Julian Rivers 'From Toleration to Pluralism; Religious Liberty and Religious Establishment under the United Kingdom's Human Rights Act' in Rex Ahdar (ed), *Law and Religion* (Ashgate 2000) 133-61.

⁹⁵ Employment Equality Act 1998, s 6.

⁹⁶ Art 13 EC of the Treaty of Amsterdam (came into force on 1 May 1999); Directive 2000/78/EC of 27 November 2000 ([2000] OJ L303/16) establishing a general framework for equal treatment in employment and occupation; Directive 2000/43/EC of 29 June 2000 [2000] OJ L180/22 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

⁹⁷ See generally Marguerite Bolger and Cliona Kimber, 'Employment Equality' in Maeve Regan (ed), *Employment Law* (Tottel Publishing 2009) 413-525; also Brenda Daly and Michael Doherty *Principles of Irish Employment Law* (Clarus Press 2010) ch 5.

⁹⁸ Equal Status Act 2000 s 3.

⁹⁹ Equal Status Act 2000 ss 5-7.

¹⁰⁰ Equal Status Act 2000 s 11.

Church Response

These two areas infuse contemporary argument within the church, not least in relation to the employment status of clergy, in education, and in the current debate about sexuality.¹⁰¹ There is immense consciousness of cases argued on the basis of human rights.¹⁰²

In the case of a proposed Bill of Rights for Northern Ireland, the Church of Ireland appointed a working group to draft an official response in 2010.¹⁰³ The proposed Bill of Rights generated controversy within the church.¹⁰⁴

The Employment Equality Bill 1996 preoccupied the Board of Education of the General Synod of the Church of Ireland (BEGSCI), particularly section 37 (granting a derogation to schools in order to protect their religious ethos when employing teachers).¹⁰⁵ The SEC made representations to Government about the Bill.¹⁰⁶ The Equal Status Bill 1997 worried the SEC as section 7 dealt with school admissions.¹⁰⁷ In Northern Ireland, a group set up by the Standing Committee in 2007 monitored the Single Equality Bill.¹⁰⁸ To date there have been no public developments in relation to this Bill and the UK Equality Act 2010 (with some minor exceptions) applies only in England and Wales. In 2004, the Church of Ireland had been party to a response submitted by four Irish churches.¹⁰⁹ That response expressed concern that clergy, as

¹⁰¹ See generally, Norman Doe and Russell Sandberg (eds) *Law and Religion: New Horizons* (Peeters 2010); and also Richard O’Dair and Andrew Lewis (eds) *Law and Religion* (Oxford University Press 2001).

¹⁰² See eg *Norris v Ireland* (1989) 13 EHRR 186; *Foy v An t-Árd Chláraitheoir & Others (No 2)* [2007] IEHC 470; *Zappone and Gilligan v The Revenue Commissioners, Ireland the AG* [2008] 2 IR 417, [2006] IEHC 404; for cases involving other European countries see eg *Lautsi v Italy* App no 30814/06 (ECtHR, 18 March 2011); see also ‘State drops transgender challenge’ *Irish Times* (6 June 2010, Dublin). Shiranikha Herbert ‘Religious rights given priority in Belfast Pride advert case’ *Church Times* (13 May 2011, London); ‘Court fight on gay adoption ban in Northern Ireland’ *Belfast Telegraph* (13 December 2011).

¹⁰³ JGS [2010] 212 and 246-66.

¹⁰⁴ ‘A Northern Ireland Bill of Rights is Wrong’ *Church of Ireland Gazette* (4 January 2008) <http://gazette.ireland.anglican.org/2008/040108/editorial040108.htm> accessed on 25 January 2012; also ‘Bill of rights “must be dropped”’ < http://news.bbc.co.uk/2/hi/uk_news/northern_ireland/7168142.stm > accessed 25 January 2012; also ‘Proposed Bill of Rights for Northern Ireland’ *Church of Ireland Gazette* (26 March 2010) < <http://gazette.ireland.anglican.org/2010/260310/editorial260310.html> > accessed 25 January 2012.

¹⁰⁵ ‘Report of the Board of Education’ JGS [1997] 178.

¹⁰⁶ ‘Report of the Secondary Education Committee’ JGS [1997] 221. In 1998, the Committee reported that the Bill had been found to be unconstitutional. See ‘Report of the Secondary Education Committee’ JGS [1998] 207.

¹⁰⁷ ‘Report of the Secondary Education Committee’ JGS [1997] 221.

¹⁰⁸ JGS [2008] 159 para 35.

¹⁰⁹ The Roman Catholic Church, the Church of Ireland, the Presbyterian Church in Ireland and the Methodist Church. The full response is found at << <http://www.ofmdfmi.gov.uk/index/equality/single-equality-bill/single-equality-responses.htm> >> accessed on 23 October 2012.

office holders, might be brought within the scope of the equality legislation. Clearly the churches appeared menaced by the proposed legislation:

[W]e argue strongly for the retention of those exceptions to equality legislation which already exist (...) and express our determined opposition to any legislation which undermines the right of religious organisations to organise in a manner consistent with their ethos. This applies not only to their right to protect their ethos in relation to employment, but also in relation to the role of religious bodies in the provision of and access to goods and services.¹¹⁰

The Human Sexuality Debate and Civil Partnerships

The current debate about human sexuality is a particular locus for tensions arising from human rights and equality issues.¹¹¹ The Civil Partnership Act 2004 came into force in Northern Ireland in January 2006.¹¹² Likewise, in Ireland, the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 had force from 1st January 2011.

Church Response

The House of Bishops initiated an internal study in 2000.¹¹³ Pastoral letters were issued in 2003 and 2011.¹¹⁴ A conference to discuss issues of human sexuality was held in March 2012.¹¹⁵ There is an underlying uncertainty about the obligations of the Church of Ireland in relation to civil partnership legislation in both jurisdictions. There is a lack of clarity about the possible impact of human rights contentions generally. For example, one Diocese requested the Standing Committee to consider the implications of the Civil

¹¹⁰ ‘Response of four Churches to Single Equality Bill (UK)’ 4 <<
<http://www.ofmdfmi.gov.uk/index/equality/single-equality-bill/single-equality-responses.htm> >>
 accessed on 23 October 2012.

¹¹¹ see e.g. O Kelly ‘Senior cleric in same-sex ceremony’ *Irish Times* (5 September 2011, Dublin) also available at < <http://www.irishtimes.com/newspaper/ireland/2011/0905/1224303498399.html> > accessed on 24 January 2012; also ‘Gay row “may split church”’ *Belfast Newsletter* (7 September 2011, Belfast) also available at < www.newsletter.co.uk/news/local/gay_row_may_split_church_1_3031748 > accessed on 24 January 2012; also Alf McCreery ‘Bishop under fire over cleric’s gay marriage’ *Belfast Telegraph* (13 September 2011, Belfast) also available at < <http://www.belfasttelegraph.co.uk/news/local-national/northern-ireland/bishop-under-fire-over-clerics-gay-marriage-16049013.html> > accessed on 24 January 2012; also ‘Clerics unite against civil partnership’ *Portadown Times* (20 September 2011, Portadown) available also at < http://www.portadowntimes.co.uk/news/local/clerics_unite_against_civil_partnership_1_3059910 > accessed on 24 January 2012; for the debate in wider Anglicanism see generally e.g. Stephen Bates *A Church at War: Anglicanism and Homosexuality* (IB Taurus 2004).

¹¹² JGS [2007]178.

¹¹³ Archive of the Bishop of Cork: Emp-02.

¹¹⁴ That of 2003 available at < <http://ireland.anglican.org/information/85> > accessed on 24 January 2012; that of 2011 available at < <http://ireland.anglican.org/information/217> > accessed on 24 January 2012.

¹¹⁵ See press release < <http://ireland.anglican.org/news/3911> > accessed on 24 January 2012; and in February 2013 it was announced that a further series of tripartite diocesan conferences are to be held in the autumn of 2013.

Partnership Act 2004.¹¹⁶ The Standing Committee referred the legislation to the RCB, the Church of Ireland Clergy Pensions Board (CICPB), and the House of Bishops.¹¹⁷ Of these the CICPB alone reported engagement with the legislation. In 2006 it reported that the civil partnership legislation in Northern Ireland had ‘the effect of equating civil partnership with marriage in respect of the pensions rights of civil partners who register as such (...).’¹¹⁸ The CICPB reported that in reaching its determination it was following Counsel’s opinion.¹¹⁹

The advent of similar legislation in Ireland prompted a briefing paper from the Church in Society Committee.¹²⁰ Some members of the church sought exemptions, for example, in respect of musicians, floral arrangers and the use of parochial halls as venues.¹²¹ At a meeting at the Department of Justice, Equality and Law Reform in March 2010, a delegation was informed that ‘an amendment to include a conscience clause in the bill would not be possible as it could open a floodgate for hate and intolerance.’¹²² Clearly, the individuals on the delegation had asked the question about a conscience clause. However, they did indicate they were ‘...content that the legislation distinguishes between partnership and the institution of marriage.’¹²³

General Regulation

In common with other institutions in society, the Church of Ireland has had to engage with new regulation in the late twentieth century. The law of the State has made significant strides in a host of areas.¹²⁴ Some examples are data protection;¹²⁵ health and safety;¹²⁶ copyright;¹²⁷ finance and investments;¹²⁸ and broadcasting.¹²⁹

¹¹⁶ JGS [2007] 178.

¹¹⁷ JGS [2007] 178.

¹¹⁸ ‘Report of the Church of Ireland Pensions Board’ JGS [2006] 104.

¹¹⁹ JGS [2008] 98, 12.

¹²⁰ JGS [2010] 215 and 354-55.

¹²¹ JGS [2010] 354; see also request for legal opinion, JGS [2010] 216; see also response from Church of Ireland Legal Department, JGS [2010] 298-301.

¹²² JGS [2010] 216.

¹²³ JGS [2010] 216.

¹²⁴ The scope of civil law sources was detailed in Part I: Chapter One.

¹²⁵ Data Protection Act 1988; Data Protection Act 1988 s 1 ‘“data” means information in a form in which it can be processed’, ‘“processing” ... use by a data controller of data equipment...’ Data Protection (Amendment) Act 2003.

¹²⁶ Occupiers Liability Act 1995; Safety, Health and Welfare at Work Acts 1989-2005.

¹²⁷ Copyright and Related Rights Act 2000, Copyright and Related Rights (Amendment) Act 2007.

¹²⁸ Pensions Act 1990; Finance Act 2001, s 45.

¹²⁹ Broadcasting Act 2001.

Church Response

As never before, compliance has become a watchword.

In the case of data protection the principal dynamic was the inclusion of paper-based records within the scope of the legislation: the Data Protection (Amendment) Act 2003 created a new reality.¹³⁰ A number of forward-thinking dioceses registered as data controllers.¹³¹ The church undertook a consultation process and briefings followed.¹³² State regulations exempted schools from registration and clarified that section 16(1)(b) of the 2003 Act also exempted churches, as not-for-profit organisations.¹³³ The House of Bishops reviewed its data protection policy.¹³⁴

The introduction of health and safety legislation was widely notified to schools. With the introduction of *Safeguarding Trust*, the opportunity was taken to emphasise the legal requirement to have a health and safety statement.¹³⁵ The RCB reminded parishes of their duties under the Occupiers Liability Act 1995 and the Safety, Health and Welfare at Work Acts 1989-2005.¹³⁶ From 2009 onwards this was stated more strenuously than ever: ‘it is imperative that each parish should have a formal Health and Safety Statement and that parish premises should meet the required standards.’¹³⁷ A sample Health and Safety Statement was produced.¹³⁸

In 1996 the BEGSCI brought copyright to the attention of schools including the requirements of the Irish Music Rights Organisation.¹³⁹ Central Church authorities had always had a vigilant approach to copyright in protection of its own publications.¹⁴⁰ A Copyright Consultant was appointed.¹⁴¹ Negotiations were entered into with copyright licensing organisations.¹⁴²

¹³⁰ See also EU Data Protection Directive 95/46/EC.

¹³¹ eg CCRD and D&G.

¹³² Archive of the Bishop of Cork: Dat-1; see also ‘Report of the Internet Advisory Committee’ JGS [2004] 211.

¹³³ Data Protection Act 1988 (Section 16(1)) Regulations 2007 (SI No 657 of 2007).

¹³⁴ Archive of the Bishop of Cork: Dat-2.

¹³⁵ ‘Report of the Board of Education’ JGS [2001] 246.

¹³⁶ JGS [2002] 24.

¹³⁷ JGS [2009] 32, JGS [2010] 34.

¹³⁸ JGS [2006] 28; JGS [2007] 29; JGS [2008] 29; JGS [2009] 32.

¹³⁹ ‘Report of the Board of Education’ JGS [1997] 180.

¹⁴⁰ See eg re the *Book of Common Prayer*, JGS [2004] 173 and ‘Guidelines on Copyright’ JGS [2004] 221-22.

¹⁴¹ ‘Report of the Liturgical Advisory Committee’ JGS [2005] 323.

¹⁴² ‘Report of the Liturgical Advisory Committee’ JGS [2006] 329; see also JGS [2007] 179; see also JGS [2008] 147 para 16.

The routine financial implications of Government enactments; tax relief for qualifying corporate donations to charities¹⁴³ and the advent of tax efficient personal giving,¹⁴⁴ were addressed and a statement on Socially Responsible Investment was introduced for the first time in 2002.¹⁴⁵

The on-going responsiveness to legislative changes is seen, for example, in 1999 when the Broadcasting Committee undertook a day consultation on the subject of the Broadcasting Bill 1999 and made a submission to the relevant Minister.¹⁴⁶ The mention of religious broadcasting in the Broadcasting Act 2001 was subsequently welcomed.¹⁴⁷

‘Employment’ Status of Clergy and Employment Law¹⁴⁸

Employment law, in its generality, affects the work of the Church of Ireland.¹⁴⁹ Cleaners, maintenance people, organists, musicians and others may be employees of church bodies. The boards of management of parochial schools are employers, including of teachers paid by the State.¹⁵⁰ The correct procedures for the recruitment of teachers, special needs assistants and others in schools, together with their contracts, have increasingly become a focus of attention.¹⁵¹

It is the employment status of clergy, in particular, which is the source of an evident phobia on the part of the church. The principal driving forces of this preoccupation are changes in the law in both jurisdictions, and awareness of such cases as have been

¹⁴³ JGS [1998] 26.

¹⁴⁴ s.45 Finance Act 2001; see also JGS [2002] 28; JGS [2005] 34 and ensuing years to JGS [2010] 44-45.

¹⁴⁵ JGS [2003] 78.

¹⁴⁶ JGS [2000] 149; see also a submission made in response to a similar debate in the U.K. in JGS [2001] 182-84.

¹⁴⁷ JGS [2003] 234; s 28(2) of the Act included ‘religious broadcasting;’ within the remit of the public service broadcaster.

¹⁴⁸ For Employment Law in Ireland, see generally, Caroline Fennell and Irene Lynch, *Labour Law in Ireland* (Gill and Macmillan 1993); Michael Forde, *Employment Law* (Round Hall 2001); Maeve Regan (ed), *Employment Law* (Tottel Publishing 2009); Brenda Daly and Michael Doherty *Principles of Irish Employment Law* (Clarus Press 2010).

¹⁴⁹ See generally Maeve Regan ‘The Contract and Relationship of Employment’ in Maeve Regan (ed), *Employment Law* (Tottel Publishing 2009) 29-56, 51; Brenda Daly and Michael Doherty *Principles of Irish Employment Law* (Clarus Press 2010) 73-74; see also *In re Dairy Lee Ltd.*, [1976] IR 34 (a full-time executive director of a company was an employee); *Henry Denny & Sons (Ireland) Ltd v Minister for Social Welfare* [1998] 1 IR 34 (the ‘control test’ is only one, and not the only test as to whether a contract is one ‘for services or ‘of service’); and *Kirwan v Technical Engineering and Electrical Union* [2005] ELR 177 (HC) (Union secretary’s arrangements were not the union rules establishing the office, but contractual).

¹⁵⁰ *O’Keefe v Hickey* [2008] IESC 72, [2009] 1 ILRM 260 (a teacher in a State school is an employee of the Board of Management rather than of the Department of Education).

¹⁵¹ ‘Report of the Board of Education’ JGS [2007] 287.

taken, in the main, in the United Kingdom.¹⁵² Academic argument that ‘religious or spiritual duties are not incompatible with a contract of employment’ has also fed this fear.¹⁵³ There is perhaps no area of the civil law, then, which illustrates more the anxiety of the church about the encroaching influence of civil law in recent times.

Clergy debt,¹⁵⁴ incapacity,¹⁵⁵ the deployment of clergy,¹⁵⁶ retirement age,¹⁵⁷ clergy stress,¹⁵⁸ stipends, and glebe houses are all matters which have been addressed by the church over the years. No consideration was given to the status, in law, of clergy, until 1940 when the Legal Advisory Committees was asked to consider the legal and constitutional basis of ‘the Parson’s Freehold’ with a view to ascertaining methods, ‘which might be adopted for abolishing or modifying the same.’¹⁵⁹

The report articulates the status quo as it has pertained securely until recent times.¹⁶⁰ Counsel advised that sections 11 and 12 (vesting all ecclesiastical property in the Church Temporalities Commissioners) of the Irish Church Act 1869 and also section 13 (dissolving all ecclesiastical corporations, sole or aggregate), ‘put an end to the rights of beneficed clergymen, as freeholders, to ecclesiastical property in right of their benefices.’¹⁶¹ Moreover, a member of the clergy’s ‘right to his benefice depends entirely on the relevant provision of the Constitution for the time being, and subject to alteration by Statute.’¹⁶² The advice given is summarised thus:

The position of an Incumbent may at present be described as a “freehold office” in the sense that his right to the benefice is a right which will last for his life, unless

¹⁵² see eg *Reaney v Hereford Diocesan Board of Finance* unreported (concerning a youth worker), Unreported, but made available unofficially at < <http://thinkinganglicans.org.uk/uploads/herefordtribunaljudgment.html> > accessed on 25th January 2012; see also Frank Cranmer ‘Casebook’ (2007) 159 *Law and Justice* 153; ‘Ruling won by Croydon organist’ *Church Times* (13 May 2011, London) 4.

¹⁵³ see eg Emma Brodin ‘The Employment Status of Ministers of Religion’ in [1996] 25 *Industrial Law Journal* 211, 211.

¹⁵⁴ JGS [1953] cxxvi: ‘That the Representative Body be requested to consider the possibility of helping clergymen who are seriously in debt.’

¹⁵⁵ JGS [1937] lxxvi: Standing Committee was requested to examine the question of clergy ‘...who by age or infirmity are incapacitated from the due discharge of their duties, but are unwilling to resign.’

¹⁵⁶ A Clergy Mobility Committee was established in 1935: see JGS [1935] lxxx; it reported each year between 1936 and 1940: JGS [1936] 384-7; JGS [1937] 350; JGS [1938] 346-56; JGS [1939] 375-89 and JGS [1940] 344-51. On the subject of deployment of clergy see also JGS [1964] lxx; see also ‘Report of the Commission on Ministry’ JGS [2002] 262 and 265-66.

¹⁵⁷ JGS [1969] cxii; JGS [1973] lxxxix.

¹⁵⁸ JGS [1988] lxxxviii; JGS [1990] lxxxiv, 113 and 137-39.

¹⁵⁹ JGS [1940] cxiii.

¹⁶⁰ JGS [1941] 159-65.

¹⁶¹ JGS [1941] 163.

¹⁶² ‘Statute’ in this instance is a reference to a Statute of the General Synod; JGS [1941] 164-65.

sooner determined by the Court or by resignation, so long as Chapter IV¹⁶³ of the Constitution remains unaltered and unamended (...). In my opinion it would be competent to the General Synod to amend or alter Chapter IV in a manner which would completely change the tenure of existing Incumbents.¹⁶⁴

Only two issues emerging briefly to discommode this opinion: clergy stress and clergy holidays.¹⁶⁵ The legal status of clergy was not at issue in 1981 when the Commission on Ministry presented its report ‘Ministry Today - A Calling for All’.¹⁶⁶

*The Law*¹⁶⁷

The starting point of the law and the courts is that clergy are office holders.¹⁶⁸ Tests of this have been developed within employment law generally in the practice of the courts.¹⁶⁹ Prior to 1998, employment equality only encompassed the sex and marital status grounds.¹⁷⁰

¹⁶³ The Constitution of the Church of Ireland [1934] Chapter IV governed appointment to cures and subscription.

¹⁶⁴ JGS [1941] 164.

¹⁶⁵ JGS [1962] cxxiv; formal provision for clergy holidays - JGS [1963] cxix-cxx.

¹⁶⁶ JGS [1981] cv.

¹⁶⁷ For an overview of recent developments see, Emma Brodin, ‘The Employment Status of Ministers of Religion’ in [1996] 25 *Industrial Law Journal* 211-24; see also GR Evans, *Discipline and Justice in the Church of England* (Gracewing 1999); Norman Doe, *The Legal Framework of the Church of England*, (Clarendon Press 1996) 198-200; Julian Rivers, *The Law of Organized Religions* (Oxford University Press 2010) 108-22; Philip Petchey, ‘Ministers of Religion and Employment Rights: An Examination of the Issues’ in (2003) 7 *EccLJ* 157; Stephen Trott, ‘Dignity at Work’ in (2001) 6 *EccLJ* 51-57; Christopher Dwyer ‘How far can religion affect Employment?’ in (2009) 163 *Law and Justice* 142.

¹⁶⁸ *Wright v Day* [1895] 2 IR 337; *Re Employment of Ministers of the United Methodist Church* (1912) 107 LT 143; *Re Employment of Church of England Curates* (1912) Ch 563 (a curate of the Church of England is not employed under a ‘contract of service’); *Scottish Insurance Commissioners v Church of Scotland*, 1914 SC 16 (assistants to ministers in the Church of Scotland are not employed under a ‘contract of service’); *Rogers v Booth* (1937) ICR 900 (a Salvation Army Officer); *Parker v Orr* [1966] 1 ITR 488 (a Congregational Minister); *Barthorpe v Exeter Diocesan Board of Finance* [1979] ICR 900 (a reader in the Church of England); *Turns v Smart, Carey and the Bath and Wells Diocesan Board of Finance* [1991] ICR 140 (control test applied); *Chalcroft v Bishop of Norwich* (1995) unreported; *Buckley v Cahal Daly* [1990] NIJB 8; see also Department of Trade and Industry (U.K) Discussion Document, *Employment Status in Relation to Statutory Employment Rights* July 2002 URN 02/1058 DTI pages 2, 18 para 48 and 24.

¹⁶⁹ For detailed description and analyses of the tests see: Simon Deakin and Gillian S Morris, *Labour Law* (LexisNexis 2003) 146-68; John Duddington, *Employment Law* (Pearson Education Ltd 2003) 34-42; Caroline Fennell and Irene Lynch, *Labour Law in Ireland* (Gill and Macmillan 1993) 115-22; and Michael Forde, *Employment Law* (Round Hall 2001) 23-29; Maeve Regan ‘The Contract and Relationship of Employment’ in Maeve Regan (ed), *Employment Law* (Tottel Publishing 2009) 29-56; Brenda Daly and Michael Doherty *Principles of Irish Employment Law* (Clarus Press 2010) ch 3; see also ‘Code of Practice for Determining Employment or Self-Employment Status of Individuals’ (Revenue Commissioners 2010); for these tests applied to Ministers of Religion in England see Mark Hill, Russell Sandberg and Norman Doe, *Religion and Law in the United Kingdom* (Wolters Kluwer 2011) 115-21; Julian Rivers, *The Law of Organized Religions* (Oxford University Press 2010) 118-22.

¹⁷⁰ Employment Equality Act 1977.

Earlier Irish cases had, in the main, followed that long-held view that clergy are office holders.¹⁷¹ However, in *O'Callaghan v O'Sullivan*¹⁷² a contract, albeit not one of employment, was deemed to exist between a Roman Catholic parish priest and his bishop.¹⁷³

By the mid-1990s the position in State law was summed up by Casey:

Though clear modern authority on the point is lacking, it seems probable that persons in Holy Orders or under religious vows do not have a contractual relationship with their ecclesiastical superiors.¹⁷⁴

New Factors

A new factor is the legislative activity of the State in relation to employment. Many clergy encounter this on select vestries and as members of schools' boards of management.¹⁷⁵ All of this occurs against the background of what Fennell and Lynch refer to as a paradigmatic shift from a unitary paradigm (where workers and management have the same interest at heart) to a pluralist paradigm, 'which sees an inevitable conflict of interest arising between workers and employer.'¹⁷⁶ A stressful age has raised awareness of worker entitlements and responsibilities. As a general sociological observation, the greatly changed attitude to all forms of authority in modern society results in a questioning by some of what were traditionally understood as master/servant relationships.¹⁷⁷ The passing of the Employment Equality Act 1998 (albeit with its specific derogations for churches on the religious and gender grounds; and for religious schools on the religion ground) represented a substantial development.

¹⁷¹ *Wright v Day* [1895] 2 IR 337 (the defendants were the bishops of the Church of Ireland).

¹⁷² *O'Callaghan v O'Sullivan* [1925] 1 IR 90; see also *O'Keeffe v Cullen* I.R. 7 CL 319.

¹⁷³ Per Kennedy CJ 'The contract is the contract of appointment of the plaintiff as Parish Priest – a contract made in Ireland between two Irish parties. It is a term of that contract that the parties are to be bound by a foreign law regulating their respective offices.... by the Laws, Ordinances and Canon Laws for the time being of the Roman Catholic Church' *O'Callaghan v O'Sullivan* [1925] 1 IR 90, 115; see also *Mulloy v The Minister for Education* [1975] IR 88 (priest who worked also as a 'lay' teacher); see also, however, *O'Dea v Briain* [1992] ILRM 364, 369-70 (word 'agreement' is used but not 'contract').

¹⁷⁴ James Casey, 'State and Church in Ireland' in G Robbers (ed.) *State and Church in the European Union* (Nomos Verlagsgesellschaft 1996) 147-68, 161.

¹⁷⁵ Eg Safety, Health and Welfare at Work Act 1989; the Data Protection (Amendment) Act 2003 and the Civil Registration Act 2004.

¹⁷⁶ Caroline Fennell and Irene Lynch, *Labour Law in Ireland* (Gill and Macmillan 1993) 112.

¹⁷⁷ This phrase is used in its legal sense, meaning 'a person subject to the command of his master as to the manner in which he shall do his work.' - *Yewens v Noakes* (1880-81) LR 6 QBD 530.

Employment cases involving clergy come before the courts infrequently.¹⁷⁸ This is an area, ‘traditionally relegated to the fringe of employment law.’¹⁷⁹ Nonetheless, the impact of such cases, when they do occur, on the psyche of the church, is considerable.¹⁸⁰ Cases in the United Kingdom naturally set out the law for that part of the Church of Ireland in Northern Ireland.

Some Irish cases with a bearing on the Church of Ireland have fed the church’s general trepidation about change: two in the ecclesiastical courts;¹⁸¹ another before the civil courts but settled before hearing. In 2003 a priest secured a favourable ruling at the Labour Relations Commission on the basis that he is an employee. At the Employment Appeals Tribunal the RCB secured a reversal of that decision.¹⁸² In the case of *Millen v Presbyterian Church in Ireland*¹⁸³ a Presbyterian minister sought a statement of his terms and conditions of employment in accordance with the Terms of Employment (Information) Act 1994. He relied on a P60 form issued to him in which the terminology employer/employee was used. A Rights Commissioner accepted that Millen was an employee and ordered the church to provide the minister with terms and conditions of employment.¹⁸⁴ On appeal by the church, the Employment Appeals Tribunal overturned the decision on the grounds that he was not an employee, and moreover the issuance of a P60 form and the descriptions ‘employer’ and ‘employee’ on it do not determine the relationships in question. The determination cited, among others,

¹⁷⁸ *Per May LJ President of the Methodist Church v Parfitt* (1983) 3 All ER 747, 753.

¹⁷⁹ Emma Brodin, ‘The Employment Status of Ministers of Religion’ in [1996] 25 *Industrial Law Journal* 211, 211.

¹⁸⁰ *President of the Methodist Church v Parfitt* (1983) 3 All ER 747 (a Methodist Minister – recognition of an employment contract overturned at the Court of Appeal); *Davies v Presbyterian Church of Wales* [1986] 1 WLR 323, [1986] 1 All ER 705 (Lord Templeman: ‘The pastor is the servant of God ...the duties owed by the church to the pastor are not contractual’); *Coker v Diocese of Southwark* [1995] ICR 563 (an Industrial Tribunal recognised an employment relationship, but this was overturned at the EAT and by the Court of Appeal in *Diocese of Southwark and Others v Coker* [1998] ICR 140); *Singh v Gurdwara* [1990] LC 309 (following *Parfitt*); *Pathak v The Hindu Centre* [2001] UKEAT 0730_01_0911; *Guru Nanak Sikh Temple v Sharry* EAT 21/12/90 (145/90); *Birmingham Mosque Trust v Alavi* (1992) IRLR 194; *Ghusia Jamia Mosque v Qamar* [2001] UKEAT 899_01_0612.

¹⁸¹ *Bishop of Meath v. Furlong* [2003] JGS 446; and *Reid and others v Frazer* [2003] Diocesan Registry of Meath and Kildare.

¹⁸² *Representative Church Body v Frazer* [2005 EAT] ELR 292.

¹⁸³ *Millen v Presbyterian Church in Ireland* [2000] ELR 292.

¹⁸⁴ At the Labour Relations Commission.

Parfitt,¹⁸⁵ *Davies*,¹⁸⁶ *Coker*¹⁸⁷ and *Buckley*,¹⁸⁸ as well as *O’Keeffe v Cullen*.¹⁸⁹ Recent cases in the UK have not assuaged fear in the Church of Ireland.¹⁹⁰

In *Percy v Church of Scotland Board of National Mission*¹⁹¹ the court did not impute employment status beyond the scope of discrimination law. Nonetheless, it was groundbreaking and engendered apprehension. Ms Percy (a former minister of the Church of Scotland), alleging unfair dismissal and unlawful sex discrimination, initiated proceedings in 1998 in an Employment Tribunal.¹⁹² It dismissed the case for want of jurisdiction on the grounds that the complaints comprised ‘matters spiritual.’ The Employment Tribunal added that, although there was a contract in existence, having regard to the essentially religious nature of Ms Percy’s duties it was not a contract of employment as defined in the unfair dismissal legislation or as defined in section 82(1) of the Sex Discrimination Act 1975. Ms Percy’s appeal related only to the decision in relation to the sex discrimination. It was similarly dismissed ‘as a spiritual matter’ at the Employment Appeal Tribunal, as was her subsequent appeal to the Inner House of the Court of Session.¹⁹³ However, Ms Percy (by a majority verdict of four to one) had her appeal upheld by the House of Lords.¹⁹⁴ Although it was not Ms Percy’s claim that she was an employee with a contract of employment or service under the Employment Rights Act 1996,¹⁹⁵ it was held that, for the purposes of sex discrimination law, a contract had been created.¹⁹⁶ She was employed by the Board of National Mission under ‘a contract personally to execute work’ within the meaning of section 82(1) of the Sex Discrimination Act 1975.¹⁹⁷ This was an agreement with a religious organisation, which

¹⁸⁵ *President of the Methodist Church v Parfitt* (1983) 3 All ER 747.

¹⁸⁶ *Davies v Presbyterian Church of Wales* (1986) 1 WLR 323; (1986) 1 All ER 705.

¹⁸⁷ *Diocese of Southwark and Others v Coker* (1998) ICR 140.

¹⁸⁸ *Buckley v Daly* (112/85 UD), the Tribunal stage of *Buckley v Cahal Daly* [1990] NIJB 8.

¹⁸⁹ *O’Keeffe v Cullen* [1873] IR 7.

¹⁹⁰ Including *Chalcroft v Bishop of Norwich* (1995) Unreported; *Diocese of Southwark and Others v Coker* (1998) ICR 140; *R v Bishop of Stafford, ex parte Owen* (2000) 6 Ecc LJ 83; *Brown v Bishop of Carlisle* (2003) 7 EccLJ 239; *Tyler v United Kingdom*, Application 21283/93, 5 April 1994 (reported) E ComHR; *Percy v Church of Scotland Board of National Mission* 2001 SC 757, 2001 SLT 497; *New Testament Church of God v Stewart* (2007) IRLR 178, [2008] ICR 282; *MacDonald v Free Presbyterian Church of Scotland* [2010] UKEAT S/0034/09/BI; *Preston (formerly Moore) v The President of the Methodist Conference* [2011] EWCA Civ 1581.

¹⁹¹ *Percy v Church of Scotland Board of National Mission* (2005) UKHL 73.

¹⁹² Then known as an Industrial Tribunal. For analysis of the *Percy Case* see John Duddington ‘Ministers of Religions and Discrimination Law: A Story from the Glens of Angus’ in 156 (2006) Law and Justice 59-66; and also Frank Cranmer and Scot Peterson ‘Employment, Sex Discrimination and the Churches: the *Percy Case*’ in 8 (2006) EccLJ 392-405.

¹⁹³ *Percy v Church of Scotland Board of National Mission* 2001 SC 757, 2001 SLT 497.

¹⁹⁴ *Percy v Church of Scotland Board of National Mission* (2005) UKHL 73.

¹⁹⁵ Employment Rights Act 1996, s 230(1).

¹⁹⁶ *Percy v Church of Scotland Board of National Mission* (2005) UKHL 73 per Lord Hope at para 106.

¹⁹⁷ *Percy v Church of Scotland Board of National Mission* (2005) UKHL 73 para 42.

created a legally binding relationship.¹⁹⁸ The court clarified that it is possible to hold both an office and a contract: the two are different but not mutually exclusive.¹⁹⁹

In *Preston (formerly Moore) v The President of the Methodist Conference* Kay LJ suggested that *Percy* had caused ‘the tectonic plates to move.’²⁰⁰ In his judgment he referred to the judgment of Underhill J at the EAT which, he said, ‘contained a masterly and detailed analysis of the authorities.’²⁰¹ The EAT had concluded that:

[i]n our view the Claimant's contract was one of service. Once it is accepted that there is nothing in the Claimant's spiritual role which is inconsistent with her being an employee and once the question whether there was anything special about the nature of the Claimant's remuneration is decided all the indications point one way. She received regular remuneration, including an entitlement to sick pay. She was given accommodation. She was required to engage in an appraisal process, was subject to at least a degree of supervision from the Church and was liable to a disciplinary procedure. Although she did not have to work set hours, there was a clear concept of working time, when she was at the disposal of the Church, and holiday, when she was not. Of course, like any professional she had a great deal of discretion as to how she did her work, but that is in no way inconsistent with a contract of service. Again, we see close parallels with the facts in *Stewart* (...) ²⁰²

The Court of Appeal agreed with that analysis.²⁰³ On 15th May 2013 the Supreme Court by a majority overturned that decision.²⁰⁴

In *New Testament Church of God v Stewart* ²⁰⁵ both an EAT and the Court of Appeal decided, albeit on the facts of the case, that the Minister was an employee of the Church. It held that a spiritual motivation in working for a church did not preclude an intention to create a legal relationship, and, in determining whether there was such a relationship between a minister and his church, the religious beliefs of the parties, the spiritual nature of the work, and the spiritual discipline under which the work was performed were relevant considerations for the fact-finding tribunal. Even though commentators have emphasised that the case was decided on its own facts and that

¹⁹⁸ *Percy v Church of Scotland Board of National Mission* (2005) UKHL 73 per Lord Hope at para 137.

¹⁹⁹ *Percy v Church of Scotland Board of National Mission* (2005) UKHL 73 per Lord Nicholls of Birkenhead at para 18.

²⁰⁰ *Preston (formerly Moore) v The President of the Methodist Conference* [2012] QB 735, 748; [2011] EWCA Civ 1581, para 25.

²⁰¹ *Preston (formerly Moore) v The President of the Methodist Conference* [2012] QB 735, 741; [2011] EWCA Civ 1581, para 7.

²⁰² *Preston (formerly Moore) v The President of the Methodist Conference* UKEAT/219/10 [2011] I.C.R. 819, para 63.

²⁰³ *Preston (formerly Moore) v The President of the Methodist Conference* [2012] QB 735,747; [2011] EWCA Civ 1581, para 22.

²⁰⁴ *The President of the Methodist Conference v Preston* [2013] UKSC 29.

²⁰⁵ *New Testament Church of God v Stewart* (2007) IRLR 178. [2008] ICR 282; followed in *MacDonald v Free Presbyterian Church of Scotland* [2010] UKEAT S/0034/09/BI; see also Frank Cranmer, ‘Clergy Employment, Judicial Review and the Free Presbyterian Church of Scotland’ in Vol 12(3) *EccLJ* 355-60.

sweeping interpretation is misplaced, the case represents a development within the law which concerns many.²⁰⁶ It is suggested that the case leaves the law ‘in a distinctly unholy muddle.’²⁰⁷

Similarly, in the *Percy* case Lord Nicholls of Birkenhead referred to the uncertainty that surrounds office holders:

The distinction between holding an office and being an employee has long suffered from the major weakness that the concept of an 'office' is of uncertain ambit. The criteria to be applied when distinguishing those who hold an office from those who do not are imprecise.²⁰⁸

Formal articulation of concern arising from uncertainty surrounding the employment status of clergy, as well as the exclusion of some working people from employment rights, gave rise to a consultation initiated by the Department of Trade and Industry (DTI) in the U.K. in 2002.²⁰⁹ It is this uncertainty that preoccupies many in churches, engendering fear.²¹⁰

Church Response

Clergy themselves began discerning the changing environment of ministry in the 1990s.²¹¹ Many showed awareness of the attractions that comprehensive legislation brings to those with employment status.²¹² Within the Church of Ireland there continues to be fear, an awareness of change, a consciousness that, in the prevailing culture of assertion of rights, someone may indeed test the status of clergy in Irish law.

Archbishop Robin Eames envisaged such a scenario:

²⁰⁶ John Duddington, ‘God, Caesar and the Employment Rights of Ministers of Religion’ in 159 (2007) *Law and Justice* 129, 129.

²⁰⁷ John Duddington, ‘God, Caesar and the Employment Rights of Ministers of Religion’ in 159 (2007) *Law and Justice* 129, 132.

²⁰⁸ *Percy v Church of Scotland Board of National Mission* (2005) UKHL 73 para 17.

²⁰⁹ Department of Trade and Industry (UK) Discussion Document, *Employment Status in Relation to Statutory Employment Rights* July 2002 URN 02/1058 DTI.

The document may be found at www.dti.gov.uk/er/individual/statusdiscuss.pdf

²¹⁰ See Jerold Waltman, ‘Churches and Equal Employment Policy in the United States and the United Kingdom’ in (2011) 166 *Law and Justice* 36.

²¹¹ Paul Colton ‘The Context of Ministry Today’ Unpublished paper for the Dublin and Glendalough Clergy Conference (3rd February 1998) available at Archive of the Bishop of Cork: Emp-01.

²¹² see eg Unfair Dismissals Acts 1993; Industrial Relations Act 1990; Protection of Employees (Fixed-Term Work) Act 2003; Payment of Wages Act 1991; Terms of Employment (Information) Acts 1994 to 2001; National Minimum Wage Act 2000; Organisation of Working Time Act 1997; Carer’s Leave Act 2001; Minimum Notice and Terms of Employment Acts 1973 to 2001; Redundancy Payments Acts 1967 to 2003; Safety, Health and Welfare at Work Act 1989; Adoptive Leave Act 1995; Maternity Protection Act 1994; Protection of Employees (Part -Time Work) Act 2001; the Parental Leave Act 1998.

As I reflect on the changing demands of ministry I am conscious that a time is approaching when our Church will have to face a key question. What alterations in structure are needed to allow the ministry of our Church to address a rapidly changing scenario and rapidly changing local conditions? (...) The concept of the parson's freehold has for generations provided stability and degrees of independence for parochial ministry (...) Is the time approaching when we will need to examine with great honesty the implications of this freehold? In technical terms we are talking about fixed term contractual relationships. (...) Is the time fast approaching when a new approach is needed?²¹³

In 1997 the RCB reported that it too had considered the matter:

in response to suggestions that conditions of service, tenure etc. need to be updated to take account of the considerable changes which have taken place over a whole range of entitlements (pensions, social insurance, minimum stipends) and which are said to be "uncharacteristic" of the ancient freehold office and its endowment.²¹⁴

In parallel with developments in the courts, the church was itself examining its own pattern of ministry: a Commission on Ministry was established in 1996.²¹⁵ Some of the motivating factors were internal concerns.²¹⁶ However, when it began its work, significantly, one of the three issues the Commission prioritised was 'the appointment and tenure of office of stipendiary clergy'.²¹⁷ The sub-committee noted that the clergy 'freeholder' 'is not an employee, but that, 'there is at least a moral onus on the Church to try to develop proper structures of support over and above the informal pastoral advice for those who have hitherto been left largely to their own devices especially in times of great difficulty.'²¹⁸ In 2000, the Commission on Ministry reiterated the legal opinion of 1941 concerning the 'Parson's Freehold' and concluded that the 'concept of "Freehold" is no longer fully applicable in the Church of Ireland.'²¹⁹

The DTI consultation in 2002 heightened concern that any new legislation might result in major internal changes in the church, incur significant additional costs and present logistical issues in the deployment of clergy in Northern Ireland, and might set a pattern to be followed in the Republic of Ireland. The Standing Committee noted that:

²¹³ 'Presidential Address of the Most Rev RHA Eames' JGS [1996] lxxix.

²¹⁴ JGS [1997] 15.

²¹⁵ JGS [1996] xcv-xcvii.

²¹⁶ eg the emergence of new models of ministry; reduced numbers of people offering themselves for ordination; some relinquishment of holy orders; the ordination of women; some clergy with contracts of employment; demands for review of the auxiliary ministry; and financial constraints.

²¹⁷ JGS [1998] 249; the other two were the perceived needs and expectation of ministry and the part-time deployment of stipendiary ministry.

²¹⁸ JGS [1998] 251.

²¹⁹ 'Report of the Commission on Ministry' JGS [2000] 238-39.

[a]s the employment status of Church of Ireland clergy is unusual, legislation conferring statutory employment rights to those who are not employees could have significant implications for our clergy in relation to working conditions.²²⁰

Significantly, it was noted that the discussion document from a working group in this area was asked to revise its response in the light of ‘reservations expressed by the Standing Committee.’²²¹ This was the first published acknowledgement that the civil law’s approach to the status of clergy may be under scrutiny. Untypically, again a measure of nervousness, the revised report of the working group is not included among the twenty-one reports appended to the Standing Committee report in 2003, nor is it reported at all by the RCB.²²²

All of the churches opposed the extension of employment rights to clergy through legislation at that juncture.²²³ The Church of Ireland’s response (the only response from an Irish church) was defensive. It perceived no additional benefits in protection for clergy arising from the extension of employment rights because of its, ‘on-going commitment to best practice in the workplace coupled with the existing specific rights of clergy (...).’²²⁴ The fact that the summary of responses (setting out the conflicting views of the churches) published in March 2006 made no recommendations in this area seems to have done little to assuage concerns about the possibility of change.²²⁵

A further measure of the church’s preoccupation in this area was that of ‘an aspect of our work which is becoming more and more prominent, viz. legal and technical issues arising in the employment of clergy in the Church of Ireland.’²²⁶ The areas the Archbishop felt demanded attention were: the development of a panel of lawyers versed in ecclesiastical matters; a review of current thinking on the parson’s freehold; an

²²⁰ JGS [2003] 161-62.

²²¹ JGS [2003] 162.

²²² JGS [2003] 3-99.

²²³ Churches’ Main Committee (Circular 2002/16) response to Department of Trade and Industry (U.K) Discussion Document, *Employment Status in Relation to Statutory Employment Rights* July 2002 URN 02/1058 DTI, (distributed from 1 Millbank, London, SW1P 3JZ); for the Church of England responses see *Review of Clergy Terms of Service* (2004, Church House Publishing, London); General Synod of the Church of England *Review of Employment Status and the Clergy* GS1488 (2003, General Synod, London) 2 para 6; for the response of the Roman Catholic Church in England and Wales see < www.catholic-ew.org.uk/resource/clergyemploy.htm > for the response of the Methodist Church see *Methodist response to Department of Trade and Industry (U.K) Discussion Document, Employment Status in Relation to Statutory Employment Rights* July 2002 URN 02/1058 DTI, 2 at par.1.1

²²⁴ Church of Ireland response to Department of Trade and Industry (U.K) Discussion Document, *Employment Status in Relation to Statutory Employment Rights* July 2002 URN 02/1058 DTI; see also ‘Report of the Church of Ireland Pensions Board’ JGS [2008] 97.

²²⁵ Department of Trade and Industry (U.K) Discussion Document, *Employment Status Review: Summary of Responses* March 2006 URN 06/1050 DTI, para18-20.

²²⁶ Letter to this author from the Archbishop of Armagh, Archive of the Bishop of Cork: Emp-04.

examination of contractual practices between the RCB and serving clergy; the up-dating of the CCI to take account of current and probably future trends in clergy employment; and insurance, pension and employment law.²²⁷ The working group did little more than identify the problems.²²⁸

The church's internal debates provide a measure of the change in this area: part-time stipendiary ministry,²²⁹ mediation and severance, payments to auxiliary clergy and, most recently, a code of duty and conduct for clergy.²³⁰ At all times there has been a manifest determination to avoid the language of 'employment', with few notable exceptions.²³¹

Part-time stipendiary ministry was introduced and based on a 'self-employed contract where payment would be made on a pro-rata basis related to hours or days worked.'²³² A draft contract letter deals with duties, sessions, rates for sessions, reporting, expenses, pensions and the giving of notice.²³³ These were formally incorporated in regulations in 2000.²³⁴ The regulations emphasised that part-time deployment in stipendiary ministry would be governed by a 'contract for services'.²³⁵ A 'Model Contract for Services Agreement – Offer and Acceptance' was provided.²³⁶ The CICPB adopted regulations governing pensions in such situations.²³⁷

The General Synod provided for Clergy Severance in 2001.²³⁸ Clergy Severance Regulations were adopted by the RCB in 2002.²³⁹ These established mediation panels,

²²⁷ Letter to this author from the Archbishop of Armagh, Archive of the Bishop of Cork: Emp-04.

²²⁸ Archive of the Bishop of Cork: Emp-05.

²²⁹ 'Report of the Commission on Ministry' JGS [1998] 252 and 251-55.

²³⁰ Archive of the Bishop of Cork: CDCC-4 (This author is a member of the sub-committee); JGS [2011] 224.

²³¹ See JGS [1975] lxxviii (a member of the clergy '...who has been in the paid employment of the Church of Ireland shall not so far as possible, be left without alternative employment, and that the RCB be asked to report on the question of making suitable payments to any clergyman whose office has been terminated').

²³² 'Report of the Commission on Ministry' JGS [1998] 252.

²³³ 'Report of the Commission on Ministry' JGS [1998] 253-55.

²³⁴ JGS [2000] 21 and 58-62. See also Statute of the General Synod of the Church of Ireland 1999 c.IV. They were also notified to the Church of Ireland Pensions Boards: see JGS [2000] 73 at para 13.

²³⁵ JGS [2000] 59.

²³⁶ JGS [2000] 60-62.

²³⁷ 'Report of the Church of Ireland Pensions Board' JGS [2001] 72 and 123-25; see also 'Report of the Church of Ireland Pensions Board' JGS [2002] 79 para 13 and 113-15.

²³⁸ Statute of the General Synod of the Church of Ireland 2001 c.vi.

²³⁹ JGS [2003] 50-51.

and created the possibility of voluntary severance and settlements. Legislation mandating a severance fund was passed in 2003.²⁴⁰

In 2006, the Commission on Ministry identified ‘conditions of employment’ as an issue arising from disparate practices among dioceses in the deployment of auxiliary clergy.²⁴¹

In 2009, the General Synod provided that, in certain circumstances, payments might be made to persons in the auxiliary ministry.²⁴² Legislation laid down the pre-conditions.²⁴³

In this connection, the RCB was at pains to emphasise the status of clergy:

[A] member of the clergy in his or her capacity as such is not an employee. As such, a member of the clergy is not entitled to statutory leave such as holiday leave, sick leave or maternity leave. He or she is also responsible for discharging any taxes, (...).²⁴⁴

In 2009 the proposal emerged that there should be a Code of Duty and Conduct for ministering in the Church of Ireland.²⁴⁵ A sub-committee identified that many of the elements of a codified approach were dispersed throughout the canonical framework of the church.²⁴⁶ Similar work in other parts of the Anglican Communion was examined.²⁴⁷ Again, the Standing Committee emphasised the status of clergy:

It was also stressed that the production of a code of duty and conduct should not imply a shift from the status of ‘office-holder’ to ‘employee’ for clergy and therefore that such a code would have to be very carefully drafted.²⁴⁸

Ecclesiastical Discipline

Closely related to ‘personnel’ matters is the issue of discipline.

By 2002, the extant system of ecclesiastical discipline was that established in the nineteenth century. The rules of the courts were last updated in 1935.²⁴⁹ The intensive

²⁴⁰ Statute of the General Synod of the Church of Ireland 2003 c xvi.

²⁴¹ ‘Report of the Commission on Ministry’ JGS [2006] 347.

²⁴² Statute of the General Synod of the Church of Ireland 2009 c v (Amendment to Canon 34); see also JGS [2008] cxlii.

²⁴³ CCI ch IX s 34(5) [Canon 34.5].

²⁴⁴ ‘Explanatory Memorandum’ of ‘Rules Governing Remuneration, Expenses and Other Matters relating to Payments to Persons Serving in the Auxiliary Ministry’ JGS [2010] 99.

²⁴⁵ JGS [2009] cv.

²⁴⁶ Archive of the Bishop of Cork: CDCC-1.

²⁴⁷ Archive of the Bishop of Cork: CDCC-2 and CDCC3.

²⁴⁸ JGS [2010] 217.

focus between 2003 and 2009 on a revised scheme of ecclesiastical discipline and tribunals emerged, in part, from the prevalent uncertainty about the employment status of clergy, and also from concerns about the extant framework and constitutional justice.

This latter preoccupation was specifically outlined in 2005: the independence of the complaints body, the minimising of the adversarial element; a system not based in the diocese to ensure ‘fairness and independence’; the availability of enough people to sit on tribunals; and openness to public scrutiny.²⁵⁰ The underlying issues were again alluded to in 2006:

[T]he Committee is working to recommend (...) the adoption of such a revised and modernised scheme (...) as would ensure compliance with, on the one hand, the established principles of Canon Law, and on the other, the requirements of civil law and natural justice, by providing, at each stage of the procedure, a truly objective assessment by an independent body of the issues involved in a less adversarial manner and is open to public scrutiny throughout.²⁵¹

The reasoning was discernible in the final report: the proposal ‘contains provisions for a new disciplinary process which is both sensitive to the concerns of clergy and to the key pastoral role of bishops while, at the same time, ensuring compliance with the requirements of human rights legislation in both jurisdictions in Ireland.’²⁵²

The backdrop was the *Furlong Case*²⁵³ in May 2002. Dean Furlong and his lawyers disagreed with the procedures.²⁵⁴ In the aftermath of that case, the Archbishop of Armagh wrote:

For some time I have been conscious of the need to examine the Church of Ireland Constitutional provisions regarding Church Courts and Tribunals. While recourse to these bodies is not a frequent occurrence recent occasions have reminded us that the composition and powers of such bodies require examination.²⁵⁵

A report of the Archbishop’s unilateral decision (itself significant) to set up a Courts and Tribunals Committee sets out the wider context:

²⁴⁹ JGS [2004] 174 para15.

²⁵⁰ ‘Report of the Courts and Tribunals Committee’ JGS [2005] 216-19, 218.

²⁵¹ JGS [2006] 149 para 16.

²⁵² JGS [2008] 247 para 17.

²⁵³ *Bishop of Meath v. Furlong* [2003] JGS 446; see also Andrew Furlong *Tried for Heresy* (O Books 2003).

²⁵⁴ Andrew Furlong *Tried for Heresy* (O Books 2003) 76-79.

²⁵⁵ Letter to this author on 1st April 2003, Archive of the Bishop of Cork, Courts – 1.

[T]here have been substantial changes in the civil law arising particularly out of the obligations of membership of the European Union and the recent incorporation into domestic law of the European Convention on Human Rights. In recent years it has been increasingly felt that the Church of Ireland's procedures for dealing with grievances need to be reviewed.²⁵⁶

Church Response

The Archbishop's Courts and Tribunals Committee was tasked with 'drafting detailed recommendations for such legal structures and procedures as will ensure a fair hearing and equitable resolution of matters referred to them.'²⁵⁷ Insinuated in this is the suggestion that the structures and procedures may not have encompassed such fairness. The Committee met on six occasions between 2004 and 2005 'to consider what legal structures and procedures would best serve the needs of the Church of Ireland in the twenty-first century.'²⁵⁸ The primary thrust of the committee's work was a new disciplinary scheme.²⁵⁹ This was to be modelled on a scheme for a professional body and envisaged putting in place a complaints officer, a complaints committee, a disciplinary tribunal and an appeals tribunal.²⁶⁰

Hesitation was evident in the report of Standing Committee in 2008 when it referred to the inclusion of two core elements in the draft Bill: on the one hand, the concerns of clergy and the key pastoral role of bishops, and, on the other, the requirements of human rights legislation.²⁶¹

A year intervened without a report from the Committee, which indicates a hiatus: early drafts of a disciplinary framework had been produced with reference only to civil law models. These ignored the ecclesiastical principles of canonical obedience, the role of the bishop and the obligation, as of first importance, to seek a pastoral resolution, in the early stages of disputes.

A Bill was finally presented in 2008.²⁶² Chapter VIII was substantially altered by the addition of a fourth part.²⁶³ Part IV provided an entirely new structure for dealing with disciplinary matters (Complaints Officer, a Complaints Committee, a Disciplinary

²⁵⁶ JGS [2004] 174 para 15; this author was a member of the Courts and Tribunals Committee.

²⁵⁷ JGS [2004] 174 para 15.

²⁵⁸ 'Report of the Courts and Tribunals Committee' JGS [2005] 216-19, 216.

²⁵⁹ 'Report of the Courts and Tribunals Committee' JGS [2005] 216.

²⁶⁰ 'Report of the Courts and Tribunals Committee' JGS [2005] 216.

²⁶¹ JGS [2008] 247 para 17.

²⁶² JGS [2008] xlv – xcvi.

²⁶³ CCI, ch VIII, 'Ecclesiastical Tribunals, Faculties and Registries'.

Panel, Disciplinary Tribunals, an Appeals Tribunal) as well as procedures for each stage.²⁶⁴ There were few changes in the original parts: Part I (Diocesan Courts), Part II (the Court of the General Synod) and Part III (provisions relating to Diocesan Courts and the Court of the General Synod, as well as licences, dispensations and faculties).²⁶⁵

Pensions

In the area of pensions the civil law has had a considerable impact in recent years: the Pensions Act 1990, the Pensions Act 1995 (UK), the Pensions (Amendment) Act 2002,²⁶⁶ and the Civil Partnership Act 2004.

The principal catalyst of major change was a review by the church, in consultation with its legal advisers, of its compliance with the Pensions Act 1990 and related legislation.²⁶⁷ The implementation of the Pensions Act 1990 resulted in changes in the mid-1990s.²⁶⁸ The contemporary culture within the church of compliance with the civil law motivated the review and resulted in a period of intense preoccupation with pensions law.

The CICPB took legal advice in 2007.²⁶⁹ That advice identified elements of Chapter XIV of the CCI which did not comply with Irish pension legislation; it called into question the governance structure relating to the Clergy Pensions Fund (CICPF).²⁷⁰ The report of the CICPB in 2009 set out the dilemmas of compliance with the legislation at some length, as did that of the RCB in 2010.²⁷¹

The principal concern was that the RCB is the ‘sponsoring employer’ of the Fund and, simultaneously is ‘Trustee of the Fund.’²⁷² Moreover, legal advice identified that

²⁶⁴ Statute of the General Synod of the Church of Ireland 2008 c i; the Statute was commenced on 1st January 2009; at the time of writing, two complaints had been heard under the new procedures in 2011 JGS [2011] 451-52 and 454-55.

²⁶⁵ JGS [2008] xlvi.

²⁶⁶ Provided for the introduction of Personal Retirement Savings Accounts (so-called PRSAs) in Ireland.

²⁶⁷ Finance Act 1972; Taxes Consolidation Act 1997; Pensions Ombudsman Regulations 2003 (SI 397/2003); Social Welfare and Pensions Act 2005; Occupational Pensions Scheme (Disclosure of Information) Regulations 2006 (SI 301/2006); EU Directive 2003/41/EC.

²⁶⁸ JGS [1995] 82-83.

²⁶⁹ ‘Report of the Church of Ireland Pensions Board’ JGS [2009] 110 para 14; see also Archive of the Bishop of Cork: Pen-01.

²⁷⁰ ‘Report of the Church of Ireland Pensions Board’ JGS [2009] 110 para 14.

²⁷¹ ‘Report of the Church of Ireland Pensions Board’ JGS [2009] 110-1. para 14; and see also JGS [2010] 42-44.

²⁷² JGS [2010] 43.

elements of Chapter XIV did not ‘currently comply with Irish pensions legislation and (...) questioned the current governance structure relating to the Fund.’²⁷³

The CICPB had been fulfilling functions, which properly were the legal duty of the trustee, and was fulfilling powers and responsibilities of a pension scheme administrator.²⁷⁴ Among powers not being exercised properly for a scheme administrator in law were: appointing the actuary; the levying and receipt of contributions; and the power to split the fund.²⁷⁵

Other weaknesses included: inadequate provision for consultation with the scheme sponsor (the RCB); lack of definition of personal interest; a lack of clarity about compliance with cross-border provisions of the Pensions Act 1990; and a lack of clarity about where certain powers conferred on pensions trustees in legislation resided.²⁷⁶ The scheme’s Explanatory Booklet failed to refer to certain matters as required by the Occupational Pensions Scheme (Disclosure of Information) Regulations 2006.²⁷⁷ namely, the internal disputes resolution procedure, pensions adjustment orders, the fact of registration with *An Bord Pinsean*²⁷⁸ and the registration number, the terms of who may amend the fund, the fund’s approval under Chapter 1 of Part 30 of the Taxes Consolidation Act 1997 or Chapter II of Part I of the Finance Act 1972, and the fact that the fund is a defined benefit scheme for the purposes of the Pensions Act 1990.

Church Response

It is ironic that such a cathartic overhaul of the CICPF was required by that review; the CICPB had always appeared alert to regulatory and legislative change. The Pensions Act 1995 (UK) was considered in 1996.²⁷⁹ A statement of investment principles was devised;²⁸⁰ and, following a major review, a statement of investment policy was adopted.²⁸¹ The advice of *An Bord Pinsean* was sought about the possible impact on

²⁷³ JGS [2010] 43.

²⁷⁴ Archive of the Bishop of Cork: Pen-01, paras 4 and 7.

²⁷⁵ Under the Pensions Act 1990 these are powers and duties assigned to the trustee; see also Archive of the Bishop of Cork: Pen-01.

²⁷⁶ Occupational Pensions Scheme (Disclosure of Information) Regulations 2006 (SI 301/2006).

²⁷⁷ Occupational Pensions Scheme (Disclosure of Information) Regulations 2006 (SI 301/2006).

²⁷⁸ The Irish Pensions Board.

²⁷⁹ ‘Report of the Church of Ireland Pensions Boards’ JGS [1997] 88 at para 11; see also JGS [1999] 67, para 12.

²⁸⁰ ‘Report of the Church of Ireland Pensions Board’ JGS [1998] 64, para 13.

²⁸¹ JGS [1999] 17.

Irish pension schemes of a new regulatory regime in the U.K. from 6th April 1997.²⁸² In 2000, the CICPB reported that it had been informed of likely agreement between Ireland and the U.K.²⁸³ The following year it reported that regulations removing difficulties caused by dual regulation of schemes with members in both Ireland and the U.K. had been adopted with effect from 31st December 2000.²⁸⁴ The CICPB noted in 2006 the impact of the Social Welfare and Pensions Act 2005 in respect of cross-border pensions schemes; legislation required on foot of EU Directive 2003/41/EC.²⁸⁵

In 2006 the CICPB reported that the Civil Partnership Act 2004 (U.K.) had ‘the effect of equating civil partnership with marriage in respect of the pension rights of civil partners who register as such.’²⁸⁶ Two years later the CICPB reported that it had considered the issue, received legal advice and, following further consideration by the trustee, had agreed ‘that pensions entitlements of registered civil partners must be the same as those of surviving spouses in the Fund.’²⁸⁷

Initially the CICPB was of the view that the current church pensions regime was compliant with the 1990 Act.²⁸⁸ A short note in the report of the CICPB in 2008 belied the intensity of work and change that lay ahead in order to bring the CICPF into compliance with civil law:

A small working-group made up of members of the RCB Executive Committee and the Board was set up to review issues concerning how the Fund complied with the legal requirements imposed on pension funds by the Irish Pensions Board.²⁸⁹

The RCB reported that the group had been set up ‘to review issues concerning how the CICPF complied with the increasingly complex legal requirements imposed on pension funds.’²⁹⁰ The working group reported that changes were required in Chapter XIV of the CCI ‘to enable it to conform with current pensions legislation and to make other changes to incorporate best practice in relation to the governance of a pension plan.’²⁹¹

²⁸² ‘Report of the Church of Ireland Pensions Boards’ JGS [1998] 64, para 12-13.

²⁸³ ‘Report of the Church of Ireland Pensions Board’ JGS [2000] 73, para 12.

²⁸⁴ ‘Report of the Church of Ireland Pensions Board’ JGS [2001] 71, para 12.

²⁸⁵ This took effect from 23rd September 2005; see also the Social Welfare and Pensions Act 2005 and the Social Welfare and Pensions Act 2007.

²⁸⁶ ‘Report of the Church of Ireland Pensions Board’ JGS [2006] 104.

²⁸⁷ ‘Report of the Church of Ireland Pensions Board’ JGS [2008] 98, para 12.

²⁸⁸ JGS [1991] 154; JGS [1992] 176.

²⁸⁹ ‘Report of the Church of Ireland Pensions Board’ JGS [2008] 98, para 13.

²⁹⁰ JGS [2010] 42.

²⁹¹ JGS [2010] 42; see also ‘Report of the Church of Ireland Pensions Board’ JGS [2010] 162.

The review was an intense process involving representatives of the RCB, the Standing Committee and the CICPB over a three year period, followed by legislation at the General Synod and implementation. One of the first signs of change was the appointment of a registered administrator to fulfil certain statutory functions.²⁹²

The central response was the appointment of a corporate trustee in the form of a limited company, having the RCB as sole shareholder and its sole function being the trusteeship of the Fund.²⁹³ The new company is The Church of Ireland Clergy Pension Trustee Ltd.²⁹⁴ As a matter of internal church law, the five directors of the Company (three nominated by the RCB Executive and two by the CICPB) were to sign a declaration indicating that they submit themselves to the ‘powers of the General Synod and the laws of the Church of Ireland’.²⁹⁵ No amendment can be made by the RCB as sole shareholder to the Memorandum or Articles without the consent of the General Synod.²⁹⁶

The investment powers of the trustee were set out in the pensions chapter of the CCI.²⁹⁷ The role of the CICPB was radically altered. The fund was now to be administered by the Trustee, with the assistance of the CICPB.²⁹⁸ The duties were set out and it was emphasised that while ‘these are largely those presently undertaken by the Board (...) ultimate responsibility for all of those duties will remain with the new Trustee.’²⁹⁹ Other tasks previously fulfilled by the CICPB being transferred to the trustee included: the appointment of the Medical Panel;³⁰⁰ the making of certain calculations and determining contributions;³⁰¹ and the setting of episcopal contributions.³⁰²

It was not only the realignment of functions as and between the CICPB and the new trustee, which was addressed in this internal church legislation. Hitherto the RCB had prescribed the terms and conditions for recognition of service in a full-time appointment

²⁹² ‘Report of the Church of Ireland Pensions Board’ JGS [2009] 107, para 9.

²⁹³ ‘Explanatory Memorandum’ Bill No.1 General Synod 2010, see JGS [2010] xlvii.

²⁹⁴ For the Memorandum and Articles of Association see JGS [2010] 122-49.

²⁹⁵ JGS [2010] 43.

²⁹⁶ CCI, ch XIV s 7.

²⁹⁷ CCI, ch XIV Ss 8 and 14.

²⁹⁸ CCI, ch XIV Ss 11 and 12.

²⁹⁹ ‘Explanatory Memorandum’ JGS [2010] xlix; and JGS [2010] 44.

³⁰⁰ CCI, ch XIV Ss 31-33.

³⁰¹ CCI, ch XIV Ss 38-39.

³⁰² CCI, ch XIV s 70.

outside parochial ministry; now the trustee would do so.³⁰³ The new trustee had compliance issues to address as of first importance, notably the putting-in-place of an Internal Dispute Resolution (IDR) Procedure as required under the Pensions Ombudsman Regulations 2003.³⁰⁴

Education³⁰⁵

Since 1998, the impact of the civil law has been encountered strongly in the field of education (a crucible of controversy).³⁰⁶ This has been referred to as ‘a dormant crisis in waiting.’³⁰⁷ It has preoccupied the Church of Ireland.³⁰⁸

Education has ever been a concern of the church.³⁰⁹ Until 1998 education law was found in a jigsaw of sources, a situation the courts have described as ‘unsatisfactory’.³¹⁰ This regulatory hotchpotch was referred to by Costello J in *O’Callaghan v Meath VEC*:

It is a remarkable feature of the Irish system of education that the administration by the Department of Education is largely uncontrolled by statute or statutory instruments and that many hundreds, perhaps thousands, of rules and regulations, memoranda, circulars and decisions are issued and made by the Department and Minister (dealing sometimes with the most important aspects of educational policy) not under any statutory power but merely as administrative measures.³¹¹

Following a decade of consultation, the Education Act 1998 was passed on 13 December 1998 and commenced progressively over the ensuing two years.³¹² The Act

³⁰³ CCI, ch XIV s 21.

³⁰⁴ Pensions Ombudsman Regulations 2003 (SI No 397 of 2003).

³⁰⁵ For the law of education in Ireland see generally Dympna Glendenning, *Education and the Law* (Butterworths 1999); for religion, education and law see Dympna Glendenning, *Education, Religion and the Law* (Tottel 2008) ch 9.

³⁰⁶ see eg ‘Suburbs full of empty promise’ *Irish Times* 26th August 2006; ‘Is your child Catholic enough to get a place at school?’ *Irish Times* 5th May 2007; ‘Is denominational education suitable for 21st Century Ireland?’ *Irish Times* 4th April 2008; ‘Protestant Bishops fear cuts will close schools’ *Irish Independent* 1st November 2008; see also Oran Doyle, ‘Article 44: Privileging the Rights of the Religious’ in Eoin Carolan, and Oran Doyle (eds.) *The Irish Constitution: Governance and Values* (Thomson Round Hall 2008) 476-89.

³⁰⁷ Claire Hogan, ‘A Veiled Problem: Religion in Irish Schools’ (2005) 8 *TCLR* 5-31 at 29.

³⁰⁸ See eg Paul Colton ‘Schools and the law: a patron’s introspection’ (2009) vol 28 no 3 *Irish Educational Studies* 253; Paul Colton ‘Religion in Public Education in Ireland’ in Gerhard Robbers (ed), *Religion in Public Education* (European Consortium for Church and State Research 2011) 227-56; Richard Clarke, ‘What do we want from Denominational Education?’ (2006) vol 29 no 3 *SEARCH: A Church of Ireland Journal* 228.

³⁰⁹ With the exception of liturgy and hymnody the first board to be established was a Board of Education, see JGS [1875] 80f and 99-100 and 226-27.

³¹⁰ Per Laffoy J *O’Sheil v Minister for Education* [1999] 2 *ILRM* 241, 247.

³¹¹ *O’Callaghan v Meath VEC* [1991] *WJSC-HC* 1037, 1038; a similar observation was made by Laffoy J in *O’Sheil v Minister for Education* [1999] 2 *ILRM* 241, 247; a full list of circulars is available at < www.education.ie > accessed 21 March 2012.

³¹² Education Act 1998, s 1(3); the sections were commenced as follows: Education Act 1998 (Commencement) Order 1999 (SI No 29 of 1999) (Ss 2, 3, 4, 5, 6, 13, 25, 26, 36 and 37 and Parts VIII

‘formalises, for the first time in the history of the State, a national consensus in education distilled over a nine-year period of intense public debate, negotiation and compromise.’³¹³ The Act provides for: the functions of a school;³¹⁴ recognition (and withdrawal of recognition) of schools;³¹⁵ annual funding;³¹⁶ establishing an inspectorate;³¹⁷ constituting and regulating boards of management;³¹⁸ putting in place a school plan;³¹⁹ the appointment and role of the principal and teachers;³²⁰ the establishment and regulation of the National Council for Curriculum and Assessment;³²¹ examinations;³²² the provisions of support services through bodies corporate;³²³ the setting up of parents’ associations;³²⁴ and miscellaneous provisions, the most notable of which relate to the school year,³²⁵ student councils,³²⁶ local grievance procedures,³²⁷ appeals,³²⁸ the curriculum,³²⁹ the making of regulations³³⁰ and educational disadvantage.³³¹

Since 1998 even more transforming legislation has been introduced governing schools.³³² Regulations, rules, circulars, handbooks and guidelines continue to be a mainstay of the regulatory framework governing education.³³³ As in other areas of

and IX were commenced on 5 February 1999); Education Act 1998 (Commencement)(No 2) Order 1999 (SI No 470 of 1999) - (ss 7, 9, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 27, 28, 30, 31, 33, 34, 35, and Part VII were commenced on 23 December 1999); Education Act 1998 (Commencement)(No 3) Order 2000 (SI No 495 of 2000): (ss , 8, 10, 11, 12, 18, 29 and 32 were commenced on 22 December 2000); until then, the only piece of twentieth century legislation relating to primary school children was the School Attendance Act 1926; see also ‘Report of the Board of Education’ JGS [1999] 236; ‘Report of the Secondary Education Committee’ JGS [1999] 286.

³¹³ Dympna Glendenning, *Education and the Law* (Butterworths 1999) 163.

³¹⁴ Education Act 1998, s 9.

³¹⁵ Education Act 1998, Ss 10 and 11.

³¹⁶ Education Act 1998, s 12.

³¹⁷ Education Act 1998, s 13.

³¹⁸ Education Act 1998, ss 14-20.

³¹⁹ Education Act 1998, s 21.

³²⁰ Education Act 1998, ss 22-24.

³²¹ Education Act 1998, ss 38-48.

³²² Education Act 1998, ss 49-53.

³²³ Education Act 1998, ss 54-59.

³²⁴ Education Act 1998, s 26.

³²⁵ Education Act 1998, s 25.

³²⁶ Education Act 1998, s 27.

³²⁷ Education Act 1998, s 28.

³²⁸ Education Act 1998, s 29 (known colloquially as section 29 appeals).

³²⁹ Education Act 1998, s 30.

³³⁰ Education Act 1998, s 33.

³³¹ Education Act 1998, s 32.

³³² Education (Welfare) Act 2000; Qualifications (Education and Training) Act 2000; Teaching Council Act 2001; Education of Persons with Special Educational Needs Act 2004; Teaching Council (Amendment) Act 2006; Education (Miscellaneous Provisions) Act 2007.

³³³ see eg *Boards of Management of National Schools Constitution of Boards and Rules of Procedure* (Department of Education and Skills 2011) and *Primary Boards of Management: Information Manual* (Department of Education and Science 2007).

change, there is a consciousness too of the human rights debate in relation to the Irish education system.³³⁴

Church Response

The transition to this new legal dispensation has shaped the education agenda of the church. In 1996, the BEGSCI considered a government White Paper ‘Charting our Education Future’.³³⁵ When the Education Bill 1997 was published legal advice was sought.³³⁶ A submission³³⁷ and representations were made.³³⁸ Similar strategies were adopted in response to subsequent proposals.³³⁹ In October 1997 agreement was reached.³⁴⁰

So cathartic were the changes, that the BEGSCI issued briefing papers.³⁴¹ The BEGSCI emphasised that ‘[t]he statutory responsibilities imposed by the Act will require all involved in the delivery of education to be extremely careful in following all agreed procedures.’³⁴² The preoccupation with compliance was seen as recently as 2008:

The need to be compliant with both statutory and agreed procedures has been repeatedly stressed as difficulties are more likely to arise when errors or omissions occur in the implementation of matters such as teacher appointments or parental complaints. The use of mediation has been found helpful in relation to resolving a small number of issues within school communities.³⁴³

Putting boards of management in place for second-level schools proved elusive and time-consuming.³⁴⁴ Appeals under section 29 of the Education Act 1998 caused anxiety.³⁴⁵ By 2002 the SEC reported that legislation had been introduced at such speed

³³⁴ See generally eg Alison Mawhinney, *Freedom of Religion and Schools: the Case of Ireland* (VDM Verlag Dr Müller 2009); Conor O’Mahony, *Educational Rights in Irish Law* (Thomson Roundhall 2006); see also eg *Hasan and Eylem Zengin v Turkey* App No 1448/04 (9 October, 2007).

³³⁵ ‘Report of the Board of Education’ JGS [1996] 251.

³³⁶ ‘Report of the Board of Education’ JGS [1997] 178; ‘Report of the Secondary Education Committee’ JGS [1998] 206 (section 12 of the Bill dealt with the funding of schools and the Committee was concerned about its relation to Article 44.2.4 of *Bunreacht na hÉireann*).

³³⁷ ‘Report of the Board of Education’ JGS [1997] 195-99.

³³⁸ ‘Report of the Secondary Education Committee’ JGS [1997] 221.

³³⁹ Universities Bill 1996, ‘Report of the Board of Education’ JGS [1997] 179; Education (No 2) Bill 1997, ‘Report of the Board of Education’ JGS [1998] 170-71 (the Education Bill 1997 fell upon the dissolution of the 27th Dáil on 15th May 1997); see also Universities Act 1997.

³⁴⁰ ‘Report of the Board of Education’ JGS [1998] 172.

³⁴¹ Education Act 1998, s 8 (patronage) and s 15(2)(b) (characteristic spirit).

³⁴² ‘Report of the Board of Education’ JGS [2000] 189; see also ‘Report of the Secondary Education Committee’ JGS [2000] 204.

³⁴³ ‘Report of the Board of Education’ JGS [2008] 268-69.

³⁴⁴ ‘Report of the Secondary Education Committee’ JGS [2001] 261-62.

³⁴⁵ ‘Report of the Secondary Education Committee’ JGS [2001] 262.

that the government itself was ‘...unable to keep pace in providing the supporting structures.’³⁴⁶ The BEGSCI issued a number of documents to assist schools with compliance.³⁴⁷ The changes enabled the introduction of Religious Education as an examinable subject at second-level.³⁴⁸

The BEGSCI has consistently drawn the church’s attention to new legislation.³⁴⁹ Its responses to legislation indicate the considerable effects on the church: ‘a further burden (...) if resources are not put in place’,³⁵⁰ ‘a cause of anxiety’,³⁵¹ ‘extremely demanding for schools’,³⁵² ‘adds to the burden of legislation’,³⁵³ and, ‘grave disquiet at the additional requirements being placed on school authorities.’³⁵⁴ The absence of adequate funding to ensure legal compliance was a persistent worry.³⁵⁵ The Protection of Employees (Fixed Term Work) Act 2003 was reported as having ‘a significant impact on boards of management as employers and on temporary employees’ in schools.³⁵⁶

In general, the BEGSCI fulfilled its advisory role and assisted schools with implementation of the new legislation.³⁵⁷ Specific issues were patronage,³⁵⁸ the burden and complexity of the law,³⁵⁹ defining ‘characteristic spirit’,³⁶⁰ the rights of religious

³⁴⁶ ‘Report of the Secondary Education Committee’ JGS [2002] 231.

³⁴⁷ Documents prepared by the Bishop of Cork, ‘Report of the Board of Education’ JGS [2002] 215.

³⁴⁸ ‘Report of the Board of Education’ JGS [1998] 173; see also ‘Report of the Secondary Education Committee’ JGS [1998] 207.

³⁴⁹ eg Qualifications (Education and Training) Act 2000 and Teaching Council Act 2001 ‘Report of the Board of Education’ JGS [2001] 243.

³⁵⁰ Response to Education for Persons with Disabilities Bill 2002, ‘Report of the Secondary Education Committee’ JGS [2002] 231.

³⁵¹ Response to the Education for Persons with Disabilities Bill 2002, ‘Report of the Secondary Education Committee’ JGS [2004] 325.

³⁵² Response to the Education for Persons with Special Educational Needs Act 2004, Report of the Board of Education’ JGS [2005] 278.

³⁵³ Response to the Education for Persons with Special Educational Needs Act 2004, ‘Report of the Board of Education’ JGS [2006] 294. see generally Mary Meaney Nessa Kiernan and Karl Monahan *Special Educational Needs and the Law* (Thomson Roundhall 2005).

³⁵⁴ Response to the Education (Welfare) Bill 2000, ‘Report of the Board of Education’ JGS [2000] 190; see also ‘Report of the Secondary Education Committee’ JGS [2000] 204; see also Education (Welfare) Act 2000.

³⁵⁵ ‘Report of the Secondary Education Committee’ JGS [2001] 262; ‘Report of the Secondary Education Committee’ JGS [2002] 215; ‘Report of the Board of Education’ JGS [2007] 287-88.

³⁵⁶ ‘Report of the Board of Education’ JGS [2006] 295.

³⁵⁷ See eg ‘Report of the Board of Education’ JGS [2003] 286.

³⁵⁸ See the National Forum on Patronage and Pluralism in the Primary Sector: < <http://www.education.ie/home/home.jsp?maincat=&pcategory=10861&ecategory=10876§ionpage=12251&language=EN&link=link001&page=6&doc=52586> > accessed on 23 January 2012.

³⁵⁹ Paul Colton ‘Schools and the law: a patron’s introspection’ (2009) vol 28 no 3 Irish Educational Studies 253, 257 and 259.

³⁶⁰ Paul Colton ‘Schools and the law: a patron’s introspection’ (2009) vol 28 no 3 Irish Educational Studies 253, 259-60.

minorities;³⁶¹ religious education and the right of opt-out;³⁶² the employment of teachers in denominational schools;³⁶³ religious symbols and dress;³⁶⁴ and political pressures.³⁶⁵

In the case of religious education, church schools have to engage with the Supreme Court's distinction between 'religious education' and 'religious formation'.³⁶⁶ A review of the Rules for National Schools 1965 was requested.³⁶⁷ The question of Deeds of Variation was re-opened in 2007 but has not been resolved.³⁶⁸ Other changes effected by administrative measure were notified and explained: whole school evaluation,³⁶⁹ school development planning,³⁷⁰ a new primary curriculum,³⁷¹ the development of new operational procedures,³⁷² regulation of the school year,³⁷³ and the development of school codes of behaviour.³⁷⁴

At second-level, the SEC undertook this work.³⁷⁵ Perceived failings on the part of the State were seen as compounding the impacts of new legislation. The SEC alleged that:

[t]he tardiness of the Government in providing adequate staffing resources for the National Education Welfare Board has resulted in schools being expected to comply with complex legislation but without the necessary guidance from the Board.³⁷⁶

³⁶¹ Paul Colton 'Schools and the law: a patron's introspection' (2009) vol 28 no 3 Irish Educational Studies 253, 261-63.

³⁶² Paul Colton 'Schools and the law: a patron's introspection' (2009) vol 28 no 3 Irish Educational Studies 253, 265-6.

³⁶³ Paul Colton 'Schools and the law: a patron's introspection' (2009) vol 28 no 3 Irish Educational Studies 253, 267.

³⁶⁴ Paul Colton 'Schools and the law: a patron's introspection' (2009) vol 28 no 3 Irish Educational Studies 253, 267-68.

³⁶⁵ eg Department of Education and Skills Value for Money Review of Small Schools; see also 'Report of the Value for Money Review of the School Transport System' (Department of Education and Skills 2011)

³⁶⁶ *Campaign to Separate Church and State Ltd and Murphy v Minister for Education* [1998] 3 IR 321, 357-58: the Court differentiated between 'religious education' (general teaching about religious doctrine, apologetics, religious history and comparative religions) and 'religious formation' (familiarising a child with religious practice, attendance at religious services, and developing the child's religious and spiritual life), per Costello P, 341.

³⁶⁷ 'Report of the Board of Education' JGS [2003] 286.

³⁶⁸ 'Report of the Board of Education' JGS [2007] 288.

³⁶⁹ 'Report of the Board of Education' JGS [2000] 191; 'Report of the Secondary Education Committee' JGS [2005] 294.

³⁷⁰ 'Report of the Board of Education' JGS [2000] 191.

³⁷¹ 'Report of the Board of Education' JGS [2000] 191.

³⁷² 'Report of the Board of Education' JGS [2000] 192.

³⁷³ 'Report of the Secondary Education Committee' JGS [2004] 339; 'Report of the Secondary Education Committee' JGS [2005] 293.

³⁷⁴ *Developing a Code of Behaviour: Guidelines for Schools* (National Educational Welfare Board 2008).

³⁷⁵ See eg handbook prepared, 'Report of the Secondary Education Committee' JGS [2003] 312.

³⁷⁶ 'Report of the Secondary Education Committee' JGS [2003] 312.

A measure of the growing consciousness of legal vulnerability was the decision, in 2000, to incorporate the SEC as a company limited by guarantee,³⁷⁷ undertaken for ‘legal and insurance reasons.’³⁷⁸

Child Protection

The law relating to children in Ireland subsists in a complex array of sources.³⁷⁹ As a sub-category it has been articulated only recently.³⁸⁰ It is topical not least because of the long-awaited referendum on children’s rights.³⁸¹ The need is as pressing as ever.³⁸² The impetus for change arose from an horrendous litany of crimes and malpractice, including within churches, exposed in the 1990s.³⁸³ In 2002 ‘The SAVI Report’ estimated that 27% of Irish children experienced abuse before the age of seventeen.³⁸⁴

³⁷⁷ JGS [2000] lxxxix, xc and c.

³⁷⁸ ‘Report of the Secondary Education Committee’ JGS [2000] 205.

³⁷⁹ See generally eg *Bunreacht na hÉireann*, Articles 40-42; United Nations convention on the Rights of the Child 1989 (ratified by Ireland on 21 September 1992); the European Convention on the Exercise of Children’s Rights 1996 (signed by Ireland on 25 January 1996, but not yet ratified); the European Convention on Human Rights and Fundamental Freedoms; the European Convention on Human Rights Act 2003, the Charter of Fundamental Rights of the European Union (adopted 7 December 2000), the Hague Child Protection Convention 1996 and the Protection of Children (Hague Convention) Act 2000 (passed but not commenced); for the welfare and care of children see Child Care Act 1991 and Children Act 2001; for education of children see . Education Act 1998, Education (Miscellaneous Provisions) Act 2007, Education (Welfare) Act 2000, the Education for Persons with Special Educational Needs Act 2004, the Disability Act 2005; for children in the workplace see Safety, Health and Welfare at Work (Children and Young Persons) Regulations 1998 (SI No 504 of 1998); Minimum Wage Act 2000; Protection of Young Persons (Employment) Act 1996; for work on licensed premises see also Protection of Young Persons (Employment) Act 1996 (Employment in Licensed Premises) Regulations, 2001 (SI No 350 of 2001); Protection of Young Persons (Employment) Act 1996 (Bar Apprentices) Regulations 2001 (IS no 351 of 2001); for health and safety see Safety , Health and Welfare at Work Act 1989, Safety, Health and Welfare at Work Act 2005; for the ombudsman for children see The Ombudsman for Children Act 2002; also < www.oco.ie > accessed on 22 January 2012; for children on church property see Occupiers’ Liability Act 1995; for fund-raising see Street and House to House Collections Act 1962 , s 1 and Casual Trading Act 1995, s 2(2).

³⁸⁰ See generally Geoffrey Shannon, *Child Law* (2nd edn, 2010 Thomson Reuters 2010), the first edition was published in 2005.

³⁸¹ Fionán Sheahan, ‘Coalition considers holding one referendum at a time’ *The Irish Independent* (Dublin, 4 January 2012); Noel Whelan, ‘Stage is set for dramatic year in political life’ *The Irish Times* (Dublin, 7 January 2012); and, the people of Ireland voted ‘yes’ in the Children’s Referendum on 10th November 2012 in support of the Thirty-First Amendment of the Constitution (Children) Bill 2012.

³⁸² Carl O’Brien, ‘Minister says serious work to be done in reforming the protection of children’ *The Irish Times* (Dublin, 31 December 2011).

³⁸³ See June Goulding, *The Light in the Window* (Ebury Press 2005); Andrew Madden, *Altar Boy* (Penguin 2004); Suing the Pope’ < <http://news.bbc.co.uk/1/hi/programmes/correspondent/1879407.stm> > accessed 20 March 2012; Goldenbridge see Bernadette Fahy, *Freedom of Angels: Surviving Goldenbridge Orphanage*, (The O’Brien Press 1999); the Magdalen laundries see Frances Finnegan, *Do Penance or Perish: Magdalen Asylums in Ireland*, (Oxford University Press 2004); Kilkenny Incest Report 1993; Madonna House Enquiry, 1996; industrial schools see Mary Raftery and Eoin O’Sullivan, *Suffer the Little Children: The Inside Story of Ireland’s Industrial Schools*, (New Island Books 2000); ‘1 in 4 founder settles High Court action’ < www.rte.ie/news/2003/0409/abuse01.html > accessed 20 March 2012.

³⁸⁴ *The SAVI Report* (Sexual Abuse and Violence in Ireland) (Liffey Press 2002); see also < www.oneinfour.org/about/irishstatistics/ > and < www.drcc.ie/about_us/savi.html > accessed 21 March 2012.

The mind of society was for change and the civil law began to reflect that.³⁸⁵ On 11th May 1999, the Government apologised to victims of abuse. A Commission of Enquiry was set up and reported in May 2009.³⁸⁶ The report of the Ferns Inquiry was published in October 2005. The Murphy Report (into child abuse in the Archdiocese of Dublin) was published in July 2009.³⁸⁷ The Cloyne Report was published in December 2010.³⁸⁸ The Roman Catholic Church's internal review of six other dioceses was published in November 2011.³⁸⁹

In Ireland, as a whole, a very public debate about mandatory reporting resulting in an inconclusive report.³⁹⁰ The Protection for Persons Reporting Child Abuse Act 1998 was followed, in 1999, by national guidelines: *Children First*.³⁹¹ In 2001, *A Code of Good Practice - Child Protection for the Youth Work Sector* was published.³⁹² In 2002, *Our Duty to Care* was added.³⁹³

The Sex Offenders Act 2001 legislated for the notification to *An Garda Síochána* of conviction for certain sexual offences.³⁹⁴ The Criminal Law (Sexual Offences) Act 2006³⁹⁵ created the offence of engaging in a sexual act with a child under 15 years.³⁹⁶ The Criminal Justice Act 2006 created the indictable offence of the reckless

³⁸⁵ 'Taoiseach apologies to victims of child abuse' < www.rte.ie/news/1999/0511/abuse.html > accessed 20 March 2012.

³⁸⁶ Commonly known as 'The Ryan Report'; see < www.childabusecommission.ie > accessed on 21 January 2012; Tony Flannery (ed), *Responding to the Ryan Report* (The Columba Press 2009).

³⁸⁷ See < www.justice.ie/en/JELR/Pages/PB09000504 > accessed on 21 January 2012.

³⁸⁸ See < http://www.justice.ie/en/JELR/Pages/Cloyne_Rpt > accessed on 21 January 2012.

³⁸⁹ See < www.safeguarding.ie/reviews-nov-2011 > last accessed on 21st January 2012. The six Dioceses are: Ardagh and Clonmacnois, Derry, Dromore, Kilmore, Raphoe and Tuam.

³⁹⁰ *Putting Children First* (Department of Health 1997).

³⁹¹ Protection of Persons Reporting Child Abuse Act 1998, s 3(1) afforded protection for those who made reports in good faith, while s 5(1) – the offence of making a false report; *Children First: national guidelines for the welfare and protection of children* (Stationery Office 1999); see also JGS [2000] 126 para 25; Opinion of Mr Gerard Hogan, S.C. (17th May, 1999) (Office of the Board of Education of the General Synod of the General Synod).

³⁹² *A Code of Good Practice - Child Protection for the Youth Work Sector* (Stationery Office 2003); a revised edition was published in 2009 *Children First: national guidelines for the welfare and protection of children* (Stationery Office 2009).

³⁹³ *Our Duty to Care: the principles of good practice for the protection of children and young people* (Department of Health and Children 2002).

³⁹⁴ Colloquially known as the Sex Offenders' Register: Sex Offenders Act 2001, s 26(1) – sex offenders must notify prospective employers; Sex Offenders Act 2001, s 26(2) – it is an offence not to notify.

³⁹⁵ See also Criminal Law (Sexual Offences) Act 2007 which was introduced to correct an error in the 2006 Act which had created an inconsistency with section 6 of the Criminal Law (Sexual Offences) Act 1993 (soliciting to importuning another to commit offences under ss 1 or 2 of the Criminal Law (Amendment) Act 1935).

³⁹⁶ Criminal Law (Sexual Offences) Act 2006 s 2; s 3, replacing s 2(1) of the Criminal Law (Amendment) Act 1935 – sexual acts with those under 17 years; Criminal Law (Sexual Offences) Act 2006 s 3(3) – new offence of defilement of a child under 17 years by a person in authority; Criminal Law (Sexual Offences) Act 2006 s 3(5) – defence of honest mistake.

endangerment of children.³⁹⁷ The advent of vetting for volunteers and parish workers was a significant development in 2006.³⁹⁸

Future changes in child law will impact considerably on the church.³⁹⁹ It was announced in January 2012 that a Children First Bill is to be advanced in the current session.⁴⁰⁰ Under the proposed legislation, voluntary groups, which work with children, may lose funding if they fail to implement child protection measures. Adherence to *Children First* will become mandatory. It will include statutory requirements to make reports, to share information and to cooperate with the authorities.⁴⁰¹

Church Response

In 1996 the Primate⁴⁰² raised the subject of child protection publicly for the first time:

I turn now to a concern which sadly has (...) filled our hearts with dismay this past year: the abuse of children. ... there is an understandable concern for the welfare of children and young people and many groups have felt it necessary to review their approach to this work. This is not a process which the Church of Ireland can avoid (...) Work is on-going to conclude the preparation of a set of guidelines.⁴⁰³

In this, the church was ahead of the State: the Standing Committee established a Working Group on Child Sexual Abuse in November 1994.⁴⁰⁴ In September 1996 *Safeguarding Trust* was approved.⁴⁰⁵ Implementation of the code was entrusted to the BEGSCI.⁴⁰⁶ This first edition of the code was intended for both jurisdictions in Ireland but the disparate legislative provisions made this an unworkable approach.

³⁹⁷ Criminal Justice Act 2006, s 176.

³⁹⁸ ‘Report of the Board of Education’ JGS [2007] 285-6; the Church of Ireland had written to *An Taoiseach* in 2004 to urge that such vetting be put in place, see JGS [2004] 172-73; see also ‘Report of the Board of Education’ JGS [2004] 323; JGS [2005] 146 para10.

³⁹⁹ *Ireland’s Second Report to the United Nations Committee on the Rights of the Child* (July 2005, National Children’s Office, Dublin); *All-Party Oireachtas Committee on the Constitution Tenth Report: The Family* (Stationery Office 2006).

⁴⁰⁰ See

<www.taoiseach.gov.ie/eng/Taoiseach_and_Government/Government_Legislation_Programme/SECTION_A1.html> accessed on 23 January 2012.

⁴⁰¹ C O’Brien ‘Funding threat over child law compliance’ *The Irish Times* (31 December 2011, Dublin); available also at < <http://www.irishtimes.com/newspaper/ireland/2011/1231/1224309673334.html>> accessed on 23 January 2012.

⁴⁰² The Most Reverend R.H.A. Eames.

⁴⁰³ ‘Presidential Address of the Most Reverend R.H.A. Eames’ JGS [1996] lxxxii.

⁴⁰⁴ JGS [1996] 135-36.

⁴⁰⁵ JGS [1997] 141 par 24.

⁴⁰⁶ ‘Report of the Board of Education’ JGS [1998] 173.

A new edition was developed following the passing of the Protection of Persons Reporting Child Abuse Act 1998.⁴⁰⁷ The enactment of the Sex Offenders Act 2001 necessitated a briefing for clergy and panel members.⁴⁰⁸ The publication of *Our Duty to Care* necessitated a further review. Additional guidebooks were produced.⁴⁰⁹

The impact of the changing face of State law is seen in the BEGSCI report in 2000: '[t]he Church of Ireland's Code should not be static, as it must reflect on-going developments in law and research into the nature and causes of abuse.'⁴¹⁰ Throughout the church training and induction took place over a period of years.⁴¹¹

A third edition of *Safeguarding Trust* was required in 2003 to take on board not only *Our Duty to Care*, but also the Department of Education and Science's newest publication: *Child Protection for the Youth Work Sector*.⁴¹² All dioceses appointed trainers. The Department of Health and Children was asked to consider developing a single set of guidelines for all voluntary organisations.⁴¹³

Every year since the advent of *Safeguarding Trust*, the scheme of implementation and alterations to the approach, of importance, are reported to the General Synod: training, recruitment of trainers; communication; newsletters, and implementation of vetting.⁴¹⁴

A significant development in 2006 was the insertion of a new chapter in the CCI entitled 'Ministry with Children' putting the code on a statutory footing within the church.⁴¹⁵ In the same year, ecclesiastical statutory provision was made for the financing of Child Protection Officers for the Church.⁴¹⁶ A further edition of *Safeguarding Trust* was adopted in September 2007.⁴¹⁷

⁴⁰⁷ 'Report of the Board of Education' JGS [2000] 194.

⁴⁰⁸ 'Report of the Board of Education' JGS [2002] 216.

⁴⁰⁹ JGS [2001] 143 par. 27; JGS [2003] 161 par 33.

⁴¹⁰ 'Report of the Board of Education' JGS [2000] 194.

⁴¹¹ 'Report of the Board of Education' JGS [2001] 245-46; 'Report of the Board of Education' JGS [2002] 216.

⁴¹² 'Report of the Board of Education' JGS [2003] 289.

⁴¹³ 'Report of the Board of Education' JGS [2003] 289.

⁴¹⁴ see e.g. 'Report of the Board of Education' JGS [2005] 280-81; 'Report of the Board of Education' JGS [2006] 297.

⁴¹⁵ CCI, ch XVI, proposed by the Bishop of Cork; Statute of the General Synod of the Church of Ireland 2006 c ii; JGS [2006] 157 para 33; for debate about the consequences see legal opinion at JGS [2008] lxxviii.

⁴¹⁶ Statute of the General Synod of the Church of Ireland 2006 c iii; see also and JGS [2006] 157 para 33.

⁴¹⁷ JGS [2008] 159 para 34 and 'Report of the Board of Education' JGS [2008] 270-71.

Marriage Law

Prior to the disestablishment of the Church of Ireland, jurisdiction in matrimonial matters - nullity, divorce *a mensa et thoro*,⁴¹⁸ restitution of conjugal rights and jactitation of marriage - was vested in the Ecclesiastical Courts.⁴¹⁹ Matrimonial jurisdiction remained with those courts until 1871.⁴²⁰

Until November 2007 the formalities of marriage within the Church of Ireland were governed principally by this nineteenth century dispensation.⁴²¹ Marriages were celebrated either after publication of banns,⁴²² or by ordinary licence,⁴²³ or by special licence,⁴²⁴ or on production of a registrar's certificate.⁴²⁵ Until the Family Law Act 1995 the few statutes relating to marriage were limited in their ambit.⁴²⁶ The 1995 Act represented a major change in policy: it required couples to give three months' notice in writing of their intention to marry.⁴²⁷

In 2001, the Office of the Registrar General initiated a consultation: *Bringing Civil Registration into the 21st Century*.⁴²⁸ The legislation (phase one of a two-stage process) envisaged the electronic capture of all civil registration records. Formalities of marriage were to be reviewed during phase two. An Inter-Departmental Committee on the Reform of Marriage Law issued discussion papers commencing in April and May 2003.⁴²⁹ On 7th October 2003, a modernisation of the civil registration process was

⁴¹⁸ Judicial Separation.

⁴¹⁹ See generally Alan Shatter, *Family Law* (4th edn, Butterworths 1997) 97f.

⁴²⁰ The equivalent jurisdiction in England had been removed by the Matrimonial Causes Act 1857 (20 & 21 Vict c 85).

⁴²¹ Marriages (Ireland) Act 1844 (7 & 8 Vict c 81); Marriage Law (Ireland) Amendment Act 1863 (26 & 27 Vict c 27), Matrimonial Causes and Marriage Law (Ireland) Amendment Act 1870 (33 & 34 Vict c 110); Matrimonial Causes and Marriage Law (Ireland) Amendment Act 1871 (34 & 35 Vict c 63); Marriage Law (Ireland) Amendment Act 1873 (36 & 37 Vict c 16); Marriages Act 1936, Marriages Act 1972; Family Law Act 1995; for full exposition of the pre -2007 formalities of marriage see Alan Shatter *Family Law* (4th edn, 1997 Butterworth 1997) 157-77.

⁴²² Matrimonial Causes and Marriage Law (Ireland) Amendment Act 1870 (33 & 34 Vict c 110), s 33.

⁴²³ Matrimonial Causes and Marriage Law (Ireland) Amendment Act 1870 (33 & 34 Vict c 110), s 35 as amended by Marriages Act 1972, s 12(1)(b), s 12(1)(c) and Family Law Act 1995, s 3.

⁴²⁴ Matrimonial Causes and Marriage Law (Ireland) Amendment Act 1870 (33 & 34 Vict c 110), s 36, as amended by Marriages Act 1972, s 13.

⁴²⁵ Marriages (Ireland) Act 1844(7 & 8 Vict c 81), Ss 13-6, Matrimonial Causes and Marriage Law (Ireland) Amendment Act 1870 (33 & 34 Vict c 110), s 33(1) and Matrimonial Causes and Marriage Law (Ireland) Amendment Act 1871 (34 & 35 Vict c 63), Ss 26-27.

⁴²⁶ Marriages Act 1936; Marriages Act 1972; see also the Church of Ireland response to a White Paper on Marital Breakdown, JGS [1993] 146-51.

⁴²⁷ Family Law Act 1995, s 32(1) which took effect on 1 August 1996; see also JGS [1997] 141, para 23; JGS [1999] 115, para 20 (this author was a member of the sub-committee).

⁴²⁸ See < <http://www.groireland.ie/images/consultation.pdf> > accessed on 20 January 2011; JGS [2002] 132 and 169-74; a similar review was completed sooner in Northern Ireland, see JGS [2004] 177-78 para 29 and 233-38; see also 'Marriage Regulations (NI) 2004' JGS [2005] xcvi-ci.

⁴²⁹ Archive of the Bishop of Cork: Mar-19 to Mar 21 and Mar-22.

announced.⁴³⁰ In its submission, the Church of Ireland successfully requested that reform of the formalities of marriage be addressed in phase one also.⁴³¹

The Civil Registration Act 2004 became law on 5th November 2007. The Act sets out substantive requirements of marriage in Ireland:⁴³² three months' notice;⁴³³ declaration to the registrar;⁴³⁴ attendance in person.⁴³⁵ Having established their identity and provided certain information to the registrar,⁴³⁶ and once the couple have made the declaration of no impediment, the registrar issues a Marriage Registration Form.⁴³⁷ Among other changes, the principal difference is the creation of a Register of Solemnisers – those authorised to solemnise marriages.⁴³⁸

The Act also sets out substantive requirements of marriage:⁴³⁹ parties to the marriage must both be present; there must be two witnesses over 18 years of age; the place of marriage must be open to the public; and the registered solemniser is required to be satisfied that the parties understand the nature of the marriage ceremony and the declarations they are required to make.⁴⁴⁰ The registered solemniser must use a form of ceremony approved by the Registrar General or, in the case of a solemniser nominated by a religious body, which has been approved by that body.⁴⁴¹ The ceremony must include two declarations (both made in each other's presence, the presence of the two witnesses and that of the registered solemniser): first, to the effect that they do not know of any impediment to the marriage, and second, that they accept each other as husband

⁴³⁰ < <http://www.dohc.ie/press/releases/2003/20031007.html> > accessed 19 January 2012 and also < http://www.groireland.ie/docs/Launch_of_Government_Approved_Modernisation_of_Civil_Registration_Service_conv.pdf > accessed on 19 January 2012; see also Archive of the Bishop of Cork: Mar-24.

⁴³¹ JGS [2003] 154, para 25.

⁴³² Civil Registration Act 2004, s 46 (4).

⁴³³ Civil Registration Act 2004, s 47 (1).

⁴³⁴ Civil Registration Act 2004, s 46 (1).

⁴³⁵ Civil Registration Act 2004, s 46 (2).

⁴³⁶ Civil Registration Act 2004, s 46 (7) and (8) - information requested: age, marital status, identity, nationality, date of proposed marriage, whether it is a civil or religious ceremony, names and dates of birth of the witnesses, the name of the Solemniser and the venue for the marriage.

⁴³⁷ Civil Registration Act 2004, s 48; delivered to one of the parties - Civil Registration Act 2004, s 48 (2); in the possession of the solemniser - Civil Registration Act 2004, s 48 (3); valid for six months - Civil Registration Act 2004, s 48 (4).

⁴³⁸ Civil Registration Act 2004, s 53; places are no longer registered for marriage; religious bodies apply for inclusion of their clergy on the register - Civil Registration Act 2004, s 54; registration may be cancelled - Civil Registration Act 2004, s 55; cancellation of registration may be appealed - Civil Registration Act 2004, s 56.

⁴³⁹ Civil Registration Act 2004, s 51(5).

⁴⁴⁰ Civil Registration Act 2004, s 51 (1) and (2).

⁴⁴¹ Civil Registration Act 2004, s 51 (3).

and as wife.⁴⁴² The couple are married in civil law when these declarations have been made.⁴⁴³ In certain circumstances an interpreter must be provided.⁴⁴⁴

After the marriage ceremony the Marriage Registration Form is signed.⁴⁴⁵ The couple are obliged to return it to the Registrar General for registration.⁴⁴⁶

Church Response

By 1998 the church was concerned that implementation of the Family Law Act 1995 was posing difficulties. A sub-committee was appointed to examine marriage law and to make representations to government.⁴⁴⁷ With the advent of the 2001 consultation a first meeting took place between the church and representatives of the Registrar General and the Department of Social, Community and Family Affairs on 27th June 2001.⁴⁴⁸ A succession of further meetings took place.⁴⁴⁹ The church's sub-committee indicated that the process seemed to display scant understanding of the Church of Ireland's position within the extant State legal framework.⁴⁵⁰ Concern was also expressed at the erosion of the Church of Ireland's historic role and prerogatives in marriage law.⁴⁵¹

A flurry of political consultation took place in February 2004 as the Civil Registration Bill 2003 accelerated unexpectedly through the *Oireachtas*.⁴⁵² A compromise solution concerning the legal declarations was negotiated at committee stage to accommodate

⁴⁴² Civil Registration Act 2004, s 51 (4).

⁴⁴³ Civil Registration Act 2004, s 51 (7).

⁴⁴⁴ Civil Registration Act 2004, s 51 (6).

⁴⁴⁵ Signatories: each of the parties to the marriage, the two witnesses and the registered solemniser.

⁴⁴⁶ Civil Registration Act 2004, s 49.

⁴⁴⁷ JGS [1999] 115; JGS [2000] 121.

⁴⁴⁸ Archive of the Bishop of Cork: Mar-1; for a related dialogue about the ecumenical use of church buildings for marriages see Archive of the Bishop of Cork: Mar-3 to Mar-13; Mar-16 to Mar-17; Mar-19; and for the legal opinion on that matter see Archive of the Bishop of Cork: Mar-6.

⁴⁴⁹ 15th November 2002 (see Archive of the Bishop of Cork: Mar-14 and Mar-22;) by telephone on 3rd February 2003 (see Archive of the Bishop of Cork: Mar-18); by letter (Archive of the Bishop of Cork: Mar-23).

⁴⁵⁰ JGS [2002] 170; see also Archive of the Bishop of Cork: Mar-14.

⁴⁵¹ JGS [2002] 174; see also Archive of the Bishop of Cork: Mar-14 to Mar-15.

⁴⁵² This author undertook this work on behalf of the Church of Ireland; see Archive of the Bishop of Cork: Mar-26 to Mar-61.

the *Book of Common Prayer 2004*.⁴⁵³ Even with that solution, further church legislation was required and the Marriage Services have since been amended.⁴⁵⁴

Meanwhile a new Church Marriage Law Reform Working Group prepared a ‘Regulatory Scheme and Guidance Notes’, and advised about changes to rubrics and the canons.⁴⁵⁵ As a result, the canon on marriage was amended.⁴⁵⁶

Every member of the clergy who is approached with a view to solemnising a marriage is required to fulfil the statutory requirements of the state in which the marriage is to take place and must comply also with such Church of Ireland Marriage Regulations as may be provided.⁴⁵⁷

The Standing Committee approved marriage regulations.⁴⁵⁸ This created a major shift: a new learning curve in parishes and for couples preparing for marriage. One of the most far-reaching consequences of the new legislation were amendments required to the marriage Services in the BCP to include the first declarations required by civil law.⁴⁵⁹

The Church of Ireland augmented the civil law provisions in its own internal laws.⁴⁶⁰ These lay down qualifications of those the church will nominate as registered solemnisers and the procedure for nominating them. As the State requires three months’ notice so too the clergy ought to be given three months’ notice. The regulations underscore, by repetition, a number of the civil law provisions and go further in relation to qualifications and venue. At least one of the parties to the proposed marriage shall have been baptised and be a member of the Church of Ireland or of a church in full communion therewith, unless in exceptional circumstances, the bishop shall determine otherwise. Other than in exceptional circumstances approved by the bishop, the marriage is to take place in a church or chapel. The ceremony is to be

⁴⁵³ The marriage services as set out did not include the legal declarations envisaged in the Civil Registration Act 2004, s 51(4), and the Registrar General took the view that silence in response to the traditional appeal to those with objections to come forward, as well as the exhortation to the couple themselves followed by silence, did not constitute such a legal declaration.

⁴⁵⁴ Statute of the General Synod of the Church of Ireland 2009, c ii.

⁴⁵⁵ JGS [2004] 178.

⁴⁵⁶ Statute of the General Synod 2006 c.i. See also JGS [2004] 178; JGS [2005] lxxi; JGS [2005] 150 par.26 and 157-62; see also Marriage (Northern Ireland) Order 2003 - Statutory Instrument 2003 No. 413 (N.I. 3). See also Archive of the Bishop of Cork: Mar-62.

⁴⁵⁷ CCI c IX, s 31 (Canon 31).

⁴⁵⁸ The Church of Ireland Marriage Regulations (Republic of Ireland) 2007. See also JGS [2008] 146 par 12.

⁴⁵⁹ Statute of the General Synod of the Church of Ireland 2009 c.ii.

⁴⁶⁰ Marriage Regulations (Republic of Ireland) 2007. Similar regulations exist in Northern Ireland: Marriage Regulations (Northern Ireland) 2004; both may be found at < <http://www.ireland.anglican.org/index.php?do=information&id=135> > last visited on 19 March, 2008.

from the BCP.⁴⁶¹ In addition the incumbent of a parish must give consent to a marriage in that parish. In each parish a Record of Marriage Book is to be kept.⁴⁶²

Charity Law⁴⁶³

The law governing charities is of immense importance to the Church of Ireland. The RCB is an incorporated trust with 21,158 charitable trusts in its care.⁴⁶⁴ Its primary mission is ‘to serve and support the Church’s ministry with full legal accountability for its governance of property and financial assets.’⁴⁶⁵ In addition, the church has a number of charitable companies and the Bishops’ Appeal.⁴⁶⁶

Irish charity law was rooted in seventeenth century statutes, some subsequent statutes, and the associated decisions of the courts.⁴⁶⁷ These pertained in Ireland until the enactment of the Charities Act 1961 (‘the 1961 Act’) and the Charities Act 1973 (‘the 1973 Act’).⁴⁶⁸ Charitable status is, in Ireland, ‘[o]fficial recognition (...) extended to charities by the Revenue Commission purely as a technical device to clarify eligibility for charitable tax exemption.’⁴⁶⁹ Section 45(1) of the 1961 Act embodied what was the practice of the courts – the conclusive presumption that gifts for the advancement of

⁴⁶¹ The Church of Ireland *Book of Common Prayer* (2004).

⁴⁶² Archive of the Bishop of Cork: Mar-63.

⁴⁶³ For charity law generally in Ireland see Kerry O’Halloran, *Charity Law* (Thomson Reuters, 2009).

⁴⁶⁴ 6,473 trusts in the sterling area and 14,685 in the Eurozone (information supplied by the RCB); at end of 2010 the total value was c €200million, plus the Pensions Fund at c €111million, plus General Funds at c €144million, JGS [2011] 59, 64 and 68.

⁴⁶⁵ JGS [2005]13.

⁴⁶⁶ Avenue Properties (registered in both Northern Ireland and the Republic of Ireland); and also the Bishops’ Appeal (NI) Ltd (which facilitates the collection in Northern Ireland of tax refunds on donations in that jurisdiction to the Bishops’ Appeal for aid in the developing world); Bishops’ Appeal income in 2010 was c €1million, JGS [2011] 245.

⁴⁶⁷ The Statute of Charitable Uses 1601 (43 Eliz I, c 4) (repealed by the Charities Act 1960); and The Statute of Charitable Uses 1634 (10 Car I, Sess 3, c 1 (repealed by the Statute Law Revision (Ireland) Act 1878 (41 & 42 Vict c 57)); Charities Procedure Act 1812 (52 Geo III c 101 - repealed by the Charities Act 1961); Charitable Donations and Bequests (Ireland) Act 1844 (7 & 8 Vict c 97), Charitable Donations and Bequests (Ireland) Act 1867 (30 & 31 Vict c 54); Charitable Donations and Bequests (Ireland) Act 1871 (34 & 35 Vict c 102) - all repealed by the Charities Act 1961; *Morice v Bishop of Durham* [1803-1813] All ER Rep 451 (charitable purposes are those enumerated in the Statutes); *Incorporated Society in Dublin for Promoting English Protestant Schools in Ireland v Richards* (1841) 1 Dr. & War. 258 (the Irish Statutes are to be treated as identical to the English, per Sugden, LCJ); *Commissioners for Special Purposes of Income Tax v Pemsel* [1891] AC 531 (tests: relief of poverty, advancement of education, advancement of religion, and trusts for other purposes beneficial to the community); *Royal College of Surgeons of England v National Provincial Bank Ltd* [1952] AC 631 (it is still necessary to refer to the 17th Century Statutes); *Re Worth Library* [1994] 1 ILRM 161 (Keane J: the list in the statutes is not exhaustive, ‘a trust may still be charitable if it is within its spirit and intendment’); *Scottish Burial Reform and Cremation Society Ltd v Glasgow City Corporation* [1968] AC 138 (ensuring the law of charities embraces new ideas); *Biscoe v Jackson* (1893) 2 Ch 41 (charitable intent).

⁴⁶⁸ Charities Act 1973, s 18 – the two are to be construed as one Act.

⁴⁶⁹ Kerry O’Halloran, *Charity Law*, (Round Hall Sweet and Maxwell 2000) 13.

religion confer public benefit. Prior to that a presumption of charitable status, *prima facie*, was construed in the case of religious objects.⁴⁷⁰

Legislation governed fund-raising and street collections,⁴⁷¹ raffles and lotteries,⁴⁷² sales,⁴⁷³ the distribution of proceeds from the National Lottery,⁴⁷⁴ and exemption from payment of rates. Charity law intersects with equity and trusts,⁴⁷⁵ company law, and revenue law.

Changes began to occur at the start of this century. Section 45 of the Finance Act 2001 facilitated tax efficient giving to charities.⁴⁷⁶ In 2002 the Irish government promised ‘a comprehensive reform of the law (...) to ensure accountability and to protect against abuse of charitable status and fraud.’⁴⁷⁷ The Minister⁴⁷⁸ announced reform of charity legislation: ‘Charities have changed hugely but existing legislation is antiquated’.⁴⁷⁹

In 2003 a consultation paper was published: *Establishing a Modern Statutory Framework for Charities*, followed in 2004 by public consultation focusing on clarity,

⁴⁷⁰ see eg the following which were confirmed as charitable *Re Howley’s Estate* [1940] IR 109 (‘the best interests of religion’) *Re Caus* [1934] Ch 162 (‘the best interests of religion’); *Re Howley’s Estate* [1940] IR 109 (saying of masses); *Kelly v Walsh* [1948] IR 388 (saying of masses); *Maguire v AG* [1943] IR 238 (religious order); *Re Keogh’s Estate*, [1945] IR 13 (religious order) and *In re Sheridan; Bank of Ireland Trustee Co Ltd v AG* [1957] IR 257 (religious order); *Re Quinn’s Will Trusts*, (1953) 88 ILTR 161 (upkeep of graves); *Arnott v Arnott* [1906] 1 IR 127 (advancement of religion in general); *Copinger v Crehane* (1877) LR 11 Eq 429 (‘the benefit of a Christian denomination’); *AG v Becher*, [1910] 2 IR 251 (‘the conversion of Roman Catholics to the doctrines of the Church of Ireland’); *Re McCarthy’s Will Trusts* [1958] IR 311 (religious pilgrimages); *Powerscourt v Powerscourt* (1824) 1 Mol 616 (bible study); *Re McNamara; Coe v Beale*, [1943] IR 372 (support of the clergy); *Re Foster* (1953) 88 ILTR 161 (support of the clergy); *Re MacNamara’s Estate* [1943] IR 372 (religious associations); *Coe v Beale* [1943] IR 372 (religious associations); *Morice v Bishop of Durham* [1803-1813] All ER Rep 451 (an ecclesiastical office); *Gibson v Representative Church Body* (1881) 9 Lr IR 1 (an ecclesiastical office); *Thorner v Wilson* (1855) 3 Dr 245 (an ecclesiastical office); *In Re Bonnet de’cd Johnston v Langheld*, [1983] ILRM 359 (gift to a specific church); in contrast, see, *Munster and Leinster Bank Ltd v AG* [1940] IR 19; *Re Prescott* [1990] 2 IR 342; *Donnellan v O’Neill* (1870) IR 5 Eq 523.

⁴⁷¹ Street and House to House Collections Act 1962.

⁴⁷² Gaming and Lotteries Acts 1956, 1970 and 1979.

⁴⁷³ Casual Trading Act 1995.

⁴⁷⁴ National Lottery Act 1986.

⁴⁷⁵ See generally Hilary Delaney, *Equity and the Law of Trusts in Ireland*, (Thomson Round Hall 2003)

⁴⁷⁶ The Taxes Consolidation Act 1997, s 848.

⁴⁷⁷ ‘Establishing a Modern Statutory Framework for Charities’ - Consultation Paper (Department of Community, Rural and Gaeltacht Affairs 2003) 4.

⁴⁷⁸ The Minister for Community, Rural and Gaeltacht Affairs, Mr Noel Ahern, T.D.

⁴⁷⁹ *Irish Times*, Dublin 4th December 2002; see also ‘Charity Law Reform’ Arthur Cox Report to the Department of Community, Rural and Gaeltacht Affairs, (November 2002); ‘Charity Law: The Case for Reform’ Report by The Law Reform Committee of the Law Society of Ireland (July, 2002); ‘Committee on Fundraising Activities for Charitable and Other Purposes’ (The Costello Report) (1990, Law Reform Commission of Ireland, Dublin); ‘Report of the Advisory Group on Charities/Fundraising Legislation’ (‘Burton Report’) (1996, The Law Reform Commission of Ireland, Dublin); ‘Consultation Paper on Charitable Trust Law’ [February, 2005, The Law Reform Commission of Ireland, Dublin] (LRC CP36 – 2005), vii.

accountability, transparency, compliance and governance. The outcome - the Charities 2009 Act ('the 2009 Act') - was the first major reform of charity law in Ireland in forty years.⁴⁸⁰

The 2009 Act has not been commenced and as recently as 2013 discussions about its implementation continue.⁴⁸¹ However, it provides a statutory definition of charitable purpose for the first time.⁴⁸² It establishes a regulatory authority for charities (*An tÚdarás Rialála Carthanas*).⁴⁸³ It creates a register of charities, which must satisfy charitable purposes and the public benefit test.⁴⁸⁴ Certain measures are designed to protect charities.⁴⁸⁵ A Charity Appeals Tribunal is to review regulatory decisions.⁴⁸⁶ Fundraising will be regulated.⁴⁸⁷

Notably, the 2009 Act extends the common law definition of charitable purposes set out in the *Pemsel Case*.⁴⁸⁸ The four heads are included: the prevention or relief of poverty or economic hardship; the advancement of education; the advancement of religion; and any other purpose that is of benefit to the community.⁴⁸⁹ The last encompasses eleven charitable purposes.⁴⁹⁰

A purpose, as before, to be charitable, must incur public benefit.⁴⁹¹ A gift for the advancement of religion continues to be presumed to confer public benefit.⁴⁹²

⁴⁸⁰ It together with any unrepealed elements of the 1961 Act and the 1973 Act will govern charities in Ireland, however, it is not clear when it will be commenced: see, Mary Minihan, 'Charities Act deferred over cost' *Irish Times* (Dublin, 22 May 2012).

⁴⁸¹ Archive of the Bishop of Cork: Cha-7 and Cha-8; as recently as February 2013 the Department of Justice and Equality has initiated a consultation process on the implementation of the Charities Act 2009 – Archive of the Bishop of Cork: Cha-9.

⁴⁸² Charities Act 2009, s 3; the term 'charity' itself is not defined.

⁴⁸³ The Charities Regulatory Authority. Charities Act 2009 Ss 12-38.

⁴⁸⁴ Charities Act 2009, s 3 and ss 39-63.

⁴⁸⁵ Charities Act 2009, ss 64-74.

⁴⁸⁶ Charities Act 2009, ss 75-80.

⁴⁸⁷ Charities Act 2009, s 97.

⁴⁸⁸ *Commissioners for Special Purposes of Income Tax v Pemsel* [1891] AC 531; Charities Act 2009 s 3.

⁴⁸⁹ Charities Act 2009, s 3(1)(a)-(d).

⁴⁹⁰ Charities Act 2009, s 3(11) - the advancement of community welfare including the relief of those in need by reason of youth, age, ill-health, or disability; the advancement of community development, including rural or urban regeneration; the promotion of civic responsibility or voluntary work; the promotion of health, including the prevention or relief of sickness, disease or human suffering; the advancement of conflict resolution or reconciliation; the promotion of religious or racial harmony and harmonious community relations; the protection of the natural environment; the advancement of environmental sustainability; the advancement of the efficient and effective use of the property of charitable organisations; the prevention or relief of suffering of animals; the advancement of the arts, culture, heritage or sciences; and the integration of those who are disadvantaged, and the promotion of their full participation, in society.

⁴⁹¹ Charities Act 2009, s.3(2).

⁴⁹² Charities Act 2009, s 3(4).

Moreover, it shall not be determined that a gift for the advancement of religion is not of public benefit without the consent to the Attorney General.⁴⁹³ Gifts for the advancement of religion are to be ‘construed, in accordance with the laws, canons, ordinances and tenets of the religion concerned.’⁴⁹⁴ Gifts to an organisation or cult which has, as its principal object, the making of a profit or which ‘employs oppressive psychological manipulation’ are deemed not to be a gift for the advancement of religion.⁴⁹⁵

Church Response

The introduction of tax efficient giving resulted in a flurry of activity in dioceses and parishes throughout the country.⁴⁹⁶ Seminars were also hosted by the RCB.⁴⁹⁷ By 2005 the Church of Ireland was already engaging with similar changes proposed for Northern Ireland.⁴⁹⁸ In 2008 it reported that a review of charities legislation had been taking place in both jurisdictions and that a working group had, therefore, been formed ‘to monitor legislative developments and advise the church on the implications of the new legislation.’⁴⁹⁹

The impacts for the church, as a body in receipt of charitable gifts, of the 2009 Act, when it is implemented, will be considerable.⁵⁰⁰ This was recognised immediately. A submission to government was formulated.⁵⁰¹ Liaison took place with dioceses about church-wide consultation. Several concerns emerged: the likely registration structure and whether new internal church legislation would be required.⁵⁰²

The diocesan consultations showed a preference for a diocesan structure of registration in response to the new legislation in both jurisdictions, rather than a parochial or national approach.⁵⁰³ Such was the import of the changes that a church-wide discussion took place in March 2009 about the implementation of the new legislation.⁵⁰⁴ The RCB reviewed accounting packages for use by parishes.⁵⁰⁵ The 2009 Act also provides for

⁴⁹³ Charities Act 2009, s 3(5).

⁴⁹⁴ Charities Act 2009, s 3(6).

⁴⁹⁵ Charities Act 2009, s 3(10).

⁴⁹⁶ Finance Act 2001, s 45.

⁴⁹⁷ JGS [2002] 28; JGS [2003] 26; JGS [2004] 32.

⁴⁹⁸ JGS [2006] 148 para 12.

⁴⁹⁹ JGS [2008] 157 para 32.

⁵⁰⁰ Archive of the Bishop of Cork: Cha-1 and Cha-3.

⁵⁰¹ Archive of the Bishop of Cork: Cha-3.

⁵⁰² JGS [2008] 157 para 32; see also Archive of the Bishop of Cork: Cha-1 and Cha-5.

⁵⁰³ JGS [2009] 156 para 10.

⁵⁰⁴ JGS [2009] 156 para 10.

⁵⁰⁵ JGS [2009] 156 para 10.

the regulation of fund-raising by charities and this provoked introspection within the Church.⁵⁰⁶ In March 2010 all parishes were briefed and were advised to prepare for registration.⁵⁰⁷ Parishes were urged to review their accounting practices.⁵⁰⁸ In 2013, the church joined consultations at the Department of Justice and Equality about the implementation of the Charities Act 2009.⁵⁰⁹

The pace of change was greater in Northern Ireland. This necessitated practical responses in a number of areas: inclusion on the interim register, agreement on whether the parish or diocese would register; insurance for trustees; guidelines for parochial treasurers; and regional information meetings.⁵¹⁰ The Standing Committee responded to the public consultation in Northern Ireland.⁵¹¹ The new charities' legislation in Northern Ireland required the church, in 2010, to adopt a Statement of Charitable Purpose and a Statement of Public Benefit.⁵¹²

Disability

An emerging area with immense legal implications relates to people with disabilities. The first legislative influences on the church in addressing disability came from the U.K. in 1995.⁵¹³ In 2002 a civil bill was served on the RCB and the Standing Committee and Ballymacash Parish claiming a failure on the part of the Church to comply with the provisions, in the U.K. of the Disability Discrimination Act 1995 as a Braille edition of the Church Hymnal was not available.⁵¹⁴

Church Response

This exemplifies how legislation emerging in one jurisdiction began to affect the mindset of the church in the other. Disability legislation in Ireland was only in the planning stage, yet the RCB advised that the church's 'underlying commitment towards the interpretation of reasonableness under the above Code of Good Practice is, in the

⁵⁰⁶ Charities Act 2009, s 97; see also Archive of the Bishop of Cork: Cha-6.

⁵⁰⁷ Archive of the Bishop of Cork: Cha-6.

⁵⁰⁸ Archive of the Bishop of Cork: Cha-6.

⁵⁰⁹ Archive of the Bishop of Cork: Cha-9.

⁵¹⁰ JGS [2010] 212-14.

⁵¹¹ JGS [2010] 214 and 282-85.

⁵¹² JGS [2010] cxxxi - cxxxii.

⁵¹³ Disability Discrimination Act 1995 (Although amended by subsequent legislation in Great Britain and ultimately repealed in Great Britain by the Equality Act 2010, the Act still applies in Northern Ireland).

⁵¹⁴ JGS [2002] 28.

interim, to be recommended.⁵¹⁵ This holding position and commitment were reiterated in the ensuing years.⁵¹⁶

The first responses were to the U.K. legislative changes. The RCB reported that from 1st October 2004, ‘the Church will be obliged to take reasonable steps to remove, alter, or provide means of avoiding physical features that make it impossible or unreasonably difficult for disabled persons to use its services.’⁵¹⁷ A code of good practice was prepared advocating an access audit to properties.⁵¹⁸ Attention was drawn to the legislation and to the Code of Good Practice in each following year.⁵¹⁹ In 2004, the Standing Committee framed a transforming policy statement on disability.⁵²⁰

In 2005 it was reported that since 2002 there ‘has been much new legislation on disability issues that has practical implications for the Church. It is important to be in a position to respond positively to any proposed legislation.’⁵²¹ A working group was appointed which indicated that it was considering ‘the implications of legislation and proposed legislation on disability in both jurisdictions.’⁵²² A disability awareness programme and Disability Awareness Sunday were launched.⁵²³ Training was delivered in dioceses.⁵²⁴ *Safeguarding Trust* training was expanded in 2009 to incorporate child protection for children with disabilities.⁵²⁵

Property – Planning, Heritage

There have been major changes governing protected structures and heritage properties (many of which are owned by the Church of Ireland). Recently, the RCB alluded to the procedures for dealing with such property as ‘cumbersome and bureaucratic’; a careful chain of decision-making is ‘a consistent, careful and transparent process which reflects this duty of care of (...) the legal responsibilities of trustees and custodians’.⁵²⁶

⁵¹⁵ JGS [2003] 22.

⁵¹⁶ JGS [2004] 25; JGS [2005] 27.

⁵¹⁷ JGS [2003] 21.

⁵¹⁸ ‘Access to Churches and Parochial Buildings for Disabled People: Code of Good Practice’ JGS [2003] 79-83 (These were reprinted in JGS [2004] 84-87).

⁵¹⁹ These were reprinted in JGS [2004] 84-87; and again in JGS [2005] 27 and 80-84.

⁵²⁰ JGS [2003] 155, para 27; see also JGS [2004] 25 and 84-88.

⁵²¹ JGS [2005] 147, para 16.

⁵²² JGS [2006] 150, para 18.

⁵²³ JGS [2006] 150, para 18.; JGS [2008] 233-34.

⁵²⁴ JGS [2007] 208-09, paras 6 and 7.

⁵²⁵ ‘Report of the Board of Education’ JGS [2010] 371.

⁵²⁶ JGS [2010] 32.

In the past decade, in both jurisdictions, legislation governing property has had an increasing impact.⁵²⁷ The principal force for change has been the Irish Planning and Development Act 2000 ('the Act of 2000'), which consolidated all planning legislation in Ireland from 1963 to 1999.⁵²⁸ The Act of 2000 raised a query within the church about the adequacy of insurance cover for the reinstatement (rather than replacement) of protected structures.⁵²⁹ It was the catalyst for the *Architectural Heritage Protection: Guidance for Planning Authorities (Department of the Environment Planning Guidelines No.9)* in 2004. These identified the scope of legislation affecting heritage buildings and protected structures.⁵³⁰ The Guidelines list eighteen statutes or statutory instruments; forty-one Government publications (many of them soft law provisions); three Council of Europe Conventions; six Charters of the International Council on Monuments and Sites; and, twenty-eight volumes of technical guidance and secondary sources.⁵³¹ Similarly, the plan of only one local authority listed thirty-five pieces of legislation and policy in its recent heritage plan.⁵³²

Church Response

While the Property Committee of the RCB reported its role and transactions annually to the General Synod, significantly, its first specific reference to its obligations as legal trustees and those as custodians of property was in 1998.⁵³³ Annual reference has subsequently been made to areas of concern: stained glass,⁵³⁴ insurance,⁵³⁵ and, the maintenance of churchyard and graveyard walls.⁵³⁶ A desire to implement advice provided by State bodies is seen, for example, in guidelines on the care and conservation of graveyards set out by the Office of Public Works, which were notified

⁵²⁷ See eg Ireland: Public Health (Tobacco) Act 2002 and Tobacco Smoking (Prohibition) Regulations 2003 (SI No 666 of 2006); European Communities Performance of Buildings Directive (EPBD) Directive 2002/91/EC; European Communities (Energy Performance of Buildings) Regulations 2006 (SI No 666 2006); Local Government (Household Charge) Act 2011; in Northern Ireland see eg Control of Asbestos at Work Regulations (NI) 2003; Fire Precautions (Workplace) Regulations (NI) 2001; The Smoking (Northern Ireland) Order 2006.

⁵²⁸ The planning system was introduced on 1st October 1964 following the enactment of the Local Government (Planning and Development) Act 1963.

⁵²⁹ JGS [2004] 26; JGS [2005] 27.

⁵³⁰ *Architectural Heritage Protection: Guidance for Planning Authorities (Department of the Environment Planning Guidelines No.9)* (Department of the Environment, Government Publications 2004).

⁵³¹ *Architectural Heritage Protection: Guidance for Planning Authorities (Department of the Environment Planning Guidelines No.9)* (Department of the Environment, Government Publications 2004) 248-51.

⁵³² *Cork City Heritage Plan 2007-2012* (2007, Cork City Council, Cork) 30.

⁵³³ JGS [1998] 21.

⁵³⁴ see eg JGS [2010] 33.

⁵³⁵ see eg. JGS [2010] 33.

⁵³⁶ see eg JGS [2010] 33.

to all clergy in 1997.⁵³⁷ In 1995 the RCB reported that guidelines had been prepared for the care of stained glass and the concern for stained glass in a heritage context.⁵³⁸ In 1997 the RCB reported that it had concluded negotiations in 1996 with the Heritage Council concerning the form of legal agreement to cover grant conditions and covenants to be observed by grantees.⁵³⁹

According to the RCB the Act of 2000 strengthened, ‘procedures for the protection of architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.’⁵⁴⁰ The church began discussions with *Dúchas*⁵⁴¹ ‘with a view to preparing guidelines and advice on the care, maintenance and redundancy of church property in the context of the new planning environment.’⁵⁴² The Legislation and Political Committee of the newly established Church in Society Committee identified the Act of 2000 ‘as an immediate priority in relation to its impact on Church life.’⁵⁴³

The Act of 2000 posed problems. In 2002 the RCB reported that it had engaged with the Department of Arts, Heritage, Gaeltacht and the Islands, as well as *Dúchas*, to agree guidelines for planning authorities in relation to the interiors of places of worship and the meeting of the requirements of the civil law in this area.⁵⁴⁴ The concerns centred on control and the perceived restrictiveness of the legislation:

[A] Church must retain proper control over form and order of worship in a continuously evolving liturgical process and that the intrusion of the planning process into the arrangement of interiors of places of worship may impede the continued use of churches i.e. where sub-division and flexible arrangements are essential features of continuing witness and worship. (...)

The impact of the legislation generally is regarded as too restrictive and even repressive with serious financial potential for the care, maintenance and redundancy of church property for the future.⁵⁴⁵

The issue of heritage buildings was of wide concern. The RCB reported that a specialist group was established to assist small parishes.⁵⁴⁶ In March 2002, an Historic Churches

⁵³⁷ JGS [1997] 34.

⁵³⁸ See eg JGS [2005] 26.

⁵³⁹ JGS [1997] 34.

⁵⁴⁰ JGS [2001] 19.

⁵⁴¹ The Heritage Service.

⁵⁴² JGS [2001] 19.

⁵⁴³ ‘Report of the Church in Society Committee’ JGS [2003] 205.

⁵⁴⁴ JGS [2002] 22.

⁵⁴⁵ JGS [2002] 22.

⁵⁴⁶ JGS [2002] 23 (The Cork debate was again referred to in JGS [2003] 84).

Advisory Committee was established.⁵⁴⁷ It was tasked with formulating a strategic plan for the maintenance of churches of national heritage significance and, significantly, it was to ‘act as an advisory committee in accordance with the draft Planning Guidelines in relation to Part IV of the Planning and Development Act 2000 (...).’⁵⁴⁸

That Committee encapsulated the impact of the Act of 2000 thus:

This on-going apprehension has been crystallised in the Republic by the recent enacting of comprehensive legislation to protect the country’s architectural heritage – Part IV of the Local Government (Planning and Development) Act 2000 (*sic*).⁵⁴⁹ This legislation derives from the obligations of Ireland’s 1997 ratification of the 1985 Convention for the Protection of the Architectural Heritage of Europe (...).⁵⁵⁰

The committee observed that the legislation enhanced the powers of local authorities and increased obligations on the owners and occupiers of ‘protected structures.’⁵⁵¹ It noted that the question of changes to the interiors of churches remained unresolved.⁵⁵² Finally in 2003 guidelines were agreed, published and circulated to planning authorities.⁵⁵³

The church guidelines enjoined core principles on planning authorities: respect for liturgical requirements; the need for flexibility of use; the essential character of churches as places of worship; and, in particular, whether a planning authority might consider that works would not materially affect the character of a protected structure that is regularly used as a place of worship.⁵⁵⁴ The elements to be brought to bear on such decision-making were set out as: the possible effects on the special interest of the structure; liturgical considerations; structural changes; the impact on important fixtures

⁵⁴⁷ JGS [2003] 22; the Committee was disbanded in 2009 and its roles assumed by the RCB Property Committee, JGS [2009] 34-35; it in turn set up a Church Buildings Sub-Committee, JGS [2010] 37-38.

⁵⁴⁸ JGS [2003] 22.

⁵⁴⁹ Planning and Development Act 2000 (The confusion was probably caused by the proximity of the Local Government (Planning and Development) Act 1999).

⁵⁵⁰ ‘Report of the Historic Churches Advisory Committee’ JGS [2003] 84-90, 84 para 3.

⁵⁵¹ ‘Report of the Historic Churches Advisory Committee’ JGS [2003] 84-90, 84 para 4.

⁵⁵² ‘Report of the Historic Churches Advisory Committee’ JGS [2003] 84-90, 85 para 7.

⁵⁵³ JGS [2004] 26 and 93-9. See also Ss 28, 52(2) and 57(5)(b)(i) of the Planning and Development Act 2000; and also ‘Explanatory Memorandum from the Historic Churches Advisory Committee’ JGS [2004] 9, para 5.

⁵⁵⁴ *Architectural Heritage Protection: Guidance for Planning Authorities (Department of the Environment Planning Guidelines No.9)* (2004, Department of the Environment, Government Publications, Dublin). See also ‘Architectural Heritage Protection for Places of Public Worship (Republic of Ireland): Guidelines for Planning Authorities.’ JGS [2004] 93-94.

and fittings (including their age, rarity and craftsmanship).⁵⁵⁵ Such was the impact of this development the guidelines were repeatedly averted to in successive years.⁵⁵⁶

An explanatory memorandum was issued.⁵⁵⁷ The provisions of the Act of 2000 governing the endangerment of protected structures were set out,⁵⁵⁸ as was the requirement to seek planning permission.⁵⁵⁹ Such was the anxiety about the financial burden of such measures that the committee, provided information about grants and a limited possibility for tax relief in respect of works on certain ‘approved buildings’ under s 482 of the Taxes Consolidation Act 1997.⁵⁶⁰ An explanatory guide to the legislation was circulated.⁵⁶¹

The preoccupation with civil law compliance is seen in successive RCB Property Committee Reports: ‘[I]t is essential that parishes notify their Local Authority of any proposed alteration [to Protected Structures] and gain the requisite agreement.’⁵⁶² Step-by-step guidelines were set out ‘in order to comply with Church and State regulations’ in both jurisdictions.⁵⁶³

Other practical changes following the enactment of the Act of 2000 indicates its impact:⁵⁶⁴ the appointment of a panel of experts,⁵⁶⁵ amendment of the CCI provisions governing the appointment of diocesan architects and the inspection of churches,⁵⁶⁶ administrative changes,⁵⁶⁷ standardisation of church inspections and the introduction of maintenance logbooks,⁵⁶⁸ and guidelines became commonplace.⁵⁶⁹

⁵⁵⁵ *Architectural Heritage Protection: Guidance for Planning Authorities (Department of the Environment Planning Guidelines No.9)* (2004, Department of the Environment, Government Publications, Dublin). See also ‘Architectural Heritage Protection for Places of Public Worship (Republic of Ireland): Guidelines for Planning Authorities.’ JGS [2004] 93-94, 94 para 6.

⁵⁵⁶ see JGS [2005] 27 and 87-90; JGS [2006] 28; JGS [2007] 29; JGS [2008] 28; JGS [2009] 34; and JGS [2010] 36.

⁵⁵⁷ JGS [2004] 26 and 97-99.

⁵⁵⁸ s 58(1) Planning and Development Act 2000; see also ‘Explanatory Memorandum from the Historic Churches Advisory Committee’ JGS [2004] 97.

⁵⁵⁹ s 57(1) Planning and Development Act 2000; see also ‘Explanatory Memorandum from the Historic Churches Advisory Committee’ JGS [2004] 97.

⁵⁶⁰ ‘Explanatory Memorandum from the Historic Churches Advisory Committee’ JGS [2004] 98, para 3.

⁵⁶¹ JGS [2005] 28.

⁵⁶² JGS [2010] 37.

⁵⁶³ JGS [2010] 378.

⁵⁶⁴ The negative impact was seen in the case of the Church of St Peter, Castletownbere which never reopened following an arson attack due to the strictures placed by the County Heritage Officer and the lack of funds to meet those.

⁵⁶⁵ JGS [2005] 29.

⁵⁶⁶ JGS [2005] 30; see also Statute of the General Synod of the Church of Ireland 2005 c ii.

⁵⁶⁷ JGS [2006] 30; JGS [2007] 30.

⁵⁶⁸ JGS [2006] 29 and 80-84.

The Act of 2000 has necessitated regular meetings between Church and State representatives.⁵⁷⁰ At one such meeting, ‘it was agreed that difficulties experienced since the introduction of the Act have varied from Church to Church (...). [But] for the Church of Ireland, where so many of its churches are listed as Protected Churches the major issue is one of funding for restoration and repair, particularly in parishes with small congregations and insufficient funds to carry out necessary works.’⁵⁷¹ Funding for such heritage works has been an enduring problem.⁵⁷²

The church also responded to other legislative changes in the property field: surveys of all churches and parochial buildings in Northern Ireland;⁵⁷³ assessment of fire risk,⁵⁷⁴ smoking in the workplace;⁵⁷⁵ the energy performance of buildings;⁵⁷⁶ and assessment of the impact of the Local Government (Household Charge) Act 2011.⁵⁷⁷

Case-Study Conclusion

This case-study illustrates how the law of the State, more than at any time in the history of the Church of Ireland since its disestablishment, is impacting on the church in new ways. The range of responses of the church includes acceptance and cooperation, as well as fear and opposition. Legislation has necessitated amendment of church law and re-training (marriage formalities and education), and changes in local communities (education management). Pastoral and liturgical adjustments have been required (marriage and youth work). Compliance has been a principal concern (pensions, health and safety, data protection and ecclesiastical discipline). The Charities Act 2009 will cause major administrative upheaval at every level of church life.

⁵⁶⁹ eg concerning the care of memorials in churches, JGS [2006] 29 and 85-87; JGS [2007] 30 and 80-82.

⁵⁷⁰ JGS [2008] 29.

⁵⁷¹ JGS [2008] 30.

⁵⁷² JGS [2008] 31: Civic Structures Conservation Grants Scheme. See also JGS [2009] 34; ‘The Heritage Council Buildings at Risk Scheme’ JGS [2009] 34; and ‘The Heritage Council Significant Places of Worship Grant Scheme’ JGS [2009] 34; re Northern Ireland see ‘National Heritage Memorial Fund Grants’ JGS [2009] 32 and ‘Listed places of Public Worship Grant Scheme’ JGS [2009] 33; see also JGS [2010] 35-36.

⁵⁷³ Control of Asbestos at Work Regulations (NI) 2003; see also Explanatory Memorandum circulated by the Property Committee, JGS [2004] 25 and 89-90, JGS [2005] 27 and 85-86.

⁵⁷⁴ Fire Precautions (Workplace) Regulations (NI) 2001; see also JGS [2004] 26 and 91-92.

⁵⁷⁵ Ireland: Public Health (Tobacco) Act 2002 and Tobacco Smoking (Prohibition) Regulations 2003. Northern Ireland: The Smoking (Northern Ireland) Order 2006; see also JGS [2008] 29.

⁵⁷⁶ European Communities (Energy Performance of Buildings) Regulations 2006 (SI No 666/2006); see also European Communities Performance of Buildings Directive (EPBD) Directive 2002/91/EC; see also JGS [2010] 34; for exemptions on certain listed buildings see JGS [2009] 32; JGS [2010] 33.

⁵⁷⁷ Local Government (Household Charge) Act 2011 s 4(1)(b)(ii); see also Finance Act 2001 s 45; Taxes Consolidation Act 1997 s 848A.

State legislation has exposed shortcomings in the church's praxis (disability legislation and child protection). New church law has been necessitated (child protection). Some legislation potentially brings the church into conflict with the State (Planning and Development Law). Other legislation mirrors contemporary controversy within the church (equality, human rights, civil partnerships, Constitutional reform) and is likely to continue to do so. Much legislation is tacitly embraced and implemented.

Most significantly, uncertainty endures concerning areas in which the law itself is still unfolding (equality, sexual orientation, human rights, and the employment rights of clergy). This uncertainty and the associated debates, of themselves, vindicate the assessment that, more than any other time, the law of the State is having such an impact on the church, that it is preoccupied, more than ever before, with law.

PART TWO: CHAPTER 2
CASE STUDY II:
THE ACCESSIBILITY OF THE SOURCES OF LAW
OF THE CHURCH OF IRELAND

Introduction

This chapter – another case study – raises a concern, fundamental to the rule of law, in relation to the internal sources of law of the Church of Ireland: their accessibility. As will be seen, the outcomes of the survey (indicating that some of the primary sources are not so easily accessible, and that the secondary and tertiary sources are inaccessible) warrant this examination.¹

At the outset, this chapter underscores the fundamental nexus between accessibility and the rule of law. The law of the Church of Ireland is then considered in terms of its accessibility with reference to the survey. A detailed investigation of one of the principal sources of the law of the Church of Ireland – the ecclesiastical law – exposes the issue. This is accentuated by insights gained from the church's engagement with statute law revision by the Irish State. In addition specific non-statutory examples are addressed (visitations – episcopal and archdiaconal, *ius liturgicum* and custom). The inescapable conclusion is that, ecclesiastical law, as a primary source, fails to attain to an adequate standard of accessibility or clarity. The contrast is drawn between today and the expertise available to the Church of Ireland of the practising ecclesiastical lawyers of the nineteenth century.

Accessibility and the Rule of Law

The rule of law is the foundation of a civilised society.² Government and the people should obey the law and be ruled by it. The Preamble to the European Convention on Human Rights (ECHR) describes the governments of the countries of Europe as having 'a common heritage of political traditions, ideals, freedom and the rule of law (...).'³ Legal systems presuppose an understanding of and reliance on the concept.⁴

¹ See pages 215-16.

² Resolution Number 2005 of the Council of the International Bar Association, 8th October 2009 at <www.ibanet.org> accessed 24th May 2010; for the rule of law, see generally B.Z. Tamanaha, *On the Rule of Law* (Cambridge University Press 2004).

³ <<http://www.hri.org/docs/ECHR50.html#C.Preamble>> accessed 8 March 2012.

⁴ see eg Ireland: *A v Governor of Arbour Hill Prison* [2006] IESC 45 per Murray CJ 'The Constitution like others, is holistic, provides a full and complete framework for the functioning of a democratic state and ordered society in accordance with the rule of law, the due administration of justice and the interests

The vulnerability of a society without the rule of law and, more specifically, without the right elements within that rule, is emphasised by the Preamble to the Universal Declaration of Human Rights:

‘[I]t is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.’⁵

Pinning down a universally agreed definition of the rule of law is elusive.⁶ According to Tamanaha, the belief that the rule of law is good for everyone is orthodoxy among Western states.⁷ Lord Bingham delineates the core of the concept in these terms:

that all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts.⁸

One key component, which Bingham identifies as inherent in the rule of law, is the accessibility of the law.⁹

Accessibility of the Law

In the sixth Sir David Williams Lecture delivered at the Centre for Public Law at Cambridge University on 16th November 2006, Bingham underscored this perspective:

[T]he law must be accessible and so far as possible intelligible, clear and predictable. This seems obvious: if everyone is bound by the law they must be able without undue difficulty to find out what it is, even if that means taking advice (as it usually will), and the answer when given should be sufficiently clear that a course of action can be based on it.¹⁰

He cited legislative hyperactivity, ‘the length, complexity and sometimes prolixity of modern common law judgments’ and the intelligibility of legislation as contemporary challenges in this connection.¹¹

of the common good’; see also United Kingdom: Constitutional Reform Act 2005, s 1: ‘This Act does not adversely affect (a) the existing constitutional principle of the rule of law, or (b) the Lord Chancellor’s existing role in relation to that principle.’; see also s 17 (the Lord Chancellor’s Oath).

⁵ See < <http://www.un.org/en/documents/udhr/> > accessed 24 May 2010.

⁶ Brian Z Tamanaha, *On the Rule of Law* (Cambridge University Press 2004) 3.

⁷ Brian Z Tamanaha, *On the Rule of Law* (Cambridge University Press 2004) 1.

⁸ Tom Bingham, *The Rule of Law* (Allen Lane 2010) 8.

⁹ Tom Bingham, *The Rule of Law* (Allen Lane 2010) ch 3: ‘[t]he law must be accessible and so far as possible intelligible, clear and predictable.’

¹⁰ < <http://www.cpl.law.cam.ac.uk/Media/THE%20RULE%20OF%20LAW%202006.pdf> > at 6, accessed on 8 March 2012.

¹¹ See also Tom Bingham, *The Rule of Law* (Allen Lane 2010) ch 3.

In *The Concept of Law* HLA Hart distinguished between primary and secondary rules in society. He suggests a possible ‘defect’ in primary rules, which he styles ‘uncertainty’. This may arise, he says, where ‘doubts arise as to what the rules are or as to the precise scope of some given rule (...)’.¹² Defects such as this in primary rules, Hart suggests, are overcome by setting out secondary rules, notably a ‘rule of recognition.’¹³ He argues that ‘[w]herever such a rule of recognition is accepted, both private persons and officials are provided with authoritative criteria for identifying primary rules of obligation.’¹⁴

In the Storrs Lectures on Jurisprudence delivered at Yale University in 1963 (and published a year later as *The Morality of Law*) Lon L. Fuller revealed his allegory of Rex, the reforming king who, even after many efforts, failed to put in place a tenable system of laws in his kingdom. From this, Fuller extrapolated eight ways in which law fails to be law. Among these, two are relevant for the purposes of this case-study: promulgation and the clarity of laws.

Fuller describes promulgation as ‘an ancient and recurring problem’.¹⁵ He argued that although it would ‘be foolish to try to educate every citizen into the full meaning of every law that might conceivably be applied (...)’ to him or her, nonetheless, the laws:

should also be given adequate publication so that they may be subject to public criticism, including the criticism that they are the kind of laws that ought not to be enacted unless their content can be effectively conveyed to those subject to them. It is also plain that if the laws are not made readily available, there is no check against a disregard of them by those charged with their application and enforcement.¹⁶

In the case of clarity Fuller says:

The desideratum of clarity represents one of the most essential ingredients of legality (...) [I]t is obvious that obscure and incoherent legislation can make legality unattainable by anyone, or at least unattainable without an unauthorized revision which itself impairs legality.¹⁷

Similarly, Joseph Raz set out principles which are derived from the basic rule of law:¹⁸

All laws should be prospective, open, and clear. (...) The law must be open and adequately publicized. If it is to guide people they must be able to find out what it is.

¹² HLA Hart, *The Concept of Law* (Clarendon at Oxford University Press 1961) 90.

¹³ HLA Hart, *The Concept of Law* (Clarendon at Oxford University Press 1961) 92.

¹⁴ HLA Hart, *The Concept of Law* (Clarendon at Oxford University Press 1961) 97.

¹⁵ Lon L Fuller, *The Morality of Law* (Revised edn, Yale University Press 1969) 49.

¹⁶ Lon L Fuller, *The Morality of Law* (Revised edn, Yale University Press 1969) 49 and 51.

¹⁷ Lon L Fuller, *The Morality of Law* (Revised edn, Yale University Press 1969) 63.

¹⁸ Joseph Raz, *The Authority of Law* (2nd edn, Oxford University Press 2009) ch 11.

For the same reason its meaning must be clear. An ambiguous, vague, obscure, or imprecise law is likely to mislead or confuse at least some of those who desire to be guided by it.¹⁹

Raz adds that the need to find out what the law is presupposes also that ‘laws should be relatively stable’: not changed too often.

Similarly, John Finnis in *Natural Law and Natural Rights*, lists features distinctive of ‘legal order’.²⁰ The law:

brings definition, specificity, clarity, and thus predictability into human interactions, by way of a system of rules and institutions so interrelated that rules define, constitute, and regulate the institutions, while institutions create and administer the rules, and settle questions about their existence, scope, applicability, and operation. There is thus a characteristically legal circle (...)²¹

Describing the rule of law as ‘the specific virtue of legal systems’, he suggests that such systems exemplify the rule of law to the extent that, *inter alia*, ‘(iii) its rules are promulgated, (iv) clear, and (v) coherent one with another; that (vi) its rules are sufficiently stable to allow people to be guided by their knowledge of the content of the rules (...)’.²² Promulgation, he suggests, is not ‘fully achieved by printing ever so many legible official copies of enactments, decisions, forms, and precedents; it requires also the existence of a professional class of lawyers whose business it is to know their way around the books, and who are available without undue difficulty and expense to advice anybody who wants to know where he stands.’²³

Tamanaha, in his exploration of the history, politics, and theories surrounding the notion of the rule of law identified three ‘familiar themes’ which run through the rule of law tradition.²⁴ The second of these is ‘formal legality’ according to which, the rule of law ‘in this sense entails public, prospective laws, with the qualities of generality, equality of application and certainty.’²⁵ The latter, he says, is above all else about predictability.²⁶ Without such certainty, is ‘to be perpetually insecure. Societies that implement formal legality should be lauded for reducing this unpleasant state of uncertainty.’²⁷ Tamanaha warns that:

¹⁹ Joseph Raz, *The Authority of Law* (2nd edn, Oxford University Press 2009) 214-15.

²⁰ John Finnis, *Natural Law and Natural Rights* (Oxford University Press 1980) 267-70.

²¹ John Finnis, *Natural Law and Natural Rights* (Oxford University Press 1980) 268.

²² John Finnis, *Natural Law and Natural Rights* (Oxford University Press 1980) 270.

²³ John Finnis, *Natural Law and Natural Rights* (Oxford University Press 1980) 271.

²⁴ Brian Z Tamanaha, *On the Rule of Law* (Cambridge University Press 2004) ch 9.

²⁵ Brian Z Tamanaha, *On the Rule of Law* (Cambridge University Press 2004) 119.

²⁶ Brian Z Tamanaha, *On the Rule of Law* (Cambridge University Press 2004) 119.

²⁷ Brian Z Tamanaha, *On the Rule of Law* (Cambridge University Press 2004) 122.

[b]efore governments claiming to live up to formal legality become too self-congratulatory, however, they should be put to a reality test rarely entertained by Western theorists, one that takes cognizance of the complexity of modern legal regimes and their overflowing profusion of rules. (...) If formal legality is truly about predictability for citizens, then attention must also be directed at discerning whether such predictability is actually conferred by the legal system.²⁸

The World Justice Project, established by the American Bar Association in 2007, uses a working definition of the rule of law based on what it calls ‘four universal principles.’²⁹

The second of these requires that laws ‘are clear, publicized, stable and fair, and protect fundamental rights, including the security of persons and property.’³⁰

The Project has developed a ‘Rule of Law Index’ setting out four universal principles developed into sixteen factors, which, in turn evolve into sixty-four sub-factors.³¹ The second universal principle gives rise to factor six: ‘laws are clear, publicized and stable’. This is developed in three sub-factors. First, the laws are reasonably comprehensible to the public. Second, the laws, including administrative rules, are published and widely accessible in a form that is up-to-date and available in all official languages and in formats available to persons with disabilities. Third, the laws are sufficiently stable to permit the public to ascertain what conduct is permitted and prohibited, and are not modified or circumvented in secret or by executive decree. The test of clarity and comprehensibility is whether or not the meaning of the law can be easily ascertained.

Also in 2009, the Council of the International Bar Association passed a resolution concerning the rule of law, which laid down that law must be accessible and equal to all:

The law must be readily known, available in advance and certain and clear. (...) In modern societies the law is becoming increasingly complex. This forces the conclusion that a strong, independent legal profession is all the more important to a modern society adhering to the Rule of Law.³²

These insights gleaned from what some might consider the remote realm of jurisprudence and the philosophy of law are borne out in the modern articulation of law. In *Black-Clawson International Ltd. v Papierwerke Waldhof-Aschaffenburg*³³ Lord Diplock said that ‘[t]he acceptance of the rule of law as a constitutional principle requires that a citizen, before committing himself to any course of action, should be able

²⁸ Brian Z Tamanaha, *On the Rule of Law* (Cambridge University Press 2004) 122.

²⁹ <<http://www.worldjusticeproject.org/about/>> accessed 8th March 2012.

³⁰ <<http://www.worldjusticeproject.org/about/>> accessed 8th March 2012.

³¹ See < <http://worldjusticeproject.org/rule-of-law-index/> > accessed 25 March 2012.

³² <www.ibanet.org> Resolution of 8th March 2012, page 15 - Part II (M).

³³ *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg* [1975] AC 591.

to know in advance what are the legal consequences that will flow from it. Where those consequences are regulated by a statute the source of that knowledge is what the statute says.³⁴

In *Fothergill v Monarch Airlines Ltd*³⁵ he made a similar point:

Elementary justice or, to use the concept often cited by the European Court, the need for legal certainty demands that the rules by which the citizen is to be bound should be ascertainable by him (or, more realistically, by a competent lawyer advising him) by reference to identifiable sources that are publicly accessible. The source to which Parliament must have intended the citizen to refer is the language of the Act itself. These are the words which Parliament has itself approved as accurately expressing its intentions.³⁶

The ECtHR has also pronounced on the matter of the clarity and foreseeability of the law. In *Sunday Times v United Kingdom* the Court said:

[T]he law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case (...) a norm cannot be regarded as a ‘law’ unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.³⁷

In England in *Johnson v Sargant Bailhache J* took the view that delegated legislation does not come into force until published:

While I agree that the rule is that a statute takes effect on the earliest moment of the day on which it is passed or on which it is declared to come into operation, there is about statutes a publicity even before they come into operation which is absent in the case of many Orders such as that with which we are now dealing; indeed, if certain Orders are to be effective at all, it is essential that they should not be known until they are actually published. In the absence of authority upon the point I am unable to hold that this Order came into operation before it was known (...).³⁸

In Ireland, Section 3(1) of the Statutory Instruments Act 1947 provides that every statutory instrument shall be distributed, printed and published.³⁹ Section 202 of the Local Government Act 2001 requires local authorities to publish notice of the making of a bye-law. A proposal to create such a bye-law requires notice.⁴⁰ Section 9(2) of the Interpretation Act 1937 provides that ‘[e]very instrument made wholly or partly under an Act of the *Oireachtas* shall, unless the contrary intention is expressed in such

³⁴ *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg* [1975] AC 591, 638.

³⁵ *Fothergill v Monarch Airlines Ltd.* [1981] AC 251, 279 G.

³⁶ *Fothergill v Monarch Airlines Ltd.* [1981] AC 251, 279-80.

³⁷ *Sunday Times v United Kingdom* (1979) 2 EHRR 245, 271, para 49.

³⁸ *Johnson v Sargant* [1918] 1 KB 101, 103.

³⁹ For an extra-statutory scheme struck down due to non-publication see *O’Neill v Minister for Agriculture and Food* [1998] 1 IR 539.

⁴⁰ Local Government Act 2001, s 200.

instrument, be deemed to be in operation as from the end of the day before the day on which such instrument is made.’ Publication and legal certainty have been described as constitutional values and part of the rule of law.⁴¹

The comments of Costello J in *McCann v Minister for Education*,⁴² are important:

The law should be certain and it should be readily accessible. The same applies to non-statutory administrative measure. In the case of primary and secondary education hundreds of millions of pounds are administered annually by means of a large number of administrative measures whose existence is known only to a handful of officials and specialities, which are not readily available to the public and whose effect is uncertain and often ambiguous.⁴³

As will be seen in the third case-study (Part Two, Chapter Three), Justice McHugh of the High Court of Australia identifies inaccessibility as ‘one of the fundamental problems with quasi-legislation.’⁴⁴ In England in *Blackpool Corporation v Locker*⁴⁵ Scott LJ said that although there was no duty either by statute or common law to publish sub-delegated legislation, he did consider it ‘vital to the whole English theory of liberty of the subject’ that those affected by sub-delegated legislation should be able to ascertain its existence and nature:

The modern extent of sub-delegated legislation is almost boundless: and it seems to me vital to the whole English theory of the liberty of the subject, that the affected person should be able at any time to ascertain what legislation affecting his rights has been passed under sub-delegated powers.⁴⁶

As far as church law is concerned, the Anglican Communion Legal Advisers Network, emphasised the concept of the rule of law.⁴⁷ Principle 4 (The sources and forms of law) of the PCLCCAC lays down that the laws of churches should be identifiable.⁴⁸ Moreover, Principle 4 (5) states that ‘[l]aws should be short, clear and simple to the extent that is consistent with their purpose, meaning and comprehensiveness.’⁴⁹

⁴¹ Gerard Hogan and David Gwynn Morgan *Administrative Law in Ireland* (Fourth edn, Round Hall Thomson Reuters 2010) at 36.

⁴² *McCann v Minister for Education* [1997] 1 ILRM 1; [1997] WJSC-HC 1382.

⁴³ *McCann v Minister for Education* [1997] 1 ILRM 1, 15; [1997] WJSC-HC 1382 at 1412-13.

⁴⁴ Quoted in Duncan Berry ‘When does an instrument made under primary legislation have “legislative effect”?’ [1997] *The Loophole* (The Newsletter of the Commonwealth Association of Legislative Council) 14-29, 24.

⁴⁵ *Blackpool Corporation v Locker* [1948] 1 KB 349.

⁴⁶ *Blackpool Corporation v Locker* [1948] 1 KB 349, 370; see also *McCann v Minister for Education* [1997] 1 I.L.R.M. 1, 15; [1997] WJSC-HC 1382, 1412.

⁴⁷ PCLCCAC, Principle 5 page 20.

⁴⁸ PCLCCAC, Principle 4.2 page 19: ‘The laws of churches exist in a variety of formal sources which should be identifiable, including constitutions, canons rules, regulations and other instruments.’

⁴⁹ PCLCCAC, Principle 4.5 page 20.

The Accessibility of the Law of the Church of Ireland

The fundamental principle of accessibility, in the case of the sources of law of the Church of Ireland, was tested in the survey. The outcomes indicate that the best-published primary sources are perceived as being those easily accessible: the CCI;⁵⁰ the Preamble and Declaration;⁵¹ the Canons,⁵² and, the BCP and its rubrics.⁵³ The experience of the laity was significantly different in relation to each of those.⁵⁴ That of the clergy indicates shortfalls in accessibility also.⁵⁵ The proportions of those who thought these key sources are only somewhat accessible or not accessible, are not to be dismissed.⁵⁶

Some primary sources are, however, perceived as less accessible. Secondary and tertiary sources are considered to be the most inaccessible, to the extent that a significant issue is manifest.

A significant minority of each group surveyed indicates that Statutes of the General Synod are either only somewhat accessible or not easily accessible.⁵⁷ A similar pattern is manifest with Resolutions of General Synod.⁵⁸ An even weaker sense of accessibility (somewhat accessible or not easily accessible) is seen in the responses to the following: regulations of the RCB;⁵⁹ regulations of a diocesan synod;⁶⁰ and, regulations of a diocesan council.⁶¹ Even some of the most highly publicised new sources – marriage regulations and *Safeguarding Trust* – are seen by disturbing numbers to be only somewhat accessible or not easily accessible.⁶²

⁵⁰ Bishops – 100%; Chancellors – 87.5%; Registrars – 100%; Clergy – 80.5%.

⁵¹ Bishops – 90%; Chancellors – 87.5%; Registrars – 91%; Clergy – 76%.

⁵² Bishops – 90%; Chancellors – 87.5%; Registrars – 82%; Clergy – 70%.

⁵³ Bishops – 90%; Chancellors – 100%; Registrars – 100%; Clergy – 86%.

⁵⁴ Laity who found the following easily accessible: the CCI – 47%; the Preamble and Declaration – 42%; the Canons – 38%; and, the *Book of Common Prayer* and its Rubrics – 69%.

⁵⁵ Clergy who thought the sources only somewhat accessible or not accessible were: the CCI – 4.5%; the Preamble and Declaration – 7%; the Canons – 9.5%; and, the *Book of Common Prayer* and its Rubrics – 1.5%.

⁵⁶ See Appendix A.

⁵⁷ Bishops – 10%; Chancellors – 12.5%; Registrars – 0%; Clergy – 38.5%; Laity – 37.5%.

⁵⁸ Bishops – 10%; Chancellors – 55%; Registrars – 9%; Clergy – 41%; Laity – 32%.

⁵⁹ Bishops – 50%; Chancellors – 62.5%; Registrars – 36%; Clergy – 52.5%; Laity – 45%.

⁶⁰ Bishops – 50%; Chancellors – 50%; Registrars – 9%; Clergy – 39%; Laity – 38%.

⁶¹ Bishops – 70%; Chancellors – 37.5%; Registrars – 18%; Clergy – 46.5%; and Laity – 46%.

⁶² Marriage Regulations: Bishops – 20%; Chancellors – 62.5%; Registrars – 0%; Clergy – 9%; Laity – 22.5%; *Safeguarding Trust*: Bishops – 10%; Chancellors – 12.5%; Registrars – 9%; Clergy – 3%; Laity – 5%..

The sources perceived as least accessible are the tertiary sources: guidelines of the House of Bishops;⁶³ protocols of the House of Bishops;⁶⁴ guidelines of individual bishops;⁶⁵ and, parochial regulations.⁶⁶ The extent of inaccessibility, allied with the increasing reliance by the Church of Ireland on these instruments (as detailed in Part Two: Chapter Three) is a cause for significant concern.

An Examination of the Accessibility of Ecclesiastical Law

The problem posed by inaccessibility is well illustrated by scrutiny of ecclesiastical law. The accessibility of this principal source is investigated for the purpose of this case study. The principle of the rule of law, comprehending that of the accessibility and clarity of the law, extends to the ecclesiastical law of Ireland prior to disestablishment in 1871: it indeed comprised laws ‘publicly made’ and ‘publicly administered by the courts’ (to use Bingham’s construct of the rule of law).⁶⁷

Since disestablishment, those laws continue to apply within the Church of Ireland as a matter of internal law by virtue of section 20 the Irish Church Act 1869. It is submitted that the principles underpinning the concept of the rule of law should, by extension, pervade the internal legal systems of law-abiding institutions in society such as the Church of Ireland. A challenging question arises, therefore, about the clarity and accessibility of that source of law for the Church of Ireland known as ‘ecclesiastical law.’

The Meaning of Ecclesiastical Law

It is recalled from Part One, that the Irish Church Act 1869 provided that from 1st January 1871 the ecclesiastical courts were to be abolished, and furthermore, that the:

ecclesiastical law of Ireland, except in so far as relates to matrimonial causes and matters, shall cease to exist as law.⁶⁸

And, crucially, from the same date the:

ecclesiastical law of Ireland, and the present articles, doctrines, rites, rules, discipline, and ordinances of the said Church, shall be deemed to be binding on the

⁶³ Bishops – 60%; Chancellors – 62.5%; Registrars – 54%; Clergy – 52%; Laity – 50%.

⁶⁴ Bishops – 80%; Chancellors – 75%; Registrars – 54%; Clergy – 68%; Laity – 59%.

⁶⁵ Bishops – 50%; Chancellors – 50%; Registrars – 36%; Clergy – 29%; Laity – 40%.

⁶⁶ Bishops – 80%; Chancellors – 75%; Registrars – 27%; Clergy – 31%; Laity – 41%.

⁶⁷ Tom Bingham, *The Rule of Law* (Allen Lane 2010) 8.

⁶⁸ Irish Church Act 1869, s 21; for the analogous situation in the Church in Wales see *Powell v Representative Body of the Church in Wales* [1957] 1 All ER 400.

members for the time being thereof in the same manner as if such members had mutually contracted and agreed to abide and observe the same, and shall be capable of being enforced in the temporal courts in relation to any property (...).⁶⁹

It will be recalled that the ecclesiastical law, while abolished *as law*, does not, in fact, cease to exist in the life of the church. It is enjoined on members of the Church of Ireland, and on those who seek the benefits of church membership. It ‘continues to govern the Church (subject to modification and alteration by the Legislative body of the Church).’⁷⁰

Ecclesiastical Law in the modern-day law of the Church of Ireland

There are a number of instances where the post-disestablishment laws of the Church of Ireland make specific reference to the provisions of pre-disestablishment ecclesiastical law, thus emphasising the importance of that source. They are continued as a matter of internal law and consensual compact rather than with the force of State law which they once had. For example, the Church of Ireland Act 1851⁷¹ and the Church of Ireland Act 1858⁷² (both of which provided for the erection and endowment of churches and chapels in Ireland and vested rights of patronage in the trustees of those churches) are specifically mentioned (and the prerogatives laid down in them are protected) under the CCI Chapter IV, section 22.

Similarly, the CCI Chapter V, section 11 cross-references to the rights afforded by a post-disestablishment civil Statute - the Trustee Churches Act (Ireland) 1884.⁷³ In both these instances the CCI mentions also section 70 of the Irish Church Act 1869. In the Court of the General Synod in *Re The Precedence of the Bishop of Meath*⁷⁴ the Court relied on the pre-disestablishment ecclesiastical law of Ireland in according precedence to the Bishop of Meath (next after the two Archbishops) among the bishops of the Church of Ireland.

The express continuity with the pre-disestablishment ecclesiastical law is also well illustrated by provisions concerning licences, dispensations and faculties:

The archbishops and bishops of the Church of Ireland shall have, and may use, all the same powers of granting licences, dispensations, faculties, and other writings

⁶⁹ Irish Church Act 1869 (32 & 33 Vict c 42), s 20.

⁷⁰ George Atkins, *The Irish Church Act 1869: Carefully Annotated* (Ponsonby 1869) 28.

⁷¹ 14 & 15 Vict c 72.

⁷² 21 & 22 Vict c 59.

⁷³ 47 & 48 Vict c 10.

⁷⁴ *Re Precedence of the Bishop of Meath* JGS [1886] 176.

which they had and might have used at the time of the passing of the Irish Church Act, 1869 (...)⁷⁵

Similarly, a member of the clergy or a bishop shall be liable to disciplinary action if he or she is guilty of:

an act or omission which would have been a breach or violation of the ecclesiastical law of the United Church of England and Ireland, and an offence punishable by such law in Ireland, at the time of the passing of the Irish Church Act, 1869, and which is a breach or violation of the ecclesiastical law of the Church of Ireland for the time being; (...).⁷⁶

These provisions posit a clear challenge of establishing what was the law on these matters – licences, dispensations, faculties and violations of the ecclesiastical law – on 1st January 1871. In the case of ‘violations of the ecclesiastical law’ members of the clergy, in general, almost certainly do not have an awareness of what those offences may have been.

Some of the terminology in the CCI itself, and in other forms and precedents of the church, point to this pre-existing body of ecclesiastical law. There is reference, for example, to ‘ecclesiastical rights generally.’⁷⁷

In addition to such express references to the pre-1871 ecclesiastical law, there are entire sections of the modern-day church law – the canons ecclesiastical being an obvious example – which have a clear provenance in canonical activity of an earlier era (as set out in Appendix D).⁷⁸ An understanding of the etymology in the pre-1871 material and the subsequent evolution of those laws is not a matter of mere academic interest; it can inform contemporary reviews of the law, and has done so.⁷⁹

The Challenge of Determining Ecclesiastical Law

Ecclesiastical law as a source of law for the Church of Ireland is, as has already been established in Part One: Chapter Two, a highly specific concept. Ascertaining the position of the ecclesiastical law in Ireland on 1st January 1871 is a vital component if one is definitively to access the law of the Church of Ireland.

⁷⁵ CCI, ch VIII, s 14.

⁷⁶ CCI, ch VIII, s 25.

⁷⁷ CCI, ch VIII, s 4.

⁷⁸ See ‘Canons’ below and Appendix D.

⁷⁹ eg a recent consideration by the Legal Advisory Committee of burial rights, JGS [2009] 161, JGS [2010] 222; see also the work of the Courts and Tribunals Committee, JGS [2008] 247 para 17.

However, for the modern canon lawyer the task of pinning down the ecclesiastical law as it was on 1st January 1871, and determining whether or not it still pertains, as internal church law, is a difficult task. As was seen in Part One: Chapter Two, lawyers, like historians, face also the issue of determining which English Reformation ecclesiastical legislation had (or purported to have) effect in Ireland.⁸⁰

The questions the task gives rise to are: what was the law of the Church of Ireland on 1st January 1871? Is that law consistent with the law of the Irish State today? (If not, it cannot be the internal law of the Church of Ireland). Has that law subsequently been changed, abrogated or amended by the General Synod? (If so, the new law or amended form of the older law applies).

While these pursuits may energise the skilled legal practitioner or those with a highly honed understanding of the subject matter, they will prove inaccessible to the ordinary church member. Should this be, given that it is those members who are bound by and beneficiaries of the provisions of that law?

That this is indeed problematic is evidenced by the survey. All participants were asked whether in the course of their ministry or work in the Church of Ireland they had cause to ascertain an aspect of pre-1871/pre-disestablishment ecclesiastical law of the Church of Ireland. While the vast majority of bishops (90%) and chancellors (87.5%) had had to do so, others had done so in fewer instances.⁸¹ Significantly, none of the bishops and none of the chancellors found that the pre-1871 ecclesiastical law was easily accessible; only small numbers of other groups had found it so.⁸² A minority found it to be accessible.⁸³ Others found it to be only ‘somewhat accessible’, which, very significantly, included 50% of those who might be presumed to be the most qualified in the law: the chancellors.⁸⁴ What is hugely significant is that 50% of bishops and 37.5% of chancellors were of the opinion that this source is inaccessible.⁸⁵ So daunting is this source, that almost half of both the registrars (46%) and the clergy (49%), as well as a majority of the laity (54%) did not know.⁸⁶

⁸⁰ See generally Henry Holloway, *The Reformation in Ireland: A Study of Ecclesiastical Legislation* (SPCK 1919).

⁸¹ Registrars – 36%; Clergy – 20.5%; Laity 16.5%.

⁸² Registrars – 18%; Clergy – 2%; Laity 2%.

⁸³ Bishops – 20%; Chancellors – 12.5% Registrars – 9%; Clergy – 13%; Laity 13%.

⁸⁴ Bishops – 30%; Chancellors – 50% Registrars – 9%; Clergy – 17%; Laity 13%.

⁸⁵ The numbers for the other groupings is as follows: Registrars – 18%; Clergy – 19%; Laity 18%.

⁸⁶ Bishops – 0%; Chancellors – 0%.

The Church of Ireland and the Statute Law Revision Project

As part of this case-study, and in order to corroborate the perplexity of many of those surveyed on the one hand, and the view articulated that the ecclesiastical law is inaccessible, the Church of Ireland's encounter with the Statute Law Revision project is illustrative and serves as a mirror. It is litmus in which the complexity of the corpus of ecclesiastical law is seen. This exposes also the contorted efforts required to establish what the law may be on a particular subject.

The statutes currently in force in Ireland have been enacted by different parliaments over many centuries: legislation passed by the *Oireachtas* since the founding of the State in 1922; legislation passed following the Act of Union between 1801 and 1922; and statutes passed by parliaments in Ireland before 1800.⁸⁷ It should be noted also that, notwithstanding the Act of Union and the uniting of the Churches of England and Ireland between 1801 and 1871, a number of statutes passed in that same period were English statutes which did not apply in Ireland (and are not, therefore, part of the pre-1871 ecclesiastical law).⁸⁸

When in 2004 the Taoiseach announced a new phase of statute law revision in Ireland, he described it as a process of removing legislation that is obsolete, or no longer in force, from the legal system. An examination of that process of statute law revision and the Church of Ireland's interaction with it manifests the complexity of accessing and implementing the ostensibly simple concept of ecclesiastical law as re-defined by the Irish Church Act 1869.⁸⁹

The Office of the Attorney General recognised the complexity from an ecclesiastical law perspective and initiated contact with the Archbishop of Dublin in March 2004.⁹⁰ An exploratory meeting was held on 1st April 2004⁹¹ at which the Bishop of Cork

⁸⁷ see eg W.N. Osborough, *The Irish Statutes, Revised Edition 1310-1800* (Round Hall 1995); see also P Connolly (ed) *Statute Rolls of the Irish Parliament: Richard III – Henry VIII* (Four Courts Press 2002).

⁸⁸ eg Lecturers And Parish Clerks Act 1844 (7 & 8 Vict c 59).

⁸⁹ For a comprehensive overview of the work of parliaments in Ireland before 1801, and most especially for an explanation of the import for Ireland of legislation passed both by the Irish and English parliaments see WN Osborough, 'The Legislation of the Pre-Union Irish Parliament' in *The Irish Statutes Revised Edition 1885* (Reprint, The Round Hall Press 1995) a – u; see also Philomena Connolly (ed) *Statute Rolls of the Irish Parliament: Richard III – Henry VIII* (Four Courts Press 2002).

⁹⁰ Archive of the Bishop of Cork, SLR-1.

⁹¹ At the See House, Temple Road, Dublin 6 attended by representatives of the Church of Ireland (the Archbishop of Dublin, the Bishop of Cork and Mr William Prentice, Chancellor of the Diocese of Meath and Kildare) and of the Statute Law Revision Unit at the Office of the Attorney General (Mr Edward

emphasised the importance of the concept of ecclesiastical law (as defined in the Irish Church Act 1869) for the Church of Ireland. An enquiry posed to the Statute Law Revision Unit from the Archbishop of Dublin in December 2004 elicited the information that the previous director⁹² had left the Statute Law Revision Unit and that a new director of that unit would be appointed in 2005. Sight was lost of the contact with the Church of Ireland during this transition, however, and, having noticed the progress of the Bill through the *Oireachtas*, the Bishop of Cork made urgent contact with the Statute Law Revision Unit on 23rd September 2005,⁹³ and alerted the House of Bishops.⁹⁴ The Statute Law Revision Unit re-opened consultation with the Bishop of Cork about the relevance of eighteen Acts it was proposed to repeal.⁹⁵ Arising from both the immanence of the debate of the Bill and also the significance of some of the Acts within the ecclesiastical framework, (and with the consent of the Archbishop), personal contact was made with academics and lawyers about the principle of repeal of the Acts.⁹⁶

The advice received indicated that the process was ‘odd’ given that some of the statutes being repealed may, in any case, never have applied in Ireland, but that it was clearly a ‘belt and braces’ approach.⁹⁷ The scheme of revision was styled as a ‘cleaning up’ of the pre-1922 Statute roll, and that such legal effect as the ecclesiastical law had ‘would, in any event, have not survived the enactment of Article 44 of the Constitution 1937.’⁹⁸

Gerard Hogan, SC indicated his concurrence with this statement by the Bishop of Cork:

Since 1871, ecclesiastical law, while abolished as law, does not, in fact, cease to exist in the life of the Church, in the sense that it is enjoined on those who choose to be members of the Church of Ireland. It continues to govern the Church (subject to modification and alteration by the legislative body of the Church). Although ecclesiastical law then, ceased to exist as the law of the land, section 20 of the Irish Church Act 1869 continues the whole of the present ecclesiastical law, and the present teaching and discipline of the Church, even after 1st January, 1871, subject to such alteration, if any, as the Church itself may introduce.

Ecclesiastical law, as far as the Church of Ireland is concerned today would appear, therefore, to be such ecclesiastical law from the pre-disestablishment period which has not been altered or modified by the General Synod of the Church of Ireland, and

Donelan) and a solicitor advising the Statute Law Revision Unit (Ms Denise O’Connor of Whitney, Moore & Keller).

⁹² Edward Donelan.

⁹³ Archive of the Bishop of Cork, SLR-4.

⁹⁴ Archive of the Bishop of Cork, SLR-5 and SLR-6.

⁹⁵ Archive of the Bishop of Cork, SLR-7.

⁹⁶ Archive of the Bishop of Cork, SLR-8 and SLR-9.

⁹⁷ Archive of the Bishop of Cork, SLR- 10, SLR- 11, SLR- 13.

⁹⁸ Archive of the Bishop of Cork, SLR-14 Opinion of Gerard Hogan, SC.

to which members of the Church are currently bound by virtue of their membership of the Church and their ‘mutual contract’ each to the other.⁹⁹

On this basis the repeal of ecclesiastical statutes by the State was of little importance to the Church of Ireland. Their:

abolition by statute is irrelevant to the Church. [Moreover], the reverse would also be true. If the Church changed an old part of ecclesiastical law that was formerly provided for by statute in pre-establishment days, the fact that the statute remained on the statute roll would be irrelevant so far as Church law and teaching was concerned.¹⁰⁰

In the light of this advice, and having reported to the Archbishop of Dublin,¹⁰¹ the Bishop of Cork informed the Office of the Attorney General that the church had been advised that the repeal of the statutes would not affect the internal law of the Church of Ireland.¹⁰² More extensive consultation within a longer timeframe was requested in the future and, on this basis, the Bishop of Cork reported to the Standing Committee and suggested that a working group be established to deal with future statute law revision.¹⁰³ The working group undertook that task in relation to the Statute Law Revision (Pre-1922) Bill 2007.¹⁰⁴ This involved scrutiny of 489 statutes with ecclesiastical import.

A complete list of the repealed statutes (as well as others specifically retained in 2007¹⁰⁵), which deal with ecclesiastical law, has been garnered from the legislation and appears at Appendix B. Study of the statutes listed indicates the manifest complexity of the task of discerning which were still part of the ecclesiastical law on 1st January 1871; and, moreover, which are still part of that ecclesiastical law today.

Lessons about Ecclesiastical Law garnered from the Statute Law Revision Project

Engagement with the Statute Law Revision Project is a prism which reflects the diffuseness, intangibility and inaccessibility of the ecclesiastical law of the Church of Ireland. It identified elements of the ecclesiastical law which are obsolete, superseded by Irish law, abrogated by internal church law, indicative of the provenance of much modern church law, repealed as State law but continuing in force as church law and

⁹⁹ Archive of the Bishop of Cork, SLR-15 and SLR-16.

¹⁰⁰ Archive of the Bishop of Cork, SLR- 16 Opinion of Gerard Hogan, SC.

¹⁰¹ Archive of the Bishop of Cork, SLR-18.

¹⁰² Archive of the Bishop of Cork, SLR-21 and SLR-22.

¹⁰³ Archive of the Bishop of Cork, SLR-19 and SLR-20.

¹⁰⁴ Archive of the Bishop of Cork, SLR-24 and SLR-25.

¹⁰⁵ Statute Law Revision Act 2007, s 2(1)(a) and Schedule 1.

statutes about which there is uncertainty as to its continuing relevance. These challenges accentuate the concern about accessibility.

Obsolete Ecclesiastical Law

The easiest group of Statutes to deal with in the Statute Law Revision Project are those that are plainly obsolete, or spent, as they were private or local statutes for a specific purpose that was subsequently fulfilled or lapsed due to expiration of time.¹⁰⁶ A number of statutes had already been repealed in part by subsequent pre-1922 legislation and were repealed as a whole.¹⁰⁷

Ecclesiastical Law superseded by Irish Law

Another group of statutes has been superseded by modern Irish law: an obvious example is the many confirmations of the liberties of the Church, an area now governed by Article 44 of the Irish Constitution and by the ECHR.¹⁰⁸ Another is the Protection of Pilgrims Act 1493,¹⁰⁹ which is provided for today in legislation such as the Prohibition of Incitement to Hatred Act 1989 and the Non-Fatal Offences against the Person Act 1997.

Abrogated by Internal Church Law

A large number of the repealed statutes has been superseded by the internal law of the disestablished Church of Ireland, for example, the Vacancies in Archbishoprics and Bishoprics Act 1164,¹¹⁰ Churchwardens Act 1781,¹¹¹ Church Rates (Ireland) Act 1826.¹¹²

¹⁰⁶ Among many others see eg 9 Hen V c 1 [Owing to war and disagreements the King's presence necessary in Ireland (1421)]; 27 Hen VI c 24 [John, Bishop of Limerick pardoned an amercement of £20 for not attending a Great Council (1449)] 10 Edw IV c 19 [Abbot of Duleek may repair the weir on the Boyne at the Grange (1470)], 33 Hen VI c 13 [Michael, Archbishop of Dublin to have £40 (1455)].

¹⁰⁷ See eg Collection and Payment of Tithes Act 1290 (18 Edw I [C D.I. vol. 3 no 580] which was repealed by the Tithe Rentcharge (Ireland) Act 1838 (1 & 2 Vict c 109); Glebe Act 1698 (10 Will III c 6) which was repealed in part by 14 & 15 Vict c 71 s1; Prohibition of Disturbance of Worship Act 1719 (6 Geo. I c 5) which was repealed in part by 35 & 36 Vict c 48, s1 .

¹⁰⁸ See eg 13 Edw II c 1; 25 Edw III c 1; 3 Hen IV c 1; 7 Hen VI c 1; 8 Hen. VI c 1; 10 Hen VI c 1; 25 Hen VI c 1; 27 Hen VI c 1; 28 Hen VI c 1; 29 Hen VI c 1; 22 Hen VI c 1; 36 Hen VI c 1; 37 Hen VI c 1; 38 Hen VI c 1; 3 Edw IV c 1; 5 Edw IV c 1; 7 & 8 Edw IV c 1; 10 Edw IV c 1; 11 & 12 Edw IV c 1; 12 & 13 Edw IV c 1; 16 & 17 Edw IV c 1.

¹⁰⁹ Protection of Pilgrims Act 1493 (8 Hen VIII [PRO Col 5 App 2]).

¹¹⁰ Vacancies in Archbishoprics and Bishoprics Act 1164 (10 Hen II [Constitutions of Clarendon [12]]): this has been superseded by CCI, ch VI.

¹¹¹ Churchwardens Act 1781 (21 & 22 Geo III c 52): this has been superseded, mainly by CCI, ch III.

¹¹² Church Rates (Ireland) Act 1826 (7 Geo IV c 72) (which *inter alia* provides for the election of churchwardens and laid down that anyone so elected was compelled to serve): this has been superseded, mainly by CCI, ch III.

Indicative of the Provenance of Church Law

Many of the statutes, whether repealed or not repealed, illustrate the emerging provenance of contemporary canonical principles. A cursory glance at Appendix B parallels the historical development of the Church of Ireland, and illustrates the point that matters now part of the infrastructural, as well as of the legal DNA of the Church of Ireland are prefigured in earlier statutory provisions.¹¹³

Repealed but still embodying the Internal Law of the Church

A number of repealed statutes, notwithstanding their repeal, and since their provisions have neither been expressly included in the post-1871 law of the Church of Ireland or abrogated or amended by that law, still form part of the ecclesiastical law of the Church of Ireland. A most obvious example is section 8 of the Sacrament Act 1547¹¹⁴ which provides for the reception of the Holy Communion in both kinds (bread and wine). This Act was repealed by the Statute Law Revision (Pre-1922) Act 2005.¹¹⁵ Notwithstanding its repeal, it continues in force, as a matter of internal church law.

This interaction between contemporary concerns and Reformation statutes was raised topically at the time of the outbreak of the A1H1 virus (known as swine flu) in July 2009. In England the Archbishops of Canterbury and York wrote to the Bishops of the Church of England recommending the suspension of the sharing of the chalice at Holy Communion. Their decision was based on advice received and published by the British Government.¹¹⁶ Anticipating a similar recommendation from the Archbishops and Bishops of the Church of Ireland (wrongly as matters unfolded) an enquirer sought clarification about the administration of holy communion in one kind and, specifically, asked about the relationship between Article 30 of the Thirty-Nine Articles and section 8 of the Sacrament Act 1547.

¹¹³ See eg the following selection: Statute on Trees in Churchyard (uncertain date between 1066 and 1494); Excommunications Act 1164 (10 Hen. II [Constitutions of Clarendon [5], [8],[10] & [11]]); 15 & 16 Edw IV c 52 on the death of Archbishops and Bishops, and during vacancies, guardians of spiritualities to keep the manses of their manors in repair, etc out of the profits of the demesnes (1475); 2 Eliz I c 2 (Act of Uniformity (1560); 17 & 18 Chas II c 6 (Act of Uniformity 1665); 7 Will III c 17 (Sunday Observance Act 1695); 12 Geo I c 10 (Ecclesiastical Residences Act 1725); 1 Geo II c 22 (Maintenance of Curates Act 1727); 21 & 22 Geo III c 52 (Churchwardens Act 1781); 40 Geo III c 38 (Act of Union 1800); 1 Edw VI c 1 (Sacrament Act 1547); 6 & 7 Vict c 62 Incapacitated Bishops Act 1843; together with all the ecclesiastical legislation between 1801 and 1869.

¹¹⁴ Sacrament Act 1547 (1 Edw VI c 1).

¹¹⁵ In Northern Ireland s8 was repealed by the Statute Law Revision Act 1952 (2&3 Eliz 2 c 5) Sch 1

¹¹⁶ 'Faith Communities and Pandemic Flu: Guidance for Faith Communities and Local Pandemic Committees' (1 May 2009) available at

<<http://www.cofe.anglican.org/info/swineflu/governmentadvice.doc>> accessed on 1st February 2010.

As was seen in Part One, the Thirty-Nine Articles are one of the primary sources of internal law of the Church of Ireland and also it will be observed that the Sacrament Act 1547 pre-dates the adoption of the Thirty-Nine Articles.

Article 30 states that:

The Cup of the Lord is not to be denied to the Lay-people: for both the parts of the Lord's Sacrament, by Christ's ordinance and commandment, ought to be ministered to all Christian men alike.

Section 8 of the Sacrament Act 1547 laid down that the:

most blessed sacrament be hereafter commonly delivered and ministered unto the people, within this Church of England and Ireland and other the Kings Dominions, under both the Kinds, that is to say of bread and wine, except necessity otherwise require:...

The Sacrament Act 1547 was an Act of the English parliament and was not enacted separately by an Irish Parliament. Nonetheless, section 8 of the Act makes clear that it applied 'within this Church of England and Ireland'. Statutes such as this from the sixteenth century present particular problems. During the reign of Henry VIII the Irish Parliament sat, for example, in Dublin, Kilkenny, Cashel and Limerick.¹¹⁷ In the Reformation period, it appears that efforts were simply made to implement, in Ireland, certain legislation passed by the English Parliament. Referring to the legislative advance of the Reformation in England, it has been noted that:

[t]he counterpart of this development in Ireland, where confusion was greater and change slower, and where no parliament was summoned to maintain the Henrician appearance of public support, served more than ever to identify the reform with the wishes of the Dublin Englishmen. The protectorate council does not seem to have considered that Ireland required special treatment. English ecclesiastical legislation was simply applied to Ireland, and, although no question of constitutionality seems to have arisen, confusion certainly followed: thus John Bale, when he was consecrated bishop of Ossory in 1553, held out the use of the formulary of the second prayer-book, which had been authorised by the English parliament in the previous year, in opposition to the Irish clergy and laity, who held that the use of that book, with its more advanced protestant content, was not mandatory in Ireland.¹¹⁸

Any reforming measures that were achieved were effectively undone during the reign of Queen Mary, but were specifically affirmed by the Irish Parliament during the reign of

¹¹⁷ Dublin (1-31 May 1536); Kilkenny (25-26 July 1536); Cashel (28 July 1536); Limerick (2-19 August 1536) and Dublin (15-28 September 1536, 20 January -5/6 February 1537, 1-8 May 1537, 20-21 July 1537 and 13 October – 20 December 1537); source: Philomena Connolly (ed) *Statute Rolls of the Irish Parliament: Richard III – Henry VIII* (Four Courts Press 2002) xxxii-xxxiii.

¹¹⁸ GA Hayes-McCoy, 'The protestant reformation, 1547-1571' in TW Moody, FX Martin and FJ Byrne (eds) *A New History of Ireland Vol. III: Early Modern Ireland 1534-1691* (Oxford University Press 2009) 69-93, 74.

Elizabeth I.¹¹⁹ Throughout the Reformation in Ireland, where change came about it was slow and sporadic, and the passing of legislation was in no way sufficient to effect a successful reformation.¹²⁰

In the case of the administering of holy communion in both kinds (bread and wine), ‘except necessity otherwise require’, the Sacrament Act 1547, appears, at least in terms of subsequent sources of ecclesiastical law, to have been followed. Article 30 of the Thirty-Nine Articles manifests this. Likewise Canon 18 of the Irish Canons of 1634 provided that ‘the minister shall deliver both the bread and the wine to every communicant severally.’ This was a restatement of part of Canon 21 of the English Canons of 1603 (which, as was seen, only applied in Ireland between 1801 and 1870).

Today, the duty to administer Holy Communion in both kinds has a clear legal foundation (the Sacrament Act 1547 and Article 30 of the Thirty-Nine Articles). However, that important principle is not clearly stated in the modern day canons or in the CCI. It is only implicit in the CCI in that one of the duties of the select vestry of a parish is, ‘subject to the advice and direction of the member of the clergy officiating in the parish (...) [to provide] a sufficient quantity of fine white bread and of good and wholesome wine sufficient for the number of communicants.’¹²¹

It is unsatisfactory that such an important Reformation principle, characteristic of the practice of the Church of Ireland, should, for its contemporary legal status, depend on implication. The Thirty-Nine Articles are clear. The earlier statutory foundation is more confusing, given the confusion surrounding the applicability and sporadic enforcement of English Reformation statutes in Ireland. More important, the repeal by the *Oireachtas* of the Sacrament Act 1547 by the Statute Law Revision (Pre-1922) Act 2005 generates potential further confusion other than on the part of those who have a clear grasp of the meaning of ecclesiastical law in an Irish context.

¹¹⁹ See generally GA Hayes-McCoy, ‘The protestant reformation, 1547-1571’ in TW Moody, FX Martin and FJ Byrne (eds) *A New History of Ireland Vol. III: Early Modern Ireland 1534-1691* (Oxford University Press 2009) 69-93, 83.

¹²⁰ See eg James Murray ‘Ecclesiastical justice and the enforcement of the reformation: the case of Archbishop Browne and the clergy of Dublin’ in A Ford, J McGuire and K Milne (eds), *As by Law Established: the Church of Ireland since the Reformation* (The Lilliput Press 1995) 33-51; B Bradshaw ‘The Edwardian reformation in Ireland, 1547-1553’ in (1977) 34 *Archivium Hibernicum* 83-99; B Bradshaw ‘The opposition to the Ecclesiastical Legislation in the Irish Reformation Parliament’ in (1969) 16(63) *Irish Historical Studies* 285-303.

¹²¹ CCI, ch III, s 24(6)(j).

Uncertainty/Hesitation

Many of the statutes repealed relate to the granting of lands, the holding of property and the right to income and to trusts.¹²² Property still owned by the time of disestablishment was vested in the Church Commissioners under section 12 of the Irish Church Act 1869.¹²³ It provides that:

all property, real and personal, belonging or in anywise appertaining to or appropriated to the use of any archbishopric, bishopric, benefice, or cathedral preferment in or connected with the said Church, or belonging or in anywise appertaining to or appropriated to the use of any person as holding any such archbishopric, bishopric, benefice, or cathedral preferment, or belonging or in anywise appertaining to or appropriated to the use of any cathedral corporation in Ireland, as defined by this Act, shall vest in the Commissioners (...).

Moreover, upon the completion of the Commissioners' work and the establishment of the Representative Church Body, all such property was vested in that Body.¹²⁴ Furthermore, the Statute Law Revision Act 2007 provides that it 'does not affect any existing principle or rule of law or equity or any established jurisdiction, form or course of pleading, practice or procedure or any existing trust, notwithstanding that it may have been in any manner derived from, affirmed or recognised by any statute repealed by this Act.'¹²⁵ It goes on to provide:

- (2) (a) The repeals by this Act do not affect-
- (i) the continuance of any body subsisting immediately before the passing of this Act which was incorporated (or otherwise established), confirmed or revived by the grant of a charter or letter patent, and
 - (ii) such charter or letter patent, to the extent that it so subsists, together with any amendment to such a charter or letter patent so subsisting and granted or otherwise duly made by or under any enactment or otherwise.¹²⁶

Nonetheless, the State opted to retain statutes governing properties and institutions which continue to exist, arising from uncertainty about their continuing relevance and the fear that they may not be wholly obsolete.

Statutes Not Repealed

Most of the Acts specifically retained in 2007 have continuing significance. An additional few were not repealed at the specific request of the Church of Ireland in the

¹²² See eg 11 & 12 Edw IV c 11 (St. Mary's Abbey, Dublin, to enjoy lands granted or to be granted to it (1471)).

¹²³ 32 & 33 Vict c 42.

¹²⁴ Irish Church Act 1869 (32 & 33 Vict c 42) ss 22-30.

¹²⁵ Statute Law Revision Act 2007, s 9.

¹²⁶ Statute Law Revision Act 2007, s 9(2).

consultation process: Burials (Ireland) Act 1868,¹²⁷ Irish Church Act 1869,¹²⁸ Glebe Lands, Representative Church Body (Ireland) Act 1875¹²⁹ and the Trustee Churches (Ireland) Act 1884.¹³⁰

Where other Acts were specifically retained in 2007 it was sometimes because there was uncertainty about their continued application and this gave rise to hesitation about repealing them.¹³¹

Acts relating to the formalities of marriage were retained on an interim basis pending the commencement of the provisions relating to the new formalities of marriage under the Civil Registration Act 2004, which, when commenced, itself repealed them.¹³²

Of itself, the repeal of any of these Statutes does not immediately assist in providing clarification as to what the pre-1871 law was, whether repealed or not, they may or may not continue as forms of law (as a matter of consensual compact under section 20 of the Irish Church Act 1869) until repealed or amended by the post-1871 law-making of the Church of Ireland.

Non-Statutory Ecclesiastical Law on which the Church of Ireland Continues to Rely

Today, whole areas of the law, in relation to which there has been virtually no recent legislative activity by the General Synod, may only be understood at all by reference to the ecclesiastical law as it pertained at and before disestablishment. Some examples will now be considered: visitation, archdiaconal visitations and the *ius liturgicum* of the bishop.

¹²⁷ Burials (Ireland) Act 1868 (31 & 32 Vict c 103).

¹²⁸ Irish Church Act 1869 (32 & 33 Vict c 42).

¹²⁹ Glebe Lands, Representative Church Body (Ireland) Act 1875 (38 & 39 Vict c 42).

¹³⁰ Trustee Churches (Ireland) Act 1884 (47 & 48 Vict c 10).

¹³¹ See eg Saint Werburgh's Church Act 1478 (18 Edw IV [P.R.O. vol.5[8]], Christ Church Lands Act 1481 (21 Edw IV [Christ Church Deed no 334], King's Inns Act 1798 (38 Geo III c 49), Archbishop's Palace Dublin Act 1804 (44 Geo III c 63) and Places of Religious Worship Act 1812 (52 Geo III c 155).

¹³² Marriages (Ireland) Act 1844 (7 & 8 Vict c 81), Marriages (Ireland) Act 1846 (9 & 10 Vict c 72), Marriage (Society of Friends) Act 1860 (23 & 24 Vict c 18), Marriage Law (Ireland) Amendment Act 1863 (26 & 27 Vict c 27), Registration of Marriages (Ireland) Act 1863 (26 & 27 Vict c 90), Matrimonial Causes Marriage Law (Ireland) Amendment Act 1870 (33 & 34 Vict c 110), Matrimonial Causes and Marriage (Ireland) Amendment Act 1871 (34 & 35 Vict c 49), Marriage (Society of Friends) Act 1872 (35 & 36 Vict c 10) and Marriage Law (Ireland) Amendment Act 1873 (36 & 37 Vict c 16).

Visitation

The pre-1871 law relating to the bishop's ancient right of visitation¹³³ is recognised as part of Irish ecclesiastical law.¹³⁴ According to Halsbury, visitation 'denotes the act of the bishop or of some other Ordinary going his circuit throughout his diocese or district with full power of inquiring into such matters as relate to the government and discipline of the church'.¹³⁵ Such visitations, however, no longer have the character of court proceedings which they once had.¹³⁶

Although few formal visitations, in the traditional sense, are carried out by bishops or other ecclesiastical persons in the Church of Ireland in our time, the legal basis for them endures. Pastoral strategies have displaced, in large measure, visitation processes. This does not remove, however, their the legal basis. In large measure also, the nature of encounter of the bishop with the diocese, its clergy and people, has altered as diocesan synods and other formal and informal gatherings take on new significance. In less populous churches such as the Church of Ireland where contact with the bishop is regular and personal, formal visitations may have become less important.

Nevertheless, visitations are normative within the Anglican canonical tradition.¹³⁷ Principle 23 of the PCLCCAC states that visitation 'enables the exercise of a supervisory jurisdiction or a pastoral ministry, including enquiry into and assessment of the condition of an ecclesiastical entity.'¹³⁸ Such visitations 'may be exercised by the primate, archbishop, bishop or other ecclesiastical person to the extent authorised by the law.'¹³⁹ None of this is explicit in the CCI. For its law on visitation, the Church of Ireland depends almost entirely on the pre-1870 ecclesiastical law.¹⁴⁰

In contrast, the law on visitation in other Anglican Churches is clear and accessible. In *TEC*, for example, Canon I.2.4 prescribes that the presiding bishop, as 'chief pastor and Primate' shall 'visit every diocese of this Church for the purpose of: (i) holding pastoral

¹³³ See generally Peter M Smith, 'Points of Law and Practice Concerning Ecclesiastical Visitations' [1990-92] 2 *EccLJ* 189.

¹³⁴ *Harrison v Archbishop of Dublin* [1713] 2 Bro Parl Cas 199; and *Bishop of Kildare v Archbishop of Dublin* [1724] 2 Bro Parl Cas 179.

¹³⁵ *Halsbury's Laws of England* vol 34 (5th edn, 2011) para 211.

¹³⁶ *Halsbury's Laws of England* vol 34 (5th edn, 2011) para 211, 212; also *Re Dean of York* (1841) 2 QB 1, 39.

¹³⁷ See generally Norman Doe, *Canon Law in the Anglican Communion* (Clarendon Press 1998) 74-77.

¹³⁸ PCLCCAC, Principle 23(1).

¹³⁹ PCLCCAC, Principle 23(2).

¹⁴⁰ See eg Edward A Stopford *A Handbook of Ecclesiastical Law and Duty for the Use of The Irish Clergy* (Hodges, Smith and Co 1861) 263-65.

consultation with the Bishop or Bishops thereof, and with their advice, with the Lay and Clerical leaders of the jurisdiction; (ii) Preaching the Word; and (iii) Celebrating the Holy Eucharist.¹⁴¹ In the case of Archbishops, West Africa is a good example. There one of the functions of the Archbishop is to ‘visit officially the Dioceses of the Province as Metropolitan, whether at the invitation of the Bishop of a Diocese or of his own initiative, for the purpose of holding pastoral consultation with the Bishop or Bishops (...)’.¹⁴²

In the Scottish Episcopal Church the bishop, as chief pastor, must visit each congregation personally ‘at least once in every three years, and formal visitations by the Bishop may from time to time be held in connection therewith.’¹⁴³

In Southern Africa, the canons make clear that the discretion to visit is inherent in the office of bishop. Amidst the canons dealing with disciplinary process, Canon 39 (22) states that:

Nothing contained in this or other Canons shall be so construed as to affect any right in visitation, or other spiritual authority, which the Bishop of a Diocese may exercise by virtue of his office, without judicial proceedings.¹⁴⁴

Canon G5 of the Church of England summarises well the legal concept, in Anglicanism, of the visitation:

Every archbishop, bishop, and archdeacon has the right to visit at times and places limited by law or custom, the province, diocese, or archdeaconry committed to his charge, in a more solemn manner, and in such visitation to perform all such acts as by law and custom are assigned to his charge in that behalf for the edifying and well-governing of Christ’s flock, that means may be taken thereby for the supply of such things as are lacking and the correction of such things as are amiss.¹⁴⁵

None of this is clearly articulated in the law of the Church of Ireland: in this regard, the church is entirely dependent on residual awareness of ecclesiastical law. In contrast, in the Church in Wales, which was disestablished fifty years after the Church of Ireland, there is explicit reference, to visitations and the pre-disestablishment position.¹⁴⁶

¹⁴¹ TEC, Canon I.2.4.

¹⁴² West Africa, Constitution, Article V (a)v.

¹⁴³ Scotland, Canon 6(2).

¹⁴⁴ Southern Africa, Canon 39(22).

¹⁴⁵ England, G5.

¹⁴⁶ Wales, vol I, ch XI, 17(1).

The documentary framework for the holding of visitations is provided for in the current *Rules of the Court of the General Synod and Rules and Orders of Diocesan Courts and Registries in Ireland*.¹⁴⁷ These provide a Mandate for a Visitation, a Citation to Visitation and the Mandate for Visitation of Dean and Chapter. The phraseology is revealing. In the Mandate for a Visitation the bishop declares his intention to visit the whole diocese ‘according to the canonical ordinances provided for that purpose.’ The Citation to Visitation ‘requires’ the recipient to attend indicating the significance of the visitation. The Mandate for a Visitation of Dean and Chapter requires the dean and chapter to appear before the bishop in the chapter room, ‘then and there to undergo our canonical visitation.’

These assume familiarity with the nature of a ‘canonical visitation’ and ‘the canonical ordinances’ which facilitate the visitation. It is strange then that there is a paucity of references to visitation in the CCI itself. The two actual references might be seen as tangential to the mainstream of all church activity: the references relate to non-parochial churches and to Saint Patrick’s Cathedral, Dublin. In the case of proprietary or non-parochial churches the CCI provides that a licence shall determine where such a church ceases to be ‘subject to the visitation and jurisdiction of the bishop of the Diocese.’¹⁴⁸ In the case of Saint Patrick’s Cathedral, there is a clear statement of the role of the Archbishop of Dublin as visitor.¹⁴⁹ The visitation of the Dean and Chapter by the Archbishop is to occur ‘as heretofore’ – a clear reference to the pre-1870 dispensation:

The Archbishop of Dublin shall visit the Dean and Chapter, but only, as heretofore, in their chapter house; and all the members of the Chapter, and other clergy of the cathedral, shall be subject to the jurisdiction of the Archbishop of Dublin in the Archbishop’s diocesan court.¹⁵⁰

What is most remarkable is that, in contrast to many other parts of the Anglican Communion, there is no reference to visitation, either in Chapter VI of the CCI which treats of archbishops and bishops or in Chapter VIII concerning ecclesiastical tribunals and discipline. The latter underscores that the bishops and archbishops of the Church of Ireland have ‘by virtue of their respective offices and consecration a role in

¹⁴⁷ ‘Rules of the Court of the General Synod and Rules and Orders of Diocesan Courts and Registries in Ireland’ (Church of Ireland 1934).

¹⁴⁸ CCI, ch V, s 8.

¹⁴⁹ CCI, ch VII, s 37.

¹⁵⁰ CCI, ch VII, s 35.

administering discipline (...)’¹⁵¹ and to the role of the bishop in trying to effect a pastoral resolution to conflicts.¹⁵²

The law in relation to visitations in the Church of Ireland, reliant as it is on pre-1871 ecclesiastical law, is inaccessible. According to that ecclesiastical law visitation has its origins in the earliest days of the church when bishops, assisted by deacons visited all parts of their dioceses annually.¹⁵³ The visitation, as Metropolitan, by Archbishop Colton, as guardian of spiritualities, of the Diocese of Derry in 1397, during a vacancy in See, was notable.¹⁵⁴

Legal historians trace the development of the law of visitation generally to canon 35 of the Fourth Council to Toledo in 633, the second Council of Braga in 752, in the visitation of Archbishop Theodore in England in 669, at the Council of Clovesho in 747, at the Synod of Celchyth in 787, in Odo’s Canons of 943, in the visitations of Dunstan and Oswald in the tenth century and of Bishop Grossteste in the thirteenth century, and in canon 33 of the Fourth Lateran Council in 1215.¹⁵⁵

In Ireland, the practice is rooted in visitations by abbots.¹⁵⁶ These occurred regularly.¹⁵⁷ With stricter control from the Church of Rome under English influence they were a

¹⁵¹ CCI, ch VIII, s 24(c).

¹⁵² CCI, ch VIII, s 19 (b).

¹⁵³ Richard Burn *Ecclesiastical Law* vol 4 (Sweet, Stevens and Norton 1842) 12.

¹⁵⁴ William Reeves (ed), *Acts of Archbishop Colton in his Metropolitan Visitation of the Diocese of Derry, 1397* (The Irish Archaeological Society 1850).

¹⁵⁵ For the history of visitations see Peter M Smith, ‘Points of Law and Practice Concerning Ecclesiastical Visitations’ [1990-92] 2 *EccLJ* 189; see also WH Frere and William Paul M Kennedy (eds) *Visitation Articles and Injunctions Vol. I* (Longmans, Green and Co 1910).

¹⁵⁶ William Reeves (ed), *Acts of Archbishop Colton in his Metropolitan Visitation of the Diocese of Derry, 1397* (The Irish Archaeological Society 1850) iii.

¹⁵⁷ Visitations conducted by Dubdaleithe and Tibraide (at Cruachan in 778); by Nuadha (of Connacht in 810); by Artri (of Connacht in 817); by Felim (of Munster in 822); by Artri (of Connacht in 824); by Dermot (of Connacht in 835); by Dubhdalethe (of Munster in 973); by Maelseachlainn (of Meath in 985); by Muireagan (of Tír-Eoghain in 992); by Amhalgaidh (of Munster in 1021); by Dubhdalethe (of Cinel-Eoghain in 1050); by Maelisa (of Munster in 1068); by Domhnaid (of Munster in 1094); by Caellach (of Munster in 1106); by Caellach (of Meath in 1110); by Caellach (of Connacht in 1116); by Caellach (of Munster in 1120); by Caellach (throughout Ireland in 1126); by Muircheartach (of Tír-Eoghain in 1133); by Maelmaedhog Ua Morgair (of Munster in 1134); by Gelasius (of Connacht in 1140); by the Archbishop and clergy of Armagh (of Tír-Eoghain in 1150); by Gillamacliag (of Connacht in 1151); by Flaitheartach Ua Brolchain, successor of Columcille, (of Ciel-Eoghain in 1150, of the Sil=Cathasagh in 1151, of Dal-Cairbre and Ui Eathach Uladh in 1153, and of Meath in 1161); by Gillamacliag (of Cinel-Eoghain in 1162, and of Connacht in 1172); by Tomaltach Ua Conchobair (of Cinel-Eoghain in 1181); see generally William Reeves (ed), *Acts of Archbishop Colton in his Metropolitan Visitation of the Diocese of Derry, 1397* (The Irish Archaeological Society 1850) v – x.

regular occurrence: a Papal Bull of Pope Alexander IV provided that the Archbishop of Armagh should visit the province of Tuam every five years (for twenty-seven days).¹⁵⁸

Helmholz describes the visitation at the time of the Reformation as ‘venerable.’¹⁵⁹ Drawing on articles of enquiry from the period, he observes that by the sixteenth century the visitation system was more practical, working better, more regular and attendance at them was being enforced.¹⁶⁰ In the sixteenth century, a primatial visitation was ‘the normal way that a new archbishop would display and establish his authority among his clergy and flock (...).’¹⁶¹ Such visitations in the Reformation period were normally conducted personally:

The itinerary of Browne’s visitation would also have been a well-established practice. It is likely that he travelled on horseback, with his train in tow, to a pre-chosen parish church in each of the rural deaneries ... What is certain is that he intended to make stopovers in all of the religious corporations *en route*. And here, in each of the chapter houses, as well as each of the selected parish churches, he would have presided over specially convened visitation courts before which the inmates of the monasteries and the assembled secular clergy of each deanery would have been examined on the previously prepared visitation articles.¹⁶²

Visitation was given force of statute, including in the Irish Act of Uniformity 1560.¹⁶³ In the English Canons of 1603 Canon 60 refers to the bishop’s ‘accustomed visitation’ and requires that confirmation be administered ‘... in the bishop’s visitation every third year.’ Ecclesiastical visitations are mentioned in Canon 86 (the survey of churches), Canons 109, 111, 112, 113 and 116-119 (churchwardens’ presentments). As was seen in Part One, by virtue of Article 5 of the Act of Union 1801 these canons were in force in Ireland from 1801 to 1870.¹⁶⁴

¹⁵⁸ William Reeves (ed), *Acts of Archbishop Colton in his Metropolitan Visitation of the Diocese of Derry, 1397* (The Irish Archaeological Society 1850) x.

¹⁵⁹ RH Helmholz, *Roman Canon Law in Reformation England* (Cambridge University Press 1990) 105.

¹⁶⁰ RH Helmholz, *Roman Canon Law in Reformation England* (Cambridge University Press 1990) 105-06

¹⁶¹ James Murray ‘Ecclesiastical justice and the enforcement of the reformation: the case of Archbishop Browne and the clergy of Dublin’ in A Ford, J McGuire and K Milne (eds), *As by Law Established: the Church of Ireland since the Reformation* (The Lilliput Press 1995) 33-51, 37.

¹⁶² James Murray ‘Ecclesiastical justice and the enforcement of the reformation: the case of Archbishop Browne and the clergy of Dublin’ in A Ford, J McGuire and K Milne (eds), *As by Law Established: the Church of Ireland since the Reformation* (The Lilliput Press 1995) 33-51, 41.

¹⁶³ 2 Eliz I c 2; see also 28 Hen VIII c 10, 31 Hen VIII c 14; 1 Eliz I c 2, 23 & 24 Geo III c 49.

¹⁶⁴ For accounts of the development of the English Canons of 1603 see *Canon Law of the Church of England* Report of the Archbishops’ Commission on Canon Law (SPCK 1947) 71-78; see also Submission of the Clergy Act 1533 (25 Hen VIII c 19); Gerald Bray, ‘The Strange Afterlife of the *Reformatio Legum Ecclesiasticarum*’ in Norman Doe, Mark Hill and Robert Ombres (eds), *English Canon Law* (University of Wales Press 1998) 36-47; RH Helmholz, ‘The Canons of 1603: the Contemporary Understanding’ in Norman Doe, Mark Hill and Robert Ombres (eds), *English Canon Law* (University of Wales Press 1998) 23-35; for the text of the Irish Canons of 1634 see Gerald Bray (ed), *The Anglican Canons 1529-1947* (The Boydell Press 1998) 485-531.

The Irish Canons of 1634 (together with the five supplementary Irish Canons of 1711¹⁶⁵) which had force in Ireland until 1800 repeated, in large measure, the provisions of the English Canons in relation to visitation.¹⁶⁶ On the eve of disestablishment the Church of Ireland was thoroughly *au fait* with the ecclesiastical law pertaining to visitations. It had been colloquially re-stated by Edward Stopford (Archdeacon of Meath) in 1861:

When the bishop cites all his clergy to one place, it is a synod as well as a visitation. Hence “visitations and synods” are commonly spoken of together in acts of parliament. When the bishop visits from church to church, as at his confirmations under the 17th canon it is a visitation, but not a synod.¹⁶⁷

Stopford is clear about visitations. Clergy were bound to attend them and were subject to punishment for not doing so. They were to attend in clerical dress subject also to censure. Leave of absence had to be sought. He describes visitation as ‘a court of enquiry rather than jurisdiction; but proceedings in court can afterwards be founded on what happened at visitation.’¹⁶⁸

Whereas Canon 17 of the Irish Canons 1634 had provided that the bishop was to confirm ‘in his own person every third year (at least) in the time of his visitation (...)’ the post-disestablishment canons of 1871 (Canon 14) altered the provision by omitting reference to the visitation: ‘[t]he bishop also every third (at least) shall perform the duty of confirmation at convenient places within his diocese (...)’

The paucity of reference to visitation in the CCI puts the Church of Ireland at odds with much of the rest of the Anglican Communion. Yet, relying on the multiplicity of sources of the law of the Church of Ireland, it is clear that the law of visitation can be discerned. That it has to be uncovered almost exclusively from among the meanderings of the pre-1870 ecclesiastical law is untenable in a contemporary context.

Archdeacon’s Visitations

As seen, visitation is the act of an ordinary.¹⁶⁹ It is not clear that archdeacons in Ireland

¹⁶⁵ See Gerald Bray (ed), *The Anglican Canons 1529-1947* (The Boydell Press 1998) 833-35.

¹⁶⁶ Of the Irish Canons 1634 Canon 17 (confirmation at triennial visitation) Canons 61 to 68 mirror the English Canons 109-119 pertaining to presentments.

¹⁶⁷ Edward A Stopford *A Handbook of Ecclesiastical Law and Duty for the Use of The Irish Clergy* (Hodges, Smith and Co 1861) 263.

¹⁶⁸ Edward A Stopford *A Handbook of Ecclesiastical Law and Duty for the Use of The Irish Clergy* (Hodges, Smith and Co 1861) 263.

¹⁶⁹ *Halsbury’s Laws of England* vol 34 (5th edn, 2011) para 211.

were, as in England, an ordinary.¹⁷⁰ According to Stopford few Irish archdeacons could establish such a right.¹⁷¹ There is no explicit reference in the CCI to (nor does it specifically facilitate) archdiaconal visitations. The role of archdeacons is clearly set out.¹⁷² A careful reading of section 41 of Chapter II of the CCI indicates the latent insinuation of the possibility of visitations by an archdeacon. The duty and office of the archdeacon are rooted ‘in ancient times’. ‘It is the duty and office of an archdeacon, (...) to aid and assist the bishop in the bishop's pastoral care and office.’ Since oversight and visitation appertain to the pastoral care and office of a bishop, the archdeacon may aid and assist in these. Moreover, ‘[t]he archdeacon is at all times to watch, inquire, and report whatever may need the consideration and control of the bishop, and more especially when the bishop may direct the archdeacon to make inquiry.’ Clearly watching, inquiring and reporting may not only be pastoral activities, but have a quasi-judicial character in the nature of a visitation. In a broader sense, the role of the archdeacon extends to assisting ‘the bishop in such administration as the bishop may require.’¹⁷³

The lack of clarity as to whether any residual authority of the archdeacon to conduct visitations endured post-1871 could be resolved if, instead of disputing whether such a duty appertained to the office ‘in ancient times’, a clear, contemporary statement were, like in other Anglican jurisdictions, embodied in the law of the Church of Ireland. In England, for example, Canon C22 obliges every archdeacon to hold yearly visitations within his archdeaconry.¹⁷⁴

Ius Liturgicum

A further area arising from the contemporary reliance on ecclesiastical law as a source of law for the Church of Ireland where clarity is lacking is the bishop’s oversight of liturgy. This was considered generally in Part One: Chapter Three, in the context of consideration of custom as an intangible source.

¹⁷⁰ In England see 7 & 8 Vict c 59 s 5 ‘Archdeacon or other ordinary’.

¹⁷¹ Edward A Stopford, *A Handbook of Ecclesiastical Law and Duty for the Use of The Irish Clergy* (Hodges, Smith and Co 1861) 316.

¹⁷² CCI, ch 2 s 41.

¹⁷³ CCI, ch 2 s 41.

¹⁷⁴ England, Canon C22(5); see generally *Halsbury’s Laws of England* vol 34 (5th edn, 2011) para 211; N Doe, *The Legal Framework of the Church of England* (Clarendon Press 1996) 122-25.

Bishops have a pivotal role in defining the boundaries of liturgical flexibility. In the Ordinal the bishop's role as the main presider at the liturgy may be inferred from the Declarations ('Bishops (...) are to baptize and confirm, and to preside at the Holy Communion, and *to lead the offering of prayer and praise.*'¹⁷⁵) and the ordination prayer ('Guide and direct *him* in presiding at the worship of your people'¹⁷⁶). The bishop's role was acknowledged at the Reformation, in the preface to the *Book of Common Prayer, 1549*:

And forasmuch as nothing can be so plainly set forth, but doubts may arise in the use and practice of the same; to appease all such diversity (...) and for the resolution of doubts concerning the manner how to understand, do, and execute, the things contained in this Book; the parties that so doubt, or diversely take any thing, shall always resort to the Bishop of the Diocese, who by his discretion shall take order to the quieting and appeasing of the same; (...).¹⁷⁷

In 1897, Resolution 46 of the Lambeth Conference laid down:

That this Conference (...) recognises in each bishop within his jurisdiction the exclusive right of adapting the services in the Book of Common Prayer to local circumstances, and also of directing or sanctioning the use of additional prayers, subject to such limitations as may be imposed by provincial or other lawful authority, provided also that any such adaptation shall not affect the doctrinal teaching (...).¹⁷⁸

This right emanates not only from the theology and ecclesiology attributable to the office of bishop, but also has its provenance in the *Ius Liturgicum* inherent in the bishop's office.¹⁷⁹ This is the pre-Reformation principle whereby the bishop, as chief minister of the liturgy, exercises an ancient right to determine the form and manner of public worship. The bishop's *Ius Liturgicum* is inherent in his office, but is, exercised 'constitutionally in association with his presbyters (...)' and should be 'so exercised as to be acceptable to the overwhelming majority of his diocese.'¹⁸⁰ The bishop acts in a network of relationships.¹⁸¹

¹⁷⁵ 'Ordination Two', *Book of Common Prayer*, 577 (my emphasis).

¹⁷⁶ 'Ordination Two', *Book of Common Prayer*, 580.

¹⁷⁷ *Book of Common Prayer*, Preface to the BCP, 1549, 15.

¹⁷⁸ Lambeth Conference 1897, Resolution 46.

¹⁷⁹ For a full study of this principle see Jeffrey Gainer, 'The *Ius Liturgicum* of the Bishop and the Church in Wales' in Norman Doe (ed), *Essays in Canon Law* (University of Wales Press 1992) 111-32; see also Timothy Briden, and Brian Hanson, *Moore's Introduction to English Canon Law* (3rd edn, Mowbray 1992) 57-58.

¹⁸⁰ Jeffrey Gainer, 'The *Ius Liturgicum* of the Bishop and the Church in Wales' in Norman Doe (ed), *Essays in Canon Law* (University of Wales Press 1992) 111-32, 130.

¹⁸¹ *Episcopal Ministry* The Report of the Archbishops' Group on the Episcopate, (Church House Publishing 1990) 41.

In the Church of Ireland, the *Ius Liturgicum* appears in large measure to have been abrogated by Canons 2, 5 and 6.¹⁸² Alternatively one might say that the *Ius Liturgicum* has been subsumed in the CCI and delimited in the following ways; the bishop:

- (i) is empowered to ‘restrain and prohibit (...) any practice not enjoined in the Book of Common Prayer, or in any rubric or canon enacted by lawful authority of the Church of Ireland.’¹⁸³
- (ii) determines the ‘convenient and usual times’ of worship together with the place in which it is to take place,¹⁸⁴ and the frequency of the celebration of the Holy Communion.¹⁸⁵
- (iii) oversees the use of experimental forms of liturgy.¹⁸⁶
- (iv) approves additional forms of service for use on Sundays, and may give leave for such to be in substitution for any of the usual services.¹⁸⁷
- (v) is the arbiter of
 - i. all variations made in the liturgy at the discretion of the clergy and, in particular, whether they are of ‘substantial importance.’¹⁸⁸
 - ii. what is the customary ecclesiastical apparel of his order.¹⁸⁹
 - iii. questions relating to vestments (which have no doctrinal significance¹⁹⁰) and ornaments worn by the clergy;¹⁹¹
- (vi) may authorise
 - i. hymns and prayers not contained in prescribed or authorised books,¹⁹² and is arbiter of whether other hymns and prayers contain substantial variations from the practice of, or are contrary to the doctrine of, the church.¹⁹³

¹⁸² CCI, ch IX, Ss 2, 5 and 6, see also Part One: Chapter 3 at 121 and 135-36.

¹⁸³ CCI, ch IX, s 2 (Canon 2) [Provenance: Canon 5 of 1871, Canon 8 of 1634 and absent from the Canons of 1603].

¹⁸⁴ CCI, ch IX, s 3 (Canon 3) [Provenance: Canon 4 of 1871; Canon 7 of 1634; and Canon 14 of 1603].

¹⁸⁵ CCI, ch IX, s 13 s 1 (Canon 13.1) [Provenance: Canon 15 of 1871; Canon 18 of 1634; and Canon 21 of 1603].

¹⁸⁶ CCI, ch I, s26 ss3 (b).

¹⁸⁷ CCI, ch IX, s 5 (Canon 5) [Provenance: Canon 1 of 1871; Canon 3 of 1634; and Canon 4 of 1603].

¹⁸⁸ CCI, ch IX, s 5 (Canon 5) as amended to provide such discretion to clergy by Statute of the General Synod, 1974 c i [Provenance: Canon 1 of 1871; Canon 3 of 1634; and Canon 4 of 1603].

¹⁸⁹ CCI, ch IX, s12.1(Canon 12.1) [Provenance: Canon 4 of 1871; Canon 7 of 1634; and Canon 14 of 1603].

¹⁹⁰ CCI, ch IX, s12.4(Canon 12.4) [added in 1974 by Statute of the General Synod 1974 c i].

¹⁹¹ CCI, ch IX, s 12.3 (Canon 12.3) [Provenance: Canon 4 of 1871; Canon 7 of 1634; and Canon 14 of 1603].

¹⁹² CCI, ch IX . 6 (c) (Canon 6.c) [Provenance: Canon 5 of 1871; Canon 8 of 1634; and not present in 1603].

¹⁹³ CCI, ch IX, s 6 (d) (Canon 6.d).

- ii. the participation of visiting clergy of prescribed Christian denominations,¹⁹⁴
- iii. the use of churches by clergy of other Christian denominations for liturgies of that denomination,¹⁹⁵
- (vii) may excuse the clergy from preaching a sermon on every Sunday in every church of his/her parish.¹⁹⁶
- (viii) may make conditions concerning the administration of Holy Communion by intinction to those who are sick.¹⁹⁷
- (ix) is to approve the covering on the communion table,¹⁹⁸ as well as any changes in the structure, ornaments or furnishings of any church.¹⁹⁹
- (x) gives directions where a member of the clergy refuses or unduly delays in the baptism of a child.²⁰⁰
- (xi) directs, in the case of services when Irish-speakers are present, which Irish translations of the services or portions of the Service are to be used.²⁰¹

While the principle of *Ius Liturgicum* is sustained in the Preface to the *Book of Common Prayer, 1662*, was affirmed by Lambeth resolution,²⁰² and is incorporated in provisions of the CCI it is not clear to what extent, if at all, it continues to exist in a residual and limited form.²⁰³ In those ways in which the post-1871 law of the Church of Ireland does not affect the exercise of the *Ius Liturgicum* the question has to arise as to whether it may continue to apply.²⁰⁴ Clearly, the bishop cannot authorise what is expressly forbidden, what is not consonant with the doctrine of the Church of Ireland, ‘nor the omission of anything enjoined by the Book’.²⁰⁵ The bishop could not forbid, for example, the use of services and alternatives that have been authorised. On the other hand, given that the bishop’s oversight and discretion has been delineated within the

¹⁹⁴ CCI, ch IX, s 10 (Canon 10) [Provenance: adopted in 1945 and amended in 1962 and 1966].

¹⁹⁵ CCI, ch IX, s 11 (Canon 11) [Provenance: adopted in 1966 - *Statute of the General Synod, 1966 C i*].

¹⁹⁶ CCI, ch IX, s 7 (Canon 7) [Provenance: Canon 7 of 1871; Canon 9 of 1634; and Canon 45 of 1603].

¹⁹⁷ CCI, ch IX, s 13.5 (Canon 13.5) [Provenance: Canon 37 of 1871 – the ban on the mixed-Chalice having been removed in 1974 by Statute of the General Synod 1974 c i].

¹⁹⁸ CCI, ch IX, s 15 (Canon 15) [Provenance: Canon 34 of 1871; Canon 94 of 1634; and Canon 82 of 1603].

¹⁹⁹ CCI, ch IX, s 38 (Canon 38) [Provenance: Canons 40 of 1871].

²⁰⁰ CCI, ch IX, s 26 (Canon 26) [Provenance: Canons 9 -10 of 1871; Canons 14 – 15 of 1634; and Canons 68 – 69 of 1603].

²⁰¹ CCI, ch IX, s 9 (Canon 9) [Provenance: Canon 6 of 1871 and Canon 8 of 1634].

²⁰² Lambeth Conference 1897, Resolution 46.

²⁰³ See Rupert DH Bursell, *Liturgy, Order and the Law* (Clarendon Press 1996) 4 and Appendix 3, 271-9

²⁰⁴ Irish Church Act 1869, Ss 20 and 21.

²⁰⁵ Timothy Briden, and Brian Hanson, *Moore’s Introduction to English Canon Law* (3rd edn, Mowbray 1992) 58.

CCI does this set aside any enduring relevance of one ancient aspect of the ecclesiastical law: the *Ius Liturgicum* of the bishop? There is uncertainty and a lack of clarity.

Custom

In Part One: Chapter Three, the role of custom as a source – or not, or if, and to what extent – of the law of the Church of Ireland was outlined.

As was seen, in 2008, the Anglican Legal Advisers' Network identified custom as one of the possible 'sources and forms of law' within Anglicanism: '[h]istorical sources recognised as such in the canonical tradition, including custom, have such status within a church as may be prescribed by law.'²⁰⁶ Taking Archdeacon Stopford's Handbook as an example, it was also noted that he was familiar with the place of custom in ecclesiastical law, but held the view that custom has no legal force where a matter is provided for by Statute or rubric: '[c]ustom may be relevant where the rubrics are silent.'²⁰⁷ He pointed out that, in his time, where a custom was purely ecclesiastical in character with no temporal significance the certification of the bishops was relevant.²⁰⁸

The question of custom seems to have perplexed him even then, as it might church members in the twenty-first century:

In respect of some of the innovations on accustomed practice which have latterly disturbed the church, if the bishops of a province were to consult and agree on "the custom of the church," it would enable individual bishops to act with greater effect in putting a stop to innovation, and preserving peace and uniformity.

But it must now be remembered that this argument is available only for what the bishops will certify as a common or *general* custom of the church. A custom cannot now be made. Individual innovation or disobedience is not custom. Neither will it avail to say, "such has been the custom of this church of A." It must be a *general* custom of the church, which the bishops will certify as such; and to such custom the clergy ought to conform as to their rule, in all things not expressly directed.²⁰⁹

The residual references to custom within the Church of Ireland's legal framework are problematic. Archbishops and bishops are obliged 'at all times of their public ministration of the services of the Church' to use 'the customary ecclesiastical apparel

²⁰⁶ PCLCCAC, Principle 4.3.

²⁰⁷ Edward A Stopford *A Handbook of Ecclesiastical Law and Duty for the Use of The Irish Clergy* (Hodges, Smith and Co 1861) 149-55.

²⁰⁸ Edward A Stopford *A Handbook of Ecclesiastical Law and Duty for the Use of The Irish Clergy* (Hodges, Smith and Co 1861) 154.

²⁰⁹ Edward A Stopford *A Handbook of Ecclesiastical Law and Duty for the Use of The Irish Clergy* (Hodges, Smith and Co 1861) 154-55.

of their order.’²¹⁰ Ordinations are to be carried out on certain days ‘in accordance with the ancient customs of the Church (...)’.²¹¹ The notes which preface the Ordinal lay down that questions concerning the form of service or its conduct are to be determined by the presiding bishop ‘in accordance with the rubrics of the service and having regard to tradition and local custom.’²¹²

The references to custom together with an abiding uncertainty about the place and role of custom in modern church law, and also the challenge of pinning down its place with the pre-1871 ecclesiastical law make the use of custom as a source an uncertain, elusive and perplexing quest and underscore the challenge of accessibility in terms of the pre-1871 ecclesiastical law.

Lessons from the Mirror of Statute Law Revision and the Pursuit of Ecclesiastical Law

Ecclesiastical law is a key source of law for the Church of Ireland and yet, as has been illustrated, it cannot be readily accessed without the expertise of identification, analysis and interpretation. Such technical ability is, in the main, outside the realm of the average member of a voluntary association. There is every reason to assume that most church members have little or no consciousness of ecclesiastical law as a source of law or of its narrow and specialised definition in an Irish context.

For the Church of Ireland, even if only among those intimately involved, participation in the Statute Law Revision Project exercise affirmed the existence of ecclesiastical law, defined in that particular way, as a primary and key source of law.

Engagement with the Statute Law Revision Project manifested the inherent complexity in endeavouring to establish the ecclesiastical law, its relevance, and its continuing applicability or otherwise today. As the project’s name infers, it dealt solely with statutes. Statutes were not, however, the sum total of the ecclesiastical law prior to 1871 (as has been detailed in Part One). Clearly the canonical provenance, the common law and the interpretation of those statutes by the courts may, or may not, like the Statutes to which they relate, continue to apply within the Church of Ireland since 1871.

²¹⁰ CCI, ch IX s 12(1) (Canon 12.1).

²¹¹ CCI, ch IX s 18 (Canon 18).

²¹² ‘Ordination Services Two: Notes’ in *Book of Common Prayer* 551.

The challenge, on every matter of the contemporary law of the Church of Ireland on which ecclesiastical law may have a bearing (which is much of the body of law) is to identify what precisely the law was on 1st January 1871. Remote as that date is now from this generation and from most people’s expertise, this requires specialist skill and knowledge to such an extent that this part of the law of the church is inaccessible to most.

The Church of Ireland’s partnership with the Statute Law Revision Project on ecclesiastical statutes illustrates also that some aspects of the law are spent, obsolete, superseded by Irish law, superseded by internal church law, repealed but still enduring as internal church law or repealed but indicative of the provenance of church law. Other statutes were seen to be still in force, while there was a hesitant uncertainty about repealing many of those relating to property or institutions still in existence.

All this tends to complexity and inaccessibility, motivators, in themselves, for Statute Law Revision by the State. Addressing Seanad Éireann in 2007, Minister of State Tom Kitt, TD set out the State’s rationale:

Our complex history has led to a situation whereby there is considerable uncertainty as to what legislation from prior to independence even applies to this State. To give a few examples:

- We have many laws passed by various parliaments sitting in Ireland between the Norman invasion in 1169 and the Act of Union in 1800 – but because records have been lost or destroyed over the years, and particularly during the 1922 civil war, it is impossible to say with absolute certainty what all of these are.
- We have laws which were not “Acts of parliament” in the modern sense, but are regarded as being of statutory force.
- We have laws passed by various parliaments of England and Great Britain that also applied – or were subsequently extended - to Ireland, even though Ireland had its own parliament from at least the 14th century onwards.
- We have laws passed during the period of the former United Kingdom of Great Britain and Ireland, but it is not clear to what extent many of them applied to Ireland.

These and other factors leave us in a position where it is at the moment impossible to say with absolute certainty which laws from before the foundation of the State actually apply in Ireland at the present time. That situation is clearly not in line with our modern regulatory principles of clarity and transparency. That is why we have moved from previous models of statute law revision – which tend to list those statutes to be repealed – to a new model. This new model is one by which we can clarify exactly which laws continue to apply.²¹³

²¹³ Parliamentary Debates *Seanad Éireann* vol 185 no 21 7th February 2007.

Referring to the Bill the Minister said that it ‘will allow us to give democratic legitimacy to the body of laws on our Statute Book.’ If the State is not clear about laws from that period, the church should also learn from this in the interests of certainty, clarity and transparency, themselves fundamentals of the Rule of Law.

Accessibility of Church Law and the Church’s Lawyers

In Part One: Chapter Three, the Church of Ireland’s dependence on its lawyers was noted. The concern about accessibility is compounded by the availability of expertise and absence of formal training in church law.

While many professional lawyers - solicitors, barristers and judges - generously give of their time today to the work of the Church of Ireland, and their expertise in current State law is immense, they serve a church which is at one hundred-and-forty-two years’ remove from the era in which the pre-1871 ecclesiastical law was relevant and the routine stuff of practitioners’ professional work. None of the highly qualified lawyers presently serving on either the Legal Advisory Committee of the Standing Committee or on that of the RCB has undertaken an academic course of study in canon law. Few clergy have: four priests and one bishop.²¹⁴ A small number of clergy transferring to the ministry of the Church of Ireland from the Roman Catholic Church have completed studies in Roman Catholic canon law as part of their ordination training. Church law, as a discipline, is not a core subject on the course of study at the Church of Ireland Theological Institute nor is it a formal element in training for ordination.²¹⁵

In contrast, as disestablishment was being prepared for and for several decades afterwards, a significant wealth of expertise in contemporary ecclesiastical law was at the disposal of the Church of Ireland. The knowledge of the Reverend William Sherlock and Archdeacon Stopford has already been noted. In addition, however, there were the professional lawyers. In 1849 Sir Joseph Napier, a judge (previously a Member of Parliament), carried through parliament an ecclesiastical code for the Church of Ireland. He served as Attorney General for Ireland and Lord Chancellor and brought all his legal expertise to bear in opposing disestablishment and ultimately in the reconstruction of the Irish church.²¹⁶

²¹⁴ Simon Doogan, Terence Dunlop, Stephen Farrell, Kenyon Homfray, and Paul Colton.

²¹⁵ On 19th March 2013 Paul Colton’s offer to deliver two lectures (‘An Introduction to the Law of the Church of Ireland’) at the Church of Ireland Theological Institute was accepted by the Director.

²¹⁶ *Oxford Dictionary of National Biography* (Oxford 2004) 175-77.

Similarly, Judge Mountifort Longfield, from the Diocese of Cork, had been called to the Irish bar in 1828 and was regius professor in Trinity College, Dublin (TCD) of feudal and English law. He was appointed a commissioner of Irish national education in 1853 and, following disestablishment served as assessor to the General Synod.²¹⁷

Sir Frederick Shaw was called to the Irish bar in 1822 and he too served as a Member of Parliament and sat also on the Irish privy council.²¹⁸ John Thomas Ball was awarded an LLD from TCD in 1844. Four years earlier he had been called to the Irish bar and took silk in 1854. His father-in-law, Charles Elrington, was regius professor of divinity. Ball's practice was mainly in the ecclesiastical courts, and later in the Probate and Matrimonial Division. In 1862 he was appointed Vicar General of the province of Armagh. Entering politics, he became a proponent of legislation for ecclesiastical reform, opposing, however, the disestablishment of the Church of Ireland.²¹⁹

Judge Michael Harrison, who was called to the Irish bar in 1849, became a judge of the bankruptcy court (1868), a justice of the Common Pleas Division (1878) and was transferred to the Queen's Bench Division in 1888.²²⁰ Judge Thomas Lefroy was also a judge and MP, who had been called to the Irish Bar in 1797, and was a 'staunch evangelical protestant.'²²¹

The proximity of these lawyers to the ecclesiastical law of the pre-1870 period and their professional currency with it, enabled them to access, interpret and delineate that law clearly for the Church of Ireland. Expertise, proximate to the ecclesiastical law, proficiency in it and diurnal praxis in its working as a specific discipline, is no longer available in the same way to the Church of Ireland.

Case-Study Conclusion

Accessibility, together with the related principles of intelligibility, clarity, predictability, coherence, stability, fairness and publication are elemental to the Rule of Law.

The principle of accessibility was specifically tested in the survey in relation to all the sources of law of the Church of Ireland. While the most widely published sources

²¹⁷ *Oxford Dictionary of National Biography* (Oxford 2004) 391.

²¹⁸ *Oxford Dictionary of National Biography* (Oxford 2004) 81.

²¹⁹ *Oxford Dictionary of National Biography* (Oxford 2004) 565.

²²⁰ F Elrington Ball, *The Judges in Ireland, 1221-1921 Vol. II* (John Murray 1926) 373.

²²¹ *Dictionary of Irish Biography* (Cambridge University Press 2009) 420-21.

proved to be most accessible, nonetheless, significant minorities of the clergy and the majority of the laity attested to almost all the sources being inaccessible. Perceived as particularly inaccessible are the tertiary sources, notably, many of those relied on by the bishops.

The case study of one source – ecclesiastical law (with its distinctive meaning in the Irish context) – affirms the importance of that source in contemporary use and demonstrates the challenges faced in accessing and pinning it down this. Significant numbers of the church’s legal practitioners, in addition to half its bishops, attested to this experience.

This case study exposes that ecclesiastical law, as one core source of the law of the Church of Ireland, is inaccessible. This conclusion is corroborated by specific reference to the Church of Ireland engagement with the State’s Statute Law Revision Project. That Project illustrates the multiplicity of pre-1871 Statutes which fall into such multifarious categories (obsolete, superseded abrogated, repealed but embodying Church law, uncertain, still in force) that the complexity of relying on this source is illustrated. The pre-1871 non-statutory examples of visitations, *Ius Liturgicum*, and custom corroborate the challenges involved in accessing this source. This inaccessibility has been exacerbated as the church becomes ever more removed in time from the legal practitioners of the immediate post-disestablishment era when ecclesiastical law was part of their legal currency. All of this should tend towards an urgent desire for reform.

PART TWO: CHAPTER 3**CASE STUDY III****THE INCREASED RELIANCE BY THE CHURCH OF IRELAND
ON QUASI-LEGISLATION AND SOFT LAW****Introduction**

This chapter, a case study, like the previous two, focuses on a dynamic which has emerged from this study of the sources of the law of the Church of Ireland, and which appears to have gone unremarked. It has not been subjected to investigation by the church. The concern at issue emerged from the setting out of quasi-legislation and soft law instruments in Part One: Chapter Three.

More detailed analysis of the materials and primary sources in this case study establishes that the Church of Ireland is, in more recent times, relying increasingly on this quasi-legislation and soft law to fashion and enliven its legal framework. This will be proven by means of a detailed comparative scrutiny of the church's use of secondary or delegated sources on the one hand, and of tertiary source models on the other. (The results of which are tabulated in Appendix G and considered here). Specific examples from core areas of church life and from various strata within the ecclesiastical framework (General Synod and the RCB; the House of Bishops; and, dioceses and their bishop) will exemplify this.

It will be shown that this trend is consonant with what is happening in other parts of the Anglican Communion, and, also, that there is an emerging preference in the Church of Ireland for greater informality in church law. The advantages of this development as well as the concerns to which it gives rise, are also considered. In the light of this, proposals for consideration and possible reform are articulated.

First, for clarity, the distinction between secondary/delegated sources and tertiary sources (quasi-legislation and soft law instruments) is reviewed.

Quasi-Legislation distinguished from Delegated Legislation

Delegated or subordinate legislation is, as was underlined in Part One: Chapter Three, to be distinguished from quasi-legislation and soft law. In the civil law context, the former includes statutory instruments, which in turn include ‘an order, regulation, rule, scheme or bye-law made in exercise of a power conferred by statute.’¹ As well as to government ministers, such power may be delegated to regulatory authorities or expert bodies. It is axiomatic that the exercise of such powers must be consonant with the Irish Constitution and delegated legislation must not conflict with statutory provisions.²

Delegated Legislation in the Law of the Church of Ireland

As was seen, secondary legislation is, as in the civil law, intrinsic to the workings of the primary legal economy of the Church of Ireland. In the case of the church, this is manifested in standing orders;³ the Constitutions of Standing Committee and of the Board of Education;⁴ the constitutions of other ecclesiastical bodies;⁵ regulations;⁶ rules;⁷ glebe rules;⁸ Rules and Orders of Diocesan Courts and Registries in Ireland;⁹ by-laws;¹⁰ Diocesan Rules and Regulations;¹¹ and The Declaration for Subscription.¹² In addition, on foot of specific Statutes, the Standing Committee or RCB may be empowered to regulate specific areas. For example, regulations governing clergy severance were put in place in 2002 by the RCB.¹³ A most recent example in the case of the Standing Committee is the putting in place of regulations governing the church’s internal approach and additional rules relating to marriage law in both jurisdictions in

¹ Statutory Instruments Act 1947 s 1(1).

² *Harvey v Minister for Social Welfare* [1990] 2 IR 232.

³ CCI, ch I s18, s 24; for the first Standing Orders – those of the General Convention – see Journal of the General Convention [1870] 6-8.

⁴ CCI, ‘Constitution Duties and Powers of the Standing Committee of the General Synod’; CCI, ‘Constitution and Duties of the Board of Education’.

⁵ See eg the Marriage Council (JGS [1996] 327-28 and cxxii – cxxiii), the Commission on Ministry (JGS [1996] cxxiv-cxxvi), the Church of Ireland Youth Department (JGS [1989] civ – cix and JGS [1999] lxxxvi – lxxxvii and JGS [2007] c – cii), the Committee for Christian Unity (JGS [1995] cii and 258 and JGS [2007] ciii), the Central Communications Board (JGS [2001] cviii), the Covenant Council (JGS [2003] cxxxv – cxxxvi) and the Church of Ireland Council for Mission (JGS [2004] lxxvii - lxxix).

⁶ See Part One: Chapter Two, pp 86-89 for regulations made by the General Synod, the Standing Committee, an archbishop, a bishop, diocesan synods, a diocesan council, a select vestry, the RCB and the Church of Ireland Pensions Board.

⁷ See Part One: Chapter Two, pp 89-90 for rules.

⁸ CCI, ch XIII s 2.

⁹ ‘Rules of the Court of the General Synod and Rules and Orders of Diocesan Courts and Registries in Ireland’ (Church of Ireland 1934).

¹⁰ See Part One: Chapter Two, pp 91-92 for by-laws.

¹¹ For an overview of Diocesan Rules and Regulations see Part One: Chapter Two, pp 92-94.

¹² CCI, ch IV s 67 and ch 4, Schedule.

¹³ Statute of the General Synod, 2001 c VI; see also ‘Clergy Severance Regulations’ JGS [2003] 50-51.

Ireland.¹⁴ Methodologically, much of this correlates with the delegated legislation prevalent in civil law.

All of these are, as previously emphasised, to be distinguished from quasi-legislation and soft law, a tertiary source of law, which there is a growing tendency to rely on, not only in workings of the Church of Ireland, but more widely within Anglicanism.

A Preference for Informality in Church Law

In 1995, a review of the workings of the General Synod of the Church of England, while rejecting extreme calls for the ‘removal of the Church’s legal system’, commended an approach to synodical legislation ‘that was less prescriptive and detailed, giving more discretion to dioceses and to those in day-to-day charge of various aspects of the Church’s work to apply it in ways which best suit their local circumstances.’¹⁵

This was not a new proposal. Nearly forty years earlier, Eric Kemp counselled that church law does not:

consist primarily of a series of commands and prohibitions to which penalties are attached, though it contains some of this. Much of it is rather normative and exhortatory and when penalties are necessary its favourite instrument is admonition. Part of it is immutable from its universally recognised connection with the divine revelation, but much of it needs to be adapted to the circumstances of ages, countries, and communities. That is why the greater part of church law cannot be comprehended in a written code, and why its constituent parts need to be subject to less other elaborate and final methods of modification than statutory enactment. The danger is of course that flexibility may lead to licence, to such a variety of practice and entrenchment of selfish and partisan interests as will damage the church. I believe that we shall do best to seek for protection against this danger in a proper system of courts staffed by the right kind of officers rather than in an elaboration of the details of the law.¹⁶

In the Church of Ireland there is a recent, general questioning of the outworking of its synodical structures and procedures. In the survey, significant minorities of the clergy (16%) and of the laity (18%) agreed with the view that ‘law gets in the way of the life of the Church of Ireland.’ Two registrars and one Chancellor agreed with this view.

¹⁴ see Marriage Regulations (NI) 2004, JGS [2005] lxxxi-lxxxiv; and Church of Ireland Marriage Regulations (Republic of Ireland) 2007, JGS [2008] 188-92.

¹⁵ *Working as One Body*, The Report of the Archbishops’ Commission on the Organisation of the Church of England (Church House Publishing 1995) 72, para 6.40.

¹⁶ Eric Waldram Kemp, *An Introduction to the Canon Law in the Church of England* (Hodder and Stoughton 1957) 76-77.

While not holding to that view, a new Archbishop of Armagh¹⁷ in his first Presidential Address to the General Synod in 2007 articulated his own frustrations: ‘I want to provoke a internal conversation about how things are and how they might be,’ he said.¹⁸ He posited questions about the role and effectiveness of the General Synod; queried the contemporary value of a parliamentary bills procedure; and, warned about a lack of clarity about decision-making in the church.¹⁹ He advocated an exercise of re-evaluation:

My suggestion is that we take a blank sheet of paper and write on it not what, by accretion, we have inherited from a past generation but what we now need in order to fulfil the will of Christ in our day. My belief is that this is not a case of “if it ain’t broke don’t fix it”, but rather, “let’s not fix it, let’s build what we need to do today’s job today!”²⁰

A Trend Towards Quasi-Legislation and Soft Law Instruments

In a seminal article published in 1998, Doe noted that regulation within the church is increasingly being effected by what he styled ‘ecclesiastical quasi-legislation’.²¹ He posited the view that informal rule-making is ‘a normal function of ecclesiastical government (...)’.²²

Doe contends that the identification of this trend towards reliance on ecclesiastical quasi-legislation appears to be borne out within universal Anglicanism.²³ This is seen, in the PCLCCAC which acknowledge that, among the formal sources of law, the laws of churches exist in ‘other instruments’;²⁴ and they contain ‘principles, norms, standards, policies, directions, rules, precepts, prohibitions, powers, freedoms, discretions, rights, entitlements, duties, obligation, privileges and other juridical

¹⁷ Alan Harper.

¹⁸ JGS [2007] lxviii.

¹⁹ JGS [2007]lxx-lxxii.

²⁰ JGS [2007] lxxii.

²¹ Norman Doe, ‘Ecclesiastical Quasi-Legislation’ in Norman Doe, Mark Hill and Robert Ombres (eds), *English Canon Law* (University of Wales Press 1998) 93-103.

²² Norman Doe, ‘Ecclesiastical Quasi-Legislation’ in Norman Doe, Mark Hill and Robert Ombres (eds) *English Canon Law* (University of Wales Press 1998) 93, 103.

²³ For quasi-legislation throughout Anglicanism generally see Norman Doe, *Canon Law in the Anglican Communion* (Clarendon Press 1998) 23; for England see Norman Doe, *The Legal Framework of the Church of England* (Clarendon Press 1996) 19-22; for Wales see Norman Doe, *The Law of the Church in Wales* (University of Wales Press 2002) 19-20.

²⁴ PCLCCAC, Principle 4(2).

concepts.²⁵ Doe himself has identified these within the legal systems of the provinces of the Anglican Communion.²⁶

Comparative Analysis of Secondary/Delegated Legislation, and Quasi-Legislation/Soft Law Instruments in the Church of Ireland at National Level

Delegated legislation has always formed part of the internal legal methodology of the Church of Ireland as have, to some extent, quasi-legislative instruments. A thorough analysis of the two volumes of the General Convention 1870 and all one hundred and forty-two volumes of the Journals of the General Synod since 1870 not only illustrates this but indicates a recent and emergent tendency to augment delegated legislation with quasi-legislative and soft law instruments. In this respect it can be seen that the Church of Ireland, consciously or unconsciously, is mirroring the State.

The table in Appendix G sets out principal delegated legislation reported in the Journals of the General Synod since 1871. It also lists instruments which may be designated as quasi-legislative or soft law provisions. (It also records - in the right-hand column - the number of statutes, or primary ecclesiastical legislation, passed in the same year).

This tabular extrapolation from the 144 volumes elicits a number of observations. First a qualifying remark: norms of reporting within the journals, although consistent from the outset, may have varied over the years according to who was compiling the several reports or editing the individual journals. At different times the choice of which quasi-legislative instruments were to be reported, or whether or not to report them, was made by different individuals who undoubtedly will have exercised that responsibility in a variety of ways. Those writing reports for the earlier journals will most likely not have

²⁵ PCLCCAC, Principle 4(4).

²⁶ Norman Doe, *Canon Law in the Anglican Communion* (Clarendon Press 1998) 23; for a plethora of contemporary examples in England see eg: Daryl Fowler, *Church Floors and Floor Coverings* (Church House Publishing 1992); William Bordass and Colin Bemrose, *Heating Your Church* (Church House Publishing 1996); Council for the Care of Churches, *A Stitch in Time: Guidelines for the care of textiles* (Church House Publishing 2001); ADR Caroe and MB Caroe, *Stonework: maintenance and surface repair* (2nd edn, Church House Publishing 2001); Thomas Cocke (ed), *The Churchyards handbook* (4th edn, Church House Publishing 2001); Dominic Gwyn, *Historic organ conservation* (Church House Publishing 2001); Council for the Care of Churches, *Church extensions and adaptations* 2nd edn, Church House Publishing 2002); Sarah Brown and Sebastian Strobl, *A Fragile inheritance: the Care of Stained glass and historic glazing* (Church House Publishing 2002); John Norman and Jim Berrow, *Sounds good: A guide to church organs, foe incumbents, churchwardens and PCCs* (Church House Publishing 2002); Council for the Care of Churches, *The Conservation and repair of bells and bellframes: a Code of Practice* (Church House Publishing 2002); Joseph Elders, *Revealing the past, informing the future: a guide to archaeology for parishes* (Church House Publishing, 2004); John Penton, *Widening the eye of the needle: Access to church buildings for people with disabilities* (3rd edn, Church House Publishing 2008).

thought of ‘quasi-legislation’ as a category at all. Equally, in more recent times, in spite of the growing amount and types of such soft law in the civil law environment, the modern-day church member on General Synod, the RCB or their committees may not be conscious either of an emerging pattern of greater reliance on quasi-legislation/soft law.

There is a pattern. The graph below indicates that the enactment of primary legislation has ebbed and flowed over each twenty-year period around a similar mean point without dramatic variation. The high points reflect those years in which there has been liturgical revision and, of course, the initial flurry of legislation necessitated by disestablishment.

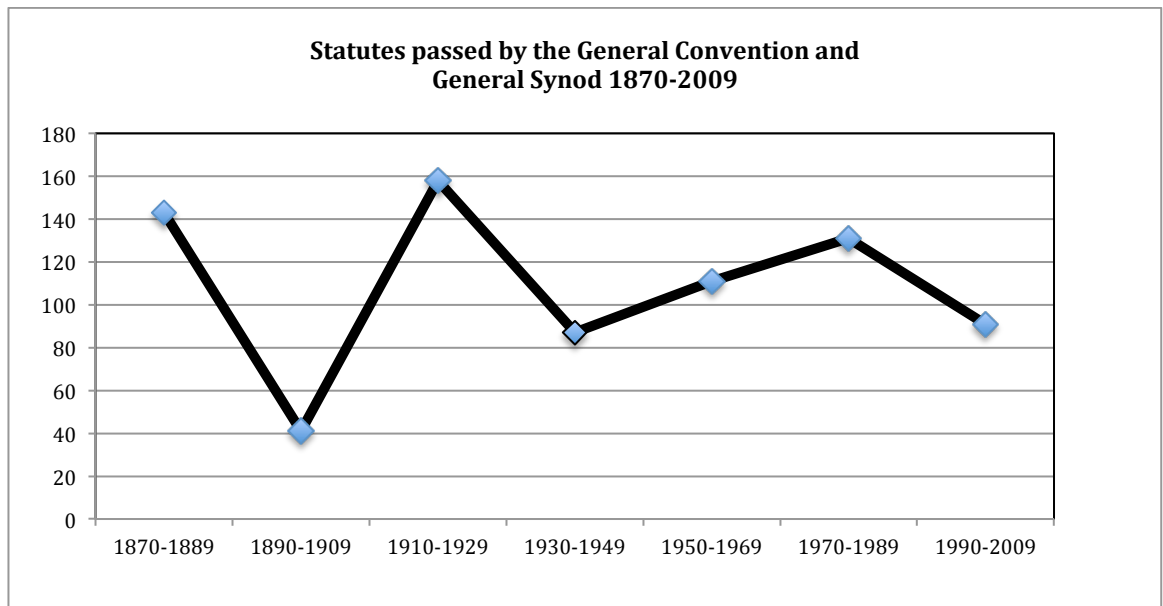


Figure 1: Statutes of the church 1870-2009

In contrast, of the 194 quasi-legislative instruments tabulated, 107 (55%) were put in place since 1990. Indeed, 75 (39%) came into being in the last ten years. A graph, also by twenty-year period, shows the trend as follows:

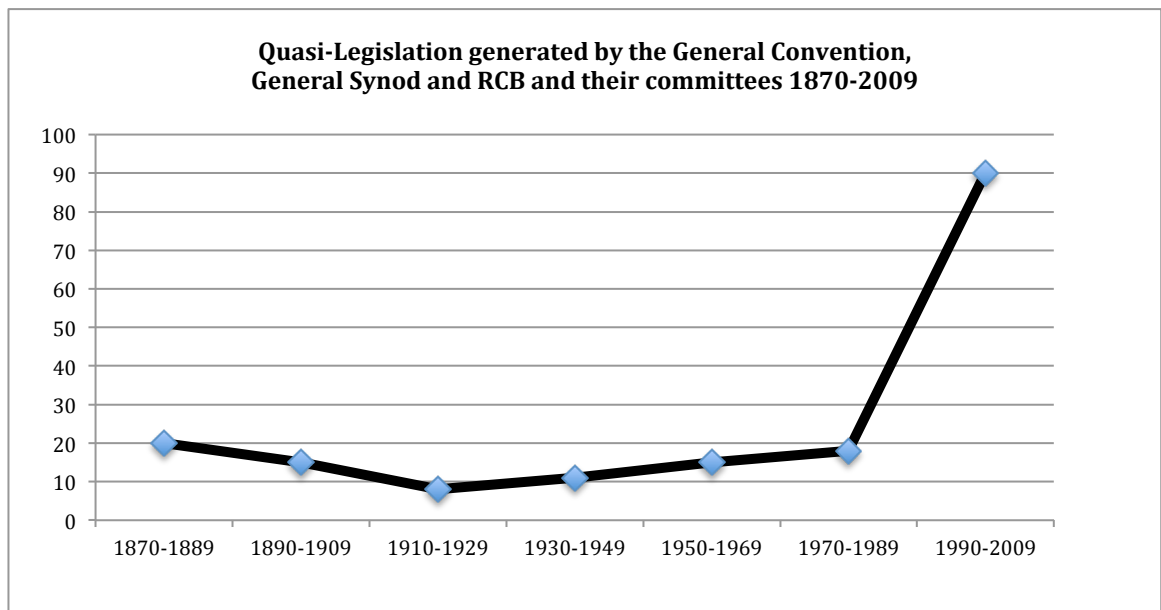


Figure 2: Quasi-Legislation of the church 1870 to 2009

In 2010 there were a further seventeen such instruments. The slightly higher level in the initial years after 1871 is accounted for by the periodic issuing of memoranda to make known, and explain, aspects of the newly adopted CCI as well as other aspects of the transition from establishment to disestablishment. Among the journals, 27 report no delegated or quasi-legislation in the given year: all of those are prior to 1883.

This exercise (Appendix G and the graphs) directs attention to law-making activity at national/provincial level within the church: General Synod, the Representative Church Body and their committees. (Other levels will be alluded to later in this chapter).

The graph shows that the church has had recourse increasingly in the last twenty years to soft law instruments. The Church of Ireland, it would appear, in common with trends in the civil law, is relying increasingly on soft law instruments to regulate significant areas of its life.

In Part One: Chapter Three, the phenomenon of quasi-legislation and soft law was set out and, in broad terms, the principal categories of such instruments in use were sketched. This case study manifests the Church of Ireland's growing reliance on quasi-legislation and soft law sources and methodologies at national level. In order to corroborate the numerical evidence garnered and listed from the journals, the use of these particular tertiary sources needs to be delineated in greater detail and commentary,

not only in the case of the national law-making of the Church of Ireland (General Synod and RCB), but also locally and by individuals (generally bishops).

It should be noted, first, that the experience of the participants in the survey corroborates the journal analysis and manifests, more generally, from the experience of a wide range of people within the church, that quasi-legislative instruments are indeed increasingly being used. High percentages of those surveyed encountered, either frequently or sometimes, the following: administrative circulars;²⁷ codes of practice;²⁸ decisions of the House of Bishops;²⁹ decisions of the RCB;³⁰ executive decisions of a bishop;³¹ guidelines;³² handbooks;³³ notices;³⁴ resolutions of General Synod;³⁵ resolutions of diocesan synods;³⁶ and, protocols.³⁷

Most significantly, the percentages of those surveyed who had never encountered any of these instruments in the life of the Church of Ireland was emphatically low: normatively at 0%, and, when not, on a scale generally of 0%-9%, and, in only three specific instances higher than that.³⁸

Quasi-Legislation and Soft Law: The General Synod and the RCB

The table in Appendix G corroborates the identification and classification of quasi-legislation and soft law manifest in many forms in the law of the Church of Ireland set out in Part One: Chapter Three, but lists them in greater detail and chronologically. The table shows that the following instruments, at national church level, are being increasingly relied on: administrative decisions;³⁹ advice;⁴⁰ approvals;⁴¹ circulars,⁴²

²⁷ Bishops - 90%; chancellors - 87.5%; registrars - 91%; clergy - 78%; laity - 81%.

²⁸ Bishops - 70%; chancellors - 100%; registrars - 91%; clergy - 82%; laity - 88%.

²⁹ Bishops - 80%; chancellors - 100%; registrars - 91%; clergy - 84%; laity - 83%.

³⁰ Bishops - 90%; chancellors - 100%; registrars - 91%; clergy - 80%; laity - 85%.

³¹ Bishops - 50%; chancellors - 100%; registrars - 64%; clergy - 60%; laity - 72%.

³² Bishops - 70%; chancellors - 100%; registrars - 82%; clergy - 85%; laity - 88%.

³³ Bishops - 50%; chancellors - 75%; registrars - 55%; clergy - 72.5%; laity - 70%.

³⁴ Bishops - 50%; chancellors - 75%; registrars - 55%; clergy - 71%; laity - 64%.

³⁵ Bishops - 100%; chancellors - 100%; registrars - 82%; clergy - 92%; laity - 90%.

³⁶ Bishops - 70%; chancellors - 87.5%; registrars - 73%; clergy - 85%; laity - 82%.

³⁷ Bishops - 90%; chancellors - 50%; registrars - 64%; clergy - 66%; laity - 72%.

³⁸ One at 11% (lay experience of protocols) and two at 18% (both the experience of registrars in relation to executive decisions of a bishop and resolution of a diocesan synod).

³⁹ eg the setting up of See House Committees to manage see houses JGS [1991] 22; on the use of the Church of Ireland logo, JGS [1991] 84; setting of minimum levels of public liability insurance, JGS [1997] 35; Church of Ireland Publishing imprint, JGS [2004] 175-76.

⁴⁰ eg Disability Discrimination Act 1995, JGS [2002] 22.

⁴¹ eg of 'The Sevenfold Programme' of the British Council of Churches, JGS [1952] cxviii; approval of a scheme of loans for car purchase, JGS [1956] 24; of a Church of Ireland logo, JGS [1989] 80.

⁴² eg concerning public liability insurance, JGS [1988] 29.

codes;⁴³ codes of good practice;⁴⁴ commendations;⁴⁵ communications;⁴⁶ constitutions (which have no legislative force of the General Synod but are adopted by bodies within the Church without law-making power);⁴⁷ criteria;⁴⁸ decisions and determinations;⁴⁹ directions;⁵⁰ drafts;⁵¹ exhortations;⁵² explanations;⁵³ explanatory booklet;⁵⁴ explanatory memorandum;⁵⁵ forms of agreement;⁵⁶ framework;⁵⁷ general specifications;⁵⁸ green paper;⁵⁹ guidance;⁶⁰ guidance notes;⁶¹ guidelines;⁶² hints;⁶³ issues of good practice;⁶⁴ leaflet;⁶⁵ memoranda;⁶⁶ mission statement;⁶⁷ notes,⁶⁸ notices,⁶⁹ notifications;⁷⁰

⁴³ see proposal to devise a code of duty and conduct for clergy, JGS [2009] cv.

⁴⁴ eg access to parochial buildings for disabled people, JGS [2003] 79-83 and JGS [2004] 84-88.

⁴⁵ eg re guides of good practice, JGS [2005] 28.

⁴⁶ eg lay agency, JGS [1907] liv; interchange of preachers, JGS [1944] lxxxi-lxxxiv; Copyright Licensing, JGS [1996] 136; children and communion, JGS [2000] lxxiii. Theological College Council, JGS [2000] lxxiv-lxxv; Bishops' Liaison Group on Ordination, JGS [2002] cviii.

⁴⁷ eg Constitution of the Church of Ireland Primary Schools' Managers Association, JGS [1974] 137-39; Constitution of the Churches' Ministry of Healing (NI), JGS [2001] 313-16; Historic Churches Advisory Committee, JGS [2004] 27; Working Group on Disability, JGS [2005] 147; Statute Law Review Monitoring Group, JGS [2006] 157; review of charities' legislation, JGS [2008] 157; Anglican Covenant Response Group, JGS [2009] 154; Tied clergy housing working group, JGS [2009] 166.

⁴⁸ eg re grants for the repair of churches, JGS [1992] 25-26.

⁴⁹ eg by Church of Ireland Clergy Pensions Board equating civil partnership with marriage for pensions purposes, JGS [2008] 98.

⁵⁰ eg concerning the Marriage (Northern Ireland) Order 2003, JGS [2004] 233.

⁵¹ eg a draft Constitution for discussion, JGS [1971] 152-53; new composition of the Council for the Church Overseas, JGS [1979] 147.

⁵² eg re vigilance when building near ancient boundary walls, JGS [2006] 27; health and safety statements, JGS [2006] 28; insurance of land occupied by third parties, JGS [2007] 29; energy performance of buildings, JGS [2009] 32.

⁵³ eg listed buildings, JGS [2008] 30.

⁵⁴ eg clergy pensions JGS [1989] 143.

⁵⁵ eg of the Historic Churches Advisory Committee, JGS [2004] 97-99.

⁵⁶ eg establishing full communion with the Spanish Lusitanian Church and Philippine Churches, JGS [1963] 168.

⁵⁷ eg Conservation Adviser, JGS [2003] 89-90.

⁵⁸ eg general specifications for the work on glebes, JGS [1902] 164-67.

⁵⁹ eg on pastoral breakdown, JGS [1999] 323-27.

⁶⁰ eg preliminary guidance for marriage licensers and clergy, JGS [2004] 238; 'Guidance for Diocesan Registrars re the M.Th. Internship Year at the Church of Ireland Theological Institute' (7th July 2010, RCB Legal Department on behalf of the House of Bishops, Dublin).

⁶¹ eg re Marriage (Northern Ireland) Order 2003, JGS [2005] lxxxiv-lxxxvi.

⁶² eg 'Commission on Church Buildings Guidelines on the Closure of Churches', JGS [1990] 288-99; on the contents of churches, JGS [1993] 42; guidelines to Diocesan Glebes Secretaries, JGS [1996] 73-80; architectural heritage protection, JGS [2004] 93-96; copyright of the Book of Common Prayer, JGS [2004] 173 and 221-22; Quinquennial inspections, JGS [2006] 29 and 80-84; memorials in churches, JGS [2006] 29 and 85-87; Commission on Ministry guidelines on transfer from non-stipendiary to stipendiary ministry, JGS [2006] 348; Liturgical Advisory Committee, 'Guidelines re the Liturgical Use of Oil' (2010).

⁶³ eg Hints for Sunday School Teachers (in reality a scheme) JGS [1927] 251-63.

⁶⁴ eg Re-ordering of Liturgical Space, JGS [2010] cxxii; *Liturgical Space and Church Re-Ordering: Issues of Good Practice* (Church of Ireland Publishing 2010).

⁶⁵ see eg re the Porvoo Communion, JGS [1999] 166-67.

⁶⁶ eg asbestos, JGS [2004] 25 and 89-90.

⁶⁷ Church of Ireland Mission Statement devised by the House of Bishops, JGS [2008] 157-58.

⁶⁸ eg Notes for the guidance of holders of glebes and glebe lands, JGS [1900] 107-08.

⁶⁹ eg the inspection of churches, JGS [1900] 112, JGS [1902] 172; health and safety legislation, JGS [2002] 24; civic structures conservation grants, JGS [2008] 31; listed places of public worship grant scheme (NI), JGS [2010] 35; and civic structures grants scheme (RoI) JGS [2010] 36.

objectives;⁷¹ permissions;⁷² ‘points’;⁷³ policies;⁷⁴ policy statements;⁷⁵ procedures;⁷⁶ programmes;⁷⁷ proposals;⁷⁸ protocols;⁷⁹ recommendations;⁸⁰ reports;⁸¹ resolutions;⁸² reviews;⁸³ schemes;⁸⁴ standardised forms;⁸⁵ standardised plans;⁸⁶ statements;⁸⁷ ‘systems’;⁸⁸ templates;⁸⁹ terms;⁹⁰ ‘values and aims’;⁹¹ and white papers.⁹²

As early as 1871 the RCB had recourse to what would now be termed a soft law instrument: a memorandum to clarify and expound the law in relation to the appointment of diocesan trustees.⁹³ Memoranda such as that one are pasted in the minute books of the Legal Advisory Committee and, normatively, were reported and re-printed in the Journals of the General Synod.⁹⁴ In 1877 circulars were first used concerning alterations to churches⁹⁵ and in order to instruct rural deans.⁹⁶

⁷⁰ eg Data Protection Act 1998 (UK), JGS [2002] 28.

⁷¹ eg Priorities’ Fund, JGS [2001] 204.

⁷² eg copyright JGS [1990] 114-15.

⁷³ eg Points from the Porvoo Communion Contact Group, JGS [2005] 237-38.

⁷⁴ eg on stained glass, JGS [1992] 26.

⁷⁵ eg on disability, JGS [2003] 155-56; working group on disability, JGS [2006] 224.

⁷⁶ eg Child protection clearance procedures, JGS [2004] 172-73; re weekend meetings of the General Synod, JGS [2009] 190-92.

⁷⁷ eg sectarianism education, JGS [2000] 127.

⁷⁸ eg re the Role of the Church Committee, JGS [2001] 205-08; conservation adviser, JGS [2003] 89-90.

⁷⁹ eg re Methodist covenant partnerships, JGS [2005] 162-88.

⁸⁰ eg re the amalgamation of diocesan financial schemes, JGS [1908] lxvi; the upkeep of churchyards, JGS [1941] 34-35; against depositing in ashes in walls or under pavings of churches, JGS [1964] 22; concerning the implementation of resolutions of ACC, eg ACC-6, JGS [1987] 110-12; of the Contents of Churches Committee, JGS [1989] 28-29; on accommodation for married ordinands, JGS [2000] 270-71; fire precautions, JGS [2004] 91-92.

⁸¹ eg concerning Readers, JGS [1948] 151-53; ancient and historic churches, JGS [1978] 18; the disposal and display of Church plate, JGS [2001] 51-53; Parish Development Working Group, JGS [2005] 234-36.

⁸² eg setting of Priorities’ Fund targets, JGS [1992] 97.

⁸³ eg of Safeguarding Trust, JGS [2000] 126.

⁸⁴ eg Scheme for Diocesan Missionary Councils, JGS [1930] 264-66; Scheme for Missionary Parochial Committees, JGS [1930] 266-68; Scheme of loans for car purchase, JGS [1956] 24; Christian Stewardship Scheme, JGS [1961] 28-30; Scheme for the appointment of diocesan information officers, JGS [1961] 84-85; Scheme of Housing for Retired Clergy in the Republic of Ireland; Scheme of maintenance of churches, JGS [1986] 163-64; Endowment Assurance Scheme, JGS [1987] 31-34; scheme of part-time deployment in ministry, JGS [1998] 252-55.

⁸⁵ eg JGS [1990] 28; JGS [1993] 42.

⁸⁶ eg for glebes, JGS [1964] 22.

⁸⁷ eg explaining the financial system of the Church of Ireland, JGS [1927] 241-46; statement of investment policy, JGS [1999] 17; socially responsible investment, JGS [2003] 78; freedom of choice and conscience re membership of the Masonic Order, JGS [2006] 152; and Statements of Charitable Purpose and Public Benefit, JGS [2010] cxx.

⁸⁸ see eg JGS [1884] 78.

⁸⁹ eg template maintenance log books, JGS [2006] 29 and 88-89.

⁹⁰ eg governing voluntary severance from the ordained ministry, JGS [2003] 51.

⁹¹ eg of the Hard Gospel Working Group, JGS [2005] 257-59.

⁹² eg pastoral breakdown, JGS [2000] 239 and 241-43.

⁹³ JGS [1871] 137. The same topic was addressed in JGS [1901] 104-08.

⁹⁴ eg Memoranda concerning: clergy income tax, JGS [1906] 110; the establishment of a Divinity Hostel, JGS [1913] lxxx – lxxxii.

⁹⁵ JGS [1871] 137.

⁹⁶ JGS [1877] 108-09.

Occasionally styles of instrument are elided, such as in the case of a ‘memorandum of suggestions’;⁹⁷ or ‘a resolution and circular.’⁹⁸ Circulars were a common feature in subsequent years.⁹⁹ They serve different functions: explanation;¹⁰⁰ education; announcement;¹⁰¹ advice; or enjoining something on the recipient.¹⁰² In 1877 also, the newly formed Board of Education which had no law-making jurisdiction set out its expectations in relation to the examination of teachers¹⁰³ and the religious instruction of children.¹⁰⁴

Schemes are commonplace.¹⁰⁵ Routinely, a regulatory approach was styled a ‘system’, such as that for loans to repair See or glebe houses.¹⁰⁶ Some areas, later legislated for by Statute, had their genesis in quasi-legislative formats, for example, a Scheme for the Management of Glebes.¹⁰⁷ This metamorphosed over time and became the Glebe Rules.

Resolutions of the General Synod and the RCB appear in many forms, and their legal effects vary. As seen in Part One: Chapter Two, these pose particular dilemmas. Some have direct legal consequences, such as that establishing the Clergy Superannuation Fund in 1881.¹⁰⁸ Others have practical consequences, which, in turn, necessitate the devising of an administrative framework: one example is the resolution providing for the People’s Collection.¹⁰⁹ Some bodies, lower in the hierarchy than the General Synod, favour resolutions when setting up working groups.¹¹⁰ Some are practical in effect but have lapsed as a matter of practice; for example, the requirement that ordinands be supplied with a copy of the CCI and Statutes.¹¹¹

⁹⁷ eg ‘Memorandum of Suggestions as to the proper course to be pursued in all cases of malicious injuries to churches, glebe houses, school houses and other Church property’ JGS [1904] 110-12.

⁹⁸ eg setting up the group Voluntary Health Insurance scheme for clergy and exhorting them to join it, JGS [1958] 90.

⁹⁹ The operation of the Widows and Orphans Fund JGS [1878] 129-30; the cutting of trees, JGS [1900] 109; quarries and gravel pits, JGS [1900] 110; external glebe lands, JGS [1901] 109.

¹⁰⁰ eg re the Clergy Superannuation Fund, JGS [1891] 108.

¹⁰¹ eg re the discontinuation of the holding of diocesan accounts, JGS [1891] 109.

¹⁰² eg insurance when a glebe is under repair, JGS [1900] 111.

¹⁰³ JGS [1877] 130.

¹⁰⁴ JGS [1877] 130-31.

¹⁰⁵ Religious Education Scheme, JGS [1883] 85-87; Scheme governing the Divinity School Fund, JGS [1884] 75-76.

¹⁰⁶ JGS [1884] 78.

¹⁰⁷ JGS [1879] 24 and 182-84.

¹⁰⁸ Other include: legal forms, JGS [1886] 85-86.

¹⁰⁹ JGS [1954] cv-cvi.

¹¹⁰ eg strategic planning working group, JGS [1998] 128; sectarianism working group, JGS [1998] 146-56.

¹¹¹ JGS [1885] xciii.

Other resolutions purport to exhort or even regulate, but their standing *qua* law is unclear. Examples include: the commendation of regular financial giving;¹¹² a request to set up the Sunday before Armistice Day as Remembrance Sunday;¹¹³ the cessation of use of tropical hardwoods;¹¹⁴ on compliance with Fairtrade objectives;¹¹⁵ and an exhortation to celebrate the Methodist Covenant.¹¹⁶

Some resolutions are determinations or clarifications of the law.¹¹⁷ Others may be little more than ‘suggestions.’¹¹⁸ Others are intended to be prescriptive, such as that providing for new planting in lieu of cut trees.¹¹⁹ Still others reflect the emergence of new realities such as that providing for expenses for motorcars and motorcycles.¹²⁰ The intended legal effect frequently has a practical or pastoral intent; for example, that in 1958 establishing the group Voluntary Health Insurance scheme and exhorting clergy to join it.¹²¹

Occasionally, it would appear that resolutions have been used where agreement on the same issue might not have been attained by statute. An example is a resolution in 1947 requesting the bishops to designate a Sunday annually for prayer for Christian Unity.¹²² They are used to break new ground and to establish new relationships.¹²³ They are also relied on to address (without recourse to regulations or contracts) thorny issues such as sick leave for clergy.¹²⁴ Resolutions also seem to be preferred when it comes to regulating relationships and agreements with other churches or communions such as the Porvoo Communion.¹²⁵ In 2011 a resolution, adopted by simple majority, was the preferred instrument ‘to subscribe’ the Anglican Communion Covenant.¹²⁶

¹¹² JGS [1888] xci.

¹¹³ JGS [1926] lxxxv.

¹¹⁴ JGS [1994] lxxv.

¹¹⁵ JGS [2006] lxxxviii.

¹¹⁶ JGS [2006] lxxxix.

¹¹⁷ eg the ecclesiastical precedence of the Bishop of Meath, JGS [1885] lxxxviii; the correct title of the Church of Ireland, JGS [1886] 23-24.

¹¹⁸ eg that ‘suggesting’ the use of letters of commendation, JGS [1888] xc.

¹¹⁹ JGS [1912] 26.

¹²⁰ JGS [1920] xcvi.

¹²¹ JGS [1958] 90.

¹²² JGS [1947] xcvi.

¹²³ eg with the Church of South India, JGS [1952] xcvi-xcviii and ciii-civ.

¹²⁴ JGS [1971] 90-91.

¹²⁵ JGS [1995] 143.

¹²⁶ JGS [2011] xc.

Apart from resolutions, other instruments, such as reports, have been used in a similar fashion: to commend change in the law and to set out best practice, often in a comparative context with other churches or the rest of the Anglican Communion.¹²⁷

The legal effect of some instruments is implicit, but unclear, such as ‘Notes for the Guidance of Holders of Glebes and Glebe Lands.’¹²⁸ ‘Recommendations’ appear to be used at times where there is a lack of clarity about the law such as in 1964 when it was recommended that ashes not be deposited in the walls or under the paving of churches.¹²⁹ Some are purely advisory, for example those dealing with income tax.¹³⁰ Forms, with legal import, were frequently provided, for example, those relating to the appointment of a schoolmaster or sexton.¹³¹

It is notable that over the years, soft law instruments have been used to address, at least initially, areas of church life that might have been contentious or potentially fractious. A good example is in relation to emerging ecumenism where agreement had not been found possible within the General Synod. In 1944 the House of Bishops issued a communication concerning the interchange of preachers in the context of the rules of church order.¹³²

‘Approvals’ have been used, it would appear, to deal with the external relations of the Church of Ireland, obviating any question of incorporation, by statute, into the law of the church. An obvious example is the approval given to the setting up of the Anglican Consultative Council.¹³³ Approvals are also used where other bodies did the law-making: the recommendations from the Inter-Church Meeting concerning Baptism and interchurch marriages are one instance.¹³⁴

In some cases quasi-legislative instruments were elevated and subsumed, over time, in the statutory law-making of the General Synod: hence, their publication in the journals ceases unless amendments by Statute are proposed. An example is the Glebe Rules.

¹²⁷ see eg ‘Administration 1967’ JGS [1968] 78-94; Report of the Committee on the Ordained Ministry, JGS [1995] 165-70; see also Part Two, Chapter Four.

¹²⁸ JGS [1900] 107-08.

¹²⁹ JGS [1964] 26.

¹³⁰ ‘Memorandum to Clergy concerning Income Tax’ JGS [1906] 110.

¹³¹ JGS [1886] 85-86.

¹³² JGS [1944] lxxxi-lxxxiv.

¹³³ JGS [1970] 68.

¹³⁴ JGS [1985] 74-75.

Certain instruments are published annually, such as the policy on Socially Responsible Investment.

Language is used interchangeably. For example, where ‘scheme’ is used on occasions it has the force of implementation of a resolution of the General Synod.¹³⁵ On other occasions a ‘scheme’ is something more informally drafted by the RCB itself without reference to the General Synod.

Beyond descriptive and methodological analysis, it is clear that core areas of the contemporary church’s life are, for one reason or another, being addressed by means of quasi-legislation/soft law.

Code of Conduct for Clergy

The most topical example of emerging soft law in the Church of Ireland is the proposal that there be a ‘Clergy Code of Good Practice’. In 2009 the General Synod requested the Standing Committee to report to General Synod in 2010 ‘on progress towards a Code of Duty and Conduct for ministering in the Church of Ireland.’¹³⁶ In the course of the debate a Judge of the Supreme Court of Ireland and member of the Synod, Catherine McGuinness, adduced the term ‘soft law’, explaining its meaning and indicating that it would be applicable to the envisaged Code.¹³⁷ In March 2011 the Standing Committee established a working group to begin work on drafting such a code.

Clergy Conditions and Service

A related area comprehensively addressed in 1990, was that of clergy conditions and service. The Clergy Remunerations and Benefits Committee (CRAB) of the RCB reported in 1990.¹³⁸ Of itself, this report would not be considered to be law. Nonetheless, having been adopted by the General Synod many of its recommendations were given practical effect, with very real and practical legal and property consequences for clergy and their families: residences, stipends, expenses, grants, pensions, education grants for children, a loan scheme for purchasing cars and inspections.¹³⁹ The report also clarified the status and taxation framework governing clergy.¹⁴⁰ That report

¹³⁵ see eg ‘Scheme of Procedure for the Filling of Casual Vacancies on the RCB’ JGS [1909] 124-25.

¹³⁶ JGS [2009] cv.

¹³⁷ This writer was present during the debate.

¹³⁸ JGS [1990] 72-104.

¹³⁹ For a summary of the main recommendations see JGS [1990] 74.

¹⁴⁰ JGS [1990] 75.

stimulated changes to the administrative framework regulating a core aspect of its work: the ordained ministry.

This is not an isolated example of a report, which, by virtue of its adoption and implementation, becomes the reference point and informal regulatory instrument in relation to such matters. In 1995, the report of a Committee on the Ordained Ministry addressed questions arising from the auxiliary ministry, local ordained ministry, part-time deployment of the stipendiary ministry, husband/wife in the ordained ministry, sabbatical and maternity leave.¹⁴¹ Legislative provision has since been made in addressing some of these matters.¹⁴² Others are still a matter of soft law in individual dioceses.¹⁴³

In 1998 the Commission on Ministry devised a scheme and draft contract letter for the part-time deployment in ministry of stipendiary clergy.¹⁴⁴ A Green Paper on pastoral breakdown, appointment and tenure of office led to a White Paper in 2000 and the setting up of Provincial Mediation Panels in 2001,¹⁴⁵ and subsequently Clergy Severance Regulations were adopted by the RCB of in 2002.¹⁴⁶ Some elements of these innovations are now clearly worked out in secondary legislation, while others continue to be addressed informally and, frequently, according to local praxis.

In 2000 even though the General Synod formally received the report of the Select Committee on Theological College Accommodation, the Committee's recommendations were never fully implemented.¹⁴⁷ More recently, a working group has been set up to examine the issue of tied housing.¹⁴⁸ In that instance, in contrast to other reports, these have not been followed up in such a way as to result in any regulatory framework based on the report.

¹⁴¹ JGS [1995] 165-70.

¹⁴² eg Scheme of part-time deployment in ministry and draft contract - JGS [1998] 252-55; General rules, terms and limitations relating to voluntary severance on a permanent basis from the stipendiary ministry - JGS [2003] 51; Commission on Ministry guidelines on transfer from auxiliary to full-time stipendiary ministry - JGS [2006] 348; Rules governing remuneration, expenses and other matters relating to payments to persons serving in the Auxiliary Ministry - JGS [2010] 99-101.

¹⁴³ eg D&D three-year duration of a first curacy; CCR 'Sick leave provisions' and 'Sabbaticals'.

¹⁴⁴ JGS [1998] 252-55; this was subsequently legislated for in Statute of the General Synod of the Church of Ireland [1999] c iv.

¹⁴⁵ See JGS [1999] 323-27; JGS [2000] 239 and 241-43; and Statute of the General Synod of the Church of Ireland [2001] c vi, respectively.

¹⁴⁶ JGS [2003] 50-51.

¹⁴⁷ JGS [2000] c.

¹⁴⁸ JGS [2009] 166.

Many matters relating to selection for training, training itself, and ordination are regulated by soft law instruments adopted by the House of Bishops.¹⁴⁹ In addition, the Commission on Ministry put forward guidelines it believed ‘should apply’ to the transfer of auxiliary clergy to the full-time stipendiary ministry.¹⁵⁰ Some confusion arises about the status of these as it is not evident that they are in accord with the separate guidelines utilised by the House of Bishops.

One area of considerable pastoral significance governs the appointment of healthcare chaplains. In 2010 a new Chaplaincy Accreditation Board was established and adopted ‘Recognised Standards for Certification of Healthcare Chaplains’ which was effected by signature of each of the bishops involved.¹⁵¹

Child Protection

As seen in the first case study, an area of regulation in which the Church of Ireland has been ahead of the State is the key matter of child protection.¹⁵² The Board of Education of the General Synod formulated guidelines embodying good practice, which were approved by the Standing Committee in September 1996.¹⁵³ The Code of Good Practice - *Safeguarding Trust* - was formulated first as guidance. In 1999 the State published its national guidelines *Children First*.¹⁵⁴ *Safeguarding Trust* was modified accordingly,¹⁵⁵ as it was in successive years following other reports and legislation: the Protection for Persons Reporting Child Abuse Act 1998, Sex Offenders Act 2001, *Our Duty to Care*,¹⁵⁶ *Code of Good Practice for Child protection in the Youth Work Sector*,¹⁵⁷ the Criminal Law (Sexual Offences) Act 2006, and the Criminal Justice Act 2006.

Having been a soft law instrument (code and guidelines) for the first nine years of its existence, *Safeguarding Trust* was given a statutory footing within the church in 2006

¹⁴⁹ See eg Church of Ireland Theological Institute
< <http://www.theologicalinstitute.ie/courseinformation/index.php> > accessed on 3 March 2012; HoB, ‘Scheme for the Appointment of Candidate Priests 2011-2012’ (2012).

¹⁵⁰ JGS [2006] 348.

¹⁵¹ Chaplaincy Accreditation Board, ‘Recognised Standards for Certification of Healthcare Chaplains’ (January 2010).

¹⁵² See above Part Two, Chapter 5.

¹⁵³ JGS [1997] 141.

¹⁵⁴ ‘Children First: National Guidelines for the Protection and Welfare of Children’ (Department of Health 1999).

¹⁵⁵ see JGS [2000] 126.

¹⁵⁶ ‘Our Duty to Care: Principles of Good Practice for the protection of Children and Young People’ (Department of Health 2002).

¹⁵⁷ ‘Code of Good Practice for Child Protection in the Youth Work Sector’ (2nd edn, Department of Education and Science 2003).

when a new section was added to the CCI making its implementation compulsory.¹⁵⁸ In 2004, following the introduction of a vetting process, procedures were adopted by the Standing Committee on the advice of the Board of Education of the General Synod.¹⁵⁹

Property

Some of the earliest examples of the soft law approach have related to the management of property.¹⁶⁰ A recent example is *Guidelines – Diocesan Glebes Secretary* which ‘are intended to clarify certain issues of policy and practice’.¹⁶¹ The guidelines embody policy generally as well as with regard to: sales by public auction and private treaty, disposal or demolition of redundant churches, insurance, loans for repairs, problems with title, vesting, new rectories, lettings, commissions of repair, annual inspections, felling of trees, forms of acknowledgment, informal lettings, glebewardens, wayleaves and easements, and the appointment of sextons.

A recent device is the commendation of other good practice guides and reference works such as that relating to the maintenance and care of stained glass.¹⁶² The CCI, as a matter of primary law, provides for careful monitoring of church plate.¹⁶³ However, issues concerning the disposal and display of church plate are governed by a policy devised by the Library and Archives Committee.¹⁶⁴

In 2004, following an ecumenical consultation with the Minister for the Environment, guidelines were issued to planning authorities in relation to the protection and use of places of public worship. These were, in turn, notified to the church at large through report to the General Synod.¹⁶⁵ Other property related soft law instruments concern: inspections by diocesan architects;¹⁶⁶ memorials in churches;¹⁶⁷ maintenance log books;¹⁶⁸ insurance;¹⁶⁹ buildings at risk;¹⁷⁰ and the re-ordering of liturgical space.¹⁷¹

¹⁵⁸ Statute of the General Synod of the Church of Ireland, [2006] c ii – ‘Ministry with Children’.

¹⁵⁹ JGS [2004] 172-73.

¹⁶⁰ Memorandum from the Chief Officer, ‘Graveyards vested in the Representative Church Body’ (1st April 1968).

¹⁶¹ JGS [1996] 73-80.

¹⁶² JGS [2005] 28.

¹⁶³ CCI, Ch III Ss 38-41.

¹⁶⁴ JGS [2001] 51-53.

¹⁶⁵ ‘Guidelines for Planning Authorities concerning architectural heritage protection for places of public worship (Republic of Ireland)’, JGS [2004] 93-96.

¹⁶⁶ JGS [2006] 29 and 80-84.

¹⁶⁷ JGS [2006] 29 and 85-87.

¹⁶⁸ JGS [2006] 29 and 88-89.

¹⁶⁹ JGS [2007] 29.

¹⁷⁰ JGS [2009] 34.

Quasi-Legislation superseded by State Law

There are some examples of quasi-legislation/soft law instruments in use in the Church of Ireland which have been overtaken by the State law-making. For example, in 1989 the Church of Ireland Clergy Pensions Board reported that in November 1988 it had circulated an explanatory booklet to all members. Here is an example of an internal soft law instrument which pre-dated a statutory requirement, but which was superseded by it. Dissemination of such information became a statutory obligation on pensions trustees under the Pensions Act 1990.¹⁷²

Compliance

Soft law instruments and administrative tools are frequently used to exhort compliance with the civil legal framework. The church's approach to disability legislation is a case in point. On foot of the enactment of the Disability Discrimination Act 1995 in the U.K., the RCB issued advice, through its annual report at General Synod, drawing attention to the obligation 'to take reasonable steps to remove alter, or provide means of avoiding physical features that make it impossible or unreasonably difficult for disabled persons to use its services.'¹⁷³ In 2003 this was strengthened with the putting in place of a *Code of good practice on access to churches and parochial buildings for disabled people*.¹⁷⁴ A further dimension of regulation in this area by soft law provision was developed by Standing Committee in 2002 when it espoused a Policy Statement on Disability.¹⁷⁵ A similar statement was put forward in 2006,¹⁷⁶ and an audit of disability access was laid down in 2007.¹⁷⁷

Regular attention is drawn by notice in the RCB to the importance of compliance with legislation governing Health and Safety;¹⁷⁸ data protection;¹⁷⁹ control of asbestos;¹⁸⁰ fire

¹⁷¹ JGS [2010] cxxii.

¹⁷² Pensions Act 1990 s 54.

¹⁷³ JGS [2002] 22.

¹⁷⁴ JGS [2003] 79-83.

¹⁷⁵ JGS [2003] 155-56.

¹⁷⁶ JGS [2006] 224.

¹⁷⁷ JGS [2007] 208.

¹⁷⁸ see eg JGS [2002] 24; and also JGS [2006] 28.

¹⁷⁹ See eg JGS [2002] 28.

¹⁸⁰ Control of Asbestos at Work Regulations (NI) 2003, JGS [2004] 25 and 89-90.

precautions;¹⁸¹ smoke-free legislation;¹⁸² the energy performance of buildings;¹⁸³ and copyright.¹⁸⁴

From time to time, Standing Committee adopts a similar approach. Changes in the marriage law in Northern Ireland resulted in preliminary guidance being issued to clergy and licensers in 2004.¹⁸⁵ The following year guidance notes on the same topic were issued.¹⁸⁶

A consequence of new charities legislation in Northern Ireland has been the need to adopt two statements – in themselves quasi-legislative instruments. Accordingly, in 2010 the General Synod adopted a Statement of Charitable Purpose and a Statement of Public Benefit in connection with the work of the Church of Ireland.¹⁸⁷

Issues of these Times

Quasi-legislation and soft law have been used to give expression, notably by way of resolutions, to the views of the church on issues of the times. As resolutions of the General Synod they do carry authority, but frequently, are so ‘soft’ as to be of little effect. A good example is a resolution of 1994 on the subject of tropical hardwoods which stated that ‘the General Synod recommends to the Standing Committee that it refers to the Role of the Church Committee consideration of the cessation of the use of tropical hardwoods except those from managed forests in Church buildings.’¹⁸⁸ The articulation of a resolution in terms of ‘recommendation’, and without apparent follow-up, or the publication of any law-making instrument, renders it weak in its practical effect.

The General Synod showed greater precision in 1998 when it resolved to support ‘the work and aims of Jubilee 2000’ thus setting the trajectory for engagement with that campaign throughout the Church of Ireland.¹⁸⁹ Similarly, Fairtrade was the subject of a resolution in 2006 which called on the ‘whole Church of Ireland: (1) to use, where

¹⁸¹ Fire precautions (Workplace) Regulations (NI) 2001, JGS [2004] 91-92.

¹⁸² JGS [2008] 29.

¹⁸³ JGS [2009] 32.

¹⁸⁴ Letter from Head of Synod Services, Janet Maxwell re Copyright Licencing (21 June 2010).

¹⁸⁵ JGS [2004] 238.

¹⁸⁶ JGS [2005] lxxxiv-lxxxvi.

¹⁸⁷ JGS [2010] cxx.

¹⁸⁸ JGS [1994] lxxv-lxxvi.

¹⁸⁹ JGS [1998] lxxxiv.

possible, products that comply with the objectives of Fairtrade at all events held on church premises or under church auspices; (2) encourages the display of notices promoting Fairtrade objectives at all church premises so as to indicate a commitment to Fairtrade. The substance of the resolution was to be ‘conveyed to Diocesan Synods with a view to action.’¹⁹⁰

In 2010, the General Synod passed a resolution recognising ‘the need for the Church of Ireland as a whole to have an environmental code of good practice’ and requested the Church in Society Committee to draw up such a code for consideration in 2011.¹⁹¹

Contentious Areas

This type of tertiary legal activity is frequently used to facilitate a common approach to contentious areas. In 1998, a resolution of the General Synod affirmed ‘that the Church of Ireland is opposed to Sectarianism.’¹⁹² This first element in the resolution embodies an ideal and aspiration. The second part of the resolution manifested that the ideal has not yet permeated the life of the church by requesting the Standing Committee ‘to initiate an examination of church life at all levels, to identify ways in which the church may be deemed to be accommodating to Sectarianism.’¹⁹³ In the years since, this initiative has given rise to debates and further resolutions which, while they also set out the perspective of the Church of Ireland, are not universally implemented or adhered to.

Another example is the emotive area of the flying of flags on church buildings or within the grounds of church buildings. On foot of the work of the Sectarianism Working Group the General Synod resolved in 1999 that:

[T]he only flags specifically authorised to be flown on church buildings, or within the church grounds of the Church of Ireland are the cross of St Patrick or, alternatively, the flag of the Anglican Communion bearing the emblem of the Compassrose (...) Any other flag flown at any other time is not specifically authorised by this Church.¹⁹⁴

¹⁹⁰ JGS [2006] lxxxviii.

¹⁹¹ JGS [2010] cxiv. See also ‘The Parish Green Guide: Caring for God’s Creation’ (Church in Wales, Cardiff).

¹⁹² JGS [1998] 146.

¹⁹³ JGS [1998] 146.

¹⁹⁴ JGS [1999] lxviii.

The same working group brought a declaration to the General Synod in 1999 concerning the church's understanding of 'the historic formularies'.¹⁹⁵ The declaration affirms their position as 'an important part of the inheritance through which this Church has been formed in its faith and witness to this day.'¹⁹⁶ At the same time it affirms that negative statements towards other Christians in those formularies 'should not be seen as representing the spirit of this Church today (...) [and] regrets that words written in another age and in a different context should be used in a manner hurtful to or antagonistic towards other Christians.'¹⁹⁷

The question of membership of the Masonic Order was addressed within Standing Committee and the matter is dealt with in a 'generally accepted (...) view expressed by the Honorary Secretaries (...) that membership of, and participation in, Freemasonry is a matter of free choice and conscience for members of the Church of Ireland.'¹⁹⁸ This 'view' was articulated in the Standing Committee's report to and adopted by the General Synod.

A growing awareness of ethical issues surrounding commercial activity and investment evidenced in a number of speeches in successive years at the General Synod which led the RCB Investment Committee to adopt a statement of investment policy in 1999.¹⁹⁹ In 2002 this emerged in a new format as a 'Statement on Socially Responsible Investment', governing the activity of the Investment Committee. It has been reviewed and published annually since.²⁰⁰

Diversity of Belief and Praxis

Some areas where there is a diversity of outlook and praxis are addressed sensitively using soft law instruments. Interfaith events and dialogue are an example: this has not been addressed in the primary or secondary legal source material. In 2007 the House of Bishops and the Committee for Christian Unity filled the lacuna by issuing guidelines on the subject.²⁰¹ Another instance is the liturgical use of oil.²⁰²

¹⁹⁵ The Thirty-Nine Articles of Religion, the Book of Common Prayer, the Ordering of Bishops, Priests and Deacons and the Declaration prefixed to the Statutes of the Church of Ireland (1870).

¹⁹⁶ JGS [1999] lxix.

¹⁹⁷ JGS [1999] xcvi.

¹⁹⁸ JGS [2006] 152.

¹⁹⁹ JGS [1999] 17.

²⁰⁰ JGS [2003] 78.

²⁰¹ *Guidelines for Interfaith Events and Dialogue* (Church of Ireland Publishing 2007); see also 'Irish Churches' Affirmations on Migration, Diversity and Interculturalism' (Irish Inter-Church Meeting 2010).

Promoting Change in Church Law

It has already been seen that, in the case of clergy conditions and service, reports can effect change in the administrative and legal framework. They are used also to nudge the church towards new initiatives. This is frequently achieved by outlining a scheme or proposal styled in a soft law format which then commends itself more widely within the church. One example is the proposal made in 2003 to appoint a Church Conservation Adviser (outlining the remit of the role and the requirements of an appointee).²⁰³

Ecumenism and the Anglican Communion Covenant

The procedure adopted by the General Synod in relation to ecumenical accords leaves open to discussion and further analysis the question of the status of the contents and provisions of those accords within the law of the Church of Ireland. In 1995 the General Synod resolved that the ‘Church of Ireland *makes and subscribes* the Porvoo Declaration.’²⁰⁴ In the case of the Fetter Lane Agreement the General Synod ‘agreed’ that the Declaration arising from the Agreement ‘be signed on behalf of the Church of Ireland’.²⁰⁵ In 2000, the General Synod agreed ‘to make’ The Reuilly Declaration.²⁰⁶

In contrast, and in the case of relations with the Methodist Church in Ireland, the General Synod resolved in 2002 that the ‘Church of Ireland enter into a covenant relationship with the Methodist Church in Ireland.’²⁰⁷ The terms of the Church of Ireland – Methodist Covenant include mutual acknowledgments, commitments and an agreement governing in ten key areas.²⁰⁸ It was this covenant document, a soft law instrument, which gave impetus to the quest for revised ecumenical canons.²⁰⁹ Already, in 2005, the Covenant Council had issued ‘Guidelines and protocols for local covenant partnerships’.²¹⁰ A further resolution in 2006 encouraged congregations to celebrate the covenant relationship with their Methodist neighbours.²¹¹ Principles were put forward

²⁰² Liturgical Advisory Committee, ‘Guidelines re the Liturgical Use of Oil’ (2010).

²⁰³ JGS [2003] 89-90.

²⁰⁴ My emphasis JGS [1995] 143.

²⁰⁵ JGS [1998] lxxxi.

²⁰⁶ JGS [2000] lxxvii.

²⁰⁷ JGS [2002] lxxix.

²⁰⁸ JGS [2002] lxxix-lxxx.

²⁰⁹ Statute of the General Synod of the Church of Ireland [2011] c II.

²¹⁰ JGS [2005] 162-88. See also Gillian Kingston, *Guidelines for the Journey: Working out the Covenant* (Church of Ireland Publishing 2008).

²¹¹ JGS [2006] lxxxix.

in 2010 on the interchangeability of ministries with the Methodist Church.²¹² It is expected that legislation will be brought before the General Synod in 2013.

Similarly, a motion before the General Synod in 2011 resolved that the Church of Ireland *subscribe* the much-debated The Anglican Communion Covenant.²¹³

Administration

There are many examples of soft law where the work of a working group or commission necessitates such an approach. The Commission on Church Buildings, soon after its establishment, issued ‘Guidelines re Closure of Churches’.²¹⁴ These set out how a church building is to be de-commissioned; the options open to a select vestry; and they address practical matters relating to graveyards, furnishings, plate, on-going maintenance and what happens to the proceeds arising from a disposal of a building.

Similar administration with legal implications is seen, for example, in copyright permissions;²¹⁵ the use of standardised forms;²¹⁶ administrative decisions such as that to set up See House Management Committees;²¹⁷ drawing attention to grants schemes,²¹⁸ and guidance documents concerning new charities legislation.²¹⁹ The making of appointments and choice of Church of Ireland representatives and delegates to other events falls also into this administrative category.²²⁰

Perhaps the most recent administrative decision of a committee with clear legal affect is seen in the very contemporary area of the pensions rights of civil partners of members of the CICPF: by administrative decision, reported to the General Synod, civil partners were accorded the same rights as spouses.²²¹

²¹² JGS [2010] 308-09.

²¹³ JGS [2011] xcv; for the Anglican Covenant generally see Mark Chapman, *The Anglican Covenant* (Mowbray 2008); and also Norman Doe, *An Anglican Covenant* (Canterbury Press 2008); for the Church of Ireland response to the Ridley Cambridge Draft of the Anglican Covenant see JGS [2009] 153-54 and 170; and JGS [2010] 211 and 233.

²¹⁴ JGS [1990] 288-89.

²¹⁵ eg JGS [1990] 114-15.

²¹⁶ eg JGS [1990] 28 and JGS [1993] 42.

²¹⁷ JGS [1991] 22.

²¹⁸ eg Listed Places of Public Worship Grants Scheme, JGS [2008] 30; the Civic Structures Conservation Grants Scheme, JGS [2008] 31; the Significant Places of Worship Grants Scheme, JGS [2009] 34; the Listed Places of Public Worship Grant Scheme (NI), JGS [2010] 35; and the Civic Structures Conservation Grants Scheme (Republic of Ireland), JGS [2010] 36.

²¹⁹ JGS [2010] cxix.

²²⁰ eg JGS [2006] 146-47.

²²¹ JGS [2008] 98.

Policies, Good Practice and Education

In recent decades the policies of the RCB or other bodies, together with exhortations to good practice, are reported in the journals. Many of these and others have a didactic purpose.²²² Not all are immediately obvious or accessible. The policy relating to stained glass, laying down, among other guidance, that ‘certain windows should be preserved at all costs and restoration, where necessary, should only be carried out by skilled glass-painters and craftsmen experienced in the art of conservation’, is set out merely in prose within the report of 1992.²²³

Quasi-Legislation/Soft Law: House of Bishops

In 2007 the Honorary Secretaries of General Synod asked the House of Bishops to identify key areas of policy and vision for the church for the coming ten-year period. In response the bishops articulated a Mission Statement which focuses on the watchwords of growth, unity and service.²²⁴ Simple as it is, this statement is intended as a governing yardstick for much of the activity of the Church of Ireland in the current period.

An instrument frequently utilised by the House of Bishops to convey its executive decisions or agreed positions is that of a formal communication. In 2000 there were such communications in relation to the issue of children and communion, as well as the setting up of the new Theological College Council.²²⁵ The announcement of the Bishops’ Liaison Group on Ordination was made in the same manner.²²⁶

As previously seen, aspects of law-making in the Church of Ireland are specifically delegated to the House of Bishops: the authorisation of liturgies for experimental use for a period up to fifteen years;²²⁷ matters relating to theological education,²²⁸ and the determination of those churches with which the Church of Ireland is not in full communion for the purposes of the Canons.²²⁹ The authority of the several bishops stems from the Ordinal (‘leading in serving and caring’, ‘chief pastors’, guarding the faith, ‘speaking in the name of God and interpreting the gospel of Christ’, ‘to ordain and

²²² see eg ‘The General Synod of the Church of Ireland: A Guide’ (Church of Ireland 2012).

²²³ JGS [1992] 26.

²²⁴ JGS [2008] 157-58.

²²⁵ see JGS [2000] lxxiii and JGS [2000] lxxiv-lxxv, respectively.

²²⁶ JGS [2002] cviii.

²²⁷ CCI, ch I, s 26(3).

²²⁸ Statute of the General Synod of the Church of Ireland [1913] c i.

²²⁹ CCI, ch IX Ss 10 and 11 [Canons 10 and 11].

send new ministers’,²³⁰ and the oath of canonical obedience taken by clergy in the Declaration of Subscription.²³¹ In liturgical matters, the jurisdiction and discretion of the Bishop stems from his/her position as Ordinary.²³² The outworking of much of this delegated authority is, however, by means of quasi-legislative or soft law instrument.

A number of significant matters stem from the bishops’ role in relation to ordination and ministry. All of these are governed by collective decision of the bishops and are quasi-legislative and soft law instruments of a variety of types: resolution; scheme; course; protocol and guidelines. These matters include the selection and training of ordinands; the approval of the course of training;²³³ the licensing of clergy;²³⁴ and the reception of Roman Catholic Clergy into the ordained ministry of the Church of Ireland.²³⁵ In 2011, in order to regulate a new approach to practical training for ministry, the Governing Council of the Church of Ireland Theological Institute (answerable to the House of Bishops) devised an ‘Internship Handbook’ to govern all aspects of training (practicalities, schedule, meetings, pastoral and liturgical elements, confidentiality, housing, insurance, expenses, grants, child protection, conflict resolution and assessment) in the first year as Deacon.²³⁶ Training for the ministry of Reader is also governed by a course approved by the House of Bishops.²³⁷ The bishops recently responded to one area of ministry regulation. Particular oversight of the qualification and ministry of healthcare chaplains has been devised and these came into force in 2012.²³⁸

In 1986, in the wake of the identification of HIV the bishops issued guidelines concerning the care of communion vessels and linen.²³⁹ In 2009, the bishops issued guidelines in relation to the H1N1 Flu pandemic.²⁴⁰ Guidelines regulating the interment of ashes and their dispersal at sea were devised in 2003 and were undergirded by a

²³⁰ ‘Ordination Services Two: Bishops’ in *Book of Common Prayer* (Church of Ireland 2004) 576-77.

²³¹ CCI, ch IV, Schedule para 5.

²³² CCI, ch IX, Definitions.

²³³ CCI ch IX s 21(3)(b) [Canon 21(3)(b)]; for the approved course of training see <http://www.theologicalinstitute.ie/courseinformation/structure_a.php> accessed on 16th March 2011.

²³⁴ HoB, ‘Clergy Licensing Protocols’ (2009) HoB, Protocols with regard to the Granting of a Licence’ (January 2010).

²³⁵ HoB, ‘Protocol for Receiving Roman Catholic Clergy’ (2002).

²³⁶ The Church of Ireland Theological Institute, ‘Internship Handbook’ (2011).

²³⁷ HoB, ‘The Church of Ireland Reader Training Syllabus’ (2001); HoB: ‘The Church of Ireland Readers Training Syllabus 2011’.

²³⁸ HoB, ‘Recognised Standards for Certification of Healthcare Chaplains’ (2010).

²³⁹ HoB, ‘Guidelines from the House of Bishops to All Parochial Clergy - the Care of Communion Vessels and Linen’ (1986).

²⁴⁰ HoB, ‘The H1N1 Flu Pandemic’ (4th August 2009).

rubric in the BCP.²⁴¹ In 2007, jointly with the Committee for Christian Unity, the Bishops issued ‘Guidelines for Interfaith Events and Dialogue’.²⁴² At the request of the Legal Advisory Committee the House of Bishops is currently devising guidelines on the burial of non-Christians in churchyards.

A number of key areas which are governed by custom and convention rather than written protocol are: the requirement that those not trained for ministry or not ordained following training within a period of five years must re-submit themselves to selection; and the process of allocation of curacies among dioceses. The fact that these ‘conventions’ are relied upon, colloquially known and implemented by the bishops, but not embodied in written instruments or published texts, highlights issues of clarity, transparency and accessibility.

Unwritten procedure is also followed in other cases. For example, the process of transfer of an auxiliary minister to the whole-time stipendiary ministry. Notably there are no Standing Orders for the meetings of the House of Bishops itself or for meetings of the House of Bishops to elect a bishop when such elections lapse to the House.²⁴³

The indices to the Minute Books of the meetings of the House of Bishops attest to the fact that a large number of decisions are made collectively by the bishops, most of which have executive effect and legal consequence.²⁴⁴ An interesting example concerns the Meißen Agreement between the Church of England and the Evangelical Lutheran Church in Germany. The Church of Ireland was a corresponding participant in the conversations but did not sign the agreement.²⁴⁵ Although the Church of Ireland was not a signatory to the outcome – the Meißen Agreement – the House of Bishops agreed that it would implement the spirit of the agreement. The standing of this decision and its practical effects are difficult to determine.

²⁴¹ HoB, ‘Guidelines: The Interment of Ashes and their Dispersion at Sea’ (2003); see also ‘Funeral Services Two’ in *Book of Common Prayer* (2004), 503.

²⁴² *Guidelines for Interfaith Events and Dialogue* (Church of Ireland Publishing 2007).

²⁴³ CCI ch VI, Ss 13 and 18.

²⁴⁴ I am grateful to the House of Bishops for giving me permission to refer to the indices of the Minute Books and to specific minutes approved by them.

²⁴⁵ This author was the corresponding participant, but the Agreement was not signed as the Church of Ireland determined that it had insufficient funds to take part fully in the final phases of the conversations.

Quasi-Legislation/Soft Law: Dioceses and their Bishops²⁴⁶

As seen in Part One, dioceses too exercise delegated law-making functions. Not all quasi-legislation is reported in the Journals of the General Synod. Much is to be found by way of administrative circular and guidelines in the dioceses. Lack of materials makes a tabular analysis of any developing reliance on quasi-legislation or soft law in the diocesan context impossible. The considerable number of examples elicited from diocesan and episcopal materials is, however, corroborative of the national trend. The amount of quasi-legislation and soft law in use in dioceses, as well as by individual bishops, today is considerable.

Quasi-legislation and soft law at local level

One interesting approach, eliding secondary and tertiary sources of law is the Diocese of Meath and Kildare. It publishes what it styles a ‘Resource Book’. It is a reference manual and index of information, some of it advisory, and more of it educational and descriptive of primary legislation. It also regulates matters such as clergy in charge of a parish during a vacancy, attendance at clergy conference, arrangements for Confirmation, expenses, holidays and retreats. Among these are interpolated the Diocesan Rules and Regulations, the Financial Scheme, and glebes rules (styled ‘rectory matters’), although it is emphasised that ‘it is not a summary of the Constitution of the Church of Ireland (...) but what we intend to be a user-friendly supplement to [it] (...)’.²⁴⁷ In addition to its published diocesan rules and regulations, Cork, Cloyne and Ross has an online source of soft law instruments which it styles an ‘InfoBase’.²⁴⁸ Many Dioceses publish circulars, guidelines, instructions and information leaflets.²⁴⁹

Many important matters, on the basis of subsidiarity, are left entirely to diocesan soft law governance: sick leave of clergy, clergy appraisal, sabbaticals, retreats and study leave, for example. The outcome is an unevenness and diffusion of practice. In Down and Dromore the tenure of curates is regulated by episcopal instruction: no priest in a first curacy is permitted to consider an incumbency until after the Christmas of his or her third year in Orders. In a similar vein, by dint of episcopal practice, all confirmation candidates in Cork are notified that they are expected to attend a pre-confirmation event with the Bishop.

²⁴⁶ For delegated legislation put in place by dioceses and diocesan councils see Part One, Chapter Two.

²⁴⁷ M&K, ‘Resource Book’, Bishop’s Introduction.

²⁴⁸ See <www.cork.anglican.org> accessed on 3rd January 2011.

²⁴⁹ CCR: ‘What is a Rural Dean?’.

A wide-ranging sample of such instruments in use in a number of Church of Ireland Dioceses exhibits the following areas governed by soft law instruments: annual study leave for clergy;²⁵⁰ boards of nomination and parochial nominators;²⁵¹ confirmation;²⁵² commissioning of lay assistants at Holy Communion;²⁵³ data protection;²⁵⁴ diocesan employees;²⁵⁵ ecumenical and inter-faith Services;²⁵⁶ education grants;²⁵⁷ education policy development;²⁵⁸ expenses of office allowance;²⁵⁹ faculties;²⁶⁰ funerals;²⁶¹ Holy Communion by Extension;²⁶² Holy Communion of the baptised but unconfirmed;²⁶³ infection control;²⁶⁴ Institution Services;²⁶⁵ lay church workers;²⁶⁶ lay liturgical assistants;²⁶⁷ marriage;²⁶⁸ orders of Service;²⁶⁹ parochial finance;²⁷⁰ parish readers;²⁷¹ relocation to Ireland;²⁷² remarriage of divorced persons;²⁷³ retreats;²⁷⁴ rural deans;²⁷⁵ sabbatical leave;²⁷⁶ school administration;²⁷⁷ and training for ministers of the Eucharist.²⁷⁸

²⁵⁰ CCR, ‘Annual Study Leave and Retreats for Clergy’.

²⁵¹ CCR, ‘Guidelines for Nominators’; D&R, ‘The Proposed Procedure for Boards of Nomination’.

²⁵² CCR, ‘Confirmation Checklist’; D&D, ‘Confirmation Guidelines – Form “A”’ (2002); D&R, ‘Guidelines for the Ordering of a Service of Confirmation’ (January 2007); CCR, ‘Preparing for a Confirmation Sunday’.

²⁵³ CCR, ‘An Order of Commissioning of Lay Assistants at Holy Communion’.

²⁵⁴ CCR, ‘Data Protection: Guidance’.

²⁵⁵ CCR, ‘Diocesan Employees: Disciplinary Policy’; CCR, ‘Diocesan Employees: Grievance Procedure’; CCR, ‘Diocesan Employees: Harrassment Prevention Policy’; CCR, ‘Diocesan Employees: Bullying Prevention Policy’; CCR, ‘Diocesan Employees: Sick Leave Policy’.

²⁵⁶ CCR, ‘Guidelines for Ecumenical and Inter-Faith Services in Cork’.

²⁵⁷ CCR, ‘Education Grants’.

²⁵⁸ CCR, ‘Policy Development: Guidance on Developing an Admissions Policy’.

²⁵⁹ CCR, ‘Expenses of Office Allowance – Diocesan Council Guidelines for Select Vestries’.

²⁶⁰ D&D, ‘Guidelines regarding Faculties and Dedications for Furnishings, Plaques and Flags – Form “B”’ (October 1999).

²⁶¹ D&D, ‘Guidelines for Funerals – Form “C”’ (2002).

²⁶² CCR, ‘Holy Communion by Extension: Practical Guidelines’.

²⁶³ CCR, ‘Holy Communion and the Baptised but Unconfirmed: Pastoral Guidelines of the Bishop’ (2007).

²⁶⁴ CCR, ‘Infection Control – Advice for Hospital Chaplains and Visitors’.

²⁶⁵ D&D, ‘Revised Guidelines for Institution Services’ – Form “D” (February 2002); CCR, ‘Institution of an Incumbent: Instructions for Parishes’.

²⁶⁶ CCR, ‘Code of Practice for Lay Church Workers’.

²⁶⁷ CCR, ‘Policy on Lay Liturgical Assistants’.

²⁶⁸ CCR, ‘Getting married in Church – Information for Couples’; CCR, ‘Marriage Application and Notification Form’; CCR, ‘Marriage – Legal Checklist’; CCR, ‘Marriage Regulations – Request to Bishop in Exceptional Circumstances’.

²⁶⁹ D&D, ‘Guidelines for Orders of Service’ – Form “E” (January 2002).

²⁷⁰ CCR, ‘Parish Treasurers Return to Diocesan Treasurers: Guidelines and Notes’.

²⁷¹ CCR, ‘Policy on Parish Readers’.

²⁷² CCR, ‘Moving to Ireland: A Guide for Clergy’.

²⁷³ D&D, ‘Remarriage of Divorced Persons in Church – Form “F.2” (2002).

²⁷⁴ CCR, ‘Annual Study Leave and Retreats for Clergy’.

²⁷⁵ CCR, ‘What is a Rural Dean?’.

²⁷⁶ CCR, ‘Sabbatical Leave’; D&D ‘Sabbaticals: Guidelines – Form “G” (January 2002).

²⁷⁷ CCR, ‘Guide to the appointment of principal teachers’; CCR, ‘Guide to the appointment of teachers’; CCR, ‘Guide to the appointment of Special Needs Assistants’; CCR, ‘The Use of School Premises outside School Hours’.

²⁷⁸ CCR, ‘Training for Ministers of the Eucharist’.

Some Diocesan strategies are more formally regulated such as selection for, the content of and qualification in the Archbishop of Dublin's Course in Theology or in the course for Lay Pastoral Assistants in Cork, Cloyne and Ross.

Cathedrals and Parishes

Many parishes, and some cathedrals, frame rules to regulate matters not governed by national or diocesan laws. A typical example is additional local churchyard and graveyard regulations, or regulations governing the use of parochial halls. In the case of cathedrals also there may be additional regulations; or laws may have emerged from convention and custom. For example, Saint Patrick's Cathedral, Dublin has *The Form and Manner of Making a Dean and other Forms*²⁷⁹ published 'by authority of the Chapter.'

Resolutions of Diocesan Synod

As at General Synod, resolutions of diocesan synods come in a variety of forms and their authority (and consequentially compliance with them) fluctuates according to the subject matter addressed, and the wording and intent of the resolution. In Cork, Cloyne and Ross, in the context of emerging controversy and discord within worldwide Anglicanism, the Diocesan Synod resolved that the hymn *There's a wideness in God's mercy* be sung frequently and at opportune times throughout the Diocese.²⁸⁰ The bishop attests that he has rarely heard it sung since. In contrast, parishes have responded actively to the exhortation of a resolution of the same diocesan synod enjoining Fairtrade good practice on Church gatherings and work. Cashel and Ossory led the way in relation to the environment: its Diocesan Synod adopted a Green Charter.²⁸¹

Communion of the Baptised but Unconfirmed

Soft law instruments, locally devised, govern such developments as there have been in the Church of Ireland in relation to the admission to Holy Communion of those who are baptised but unconfirmed (usually children). This followed the failure to secure agreement on the subject at General Synod. In 2000 the House of Bishops sent a communication to the General Synod advocating change and indicating their intention

²⁷⁹ *The Form and Manner of Making a Dean and Other Forms* (Dublin University Press 1912).

²⁸⁰ *Church Hymnal* (Oxford University Press 2000) Hymn 9, including the words 'For the love of God is broader than the measure of our mind...'

²⁸¹ C&O, 'Green Charter' (2008) found at <www.cashel.anglican.org> accessed on 17th March 2011; for an example from Wales see 'The Parish Green Guide: Caring for God's Creation' (the Church in Wales 2009).

to propose an amendment to the relevant rubric in 2001.²⁸² The resolution seeking to introduce a Special Bill the following year was defeated having failed to receive the necessary two-thirds of the votes of the laity.²⁸³

As a result, and under pressure arising from mobility within Anglicanism and a consequent change in practice by parents and children in parts of the church, some bishops have found it necessary to respond in a variety of ways. Verbal guidance or written advice has been given. In Cork, the matter is governed by Pastoral Guidelines.²⁸⁴

What then of Quasi-legislation/Soft Law in the Church of Ireland?

Most of the instruments and documents described are freestanding. Some instruments are supplementary and others address lacunae in the church's legal system. Most have legal consequences and make a significant administrative impact with far-reaching consequences at every level of church life. A key element in the legal under-girding is the oath of canonical obedience taken by clergy to the Bishop as well as their promise to submit 'to the authority of the Church of Ireland and to the laws and tribunals thereof.'²⁸⁵ As such, many may be enforceable in accordance with the church's disciplinary schema.²⁸⁶

It has been established that the Church of Ireland, probably unconsciously, is mirroring the State in its increasing reliance on quasi-legislation. Undoubtedly this is, in part, a necessary response to the contemporary preference for informality on the one hand, and perhaps also the compliance culture and litigious environment of recent decades, on the other. The advance of technology and more ready means of regular and expeditious communication, outside printed media and an annual Book of Reports, are conducive to the routine introduction of soft law in the period between annual meetings of General Synod.

In some measure this may be a response to the growing number of voices at General Synod who have questioned the use of the parliamentary procedure in church law-

²⁸² JGS [2001] lxxiii-iv.

²⁸³ JGS [2001] xcvi.

²⁸⁴ CCR, 'Holy Communion and the Baptised but Unconfirmed: Pastoral Guidelines of the Bishop' (2007).

²⁸⁵ CCI, ch IV, Schedule, Declaration for Subscription.

²⁸⁶ CCI, ch VIII.

making. It has been styled as inaccessible and complicated. Speeches at the General Synod in 2011 were notable in this respect.²⁸⁷

The Advantages and Attractions of Quasi-Legislation/Soft Law

In many ways, the growing use, by the Church of Ireland, of quasi-legislative materials should come as no surprise. The attractions are clear: flexibility, cost-effectiveness, efficiency, ability to react, lack of technicality, informality and the saving of time at General Synod. Many permit of a more pastoral approach and several permit of a variety of interpretations.

The question arises as to why quasi-legislation or non-legal rules should be preferred to law.²⁸⁸ The answer to this was alluded to in Part One: Chapter Three. In the civil law context, for example, Ganz suggests, that the attraction lies in their flexibility, lack of technicality and because ‘voluntary acceptance of rules is better than their legal enforcement’ which, in turn, depends on widespread acceptance and consensus.²⁸⁹ She also identifies the use of ‘non-technical language’ (comprehensibility to the layman) as one of the principal attractions, together with the comparative ease and speed with which such instruments can be drafted.²⁹⁰

Quasi-legislation has ‘the attraction of informality’: ‘[s]uch rules inexpensively and swiftly routinise the exercise of discretion; they provide easy justifications for the use of statutory powers; they “get the job done” (...)’ they give a flexibility that primary legislation does not offer; (...)’.²⁹¹ Some types of soft law instruments have been styled ‘sensible working practice.’²⁹²

²⁸⁷ See eg Primatial Address, JGS [2011] lxxv – lxxix.

²⁸⁸ Gabriele Ganz, *Quasi-Legislation: Recent Developments in Secondary Legislation* (Sweet and Maxwell 1987) 2.

²⁸⁹ Gabriele Ganz, *Quasi-Legislation: Recent Developments in Secondary Legislation* (Sweet and Maxwell 1987) 2-3.

²⁹⁰ Gabriele Ganz, *Quasi-Legislation: Recent Developments in Secondary Legislation* (Sweet and Maxwell 1987) 96; see also Alec Samuels, ‘Codes of Practice and Legislation’ in [1986] *Statute Law Review* 29, 29.

²⁹¹ John Robert Baldwin and John Houghton, ‘Circular arguments: the status and legitimacy of administrative rules’ in [1986] *Public Law* 239, 239.

²⁹² Richard Rawlings, ‘Concordats of the Constitution’ (2000) 116 *LQR* 257, 259.

Similar attractions are outlined by Baldwin and Houghton in relation to such instruments in State law when they said that the reasons for resorting to informal rules are:²⁹³

- (i) They guide untrained officials and so facilitate planning and management
- (ii) They encourage consistency in bureaucratic decision-making
- (iii) They inform the public of official attitudes; they simplify complex issues and make them intelligible to those affected.
- (iv) They are flexible and may be issued quickly.
- (v) They deal with matters that are not amenable to strictly legal language, e.g. broad policies and regulatory philosophies.
- (vi) They are relatively free from judicial review.
- (vii) They allow control of official action where legislation is either inappropriate or politically undesired by the government.

The capacity of such instruments to utilise ‘plain English’ clearly attracts and obviates the need for the services of a parliamentary drafter and the Bills process via General Synod. The use of language varies: some is informative or a notification. Others utilise the language of expectation and aspiration, exhortation and hope – especially executive requests and decisions. Notes are styled as exhortation, permissive, aspirational. Some soft law instruments, are clearly prescriptive. Whatever the language used, it would appear that it is all designed to regulate and to effect either compliance or change.

Much of this will, naturally, sit comfortably with those in the church who have a predisposition against law and where the teaching of canon law has been weak. As has been seen in this analysis, quasi-legislation/soft law is utilised, consciously or unconsciously, to address a vast array of subjects. Many relate to compliance with State law and there is no question, in general, of a need to incorporate into church law itself. Others are routine elucidations or commendations of niches of primary or secondary sources. Still others clearly relate to the margins of difficult subjects and the need to implement best practice where the State law on an issue is not immovably determined: the best example of this relates to the employment status of clergy and their conditions of service. Breaking new ground and tackling hard subjects on which there is no

²⁹³ Robert Baldwin and John Houghton, ‘Circular arguments: the status and legitimacy of administrative rules’ in [1986] Public Law 239, 267-68.

theological or socio-political consensus would appear to be the basis of others such as children and communion, flags, the historic formularies, sectarianism and the Masonic Order.

Routinely, such instruments are communicated to the church at large and they may affect church life generally. Many are directed at clergy and other office holders such as diocesan secretaries, diocesan councils, select vestries and churchwardens, teachers and youth workers.

Concerns Relating to Quasi-Legislation/Soft Law in the Church of Ireland

Alongside advantages and attractions there are, however, disadvantages and concerns. The principal question is the extent to which, if at all, such quasi-legislative/soft law instruments are legally binding.

Are they legally binding?

Ganz underscored that the primary challenge in relation to quasi-legislation is its legal force: authority and legitimacy. According to her, the common factor embracing quasi-legislation on a wide spectrum of rules is that they are not directly enforceable through criminal or civil proceedings.²⁹⁴ She herself points out, however, that this common factor is blurred ‘because there are degrees of legal force and many of the rules (...) do have legal effect.’²⁹⁵ Sometimes the courts give them legal effect and on other occasions such efficacy is denied.²⁹⁶

While not in themselves law (primary or secondary) clearly the examples of quasi-legislation and soft law set out with reference to the Church of Ireland in this chapter purport to regulate, moderate, shape and transform church life. Whether they are a source of law *qua* law is debatable but undoubtedly they have such legal effect, as well as administrative and institutional consequences, that, in some instances, they may be

²⁹⁴ Gabriele Ganz, *Quasi-Legislation: Recent Developments in Secondary Legislation* (Sweet and Maxwell 1987) 1.

²⁹⁵ Gabriele Ganz, *Quasi-Legislation: Recent Developments in Secondary Legislation* (Sweet and Maxwell 1987) 1.

²⁹⁶ Immigration Rules: in *R v Chief Immigration Officer, Heathrow Airport ex parte Bibi* [1976] 1 WLR 979 immigration rules were held to be ‘...just as much delegated legislation as any other form of rule-making activity of delegated legislation which is empowered by Act of Parliament.’ (per Roskill LJ, 985); see also *R v Secretary of State for Home Affairs ex parte Hosenball* [1977] 1 WLR 766; and also *R v Secretary of State of the Home Department ex parte Ram* [1979] 1 WLR 148.

more potent and transforming in their outworking than primary or secondary legal instruments.

Further Concerns

Baldwin and Houghton suggest that ‘government by informal rules’ is ‘a new device’ by government when confronted with ‘a difficult regulatory task.’²⁹⁷ Their primary concern is that informal rules are ‘too free of control by Parliament, executive, judiciary or any other source and that this freedom is increasingly open to exploitation.’²⁹⁸ The issue is one of democratic accountability. They postulate, therefore, three tests: a legitimacy test; a test of clarity and precision; and justiciability and enforceability.

The first is a ‘legitimacy test’: the extent to which a line of authority from Parliament can be implied or traced, particularly where it has been published.²⁹⁹ They cite *Patchett v Leathem*³⁰⁰ in which the court’s concerns about quasi-legislation focussed on the absence of democratic accountability; the fact that a circular was unpublished and, therefore, inaccessible; the entangled and unclear form of the provisions; and the use of informal language. Referring to the circular, Streatfield J said:

Whereas ordinary legislation, by passing through both Houses of Parliament or, at least lying on the table of both Houses, is thus twice blessed, this type of so-called legislation is at least four times cursed. First, it has seen neither House of Parliament; secondly, it is unpublished and is inaccessible even to those whose valuable rights of property may be affected; thirdly, it is a jumble of provisions, legislative, administrative, or directive in character, and sometimes difficult to disentangle one from the other; and fourthly it is expressed not in the precise language of an Act of Parliament or an Order in Council but in the more colloquial language of correspondence, which is not always susceptible of the ordinary canons of construction.³⁰¹

The second test extrapolated from the praxis of the British courts relates to clarity, precision and justiciability: if the intention of the issuing body was to bind somebody, then it will bind. Rules should clearly set out rights and duties.³⁰² They summarise:

²⁹⁷ Robert Baldwin and John Houghton, ‘Circular arguments: the status and legitimacy of administrative rules’ in [1986] Public Law 239, 239.

²⁹⁸ Robert Baldwin and John Houghton, ‘Circular arguments: the status and legitimacy of administrative rules’ in [1986] Public Law 239, 240.

²⁹⁹ Robert Baldwin and John Houghton, ‘Circular arguments: the status and legitimacy of administrative rules’ in [1986] Public Law 239, 246.

³⁰⁰ *Patchett v Leathem* (1949) 65 TLR 69, 70.

³⁰¹ *Patchett v Leathem* (1949) 65 TLR 69.

³⁰² Robert Baldwin and John Houghton, ‘Circular arguments: the status and legitimacy of administrative rules’ in [1986] Public Law 239, 247; see also *R v Criminal Injuries Compensation Board, ex parte Schofield* [1971] 1 WLR 926.

The general rule, then, is that legal force varies according *both* to the strength of authority or legitimacy that a set of rules has and to the nature of the particular rule. This means that not only must the language of the rules as a whole be considered but also the nature and form of a particular rule. Within each individual code, the rules may be of very different kinds: some may be substantively prescriptive, some facilitative, some procedural and some may set standards. (...). [T]he quality of delegation required to create legal effect varies according to the legal effect at issue; it similarly varies according to the precision of the language used – both in enabling statute and subsequent rule. As a result, rules must be dealt with individually and confusion results if whole sets of informal rules are talked of as if of the same statue and effect. Some rules will be good for some effects but to for others.³⁰³

The third test or series of tests laid down by Baldwin and Houghton relate to the legal effects of quasi-legislation: it will bind if capable of enforcement. Based on the concept of ‘legitimate expectation’, it would appear that rule-makers are to be bound by their own self-made rules, although ‘the law is unfortunately replete with (...) confusion.’³⁰⁴ Other tests include the existence of implied expectations including that existing rules will be followed; and a natural justice expectation based on reasonableness, fairness or *vires*, that the stated policy will not be departed from.³⁰⁵

In spite of the various dilemmas posited by the proliferation of quasi-legislation and the absence of ‘blanket’ solutions, Houghton and Baldwin affirmed their place:

[I]t could be said: should we not encourage the use of non-justiciable rules written in unparliamentary language? Is not the informal rule of enormous value? It is readily conceded that to over-regulate rule-making would be undesirable. Bureaucrats might well avoid review by resort to *ad hoc*ery instead of developing and publishing (newly problematic) rules. Our intention, however, is not to discourage rule-making: it is to avoid the exploitation of informal rules that is the result of a failure to deal with the legal implications of rule-making. Informal guidance of all kinds should continue but our thrust is that: (a) more should be done by legislators to clarify the status of rules; (b) the judiciary should be prepared to hold the makers of such rules to account where this is reasonable; and (c) it is present failure on both these fronts that prejudices those individuals and groups who are affected by rules and that encourages governments to use informal rules to avoid being called to account.

Similar Concerns in Church Law

By analogy, similar concerns would well be articulated in relation to the use of quasi-legislation/soft law within church law, including that of the Church of Ireland.

³⁰³ Robert Baldwin and John Houghton, ‘Circular arguments: the status and legitimacy of administrative rules’ in [1986] Public Law 239, 249-50.

³⁰⁴ Robert Baldwin and John Houghton, ‘Circular arguments: the status and legitimacy of administrative rules’ in [1986] Public Law 239, 252-58, 256; see also *R v Secretary of State of the Home Department, ex parte, Asif Mahmood Khan* [1985] 1 All ER 40.

³⁰⁵ See eg *R. v Liverpool Corporation, ex parte Liverpool Taxi Fleet Operators Association* [1972] 2 QB 299.

As in State law, legality is a key concern. Doe identifies three tiers or categories of quasi-legislative activity and instruments: first, ecclesiastical quasi-legislation declaratory of church law or designed to implement it: this, he says, is in itself lawful. Second, quasi-legislation ‘operating in the interstices of law’: where ‘the law is silent on a subject this might generate a legal liberty to regulate that subject.’ Third, quasi-legislation which is in conflict with either church or State law is illegal and of no force or effect.³⁰⁶

What safeguards can protect the church against the abuse of quasi-legislation or ensure that it is consonant with the entire canonical framework? As in secular legislating, a number of approaches exist or may be adopted: the requirement of publication and accessibility; consultation with interested parties; and a mechanism for the formal review of drafts. Many of these are designed to address the fundamental concern of democratic accountability and could easily be adopted in the Church of Ireland.

Baldwin and Houghton’s succinct summary of, on one hand the concerns posed by quasi-legislation and, on the other, the reasons for resorting to it provide a plumb line against which to evaluate the advantages and disadvantages of the increasing reliance in the church on ecclesiastical soft law.³⁰⁷

Among the concerns they articulated, some may readily apply within the Church of Ireland. Therefore, Baldwin and Houghton’s concerns might be re-cast for the church context (some such as iv and v may not obviously transfer) as follows (*italics* indicating a change of word from the original to accommodate ecclesiastical polity):

- (i) They have legal effects (...) but have largely by-passed *synodical* scrutiny.
- (ii) Their legal credentials are uncertain. Their provenance is not always clear. It may not be clear whether legal effects are authorised or intended at all.
- (iii) They may be couched in *uncanonical* language. They may be vague and non-justiciable.

³⁰⁶ Norman Doe, ‘Ecclesiastical Quasi-Legislation’ in Norman Doe, Mark Hill and Robert Ombres (eds) *English Canon Law* (University of Wales Press 1998) 93-103, 100-01.

³⁰⁷ Robert Baldwin and John Houghton, ‘Circular arguments: the status and legitimacy of administrative rules’ in [1986] *Public Law* 239, 267-68; for standards and concerns in Irish law see Raymond Byrne and J Paul McCutcheon *The Irish Legal System* (Butterworths 2003) 442-63.

- (iv) They allow *church members* too much leeway in choosing whether to give effect to them or leave them alone. In Hart's terms, there is no workable rule of recognition.
- (v) They allow *church leaders* illegitimately to instruct *the faithful* on the interpretation of statutes.
- (vi) They may be resorted to on issues of great *theological and social* contention and so render the law most vague at the points where it should be most clear. This is a retreat from law.
- (vii) They may be inconsistent with primary legislation.
- (viii) They are published haphazardly, if at all, and are inaccessible.
- (ix) Little provision is made for consultation for *wider* input into many rule-making procedures.
- (x) Special groups and interests may exercise influence in lobbying, and representation may be weighted towards the interest of a pressure group or department.
- (xi) The administration may take over from the *General Synod* the function of determining general policy.
- (xii) The misapplied or mistakenly-formulated rule is difficult to challenge.

Similar principles, which have been articulated in relation to delegated legislation generally in Irish law,³⁰⁸ may also be readily applied *mutatis mutandis* to quasi-legislative instruments. Ganz too identifies safeguards or controls in a State law context: parliamentary control (including select committees); consultation and consensus; publication; control over interpretation and application (judicial control).³⁰⁹

Again in this context, a key issue – that which was the subject of Part Two: Chapter Two, of this work - is accessibility. Justice McHugh of the High Court of Australia identifies inaccessibility as 'one of the fundamental problems with quasi-legislation.'³¹⁰ In England in *Blackpool Corporation v Locker*³¹¹ Scott LJ said that although there was no duty either by statute or common law to publish sub-delegated legislation, he did

³⁰⁸ Raymond Byrne and J Paul McCutcheon *The Irish Legal System* (Butterworths 2003) 442-63.

³⁰⁹ Gabriele Ganz, *Quasi-Legislation: Recent Developments in Secondary Legislation* (Sweet and Maxwell 1987) 26-50.

³¹⁰ Quoted in Duncan Berry 'When does an instrument made under primary legislation have "legislative effect"' [1997] *The Loophole* (The Newsletter of the Commonwealth Association of Legislative Council) 14-29, 24.

³¹¹ *Blackpool Corporation v Locker* [1948] 1 KB 349.

consider it ‘vital to the whole English theory of liberty of the subject’ that those affected by sub-delegated legislation should be able to ascertain its existence and nature:

The modern extent of sub-delegated legislation is almost boundless: and it seems to me vital to the whole English theory of the liberty of the subject, that the affected person should be able at any time to ascertain what legislation affecting his rights has been passed under sub-delegated powers. So far as I know, this is the first case where that aspect of delegated legislation has come before the courts for direct consideration.³¹²

The principal safeguard in relation to all quasi-legislation and soft law in the Church of Ireland is ‘parliamentary’ control through the supreme governance of the General Synod. That, in itself, may prove insufficient. Reporting and laying sub-delegated legislation or soft law before the General Synod may not be enough. There may be inadequate opportunity to ask questions yet alone to embark upon detailed scrutiny. This, of course, can be true of legislation also. In 2010 a complex Bill was introduced amending the very complex area of the CICPF and setting up a new trustee to comply with civil law.³¹³ Very few entered into or contributed to the debate on this, the principal piece of legislation before the General Synod in that year. Not all quasi-legislation is tabled at General Synod or, indeed, at Diocesan Synods. The executive decisions, guidelines, protocols and regulations of the House of Bishops are, in the main, unpublished and inaccessible.

It is not always clear with what authority others have devised quasi-legislation. The CCI provides that Standing Committee shall exercise such power and duties as may be conferred upon it by the CCI and ‘such of the powers vested in the General Synod as shall from time to time be committed to it by the General Synod’.³¹⁴ Where regulations have been made (e.g. the marriage regulations) an express authority has clearly been conferred. What is less clear is whether or not authority has always been delegated in respect of the making of executive decisions.

Case-Study Conclusion

This case study validates the contention that the Church of Ireland (like the State) is relying increasingly on quasi-legislative and soft law instruments to order its life. The detailed research, which gave rise to Appendix G, warrants this conclusion. The

³¹² *Blackpool Corporation v Locker* [1948] 1 KB 349, 370; see also *McCann v Minister for Education* [1997] 1 I.L.R.M. 1, 15; [1997] WJSC-HC 1382, 1412.

³¹³ Statute of the General Synod of the Church of Ireland [2010] c i.

³¹⁴ ‘Constitution, Duties and Powers of the Standing Committee’, ss 9-10.

reasons for this growth have been alluded to: to explain and educate; to regulate by exhortation; to determine and clarify; to facilitate a less legal and more pastoral approach; to synthesise common ground in areas of diversity of outlook or praxis; and to address situations where there is a lack of clarity or the likelihood of conflict. Importantly, emerging areas of legal concern (clergy conduct, conditions of service, the employment status of clergy) are being faced using quasi-legislation or soft law. All of this is mirrored in the activities of the Bishops and at Diocesan level.

As has been shown there are attractions and risks in the growing dependence on this type of instrument and approach to ordering church life. This, coupled with the fact of increasing dependence on such instruments, should give rise to concern and provide the impetus for a future strategy and possible reforms.

CONCLUSION

REFORM

The task of discerning the law for the Church of Ireland on a particular subject, for the professional lawyer and ordinary church member alike, is a complex exercise. It necessitates familiarity with, and access to, a multiplicity of sources of law. As has been seen, it is a fundamental principle that sources – as the originating foundations and authorities for – the law of the Church of Ireland, whether material, formal, institutional or instrumental, should be identifiable and accessible. People should be able to find the law. Clear identification of the sources is intrinsic to that activity.

Part One: Affirmation of Law and Disentangling Uncertainty about Sources

This project has established that, while there is an understanding and affirmation of the place of law in the Church of Ireland, there is, to varying degrees, uncertainty about what exactly those sources are. There is disagreement and confusion in some instances as to whether or not certain categories are, or are not, sources. Source by source, the survey corroborates the spectrum of uncertainty and underpins the need for clarity.

The first priority, therefore, has been the identification of the sources of law for the Church of Ireland. This exposition in Part One: Chapter One lays down one such categorisation as a framework for debate were any formal review undertaken.

It established the priority of civil law sources for the Church of Ireland as a disestablished church in a religious society where, although the State espouses a principle of non-interference, a church is one voluntary association among many, and civil law takes precedence over canon law. In addition to the self-evident sources of civil law (the Irish Constitution, statutes, secondary legislation and quasi-legislation), there are civil law measures specifically governing the Church of Ireland (the Irish Church Act 1869, deeds of trust and the Charter of Incorporation of the RCB). Through their impact on the civil law, human rights, international law and European law, become, in their own way, sources of law too for the church.

In the case of the internal law of the Church of Ireland, its own primary and secondary sources (Part One: Chapter Two) have been seen to be more multifarious than is, at first,

clear. The primary sources (subsisting in a context nurtured by theology, the divine law, natural law and a rich canonical inheritance, from both before and after the Reformation) are: ecclesiastical law (in its distinctive Irish sense), the Preamble and Declaration, the CCI, the Statutes of the General Synod, the canons, the *Book of Common Prayer*, rubrics, and a generic category, styled ‘articles, doctrines, rites, rubrics and formularies’.

The secondary sources comprehend: standing orders, constitutions of subsidiary committees (including the Standing Committee) and boards (such as the Board of Education of the General Synod), regulations, rules, glebe rules, rules of church courts and diocesan registries, by-laws, diocesan rules and regulations, the Declaration for Subscription and, certain formal procedures and forms. The status of resolutions and motions of the General Synod as sources has been seen to be less clear, depending on context and a discernment of the intent of the church’s legislature.

The third category of internal law sources (in Part One: Chapter Three) has been designated ‘tertiary sources’. Decisions of church courts, the opinions of legal advisory committees and the considerable stimulus of lawyers in church life over the years, while not formal sources, continue to have persuasive contemporary influence within the Church of Ireland. In contrast, notwithstanding all the dilemmas posed by them, the phenomena of quasi-legislation and soft law, posit new forms of regulation for the Church of Ireland, frequently with considerable legal import. There is manifest confusion and disagreement as to whether and which of these are indeed sources of law for the church: decisions, executive decisions, forms, prerogatives, rights, privileges, agreements, guidelines, codes, schemes, protocols, circulars, information leaflets and lists, all of which, pervade the modern administration and organisation of the church. The concluding element among tertiary sources was consideration of the place of certain nebulous or mellifluous sources: custom, Anglicanism and, international and ecumenical agreements. All of these suffuse the law of the Church of Ireland, frequently formally, but no formal understanding of their place as sources or otherwise is demarcated.

Impulses for reform

As a first step, the Church of Ireland might usefully acknowledge the uncertainty manifested by some (including those engaged regularly with the church’s laws) in

relation to its sources of law. Consideration should be given to the setting-up of a legal commission formally to review the law of the Church of Ireland in the specific context of an analysis such as this of the sources of that law. There ought, at a minimum, to be a formal debate about the nature and parameters of those sources in order to pursue consensus and an agreed framework for law-making and implementation within the church. The first part of this study would, it is proposed, form a useful starting point.

The setting out of sources of law for the Church of Ireland clearly, and in an agreed way, perhaps incorporating formal statements about those sources in the CCI, might usefully assist the church in its future work. Identification of the sources provides a logical starting point for articulation of the law and initiating greater understanding of its development and place within the ecclesiastical community. In this connection too, education about law in general, and church law in particular, ought usefully to be undertaken at a number of levels in church life, not least in the formal education and training for ordination and licensed lay ministry, for prospective chancellors and registrars, as well as in continuing education.¹

Part Two: The Three Case Studies

The three case studies in Part Two investigate, and treat of separately, key and representative dynamics or dilemmas which emerge from the distinctive sources posited in each of the three chapters of Part One: the ever-increasing impact of civil law sources; the accessibility of primary and secondary church sources; and, the growth in dependence on quasi-legislation and soft law.

Case study I: The Impact of Civil Law

This case-study illustrates how the civil law - the law of the State - more than at any time in the history of the Church of Ireland since its disestablishment is impacting on the life and work of the church. This was evident in the distinction drawn between the energetic law-making of the immediate post-disestablishment period (concerned as it was with the continuity of the Church of Ireland) and the intervening years until approximately the 1990s (during which time the engagement with law was predominantly outward looking in tendency).

¹ An important proposal highlighted in the Church of England also in 1957: see EW Kemp, *An Introduction to the Canon Law in the Church of England* (Hodder and Stoughton 1957) 78.

In contrast, the recent phenomenon (seen in the examples considered in detail) has impacted on the church's own psyche and preoccupations (as seen, among others, in relation to human rights, equality law, civil partnerships, education, the disciplinary structures of the church and, the 'employment' status of clergy). It has necessitated responses to new issues (child protection and disability), to new State legislative activity making radical changes (education, marriage, pensions, planning and heritage and, charity law), as well as the culture of compliance with civil law (health and safety, data protection, finance and copyright).

Much of this dominates the deliberations at many levels of church life in recent decades. It has given rise to uncertainty. This is a cause of concern and provides impetus for a future strategy and possible reforms.

Impulse for reform

The legal personality of the Church of Ireland as a voluntary association and the pre-eminence of the civil law sources needs continually to be reinforced. The Church of Ireland, by means of a working group, might usefully explore the phenomenon currently being experienced in relation to its encounter with and influence by the law of the State. Has the church become more reactive and less proactive? What are the elements of the Church of Ireland's particular engagement with human rights and religious freedom?

Does the new body of law on the part of the State peculiarly affecting religious institutions amount to that sub-category described by others as religion law? If so, what is to be the Church of Ireland's interaction with that in its terminology, praxis and dialogue with the State and its institutions? Many areas of the law (disability, education, property, finance) require the church to aspire to the attainment of best practice in accordance with the civil law.

Clearly there needs to be on-going engagement with areas of the law where there is uncertainty, or even fear, on the part the church and its individual members. This should engage particularly in a schematic way with those areas of uncertainty: human rights, religious freedom, equality, the 'employment' status of clergy, human sexuality/civil partnerships, and the role of Christian outlook in law-making. All of this tends, yet again, to the question of formal education about, and training in, law within the church.

Case study II: Accessibility of Internal Sources of Church Law

The second case study established the vital nexus between the accessibility of laws and the rule of law. The survey showed that, to varying degrees, the sources of law of the Church of Ireland are perceived to be accessible, somewhat accessible or inaccessible. The detailed investigation of ecclesiastical law (with its specific Irish meaning) and its scrutiny in the context of the State's Statute Law Revision Project illustrates clearly the challenge and concludes that core elements of the sources of law for the Church of Ireland are unacceptably inaccessible.

Impulses for reform

The reality of inaccessibility ought to be reflected upon by the Church of Ireland to increase consciousness of the fundamental importance of the principle of accessibility.

A review of sources of law should be undertaken to ascertain the extent of their accessibility. In particular, consideration should be given to a full, formal review of the ecclesiastical law and, important legal principles embedded in that source, might be incorporated by Statute, further revision of the CCI or further codification of the law of the church. Careful teaching about the specific meaning of the term 'ecclesiastical law' in an Irish context needs to be undertaken, not only in order to avoid confusion and misunderstanding, but more particularly in a legal context to attain to the standards of public accessibility and identification inherent in the Rule of Law.

Publication and accessibility are tests that should be applied to each and every new legal instrument. Careful attention needs to be given to the matter of including training about this aspect of church law in the education work of the church.

Case study III: The Growing Reliance on Quasi-Legislation and Soft Law

The third case study, by detailed investigation of the materials over a one-hundred and forty-two year period, established that in the past decade or so, the Church of Ireland is relying increasingly on quasi-legislation and soft law instruments to fashion and enliven its own legal framework. This has happened against a background of a call from some, for more informal law-making and decision-making forums within the church.

Contemporary examples of recourse to quasi-legislation and soft law were presented at every level of church life. The advantages of that approach were considered. The

survey indicates the absence of consensus about which of these and when certain of these is, in fact, a source of law. In the light of this, and the dilemmas posed generally by this increasing reliance on this tertiary source, consideration needs to be given to reforms and a future strategy.

Impulses for reform

In the light of these concerns, the following tests might usefully be postulated in relation to the use of quasi-legislation/soft law in the Church of Ireland:

1. Has the instrument, in question, been mandated by primary or secondary legislation? If so it is either secondary/delegated legislation or sub-delegated legislation.
2. Is the instrument legally binding and, if so, in what way and to what extent?
3. If delegated, is the outworking consonant with the delegation given, as well as with the wider ecclesiastical legal framework?
4. Has it been published and is it accessible?
5. Is it reasonable (not arbitrary, oppressive and unjust)?²
6. Has a delegated or innate authority been exercised in good faith (not in bad faith)?³
7. Have procedures for bringing the instrument into being been complied with and are they fair?⁴
8. Have the instruments, where appropriate, been submitted to parliamentary/synodical scrutiny, or in the case of instruments formulated by the House of Bishops, communicated to the General Synod?
9. Has consultation taken place as widely as possible with relevant stakeholders and affected parties?⁵

In addition, specific recommendations are:

- a. That a body be appointed to consider and formally adopt such tests or similar which are to be applied to quasi-legislation and soft law within the Church of Ireland.

² Raymond Byrne and J Paul McCutcheon *The Irish Legal System* (Butterworths 2003) 455-58.

³ Raymond Byrne and J Paul McCutcheon *The Irish Legal System* (Butterworths 2003) 458-61.

⁴ Raymond Byrne and J Paul McCutcheon *The Irish Legal System* (Butterworths 2003) 458-61.

⁵ Michael Zander, *The Law Making Process* (Cambridge University Press 2004) 121.

- b. That quasi-legislation and soft law be formally noted, classified, and identified as a category within the canonical system of the Church of Ireland.
- c. That a shared understanding of the nature of quasi-legislation and soft law be explored in order to consider the extent, within church life, to which, and in what way, they are legally binding.
- d. That the requirement be laid down that all such instruments be published in an accessible format, more widely than they are currently.
- e. That a constitutional amendment enjoin publication and communication on all who promulgate quasi-legislation or soft law instruments.
- f. That a group (akin to the Bills Committee) be appointed to study and monitor on an on-going and future basis, the use of this type of ‘law’ in the Church of Ireland
- g. That ways be sought, including in any new course on Church law in ordination training, to raise awareness of and instruct in this aspect of the Church of Ireland legal framework.

Conclusion

When Edward Bullingbrooke published in 1770 his two-volume *Ecclesiastical Law; or, the Statutes, Constitutions, Canons, Rubricks, and Articles of the Church of Ireland Methodically Digested under Proper Heads with a Commentary Historical and Juridical*, he referred to the advisability and necessity of the clergy studying the law, and of their ‘acquisition of a competent knowledge of the several species of laws which are to be their guides in these courts.’⁶ He set out to fill a gap:

No attempt has hitherto been made to facilitate the acquisition of this knowledge in Ireland; to digest the several laws of which our ecclesiastical law is compounded into one methodical system according to their proper rank and subordination, and to draw out from thence one uniform law of our church, is the purport of this book (...).⁷

The life’s ambition of this writer is to fill a similar lacuna in our time; in which connection, the purpose of this more limited work has been to commence that task by filling a gap for the post-disestablishment Church of Ireland. The sources of law for

⁶ Edward Bullingbrooke, *Ecclesiastical Law or, the Statutes, Constitutions, Canons, Rubricks, and Articles of the Church of Ireland methodically digested under Proper Heads with a Commentary Historical and Juridical: Two Volumes* (Boulter Grierson 1770), Vol 1, x.

⁷ Edward Bullingbrooke, *Ecclesiastical Law or, the Statutes, Constitutions, Canons, Rubricks, and Articles of the Church of Ireland methodically digested under Proper Heads with a Commentary Historical and Juridical: Two Volumes* (Boulter Grierson 1770), Vol 1, x.

the Church of Ireland have, since the church was disestablished in 1871 and until now, never been the subject of singular identification and investigation. This study fills that void and, as a result, it is contended enhances the study generally of the law of the Church of Ireland.

The sources of law for the Church of Ireland have been systematically identified in a momentum towards generating awareness and understanding. The investigation of the sources by means of three case studies serves to highlight reforms that might advisedly be considered now by the church itself. It ought to embark, for itself, on an identification and investigation of the sources of law of the Church of Ireland with a view to reform.

Appendix A

The Survey Church of Ireland and the Law

Introduction

A survey was undertaken in June 2011 to test a variety of propositions concerning the law of the Church of Ireland; perceptions of it; the identification of its sources; its accessibility; the extent to which State law is increasingly impacting on the life of the Church; the understanding of quasi-legislation and its use within the Church; and a testing of attitudes to the wider Anglican legal framework.

Methodology

The survey was conducted by direct email contact with a random sample in a number of categories: clergy of the Church of Ireland and lay people involved in church affairs at either central church or diocesan level. The samples were as follows: 360 clergy and 174 lay people. The response rate was 64% and 82% respectively. In addition each person in all of the following categories were surveyed separately: all the bishops of the Church of Ireland (all of whom responded); all the Chancellors (all but one of whom responded); all but one Diocesan Registrar and Assistant Registrars (the one being unavailable, and eleven others responded).

Reporting the Outcomes

The outcomes are now recorded broadly under the headings utilised by the survey itself, but also in such a way as corresponds to the principal contentions of the thesis about the sources of law of the Church of Ireland.

Perceptions of the Law of the Church of Ireland

Participants in the survey were asked to indicate their agreement or disagreement with a variety of statements:

‘Law is not relevant in the life and work of the Church of Ireland’

	Strongly Agree	Agree	Disagree	Strongly Disagree	Do Not know
Bishops	0	10%	10%	80%	0
Chancellors	0	12.5%	50%	37.5%	0
Registrars	9.1%	9.1%	36.4%	45.5%	0
Clergy	1.7%	7.4%	45.2%	45.2%	0.4%
Lay	0	5.7%	52.9%	39.3%	2.1%

‘Law gets in the way of the work of the Church of Ireland’

	Strongly Agree	Agree	Disagree	Strongly Disagree	Do Not know
Bishops	0	10%	20%	70%	0
Chancellors	0	12.5%	50%	37.5%	0
Registrars	0	18.2%	63.6%	18.2%	0
Clergy	1.3%	15.2%	57.8%	23%	2.6%
Lay	1.4%	16.4%	63.6%	14.3%	4.3%

‘Law is part of the life and work of the Church of Ireland: it’s the way things are’

	Strongly Agree	Agree	Disagree	Strongly Disagree	Do Not know
Bishops	20%	70%	10%	0	0
Chancellors	25%	75%	0	0	0
Registrars	18.2%	81.8%	0	0	0
Clergy	17.4%	76.5%	4.3%	0.4%	1.3%
Lay	14.3%	77.9%	5.7%	0	2.1%

‘Law assists the life and work of the Church of Ireland’

	Strongly Agree	Agree	Disagree	Strongly Disagree	Do Not know
Bishops	30%	60%	10%	0	0
Chancellors	25%	75%	0	0	0
Registrars	0	100%	0	0	0
Clergy	15.7%	69.6%	7.8%	1.3%	5.7%
Lay	11.4%	76.4%	8.6%	0	3.6%

Asked whether, in their opinion, there is a connection between the law of the Church of Ireland and theology the results were as follows:

	Yes	No	Maybe	No opinion
Bishops	90%	0	10%	0
Chancellors	63%	0	25%	12%
Registrars	91%	0	9%	0
Clergy	71%	4%	23%	2%
Lay	63%	2%	27%	8%

When asked an opinion as to whether or not the Church of Ireland would be able to fulfil its ministry and mission without making laws for itself, the outcomes were as follows:

	Yes	No	Maybe	No opinion
Bishops	0	100%	0	0
Chancellors	12%	88%	0	0
Registrars	0	100%	0	0
Clergy	8%	81%	10%	1%
Lay	6%	79%	14%	1%

Similarly, asked whether or not they agreed with the statement that ‘Canon law is applied ecclesiology’:

	Agree	Disagree	Do not know
Bishops	90%	10%	0
Chancellors	38%	0	62%
Registrars	64%	36%	0
Clergy	61%	11%	28%
Lay	49%	6%	45%

At a pragmatic level, participants were asked to indicate how often in the course of work/ministry within the Church of Ireland they had to make a decision that requires them to know the law of the Church of Ireland.

	Never	Seldom	Occasionally	Often
Bishops	0	0	0	100%
Chancellors	0	0	50%	50%
Registrars	0	9%	45.5%	45.5%
Clergy	1%	24%	54%	21%
Lay	13%	34%	34%	19%

In your work/ministry within the Church, how often do you have to make a decision that requires you to get legal advice?

	Never	Less than once a year	1-5 times a year	6 – 11 times a year	12 or more times a year
Bishops	0	0	50%	30%	20%
Chancellors	37.5%	25%	37.5%	0	0
Registrars	9%	18%	55%	9%	9%
Clergy	17%	54%	24%	4%	1%
Lay	39%	32.5%	22%	3.5%	3%

Identification of Sources

A key element in the survey requested respondents to designate twenty-five selected sources of law of the Church of Ireland and to classify which, in their opinion, are or are not sources of law for the Church of Ireland. The classification is tabulated in each of the following tables:

The Bible				
	Is a source	Is sometimes a source	Is not a source	Do not know
Bishops	90%	10%	0	0
Chancellors	100%	0	0	0
Registrars	55%	27%	18%	0
Clergy	70.5%	19.5%	9%	1%
Laity	64%	22%	9.5%	4.5%

The Creeds				
	Is a source	Is sometimes a source	Is not a source	Do not know
Bishops	80%	10%	10%	0
Chancellors	87.5%	0	0	12.5%
Registrars	64%	9%	27%	0
Clergy	65.5%	20%	14%	.5%
Laity	61.5%	16.5%	13%	9%

The Articles of Religion (Thirty-Nine Articles)				
	Is a source	Is sometimes a source	Is not a source	Do not know
Bishops	90%	10%	0	0
Chancellors	100%	0	0	0
Registrars	64%	18%	18%	0
Clergy	65%	22.5%	11%	1.5%
Laity	72%	13%	4.5%	10.5%

The Book of Common Prayer				
	Is a source	Is sometimes a source	Is not a source	Do not know
Bishops	90%	10%	0	0
Chancellors	100%	0	0	0
Registrars	73%	18%	9%	0
Clergy	67%	22.5%	9.5%	1%
Laity	65%	14%	13.55	7.5%

Rubrics				
	Is a source	Is sometimes a source	Is not a source	Do not know
Bishops	80%	20%	0	0
Chancellors	50%	37.5%	0	12.5%
Registrars	55%	36%	9%	0
Clergy	58%	24%	15%	3%
Laity	48%	15%	11%	26%

The Canons				
	Is a source	Is sometimes a source	Is not a source	Do not know
Bishops	80%	20%	0	0
Chancellors	75%	12.5%	0	12.5%
Registrars	100%	0	0	0
Clergy	91%	8.5%	0	.5%
Laity	77.5%	9%	0	13.5%

The Ecclesiastical Law of Ireland prior to 1871				
	Is a source	Is sometimes a source	Is not a source	Do not know
Bishops	80%	10%	0	10%
Chancellors	62.5%	37.5%	0	0
Registrars	64%	9%	18%	9%
Clergy	46%	27%	5%	22%
Laity	47%	23%	3%	27%

Irish Church Act 1869				
	Is a source	Is sometimes a source	Is not a source	Do not know
Bishops	90%	10%	0	0
Chancellors	87.5%	12.5%	0	0
Registrars	73%	18%	0	9%
Clergy	64.5%	12%	3%	20.5%
Laity	61%	10.5%	0	28.5%

Charter of Incorporation of the Representative Church Body				
	Is a source	Is sometimes a source	Is not a source	Do not know
Bishops	90%	10%	0	0
Chancellors	75%	25%	0	0
Registrars	73%	9%	9%	9%
Clergy	70%	10%	3%	17%
Laity	61%	13.5%	4.5%	21%

Preamble and Declaration to the Constitution of the Church of Ireland				
	Is a source	Is sometimes a source	Is not a source	Do not know
Bishops	90%	10%	0	0
Chancellors	75%	12.5%	12.5%	0
Registrars	73%	18%	9%	0
Clergy	75%	11%	7%	7%
Laity	63%	13%	4.5%	19.5%

The Constitution of the Church of Ireland				
	Is a source	Is sometimes a source	Is not a source	Do not know
Bishops	90%	10%	0	0
Chancellors	100%	0	0	0
Registrars	91%	9%	0	0
Clergy	95%	4%	0	1%
Laity	89.5%	5%	1.5%	4%

Regulations made by the Representative Church Body				
	Is a source	Is sometimes a source	Is not a source	Do not know
Bishops	70%	30%	0	0
Chancellors	75%	0	25%	0
Registrars	64%	18%	18%	0
Clergy	66%	22%	8%	4%
Laity	64%	19%	10%	7%

Regulations made by a Diocesan Synod				
	Is a source	Is sometimes a source	Is not a source	Do not know
Bishops	40%	40%	20%	0
Chancellors	87.5%	0	12.5%	0
Registrars	55%	9%	36%	0
Clergy	54%	27%	14%	5%
Laity	42%	30%	18%	10%

Regulations made by a Diocesan Council				
	Is a source	Is sometimes a source	Is not a source	Do not know
Bishops	40%	40%	20%	0
Chancellors	87.5%	0	12.5%	0
Registrars	45.5%	0	54.5%	0
Clergy	46.5%	28%	17.5%	8%
Laity	36%	26.5%	26.5%	11%

Regulations made by a Bishop				
	Is a source	Is sometimes a source	Is not a source	Do not know
Bishops	10%	60%	30%	0
Chancellors	62.5%	12.5%	25%	0
Registrars	18%	27%	46%	9%
Clergy	28.5%	35%	27%	9.5%
Laity	25%	30%	30%	15%

Rules made by a Select Vestry				
	Is a source	Is sometimes a source	Is not a source	Do not know
Bishops	10%	50%	40%	0
Chancellors	37.5%	25%	37.5%	0
Registrars	0	18%	82%	0
Clergy	15.5%	23.5%	55%	6%
Laity	14.5%	14.5%	62%	9%

Guidelines of the House of Bishops				
	Is a source	Is sometimes a source	Is not a source	Do not know
Bishops	10%	50%	40%	0
Chancellors	25%	50%	25%	0
Registrars	9%	36%	55%	0
Clergy	15%	38%	40%	7%
Laity	21%	29%	39%	11%

Executive Decision of a Bishop				
	Is a source	Is sometimes a source	Is not a source	Do not know
Bishops	10%	50%	40%	0
Chancellors	25%	50%	25%	0
Registrars	9%	27%	55%	9%
Clergy	21%	32%	35%	12%
Laity	22%	18%	42%	18%

Protocols e.g. of the RCB/Diocesan Council/Bishops				
	Is a source	Is sometimes a source	Is not a source	Do not know
Bishops	10%	50%	40%	0
Chancellors	25%	50%	12.5%	12.5%
Registrars	9%	18%	64%	9%
Clergy	21.5%	37%	31%	10.5%
Laity	27%	23%	33%	17%

Advice by Circular e.g. of the RCB/Diocesan Council/Bishops				
	Is a source	Is sometimes a source	Is not a source	Do not know
Bishops	10%	40%	40%	10%
Chancellors	25%	37.5%	12.5%	12.5%
Registrars	0	27%	55%	18%
Clergy	11%	37%	42%	19%
Laity	16%	18%	52.5%	13.5%

Local Parish Custom				
	Is a source	Is sometimes a source	Is not a source	Do not know
Bishops	10%	10%	80%	0
Chancellors	12.5%	50%	37.5%	0
Registrars	0	18%	82%	0
Clergy	6%	20%	65%	9%
Laity	5%	13.5%	71.5%	10%

Local Diocesan Custom				
	Is a source	Is sometimes a source	Is not a source	Do not know
Bishops	10%	20%	70%	0
Chancellors	12.5%	50%	37.5%	0
Registrars	0	27%	73%	0
Clergy	7%	18.5%	65%	9.5%
Laity	5.5%	13.5%	70%	11%

Church of Ireland Custom				
	Is a source	Is sometimes a source	Is not a source	Do not know
Bishops	20%	30%	50%	0
Chancellors	50%	50%	0	0
Registrars	0	45.5%	54.5%	0
Clergy	9.5%	29%	52.5%	9%
Laity	10%	23%	57%	10%

The Law of Ireland/the UK depending on where you live				
	Is a source	Is sometimes a source	Is not a source	Do not know
Bishops	60%	30%	10%	0
Chancellors	87.5%	12.5%	0	0
Registrars	64%	18%	9%	9%
Clergy	70%	21%	4%	5%
Laity	62.5%	22%	7.5%	8%

Accessibility of the Pre-1871 Ecclesiastical Law

All participants were asked whether in the course of their ministry or work in the Church of Ireland they had cause to ascertain an aspect of pre-1871/pre-disestablishment ecclesiastical law of the Church of Ireland.

	Yes	No	Do not know
Bishops	90%	10%	0
Chancellors	87.5%	12.5%	0
Registrars	36%	64%	0
Clergy	20.5%	70.5%	9%
Lay	16.5%	76.5%	7%

	Easily accessible	Accessible	Somewhat accessible	Not easily accessible	Do not know
Bishops	0	20%	30%	50%	0
Chancellors	0	12.5%	50%	37.5%	0
Registrars	18%	9%	9%	18%	46%
Clergy	2%	13%	17%	19%	49%
Lay	2%	13%	13%	18%	54%

Ascertaining the pre-1871/pre-Disestablishment Ecclesiastical Law

Where an individual found it necessary to ascertain such pre-1871 ecclesiastical law, to whom does each turn? The following tables indicate the extent to which each group researching the law him/herself; turns to legal commentaries and texts; a civil lawyer; a canon lawyer; previous opinions of one of the legal advisory committees and a colleague:

The Bishops:

Legal Commentaries and texts	22%
A civil lawyer	22%
Opinions of the Legal Advisory Committees	22%
Researched the law myself	33%
A colleague	33%
A canon lawyer	67%

The Chancellors:

Legal Commentaries and texts	83%
A civil lawyer	0%
Opinions of the Legal Advisory Committees	83%
Researched the law myself	83%
A colleague	0%
A canon lawyer	50%

The Registrars:

Legal Commentaries and texts	100%
A civil lawyer	0%
Opinions of the Legal Advisory Committees	25%
Researched the law myself	50%
A colleague	25%
A canon lawyer	0%

Clergy:

Legal Commentaries and texts	13%
A civil lawyer	15%
Opinions of the Legal Advisory Committees	15%
Researched the law myself	41%
A colleague	67%
A canon lawyer	20%

Laity:

Legal Commentaries and texts	27%
A civil lawyer	9%
Opinions of the Legal Advisory Committees	14%
Researched the law myself	41%
A colleague	55%
A canon lawyer	14%

Accessibility of sources other than pre-1871 Ecclesiastical Law:

The Constitution of the Church of Ireland					
	Easily Accessible	Accessible	Somewhat Accessible	Not Easily Accessible	Do not know
Bishops	90%	10%	0	0	0
Chancellors	87.5%	12.5%	0	0	0
Registrars	100%	0	0	0	0
Clergy	80.5%	14.5%	4%	.5%	.5%
Laity	47%	33%	9%	5%	6%

The Preamble and Declaration					
	Easily Accessible	Accessible	Somewhat Accessible	Not Easily Accessible	Do not know
Bishops	90%	10%	0	0	0
Chancellors	87.5%	0	0	0	12.5%
Registrars	91%	0	9%	0	0
Clergy	76%	16.5%	5%	2%	.5%
Laity	42%	23%	12%	11%	12%

The Canons					
	Easily Accessible	Accessible	Somewhat Accessible	Not Easily Accessible	Do not know
Bishops	90%	10%	0	0	0
Chancellors	87.5%	0	12.5%	0	0
Registrars	82%	9%	9%	0	0
Clergy	70%	20%	7%	2.5%	.5%
Laity	38%	29%	12%	11%	10%

The Book of Common Prayer and its Rubrics					
	Easily Accessible	Accessible	Somewhat Accessible	Not Easily Accessible	Do not know
Bishops	90%	10%	0	0	0
Chancellors	100%	0	0	0	0
Registrars	100%	0	0	0	0
Clergy	86%	12%	1.5%	0	.5%
Laity	69%	19%	4.5%	4.5%	3%

Statutes of the General Synod					
	Easily Accessible	Accessible	Somewhat Accessible	Not Easily Accessible	Do not know
Bishops	30%	60%	0	10%	0
Chancellors	62.5%	25%	0	12.5%	0
Registrars	64%	36%	0	0	0
Clergy	20%	40.5%	24%	14.5%	1%
Laity	20.5%	34%	29.5%	8%	8%

Resolutions of the General Synod					
	Easily Accessible	Accessible	Somewhat Accessible	Not Easily Accessible	Do not know
Bishops	30%	60%	10%	0	0
Chancellors	50%	25%	12.5%	12.5%	0
Registrars	45.5%	45.5%	9%	0	0
Clergy	21.5%	37%	29%	12%	.5%
Laity	25%	36%	26%	6%	7%

Regulations of the RCB					
	Easily Accessible	Accessible	Somewhat Accessible	Not Easily Accessible	Do not know
Bishops	10%	40%	40%	10%	0
Chancellors	12.5%	25%	37.5%	25%	0
Registrars	18%	46%	36%	0	0
Clergy	15%	32%	35.5%	17%	.5%
Laity	14%	33%	32%	13%	8%

Regulations of Diocesan Synod					
	Easily Accessible	Accessible	Somewhat Accessible	Not Easily Accessible	Do not know
Bishops	10%	40%	40%	10%	0
Chancellors	25%	25%	25%	25%	0
Registrars	27%	64%	9%	0	
Clergy	26%	34.5%	29%	10%	.5
Laity	28%	29%	27%	11%	5%

Regulations of Diocesan Council					
	Easily Accessible	Accessible	Somewhat Accessible	Not Easily Accessible	Do not know
Bishops	10%	20%	60%	10%	0
Chancellors	25%	37.5%	25%	12.5%	0
Registrars	27%	55%	9%	9%	0
Clergy	21%	32%	32%	14.5%	.5%
Laity	21%	28%	31%	15%	5%

Marriage Regulations					
	Easily Accessible	Accessible	Somewhat Accessible	Not Easily Accessible	Do not know
Bishops	50%	30%	20%	0	0
Chancellors	22%	12.5%	50%	12.5%	0
Registrars	45.5%	54.5%	0	0	0
Clergy	63%	27%	7%	2%	1%
Laity	28.5%	41%	16.5%	6%	8%

Safeguarding Trust					
	Easily Accessible	Accessible	Somewhat Accessible	Not Easily Accessible	Do not know
Bishops	60%	30%	10%	0	0
Chancellors	75%	12.5%	12.5%	0	0
Registrars	55%	36%	0	9%	0
Clergy	83%	13.5%	2%	1%	.5%
Laity	63%	28%	4.5%	.5%	4%

Guidelines of the House of Bishops					
	Easily Accessible	Accessible	Somewhat Accessible	Not Easily Accessible	Do not know
Bishops	0	40%	40%	20%	0
Chancellors	12.5%	25%	50%	12.5%	0
Registrars	0	46%	36%	18%	0
Clergy	15%	31%	36%	16%	2%
Laity	7.5%	29%	28%	22%	13.5%

Protocols of the House of Bishops					
	Easily Accessible	Accessible	Somewhat Accessible	Not Easily Accessible	Do not know
Bishops	0	20%	30%	50%	0
Chancellors	12.5%	12.5%	37.5%	37.5%	0
Registrars	0	46%	27%	27%	0
Clergy	6%	22%	39%	29%	4%
Laity	4%	23%	33%	26%	14%

Guidelines of Individual Bishops					
	Easily Accessible	Accessible	Somewhat Accessible	Not Easily Accessible	Do not know
Bishops	10%	40%	20%	30%	0
Chancellors	12.5%	37.5%	25%	25%	0
Registrars	9%	55%	18%	18%	0
Clergy	31%	37%	21%	8%	3%
Laity	18%	33%	21.5%	18.5%	9%

Parochial Regulations					
	Easily Accessible	Accessible	Somewhat Accessible	Not Easily Accessible	Do not know
Bishops	0	20%	10%	70%	0
Chancellors	25%	0	50%	25%	0
Registrars	9%	55%	9%	18%	9%
Clergy	32%	34%	24%	7%	3%
Laity	16.5%	35%	22%	19%	7.5%

The impact and encroachment of State Law

Each person surveyed was asked whether in his/her experience Civil/State law appears to be having a greater or lesser impact on his/her life and work within the Church of Ireland than it did both ten and also five years ago. The tables indicate as follows:

	Greater than 10 years ago	Much the Same as 10 years ago	Less than 10 years ago
Bishops	100%	0	0
Chancellors	100%	0	0
Registrars	91%	0	9%
Clergy	81%	16%	3%
Lay	77%	20%	3%

	Greater than 5 years ago	Much the Same as 5 years ago	Less than 5 years ago
Bishops	100%	0	0
Chancellors	75%	25%	0
Registrars	73%	27%	0
Clergy	70%	28%	2%
Lay	65%	33%	2%

Moreover, those surveyed were asked to indicate whether the following areas of the State law were having a greater, lesser, much the same impact than ten years ago. The following levels (by the various groups) were identified as the extent of there being a greater impact of the areas of the law than ten years ago:

Area of the Law	Bishops	Chancellors	Registrars	Clergy	Laity
Blasphemy	50%	12.5%	46%	24%	22%
Charity	100%	100%	91%	86%	72%
Child Protection	100%	100%	100%	97%	94%
Civil Partnerships	100%	100%	73%	83%	86%
Copyright	80%	37.5%	82%	75%	63%
Criminal Law	50%	50%	18%	39%	36%
Data Protection Law	90%	100%	91%	83%	84%
Education Law	90%	87.5%	82%	66%	74%
Employment Law	100%	100%	91%	85%	78%
Environment Law	80%	87.5%	73%	70%	67%
Equality Law	100%	75%	73%	82%	79%
ECHR	90%	75%	73%	63%	62%
Health and Safety	100%	100%	100%	95%	89%
Heritage Legislation	90%	87.5%	63%	70%	69%
Human Rights Law	100%	75%	82%	67%	62%
Immigration Law	100%	62.5%	73%	61%	59%
Insurance Law	90%	50%	82%	71%	60%
Family Law	90%	100%	36%	58%	59%
Marriage Law	90%	75%	64%	74%	69%
Pensions Law	80%	87.5%	73%	57%	64%
Planning Law	90%	87.5%	82%	62%	65%
Public/Constitutional	40%	62.5%	36%	36%	37%
Tax Law	70%	62.5%	73%	52%	50%

Understanding of and Reliance on Quasi-Legislation and Soft Law

People surveyed were asked whether or not they were familiar with two terms: ‘quasi-legislation’ and ‘soft law’. The following tables set out those who indicated that they are familiar with each term (the remainder had not in each case), and the extent to which each group of respondents observes the Church of Ireland to be ordering its life more by informal regulation than ten years ago:

Term	Bishops	Chancellors	Registrars	Clergy	Laity
‘Quasi-Legislation’	100%	75%	55%	44%	40%
‘Soft Law’	100%	75%	18%	28%	33%

	More	Less	Not Sure
Bishops	60%	10%	30%
Chancellors	50%	12.5%	25%
Registrars	73%	0	27%
Clergy	35%	25%	40%
Lay	29%	26%	45%

Low lay and clergy figures are unsurprising given the lower level of encounter with the particular terms or phenomenon. This is all the more concerning when allied with the factual analysis and breakdown of law-making in the Church. The following tables indicate that the manifest increasing reliance of the Church of Ireland on quasi-legislation and soft law in its regulation is not being observed or detected (with the possible exception of Registrars) to the extent that it ought:

Bishops:

	Frequently	Sometimes	Seldom	Never
Administrative Circular	40%	50%	10%	0
Code of Practice	30%	40%	30%	0
Decision of the House of Bishops	10%	70%	20%	0
Decision of the RCB	50%	40%	10%	0
Executive decision of a bishop	10%	40%	50%	0
Guidelines	10%	60%	30%	0
Handbook	20%	30%	50%	0
Notice	10%	40%	50%	0
Resolution of General Synod	70%	30%	0	0
Resolution of Diocesan Synod	50%	20%	30%	0
Protocol	40%	50%	10%	0

Chancellors:

	Frequently	Sometimes	Seldom	Never
Administrative Circular	25%	62.5%	12.5%	0
Code of Practice	12.5%	87.5%	0	0
Decision of the House of Bishops	50%	50%	0	0
Decision of the RCB	62.5%	37.5%	0	0
Executive decision of a bishop	25%	75%	0	0
Guidelines	37.5%	62.5%	0	0
Handbook	25%	50%	25%	0
Notice	12.5%	62.5%	25%	0
Resolution of General Synod	37.5%	62.5%	0	0
Resolution of Diocesan Synod	25%	62.5%	12.5%	0
Protocol	0	50%	50%	0

Registrars

	Frequently	Sometimes	Seldom	Never
Administrative Circular	18%	73%	9%	0
Code of Practice	27%	64%	9%	0
Decision of the House of Bishops	27%	64%	9%	0
Decision of the RCB	27%	64%	0	9%
Executive decision of a bishop	9%	55%	18%	18%
Guidelines	18%	64%	18%	0
Handbook	0	55%	36%	9%
Notice	0	55%	45%	0
Resolution of General Synod	27%	55%	9%	9%
Resolution of Diocesan Synod	18%	55%	9%	18%
Protocol	9%	55%	27%	9%

Clergy:

	Frequently	Sometimes	Seldom	Never
Administrative Circular	30%	48%	19%	3%
Code of Practice	28%	54%	16%	2%
Decision of the House of Bishops	30%	54%	13%	3%
Decision of the RCB	20%	60%	17%	3%
Executive decision of a bishop	13.5%	46.5%	35%	5%
Guidelines	27.5%	57.5%	13%	2%
Handbook	19.5%	53%	24%	3.5%
Notice	18%	53%	24%	5%
Resolution of General Synod	48%	44%	6%	2%
Resolution of Diocesan Synod	33%	52%	13%	2%
Protocol	13%	53%	29%	5%

Laity:

	Frequently	Sometimes	Seldom	Never
Administrative Circular	29%	52%	12.5%	6.5%
Code of Practice	37%	51%	7.5%	4.5%
Decision of the House of Bishops	29%	54%	11%	6%
Decision of the RCB	38%	47%	10%	5%
Executive decision of a bishop	14%	58%	20%	8%
Guidelines	25.5%	62.5%	9%	3%
Handbook	17%	53%	23%	7%
Notice	11%	53%	29%	7%
Resolution of General Synod	48%	42%	5%	5%
Resolution of Diocesan Synod	32%	50%	11%	7%

Protocol	21%	51%	17%	11%
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The Survey: The Anglican Legal Framework

The survey asked if respondents had heard of *The Principles of Canon Law Common to the Churches of the Anglican Communion*. Responses are tabulated as follows:

	Yes	No	Not Sure
Bishops	100%	0	0
Chancellors	14%	72%	14%
Registrars	36%	55%	9%
Clergy	13%	77.5%	9.5%
Laity	20%	67%	13%

When asked to what extent it was believed to be important that the law of the Church of Ireland be consonant with *The Principles of Canon Law Common to the Churches of the Anglican Communion* the following were the outcomes:

	Very Important	Important	Not important	Not at all important
Bishops	10%	80%	10%	0
Chancellors	17%	83%	0	0
Registrars	20%	80%	0	0
Clergy	14.5%	68.5%	15%	2%
Lay	9%	79%	11%	1%

Respondents were asked if they had identified gaps in the law of the Church of Ireland which they believed need to be addressed. 60% of bishops; 17% of chancellors; 36% of registrars; 23% of clergy; and 13% of laity identified gaps. The gaps identified by respondents were:

- where State law sets out something definitively and Church law is silent.
- the practice of Boards of Nomination
- Clergy Support structures
- Code of conduct for Laity (x2)
- Workability of disciplinary structures
- Code of duty and conduct for clergy (x3)
- The redundancy of some canons
- The inability or unwillingness of the Church to provide even guidelines in difficult areas such as children and communion or same-sex partnerships
- Church membership (x2)
- Conflict occasionally between parts of the CCI.
- The powers of the Bishop in relation to the Dean of Saint Patrick's Cathedral.
- Clarity about the legal position of clergy appointed to various posts by bishops.

- The terms of clerical appointments.
- Accountability of clergy.
- Employment status of clergy. (x 12)
- Sick leave of clergy.
- Status of the Incumbent in employment law.
- Contracts for Rectors.
- Protection of rights of clergy in the workplace.
- No bullying and harassment policy.
- Mobility of clergy.
- No disciplinary scheme for the laity. (x3)
- Vagueness of parts of the CCI.
- Proportionate representation on select vestries in unions of parishes.
- Heterosexual and homosexual gender equality.
- Response to civil partnership legislation. (x3)
- Homosexuality.
- The participation of openly practising homosexuals in the life of the Church; ordained and lay.
- Conflict with other churches in the Anglican Communion arising from civil partnerships.
- Permission for same gender blessings. (x3)
- Employment law confusion arising in shared appointments e.g. Church and a Third-Level education institution.
- A new licence to officiate rather than permission to officiate for retired clergy in order to bind them into the law of the Church.
- A simplified declaration for youth and pastoral workers.
- Access to vulnerable adults.
- Tied Housing
- Strengthening the powers of bishops in relation to oversight of clergy.
- Accountability and supervision of clergy.
- Clarification of the law in relation to faculties.
- Inconsistencies between dioceses in relation to transfer from non-stipendiary to stipendiary ministry. (x 2)
- Role of Readers.
- Reform of episcopal electoral process.
- Gender recognition.

- Online social networking
- Out of date and irrelevant legislation
- Clarification of the status and role of the House of Bishops outside General Synod.

In addressing these gaps, the question was asked whether it was, or may be, depending on the circumstances, or was not appropriate, to turn to the laws of other churches in the Anglican Communion for guidance.

	Appropriate	May or may not be appropriate depending on the circumstances	Not appropriate	Do not know
Bishops	20%	80%	0	0
Chancellors	14%	72%	0	14%
Registrars	18%	82%	0	0
Clergy	18%	77%	4%	1%
Lay	14.5%	79.5%	2%	4%

Appendix B

Table of Statute Law Revision in Ireland and its effects on Ecclesiastical Law¹

Appendix B: Section 1: Repealed Statutes

Ordinary Typeface	-	Statutes repealed by the Statute Law Revision Act 2007
±	-	Statutes repealed by the Statute Law Revision (Pre-1922) Act 2005
*	-	Statutes repealed by the Statute Law Revision Act 1983
+	-	Statutes repealed by the Statute Law Revision (Pre-Union Irish Statutes) Act 1962
^	-	Statutes repealed or partially repealed by legislation other than the Statute Law Revision Acts 1962 to 2007 For a precise list of the sections repealed see the Irish Statute Book ²

11 Irish Statutes (1169-1800) Repealed

2 Hen III [CDI vol 1 no 739]	Elections or promotions in cathedrals (1216)
2 Hen III CDI vol 1 no 849	Ecclesiastical Jurisdiction (1218)
* 21 Hen III	Concerning those born before wedlock (1237)
18 Edw I CDI vol 3 no 580	Collection and payment of tithes (1290)
19 Edw I	Articles of the Clergy (1291)

¹ Extrapolated by this author from the Statute Law Revision Acts 1962 to 2007, the website of the Attorney General of Ireland, and in particular of the Statute Law Revision Project accessed on 2nd February 2009 and the Irish Statute Book online at < www.irishstatutebook.ie > accessed on 2 February 2009

² Available eg at < www.irishstatutebook.ie > accessed on 25 March 2012

32 Edw I CDI vol 5 no 262	Collectors of the Papal Tenth (1303)
35 Edw I	Application in Ireland of Statute as to Religious Persons (1307)
± 1 Edw II	Observance in Ireland of the Statute of Winchester (1308)
3 Edw II c 10	Only those of the English nation to be received into Religious Orders (1310)
3 Edw II c 11	Certain ordinances to be published and offenders to be excommunicated (1310)
13 Edw II c 1	Liberties, customs, franchises, etc, of the Holy Church to be enjoyed without interference (hereinafter 'Confirmation of the liberties of the Church') (1320)
13 Edw II c 13	Certain ordinances to be published and offenders to be excommunicated (1320)
25 Edw III c 1	Confirmation of the liberties of the Church (1351)
* 25 Edw III c 6	Benefices (1351)
* 25 Edw III c 2	Obtaining Benefices from Rome (1364)
* 45 Edw III	Prohibition to Spiritual Courts (1370)
4 Ric II (PRO vol 1)	Subsidy granted by prelates and clergy (1380)
4 Ric II (PRO vol 1)	Irish Statute 40 Edw III c14 confirmed (1380)
3 Hen IV (PRO vol 1)	Confirmation of the liberties of the Church (1402)

* 4 Hen IV	Benefices (1403)
11 Hen IV c 1	Confirmation of the liberties of the Church (1410)
11 Hen IV c 19	Repeals of Patents to Abbots and Priors (1410)
13 Hen IV (PRO vol 1)	Writ patent out of England for enrolling and proclaiming the Statutes against Provisors (1411)
9 Hen V c 1	Owing to war and disagreements the King's presence necessary in Ireland (1421)
9 Hen V c 4	Pope's sanction to a crusade against named Irish enemies to be sought (1421)
9 Hen V c 18	The Patronage of the living of Galtrym, Diocese of Meath (1421)
5 Hen VI (PRO vol 2)	Priory of Mullingar (1427)
7 Hen VI c 1	Confirmation of the liberties of the Church (1428)
8 Hen VI c 1	Confirmation of the liberties of the Church (1430)
10 Hen VI c 1	Confirmation of the liberties of the Church (1431)
25 Hen VI c 1	Confirmation of the liberties of the Church (1447)
27 Hen VI c 1	Confirmation of the liberties of the Church (1449)
27 Hen VI c9	Lands, etc, held of temporal lords charged with rents, etc, as alms for religious houses and not ancient foundation of the same and tenants of such

	lands, etc, to be assessed for subsidies and taxes (1449)
27 Hen VI c18	William Crose made Prior of Foure (1449)
27 Hen VI c 21	Bishop of Leighlin discharged of £20 amercement for not appearing in a Great Council (1449)
27 Hen VI c 23	Bishop of Connor and Down discharged of £20 amercement for not appearing in a Great Council (1449)
27 Hen VI c 24	John, Bishop of Limerick pardoned an amercement of £20 for not attending a Great Council (1449)
27 Hen VI c 25	The King advised to grant that John Kevernok be Treasurer of Limerick Cathedral (1449)
28 Hen VI c 1 (Dublin) c 1	Confirmation of the liberties of the Church (1449)
28 Hen VI (Dublin) c 14	Commendations sent to the King on behalf of the Archishop of Dublin (1449)
28 Hen VI (Dublin) c 22	Grant of liberties to pilgrims coming form and going to the Abbey of Trim (1449)
28 Hen VI (Drogheda) c 1	Confirmation of the liberties of the Church (1450)
28 Hen VI (Drogheda) c 15	Archbishop of Armagh may purchase lands, advowsons etc to the value of 100 marks annually (1450)

28 Hen VI (Drogheda) c 16	Leave to Archbishop of Armagh etc to levy £100 paid for resisting O'Neill and others in Louth (1450)
28 Hen VI (Drogheda) c 17	Abbot of Our Lady, Navan may purchase lands, advowsons etc to the value of £40 annually (1450)
28 Hen VI (Drogheda) c 18	Commons of Irishtown, Kilkenny, parishioners of vicars of the common hall of St Canice, discharged of all tallages, assessments, etc (1450)
28 Hen VI (Drogheda) c 19	Licence to James, Earl of Ormond, to go on pilgrimage to Canterbury and other places, and to be absent one year (1450)
28 Hen VI (Drogheda) c 23	Robert, Bishop of Ferns, by reason of age and infirmity, excused from attendance at parliaments or great councils (1450)
29 Hen VI c 1	Confirmation of the liberties of the Church (1450)
29 Hen VI c 4	Grant to Michael, Archbishop of Dublin (1450)
32 Hen VI c 17	An Act configuring a lease of the Prebend of Luske to Robert Dowall, Chief Justice (1453)
32 Hen VI c 29	Grant of certain land for life to Chancellor of St Patrick's of Dublin (1453)
33 Hen VI c 1	Confirmation of the liberties of the Church (1455)
33 Hen VI c 13	Michael, Archbishop of Dublin to have £40 (1455)

33 Hen VI c 14	Edmond, Bishop of Meath, to be restored to possessions of the See of which he had been deprived under acquisitions (1455)
34 Hen VI c 1	Confirmation of the liberties of the Church (1455)
34 Hen VI c 29	Licence for the Abbess of Clonard to exchange Calliaghstown for Dexterstown and Jordanstown (1455)
35 Hen VI c 1	Confirmation of the liberties of the Church (1456)
35 Hen VI c 11	Fraternity of St George, Dublin, to receive a cow or its value out of booty in County Dublin (1456)
35 Hen VI c 21	Prior, etc, of the Hospital of St John of Jerusalem in Ireland to distrain for rents and alms, notwithstanding seizure into King's hands (1456)
35 Hen VI c 28	Stephen Derpatrick and others not to interfere with Abbot of St Thomas, Dublin, in tithes of the parish of Derrypatrick, Meath (1456)
36 Hen VI c 1	Confirmation of the liberties of the Church (1458)
36 Hen VI c 11	Licence to Edward Somerton, second justice, to found a chantry at St Mary's altar in St Nicholas Church, near the High Cross, Dublin (1458)
36 Hen VI c 12	Letters patent to John Chevir to found a chantry in honour of St Cithe in the Church of St Michan in the suburbs of Dublin (1458)
36 Hen VI c 13	Authority granted to Robert Preston, Lord of Gormanston, to found a chantry in a chapel near

	the church of St Patrick of Stamullin, County Meath (1458)
36 Hen VI c 14	Ballymany, Ladytown and Morristown, Diocese of Kildare, to be united to the house of Connell (1458)
36 Hen VI c 19	Proportion of booty taken from Irish enemies to be given to fraternity of St George, Dublin, for support of works of the church of St George (1458)
37 Hen VI c 1	Confirmation of the liberties of the Church (1459)
35 Hen VI c 6	Abbey of St Thomas the Martyr near Dublin may hold their manors, etc (1459)
38 Hen VI c 1	Confirmation of the liberties of the Church (1460)
38 Hen VI c 18	Archbishop of Tuam and the bishops of Limerick, Emly, Killaloe, Derry, Down and Connor, to appear in Chancery (1460)
38 Hen VI c 20	Convent of the House of St Mary, Trim, may elect their abbots without licence (1460)
38 Hen VI c35	Licence to the Friars Preachers, Dublin, to hold lands, etc, given to them in alms (1460)
38 Hen VI c 50	Owing to alienations by former archbishops of the property of the See of Dublin, the marches are wasted (1460)

38 Hen VI c 53	Licence for Prior of St Giles, Little Malvern, and convent, to be absent from Ireland for 3 years, they being parsons of Clonsilla (1460)
38 Hen VI c 59	Thomas St Just, parson of Trim, to have leave to go to England (1460)
38 Hen VI c 62	John Wall, parson of Galtrim, to have leave to go to England (1460)
1 Edw IV c 1	Confirmation of the liberties of the Church (1462)
1 Edw IV c 8	Proctors of Kilmallock Church, County Limerick, may receive lands, rents Etc (1462)
3 Edw IV c 1	Confirmation of the liberties of the Church (1463)
3 Edw IV c 12	John Lofft, etc, pretended burgesses of Mungret, to do Bishop of Limerick suit and service, etc (1463)
3 Edw IV c 20	Inspeximus charter to Hospital of St John of Jerusalem (1463)
3 Edw IV c 35	Suit against Archbishop of Dublin and Robert Ashe, void (1463)
3 Edw IV c 36	Proctors of St Patrick's, Wexford, may receive possessions, etc, for said church (1463)
3 Edw IV c 37	Confirmation of grant to SS Peter and Paul, Wexford (1463)
3 Edw IV c 38	Archbishop of Dublin discharged of royal service, out of Coilacht, it being waste (1463)

- 3 Edw IV c 59 Distresses not to be taken in Donore, etc as a support for the Abbot and Canons (1463)
- 3 Edw IV c 60 Abbey of St Thomas, Dublin, to have church of St Columba, of Confey (1463)
- 3 Edw IV c 75 Dean and Chapter of Kildare to appear in Parliament by a proctor (1463)
- 3 Edw IV c 81 Archbishop of Dublin restored to services out of Galmoreston, etc (1463)
- 3 Edw IV c 99 Founding of a chantry in Dunboyne Church (1463)
- 3 Edw IV c 100 Chaplains of the new College of St Mary, Youghal, may acquire lands etc (1463)
- 3 Edw IV c 101 House of Friars Preachers, Naas to have a water mill and water near Naas and Yagoestown (1463)
- 5 Edw IV c 1 Confirmation of the liberties of the Church (1465)
- 5 Edw IV c 26 Establishment of Friars Preachers of Kilkenny to be free from secular exaction (1465)
- 5 Edw IV c 33 Fraternity of brethren and sisters to be known as that of St Nicholas the Bishop, of Dunsany (1465)
- 5 Edw IV c 35 Licence for James, Earl of Ormond, and others to found a Guild of Shoe-makers of Dublin, to be called the Guild of the Blessed Virgin Mary: also to found a chantry at St Michael's Church, High Street, Dublin (1465)

5 Edw IV c 45	John, Archbishop of Armagh, may appoint deputy in his office as Warden of the Peace for Uriell and Louth (1465)
5 Edw IV c 50	Confirmation of grant to Friars Preachers of Dublin of 10 marks out of the fee farm of the City (1465)
5 Edw IV c 51	Confirmation of leave of absence out of Ireland for 4 years to John Alleyn, Prebendary of Howth (1465)
+ 7 Edw IV c 2	Clergy (1467)
7 & 8 Edw IV c 1	Confirmation of the liberties of the Church (1467)
7 & 8 Edw IV c 8	The Church to command subjects to be obedient to the King (1467)
7 & 8 Edw IV c 12	Recovery of presentation of vicarage of Skreen by John, Abbot of St Mary's, Dublin, confirmed (1467)
7 & 8 Edw IV c 13	Licence to John, Earl of Worchester, and others, to found a chantry at the altar of St Katherine in church of St Secundinus, Dunshaughlin (1467)
7 & 8 Edw IV c 15	Archbishop of Dublin, as Lord of Dalkey, to appoint water bailiff there (1467)
7 & 8 Edw IV c 25	Unions, etc, of the certain prebends and appropriations to precentorship, treasurership and archdeaconry of Glendalough in St Patrick's, Dublin, etc (1467)

7 & 8 Edw IV c 27	Patent of John Alleyn, Dean of St Patrick's Cathedral (1467)
7 & 8 Edw IV c 48	Act of Resumption (1467)
7 & 8 Edw IV c 61	John Alleyn, Dean of St Patrick's ,to have revenues of the deanery (1467)
7 & 8 Edw IV c 68	Ten marks granted to Friars Preachers, Drogheda (1467)
7 & 8 Edw IV c 78	Legacies to St David's Church, Kilsallaghan, to be in force (1467)
7 & 8 Edw IV c 81	Chapter acts of St Patrick's, Dublin, for extension of divine service and hospitality to be in force, as if made at foundation (1467)
7 & 8 Edw IV c 82	Union of the vicarage of Ardbraccan (1467)
7 & 8 Edw IV c 83	Carmelites of St Mary's, Drogheda to have 10s chief rent (1467)
8 -10 Edw IV (PRO vol 5[5])	St Mary's Abbey, Dublin discharged from payment of rents in County Dublin (1469)
10 Edw IV c 1	Confirmation of the liberties of the Church (1470)
10 Edw IV c 17	Rents, etc, out of Newcastle Lyons granted to Guild of St Mary, Mulhuddart (1470)
10 Edw IV c 18	Certain services released to St Wolstan's, County Kildare (1470)

10 Edw IV c 19	Abbot of Duleek may repair the weir on the Boyne at the Grange (1470)
10 Edw IV c 20	Gifts, leases, etc, made by Tintern Abbey since Thomas Yong was Abbot to be, void (1470)
10 Edw IV c 28	Archbishop of Dublin restored to his right in Lambay Island (1470)
11 & 12 Edw IV c 1	Confirmation of the liberties of the Church (1471)
11 & 12 Edw IV c 10	Confirmation of grant of priory of St Katherine, near Leixlip, to St Thomas Abbey, Dublin (1471)
11 & 12 Edw IV c 11	St Mary's Abbey, Dublin, to enjoy lands granted or to be granted to it (1471)
11 & 12 Edw IV c 28	Irish Clerks made Papal Subdelegates attainted under Statute of Provisors (1471)
11 & 12 Edw IV c 30	William, Bishop of Meath, pardoned induction of Irish priests, etc (1471)
11 & 12 Edw IV c 36	John Rathe confirmed in the vicarage of St Columba, Swords (1471)
11 & 12 Edw IV c 47	Executors of William, Bishop of Meath, may dispose of his goods (1471)
11 & 12 Edw IV c 58	Roger, Abbot of Mellifont, and his house to be under the King's protection (1471)
11 & 12 Edw IV c 68	William Lucok, Abbot of SS Peter and Paul, Knock, near Louth (1471)

11 & 12 Edw IV c 69	Confirmation of grant to Guild of St Mary (1471)
11 & 12 Edw IV c 81	Incumbents and patrons of the Church of St Fintan of Carna and others to appear to show title (1471)
11 & 12 Edw IV c 82	Incumbent and patron of St John's, Wexford, to appear and show title (1471)
11 & 12 Edw IV c 85	Edmond Walsh to appear to answer the Vicars of St Patrick's (1471)
11 & 12 Edw IV c 87	John, Archbishop of Dublin, to have restitution of temporalities (1471)
12 & 13 Edw IV c 1	Confirmation of the liberties of the Church (1472)
12 & 13 Edw IV c 12	John Danston, farmer of the church of St James, Athboy, to pay £20 to the Bishop of Meath, recovered from the Archbishop of Armagh (1472)
12 & 13 Edw IV c 15	Confirmation of Act of 11 Edw 4 in favour of St Mary's Abbey, Dublin (1472)
12 & 13 Edw IV c 16	Abbot of Mellifont may build houses, etc, in Callan, where burgesses do not do so (1472)
12 & 13 Edw IV c 20	Confirmation of grants to House of St Mary, Trim, for a perpetual light before the image of Our Lady (1472)
12 & 13 Edw IV c 21	Prior of Christ Church Dublin may enter into the manor of Drumsalian, leased by him under coercion to John Begge (1472)

- 12 & 13 Edw IV c 22 Abbot of Baltinglas to receive £10 to erect a castle near Windgates, County Kildare (1472)
- 12 & 13 Edw IV c 33 Richard, "pretended" Bishop of Kildare, to appear before the Barons of the Exchequer to answer for killing of James Douedall in a riot (1472)
- 12 & 13 Edw IV c 37 James Ketyng, Prior of St John's of Jerusalem in Ireland, to appear in the Court of Common Pleas to answer Malachy Malone, Dean of Kildare, for commandery of Tully, leased to the said Malachy (1472)
- 12 & 13 Edw IV c 49 Prior of St John's of Jerusalem in Ireland to be free of subsidies, etc(1472)
- 12 & 13 Edw IV c 50 House of Our Blessed Lady of Mellifont to be under the King's protection for a year (1472)
- 12 & 13 Edw IV c 51 Christopher, Abbot of Trim, bound for England on public service; none to take coynye (billeting) or livery on the possessions of the House of Our Lady, Trim, or to despoil any pilgrim coming to the same House (1472)
- 12 & 13 Edw IV c 52 Confirmation of grant of £10 yearly out of Kildalkey, County Meath, to House of Our Lady of Trim for a special mass (1472)
- 12 & 13 Edw IV c 62 Archbishop of Dublin and others to assess sums on County Dublin for hire of soldiers to resist Geraldines, etc (1472)

- 12 & 13 Edw IV c 63 Leave of absence for Nicholas Douedall, Prebendary of Clonmethan, to go to Oxford for 8 years to pursue his studies (1472)
- 12 & 13 Edw IV c 65 Roger Moron, Treasurer of Ferns, restored to the Church of Carne, etc, to which he had been presented by Bishop of Ferns and Act against them annulled (1472)
- 12 & 13 Edw IV c 74 John Galbarry to appear, to show title to the Bay, Clondalkin, which had been given to the Vicars of St Patrick's Cathedral, Dublin, by the Archbishop (1472)
- 12 & 13 Edw IV c 77 Ploughland of the Yard in the Mallhow granted to the inhabitants of Gralagh and Curragh to enable them to maintain a chaplain to celebrate divine (1472)
- 14 Edw IV c 4 Dr Marcel of Rome to quit Ireland (1474)
- 14 Edw IV c 7 Confirmation of title of Bishop of Meath to certain manors, liberties, franchises, etc (1474)
- 14 Edw IV c 8 Annuities, etc, granted by Bishop of Meath to persons who are now absentees to be void unless the grantees return and do service (1474)
- 14 Edw IV c 11 Pilgrims, etc, coming to visit St Katherine's, Fieldtown, to be under the King's protection (1474)
- 14 Edw IV c 1 Letters patent to be made for licence for the nunnery of Grace Dieu to acquire lands, etc (1474)

- 14 Edw IV c 17 Letters patent to be made of licence to Thomas, Earl of Kildare, and others to found a fraternity in honour of the Blessed Virgin Mary and St Katherine the Virgin (1474)
- 15 & 16 Edw IV c 1 Confirmation of the liberties of the Church (1475)
- 15 & 16 Edw IV c 11 Confirmation of protection, etc, to John, Archbishop of Dublin (1475)
- 15 & 16 Edw IV c 19 Dr Marcel to quit Ireland, Prior of Kilmainham not to harbour him (1475)
- 15 & 16 Edw IV c 22 Prioress and Convent of Lismullin may purchase lands, etc (1475)
- 15 & 16 Edw IV c 23 Confirmation of grant of licence of absence out of Ireland to the Prior, etc, of Lanthony near Gloucester (1475)
- 15 & 16 Edw IV c 24 Confirmation of grant of licence of absence out of Ireland to the Prior, etc, of Lanthony the first to Wales (1475)
- 15 & 16 Edw IV c 27 Esmond Harrold to appear in the Court of Common Pleas to show title to "the Bay", Clondalkin, given to the Vicars of St Patrick's, Dublin, for the maintenance of a weekly mass (1475)
- 15 & 16 Edw IV c 28 Prior of the Hospital of St John of Jerusalem in Ireland to appear in Chief Place (Court of Common Pleas) and answer an action of debt at the suit of Sir Robert Dovedall and others (1475)

- 15 & 16 Edw IV c 29 Censures of the Church to be fulminated against tenants in Irishtown, Kilkenny, who retain rent payable in lieu of tallages, etc, to the Vicars of the Common Hall of St Canice of Kilkenny (1475)
- 15 & 16 Edw IV c 30 Pardon of treasons, etc, to William Grete, late Prior of the house of St John the Baptist, near Trim, and Richard Bellewe (1475)
- 15 & 16 Edw IV c 34 Foundation of Chantry in Church of St John the Baptist, Piercetown Laundey (1475)
- 15 & 16 Edw IV c 37 Indictment against the Abbess of Odder and others annulled (1475)
- 15 & 16 Edw IV c 39 Annulling appointment by Archbishop of Dublin of Esmund Dudelay to office of Constable of the Castle of Swords (1475)
- 15 & 16 Edw IV c 40 Nicholas Chamer to have pension granted to him on his giving Church of St Broghan of Ballymany to the House of the Blessed Virgin Mary, Connell (1475)
- 15 & 16 Edw IV c 41 Annuity granted by Henry, late Abbot of Baltinglas (now Abbot of Duiske), to his own use, to be void while he is Abbot of any other House (1475)
- 15 & 16 Edw IV c 42 House of the Blessed Virgin Mary, Navan, may elect Abbots without licence who may be consecrated and installed by the Ordinary (1475)
- 15 & 16 Edw IV c 44 Act against Davy, Bishop of Ossory, annulled (1475)

- 15 & 16 Edw IV c 52 On death of Archbishops and Bishops, and during vacancies, guardians of spiritualities to keep the manses of their manors in repair, etc, out of the profits of the demesnes (1475)
- 15 & 16 Edw IV c 53 Those who sue bulls at Rome against incumbent Ecclesiastics in Ireland and put them in execution to be attainted of treason (1475)
- 15 & 16 Edw IV c 60 James Madoke, a student at Oxford, to have 6 marks yearly out of Mulhuddart until he obtain a competent benefice and the incumbent of Mulhuddart to have the residue of the tithes, etc (1475)
- 15 & 16 Edw IV c 64 Land of Abbot, etc, of Furness near Great and Little Bewbeke, County Meath, to contribute with the clergy in subsidies, etc, as parcel of Great Bewbeke, etc (1475)
- 15 & 16 Edw IV c 67 Prior, etc, of House of St John the Baptist, Drogheda, and Thomas Kente, Guardian of the House of St James, Drogheda, discharged of chief rent to the town of Drogheda (1475)
- 15 & 16 Edw IV c 68 Prior, etc, of House of the Blessed Virgin Mary de Urso, Drogheda, may purchase lands, etc, to value of £10 a year (1475)
- 15 & 16 Edw IV c 69 Walter Fitz Symond, Chaplain, Precentor, of St Patrick's Dublin, licensed to go to Rome (1475)
- 15 & 16 Edw IV c 70 Prior and Convent of the House of the Friars

- Preachers, Kilkenny, may enter into 2 messuages in that town devised to them by Patrick Shortals (1475)
- 15 & 16 Edw IV c 74 Prioress of House of Blessed Virgin Mary Termonfeekin to be free from tallages, etc, on her demesne (1475)
- 15 & 16 Edw IV c 87 Abbot of St Mary's, Dublin, Prior of Connell and Prior of All Saints, Dublin, having possessions among the Irish enemies, may carry victuals, etc, for the profit of their houses (1475)
- 15 & 16 Edw IV c 88 Fraine in the parish of Athboy, County Meath, to be free of subsidies, etc, for 6 years (except subsidy now granted by Parliament) at prayer of Sir Roland Eustace (1475)
- 15 & 16 Edw IV c 90 Prioress of Blessed Virgin Mary, Termonfeekin, and her tenants, free of tallages, etc, for 20 years (1475)
- 16 & 17 Edw IV c 1 Confirmation of the liberties of the Church (1476)
- 16 & 17 Edw IV c 4 Subsidy to be paid by County Dublin and County Louth to William, Bishop of Meath, for his costs in sending ambassadors and in defence of the country (1476)
- 6 & 17 Edw IV c 5 Bishop of Meath, Deputy Lieutenant of Ireland, going to England for the public good, may appoint a deputy (1476)

6 & 17 Edw IV c 6	Bishop of Meath, Deputy, or his deputy may depute a person or persons to commence or prorogue Parliament (1476)
16 & 17 Edw IV c 9	Confirmation of grant to Abbot and Convent of House of Blessed Virgin Mary, Navan (1476)
16 & 17 Edw IV c 10	Grant to Prior and Convent of House of St Peter, Newtown, Trim, of 15 acres outside Trim, for 50 years (1476)
16 & 17 Edw IV c12	Lands in Priorstown and Killerther, County Louth, belonging to House of St John the Baptist, Drogheda, to be cessed as one ploughland (1476)
16 & 17 Edw IV c 13	Lords of Parliament to set their hands to a letter to the King asking him to thank Bishop of Meath for his services as Deputy Lieutenant (1476)
16 & 17 Edw IV c 16	No one dwelling on lands contributory with clergy of Dublin Diocese to be assessor or collector of subsidies, etc, of what concerns the County, etc (1476)
16 & 17 Edw IV c 26	Esmond, Archbishop of Armagh, to have all profits, etc, pertaining to the see, accrued since the death of John, late Archbishop (1476)
16 & 17 Edw IV c 27	Indictments against John, Archbishop of Dublin, to be brought into Parliament; he to have his peers or his clergy as compurgators; on acquittal, indictments, etc, against him to be void (1476)
16 & 17 Edw IV c28 of	Grants made by William, late Prior of the Hospital of

- St John the Baptist without the Newgate, Dublin, and other priors to Brothers of the said house to be resumed into the Prior's hands (1476)
- 16 & 17 Edw IV c 36 Davy Grenan, Vicar of Timsoole, an Englishman; inquisition finding him an Irishman quashed (1476)
- 16 & 17 Edw IV c 40 Subsidy to be collected of the clergy of Kildare (1476)
- 16 & 17 Edw IV c 42 John O'Hedian, Archdeacon of Cashel, and others to surrender for trial in the Court of Common Pleas on charge of obtaining Bull for the Archdeaconry of Ossory against Laurence Mortymer, appointed Archdeacon by gift of the King (1476)
- 16 & 17 Edw IV c 44 Confirmation of grant to Esmund Connesburgh, Archbishop of Armagh, of the custody of the temporalities of the See of Armagh (1476)
- 16 & 17 Edw IV c 46 Deputy to have power to make provision in this Parliament for persons injured by the Act of resumption who sue therefore (1476)
- 16 & 17 Edw IV c 47 Confirmation of grant of Hen VI to the Prior and convent of Blessed Mother Holmpatrick of licence to acquire lands to value of £40 yearly (1476)
- 16 & 17 Edw IV c 49 Abbot and Convent of Abbot Austin, Bristol, to have licence of absence from Ireland for 20 years (1476)
- 16 & 17 Edw IV c 52 Dean, etc, of St Patrick's, Dublin, may sell, set to

	farm, etc, their tithes, benefices, etc, lying among Irish enemies to said Irish enemies, etc (1476)
16 & 17 Edw IV c 54	Letters patent to be made of licence to found a chantry in chapel of the Blessed Virgin Mary in parish church of St Nicholas, Greenoge, in the diocese of Meath (1476)
18 Edw IV [PRO vol 5[11]]	Confirmation of grant to Holy Trinity, Dublin, of £20 yearly out of the fee farm of Dublin City (1478)
18 Edw IV PRO vol 5[12]]	Discharge of the convent of Odder from payment of all subsidies and other impositions (1478)
18 Edw IV sess2 c 1	Kilmainham: lands, rents, etc, to be resumed into the hands of the Prior and Brethren (1478)
18 Edw IV sess2 c 2	Kilmainham: resumption by Prior and Brethren of the Hospital of St John of Jerusalem in Ireland (1478)
18 Edw IV c 1 (bet sess 2 and 3)	Outlawry against Dean of Kildare at suit of Richard Parker to be void (1478)
18 Edw IV c 2 (bet sess 2 and 3)	Resumption by Abbot and Convent of House of Blessed Mary, Trim (1478)
18 Edw IV sess 3 c 3	Confirmation of the liberties of the Church (1478)
19 & 20 Edw IV c 1	Confirmation of the liberties of the Church (1479)
19 & 20 Edw IV c 6	Confirmation of patent appointing the Bishop of

Meath Chancellor (1479)

- 19 & 20 Edw IV c 7 Confirmation of patent of protection for Archbishop of Dublin and licence to enter on the temporalities of the Archbishop (1479)
- 19 & 20 Edw IV c 13 Prior of All Saints', Dublin, and others pardoned of treasons, etc (1479)
- 19 & 20 Edw IV c 39 Charter of the Guild of English merchants trading in Ireland founded in the Chapel of Mary of Grace, near the bridge of Dublin (1479)
- 19 & 20 Edw IV c 57 Resumption of grants of lands, tithes, etc, in Waterford made by Hospital of St John of Jerusalem in Ireland (1479)
- 19 & 20 Edw IV c 58 Pardon of Dean of St Patrick's and others (1479)
- 20 Edw IV c 4 Primate of Armagh to appear in the Court of Common Pleas as to grant of 10 marks yearly claimed by Roland fitz Eustace, Lord of Portlester (1481)
- 20 Edw IV c 5 Ecclesiastical Jurisdiction of the Abbot of Mellifont (1481)
- 21 Edw IV [PRO vol 4:
Christ Church Deed No 331] Henry Alton to surrender and remain in custody until he satisfy the Prior and Convent of Holy Trinity Dublin for taking a silver box from the high altar of the Cathedral, and the Holy Sacrament therein (1481)
- 1 Ric III c 1 Confirmation of the liberties of the Church (1484)

- 1 Ric III c 10 Grant to St Mary's Abbey, Dublin, of exemption from payment of subsidy and other impositions in the diocese of Meath (1484)
- 1 Ric III c 21 Confirmation of grants made by the prior of the Hospital to Sir Robert and Thomas Dowdall (1484)
- 1 Ric III c 23 James Collynge to appear to answer charges of forging the Great Seal of Ireland and issuing letters patent of pardon to Geoffrey Artour, treasurer of Limerick Cathedral (1484)
- 1 Ric III c 24 Licence to the mayors and bailiffs of Waterford to go on pilgrimage to Santiago de Compostela (1484)
- 2 Ric III c 1
[Analecta Hibernica No 29] Act confirming the provision, pardon, and livery of temporalities of Walter, Archbishop of Dublin (1484)
- 2 & 3 Ric III c 1 Confirmation of the liberties of the Church (1485)
- 2 & 3 Ric III c 5 Licence for the Abbot of St Thomas the Martyr near Dublin to go on pilgrimage to Canterbury notwithstanding the Statute of Absentees (1485)
- 2 & 3 Ric III c 7 Licence for the Earl of Kildare and others to found a chantry in the church of St Nicholas, Dundalk (1485)
- 2 & 3 Ric III c 9 Grant of an annuity of £100 out of the archbishopric of Dublin to John, former Archbishop (1485)

2 & 3 Ric III c 10	Licence for 2 years for the Archbishop of Dublin to provide Irish clergy to benefices in his gift (1485)
2 & 3 Hen VII c 1	Act for a Clerical Subsidy (1487)
8 Hen VII c 2	Licence for Irishmen to be presented to benefices (1493)
8 Hen VII c 7	Parish of Ballyboghil, County Dublin, to supply only one horse cart when necessary for expeditions of war (1493)
8 Hen VII c 8	Pardon to the abbot of St Mary's, Dublin, of all treasons and other offences (1493)
8 Hen VII c 9	Ballydowd, in the parish of Esker, County Dublin, to be discharged from payment of rent (1493)
8 Hen VII c 26	Dean of St Patrick's, Dublin, his successors and tenants to be exempt from payment of taxes (1493)
8 Hen VII c 32	Holmpatrick priory to receive new custom on fishing vessels called poundage to enable it to complete a harbour near Skerries (1493)
8 Hen VII [PRO vol 5 app 2]	Protection of pilgrims visiting Christchurch Cathedral (1493)
10 Hen VII c 1	Confirmation of the liberties of the Church (1494)
10 Hen VII c 31	Authorisation of the Act against Lollards and heretics (1494)

10 Hen VII c 43	Authority to the Deputy and Council to examine alienations made by spiritual persons (1494)
10 Hen VII c 44	Authority to the Chancellor for the ordering of annuities granted of spiritual possessions (1494)
10 Hen VII c 45	Restitution of spiritual possessions of the Church (1495)
10 Hen VII Statute Roll c 11(a)	<i>Registrum Novum</i> of Christchurch (1494)
* 10 Hen VII c 22	Poyning's Act 1495
10 Hen VII c22	
Analecta Hibernica c 39	Poyning's Law – Poyning's Act 1495
24 Hen VII c 1	Confirmation of the liberties of the Church (1508)
8 & 9 Hen VIII c 1	Confirmation of the liberties of the Church (1516)
+ 28 Hen VIII c 2	Marriage Act 1537 s2
+ 28 Hen VIII c 5	Act of Supremacy 1537
28 Hen VIII c 23	Parsonage of Dungarvan (1537)
28 & 29 Hen VIII c 18	First Fruits of Abbeys (1537)
+ 33 Hen VIII c 6	Marriage Act 1542
+ 2 Eliz I c 2	Act of Uniformity 1560
2 Eliz I c 7 (1560)	Priory of Hospital of Saint John of Jerusalem (1560)

+ 12 Eliz I c 1	Free Schools (1570)
+ 14 & 15 Chas II c 10	Union of Parishes; Free Schools (1662)
+ 17 & 18 Chas II c 6	Act of Uniformity 1665
17 & 18 Chas II c 14	Saint Patrick's Cathedral Leases (1665)
+ 7 Will III c 17	Sunday Observance Act 1695
9 Will III c 7	Benefit of Clergy (1697)
8 Ann c 13	Armagh Parishes (1709)
4 Geo I c 14	Diocese of Tuam: Green Coat Hospital in Cork (1717)
+ 12 Geo I c 3	Marriage Act 1725, s1
12 Geo I c 10	Ecclesiastical Residences (1725)
1 Geo II c 22	Maintenance of Curates (1727)
23 Geo II c 12	Tithes and Parish Clerks (1749)
31 Geo II c 5	Parishes in the Diocese of Dromore (1757)
33 Geo II c 11	Parish clerks: sites for churches (1759)
3 Geo III c 16	Charitable Uses (1763)
7 Geo III c 9	Union of parishes, dilapidations etc (1767)
7 Geo III c 17	Parish of Armagh (1767)

15 & 16 Geo III c 17	Exchange of Glebes: Parish of Armagh (1775)
19 & 20 Geo III c 15	Expiring Laws continuance: beggars in Lisburn (1779)
21 & 22 Geo III c 52	Churchwardens Act 1781
25 Geo III c 21	Ecclesiastical Dilapidations (See House in Limerick)(1785)
30 Geo III c 27	Grants for Charities: Rotunda Hospital (1790)
30 Geo III c 43	Down Cathedral (1790)
32 Geo III c 12	Explaining certain deeds of trust (1792)
32 Geo III c 34	Estate of the Bishop of Cork (1792)
33 Geo III c 48	Suit as to an advowsons (1793)
+ 39 Geo III c 19	An Act for the repairing of Cathedral Churches where the parish churches have long been in ruins (1799)
+ 40 Geo III c 38	Act of Union of Great Britain and Ireland 1800
40 Geo III c 82	Ecclesiastical Residences (1800)

12: English Statutes (1066-1706) Repealed

Statute of uncertain date	
c 1072 Will I	Writ concerning spiritual and temporal courts
1 Hen I Coronation Charter [1]	Freedom of the Church of God (1100)

1 Hen I Coronation Charter [3]	Marriage (1100)
1 Stephen	Charter on Liberties of the Church (1136)
10 Hen II Constitutions of Clarendon [2]	Prohibition on Churches being granted in perpetuity (1164)
10 Hen II Constitutions of Clarendon	Jurisdiction of the King's Court and the Ecclesiastical Court (1164)
10 Hen II Constitutions of Clarendon [4]	Absence from the Realm of Clergy (1164)
10 Hen II Constitutions of Clarendon [5]	Excommunications (1164)
10 Hen II Constitutions of Clarendon [7]	Application to the Lord King if any of his officials are to be excommunicated (1164)
10 Hen II Constitutions of Clarendon [8]	Excommunication Appeals (1164)
10 Hen II Constitutions of Clarendon [9]	Disputes between Clerks and Laymen (1164)
10 Hen II Constitutions of Clarendon [10]	Applications of the Chief Office of the Lord King in that town before excommunication (1164)
10 Hen II Constitutions of Clarendon [11]	Vacancies in archbishoprics and bishoprics (1164)

10 Hen II Constitutions of Clarendon [12]	Archbishop, bishops and all beneficed clergy to observe and perform all loyal rights like barons (1164)
10 Hen II Constitutions of Clarendon [16]	Sons of Villains ought not to be ordained (1164)
10 Hen II	Writ of Henry II addressed to the Bishops of England (deprivation of bishops who supported Thomas a Beckett)(1164)
12 Hen 2 Assize of Clarendon [20]	Forbidding monks or canons or any religious house to receive men unless their reputation is known (1166)
17 John Magna Carta [1]	English Church shall be free (1215)
17 John Magna Carta [62]	Remission to Clergy and Laity (1215)
± 13 Edw I Stat Wynton (Statute of Winchester)	Fairs and Markets in Churchyards (1285)
± 25 Edw I Magna Carta c 1	Confirmation of Liberties (1297)
± 25 Edw I Magna Carta c 37	Confirmation of customs and liberties (1297)
± Perrogativa Regis C10	Presentation to Benefices
* 38 Edw III c 2	Obtaining Benefices from Rome (1364)
* 45 Edw III	Prohibition to Spiritual Courts (1370)

± 50 Edw III	Confirmation of liberties and charters, pardon, arrest of clergy, etc (1376)
* 16 Ric II c 2	Statute of Praemunire (1362)
* 4 Hen IV	Benefices (1402)
* 8 Hen VI	Privileges of clergy, outlawry, forcible entry (1429)
± 27 Hen VI c 5	Sunday Fairs (1448)
± 11 Hen VII c 45	Prior of Kilmaynan, Ireland (1495)
± 24 Hen VIII c 12	Ecclesiastical Appeals (1532)
25 Hen VIII c 21	Ecclesiastical Licences (1533)
± 26 Hen VIII c 3	First Fruits and Tenths (1534)
± 1 Edw VI c 1	Sacrament Act 1547
1 Edw VI c 2	Election of Bishops Act 1547
± 2 & 3 Edw VI c 1	Act of Uniformity 1548
± 5 & 6 Edw VI c 1	Act of Uniformity 1551
± 1 Eliz I c 1	Act of Supremacy 1558
± 1 Eliz I c 2	Act of Uniformity 1558
± 5 Eliz I c 23	Writ De Excommunicato Capiendo (1562)
± 13 Eliz I c 12	Ordination of Ministers Act 1571

± 1 Jas I c 1	Succession to the Crown Act 1603
± 14 Chas II c 4	Act of Uniformity 1662
± 12 & 13 Will III c 2	Act of Settlement 1700
± 1 Ann c 2	Demise of the Crown Act 1702
1 Will & Mary sess 2 c 9	Relief of Irish Protestants (1688)
4 & 5 Ann c 13	See of Dublin (1705)
6 Ann c 8	Maintenance of the Church of England (1706)

13: Statutes of Great Britain (1707-1800) Repealed

± 12 Geo III c 11	Royal Marriages Act 1772
19 Geo III c 44	Nonconformist Relief Act 1779
33 Geo III c 21	Roman Catholic Relief Act 1793

14: United Kingdom Statutes Repealed (1801 – 1922)

44 Geo III c 43	Clergy Ordination Act 1804
45 Geo III c 84	Queen Anne's Bounty Act 1805
* 50 Geo III c 33	Schools Sites (Ireland) Act 1810
* 50 Geo III c 102	Unlawful Oaths (Ireland) Act 1810
52 Geo III c 62	Coadjutors to Bishops in Ireland Act 1812
53 Geo III c 66	Sites of Parish Churches (Ireland) Act 1813

* 53 Geo III c 107	Endowed Schools (Ireland) Act 1813
* 54 Geo III c 68	Ecclesiastical Proctors (Ireland) Act 1814
56 Geo III c 52	Glebe Exchange Act 1816
* 57 Geo III c 70	Dissenters (Ireland) Act 1817
59 Geo III c 60	Ordinations for Colonies Act 1819
1 Geo IV c 6	Glebe Exchange Act 1820
3 Geo IV c 72	Church Building Act 1822
* 3 Geo IV c 79	Endowed Schools (Ireland) Act 1822 (except ss 5 and 11)
5 Geo IV c 25	Burial (Ireland) Act 1824
5 Geo IV c 91	Church of Ireland Act 1824
6 Geo IV c 92	Marriages Confirmation Act 1825
7 Geo IV c 72	Church Rates (Ireland) Act 1826
7 Geo IV c 73	Benefices (Ireland) Act 1826
7 & 8 Geo IV c 26	Youghal Rectory Act 1827
7 & 8 Geo IV c 72	Church Building Act 1827
9 Geo IV c 94	Clergy Resignation Bonds Act 1828
* 10 Geo IV c 7	Roman Catholic Relief Act 1829

10 Geo IV c 58	Oran and Drumtemple Parishes Act 1829
11 Geo IV & 1 Will IV c 18	Marriage Confirmation Act 1830
11 Geo IV & 1 Will IV c 56	Endowed Schools (Ireland) Act 1830
1 & 2 Will IV c 38	Church Building Act 1831
2 & 3 Will IV c 61	Church Building Act 1832
2 & 3 Will IV c 67	Union of Parishes (Ireland) Act 1832
3 & 4 Will IV c 30	Poor Rate Exemption Act 1833
^ 3 & 4 Will IV c 31	Sunday Observance Act 1833
^ 5 & 6 Will IV c 54	Marriage Act 1835
1 & 2 Vict c 23	Parsonages Act 1838
1 & 2 Vict c 29	Parsonages (Amendment) Act 1838
2 & 3 Vict c 30	Spiritual Duties Act 1839
3 & 4 Vict c 20	Queen Anne's Bounty Act 1840
5 Vict c 6	Bishops in Foreign Countries Act 1841
5 & 6 Vict c 26	Ecclesiastical Houses of Residence Act 1842
5 & 6 Vict c 27	Ecclesiastical Leases Act 1842
5 & 6 Vict c 113	Marriages Confirmation (Ireland) Act 1842
6 & 7 Vict c 39	Marriages Confirmation (Ireland) Act 1843

6 & 7 Vict c 62	Incapacitated Bishops Act 1843
7 & 8 Vict c 56	Church Buildings (Banns of Marriage) Act 1844
7 & 8 Vict c 59	Lecturers and Parish Clerks Act 1844
^ 7 & 8 Vict c 81	Marriages (Ireland) Act 1844
7 & 8 Vict c 94	New Parishes Act 1844
8 & 9 Vict c 54	Parishes (Ireland) Act 1845
8 & 9 Vict c 70	Church Building Act 1845
9 & 10 Vict c 68	Church Building (Burial Service in Chapels) Act 1846
^ 9 & 10 Vict c 72	Marriages (Ireland) Act 1846
9 & 10 Vict c 88	Church Patronage Act 1846
12 & 13 Vict c 67	Sequestration Act 1849
13&14 Vict c 98	Pluralities Act 1850
14 & 15 Vict c 24	School Sites Act 1851
14 & 15 Vict c7 4	Ecclesiastical Property Valuation (Ireland) Act 1851
15 & 16 Vict c 49	School Sites Act 1852
15 & 16 Vict c 52	Colonial Bishops Act 1852
16 & 17 Vict c 49	Colonial Bishops Act 1853

17 & 18 Vict c 11	Church Temporalities Act 1854
17 & 18 Vict c 88	Confirmation of Marriages Act 1854
19 & 20 Vict c 57	Manor Court of St Sepulchre Abolition Act 1856
20 Vict c 19	Extra-Parochial Places Act 1857
21 & 22 Vict c 49	Confirmation of Certain Marriages Act 1858
21 & 22 Vict c 49	Jews Relief Act 1858
21 & 22 Vict c 108	Matrimonial Causes Act 1858
22 & 23 Vict c 64	Confirmation of Marriages Act 1859
23 & 24 Vict c 72	Benefices (Ireland) Act 1860
^ 26 & 27 Vict c 11	Registration of Births and Deaths (Ireland) Act 1863
^ 26 & 27 Vict c 27	Marriage Law (Ireland) Amendment Act 1863
^ 26 & 27 Vict c 90	Registration of Marriages (Ireland) Act 1863
26 & 27 Vict c 123	Church of Ireland Act 1863
27 & 28 Vict c 81	Revenues of Archbishopric of Armagh Act 1864
28 & 29 Vict c 64	Colonial Marriages Act 1865
28 & 29 Vict c 82	Endowment and Augmentation of Small Benefices Act (Ireland) Amendment Act 1865
28 & 29 Vict c 122	Clerical Subscription Act 1865

30 & 31 Vict c 2	Odessa Marriage Act 1867
30 & 31 Vict c 137	Church Temporalities (Ireland) Act 1867
31 & 32 Vict c 117	Incumbents Act 1868
^ 33 & 34 Vict c 110	Matrimonial Causes and Marriage Law (Ireland) Amendment Act 1870
^ 33 & 34 Vict c 112	Glebe Loan (Ireland) Act 1870
^ 34 & 35 Vict c 49	Matrimonial Causes and Marriage Law (Ireland) Amendment Act 1871
* 34 & 35 Vict c 53	Ecclesiastical Titles Act 1871
^ 35 & 36 Vict c 10	Marriage (Society of Friends) Act 1872
^ 35 & 36 Vict c 90	Irish Church Act 1869 Amendment Act 1872 (section 7 only repealed by 24/1984)
^ 36 & 37 Vict c 16	Marriage Law (Ireland) Amendment Act 1873
37 & 38 Vict c 77	Colonial Clergy Act 1874
^ 38 & 39 Vict c 5	Registry of Deeds (Ireland) Act 1875
^ 38 & 39 Vict c 82	National School Teachers Residences (Ireland) Act 1875 (s5 repealed by 16/1964)
^ 39 & 40 Vict c 58	Parochial Records Act 1876
^ 41 & 42 Vict c 52	Public Health (Ireland) Act 1878
^ 41 & 42 Vict c 66	Intermediate Education (Ireland) Act 1878

^ 42 & 43 Vict c 28	Convention (Ireland) Act Repeal Act 1879
^ 42 & 43 Vict c 74	National School Teachers (Ireland) Act 1879
^ 43 & 44 Vict c 13	Births and Deaths Registration Act (Ireland) 1880
^ 44 & 45 Vict c 35	Coroners (Ireland) Act 1881
^ 44 & 45 Vict c 71	Irish Church Act Amendment Act 1881
46 & 47 Vict c 8	Glebe Loan (Ireland) Acts (Amendment) Act 1883
49 & 50 Vict c 6	Glebe Loan (Ireland) Acts (Amendment) Act 1886
51 & 52 Vict c 28	Marriages Validation Act 1888
51 & 52 Vict c 56	Suffragans Nomination Act 1888
52 & 53 Vict c 38	Basutoland and British Bechuanaland Marriage Act 1889
± 55 & 56 Vict c 42	Irish Education Act 1892
± 56 & 57 Vict c 41	Irish Education Act 1893
61 & 62 Vict c 48	Benefices Act 1898
^ 6 Edw VII c 25	Open Spaces Act 1906
^ 6 Edw VII c 40	Marriages with Foreigners Act 1906
* 8 Edw VII c 26	Naval Marriages Act 1908
* 5 & 6 Geo V c 35	Naval Marriages Act 1915

6 & 7 Geo V c 50	Larceny Act 1916
7 & 8 Geo V c 5	Ecclesiastical Services (Omission on account of War) Act 1917
* 7 & 8 Geo V c 29	Wesleyan Methodists (Appointments during the War) Act 1917
^ 8 & 9 Geo V c 2	Marriages (Ireland) Act 1918
9 & 10 Geo V c 98	Union of Benefices Act 1919
10 & 11 Geo V c 22	Ecclesiastical Tithe Rentcharge (Rates) Act 1920
12 & 13 Geo V c 58	Ecclesiastical Rentcharges (Rates) Act 1922

Appendix B: Section 2: Retained Statutes³
(still in force)

Ordinary Typeface - Statutes specifically retained by the Statute Law Revision Act 2007

21 Pre-Union Irish Statutes (1169-1800) Not Repealed

14 Edw IV c 5	St Patrick's Cathedral Act 1474
18 Edw IV [PRO vol5[8]]	St Werburgh's Church Act 1478
21 Edw IV [Christ Church Deed No 334]	Christ Church Lands Act 1481
21 & 22 Edw IV [PRO vol 5, Appendix I [17]]	Christ Church Grants Act 1481

³ Statute Law Revision Act 2007 s2(1)(a) and Schedule 1

10 Hen VII Statute Roll c 11 (b)	St Patrick's Cathedral Act 1494
28 & 29 Hen VIII c 2	Marriage Act 1536
33 Hen VIII c 6	Marriage Act 1542
10 & 11 Chas I c 3	Ecclesiastical Lands Act 1634
9 Will III c 16	Parish of St Michan's Act 1697
10 Will III c 6	Glebe Act 1698
6 Ann c 19	Marsh's Library Act 1707
6 Ann c 21	St Anne's Parish Act 1707
9 Ann c 12	Uniting of Parishes Act 1710
6 Geo I c 5	Protestant Dissenters' Relief Act 1719
12 Geo I c 3	Marriage Act 1725
23 Geo II c 19	St Mary's Parish Act 1749
25 Geo II c 23	Cork Infirmary Act 1751
5 Geo III c 22	Local Government (Dublin and Drogheda) Act 1765
11 & 12 Geo III c 23	Cork Infirmary Act 1771
13 & 14 Geo III c 43	Meath Hospital Act 1773
15 & 16 Geo III c 20	City of Dublin Act 1775

17 & 18 Geo III c 46	Harcourt Street Act 1777
17 & 18 Geo III c 47	St Mary's Parish Act 1777
21 & 22 Geo III c 12	Dublin Leases Act 1781
25 Geo III c 49	Ecclesiastical Lands Act 1785
25 Geo III c 55	Leases by Endowed Schools Act 1785
33 Geo III c 53	St George's Parish Act 1793
35 Geo III c 23	Ecclesiastical Lands Act 1795
38 Geo III c 49	King's Inns Act 1798

**22 English Statutes (1066 – 1706) Not Repealed by the Statute Law Revision Act
2007**

Statutes of uncertain

Date	Statute on Trees in Churchyards
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**23: Statutes of the United Kingdom of Great Britain and Ireland
(1801 to 1922) Not Repealed by the Statute Law Revision Act 2007**

Note: Acts in italics were, however, repealed by the Civil Registration Act 2004 which was commenced on 5th November 2007. They were retained in the Statute Law Revision Act 2007 to facilitate transition to the new formalities provided for in that 2004 Act.

44 Geo III c 63	Archbishop's Palace, Dublin Act 1804
52 Geo III c 155	Places of Religious Worship Act 1812
53 Geo III c 92	Leases of Episcopal Lands (Ireland) Act 1813

4 Geo IV c 67	Saint Petersburg Marriages Act 1823
53 Geo III c 107	Endowed Schools Act 1813
4 Geo IV c 86	Church of Ireland Act 1823
5 Geo IV c 81	Bray and Kiltiernan Parishes Act 1824
5 Geo IV c 103	Church Building Act 1824
7 & 8 Geo IV c 43	Union of Parishes (Ireland) Act 1827
9 Geo IV c 52	Killiney Chapel Act 1828
2 & 3 Will IV c 67	Union of Parishes, etc (Ireland) Act 1832
3 & 4 Will IV c 37	Church Temporalities Act 1833
4 & 5 Will IV c 90	Church Temporalities Act 1834
5 & 6 Will IV c 54	Marriage Act 1835
6 & 7 Will IV c 70	Sites for Schoolrooms Act 1836
6 & 7 Will IV c 99	Church Temporalities (Ireland) Act 1836
1 & 2 Vict c 105	Oaths Act 1838
1 & 2 Vict c 109	Tithe Rentcharge (Ireland) Act 1838
3 & 4 Vict c 101	Church Temporalities (Ireland) Act 1840
6 & 7 Vict c 88	Parish of Saint Michael Limerick Act 1843
7 & 8 Vict c 45	Nonconformists' Chapels Act 1844

<i>7 & 8 Vict c 81</i>	<i>Marriages (Ireland) Act 1844</i>
8 & 9 Vict c 54	Parishes (Ireland) Act 1844
9 & 10 Vict c 59	Religious Disabilities Act 1846
<i>9 & 10 Vict c 72</i>	<i>Marriages (Ireland) Act 1846</i>
10 & 11 Vict c 58	Marriages of Jews and Quakers Act 1847
10 & 11 Vict c 65	Cemeteries Clauses Act 1847
11 & 12 Vict c 80	Tithe Rentcharge (Ireland) Act 1848
14 & 15 Vict c 72	Church of Ireland Act 1851
14 & 15 Vict c 73	Ecclesiastical Residences (Ireland) Act 1851
19 & 20 Vict c 119	Marriage and Registration Act 1856
20 & 21 Vict c 47	Glebe Lands Leasing Powers (Ireland) Act 1857
21 & 22 Vict c 59	Church of Ireland Act 1858
22 Vict c 27	Recreation Grounds Act 1859
<i>23 & 24 Vict c 18</i>	<i>Marriage (Society of Friends) Act 1860</i>
23 & 24 Vict c 150	Church Temporalities (Ireland) Act 1860
24 & 25 Vict c 100	Offences Against the Person Act 1861
<i>26 & 27 Vict c 27</i>	<i>Marriage Law (Ireland) Amendment Act 1863</i>

26 & 27 Vict c 90	<i>Registration of Marriages (Ireland) Act 1863</i> ⁴
30 & 31 Vict c 133	Consecration of Churchyards Act 1867
31 & 32 Vict c 103	Burial (Ireland) Act 1868
32 & 33 Vict c 42	Irish Church Act 1869
33 & 34 Vict c 110	<i>Matrimonial Causes Marriage Law (Ireland) Amendment Act 1870</i> ⁵
33 & 34 Vict c 112	Glebe Loan (Ireland) Act 1870
34 & 35 Vict c 24	Irish Presbyterian Church Act 1871
34 & 35 Vict c 49	<i>Matrimonial Causes and Marriage (Ireland) Amendment Act 1871</i> ⁶
35 & 36 Vict c 10	<i>Marriage (Society of Friends) Act 1872</i>
35 & 36 Vict c 90	Irish Church Act 1869 (Amendment) Act 1872
36 & 37 Vict c 16	<i>Marriage Law (Ireland) Amendment Act 1873</i>
38 & 39 Vict c 11	Leasing Powers Amendment Act for Religious Purposes in Ireland 1875
38 & 39 Vict c 42	Glebe lands, Representative Church Body (Ireland) Act 1875
38 & 39 Vict c 82	National School Teachers Residences (Ireland) Act 1875

⁴ Sections 7, 8, 12, 21 and 25 of this Act have not been repealed

⁵ Only sections 32 to 40 and section 42 of this Act have been repealed

⁶ Only Sections 21 to 29 of this Act have been repealed

38 & 39 Vict c 96	National School Teachers (Ireland) Act 1875
39 & 40 Vict c 79	Elementary Education Acts 1876
41 & 42 Vict c 19	Matrimonial Law Acts 1878
42 & 43 Vict c 8	Registrations of Births, Deaths and Marriages (Army) Act 1879
42 & 43 Vict c 29	Confirmations of Marriages on Certain Ships Act 1879
42 & 43 Vict c 74	National School Teachers (Ireland) Act 1879
43 Vict c 4	Relief of Distress (Ireland) 1880
43 & 44 Vict c 14	Relief of Distress (Ireland) 1880
43 & 44 Vict c 44	Irish Loans Act 1880
44 & 45 Vict c 71	Irish Church (Amendment) Act 1881
45 & 46 Vict c 69	Intermediate Education (Ireland) Act 1882
47 & 48 Vict c 10	Trustee Churches (Ireland) Act 1884
47 & 48 Vict c 22	Loans for Schools, etc (Ireland) Act 1884
47 & 48 Vict c 45	Powers to make Loans for Teachers' Residences Act 1884
48 & 49 Vict c 78	Educational Endowments (Ireland) Act 1885
54 & 55 Vict c 56	Elementary Education Act 1891
55 & 56 Vict c 23	Foreign Marriage Act 1892

56 & 57 Vict c 51	Elementary Education School Attendance Act 1893
62 & 63 Vict c 27	Marriages Validity Act 1899
63 & 64 Vict c 43	Intermediate Education (Ireland) Act 1900
6 Edw VII c 25	Open Spaces Act 1906
6 Edw VII c 30	Colonial Marriages Deceased Wife's Sister Act 1906
6 Edw VII c 57	Education Provision of Meals Act 1906
4 & 5 Geo V c 20	Education Provision of Meals Act 1914
6 & 7 Geo V c 35	Elementary Education Fee Grant Act 1916
6 & 7 Geo V c 50	Larceny Act 1916
9 & 10 Geo V c 41	Education Compliance with Conditions of Grants Act 1919
11 & 12 Geo V c 24	Deceased Brother's Widow's Marriage Act 1921

Appendix C

List of Statutes routinely relied on by EA Stopford in *A Handbook of Ecclesiastical Law and Duty for the Use of the Irish Clergy*

9 Edw II st1 c 13	<i>Articuli Cleri</i>
25 Hen VIII c 19 (England)	Submission of the Clergy Act 1533
25 Hen VIII c 21	Ecclesiastical Licences Act 1533
28 Hen VIII c 10	See of Rome Act 1536
28 Hen VIII c 15	Offences at Sea Act 1536
31 Hen VIII c 14	Statute of the Six Articles 1539
32 Hen VIII c 8	Game Act 1540
2 & 3 Edw VI c 1	Act of Uniformity 1548
2 Eliz I c 2	Act of Uniformity 1560
13 & 14 Car II c 4	Act of Uniformity (England) 1664
17 & 18 Car II c 6	Act of Uniformity (Ireland) 1665
6 Geo I c 13	Maintenance of Curates Act 1719
8 Geo I c 11	Exchange of Glebes Act 1721
1 Geo II c 18	Augmentation of Small livings (Improvements by Church Tenants) Act 1727
1 Geo II c 22	Maintenance of Curates Act 1727
19 Geo II c 13	Annulment of Marriages Act 1745
29 Geo II c 18	Insolvent Debtors Relief Act 1756
11 & 12 Geo III c 16	Chapels of Ease Act 1771
23 & 24 Geo III c 49	Endowment of Parishes Act 1784
25 Geo III c 38	Proof of Ecclesiastical Qualification Act 1785
26 Geo III c 84	Consecration of Bishops Abroad Act 1786
32 Geo III c 21	Roman Catholic Relief (Repeals) Act 1792
33 Geo III c 21	Roman Catholic Relief Act 1793

40 Geo III c 27	Maintenance of Curates Act 1800
44 Geo III c 43	Clergy Ordination Act 1804 (repealed)
48 Geo III c 75 (England)	Burial of Drowned Persons Act 1808
51 Geo III 37	Marriage of Lunatics Act 1811
56 Geo III c 56	Probate Duty (Ireland) Act 1816
57 Geo III c 99 (repealed by 1 & 2 Vict c 106)	Residences on Benefices etc (England) Act 1818
58 Geo III 81	Infant Executors (Ireland) Act 1818
59 Geo III c 60	Ordination for Colonies Act 1819
4 Geo IV c 52	Burial of Suicides Act 1823
4 Geo IV c 86	Church of Ireland Act 1823
5 Geo IV c 25	Burial (Ireland) Act 1824
5 Geo IV c 91	Church of Ireland Act 1824
7 Geo IV c 72	Vestry Act 1826
7 & 8 Geo IV c 25	Resignation Bonds Act 1827
7 & 8 Geo IV c 43	Union of Parishes (Ireland) Act 1827
9 Geo IV c 94	Clergy Resignation Bonds Act 1828
3 & 4 Will IV c 37	Church Temporalities Act 1833
3 & 4 Will IV c 102	Marriages by Roman Catholics (Ireland) Act 1833
4 & 5 Will IV c 22	Apportionment Act 1834
5 & 6 Will IV c 54	Marriage Act 1835
6 & 7 Will IV c 13	Constabulary (Ireland) Act 1836
6 & & Will IV c 31	Chapels of Ease (Ireland) Act 1836
1 Vict c 45	Vestries Notices Act 1837
1 & 2 Vict c 106	Pluralities Act 1838
1 & 2 Vict c 109	Tithe Rentcharge (Ireland) Act 1838

3 & 4 Vict c 33	Scottish Episcopal and other Clergy Act 1840
3 & 4 Vict c 113 (England)	Ecclesiastical Commissioners Act 1840
5 Vict c 6	Bishops in Foreign Countries Act 1841
7 & 8 Vict c 59	Lecturers and Parish Clerks Act 1844 (did not apply in Ireland)
7 & 8 Vict c 81	Marriages (Ireland) Act 1844
8 & 9 Vict c 54	Parishes (Ireland) Act 1845
9 & 10 Vict c 59	Religious Disabilities Act 1846
11 & 12 Vict c 41	Ecclesiastical Unions (Ireland) Act 1848
13 & 14 Vict c 98	Pluralities Act 1850
14 & 15 Vict c 72	Church of Ireland Act 1851
14 & 15 Vict c 73 (Napier's Act)	Ecclesiastical Residences (Ireland) Act 1851
14 & 15 Vict c 79	Churches and Chapels (Ireland) Act?
20 & 21 Vict c 47	Glebe Lands Leasing Powers (Ireland) Act 1857
22 Vict c 2	Observance of November 5, May 29 etc Act 1859
23 & 24 Vict c 15	Probate Duty Act 1860
23 & 24 Vict c 32	Ecclesiastical Courts Act 1860
23 & 24 Vict c 76	Burial Grounds (Ireland) Act 1860
23 & 24 Vict c 150	Church Temporalities (Ireland) Act 1860

Appendix D

A Tabular Analysis of the Canons of the Church of Ireland and their Development

Number of the Canon in 2013	Subject Matter	Canon No. in 1871	Canon No. in 1634 ¹	Canon No. in 1603 ²	Comment on the recent development of the Canon
1	The due observance of Sundays and Holy days	3	6	13	
2	Restraint on authorised practices	5	8		
3	Divine Service to be celebrated on Sundays and Holy Days	4	7	14	
4	The Book of Common Prayer	4	7	14	
5	The prescribed form of Divine Service to be used in Churches	1	3	4	1974: discretion was given to the clergy concerning variations. ³
6	The use of prayers and hymns not included in the Book of Common Prayer	5	8		1974: reformulated in permissive rather than prohibitive terms. ⁴

¹ For this tabulation see Gerald Bray, *The Anglican Canons 1529-1947* (The Boydell Press 1998) 892-96.

² Gerald Bray, *The Anglican Canons 1529-1947* (The Boydell Press 1998), 892-96.

³ Statute of the General Synod 1974, c i, Canon 5.

⁴ Statute of the General Synod 1974, c i, Canon 6.

7	The duty of preaching	7	9	45	
8	Speaking in a distinct and audible voice	5	8		1974: prohibition on Priest turning his back to the people when praying was removed other than at the Eucharist. ⁵
9	Divine Service in the Irish language	6	8		
10	Visiting ministers of Churches not in communion with the Church of Ireland				Adopted in 1945, ⁶ amended 1962 and 1966. ⁷
11	Use of churches by other Christian Denominations				1966. ⁸
11A	Local Ecumenical Partnerships				2011. ⁹
12	Ecclesiastical Apparel	4	7	14	Sub-section 4 of Canon 12 concerning the non-doctrinal significance of stoles was added in 1974 when the prohibition on them was

⁵ Statute of the General Synod 1974, c i, Canon 8 and Canon 13 (3)

⁶ Statute of the General Synod 1945, c vii; see also Resolution of the General Synod 'Rules of Church Order [JGS] 1943 cxxx, and, Communication from the House of Bishops [JGS] 1944 lxxxii – lxxxiv.

⁷ Statute of the General Synod 1962, c iii; 1966, c i.

⁸ Statute of the General Synod 1966, c i.

⁹ Statute of the General Synod 2011, c ii

					lifted.
13	Celebration of Holy Communion	15	18	21	
13 (3)	Celebration of Holy Communion – clergy to be heard and not stand with their backs to the people	5	8		In 1974 ¹⁰ the instruction to the priest to celebrate at the north end of the altar was removed to facilitate the westward position at the revised services. ¹¹
13 (5)	Celebration of Holy Communion – use of bread and wine	46	95		
13 (5)	Celebration of Holy Communion – the use of wafers and the mixed chalice.	37*			1974: the ban placed on using a mixed chalice removed.
14	Administration of Holy Communion in places other than churches	16	21		1974: broadened in scope. ¹²
15	Communion Table	34	94	82	1974: the previous requirement that the table be made of wood was deleted. ¹³

¹⁰ Statute of the General Synod 1974, c i.

¹¹ The Holy Communion, 1972.

¹² Statute of the General Synod 1974, c i.

¹³ Statute of the General Synod 1974 c i.

16	Exclusion from the Communion of the Church	49-54	20		These disciplinary Canons did not appear in 1871, but were enacted by the General Synod in 1877 as Canons 49-54. ¹⁴
16 (2)	Exclusion from the Communion of the Church – Right of Appeal		20		Canon 51 (1877)
16 (3)	Exclusion from the Communion of the Church – Sentence applies throughout the Church		20		Canon 53 (1877)
16 (4)	Exclusion from the Communion of the Church – restoration of the Penitent		20		Canon 54 (1877)
17	The form of ordering of bishops, priests and deacons	2	4	7-8	
18	Four solemn times appointed for the giving or conferring of holy orders	18	29	32	
19	Letters dimissory	20	31	34	
20	Conditions of admission of such as are to be ordained	19	30	33	Redrafted in 1974 to provide for Non-

¹⁴ Statute of the General Synod 1877, c xiv.

					Stipendiary Clergy ¹⁵
21	Qualifications of such as are to be ordained	21	31	34	Account taken in 1974 that not all candidates have university degrees. ¹⁶
21 S.4	Qualifications of such as are to be ordained – letters testimonial	21	31	34	
22	Ordination of Women				In 1984 Canon 21A was inserted to provide for the Ordination of women to the Diaconate ¹⁷ and renamed in 1988. ¹⁸ In 1990 it became the Canon 22 enabling the ordination of women to the priesthood and the episcopate. ¹⁹
23	The examination of such as are to be ordained	22	32	35	

¹⁵ Statute of the General Synod 1974, c i.

¹⁶ Statute of the General Synod 1974, c i.

¹⁷ Statute of the General Synod 1984, c i and 1988, c iv.

¹⁸ Statute of the General Synod 1988, c iv.

¹⁹ Statute of the General Synod 1990, c i.

24	Suspension of Bishops contravening Canons 20 to 23	22	32	35	
25	To prevent simoniacal contracts	25	35	40	
26	Holy Baptism	9-10	14-15	68-69	Separated from that about burial in 1974, and it also allowed some godparents from outside the Church of Ireland or a church in communion with it. ²⁰
27	Teaching the young	8	11	59	The provision that all who assisted the clergy in catechising had to be members of the Church of Ireland was removed in 1974. ²¹
28	Confirmation	14	17	60	
29	Clergy to endeavour to banish error	31	40	66	
30	Clergy to visit the people in their cures	32	41	67	

²⁰ *Statute of the General Synod 1974*, c i and 'Report of the Select Committee on the Canons' JGS [1973] 265.

²¹ *Statute of the General Synod 1974*, c i.

31	The Solemnization of Marriage				1996: provided for the marriage in church of divorced persons, and also outlined the procedure and to underscore the Church's teaching on marriage. ²²
31 (2)	The Solemnization of Marriage - legalities	11	47	99	2006: cross-reference to civil law ²³
31 (4)-(6)	Marriage in church of divorcees				
32	The Burial of the dead	9	14	68	2008: removal of reference to suicide
33	The manner of life of clergy	33	42	74	
34	The occupations of clergy				New - 1974. ²⁴
34(4)	Part-time deployment in the stipendiary ministry				Added in 1999. ²⁵
34(5)	Provision for payment to Auxiliary clergy				Added in 2009 ²⁶
35	Readers				New - 1974. ²⁷

²² Statute of the General Synod, 1996, c i.

²³ Statute of the General Synod 2006, c i.

²⁴ Statute of the General Synod, 1974, c i.

²⁵ Statute of the General Synod 1999, c iv.

²⁶ Statute of the General Synod 2009, c v.

²⁷ Statute of the General Synod, 1974, c i.

36	Churches and churchyards to be consecrated	41	43	75	
37	Other purposes to which a church may be put				New - 1974. ²⁸
38	Changes in structures and furnishing of churches	40			
39	Crosses on or behind the Communion Table	36			A previous ban (Canon 36) on crosses repealed in 1964. ²⁹
40	Use of incense forbidden	38			
41	Processions	39			1974 - Canon was moderated, and to a large extent lifted the previous ban on such processions. ³⁰
42	Right of Appeal	47			
43	Penalty for the wilful breach of any Canon	48	100	139-140	This was Canon 49 in the 1971 numbering. ³¹ In 1974 it was considered unnecessary to repeat the system of courts. ³²

²⁸ Statute of the General Synod, 1974 c i

²⁹ Statute of the General Synod, 1964 c xi

³⁰ Statute of the General Synod, 1974 c i

³¹ Statute of the General Synod, 1971c ii

³² CCI, ch VIII

Appendix E

Rules and Orders of Diocesan Courts and Registries in Ireland Schedule of Forms¹

Form Number	Title
Contentious Proceedings	
1.	The Petition
2.	Another Form of Petition
3.	Bail
4.	Citation upon a Petition
5.	Defence
6.	Notice of Withdrawal of Petition
7.	Summons to a Witness to attend at the Hearing of a Cause
8.	Commission to Examine Witnesses
9.	Summons to Witnesses to attend before Commissioner
10.	Return to a Commission for Examination of Witnesses
11.	Letters of Request to the Court of the General Synod, upon the hearing of a case involving a question of doctrine
12.	Judgment or Sentence
13.	Petition for a Faculty
14.	Notice of Opposition to the Grant of a Faculty
15.	Citation in the Matter of a Faculty
16.	Faculty or License to build to take down and rebuild a Church
17.	General Form of Faculty

¹ Rules of the Court of the General Synod and Rules and Orders of Diocesan Courts and Registries in Ireland' (Church of Ireland 1934)

Non-Contentious Proceedings

18. Mandate for the Enthronement of a Bishop
19. Certificate of Enthronement to be indorsed on the Mandate, and returned with it to the Registry of the See
20. Commission to another Prelate to Ordain for the Prelate of the diocese
21. Letters Dimissory for Ordination
22. Title for Orders – Nomination for a Curacy
23. Letters of Orders for Deacons and Priests
24. Letters Recommendatory
25. *Bene Decessit*
26. Appointment of Chancellor
27. Appointment of Person to issue Licences for Marriage
28. Appointment of Registrar
29. Appointment of Rural Dean
30. Appointment of Commissary
31. Appointment of Canon (or Prebendary)
32. Mandate for a Visitation
33. Citation to Visitation
34. Mandate for Visitation of Dean and Chapter
35. Commission to another Prelate to consecrate a Church or Churchyard
36. Petition to consecrate a Church of Chapel.
37. Act of Consecration of a Church
38. Act of Consecration of a Chapel of Ease
39. Petition to consecrate a Churchyard
40. Act of Consecration of a Churchyard
41. Licence for Divine Service in a Schoolhouse or other building where there is no Parish Church, or the same is being repaired, or otherwise hindered from being used
42. Institution

43. Licence of a Curate
44. Licence to preach and officiate in a diocese
45. Order to Curate to show cause why his Licence should not be revoked
46. Revocation of Curate's Licence upon cause shown
47. Inhibition against a Clergyman to prevent his preaching or officiating in Church
48. Petition for Licence of Non-residence
49. Licence of Non-residence where there is no fit Glebe House
50. Licence to reside out of the Glebe House in a Mansion in the Parish
51. Revocation of Licence for Non-Residence
52. Resignation
53. Licence of Non-residence where Bishop requires incumbent to reside near him as Registrar or Chaplain
54. Licence of Non-residence for ill-health or infirmity
55. Mandate for Election of Representatives for General Synod
56. Licence of Church for Celebration of Marriages
57. Faculty to disinter and remove a Corpse
58. Certificate of Confirmation by Bench of Bishops of election of Bishop

Appendix F

TABLES OF REPORTED CASES HEARD BY THE ECCLESIASTICAL COURTS AND TRIBUNALS OF THE CHURCH OF IRELAND

Cases in Diocesan Courts

Reid and others v Frazer [2003] Diocesan Registry of Meath and Kildare

Cases in the Court of the General Synod

Archbishop of Armagh v Hains [1906] JGS 313

Archbishop of Dublin v Robinson [1919] JGS 363

Bellingham, Macan and McKee v Leslie [1902] JGS 222b

Bishop of Cashel v Going [1902] JGS 222a

Bishop of Limerick v Cotter [1897] JGS 258

Bishop of Meath v. Furlong [2003] JGS 446

Bishop of Tuam v Judge [1948] JGS 283

Bradshaw, Re. [1933] JGS 381

Brown and Creagh v Pattison [1895] JGS 203

Caithness and others v Colquhoun and others [1941] JGS 406

Campbell and others v Hunt [1895] JGS 217

Carnduff and others v Thomas and anr. [1991] JGS 302

Chamney and others v Simpson [1928] JGS 367

Chamney and others v Colquhoun [1992] JGS 368

Christie and others v Colquhoun [1937] JGS 355

Colquhoun and others v Caithness and others [1941] JGS 413

Cooney, Re. [1908] JGS 332

Correll v Robinson and others [1915] JGS 459

Dancy, Re. [1910] JGS 316

Deceased Wife's Sister Marriage Act, 1907, Re. The [1908] JGS 333 and liii-lv

Diocesan Council of Down, Connor and Dromore v Representative Church Body [1916] JGS 324

Divinity School, Re. [1888] JGS 158

Election of Diocesan Nominators, Re. [1888] JGS 160

Grant v Smith and others [1895] JGS 204

Hick and others v Wilson [1947] JGS 330

Hitchcock and others v Archbishop of Armagh [1919] JGS 365

Johnson and others v Robinson [1922] JGS 333

Leet, Re. [1905] JGS 333

McKeown v Irwin [1895] JGS 202

MacLaughlin and MacMahon v Diocesan Synod of Cashel [1895] JGS 215

Meath Episcopal Election, Re. [1886] JGS 169

Powers of the General Synod, Re. [1919] JGS 366

Precedence of the Bishop of Meath, Re. JGS [1886] 176

Resignation of an Archdeacon [1888] JGS 161

Ross v McDonagh [1895] JGS 216

Sleator, Re. [1906] JGS 314

Special Diocesan Synod of Cashel and Ossory, Re. [2001] JGS 368

Tyney, Re. [1905] JGS 332

Unreported:

Gilbert v Maturin [1872]

Disciplinary Tribunal:

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Appendix G

Analysis of Delegated Legislation, Quasi-Legislation and Soft Law in the Church of Ireland, 1870 to 2010

The table in this Appendix sets out principal delegated legislation and quasi-legislation/soft law instruments reported in the Journals of the General Synod since 1871 until 2010. It records also, *in italics*, instruments, which may be designated as quasi-legislative or soft law provisions. It also records (in the right-hand column), as a comparator, the number of Statutes (primary ecclesiastical legislation) passed in the same year.

Year	Delegated Legislation/ <i>Quasi-Legislation, Soft Law</i> ¹	Number of Statutes
1870 (1)	General Standing Orders ²	5
1870 (2)	No delegated or quasi-legislation reported	
1871	Constitution of the Revision Committee (Church Formularies) ³ Constitution of a Committee on Church Hymnody ⁴ <i>Memorandum governing the appointment of Diocesan Trustees</i> ⁵	11
1872 (1)	Additional Standing Orders ⁶	
1872 (2)	No delegated or quasi-legislation reported	10
1873	Rules as to Petitions ⁷	12
1874	Amendment of Standing Orders ⁸ Widows and Orphans Fund ⁹	2
1875	Admission of the editor of the Ecclesiastical Gazette to the General Synod as a reporter ¹⁰	25

¹ Note: this table refers only to secondary legislation and quasi-legislation: it is not a timeline of primary sources of church law. For the latter sources see Part One Chapter Two.

² JGC [1870 – First Session], 6.

³ JGS [1871] 41f.

⁴ JGS [1871] 51.

⁵ JGS [1871] 137.

⁶ JGS [1872] xxi.

⁷ JGS [1873] 50.

⁸ JGS [1874] xxxii.

⁹ JGS [1874] 92-93.

¹⁰ By resolution reported in JGS [1875] 41.

	The Constitution of the Board of Education of the General Synod. ¹¹	
1876	Religious Education Board ¹² Revision of Standing Orders ¹³ Constitution and Rules of the Church of Ireland Temperance Society ¹⁴	7
1877	<i>A Circular relating to alterations to churches</i> ¹⁵ <i>Circular to Rural Deans re caretaker of vacant glebe houses and glebe lands</i> ¹⁶ <i>Board of Education: Examination of Teachers</i> ¹⁷ <i>Board of Education: Religious Instruction of Children</i> ¹⁸	22
1878	<i>Circular re operation of the Widows and Orphans Fund</i> ¹⁹	9
1879	<i>Scheme for the Management of Glebes</i> ²⁰ <i>Kildare-place Training School Scheme</i> ²¹	2
1880	No delegated or quasi-legislation reported	4
1881	<i>Resolution establishing the Clergy Superannuation Fund</i> Constitution of the Board of Missions	4
1882	Regulations of the Clergy Superannuation Fund ²² Glebe Rules ²³ Rules as to the Repairs of Glebe Houses ²⁴	2
1883	Appointment of a Standing Committee ²⁵	

¹¹ JGS [1875] 80f; 99-100 and 226-7.

¹² JGS [1876] 5.

¹³ JGS [1876] 23f, 26.

¹⁴ JGS [1876] 154-55.

¹⁵ JGS [1877] 77.

¹⁶ JGS [1877] 108-09.

¹⁷ JGS [1877] 130.

¹⁸ JGS [1877] 130-31.

¹⁹ JGS [1878] 129-30.

²⁰ JGS [1879] 24 and 182-84.

²¹ JGS [1879] 225-26.

²² JGS [1882] 8-11.

²³ JGS [1882] 69-72 – referred to as having been adopted in 1872.

²⁴ JGS [1882] 73-7 – referred to as having been adopted in 1879 and amended in 1881.

²⁵ JGS [1883] lxxvi.

	Regulations of the Clergy Superannuation Fund ²⁶ <i>Religious Education Scheme</i> ²⁷	4
1884	Constitution of the Standing Committee ²⁸ <i>Scheme governing the Church of Ireland Divinity School Fund</i> ²⁹ <i>System of loans for the repairs of See or Glebe Houses</i> ³⁰	1
1885	<i>Ecclesiastical precedence of the Bishop of Meath</i> ³¹ <i>Supply of a copy of the Constitution and Statutes to each candidate for Ordination</i> ³² Regulations of the Clergy Superannuation Fund ³³ <i>Resolution on the cutting of trees</i> ³⁴	4
1886	<i>Resolution on the cutting of trees</i> ³⁵ <i>Correct title of the Church of Ireland</i> ³⁶ <i>Forms</i> ³⁷	8
1887	Constitution of the Board of Religious Education ³⁸	4
1888	Rules of the Court of the General Synod ³⁹ <i>Resolution suggesting the use of letters of commendation</i> ⁴⁰ <i>Resolution commending regular giving</i> ⁴¹	2
1889	Glebe Rules ⁴² The Constitution of Standing Committee ⁴³	3
1890	No delegated or quasi-legislation reported	5

²⁶ JGS [1883] 69-72.

²⁷ JGS [1883] 85-87.

²⁸ JGS [1884] 98-99.

²⁹ JGS [1884] 75-76.

³⁰ JGS [1884] 78.

³¹ JGS [1885] lxxxviii.

³² JGS [1885] xciii.

³³ JGS [1885] 15.

³⁴ JGS [1885] 19.

³⁵ JGS [1886] 20.

³⁶ JGS [1886] 23-24.

³⁷ JGS [1886] 85-86.

³⁸ JGS [1887] ciii.

³⁹ JGS [1888] lx and 153-57.

⁴⁰ JGS [1888] xc.

⁴¹ JGS [1888] xci.

⁴² JGS [1889] 31.

⁴³ JGS [1889] 189-91.

1891	<i>Circular – Clergy Superannuation Fund</i> ⁴⁴ <i>Circular – Diocesan Accounts</i> ⁴⁵	3
1892	Rules and Regulations of Diocesan Synods ⁴⁶ Memorandum and Resolution on the administration of the Clergy Good Service Funds ⁴⁷ Rules governing Divinity School Exhibition Funds ⁴⁸	2
1893	No delegated or quasi-legislation reported	1
1894	No delegated or quasi-legislation reported	3
1895	Rules governing Clergy Good Service Funds ⁴⁹	3
1896	No delegated or quasi-legislation reported	0
1897	No delegated or quasi-legislation reported	5
1898	Court of the General Synod – Rules and Forms governing retirement of clergy mentally incapacitated ⁵⁰	0
1899	Standing Orders of the Representative Church Body ⁵¹ Constitution of the Social Service Committee ⁵²	2
1900	<i>Notes for the Guidance of Holders of Glebes and Glebe Lands</i> ⁵³ <i>Circular re the cutting of trees</i> ⁵⁴ <i>Circular re quarries and gravel-pits</i> ⁵⁵ <i>Circular re the insurance of glebe houses under repair</i> ⁵⁶ <i>Notice concerning the inspection of churches</i> ⁵⁷	4
1901	<i>Memorandum re appointment of Diocesan</i>	

⁴⁴ JGS [1891] 108.

⁴⁵ JGS [1891] 109.

⁴⁶ JGS [1892] lxiv.

⁴⁷ JGS [1892] 118.

⁴⁸ JGS [1892] 120.

⁴⁹ JGS [1895] 112.

⁵⁰ JGS [1898] 252-58.

⁵¹ JGS [1899] 106.

⁵² JGS [1899] lix and lxiii.

⁵³ JGS [1900] 107-08.

⁵⁴ JGS [1900] 109.

⁵⁵ JGS [1900] 110.

⁵⁶ JGS [1900] 111.

⁵⁷ JGS [1900] 112.

	<i>Trustees</i> ⁵⁸ <i>Circular re extern glebe lands</i> ⁵⁹	2
1902	Glebe Rules and By-Laws ⁶⁰ <i>General Specifications for work on glebes</i> ⁶¹ <i>Notice concerning inspection of Churches</i> ⁶²	1
1903	Constitution of a Secondary Education Committee ⁶³ By-Laws of the Board of the Church of Ireland Widows and Orphans Fund ⁶⁴	1
1904	Rules of the Superannuation Scheme ⁶⁵ <i>Memorandum of Suggestions as to the proper course to be pursued in all cases of malicious injuries to churches, glebe houses, school houses and other Church property.</i> ⁶⁶	0
1905	Constitution of the Auxiliary Fund ⁶⁷ Constitution of a Home Reunion Committee ⁶⁸ Constitution of the Board for Secondary and Technical Education ⁶⁹	1
1906	<i>Memorandum to clergy concerning Income Tax</i> ⁷⁰	5
1907	<i>Communication from the House of Bishops on the use of Lay Agency in the Church of Ireland</i> ⁷¹ Rules regulating the proceedings of the Church of Ireland Widows and Orphans Fund Board ⁷²	0
1908	By-Laws of the Representative Church Body ⁷³	

⁵⁸ JGS [1901] 104-08.

⁵⁹ JGS [1901] 109.

⁶⁰ JGS [1902] 145-72.

⁶¹ JGS [1902] 164-67.

⁶² JGS [1902] 172.

⁶³ JGS [1903] lxiv, lxix and lxxiv-lxxv.

⁶⁴ JGS [1903] 267-71.

⁶⁵ JGS [1904] lxvii – lxx and lxxxv and 24-27.

⁶⁶ JGS [1904] 110-12.

⁶⁷ JGS [1905] 34-38 and 135-41.

⁶⁸ JGS [1905] xciv.

⁶⁹ JGS [1905] 234.

⁷⁰ JGS [1906] 110.

⁷¹ JGS [1907] liv.

⁷² JGS [1907] 244.

⁷³ JGS [1908] lxiv and 106-07.

	<i>Recommendation re the amalgamation of Diocesan Financial Schemes</i> ⁷⁴	1
1909	Regulations introducing and governing Lay Readers ⁷⁵ Scheme for the Government of the Divinity School ⁷⁶ Scheme of Procedure for the Filling of Casual Vacancies on the RCB ⁷⁷	2
1910	No delegated or quasi-legislation reported	0
1911	No delegated or quasi-legislation reported	0
1912	<i>Resolution on planting in lieu of cut trees</i> ⁷⁸ Reprint of the Charter of the RCB ⁷⁹ Constitution of the Episcopal Appointments Committee ⁸⁰	2
1913	<i>Memorandum from the House of Bishops on the establishment of a Divinity Hostel in Dublin</i> ⁸¹	2
1914	Constitution of a Committee to cooperate with a Committee of the Presbyterian Church ⁸²	10
1915	<i>Memorandum re the adoption by the RCB of a system of Deduction of Income Tax</i> ⁸³ Constitution of the Committee re the association of Women with the Parochial Administration of Church Business. ⁸⁴	35
1916	No delegated or quasi-legislation reported	0
1917	<i>Communication from the House of Bishops interpreting Canons 21 and 22 (suitability of</i>	10

⁷⁴ JGS [1908] lxvi.

⁷⁵ JGS [1909] lii-liv.

⁷⁶ JGS [1909] lxviii-lxxi.

⁷⁷ JGS [1909] 124-25.

⁷⁸ JGS [1912] 26.

⁷⁹ JGS [1912] 171f.

⁸⁰ JGS [1912] xciii.

⁸¹ JGS [1913] lxxx – lxxxii.

⁸² JGS [1914] cii.

⁸³ JGS [1914] 168-73.

⁸⁴ JGS [1915] lxxxii.

	<i>candidates for ordination</i>) ⁸⁵	
1918	No delegated or quasi-legislation reported	6
1919	Alteration of Glebe Rules ⁸⁶	4
1920	<i>Resolution on Provision of expenses for Motor Cars and Motor Cycles</i> ⁸⁷ Constitution of the Committee on Retrenchment and Reform ⁸⁸	7
1920 (Special)	No delegated or quasi-legislation reported	8
1921	No delegated or quasi-legislation reported	14
1922	Revised Constitution of the Standing Committee ⁸⁹	12
1923	Rules of Procedure in the case of petitions under the Commission for the Union of Parishes Act. ⁹⁰ Constitution of the United Council of Christian Churches and Religious Communion in Ireland ⁹¹	9
1924	No delegated or quasi-legislation reported	3
1925	Rules for the Election of Members of Standing Committee ⁹²	5
1926	<i>Resolution requesting the setting apart of the Sunday before Armistice Day as Remembrance Sunday</i> ⁹³	11
1927	Constitution of a Church Music Committee ⁹⁴ <i>Statement of Standing Committee explaining the Financial System of the Church of Ireland</i> ⁹⁵ <i>Sunday School Calendar: Hints to the Teacher</i> ⁹⁶ The Graded Courses of Bible Instruction for Public	7

⁸⁵ JGS [1917] xcvi.

⁸⁶ JGS [1919] 25 and 30.

⁸⁷ JGS [1920] xcvi.

⁸⁸ JGS [1920] A2-4.

⁸⁹ JGS [1922] 183 and 202-05.

⁹⁰ JGS [1923] 190-93.

⁹¹ JGS [1923] 321.

⁹² JGS [1925] 186.

⁹³ JGS [1926] lxxxv.

⁹⁴ JGS [1927] lxxiv.

⁹⁵ JGS [1927] 241-46.

⁹⁶ JGS [1927] 251-63, this schema, amended from time to time, is repeated in subsequent years.

	Elementary Schools in Northern Ireland, 1927 ⁹⁷	
1928	Constitution of the Missionary Council of the Church of Ireland ⁹⁸	6
1929	Constitution of a Conference for Youth ⁹⁹	1
1930	<i>Scheme for Diocesan Missionary Councils</i> ¹⁰⁰ <i>Scheme for Missionary Parochial Committees</i> ¹⁰¹ <i>Scheme to promote congregational singing</i> ¹⁰²	4
1931	<i>Advice concerning the Forestry Act 1928</i> ¹⁰³	5
1932	Constitution of Committee on Artistic and Ecclesiological Interests ¹⁰⁴ <i>Resolution concerning rights of way over glebe lands</i> ¹⁰⁵ <i>Scheme of loans for the repair of churches</i> ¹⁰⁶	1
1933	No delegated or quasi-legislation reported	4
1934	<i>Scheme for the management of Church Plate and Parochial Documents</i> ¹⁰⁷ Constitution of an Ecclesiastical Records Committee ¹⁰⁸	7
1935	Constitution of a Committee on the Mobility of the Clergy ¹⁰⁹	5
1936	No delegated or quasi-legislation reported	0
1937	No delegated or quasi-legislation reported	3

⁹⁷ JGS [1927] 264-47, this schema, amended from time to time, is repeated in subsequent years.

⁹⁸ JGS [1928] 261-63.

⁹⁹ JGS [1929] lxx.

¹⁰⁰ JGS [1930] 264-66.

¹⁰¹ JGS [1930] 266-68.

¹⁰² JGS [1930] 368-69.

¹⁰³ JGS [1931] 25-26.

¹⁰⁴ JGS [1932] lxxxii.

¹⁰⁵ JGS [1932] 23.

¹⁰⁶ JGS [1932] 29-30.

¹⁰⁷ JGS [1934] 202.

¹⁰⁸ JGS [1934] 203.

¹⁰⁹ JGS [1935] lxxx.

1938	No delegated or quasi-legislation reported	2
1939	The By-Laws of the RCB ¹¹⁰	2
1940	Resolution permitting the ordination of Assistant School Masters in certain schools ¹¹¹ Resolution requesting a Sunday School Syllabus ¹¹² Standing Orders of the Board of Selectors of Bishops ¹¹³ Resolution on Compulsory Tillage Orders ¹¹⁴	4
1941	New Glebe Rules ¹¹⁵ <i>Recommendations concerning the upkeep of churchyards and burial grounds</i> ¹¹⁶ <i>Legal Opinion re 'Parson's Freehold'</i> ¹¹⁷	4
1942	No delegated or quasi-legislation reported	4
1943	No delegated or quasi-legislation reported	6
1944	<i>Communication from the House of Bishops concerning interchange of preachers/rules of Church Order</i> ¹¹⁸ Constitution of the Home Mission Society ¹¹⁹	5
1945	Constitution of the Church Unity Committee ¹²⁰	7
1946	Constitution of a Committee on the Baptism of Infants ¹²¹	7
1947	<i>Resolution requesting bishops to designate a Sunday annually for prayer for Christian Unity</i> ¹²² Resolution approving the use and commissioning of Lay Readers ¹²³	5

¹¹⁰ JGS [1939] 29 and 111-12.

¹¹¹ JGS [1940] cxi.

¹¹² JGS [1940] cxiii.

¹¹³ JGS [1940] cxxvi-cxxvii.

¹¹⁴ JGS [1940] 132.

¹¹⁵ JGS [1941] 21-29.

¹¹⁶ JGS [1941] 34-35.

¹¹⁷ JGS [1941] 159-65.

¹¹⁸ JGS [1944] lxxxi-lxxxiv.

¹¹⁹ JGS [1944] cxxxv.

¹²⁰ JGS [1945] cxxiv.

¹²¹ JGS [1946] cvii.

¹²² JGS [1947] xcvi.

	Procedures for Episcopal Elections ¹²⁴	
1948	<i>Report concerning the office of 'Reader' in the Church of Ireland</i> ¹²⁵	4
1949	Constitution of the Church of Ireland Youth Council ¹²⁶	9
1950	Constitution of a Church Hymnal Committee ¹²⁷ Constitution of 'Hymns for the Young' Committee ¹²⁸ <i>A Scheme for the reorganisation of the work of the General Synod</i> ¹²⁹ <i>Legal Opinion on the performance of duties of chaplaincy within another's Cure</i> ¹³⁰ <i>Draft Proposed Constitution of the Irish Council of Churches</i> ¹³¹	2
1951	<i>Exploration of relationship with the Church of South India</i> ¹³² Constitution of a Broadcasting Committee ¹³³ Rules for the election of Standing Committee Episcopal Electors ¹³⁴	2
1952	<i>Resolution on relationship with the Church of South India</i> ¹³⁵ <i>Approval of 'The Sevenfold Programme' of the British Council of Churches</i> ¹³⁶ Constitution of a Revised Hymnal Committee ¹³⁷	4
1953	Amendment of Glebe Rules ¹³⁸	3

¹²³ JGS [1947] ciii.

¹²⁴ JGS [1947] 149-50.

¹²⁵ JGS [1948] 151-53.

¹²⁶ JGS [1949] 168-69.

¹²⁷ JGS [1950] cvii.

¹²⁸ JGS [1950] cxiv.

¹²⁹ JGS [1950] 152-54.

¹³⁰ JGS [1950] 161-62.

¹³¹ JGS [1950] 317-18.

¹³² JGS [1951] ciii-civ.

¹³³ JGS [1951] civ.

¹³⁴ JGS [1951] 151.

¹³⁵ JGS [1952] xcvii-xcviii and ciii-civ.

¹³⁶ JGS [1952] cxviii

¹³⁷ JGS [1952] cxvi-cxvii.

¹³⁸ JGS [1953] 30-31.

1954	<i>Resolution providing for the Church of Ireland People's Collection</i> ¹³⁹	6
1955	Constitution of a Publications Committee ¹⁴⁰	2
1956	<i>Approval of Scheme of Loans for Car Purchase</i> ¹⁴¹ Recognition of Protestant Adoption Society ¹⁴² Recognition of the Church of Ireland Baptismal Registry of Adopted Children. ¹⁴³	6
1957	Constitution of the Board of Missionary Enquiry ¹⁴⁴	5
1958	Amendment of the Rules of the Court of the General Synod ¹⁴⁵ <i>Resolution and Circular concerning Voluntary Health Insurance for the Clergy</i> ¹⁴⁶	2
1959	No delegated or quasi-legislation reported	6
1960	Extension of the powers of the Broadcasting Committee to include the Television Service ¹⁴⁷	8
1961	Revision of the Powers of the Church Unity Committee ¹⁴⁸ Constitution of Select Committee on Recruitment of Men for the Ministry ¹⁴⁹ <i>Christian Stewardship Scheme</i> ¹⁵⁰ <i>Scheme for the appointment of Information Officers</i> ¹⁵¹	8
1962	Constitution of the Advisory Committee on Secondary Education in the Republic of Ireland ¹⁵²	6

¹³⁹ JGS [1954] cv-cvi.

¹⁴⁰ JGS [1955] 92.

¹⁴¹ JGS [1956] 24.

¹⁴² JGS [1956] 90.

¹⁴³ JGS [1956] 90.

¹⁴⁴ JGS [1957] xcix.

¹⁴⁵ JGS [1958] xc.

¹⁴⁶ JGS [1958] 90.

¹⁴⁷ JGS [1960] cxi.

¹⁴⁸ JGS [1961] cxiii.

¹⁴⁹ JGS [1961] cxxii.

¹⁵⁰ JGS [1961] 28-30.

¹⁵¹ JGS [1961] 84-85.

¹⁵² JGS [1962] civ; JGS [1965]lxxi-lxxii and 140-41.

	Constitution of a new Publications Committee ¹⁵³ Constitution of a Liturgical Advisory Committee ¹⁵⁴	
1963	<i>Form of agreement for full communion with the Spanish Lusitanian and Philippine Churches</i> ¹⁵⁵	8
1964	Resolution initiating discussions with the Methodist and Presbyterian Churches in Ireland ¹⁵⁶ <i>Standardised Plan for Glebe Houses</i> ¹⁵⁷ <i>Recommendation against depositing of ashes in walls or under paving in Churches</i> ¹⁵⁸ Constitution of the Board of Education ¹⁵⁹	11
1965	Report of the Constitution Committee ¹⁶⁰	7
1966	No delegated or quasi-legislation reported	5
1967	Legal Opinion on the Disposal of Church Plate ¹⁶¹	2
1968	<i>Report – Administration 1967</i> ¹⁶²	4
1969	Constitution of the Committee on the Canons ¹⁶³ Constitution of a Committee on the Office and Work of a Bishop ¹⁶⁴	6
1970	Constitution of the Council for the Church Overseas ¹⁶⁵ <i>Approval of Proposals concerning the establishment of an Anglican Consultative Council</i> ¹⁶⁶	7

¹⁵³ JGS [1962] 92-94.

¹⁵⁴ JGS [1962] 90 and 104.

¹⁵⁵ JGS [1963] 168.

¹⁵⁶ JGS [1964] xlv.

¹⁵⁷ JGS [1964] 22.

¹⁵⁸ JGS [1964] 26.

¹⁵⁹ JGS [1964] 129-30.

¹⁶⁰ JGS [1965] 69-74.

¹⁶¹ JGS [1967] 18.

¹⁶² JGS [1968] 78-94.

¹⁶³ JGS [1969] lxxv-lxxvi.

¹⁶⁴ JGS [1969] lxxvi-lxxvii and xcvi.

¹⁶⁵ JGS [1970] 163-64.

¹⁶⁶ JGS [1970] 68.

	Scheme for the appointment of a Communications Committee ¹⁶⁷ Constitution of a Role of the Church Committee ¹⁶⁸	
1971	Constitution of a Select Committee on the Canons ¹⁶⁹ Constitution of a Select Committee on the Church's Work among Tourists ¹⁷⁰ <i>Resolution re Sick Leave for Clergy</i> ¹⁷¹ <i>Draft new Constitution for the Church Unity Committee</i> ¹⁷²	14
1971 Special Synod	No delegated or quasi-legislation reported	0
1972	Amended Constitution of Standing Committee ¹⁷³ Constitution of the Council for the Church Overseas ¹⁷⁴ Constitution of a Select Committee on the Auxiliary Ministry ¹⁷⁵ Rules of Co-option to Standing Committee ¹⁷⁶ <i>Legal opinion re Marriage on production of a Registrar's Certificate</i> ¹⁷⁷ Constitution of an Advisory Committee on Religious Education ¹⁷⁸	12
1973	Constitution of the Radio and Television Committee ¹⁷⁹ Constitution of the Church of Ireland Board for Social Responsibility ¹⁸⁰	7

¹⁶⁷ JGS [1970] 75-77.

¹⁶⁸ JGS [1970] 81.

¹⁶⁹ JGS [1971] lxxxvii and cix.

¹⁷⁰ JGS [1971] cv.

¹⁷¹ JGS [1971] 90-91.

¹⁷² JGS [1971] 152-53.

¹⁷³ JGS [1972] lxxv-lxxvi.

¹⁷⁴ JGS [1972] lxxix.

¹⁷⁵ JGS [1972] xcvi.

¹⁷⁶ JGS [1972] 77-78.

¹⁷⁷ JGS [1972] 82.

¹⁷⁸ JGS [1972] 194.

¹⁷⁹ JGS [1973] lxxxii.

	Constitution of a Select Committee on the Remarriage of Divorced Persons ¹⁸¹	
1974	Rules for Selection and Training for the Auxiliary Ministry ¹⁸² Delegation of authority to the Board of Education to appoint Church of Ireland members on the Secondary Education Committee ¹⁸³ Resolution mandating entering into full communion with the Mar Thoma Syrian Church ¹⁸⁴ Authorisation by the House of Bishops for the use of specific translations of the bible in Services ¹⁸⁵ <i>Constitution of the Church of Ireland National School Managers' Association</i> ¹⁸⁶	8
1975	Rules Governing the Auxiliary Ministry ¹⁸⁷	7
1976	Resolution approving in principle the ordination of women ¹⁸⁸	11
1977	Revised Rules of the Rules and Orders of the Court of the General Synod ¹⁸⁹ Constitution of the Select Committee on the Ordination of Women ¹⁹⁰	2
1978	<i>Report on Ancient and Historic Churches</i> ¹⁹¹ Church Advisory Committees to the Law Reform Commissions ¹⁹² Supplemental Fund Rules 1978 ¹⁹³	2

¹⁸⁰ JGS [1973] lxxxviii.

¹⁸¹ JGS [1973] cii-ciii and cxvii.

¹⁸² JGS [1974] lxxxix-xcii.

¹⁸³ JGS [1974] ciii.

¹⁸⁴ JGS [1974] ciii.

¹⁸⁵ JGS [1974] 96.

¹⁸⁶ JGS [1974] 137-39.

¹⁸⁷ JGS [1974] 303-05 and JGS [1975] lxxv-lxxvii.

¹⁸⁸ JGS [1976] cix and 69.

¹⁸⁹ JGS [1977] xlv.

¹⁹⁰ JGS [1977] lix.

¹⁹¹ JGS [1978] 18.

¹⁹² JGS [1978] 66-67.

1979	<i>New composition of the Council for the Church Overseas</i> ¹⁹⁴	7
1980	Revised Rules of the Rules and Orders of the Court of the General Synod ¹⁹⁵ Concordat with the Church of Pakistan ¹⁹⁶	4
1981	No delegated or quasi-legislation reported	8
1982	No delegated or quasi-legislation reported	6
1983	No delegated or quasi-legislation reported	3
1984	Scheme to provide for a Central Communications Board ¹⁹⁷ <i>Scheme for Housing for Retired Clergy in the Republic of Ireland</i> ¹⁹⁸	12
1985	Constitution of Select Committee on the RCB Income Tax Department ¹⁹⁹ The Church of Ireland Voluntary Contributions Scheme ²⁰⁰ <i>Approval by Standing Committee of Recommendations from the Inter-Church Meeting concerning Baptism and Interchurch Marriages</i> ²⁰¹	2
1986	Terms of Reference of the Advisory Committee on Closing of Churches ²⁰² <i>Scheme for the Maintenance of Churches</i> ²⁰³	3
1987	Constitution of a Hymnbook Revision Committee ²⁰⁴ <i>Appointment of a Contents of Churches Committee</i> ²⁰⁵ <i>Endowment Assurance Scheme</i> ²⁰⁶	8

¹⁹³ JGS [1978] 115-16; these are repeated annually thereafter.

¹⁹⁴ JGS [1979] 147.

¹⁹⁵ JGS [1980] xlvi.

¹⁹⁶ JGS [1980] 67-68.

¹⁹⁷ JGS [1984] lxxxiv-lxxxv.

¹⁹⁸ JGS [1984] 22-24.

¹⁹⁹ JGS [1985] lxxviii-lxxix.

²⁰⁰ JGS [1985] xciii.

²⁰¹ JGS [1985] 74-75.

²⁰² JGS [1986] 68-72.

²⁰³ JGS [1986] 163-64.

²⁰⁴ JGS [1987] xci.

²⁰⁵ JGS [1987] 29.

	<i>Standing Committee Recommendations implementing resolutions of ACC-6</i> ²⁰⁷	
1988	<p>Constitution of Select Committee on the Ordination of Women as Priests and Bishops²⁰⁸</p> <p>Constitution of a Committee on Clergy Stress²⁰⁹</p> <p><i>Circular Letter on the Subject of Public Liability Insurance</i>²¹⁰</p> <p><i>Legal Opinion on the Re-Marriage of Divorced Persons</i>²¹¹</p> <p><i>Legal Opinion on the contractual conditions and tenure of office of women deacons</i>²¹²</p>	5
1989	<p>Constitution of the Church of Ireland Youth Council²¹³</p> <p><i>Recommendations of the Contents of Churches Committee</i>²¹⁴</p> <p><i>Approval of a Church of Ireland Logo</i>²¹⁵</p> <p><i>Explanatory Booklet on Clergy Pensions</i>²¹⁶</p>	3
1990	<p><i>Clergy Remunerations and Benefits Report</i>²¹⁷</p> <p><i>Contents of Churches Committee – Standardised Forms</i>²¹⁸</p> <p><i>Copyright permissions</i>²¹⁹</p> <p>Approval by the House of Bishops for the use of the Revised English Bible (1989) in Church²²⁰</p>	6

²⁰⁶ JGS [1987] 31-34.

²⁰⁷ JGS [1987] 110-12.

²⁰⁸ JGS [1988] lxxxvii.

²⁰⁹ JGS [1988] lxxxviii.

²¹⁰ JGS [1988] 29.

²¹¹ JGS [1988] 133-34.

²¹² JGS [1988] 134-35.

²¹³ JGS [1989] lxxxvii and 186- 88.

²¹⁴ JGS [1989] 28-29.

²¹⁵ JGS [1989] 80.

²¹⁶ JGS [1989] 143.

²¹⁷ JGS [1990] 16-17 and 72-104.

²¹⁸ JGS [1990] 28.

²¹⁹ JGS [1990] 114-1, such permissions became a regular feature from this period onwards.

²²⁰ JGS [1990] 119.

	<i>Commission on Church Buildings Guidelines on the Closure of Churches</i> ²²¹	
1991	Statement of recognition of diversities of conviction among faithful members of the Church of Ireland ²²² Constitution of a Select Committee on the Communion of the Baptised but Unconfirmed ²²³ <i>Administrative Decision to establish See House Committees</i> ²²⁴ <i>Decision on the use of the Church of Ireland Logo.</i> ²²⁵ Rules governing Augmentation of Pensions – the Supplemental Fund ²²⁶	0
1992	Constitution of a Select Committee on Marriage ²²⁷ <i>Criteria and Priorities for the award of grants for the repair of Churches</i> ²²⁸ <i>Policy on Stained Glass</i> ²²⁹ Constitution of a Committee on the Ordained Ministry ²³⁰ <i>Setting of Diocesan Targets for the Priorities Fund</i> ²³¹	3
1993	Revision of the By-Laws of the RCB ²³² Constitution of the Council for the Church Overseas ²³³	3

²²¹ JGS [1990] 288-89.

²²² JGS [1991] lx.

²²³ JGS [1991] lxxiv.

²²⁴ JGS [1991] 22.

²²⁵ JGS [1991] 84.

²²⁶ JGS [1991] 188.

²²⁷ JGS [1992] lxxix and xc.

²²⁸ JGS [1992] 25-26.

²²⁹ JGS [1992] 26.

²³⁰ JGS [1992] 90-92.

²³¹ JGS [1992] 97.

²³² JGS [1993] lxxii-lxxvii.

²³³ JGS [1993] lxxxiv-lxxxv.

	<p><i>Guidelines and standardised inventory forms for the contents of churches</i>²³⁴</p> <p>Approval from the House of Bishops for the use of the New Revised Standard Version of the Bible in Services²³⁵</p> <p><i>Legal Opinion on the membership of retired clergymen of committees</i>²³⁶</p>	
1994	<p>Amended Constitution of the Board of Education of the General Synod²³⁷</p> <p>Constitution of a Hymnal Revision Committee²³⁸</p> <p><i>Resolution on cessation of use of tropical hardwoods</i>²³⁹</p>	3
1995	<p>Constitution of a Commission on the Episcopal Needs of the Church of Ireland²⁴⁰</p> <p><i>Resolution of Subscription of the Porvoo Declaration</i>²⁴¹</p> <p><i>Report of the Committee on the Ordained Ministry</i>²⁴²</p>	2
1996	<p>Constitution of a Commission on Ministry²⁴³</p> <p>Amendment of the Constitution of the Standing Committee²⁴⁴</p> <p>Constitution of a new Select Committee on the Communion of the Baptised but Unconfirmed²⁴⁵</p> <p>Regulations governing the Remarriage of Divorced Persons in Church²⁴⁶</p>	4

²³⁴ JGS [1993] 42.

²³⁵ JGS [1993] 106.

²³⁶ JGS [1993] 152-53.

²³⁷ JGS [1994] lxxiii.

²³⁸ JGS [1994] lxvi-lxvii.

²³⁹ JGS [1994] lxxv.

²⁴⁰ JGS [1995] 143.

²⁴¹ JGS [1995] 143.

²⁴² JGS [1995] 165-70.

²⁴³ JGS [1996] xcvi-xcvii.

²⁴⁴ JGS [1996] xcvi-xcix.

²⁴⁵ JGS [1996] cv-cvi.

²⁴⁶ JGS [1996] cx-cxiv.

	<i>Guidelines to Diocesan Glebes Secretaries</i> ²⁴⁷ <i>Communication of information concerning Christian Copyright Licensing</i> ²⁴⁸	
1997	Amended By-Laws of the RCB ²⁴⁹ Resolution requesting a total and thorough revision of the Book of Common Prayer ²⁵⁰ <i>Setting of level of public liability insurance</i> ²⁵¹ <i>Approval of 'Safeguarding Trust: The Church of Ireland Code of Good Practice'</i> ²⁵²	2
1998	<i>Agreement to sign the Fetter Lane Declaration</i> ²⁵³ <i>Resolution in support of Jubilee 2000</i> ²⁵⁴ Constitution of a Select Committee on accommodation for married ordinands ²⁵⁵ <i>Setting up of a strategic planning working group</i> ²⁵⁶ <i>Setting up of a sectarianism working group</i> ²⁵⁷ Scheme of part-time deployment in ministry and draft contract ²⁵⁸	3
1999	<i>Declaration on the Historic Formularies of the Church of Ireland</i> ²⁵⁹ Request to the House of Bishops to consider the relation of Confirmation to Holy Communion ²⁶⁰ Constitution of the Church of Ireland Youth Department ²⁶¹ <i>Statement of Investment Policy of the RCB</i> ²⁶² <i>Introductory Leaflet to the Porvoo Declaration</i> ²⁶³	5

²⁴⁷ JGS [1996] 73-80.

²⁴⁸ JGS [1996] 136.

²⁴⁹ JGS [1997] xc-xci.

²⁵⁰ JGS [1997] ci.

²⁵¹ JGS [1997] 35.

²⁵² JGS [1997] 141.

²⁵³ JGS [1998] lxxxi-lxxxii.

²⁵⁴ JGS [1998] lxxxiv.

²⁵⁵ JGS [1998] xcvi-xcviii.

²⁵⁶ JGS [1998] 128.

²⁵⁷ JGS [1998] 146-56.

²⁵⁸ JGS [1998] 252-55.

²⁵⁹ JGS [1999] lxxviii-lxix.

²⁶⁰ JGS [1999] lxxv.

²⁶¹ JGS [1999] lxxix-lxxx.

²⁶² JGS [1999] 17.

	<i>Green Paper on Pastoral Breakdown: the Appointment and Tenure of Office</i> ²⁶⁴	
2000	<p><i>Communication from the House of Bishops on Children and Communion</i>²⁶⁵</p> <p><i>Communication from the House of Bishops on the Theological College Council</i>²⁶⁶</p> <p>Resolution ‘making the Reuilly Declaration’²⁶⁷</p> <p><i>Review of Safeguarding Trust</i>²⁶⁸</p> <p><i>Sectarianism Education Programme</i>²⁶⁹</p> <p><i>Legal Opinion on Freehold</i>²⁷⁰</p> <p><i>White Paper on pastoral breakdown</i>²⁷¹</p> <p><i>Recommendations of the Select Committee on accommodation for married ordinands</i>²⁷²</p>	4
2001	<p><i>Report on the disposal and display of Church plate</i>²⁷³</p> <p>Pensions (Part-time Deployment in the Stipendiary Ministry) Regulations 2000²⁷⁴</p> <p><i>New Objectives and Criteria of the Priorities Fund</i>²⁷⁵</p> <p><i>Proposals for the future role and structure of the Role of the Church Committee</i>²⁷⁶</p> <p>Covenant between the Methodist Church in Ireland and the Church of Ireland²⁷⁷</p> <p><i>Constitution of the Church in Society Committee</i>²⁷⁸</p>	6

²⁶³ JGS [1999] 166-67.

²⁶⁴ JGS [1999] 323-27.

²⁶⁵ JGS [2000] lxxiii.

²⁶⁶ JGS [2000] lxxiv-lxxv.

²⁶⁷ JGS [2000] lxxvii-lxxviii.

²⁶⁸ JGS [2000] 126.

²⁶⁹ JGS [2000] 127.

²⁷⁰ JGS [2000] 238-39.

²⁷¹ JGS [2000] 239 and 241-43.

²⁷² JGS [2000] 270-71.

²⁷³ JGS [2001] 51-53.

²⁷⁴ JGS [2001] 123-25.

²⁷⁵ JGS [2001] 204.

²⁷⁶ JGS [2001] 205-08.

²⁷⁷ JGS [2001] 284-85.

²⁷⁸ JGS [2001] 142 para 26 and 205-88; JGS [2003] 151.

	<i>Constitution of the Church's Ministry of Healing (Northern Ireland)</i> ²⁷⁹	
2002	<p><i>Covenant between the Methodist Church in Ireland and the Church of Ireland</i>²⁸⁰</p> <p><i>Communication from the House of Bishops establishing the Bishops' Liaison Group on Ordination</i>²⁸¹</p> <p><i>Advice from RCB arising from the Disability Discrimination Act 1995</i>²⁸²</p> <p><i>Notice concerning Health and Safety legislation</i>²⁸³</p> <p><i>Notification of the Data Protection Act 1998 (UK)</i>²⁸⁴</p> <p>Constitution of the Church of Ireland Sectarianism Education Project²⁸⁵</p> <p>Constitution of the Church in Society Committee²⁸⁶</p>	9
2003	<p>Amendment of Standing Orders²⁸⁷</p> <p>Amendment of the Constitution of the Standing Committee²⁸⁸</p> <p>Constitution of a Covenant Council²⁸⁹</p> <p>Clergy Severance Regulations²⁹⁰</p> <p>General rules, terms and limitations relating to voluntary severance on a permanent basis from the stipendiary ministry.²⁹¹</p> <p><i>Statement on Socially Responsible Investment</i>²⁹²</p> <p><i>Code of Good Practice on access to churches and parochial buildings for disabled people.</i>²⁹³</p>	16

²⁷⁹ JGS [2001] 313-16.

²⁸⁰ JGS [2002] lxxix-lxxx.

²⁸¹ JGS [2002] cviii.

²⁸² JGS [2002] 22.

²⁸³ JGS [2002] 24.

²⁸⁴ JGS [2002] 28.

²⁸⁵ JGS [2002] 140-41.

²⁸⁶ JGS [2002] 128; see also JGS [2003] 201-02.

²⁸⁷ JGS [2003] cviii-cix.

²⁸⁸ JGS [2003] cix-cx.

²⁸⁹ JGS [2003] cxv.

²⁹⁰ JGS [2003] 50.

²⁹¹ JGS [2003] 51.

²⁹² JGS [2003] 78; this statement, first made in September 2002, is reviewed and made annually since then.

	<p><i>Proposal and framework for a Church Conservation Adviser</i>²⁹⁴</p> <p><i>Policy Statement on Disability</i>²⁹⁵</p>	
2004	<p>Constitution of the Council for Mission²⁹⁶</p> <p><i>Memorandum and recommendations arising from the Control of Asbestos at Work Regulations (NI) 2003</i>²⁹⁷</p> <p><i>Constitution of an Historic Churches Advisory Committee</i>²⁹⁸</p> <p><i>Recommendations under the Fire Precautions (Workplace) Regulations (NI) 2001</i>²⁹⁹</p> <p><i>Guidelines for planning authorities concerning Architectural heritage protection for places of public worship (Republic of Ireland)</i>³⁰⁰</p> <p><i>Explanatory Memorandum from the Historic Churches Advisory Committee</i>³⁰¹</p> <p><i>Child protection clearance procedures</i>³⁰²</p> <p><i>Guidelines on copyright procedure in relation to the Book of Common Prayer</i>³⁰³</p> <p><i>Establishment of Church of Ireland Publishing Imprint</i>³⁰⁴</p> <p>Constitution of the Hard Gospel Committee³⁰⁵</p> <p><i>Directions concerning the Marriage (Northern Ireland) Order 2003</i>³⁰⁶</p> <p>Regulatory Scheme for the Solemnising of Matrimony³⁰⁷</p>	1

²⁹³ JGS [2003] 79-83.

²⁹⁴ JGS [2003] 89-90.

²⁹⁵ JGS [2003] 155-56.

²⁹⁶ JGS [2004] lxv-lxvi.

²⁹⁷ JGS [2004] 25 and 89-90.

²⁹⁸ JGS [2004] 27.

²⁹⁹ JGS [2004] 91-92.

³⁰⁰ JGS [2004] 93-96.

³⁰¹ JGS [2004] 97-99.

³⁰² JGS [2004] 172-73.

³⁰³ JGS [2004] 173 and 221-22.

³⁰⁴ JGS [2004] 175-76.

³⁰⁵ JGS [2004] 183-84.

³⁰⁶ JGS [2004] 233.

³⁰⁷ JGS [2004] 234-37.

	<i>Solemnisation of Matrimony: Preliminary guidance 2003/4 for licensers and clergy</i> ³⁰⁸	
2005	<p>Marriage Regulations (NI) 2004³⁰⁹</p> <p><i>Marriage (NI) Order 2003 – Guidance Notes</i>³¹⁰</p> <p><i>Commendation of Guides ‘Maintaining our Churches and ‘The Care of Stained Glass’</i>³¹¹</p> <p><i>Guidelines and protocols for local covenant partnerships</i>³¹²</p> <p><i>Setting up of a working group on disability.</i>³¹³</p> <p><i>Report of the Parish Development Committee</i>³¹⁴</p> <p><i>‘Points’ arising from the Porvoo Contact Group</i>³¹⁵</p> <p><i>Values and aims of the Hard Gospel Programme</i>³¹⁶</p>	3
2006	<p><i>Resolution on compliance with Fairtrade objectives</i>³¹⁷</p> <p><i>Resolution encouraging celebration of the covenant relationship with the Methodist Church in Ireland</i>³¹⁸</p> <p><i>Exhortation re vigilance when developing near churchyard or graveyard walls</i>³¹⁹</p> <p><i>Exhortation re Health and Safety Statements</i>³²⁰</p> <p><i>Guidelines for Diocesan Secretaries for the Quinquennial Inspection of Churches by the Diocesan Architect/Surveyor</i>³²¹</p> <p><i>Guidelines for Memorials in Churches</i>³²²</p> <p><i>Template Maintenance Log Book for Churches</i>³²³</p> <p><i>Statement re freedom of choice and conscience re</i></p>	5

³⁰⁸ JGS [2004] 238.

³⁰⁹ JGS [2005] lxxxi-lxxxiv.

³¹⁰ JGS [2005] lxxxiv-lxxxvi.

³¹¹ JGS [2005] 28.

³¹² JGS [2005] 162-88.

³¹³ JGS [2005] 147.

³¹⁴ JGS [2005] 234-36.

³¹⁵ JGS [2005] 237-38.

³¹⁶ JGS [2005] 257-59.

³¹⁷ JGS [2006] lxxxviii.

³¹⁸ JGS [2006] lxxxix.

³¹⁹ JGS [2006] 27.

³²⁰ JGS [2006] 28.

³²¹ JGS [2006] 29 and 80-84.

³²² JGS [2006] 29 and 85-87.

³²³ JGS [2006] 29 and 88-89.

	<p><i>membership of the Masonic Order</i>³²⁴</p> <p><i>Setting up of a Statute Law (Republic of Ireland) monitoring group</i>³²⁵</p> <p><i>Policy Statement of the Working Group on Disability</i>³²⁶</p> <p><i>Commission on Ministry guidelines on transfer from auxiliary to full-time stipendiary ministry</i>³²⁷</p>	
2007	<p>House of Bishops permission for experimental use of a Form of Holy Communion by Extension³²⁸</p> <p>Constitution of the Church of Ireland Commission for Christian Unity and Dialogue³²⁹</p> <p>New Constitution for the Church of Ireland Youth Department³³⁰</p> <p><i>Exhortation concerning insurance of land occupied by a third party under lease or licence</i>³³¹</p> <p><i>Terms of Reference of a diversity audit by the Hard Gospel Project</i>³³²</p> <p><i>Audit of disability access in parishes</i>³³³</p>	5
2008	<p><i>Exhortation concerning compliance with Smoke-Free legislation</i>³³⁴</p> <p><i>Explanation and outline of criteria for the Listed Places of Public Worship Grants scheme</i>³³⁵</p> <p><i>Notice concerning the Civic Structures Conservation Grants Scheme</i>³³⁶</p> <p><i>Decision equating civil partnership with marriage for pensions purposes</i>³³⁷</p>	4

³²⁴ JGS [2006] 152.

³²⁵ JGS [2006] 157.

³²⁶ JGS [2006] 224.

³²⁷ JGS [2006] 348.

³²⁸ JGS [2007] lxxvii.

³²⁹ JGS [2007] lxxxvii.

³³⁰ JGS [2007] xc-xcii.

³³¹ JGS [2007] 29.

³³² JGS [2007] 180.

³³³ JGS [2007] 208.

³³⁴ JGS [2008] 29.

³³⁵ JGS [2008] 30.

³³⁶ JGS [2008] 31.

³³⁷ JGS [2008] 98.

	<p><i>Setting up of Working Group on the review of charities legislation</i>³³⁸</p> <p><i>Church of Ireland Mission Statement (devised by the House of Bishops)</i>³³⁹</p> <p>Approval of revised editions of ‘Safeguarding Trust’³⁴⁰</p> <p>Church of Ireland Marriage Regulations (Republic of Ireland)³⁴¹</p>	
2009	<p><i>Resolution concerning a Code of Duty and Conduct for Clergy</i>³⁴²</p> <p><i>Exhortation re energy performance of buildings</i>³⁴³</p> <p><i>Notice re The Heritage Council Buildings at Risk Scheme</i>³⁴⁴</p> <p><i>Notice re The Heritage Council Significant Places of Worship Grant Scheme</i>³⁴⁵</p> <p><i>Setting up of an Anglican Covenant Response Group</i>³⁴⁶</p> <p><i>Setting up of a working group on tied clergy housing</i>³⁴⁷</p> <p><i>Procedure guidelines for a weekend meeting of the General Synod</i>³⁴⁸</p>	7
2010	<p><i>Statement of Charitable Purpose</i>³⁴⁹</p> <p><i>Resolution encouraging parishes to avail of the Back to Church initiative</i>³⁵⁰</p> <p><i>Resolution recognising the need for the Church of Ireland to have a Code of Environmental Good Practice</i>³⁵¹</p>	2

³³⁸ JGS [2008] 157.

³³⁹ JGS [2008] 157-58.

³⁴⁰ JGS [2008] 159.

³⁴¹ JGS [2008] 188-92.

³⁴² JGS [2009] cv.

³⁴³ JGS [2009] 32.

³⁴⁴ JGS [2009] 34.

³⁴⁵ JGS [2009] 34.

³⁴⁶ JGS [2009] 154.

³⁴⁷ JGS [2009] 166.

³⁴⁸ JGS [2009] 190-92.

³⁴⁹ JGS [2010] cxx.

³⁵⁰ JGS [2010] cxiii.

	<p><i>Approval of Guidance Documents for parishes relating to new charities legislation</i>³⁵²</p> <p><i>Statement of Charitable Purpose</i>³⁵³</p> <p><i>Statement of Public Benefit</i>³⁵⁴</p> <p><i>Liturgical Space and Church Re-Ordering: Issues of Good Practice</i>³⁵⁵</p> <p><i>Notice concerning Listed Places of Public Worship Grant Scheme (Northern Ireland)</i>³⁵⁶</p> <p><i>Notice concerning Civic Structures Conservation Grants Scheme (Republic of Ireland)</i>³⁵⁷</p> <p><i>Functions of a Church Buildings Sub-Committee</i>³⁵⁸</p> <p><i>Step by Step Guidelines for Compliance with Regulations in relation to Protected Structures.</i>³⁵⁹</p> <p>Establishment of Church of Ireland Clergy Pension Trustee Ltd³⁶⁰</p> <p>Rules governing remuneration, expenses and other matters relating to payments to persons serving in the Auxiliary Ministry.³⁶¹</p> <p><i>Clergy Pensions Fund Funding Proposal</i>³⁶²</p> <p>Clergy Pensions Fund Internal Dispute Resolution Procedure³⁶³</p> <p><i>Revision of the Terms of Reference of the Hard Gospel Implementation Group</i>³⁶⁴</p> <p><i>Agreed Principles on the interchangeability of ministries with the Methodist Church</i>³⁶⁵</p>	
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³⁵¹ JGS [2010] cxiv.

³⁵² JGS [2010] cxix.

³⁵³ JGS [2010] cxx and cxxxii – cxxxii.

³⁵⁴ JGS [2010] cxx and cxxxii.

³⁵⁵ JGS [2010] cxxii.

³⁵⁶ JGS [2010] 35.

³⁵⁷ JGS [2010] 36.

³⁵⁸ JGS [2010] 36-38.

³⁵⁹ JGS [2010] 37-38.

³⁶⁰ JGS [2010] 42-44 and 122-49.

³⁶¹ JGS [2010] 99-101.

³⁶² JGS [2010] 116-121.

³⁶³ JGS [2010] 196-99.

³⁶⁴ JGS [2010] 220-21.

³⁶⁵ JGS [2010] 308-09.

Bibliography

Primary Sources

The Anglican Communion Covenant (ACC 2009)

Archive of the Bishop of Cork (1999 to 2012)

- CDCC (Code of Duty and Conduct Committee)
- Cha (Charity law reform)
- Courts (Courts and Tribunal Committee)
- CSD (Church-State Dialogue)
- Dat (Data Protection)
- Emp (Employment Law)
- Mar (Marriage Law Reform)
- Pen (Pensions Committee)
- SLR (Statute Law Revision)

Anglican-Moravian Conversations: The Fetter-Lane Common Statement (Council for Christian Unity of the General Synod of the Church of England 1996)

‘Baptism, Eucharist and Ministry’ Faith and Order Paper No 111 (World Council of Churches 1982)

‘Boards of Management of National Schools Constitution of Boards and Rules of Procedure’ (Department of Education and Skills 2011)

The Book of Common Prayer (The Columba Press 2004)

Called to Witness and Service: The Reilly Common Statement (Church House Publishing 1999)

Certain Sermons or Homilies appointed to be read in Churches in the Time of Queen Elizabeth (SPCK 1938)

Children First: National Guidelines for the Protection and Welfare of Children (Department of Health 1999)

Church Hymnal (Oxford University Press 2000)

Code of Good Practice for Child Protection in the Youth Work Sector (2nd edn, Department of Education and Science 2003)

Confessing the One Faith: an Ecumenical Explication of the Apostolic Faith as it is Confessed in the Nicene-Constantinopolitan Creed (381), Faith and Order Paper No. 153 (World Council of Churches 1991)

‘Criteria for Selection for the Ordained Ministry of the Church of Ireland’ (House of Bishops 2001)

‘Developing a Code of Behaviour: Guidelines for Schools’ (National Educational Welfare Board 2008)

‘Faith Communities and Pandemic Flu: Guidance for Faith Communities and Local Pandemic Committees’ (1 May 2009) available at < <http://www.cofe.anglican.org/info/swineflu/governmentadvice.doc> > accessed 25 March 2012.

The Form and Manner of Making of a Dean and Other Forms (Ponsonby and Gibbs 1912)

Guidelines for interfaith Events and Dialogue (Church of Ireland Publishing 2007)

Kingston G, *Guidelines for the Journey: Working out the Covenant* (Church of Ireland Publishing 2008)

General Synod of the Church of England: Report of Proceedings 2010 Vol 41 No 3

‘The General Synod of the Church of Ireland: A Guide’ (Church of Ireland 2012)

‘Guidelines on the Inclusion of Students of Other Faiths in Catholic Secondary Schools’ (JMB/AMCSS 2010)

House of Bishops of the Church of Ireland:

-- Index to Minutes of the House of Bishops Volume 1 (1875 – 1937)

-- Index to Minutes of the House of Bishops Volume II (1938 – 1966)

-- Index to Minutes of the House of Bishops Volume III (October 1966 – June 1979)

-- Index to Minutes of the House of Bishops Residential Meetings (2000 – 2001)

‘Internship Handbook’ (The Church of Ireland Theological Institute 2011)

‘Irish Churches’ Affirmations on Migration, Diversity and Interculturalism’ (Irish Inter-Church Meeting 2010)

Liturgical Advisory Committee, ‘Guidelines re the Liturgical Use of Oil’ (2010)

-- *Liturgical Space and Church Re-Ordering: Issues of Good Practice* (Church of Ireland Publishing 2010)

‘Our Duty to Care: Principles of Good Practice for the protection of Children and Young People’ (Department of Health 2002)

‘An Overview of the Representative Body of the Church of Ireland’ (Church of Ireland 2003) Appendix A – By-Laws

‘The Parish Green Guide: Caring for God’s Creation’ (Church in Wales)

Pontifical Council for Promoting Christian Unity, *Directory for the Application of Principles and Norms on Ecumenism* (CTS Publications 1993)

The Porvoo Common Statement (Council for Christian Unity of the General Synod of the Church of England 1993)

‘Primary Boards of Management: Information Manual’ (Department of Education and Science 2007)

The Principles of Canon Law Common to the Churches of the Anglican Communion (Anglican Consultative Council 2008)

Representative Church Body Library – General Convention Papers – as follows:

MS 1/1: Minute book of the ‘consulting committee’, established to administer the Church of Ireland before, and in the immediate aftermath of disestablishment. 11 November, 1868 – 6 April, 1869

MS 1/2: Minute book of the standing committee of the ‘church conference’. 16 April – 20 July 1869

MS 1/3: Minute book of meetings held by the honorary secretaries of the ‘committee appointed by the Lay Conference’ or the ‘church conference’ 16 October 1869 – 5 February 1870

MS 1/4: Minute Book of the General Convention 15 February 1870 – 4 November 1870

MS 1/6: Minute book of the ‘committee of organisation’, which met during January 1870, including first draft “Act of constitution of the Church of Ireland’. January 1870.

MS 1/7: Rough minute book of the ‘committee of organization’.

MS 2/1: Original resolutions of the ‘standing committee of the church conference’ 16 April 1869 – 30 July 1869.

MS 2/2: Original resolutions of the General Convention, 1870

MS 2/3: Original resolutions of the proceedings of the ‘organisation committee’.

MS 4/6: Hand-written address to the General Convention, together with printed copy of the same, from the clergy and registered vestrymen of the Church of Ireland [hundreds of signatures], urging caution about two issues to be considered before the General Synod, 1871. These issues concerned the proposed revision of the canons and laws of the Church of Ireland...and proposed changes to the Book of Common Prayer.

Representative Church Body Library: Representative Church Body General Convention 1870. Minute Book of the Judicature Committee.

Representative Church Body Library: Representative Church Body Legal Committee minutes books:

-- [Vol. I, 1870 – 1872]

-- [Vol. II, 1872 – 1874]

-- [Vol. III, 1874 – 1876]

-- [Vol. IV, 1876 – 1877]

-- [Vol. V, 1877 – 1880]

-- [Vol. VI, 1880 – 1882]

-- [Vol. VII, 1883 – 1884]

-- [Vol. VIII, 1885 – 1886]

-- [Vol. IX, 1887 – 1890]

-- [Vol. X, 1891 – 1900]

-- [Vol. XI, 1901 – 1908]

-- [Vol. XII, 1908 – 1917]

-- [Vol. XIII, 1918 – 1926]

Representative Church Body Library: Representative Church Body Legal Committee
Folders:

Blue Folder with sundry papers (20th Century) including advices on Church funds, (also paper by P. Prentice ‘The Legal Position of Funds of the RCB’) sustentation, remarriage of divorced persons, ordination of women and donations to Anglican and Ecumenical organisations.

Representative Church Body Library Pamphlets – B6 as follows:

Magee, WC, *The Breaking Net: A Sermon preached on the occasion of the meeting of the Church Congress, Dublin September 29, 1868* (1868, Hodges, Smith and Foster, Dublin)

Monck, W.H.S., *The Order of Bishops* (1869, William McGee, Dublin),

Sherlock, W., *The Constitution of the Church in the United States of America, in Canada, and New Zealand* (1868, Hodges, Smith and Foster, Dublin)

Sherlock, W, *Suggestions towards the Organisation of the Church of Ireland based on that of the Reformed Episcopal Churches abroad* (1869 Hodges, Smith and Foster, Dublin)

Stopford, EA, *The Vote of the Bishops* (1869, Hodges, Foster and Co., Dublin)

Representative Church Body Library: Opinions of Counsel

[Vol.1, 1876 - 1884]

[Vol. 2, 1885]

[Volume of Miscellaneous Opinions, 1873 – 1934]

Two large box files marked ‘Opinions’ containing opinions given, since 1871 to the Representative Church Body

Representative Church Body Library: Rough Minutes Book of the Legal Committee of the RCB

[1942 – 1974]

Representative Church Body Library: Standing Committee Legal Advisory Committee minutes books

[16th June 1893 to 4th February 1920]

[11th January 1921 – 10th October 1960]

[24th February 1961 – 6th July 1972]

Representative Church Body Library: Standing Committee Legal Advisory Committee rough minutes books and folder

[11th January 1920 – 8th December 1955]

[1955 – 1982]

Folder [7th March 1961]

Representative Church Library – Uncatalogued Minute Books as follows:

Minutes of *The Constitution Committee*, 1961 to 1965, Uncatalogued Minute Book at the RCB Library, Dublin

Minutes of *The Constitution Committee*, 1965 to 1971, Uncatalogued Minute Book at the RCB Library, Dublin

Minutes of *The Select Committee on Procedure*, 1973 to 1975, Uncatalogued Minute Book at the RCB Library, Dublin

Minutes of *The Advisory Committee on General Synod Procedure*, 1983 to 1984, Uncatalogued Minute Book at the RCB Library, Dublin

Minutes of *The Select Committee on the Canons*, 1971 to 1974, Uncatalogued Minute Book at the RCB Library, Dublin (including correspondence from Chancellor, The Reverend E. Garth Moore, Corpus Christi College, Cambridge).

Minutes of the Standing Committee of the General Synod Uncatalogued 1971-1972

Representative Church Library – Uncatalogued Papers of the Court of the General Synod (GS3):

Simpson Case papers [1927 – 1929]

Colquhoun Cases [1934-36, 1939 and 1940]

‘Rules of the Court of the General Synod and Rules and Orders of Diocesan Courts and Registries in Ireland’ (Church of Ireland, 1934)

‘Safeguarding Trust: the Church of Ireland Code of Good Practice for Ministry with Children’ (Church of Ireland 2007)

Together in Mission and Ministry: The Porvoo Common Statement (Church House Publishing 1993)

Primary Sources: Constitutions and Canons of the Churches of the Anglican Communion

The Canons of the Church of England (6th edn, Church House Publishing 2000)

‘Code of Canons and Constitution of the Anglican Church in Aotearoa, New Zealand and Polynesia’ (September 2004)

‘Code of Canons and Digest of Resolution of the Scottish Episcopal Church’ (General Synod of the Scottish Episcopal Church 2009)

‘Constitution and Canons of the Church of the Province of West Africa ‘ (Anglican Press 1990)

Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (Church Publishing 2003)

‘Constitution and Canons of the Province of Hong Kong Sheng Kung Hui’ (October 2001)

‘La Constitution de la Province Ecclésiastique de l’Océan Indien’ (1973)

‘The Constitution of the Anglican Church of Australia’ (June 2003)

‘The Constitution of the Church in Wales (Two Vols)’ (Church in Wales 2005)

‘Constitution of the Church of Ireland’ (Church of Ireland 2003)

‘The Constitution of the Church of Nigeria’ (Anglican Communion) (2002)

‘The Constitution of the Church of the Province of Melanesia’ (2002)

‘Constitution and Canons of the Church of the Province of Southern Africa’ (CPSA 2004)

‘The Constitution of the Province of the Episcopal Church of the Sudan’ (2002)

‘Handbook of the General Synod of the Anglican Church of Canada’ (16th edn, 2010)

Primary and Secondary Sources: Diocesan Materials

Armagh ‘Constitution of the Armagh Diocesan Youth Council’ March 2007

-- ‘Constitution of the Armagh Diocesan Committee of the Church’s
Ministry of Healing’ 16 October 2007

-- ‘Rules and Regulations of the Diocese of Armagh’ (Tenth Edition, 1998)

Cashel and Ossory, ‘Diocesan Rules of the United Dioceses of Cashel, Waterford,
Lismore, Ossory, Ferns and Leighlin 2004’

Connor, ‘Diocese of Connor Diocesan Regulations and Financial Scheme 1990’

Cork, Cloyne and Ross, ‘An Order of Commissioning of Lay Assistants at Holy
Communion’

-- ‘Diocesan Regulations and Rules to order the Diocesan Synod of Cork, Cloyne
and Ross’

Derry and Raphoe, ‘Diocese of Derry and Raphoe Diocesan Rules’

Down and Dromore, ‘Diocese of Down and Dromore Diocesan Regulations, The
Financial Scheme 1988 and Diocesan Glebes Regulations’

Elphin and Ardagh, ‘Diocese of Elphin and Ardagh Financial Scheme 1966’

Meath and Kildare, ‘Resource Book of the Dioceses of Meath and Kildare’

Kilmore, ‘Financial Scheme Diocese of Kilmore 2005’

Limerick and Killaloe, 'The Financial Scheme of Limerick, Killaloe and Ardfert, 1992'

-- 'Standing Orders of the United Diocesan Synod of Limerick, Killaloe and Ardfert'

Tuam, 'Diocese of Tuam, Killala and Achonry Diocesan Regulations' (2007)

Ecclesiastical Quasi-Legislation and Soft Law: Circulars, Guidelines and Policies

Bishops of the Southern Province of the Church of Ireland, 'Recognised Standards for Certification of Healthcare Chaplains' (2010)

Church of Ireland Clergy Pensions Board, 'The Church of Ireland Voluntary Contributions Scheme – Rules' (April 2002)

Cork, Cloyne and Ross, 'Code of Practice for Lay Church Workers'

-- 'Annual Study Leave and Retreats for Clergy'

-- 'Confirmation Checklist'

-- 'Data Protection: Guidance'

-- 'Diocesan Employees: Disciplinary Policy'

-- 'Diocesan Employees: Grievance Procedure'

-- 'Diocesan Employees: Harassment Prevention Policy'

-- 'Diocesan Employees: Bullying Prevention Policy'

-- 'Diocesan Employees: Sick Leave Policy'

-- 'Expenses of Office Allowance – Diocesan Council Guidelines for Select Vestries'

- 'Getting married in Church – Information for Couples'
- 'Guide to the appointment of principal teachers',
- 'Guide to the appointment of teachers'
- 'Guide to the appointment of Special Needs Assistants'
- 'Guidelines for Ecumenical and Inter-Faith Services in Cork'
- 'Guidelines for Nominators'
- 'Holy Communion and the Baptised but Unconfirmed: Pastoral Guidelines of the Bishop' (2007)
- 'Holy Communion by Extension: Practical Guidelines' Diocese of Cork, Cloyne and Ross
- 'Infection Control – Advice for Hospital Chaplains and Visitors'
- 'Institution of an Incumbent: Instructions for Parishes'
- 'Marriage Application and Notification Form'
- 'Marriage – Legal Checklist'
- 'Marriage Regulations – Request to Bishop in Exceptional Circumstances'
- 'Moving to Ireland: A Guide for Clergy'
- 'Policy Development: Guidance on Developing an Admissions Policy'
- 'Policy on Lay Liturgical Assistants'
- 'Policy on Parish Readers'

-- 'Preparing for a Confirmation Sunday'

-- 'Parish Treasurers Return to Diocesan Treasurers: Guidelines and Notes'

-- 'Sabbatical Leave'

-- 'Training for Ministers of the Eucharist'

-- 'The Use of School Premises outside School Hours'

-- 'What is a Rural Dean?'

Derry and Raphoe, 'Guidelines for the Ordering of A Service of Confirmation'

-- 'The Proposed Procedure for Boards of Nomination'

Down and Dromore, 'Confirmation Guidelines' – Form 'A' (February 2002)

-- 'Guidelines for Funerals' – Form 'C' (January 2002)

-- 'Guidelines for Orders of Service' – Form 'E' (January 2002)

-- 'Guidelines regarding Faculties and Dedications for Furnishings, Plaques and
Flags – Form B' (October 1999)

-- 'Remarriage of Divorced Persons – Form F2' (February 2002)

-- 'Revised Guidelines for Institution Services – Form D' (February 2002)

The Form and Manner of Making a Dean and other forms (1912, Dublin University Press)

House of Bishops, 'The Church of Ireland Reader Training Syllabus' (2001)

-- 'Clergy Licensing Protocols' (2009)

-- 'Guidelines from the House of Bishops to All Parochial Clergy - the Care of Communion Vessels and Linen' (1986)

-- 'Guidelines: The Interment of Ashes and their Dispersal at Sea' (2003)

-- 'The H1N1 Flu Pandemic' (2009)

-- 'Protocol for Receiving Roman Catholic Clergy' (2002)

-- 'Regulations for Transfer of Non-Stipendiary Clergy to Stipendiary Ministry'

-- 'Scheme for the Appointment of Candidate Priests 2011-2012' (2012)

Library and Archives Committee of the RCB, 'Clerical Responsibility for Parish Records' (June 2008)

Liturgical Advisory Committee, 'Guidelines re the Liturgical Use of Oil' (2010)

RCB Legal Department, 'Guidance for Diocesan Registrars re the M.Th. Internship Year at the Church of Ireland Theological Institute.' (RCB Legal Department on behalf of the House of Bishops 2010).

Codes of Practice, Quasi-Legislation and Soft Law Instruments

'A Framework for Major Emergency Management' (Department of Justice and Law Reform)

'Airport Voluntary Commitment on Air Passenger Service' (Department of Transport 2002)

'All-Island Energy Market: A Development Framework' (Department of Communications, Marine and Natural Resources 2004)

'Architectural Heritage Protection: Guidance for Planning Authorities (Department of the Environment Planning Guidelines No.9)' (Department of the Environment, Government Publications 2004).

‘Children First: national guidelines for the welfare and protection of children’
(Stationery Office 1999)

‘Children First: national guidelines for the welfare and protection of children’
(Stationery Office 2009)

‘A Code of Good Practice - Child Protection for the Youth Work Sector’ (Stationery
Office 2003)

‘Code of Practice for the Safe Operation of Recreational Craft’ (Stationery Office 2006)

Cork City Council, ‘Cork City Heritage Plan 2007-2012’ (Cork City Council 2007)

Cork City Council ‘A Guide to Protected Structures in Cork City 2007-2012’ (Cork
City Council 2007).

‘Design, construction and Equipment of Small Fishing Vessels of less than 15m Length
overall’ (Department of Transport 2005)

‘Developing a Fully Inclusive Social Insurance Model’ (Department of Social and
Family Affairs 2002)

‘Draft Guidelines for Railway Safety Cases’ (Department of Transport 2001)

‘Farm Safety Code of Practice’ (Health and Safety Authority 2006)

‘Government Policy on Architecture 2009-2015’ (Department of Environment, Heritage
and Local Government 2009)

‘Guidance Document for Organised Pyrotechnic Displays’ (Department of Justice and
Law Reform 2006)

‘Guidance for the Control and Management of Traffic at Road Works’ (Department of
Transport 2010)

‘Guide to Professional Conduct and Ethics for Registered Medical Practitioners’ (7th edn, Irish Medical Council 2009)

‘Guidelines for Accessible Maritime Passenger Transport’ (Department of Transport 2010)

‘Guidelines for Equal Status Policies in Enterprises’ (The Equality Authority 2005)

‘Guidelines for Second Level Schools on Embedding Equality in School Development Planning’ (The Equality Authority 2010)

‘Guidelines on Auditing Rural Transport Services’ (Department of Transport 2001)

‘Guidelines on Procedures at Oral Hearings’ (An Bord Pleanála 2010)

‘Guidelines on the Preparation of a Safety Statement for Farms’ (Health and Safety Authority)

‘Immunisation Guidelines for Ireland’ (Royal College of Physicians of Ireland 2008)

‘Information Sheet on the Safe Use of All-Terrain Vehicles (ATVs) (Health and Safety Authority 2008)

Lawrence D, ‘The Care of Stained Glass’ (The Heritage Council)

‘Maritime Safety Act Guidelines for Local Authorities’ (Department of Transport 2007)

‘Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland on the Single Electricity Market (SEM) Arrangements.’ (Department of Foreign Affairs 2006)

‘Nursing Homes Support Scheme – A Fair Deal’ (Department of Health and Children 2010)

‘Our Duty to Care: the principles of good practice for the protection of children and young people’ (Department of Health and Children 2002)

‘Pesticides – Voluntary Code of Good Practice’ (Teagasc) < www.teagasc.ie > accessed on 11 January 2011

‘Poverty Proofing Guidelines’ (Office for Social Inclusion 2005)

‘Programme for Prosperity and Fairness’ (Department of the Taoiseach 1999)

‘Renewed Programme for Government’ (Department of the Taoiseach 2009)

‘Safety for Older Farmers’ (Health and Safety Authority)

‘Shareholders’ Rights Regulation 2009 – Guidance’ (Office of the Director of Corporate Enforcement)

Stay Safe on the Farm with Jessy (Health and Safety Authority 2007)

‘Tax Relief for Donations to Certain Sports Bodies – Guidelines’ (Department of Tourism, Culture and Sport 2002)

Texts and Commentaries

The Canon Law Letter and Spirit (The Canon Law Society of Great Britain and Ireland 1995)

Gratian *The Treatise on Laws* (translated by Augustine Thompson) (Catholic University of America Press 1993)

Beal JP Coriden JA Green TJ, *New Commentary on the Code of Canon Law* (Paulist Press 2000)

Bray G (ed), *The Anglican Canons 1529-1947* (The Boydell Press 1998)

-- *Records of Convocation* vol xvi Ireland 1101-1690 (The Boydell Press 2006)

-- *Records of Convocation* vol xviii Ireland 1690-1869 pt 1 (The Boydell Press 2006)

-- *Records of Convocation* vol xviii Ireland 1690-1869 pt 2 (The Boydell Press 2006)

Connolly P (ed) *Statute Rolls of the Irish Parliament: Richard III – Henry VIII* (Four Courts Press 2002)

The First and Second Prayer Books of Edward VI (The Prayer Book Society 1999)

The Irish Statutes Revised Edition 1885 (Reprint, The Round Hall Press 1995)

Price R and Gaddis M (trs) *The Acts of the Council of Chalcedon Vols. I-III* (Liverpool University Press 2007)

Reeves, W (ed) *Acts of Archbishop Colton in his Metropolitan Visitation of the Diocese of Derry, 1397* (The Irish Archaeological Society 1850)

Thorpe B *Ancient Laws and Institutes of England* (1840) (Reprint, The Law Book Exchange 2003)

Reports

Report of the Constitution Review Group (Stationery Office 1996)

All-Party Oireachtas Committee on the Constitution Tenth Report: The Family (Stationery Office 2006)

The Authority of Scripture, A report of the Church of Ireland Bishops' Advisory Commission on Doctrine (Church of Ireland Publishing 2006)

The Canon Law of the Church of England, Report of the Archbishops' Commission on Canon Law (SPCK 1947)

Ireland's Second Report to the United Nations Committee on the Rights of the Child (National Children's Office 2005);

'The truth shall make you free' Report of the Lambeth Conference 1988 (ACC 1988)

Joint Committee on the Constitutional Amendment on Children: Third/Final Report (Stationery Office 2010)

National review of compliance with Children First: National Guidelines for the Protection and Welfare of Children (Stationery Office 2008)

Report of the Lambeth Commission on Communion: The Windsor Report 2004 (The Anglican Communion Office 2004)

Report of the Value for Money Review of the School Transport System (Department of Education and Skills 2011)

Working as One Body, The Report of the Archbishops' Commission on the Organisation of the Church of England (Church House Publishing 1995)

Articles and Journals

Aronson M, 'The Great Depression, This Depression and Administrative Law' University of New South Wales [2009] Vol 37 Federal Law Review 165

Baldwin R and Houghton J, 'Circular arguments: the status and legitimacy of administrative rules' in [1986] Public Law 239

Barber P, 'The Fall and Rise of Doctors' Commons' in (1996-7) 4 EccLJ 462

Bash A, 'Ecclesiastical Law and the Law of God in Scripture' in (1998) 5 EccLJ 7

Bash A, 'The New Testament, Mosaic Law and Ecclesiastical Law Today' in (2005) 8 *EccLJ*, 60

Bates TStJN, 'Parliament, Policy and Delegated Power' in [1986] *Statute Law Review* 114

Beatson J, 'Legislative Control of Administrative Rule Making' in (1979) 12 *Cornell International Law Journal* 199

Berry D 'When does an instrument made under primary legislation have "legislative effect"' [1997] *The Loophole* (The Newsletter of the Commonwealth Association of Legislative Council) 14

Bradshaw B, 'The opposition to the Ecclesiastical Legislation in the Irish Reformation Parliament' in (1969) Vol 16 No 63 *Irish Historical Studies* 285

Bradshaw B, 'The Edwardian reformation in Ireland, 1547-1553' in (1977) Vol 34 *Archivium Hibernicum* 83

Brodin E, 'The Employment Status of Ministers of Religion' in [1996] 25 *Industrial Law Journal* 211

Buchanan C, 'Some Loose Legal Cannons' in (1996-97) 4 *EccLJ* 646

Bursell RDH, 'What is the Place of Custom in English Canon Law?' in [1987-89] 1(4) *EccLJ* 12

Cameron JT, 'Custom as a Source of Law in Scotland' in (1964) 27 *MLR* 306

Campbell K, 'Custom as a Source of Law' in (2001) 82 *ARSP-Beiheft* 58

Lord Campbell of Alloway, 'Codes of Practice as an Alternative to Legislation' in [1985] *Statute Law Review* 127

Chinkin CM, 'The Challenge of Soft Law: Development and Change in International Law' in (1989) 38(4) *International and Comparative Law Quarterly* 850

Cohn M, 'Medieval chains, invisible links: on non-statutory powers of the executive' in (2005) Vol 25(1) *Oxford Journal of Legal Studies* 97

Colton P, 'The Pursuit of a Canonical Definition of Membership of the Church of Ireland' in [2008] 10(1) *EccLJ* 3

-- 'Schools and the law: a patron's introspection' (2009) Vol 28 No 3 *Irish Educational Studies* 253

Cox N, 'Legal aspects of Church-State relations in New Zealand' [2010] *ALRS*; (2010) 8(1) *Journal of Anglican Studies* 9

Cranmer F, 'Clergy Employment, Judicial Review and the Free Presbyterian Church of Scotland' in (2010) Vol 12(3) *EccLJ* 355

Cranmer F and Heffer T, 'Necessary to Salvation? The Canon Law of the Church of England and the Interpretation of Scripture' in (2008) 10 *EccLJ* 137

Cranmer F and Peterson S, 'Employment, Sex Discrimination and the Churches: the *Percy Case*' in (2006) 8 *EccLJ* 392

Doe N, 'Towards a critique of the role of theology in English ecclesiastical and canon law' in (1992) 2 *EccLJ* 328

-- 'Canon Law and Communion' 6 *EccLJ* (2002) 241

-- 'The Common Law of the Anglican Communion' (2003) 7 *EccLJ* 4

-- 'The Anglican Covenant Proposed by the Lambeth Commission' in 8 (2005-06) 8 *EccLJ* 147

-- 'The Contribution of Common Principles of Canon Law to Ecclesial

Communion in Anglicanism' in (2008) 10 EccLJ 71

- Duddington, J 'Ministers of Religions and Discrimination Law: A Story from the Glens of Angus' in 156 (2006) Law and Justice 59
- 'God, Caesar and the Employment Rights of Ministers of Religion' in 159 (2007) Law and Justice 129
- Duffy E, 'The Shock of Change: Continuity and Discontinuity in the Elizabethan Church of England' in 7 (2004) EccLJ 429-46
- Dwyer C, 'How far can religion affect Employment?' in (2009) 163 Law and Justice 142
- Ferguson RB, 'The legal status of non-statutory codes of practice' in (1988) Journal of Business Law 12
- Greer S, 'A Guide to the Human Rights Act 1998' . (1999) 24(1) ELRev 3
- Gruchalla-Wesierski T, 'A Framework for Understanding "Soft Law"' in (1984-1985) 30 McGill Law Journal 37
- Helmholz RH, 'The Canons of 1603: the Contemporary Understanding' in Doe N Hill M and Ombres R (eds), *English Canon Law* (University of Wales Press 1998) 23-35;
- Hill C, 'Rome, Canterbury and the Law' in (1990-92) 2 EccLJ 164-71
- Hill M, 'Gospel and Order' in (1997) 4 EccLJ 659
- 'The Impact for the Church of England of the Human Rights Act 1998' (1998-2000) 5 EccLJ 431

-- 'The Permissible Scope of Legal Limitations on the Freedom of Religion in the United Kingdom' (2005) 19(2) *Emory International Law Review* 1129

Hillgenberg H, 'A Fresh Look at Soft Law' in (1999) 10 *EJIL* 499

Hope D, 'The letter killeth but the spirit giveth life' in (1997) 4 *EccLJ* 694

Hooker R, *Laws of Ecclesiastical Polity* (Reprint, JM Dent and Co 1907) Book I

Huels JM, 'Back to the Future: The Role of Custom in a World Church' in *Proceedings of the Fifty-Ninth Annual Convention of the Canon Law Society of America* (CLSA 1997) 1

Kirgis FL, 'Custom on a Sliding Scale' in (1987) Vol 81 No 1 *The American Journal of International Law* 146

Kunz JL, 'The Nature of Customary International Law' in (1953) Vol 47 No 4 *The American Journal of International Law* 662

Lee N, 'Case Comment: Child benefit – share care of two children' in (2006) Vol 13(2) *Journal of Social Security Law* 119

Libson G, 'On the Development of Custom as a Source of Law in Islamic Law' in (1997) 4 *Islamic Law and Society*

McCrudden C., 'Religion, Humamn Rights, Equality and the Public Sphere' in (2011) Vol 13(1) *EccLJ* 26

MacCulloch D, ' The Birth of Anglicanism' in (2004) 7 *EccLJ* 418

Megarry RE, 'Administrative Quasi-Legislation' in (1944) 60 *LQR* 125

Meron T, 'The Continuing Role or Custom in the Formation of International Humanitarian Law' in (1996) Vol 90 No 2 *The American Journal of International Law* 238

- Neill J, 'The Anglican Covenant and the Anglican Communion' in (2011) 34(1) *Search* 3
- Ombres R, 'Canon Law and Theology' in (2012) 14(2) *EccLJ* 164
- 'Why then the Law?' in [1974] *New Blackfriars* 296
- Petchey P, 'Ministers of Religion and Employment Rights: An Examination of the Issues' in (2003) 7 *EccLJ* 157
- Pietersen N, 'Customary Law without Custom? Rules, Principles, and the Role of State Practice in International Norm Creation' in (2007-2008) 23 *Am.U.Int'l L Rev* 275
- Pronto AN, 'Some thoughts on the making of International Law' in (2008) 19(3) *EJIL* 601
- Rees J, 'Conference Report of the Anglican Communion Legal Advisers' Consultation: 6-13 March 2002' in (2002) 6 *EccLJ* 399
- 'Covenant and Communion' in (2012) 14(2) *EccLJ* 235
- Trott S, 'Dignity at Work' in (2001) 6 *EccLJ* 51
- Rawlings R, 'Concordats of the Constitution' (2000) 116 *LQR* 257
- Di Robilant A, 'Genealogies of Soft Law' in (2006) 54(3) *American Journal of Comparative Law* 499
- Roughan N, 'Democratic Custom v international Customary Law' in (2007) 38 *Victoria University Wellington Law Review* 403
- Samuels A, 'Codes of Practice and Legislation' in [1986] *Statute Law Review* 29

Sandberg R, 'Laws and Religion: Unravelling *McFarlane v Relate Avon Limited*' in (2010) Vol 12(3) EccLJ 361

Schiller A, 'Custom in Classical Roman Law' in (1937-1938) 24 Virginia Law Review 268

Seidman R, 'Rules of Recognition in the Primary Courts of Zimbabwe: on Lawyers' Reasonings and Customary Law' in (1983) 32 International and Comparative Law Quarterly 871

Sherlock W 'The Story of the Revision of the Irish prayer book' in [1910] Vol III Irish Church Quarterly 12

Smith PM, 'Points of Law and Practice Concerning Ecclesiastical Visitations' [1990-92] 2 EccLJ 189

de Smith SA, 'Delegated Legislation in England' in (1949) Vol 2 No 4 The Western Political Quarterly 514

Le Sueur A, 'Taking the soft option? The duty of give reasons in the draft Freedom of Information Bill' in [1999] Public Law 419

Trigg R, 'Religion in the Public Forum' in (2011) vol 13(3) EccLJ 274

Vakulenko A, 'Islamic Dress in Human Rights Jurisprudence: A Critique of Current Trends' in [2007] HRLR 1

Waltman J, 'Churches and Equal Employment Policy in the United States and the United Kingdom' in (2011) 166 Law and Justice 36

Williams, DGT, 'Statute Law and Administrative Law' in [1984] Statute Law Review 157

Legal Commentaries

Atkins G, *The Irish Church Act (1869) Carefully Annotated* (Ponsonby 1869)

Bullingbrooke E, *Ecclesiastical Law or, the Statutes, Constitutions, Canons, Rubricks, and Articles of the Church of Ireland methodically digested under Proper Heads with a Commentary Historical and Juridical: Two Volumes* (Boulter Grierson 1770)

Burn R, *Ecclesiastical Law* 4 Vols. (Sweet, Stevens and Norton 1842)

Frere WH and Kennedy WPM (eds), *Visitation Articles and Injunctions Vol. I* (Longmans, Green and Co 1910)

Halsbury's Laws of England (4th edn, 1975) vol 14

Halsbury's Laws of England (5th edn, 2011) vol 34

Halsbury's Laws of England (5th edn, 2012) vol 32

Halsbury's Laws of England (5th edn, 2012) vol 96

Phillimore R, *The Ecclesiastical Law of the Church of England* (2nd edn, Sweet and Maxwell, 1895)

Stopford EA, *A Handbook of Ecclesiastical Law and Duty for the Use of The Irish Clergy* (Hodges, Smith and Co 1861)

Todd CH, *Irish Church Act 1869 with Observations* (Hodges, Foster and Co 1869)

Warren R, *The Law of the Church of Ireland: An Essay* (Stevens and Haynes 1895)

Handbooks and Guides

Behrens J, *Practical Church Management* (1998, Gracewing, Leominster)

Dale W, *The Law of the Parish Church* (Butterworths 1932)

-- *The Law of the Parish Church* (6th edn, , Butterworths 1989)

Deane JLB, *Church of Ireland Handbook* (APCK 1982)

MacMorran K, *Handbook for Churchwardens and Parochial Church Councillors* (First edition, Mowbray 1921)

MacMorran K and Briden T, *Handbook for Churchwardens and Parochial Church Councillors* (14th edn, Mowbray 2011)

Parrott D, *Your Church and the Law* (2nd edn, Canterbury Press 2011)

Wilson WG (ed), *J.B. Leslie: Irish Churchwardens' Handbook* (APCK 1979)

Secondary Materials/Books

Acheson A, *A History of the Church of Ireland, 1691 – 2001* (Columba Press 2002)

Addison N, *Religious Discrimination and Hatred Law* (Routledge 2006)

Ahdar R (ed), *Law and Religion* (Ashgate 2000)

Ahdar R and Leigh I, *Religious Freedom in the Liberal State* (Oxford University Press 2005)

Akenson DH, *The Church of Ireland: Ecclesiastical Reform and Revolution, 1800-1885* (Yale University Press 1971)

Aldridge A, *Religion in the Contemporary World: A Sociological Introduction* (2nd edn, Polity Press 2007)

Basdevant-Gaudemet A and Berlingò S (eds), *The Financing of Religious Communities in the European Union* (Peeters 2009)

Bates S, *A Church at War: Anglicanism and Homosexuality* (IB Taurus 2004)

Bellitto C, *The General Councils* (Paulist Press 2002)

Bicknell EJ, *The Thirty-Nine Articles* (3rd edn., HJ Carpenter (rev), Longmans, Green and Co, 1955)

Bingham T, *The Rule of Law* (Allen Lane 2010)

Birmelé A (ed) *Local Ecumenism: How Church Unity is Seen and Practised by Congregations* (World Council of Churches 1984)

Blackburn R and Polakiewicz J, *Fundamental Rights in Europe: The ECHR and its Members States, 1950 – 2000* (Oxford University Press, 2001)

Blenkinsopp J, *Wisdom and Law in the Old Testament* (Revised edn, Oxford University Press 2003)

Boecker HJ, *Law and the Administration of Justice in the Old Testament and Ancient East* (SPCK 1980)

Bordass W and Bemrose C, *Heating Your Church* (Church House Publishing 1996);

Boyle A and Chinkin C, *The Making of International Law* (Oxford University Press 2007)

Bradney A, *Religions, Rights and Laws* (Leicester University Press 1993)

-- *Law and Faith in a Sceptical Age* (2009, Routledge-Cavendish, Oxford)

Bray G (ed), *Documents of the English Reformation* (James Clarke and Co 1994)

Bray G, 'The Strange Afterlife of the *Reformatio Legum Ecclesiasticarum*' in Doe N Hill M and Ombres R (eds), *English Canon Law* (University of Wales Press 1998) 36

Briden T and Hanson B, *Moore's Introduction to English Canon Law* (3rd edn, Mowbray 1992)

Brown T (ed), *Other Voices, Other Worlds: The Global Church Speaks Out on Homosexuality* (DLT 2006)

Brundage JA *Medieval Canon Law* (Longman 1995)

Bursell RDH, *Liturgy, Order and the Church* (Clarendon Press 1996)

Byrne R and McCutcheon JP, *The Irish Legal System* (4th edn, Butterworths 2003)

Caroe ADR and Caroe MB, *Stonework: maintenance and surface repair* (2nd edn, Church House Publishing 2001)

Casey J, *Constitutional Law in Ireland* (Round Hall, Sweet and Maxwell 2000)

-- 'State and Church in Ireland' in Robbers G (ed) *State and Church in the European Union* (2nd edn, Nomos 2005) 187-208

Chapman MD (ed) *The Anglican Covenant: Unity and Diversity in the Anglican Communion* (T & T Clark 2008)

Clatworthy J and Taylor D (eds.) *The Windsor Report: A Liberal Response* (O Books 2005)

Cocke, T (ed) *The Churchyards handbook* (4th edn, Church House Publishing 2001)

Coolahan J, *Irish Education: history and structure* (Institute of Public Administration 1981)

Collins English Dictionary (6th edn, HarperCollins 2003)

Colton P, 'Religion and Law in Dialogue in Ireland' in Richard Puza and Norman Doe (eds). *Religion and Law in Dialogue: Covenantal and Non-Covenantal Cooperation between State and Religion in Europe* (2006, Peeters, Leuven) 93-113

-- 'Religious Entities as Legal Persons in Ireland' in Lars Friedner (ed), *Churches*

and Other Religious Organisations as Legal Persons (Louvain/Leuven, Peeters, 2007) 125-38

-- 'The Financing of Religious Communities in Ireland' in Basdevant-Gaudemet A and Berlingò S (eds), *The Financing of Religious Communities in the European Union* (Peeters 2009) 203-22

-- 'Religion in Public Education in Ireland' in Gerhard Robbers (ed), *Religion in Public Education* (European Consortium for Church and State Research, 2011) 227-56

-- 'The Application of the Freedom of Religion Principles of the European Convention on Human Rights in Ireland' in Achilles Emilianides (ed), *Religious Freedom in the European Union: the Application of the European Convention on Human Rights in the European Union* (Peeters, 2011)

Concise Oxford English Dictionary (12th edn, OUP 2011)

Coriden JA, *An Introduction to Canon Law* (Paulist Press, 1990)

Council for the Care of Churches, *Church extensions and adaptations* (2nd edn, Church House Publishing 2002)

Council for the Care of Churches, *The Conservation and repair of bells and bellframes: a Code of Practice* (Church House Publishing 2002)

Council for the Care of Churches, *A Stitch in Time: Guidelines for the care of textiles* (Church House Publishing 2001)

Ó Corráin D, *Rendering to God and Caesar: The Irish churches and the two states in Ireland, 1949-73* (Manchester University Press 2006)

Cox, N, *Church and State in the Post-Colonial Era: the Anglican Church and the Constitution in New Zealand* (Polygrapha Ltd 2008)

Ó Cróinín D (ed), *A New History of Ireland: Prehistoric and Early Ireland Vol. 1* (Clarendon Press 2005)

Ó Cróinín D, *Early Medieval Ireland, 400-1200* (Longman 1995)

Cross R and Harris JW, *Precedent in English Law* (4th edn, Clarendon Press 1991)

Cuming GJ, *A History of Anglican Liturgy* (Macmillan 1969)

O'Dair R and Lewis A (eds), *Law and Religion* (Oxford University Press 2001)

Daly B and Doherty M, *Principles of Irish Employment Law* (Clarus Press 2010)

Daly E, *Religion, Law and the Irish State* (Clarus 2012)

Davidson RD (ed), *The Six Lambeth Conferences, 1867 – 1920* (SPCK 1929)

Davis LD *The First Seven Ecumenical Councils (325-787)* (The Liturgical Press 1983)

Delaney H, *Equity and the Law of Trusts in Ireland*, (Thomson Round Hall 2003)

Dictionary of Irish Biography (Cambridge University Press 2009)

Dobb AJ, *The Services of Worship in the English Parish Church* (Churchman publishing 1987)

Doe N, *Essays in Canon Law* (University of Wales Press 1992)

-- *The Legal Framework of the Church of England* (Clarendon Press 1996)

-- *Canon Law in the Anglican Communion* (Clarendon Press 1998)

-- *The Law of the Church in Wales* (University of Wales Press 2002)

-- *An Anglican Covenant: Theological and Legal Considerations for a Global*

Debate (Canterbury Press 2008)

-- *Law and Religion in Europe: A Comparative Introduction* (Oxford University Press 2011)

Doe N, Hill M and Ombres R (eds), *English Canon Law* (University of Wales Press 1998)

Doe N and Sandberg R (eds) *Law and Religion: New Horizons* (Peeters 2010)

Doyle O and Carolan E (eds), *The Irish Constitution: Governance and Values* (Thomson Round Hall 2008)

Edge PW *Legal Responses to Religious Difference* (Kluwer Law 2002)

-- *Religion and Law: An Introduction* (Ashgate 2006)

Elders J, *Revealing the past, informing the future: a guide to archaeology for parishes* (Church House Publishing 2004)

Ellis I, *Vision and Reality: A Survey of Twentieth Century Irish Inter-Church Relations* (Institute of Irish Studies, 1992)

Ellis S, *Ireland in the Age of the Tudors, 1447 – 1603* (Longman 1995)

Elrington Ball F, *The Judges in Ireland, 1221-1921 Vol. II* (John Murray 1926)

d'Entrèves AP, *Natural Law* (2nd edn, Hutchinson 1979)

Evan C, *Freedom of Religion under the European Convention on Human Rights* (Oxford University Press 2001)

Evans MD, (ed), *International Law* (2nd edn, Oxford University Press 2006)

Evans MD, *Religious Liberty and International Law in Europe* (Cambridge University Press 1997)

Evans GR, *Discipline and Justice in the Church of England* (Gracewing 1999)

Fennell C and Lynch I, *Labour Law in Ireland* (Gill and Macmillan 1993)

Fenwick J and Spinks B, *Worship in Transition: the Twentieth Century Liturgical Movement* (T and T Clark 1995)

Ferrari S and Cristofori R (eds), *Law and Religion in the 21st Century* (Ashgate 2010)

Fey HE (ed), *A History of the Ecumenical Movement Vol II: 1948-68* (2nd edn, World Council of Churches 1986)

Finnis J, *Natural Law and Natural Rights* (Clarendon Press 1980)

Flannery T (ed), *Responding to the Ryan Report* (The Columba Press 2009).

Fleming J, *Gille of Limerick (c.1070-1145): Architect of a Medieval Church* (Four Courts Press 2001)

Ford A, *The Protestant Reformation in Ireland* (Four Courts Press 1997)

Forde M, *Employment Law* (Round Hall 2001)

Fowler D, *Church Floors and Floor Coverings* (Church House Publishing 1992)

Friedner L (ed), *Churches and Other Religious Organisations as Legal Persons* (Peeters 2007)

Fuller L, *The Morality of Law* (Revised edn, Yale University Press 1969)

Furlong A, *Tried for Heresy* (O Books 2003)

- Gainer J, 'The *Jus Liturgicum* of the Bishop and the Church in Wales' in Doe N (ed), *Essays in Canon Law* (University of Wales Press 1992) 111
- Ganz G, *Quasi-Legislation: Recent Developments in Secondary Legislation* (Sweet and Maxwell 1987)
- Garbett C, *Church and State in England* (Hodder and Stoughton 1950)
- Glendenning D, *Education and the Law* (Butterworths 1999)
- *Education and the Law* (2nd edn, Bloomsbury Professional 2012),
- *Education, Religion and the Law* (Tottel 2008)
- Glendenning D and Binchy W, *Litigation against Schools* (First Law 2006)
- Graber GW, *Ritual Legislation in the Victorian Church of England* (Edwin Mellen Press 1993)
- Groves P (ed), *The Anglican Communion and Homosexuality: A resource to enable listening and dialogue* (SPCK 2008)
- Gwynn D, *Historic organ conservation* (Church House Publishing 2001)
- Hankey WJ, 'Canon Law' in Sykes S and Booty J (eds.) *The Study of Anglicanism* (SPCK 1988)
- Hart HLA, *The Concept of Law* (Clarendon Press 1961)
- Hayes-McCoy GA, 'The protestant reformation, 1547-1571' in Moody TW Martin FX and Byrne FJ (eds) *A New History of Ireland Vol. III: Early Modern Ireland 1534-1691* (Oxford University Press 2009) 69-93
- Hefling C and Shattuck C, *The Oxford Guide to The Book of Common Prayer: a Worldwide Survey* (Oxford University Press 2006)

Helmholz RH, *Roman Canon Law in Reformation England* (Cambridge University Press 1990)

Hill M, *Ecclesiastical Law* (3rd edn, Oxford University Press 2007)

Hill M (ed), *Religious Liberty and Human Rights* (University of Wales Press, 2002)

Hill M, 'A New Dawn for Freedom of Religion: Grounding the Debate' in Hill M (ed.), *Religious Liberty and Human Rights* (University of Wales Press 2002) 1-13

Hill M Sandberg R and Doe N, *Religion and Law in the United Kingdom* (Kluwer Law 2011)

Hogan G and Gwynn Morgan D, *Administrative Law in Ireland* (4th edn, Round Hall Thomson Reuters 2010)

Hogan G and Whyte G, *J M Kelly: The Irish Constitution* (4th edn, LexisNexis Butterworths 2003)

Holeton D and Buchanan C, *A History of the International Anglican Liturgical Consultations 1983-2007* (Joint Liturgical Studies No 63, SCM-Canterbury Press, 2007)

Holloway H, *The Reformation in Ireland: A Study of Ecclesiastical Legislation* (SPCK 1919)

Hunt B, *Murdoch's Dictionary of Irish Law* (5th edn, Tottel Publishing 2009)

Hurley M (ed), *Irish Anglicanism 1869-1969* (Allen Figgis Ltd 1970)

Jackson B, 'Law' in Coggins RJ and Houlden JL, *A Dictionary of Biblical Interpretation* (SCM 1990) 383-6

Janis M and Evans C, *Religion and International Law* (Martinus Nijhoff Publishers 1999)

Janis M Kay R and Bradley A, *European Human Rights Law: Texts and Materials* (3rd edn, Oxford University Press 2008)

Johnson LT, *The Creed* (DLT 2003)

Kelly F, *A Guide to Early Irish Law* (Dublin Institute for Advanced Studies 2005)

Kemp EW, *An Introduction to the Canon Law in the Church of England* (Hodder and Stoughton 1957)

Kennedy M Clarke R, Turner E and Mayne B *The Prayer Books of the Church of Ireland 1551-2004* (The Columba Press 2004)

Kenney JF, *The Sources for the Early History of Ireland: Ecclesiastical* (Four Courts Press 1997)

Keogh D, *The Vatican, the Bishops and Irish Politics 1919-39* (Cambridge University Press 2004)

-- *Ireland and the Vatican: The Politics and Diplomacy of Church-State Relations 1922-1960* (Cork University Press 1995)

Keogh D and McCarthy A, *The Making of the Irish Constitution 1937* (Mercier Press 2007)

Kidd BJ, *The Thirty-nine Articles: their History and Explanation* Two Vols (Rivington's 1911)

Kilkelly U (ed), *ECHR and Irish Law* (Jordans 2004)

-- *ECHR and Irish Law* (2nd edn, Jordans 2009)

Kingston G, *Working out the Covenant: Guidelines for the Journey* (Church of Ireland Publishing 2008)

Leeder L, *Ecclesiastical Law Handbook* (Sweet & Maxwell 1997)

Lennon C, *Sixteenth Century Ireland* (Gill and Macmillan 2005)

Leslie JB (comp) and Wallace, WJR (ed), *Clergy of Dublin and Glendalough: Biographical Succession Lists* (The Ulster Historical Foundation 2001)

Lindars B (ed), *Law and Religion: Essays on the Place of the Law in Israel and Early Christianity* (J Clark and Co 1988)

Linzey A, *Has Anglicanism a Future? A Response to the Windsor Report* (LGCM, 2005)

Linzey A and Kirker R (eds) *Gays and the Future of Anglicanism: Responses to The Windsor Report*, (O Books 2005)

Macourt M, *Counting the People of God? The Census of Population and the Church of Ireland* (Church of Ireland Publishing 2008)

MacCulloch D, *Reformation* (Allen Lane 2003)

McAdoo HR, *The Spirit of Anglicanism* (A and C Black 1965)

McDowell RB, *The Church of Ireland 1869-1969* (Routledge and Kegan Paul 1975)

McMahon B and Binchy W, *Law of Torts* (3rd edn, Tottel Publishing 2005)

Maitland FW, *Roman Canon Law in the Church of England* (Methuen 1898)

Mawhinney A, *Freedom of Religion and Schools: the Case of Ireland* (VDM Verlag Dr Müller 2009)

Meaney M Kiernan N and Monahan K, *Special Educational Needs and the Law* (Thomson Round Hall 2005)

Meyer H and Vischer L(eds), *Growth in Agreement* (Paulist Press 1984)

Miller H, *The Desire of our Soul* (The Columba Press 2004)

Mowbray A, *Cases and Materials on the European Convention on Human Rights* (Oxford University Press 2001)

Norman J and Berrow J, *Sounds good: A guide to church organs, foe incumbents, churchwardens and PCCs* (Church House Publishing 2002)

O'Halloran K, *Charity Law* (Round Hall Sweet and Maxwell 2000)

O'Halloran K, *Charity Law* (2nd edn, Thomson Reuters 2009)

O'Mahony C, *Educational Rights in Irish Law* (Thomson Round Hall 2006)

O'Malley T, *Sources of Law* (2nd edn, Round Hall Sweet & Maxwell 2001)

Patton HE, *Fifty Years of Disestablishment* (APCK 1922)

Penton J, *Widening the eye of the needle: Access to church buildings for people with disabilities* (3rd edn, Church House Publishing 2008)

Ogle A, *The Canon Law in Medieval England* (John Murray 1912)

Örsy L, *Theology and Canon Law* (Collegeville 1992)

-- 'Theology and Canon Law' in Beal J Coriden J and Green T (eds), *New Commentary on the Code of Canon Law* (Paulist Press 2000) 1

Osborough WN, *The Irish Statutes, Revised Edition 1310-1800* (Round Hall 1995)

-- 'The Legislation of the Pre-Union Irish Parliament' in *The Irish Statutes Revised Edition 1885* (Reprint, Round Hall 1995)

Outhwaite RB, *The Rise and Fall of the English Ecclesiastical Courts, 1500-1860* (Cambridge University Press 2006)

Ovey C and White RCA, *Jacobs and White: The European Convention on Human Rights* (4th edn, Oxford University Press, 2006)

Oxford Dictionary of National Biography (2004)

Polanski, PP, *Customary Law of the Internet* (TWC Asser Press 2007)

Polakiewicz J, *Fundamental Rights in Europe* (Oxford University Press 2001)

Quick O, *Doctrines of the Creed* (Nisbet and Co 1938)

Raz J, *The Authority of Law* (2nd edn, Oxford University Press 2009)

Regan M (ed), *Employment Law* (Tottel Publishing 2009)

Richardson A, *Creeds in the Making* (SCM 1935)

Rivers J, *The Law of Organized Religions* (Oxford University Press 2010)

Robbers G (ed), *State and Church in the European Union* (2nd edn, Nomos Verlagsgesellschaft 2005)

Robilliard St John A, *Religion and the law* (Manchester University Press 1984)

Rouse R and Neill SC (eds), *A History of the Ecumenical Vol. I: 1517-1948* (3rd edn, World Council of Churches 1986)

Ruston R, *Human Rights and the Image of God* (SCM 2004)

Sandberg R, *Law and Religion* (Cambridge University Press 2011)

Sanders EP, *Paul, the Law and the Jewish People* (Fortress Press 1985)

Seaver G, *John Allen Fitzgerald Gregg: Archbishop* (Allen Figgis 1963)

Senden L, *Soft Law in European Community Law* (Hart Publishing 2004)

Shannon G, *Child Law* (2nd edn, Thomson Reuters 2010)

Shaw MN, *International Law* (6th edn, Cambridge University Press 2008)

Shearman H, *Privatising a Church: the Disestablishment and Disendowment of the Church of Ireland* (Ulster Society 1995)

Sherlock W, *The Constitution of the Church in the United States of America, in Canada, and New Zealand* (Hodges, Smith and Foster 1868)

-- *Suggestions towards the Organisation of the Church of Ireland on that of the Reformed Episcopal Churches abroad* (Hodges, Smith and Foster 1869)

Sherwin-White AN, *Roman Society and Roman Law in the New Testament* (Clarendon Press 1963)

Squibb GD, *Doctors' Commons: A History of the College of Advocates and Doctors of Law* (Clarendon Press 1977)

Stevenson K (ed), *A Fallible Church: Lambeth Essays* (DLT 2007)

Stevenson K and Spinks B (eds) *The Identity of Anglican Worship* (Morehouse Publishing 1991)

Stevick DB, 'Canon Law' in Sykes S Booty J and Knight J (eds), *The Study of Anglicanism* (revised edition, SPCK 1998)

Brown S and Strobl S, *A Fragile inheritance: the Care of Stained glass and historic glazing* (Church House Publishing 2002)

Sykes S, Booty J and Knight J (eds), *The Study of Anglicanism* (revised edn, SPCK, 1998)

Tamanaha BZ, *On the Rule of Law* (Cambridge University Press 2004)

Taylor PM, *Freedom of Religion: UN and European Human Rights Law and Practice* (Cambridge University Press 2005)

C. Thom *Early Irish Monasticism* (T and T Clark 2006)

de Vaux R, *Ancient Israel: its Life and Institutions* (DLT 1978)

Vickers LR, *Religious Freedom, Religious Discrimination and the Workplace* (Hart Publishing 2008)

van der Vyver JD and Witte Jr J (eds), *Religious Human Rights in Global Perspective: Legal Perspectives* (Kluwer Law International 1996)

Wadham J, Mountfield H, Prochaska E and Brown C, *Blackstone's Guide to the Human Rights Act 1998* (6th edn, Oxford University Press, 2011)

Watt JA, *The Church and the Two Nations in Medieval Ireland* (Cambridge University Press 1970)

Whyte JH, *Church and State in Modern Ireland 1923 – 1979* (2nd edn, Gill and McMillan 1980)

Winfield F, *Growing Together: Working for Unity Locally* (SPCK 2002)

Witte Jr J and Alexander FS (eds), *Christianity and Human Rights: An Introduction* (Cambridge University Press 2010)

Witte Jr J and Alexander FS (eds), *Christianity and the Law* (Cambridge University Press 2008)

Zander M, *The Law Making Process* (Cambridge University Press 2004)

Unpublished Materials

Clarke RL, *The Disestablishment Revision of the Irish Book of Common Prayer*
(unpublished PhD Thesis, 1989, Trinity College, Dublin)

Colton P, 'The Context of Ministry Today' Unpublished paper for the Dublin and
Glendalough Clergy Conference (3rd February 1998)

Colton P, 'Religion in the Criminal Law in Ireland' in N Doe and M Kotiranta
(eds), *Religion and Criminal Law – Religion et Droit Pénal* (Peeters, due
for publication in 2013)

Kennedy MC, *The Theological Implications of Recent Liturgical Revision in the
Church of Ireland* (unpublished PhD Thesis, 1987, Trinity College,
Dublin).