

IRISH REPORT

reporter

Anthony J. HEDERMAN

Judge of the Supreme Court

1. *Whether every power of the Administration concerning the rights of individuals must be expressly granted by Statute. And if, by consequence, the categories of administrative decision are limited.*

The powers of the Administration concerning the rights of the individuals will be found in three sources. The powers of the Administration concerning the rights of the individuals will be found in three sources:

- 1) the Constitution of Ireland (1),
- 2) *a)* statutes enacted by the parliament under the Constitution and regulations made thereunder;
b) statutes enacted prior to the coming into operation of the Constitution in 1937 either by the parliament of the Irish Free State or prior to Irish independence in 1922 insofar and regulations and orders made thereunder insofar as these statutes and regulations and orders are not inconsistent with the Constitution, and
- 3) the common law.

The Principle of legality.

In Ireland every executive or administrative act which affects legal rights, interests or legitimate expectations must have legal justification. Where no such authority exists, the aggrieved party may have recourse to the Courts where the decision may be invalidated.

The law must be public and precise. The administration may justify its decision by legislation or by secondary legislation, having itself statutory authority such as regulations made under statute.

Furthermore, sources may exist from custom though these are of minor importance today.

2. *Whether the statute which grants a power to the Administration must describe, as a rule in detail, the situation from which the power arises.*

Insofar as statutes grant powers to the Administration they are not required to describe the situation from which the power arises.

In Ireland statutes themselves confer power on the administration by express provisions or the power to make statutory rules and orders, but statutory instruments and ministerial orders (being sources of secondary legislation) will normally specify the statutory authority under which the same are made. However, such a requirement does not exist as part of the instrument itself but there are other provisions of law governing the printing and publication of the making of statutory instruments which apply generally with limited provisions for exemption (2). In principle all delegated legislation will be published. Where this is not expressly covered by the provisions of the Statutory Instruments Act, 1947 then the common law will require publication.

3. *Whether the reasons of administrative decisions must — as a rule — be evident from their text.*

The reasons upon which administrative decisions are grounded do not as a rule have to be found in the text of the decision itself.

Here unless there is a clear statutory duty to state reasons in the decision itself (3), then there is no principle of law requiring a decision to state reasons. However, in the absence of a clear obligation to state reasons in the decision itself, in the event of a decision being challenged, the decision maker will be required to give reasons for his decision and the absence of same will be taken as an indication that there is no good reason.

(1) Enacted in 1937.

(2) Statutory Instruments Act, 1947.

(3) For example, the decisions of the Valuation Tribunal relating to the rateable valuation of property under the terms of the Valuation Act, 1988 and decisions of a local authority in relation to planning under the Planning and Development Acts.

4. *Whether the Administration must hear the individuals directly concerned before making a decision.*

With regard to decisions of the executive affecting persons rights there is a requirement in the administration of justice to give the persons affected a right to be heard. Furthermore, in other cases not involving the administration of justice itself, there may be a requirement placed upon a decision maker to act judicially and this will incorporate the requirement to give a right to be heard to the person to be affected by any such decision. The right to a hearing (*audi alteram partem*) is one of the rules of natural justice which will have constitutional protection.

Before a person's rights are adversely affected by an individual decision the person concerned will have a right to be heard. Thus, for example, if it is proposed to revoke a licence already granted the person affected must be heard before the decision is taken. This will entail a right to respond to the administration and to the grounds upon which it proposes to take action. On the other hand if a decision is purely of a provisional nature, there is no right to be granted a hearing before the provisional decision is taken, but the person concerned will then have a right to be heard before the provisional decision is confirmed with legal effect.

5. *Whether all administrative documents must be placed at the disposal of interested parties.*

As part of the hearing process the Administration will be required to place information in its possession upon which it is proposed to rely in making a decision at the disposal of the party being granted a hearing. The failure to acquaint a party of information, which may include documentary material, may result in a breach of the principal of *audi alteram partem*.

Discovery of Documents:

The making available of documents to interested parties. In the event of a challenge to an administrative decision the party challenging the decision will normally be entitled to inspect the relevant documents. The grounds of exception are extremely limited and may include interests of, for example, public security. However, the claim of privilege is always subject to judicial control by the Courts established under the Constitution. Here the procedure will be by way of an application to the Courts in the context of legal proceedings for an order requiring a party to discover upon oath all relevant documents which are or have been in his possession or control. In principle the same rules apply both to the administration and to other parties to litigation. No general exceptions apply by reference to categories of documents, with the possible exception of documents in criminal matters, such as police reports. Accordingly, once documents are relevant they should be discovered unless they are covered by general principles of privilege, such as a legal professional privilege attaching to legal advice or other documents which have come into being in contemplation of legal proceedings.

After a party has furnished a sworn affidavit listing the documents in his possession and those in respect of which he claims privilege, the opposing party (or applicant, where the discovery is sought against a third party) is entitled to have sight of the documents discovered and he may choose to apply to the court to challenge a claim of privilege, in which case the court will decide the issue and may choose to inspect the document before so deciding.

6. *Whether the lack of administrative decision is illegal, where a time-limit for deciding is established by law, either automatically or following an application. Whether there is a principle of law which requires the authorities to answer any application not manifestly absurd or belated. Whether this lack of decision is illegal in the same sense as a decision contrary to the law.*

In the event of a failure to make a decision where a clear duty is imposed to reach a decision, a party may apply to the High Court for an order of mandamus compelling the defaulting party to reach a decision.

The relief in question is one of a category of reliefs under the general heading of judicial review, which is obtained after an initial *ex parte* application to the High Court for leave to bring an application for judicial review. If leave is granted by the High Court, then the application is brought on notice to the High Court after giving the respondent an opportunity to present his grounds of opposition to the motion in writing.

The statute conferring a power or duty may itself impose a time limit on the administration within which it must act. In the absence of a time limit, the administration must act within a reasonable period. For example, if an applicant applies for a licence under a statutory provision to a Minister, the Minister must act within a reasonable period of time and failure to respond within a reasonable period may result in an application for mandamus compelling the Minister to reach a decision on the application. However, if the power itself is discretionary, an such application for mandamus must respect the discretion of the Minister in reaching any decision on foot of the application made to him.

There is no formal requirement on the Administration to answer any application, unless the right to make the application is one vested by law in the person making the application and the administration addressed has a duty to answer such an application.

As indicated previously where a legal duty exists and a party has been requested to make a decision or take other action incumbent upon that party, and the party upon whom the duty is imposed fails to comply with the request to take action, an application for mandamus will lie. What is essential here is the existence of a legal duty to act.

7. *Discretion in the Administration.*

Any such discretion will either be vested in the administration by law (e.g. statute) or will be implied in the statute by virtue of the provisions of the Constitution (1).

Any statutory provision relied upon in Irish administrative law will be construed in the light of the provisions of the Constitution. Thus if a statute appears to confer a wide discretion on the administration, the discretion will be construed in the light of the requirements of the Constitution, in particular the provisions thereof relating to personal rights. If on the other hand, a law is not capable of being construed in a light conforming with the provisions of the constitution it may be declared to be repugnant to the constitution and thereby invalid.

As indicated previously, where a discretion exists, such as in the granting of a licence, the decision will be reviewable only if the decision is taken in disregard of one of the fundamental principles of fairness or the decision is demonstrated to be manifestly unreasonable.

8. *Whether these decisions, or lack of decisions, can be challenged in front of impartial non-judicial authorities, making use of formal contradictory procedure.*

In certain cases, the governing statute will provide for an appeal procedure which may provide one or more appeals, for example in the Social Welfare Code the governing legislation provides for appeals to appeals officers, and ultimately the chief appeals officer, with a possibility of a reference of a point of law to the High Court. In other areas tribunals exist which are not within the framework of the Courts themselves. However, the existence of such appeal procedures will not preclude a reference to the Courts for judicial review of administrative action, but the courts may decline relief if a party has not used the appeal machinery open to him (2). Previously certain appeals lay to the Minister in the field of permissions for planning development, but this has now been changed and an appeal board has been provided for by statute. In certain cases a Ministerial decision may be stated to be final with no right of appeal. However, even such a decision will be capable of being reviewed by the courts if it is taken in disregard of the essentials of justice. However, in such a case recourse to the courts will not constitute an avenue of appeal on the merits.

(1) *Fast Donegal Co-Operative Society Limited v. The Attorney General* [1970] I.R. 317.

(2) A case in point is that of an application for judicial review where a party has failed to exhaust his right of appeal under the Planning Acts. See *The State (Abenglen Properties Ltd) v. Dublin Corporation* [1984] I.R. 381.

9. *Judicial Review of Administrative Action.*

Whether there is access to the courts against all administrative decisions, or lack of them, as well as against the decisions or lack of them, taken by impartial non-judicial authorities.

Administrative decisions are subject to judicial review. A decision itself may be quashed by an order of certiorari granted by the High Court and an order of mandamus may be granted compelling the Administration to reach a decision where it has failed to do so. Other decisions which might be categorised as «Administrative» may be subject to appeal to a Tribunal or the Courts. The right of appeal is not necessarily granted by law but judicial review will always lie to challenge the decision making process if it is found wanting. For example there may be a lack of jurisdiction, an excess of jurisdiction or an essential want of fairness.

10. *Whether laws having general application taken by administrative authorities may be challenged in the courts.*

General regulations as opposed to individual decisions may also be challenged before the Courts where they are made in excess of jurisdiction etc. but a party challenging same must have a sufficient interest in challenging the decision (*locus standi*). The challenger must adduce personal circumstances pointing to a wrong suffered or threatened.

There is no general right in an individual to enforce a public as opposed to a private right in the absence of a special interest being vested in that person (1). However an individual may apply to the Attorney General for his «fiat» to bring an action to enforce what is in essence a public right. *In addition, any person may. In similar circumstance, seek to have a law quashed as being invalid by reason of its being repugnant to the Constitution of Ireland.* In any case involving the challenge to an Act of Parliament (Oireachtas) the Attorney General must be made a party to the proceedings for the purpose of affording him an opportunity of defending the law in question from such a challenge (2). With reference to Acts passed subsequent to the enactment of the Constitution in 1937 they have a presumption of constitutionality. With regard to pre-Constitution Acts (i.e. those Acts in being at the time of the coming into force of the Constitution), these were carried forward into Irish law save where they were inconsistent with the provisions of the Constitution itself.

11. *Whether actions for judicial review of administrative action should be especially rapid in view of the public interest involved, whether there are rules to ensure this speed.*

Time limitation in bringing actions for judicial review of administrative action.

The rules of court applying to judicial review of administrative actions provide for a speedy procedure involving in general a requirement to bring an application to the Court promptly after the cause of action arises (3). The Courts have a discretion to extend the period in question. The Application involves an ex parte application to the Court for leave to bring the application in the first place and thereafter a motion must be brought before the Court within 10 days. Other classes of action against the administration may entail more complex procedures and longer delays. It also appears that where other procedures are used that a Court will also have a discretion to refuse the relief sought if there has been undue delay on the part of the party applying to the court for relief.

(1) See *Cahill v. Sutton* [1980] I.R. 269 and *Attorney General (at the relation of the Society for the Protection of Unborn Children Ireland Limited v. Open Door Counselling Ltd. and Dublin Wellwoman Centre Limited* [1988] I.R. 593.

(2) Order 60 of the Rules of the Superior Courts.

(3) Order 84 the Rules of the Superior Courts provides that applications for judicial review shall be made promptly and in any event within three months from the date when the grounds for the applications first arose, or six months where the relief sought is certiorari unless the Court considers that there is good reason for extending the period within which the application shall be made.

12. *Whether a judge can give orders regarding the contentious matter for the duration of the lawsuit, either by granting the suspension of the administrative decision or by granting for the time being a decision which the party had hoped to obtain.*

Suspensive Effect of rulings.

In the application for judicial review the Courts may grant a stay on proceedings or other interim relief (1) and the Courts may also give leave to a party to seek an injunction. In other cases a party may apply for an interim and thereafter an interlocutory injunction to restrain action being taken pending the determination of proceedings. The granting of a mandatory injunction is rare and in general will not be granted in interlocutory proceedings. Where a party applies to the Court *ex parte* or an interim injunction or on notice for an interlocutory injunction the court can grant such an injunction pending the hearing of an application for an interlocutory injunction or pending the hearing of the action as the case may be.

13. *Problems posed for the Administration.*

If the Judgment is unfavourable to the administrative authorities, whether its enforcement poses problems which do not arise in litigation between individuals. Whether the Courts are vested with special powers to curb administrative decisions (or lack of them) taken in disregard of the judgment.

It is generally immaterial if an unfavourable judgment poses problems for the Administration. However, exceptions exist in this regard and a temporal limitation may be imposed by the court in granting relief to an individual if the result for other possible claimants would have a severe adverse impact on the Administration (2). The administration will, like anyone else, be required to comply with such a judgment. Decisions taken in disregard of Court orders may involve contempt of court which is punishable by imprisonment.

(1) Order 84 Rule 20 (7) of the Rules of the Superior Courts refers.

(2) In *Murphy v. The Attorney General* [1982] I.R. 241 the Supreme Court recognised the application of the maxim *communis error facit ius* and the Court imposed a temporal limitation on the effect of its judgment in relation to all persons other than the Plaintiffs and other persons who had taken like legal proceeding. Here the Supreme Court cited the example of *Defrenne v. Sabena* [1986] E.C.R. 455.

APPENDIX

1. Provisions of Order 84 of the Rules of the Superior Court pertaining to judicial review.
2. Provisions of the Statutory Instruments Act, 1947.

ORDER 84

JUDICIAL REVIEW AND ORDERS AFFECTING PERSONAL LIBERTY

V. *Judicial review*

18. (1) An application for an order of certiorari, mandamus, prohibition or quo warranto shall be made by way of an application for judicial review in accordance with the provisions of this Order.

(2) An application for a declaration or an injunction may be made by way of an application for judicial review, and on such an application the Court may grant the declaration or injunction claimed if it considers that, having regard to —

- a) the nature of the matters in respect of which relief may be granted by way of an order of mandamus, prohibition, certiorari, or quo warranto,
- b) the nature of the persons and bodies against whom relief may be granted by way of such order, and
- c) all the circumstances of the case,

it would be just and convenient for the declaration or injunction to be granted on an application for judicial review.

19. On an application for judicial review any relief mentioned in rule 18 (1) or (2) may be claimed as an alternative or in addition to any other relief so mentioned if it arises out of or relates to or is connected with the same matter and in any event the Court may grant any relief mentioned in rules 18 (1) or (2) which it considers appropriate notwithstanding that it has not been specifically claimed.

20. (1) No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this rule.

(2) An application for such leave shall be made by motion *ex parte* grounded upon —

- a) a notice in Form No. 13 in Appendix T containing a statement of:
 - (i) the name, address and description of the applicant,
 - (ii) the relief sought and the grounds upon which it is sought,
 - (iii) the name and registered place of business of the applicant's solicitors (if any), and
 - (iv) the applicant's address for service within the jurisdiction (if acting in person); and
- b) an affidavit which verifies the facts relied on.

Such affidavit shall be entitled:

THE HIGH COURT
JUDICIAL REVIEW
BETWEEN
A.B. APPLICANT
AND
C.D. RESPONDENT

(3) The Court hearing an application for leave may allow the applicant's statement to be, whether by specifying different or additional grounds of relief or otherwise, on such terms, if any, as it thinks fit.

(4) The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

(5) Where leave is sought to apply for an order of certiorari to remove for the purpose of its being quashed any judgment, order, conviction or other proceeding which is subject to appeal and a time is limited for the bringing of the appeal, the Court may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

(6) If the Court grants leave, it may impose such terms as to costs as it thinks fit and may require an undertaking as to damages.

(7) Where leave to apply for judicial review is granted then:

a) if the relief sought is an order of prohibition or certiorari and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders;

b) if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by plenary summons.

21. (1) An application for leave to apply for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose, or six months where the relief sought is certiorari, unless the Court considers that there is good reason for extending the period within which the application shall be made.

(2) Where the relief sought is an order of certiorari in respect of any judgment, order, conviction or other proceeding, the date when grounds for the application first arose shall be taken to be the date of that judgment, order, conviction or proceeding.

(3) The preceding paragraphs are without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made.

22. (1) An application for judicial review shall be made by originating notice of motion unless the Court directs that it shall be made by plenary summons.

(2) The notice of motion or summons must be served on all persons directly affected and where it relates to any proceedings in or before a Court and the object of the application is either to compel the Court or an officer of the Court to do any act in relation to the proceedings or to quash them or any order made therein, the notice or summons must also be served on the Clerk or Registrar of the Court and, where any objection to the conduct of the Judge is to be made, on the Clerk or Registrar on behalf of the Judge.

(3) A notice of motion or summons, as the case may be, must be served within 14 days after the grant of leave, or within such other period as the Court may direct. In default of service within the said time the stay of proceedings referred to in rule 20 (7) shall lapse. In the case of a motion on notice it shall be returnable for the first available motion day after the expiry of 10 days from the date of service thereof, unless the Court otherwise directs.

(4) Any respondent who intends to oppose the application for judicial review by way of motion on notice shall file in the Central Office a statement setting out concisely the grounds for such opposition and, if any facts are relied on therein, an affidavit verifying such facts. Such respondent shall serve a copy of such statement and affidavit (if any) on all parties not later than seven days from the date of service of the notice of motion or such other period as the Court may direct. The statement shall include the name and registered place of business of the respondent's solicitor (if any).

(5) An affidavit giving the names and addresses of, and the places and dates of service on, all persons who have been served with the notice of motion or summons must be filed before the motion or summons is heard and, if any person who ought to be served under this rule has not been served, the affidavit must state that fact and the reason for it; and the affidavit shall be before the Court on the hearing of the motion or summons.

(6) If on the hearing of the motion or summons the Court is of opinion that any person who ought, whether under this rule or otherwise, to have been served has not been served, the Court may adjourn the hearing on such terms (if any) as it may direct in order that the notice or summons may be served on that person.

23. (1) A copy of the statement in support of an application for leave under rule 20, together with a copy of the verifying affidavit must be served with the notice of motion or summons and, subject to paragraph (2), no grounds shall be relied upon or any relief sought at the hearing except the grounds and relief set out in the statement.

(2) The Court may, on the hearing of the motion or summons, allow the applicant or the respondent to amend his statement, whether by specifying different or additional grounds of relief or opposition or otherwise, on such terms, if any, as it thinks fit and may allow further affidavits to be used if they deal with new matters arising out of an affidavit of any other party to the application.

(3) Where the applicant or respondent intends to apply for leave to amend his statement, or to use further affidavits he shall give notice of his intention and of any proposed amendment to every other party.

24. (1) On an application for judicial review the Court may, subject to paragraph (2), award damages to the applicant if:

a) he has included in the statement in support of his application for leave under rule 3 a claim for damages arising from any matter to which the application relates, and

b) the Court is satisfied that, if the claim had been made in a civil action against any respondent or respondents begun by the applicant at the time of making his application, he would have been awarded damages.

(1) Order 19, rules 5 and 7, shall apply to a statement relating to a claim for damages as it applies to a pleading.

25. (1) Any interlocutory application may be made to the Court in proceedings on an application for judicial review. In this rule «interlocutory application» includes an application for an order under Order 31, or Order 39, rule 1, or for an order dismissing the proceedings by consent of the parties.

(2) Where the relief sought is or includes an order of mandamus, the practice and procedure provided for in Order 57 shall be applicable so far as the nature of the case will admit.

26. (1) On the hearing of any motion or summons under rule 22, any person who desires to be heard in opposition to the motion or summons, and appears to the Court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with notice of the motion or the summons.

(2) Where the relief sought is or includes an order of certiorari to remove any proceedings for the purpose of quashing them, the applicant may not question the validity of any order, warrant, committal, conviction, inquisition or record, unless before the hearing of the motion or summons he has lodged in the High Court a copy thereof verified by affidavit or accounts for his failure to do so to the satisfaction of the Court hearing the motion or summons. If necessary, the court may order that the person against whom an order of certiorari is to be directed do make a record of the judgment, conviction or decision complained of.

(3) Where an order of certiorari is made in any such case as is referred to in paragraph (2), the order shall, subject to paragraph (4), direct that the proceedings shall be quashed forthwith on their removal into the High Court.

(4) Where the relief sought is an order of certiorari and the Court is satisfied that there are grounds for quashing the decision to which the application relates, the Court may, in addition to quashing it, remit the matter to the Court, tribunal or authority concerned with a direction to reconsider it and reach a decision in accordance with the findings of the Court.

(5) Where the relief sought is a declaration, an injunction or damages and the Court considers that it should not be granted on an application for judicial review but might have been granted if it had been sought in a civil action against any respondent or respondents begun by plenary summons by the applicant at the time of making his application, the Court may, instead of refusing the application, order the proceedings to continue as if they had been begun by plenary summons.

(6) Where the relief sought is or includes an order of mandamus, the proceedings shall not abate by reason of the death, resignation or removal from office of the respondent but they may, by order of the Court, be continued and carried on in his name or in the name of the successor in office or right of that person.

(7) At any stage in proceedings in prohibition, or in the nature of quo warrante, the Court on the application of any party or of its own motion may direct a plenary hearing with such directions as to pleadings, discovery, or otherwise as may be appropriate, and thereupon all further proceedings shall be conducted as in an action originated by plenary summons and the Court may give such judgement and make such order as if the trial were the hearing of an application to make absolute a conditional order to show cause.

27. The forms in Appendix T shall be used in all proceedings under this Order.

Number 44 of 1947

STATUTORY INSTRUMENTS ACT, 1947*

AN ACT TO PROVIDE FOR AND REGULATE THE PRINTING, NOTICE OF MAKING, NUMBERING AND MODE OF CITATION OF ORDERS, REGULATIONS, RULES, SCHEMES AND BYE-LAWS MADE UNDER STATUTORY AUTHORITY, AND TO PROVIDE FOR CERTAIN OTHER MATTERS CONNECTED WITH THE MATTERS AFORESAID. [20th December, 1947]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1. (1) In this Act

(Definitions)

the word «statute» means any statute being:

- a) a pre-union Irish statute, or
- b) a British statute, or
- c) a Saorstát Eireann statute, or
- d) an Act of the Oireachtas (whether passed before or after this Act);

the expression «statutory instrument» means an order, regulation, rule, scheme or bye-law made in exercise of a power conferred by statute.

(2) References in this Act to a statute shall, if that statute has been adapted by or under any enactment, be construed as references to that statute as so adapted.

2. (1) This Act primarily applies to every statutory instrument which:

(Statutory instruments to which this Act primarily applies)

- a) is made on or after the 1st day of January 1948, and
- b) is made by any of the following authorities, namely:
 - (i) the President,
 - (ii) the Government
 - (iii) any member of the Government,
 - (iv) any Parliamentary Secretary,
 - (v) 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,
 - (vi) any authority having for the time being power to make rules of court, and
- c) is either:
 - (i) required by statute to be laid before both or either of the House of the Oireachtas, or
 - (ii) is of such a character as affects the public generally or 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*.

(2) a) If the Attorney-General certifies in writing that, in his opinion, a particular person or body is an authority of the class mentioned in subparagraph (v) of paragraph (b) of subsection (1) of this section, such person or body shall be deemed, for the purposes of the said subsection (1) to be an authority of that class.

(2) b) If the Attorney-General certifies in writing that, in his opinion, statutory instruments of a particular class (defined in such manner and by reference to such things as the Attorney-General thinks proper) are of the character described in subparagraph (ii) of paragraph (c) of subsection (1) of this section, such statutory instruments shall be deemed, for the purposes of the said subsection (1), to be statutory instruments of that character.

(3) Whenever:

(i) it is proposed to make a particular statutory instrument which, if made, would be, by virtue of subsection (1) of this section, a statutory instrument to which this Act primarily applies, and

(ii) the Attorney-General is of opinion that, by reason of its merely local or personal application or its temporary operation or its limited application or for any other reason, the said statutory instrument, if made, should be exempted from the operation of subsection (1) of section 3 of this Act,

the Attorney General may direct that the said instrument if made, shall be so exempted, and in that case, the said statutory instrument, if made, shall not be a statutory instrument to which this Act primarily applies.

(4) Whenever the Attorney General is of opinion that statutory instruments (being statutory instruments to which this Act primarily applies by virtue of subsection (1) of this section) of a particular class (defined in such manner and by reference to such things as the Attorney General thinks proper) should, because of their merely local or personal application or their temporary operation or their limited application or for any other reason, be exempted from the operation of subsection (1) of section 3 of this Act, he may direct that all statutory instruments of that class shall be so exempted, and in that case, any statutory instrument of that class made on or after the date of the direction, shall not be a statutory instrument to which this Act primarily applies.

(5) *a)* Every certificate or direction given by the Attorney-General under this section shall be published in the *Iris Oifigiúil*.

b) *Prima facie* evidence of any certificate or direction given by the Attorney-General under this section may be given by the production of a copy of the *Iris Oifigiúil* purporting to contain such certificate or direction.

3. (1) The following provisions shall apply in respect of every statutory instrument to which this Act primarily applies:

(Printing, notice of making, etc., of statutory instruments to which this Act primarily applies and supplementary provision)

a) within seven days after the making thereof, a copy thereof shall be sent to each of the following, namely the National Library of Ireland, the Law Library, Four Courts, Dublin, the Incorporated Law Society of Ireland, the Dublin Chamber of Commerce, the Cork Chamber of Commerce, the Limerick Chamber of Commerce, the Waterford Chamber of Commerce and the Galway Chamber of Commerce,

b) as soon as may be after it is made, it shall, notwithstanding that it is liable to be annulled, be printed under the superintendence of the Stationery Office,

c) as soon as may be after it has been printed, notice of the making thereof and of the place where copies thereof may be obtained shall be published in the *Iris Oifigiúil*,

d) as on and from the date of the issue of the *Iris Oifigiúil* containing the said notice, copies of the said statutory instrument shall be kept at the place specified in the said notice and may be obtained there.

(2) Subject to subsection (3) of this section the validity or effect or the coming into operation of any statutory instrument to which this Act primarily applies shall not be affected by any non-compliance with subsection (1) of this section.

(3) Where

a) a person (in this subsection referred to as the defendant) is charged with the offence of contravening (whether by act or omission) a provision in a statutory instrument to which this Act primarily applies, and

b) the prosecutor does not prove that, at the date of the alleged contravention, notice of the making of the said statutory instrument had been published in the *Iris Oifigiúil*,

the charge shall be dismissed, unless the prosecutor satisfies the Court that at the said date reasonable steps had been taken for the purpose of bringing the purport of the said instrument to the notice of the public or of persons likely to be affected by it or of the defendant.

(4) The production of a copy (purporting to be published by the Stationery Office or to be published by the authority of the Stationery Office) of a statutory instrument to which this Act primarily

applies, having printed thereon a statement that notice of the making of the said statutory instrument was published in a particular issue of the *Iris Oifigiúil*, shall in any proceedings *be prima facie* evidence that such notice was published in that issue of the *Iris Oifigiúil*.

(5) Nothing in this section shall be construed as restricting the printing and publication of any statutory instrument which is not a statutory instrument to which this Act primarily applies.

(Numbering statutory instrument)

4. (1) The Stationery Office shall assign to each statutory instrument to which this Act primarily applies and may assign to any other statutory instrument printed and published by the Stationery Office a number as of the year in which it is made, and where any such number is so assigned to a statutory instrument, there shall be printed conspicuously on the face thereof:

a) if it drawn up in the Irish language, the following inscription, namely, «I.R. Uimh. (*the said number*) de (*the said year*)», or

b) if it is drawn up in the English language, the following inscription, namely, «S.I. No. (*the said number*) of (*the said year*)».

(2) Non-compliance with subsection (1) of this section shall not affect the validity or the coming into force of any statutory instrument.

5. Any statutory instrument may, without prejudice to any other mode of citation, be cited by:

(Citation of statutory instruments)

a) if the inscription referred to in subsection (1) of section 4 of this Act is printed on its face, that inscription, or

b) the mode of citation authorised by such statutory instrument.

6. (1) The Rules Publication Act, 1893, is hereby repealed.

(Repeals)

(2) So much of any British statute as purports to require:

a) a statutory instrument to which this Act primarily applies to be published in the *London Gazette*, or

b) notice of the making of a statutory instrument to which this Act primarily applies to be published in the *London Gazette*, is hereby repealed.

7. (1) This Act may be cited as the Statutory Instruments Act, 1947.

Short title and commencement

(2) This Act shall come into operation on the 1st day of January, 1948.