

Raad
van State



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Answers to questionnaire: Ireland



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ACA – Better Regulation Questionnaire

Response from Ireland

Part I - Input Mechanisms prior to drafting

A. Input from the Courts

There is no formal mechanism by which the courts provide advice in the phase before legislation is drafted. Ireland has a Law Reform Commission which provides advice on reform of the law and is, by law, required to be presided over by a serving or retired judge of one of the higher courts. That Law Reform Commission frequently consults with judges concerning areas in which it is considering making recommendations for new legislation. However, the topics which are chosen for consideration by the Commission are a matter for it or for the government to request.

Legislation is drafted by the parliamentary draftsman's office which forms part of the office of the Attorney General. The courts do not play any role in the drafting process. Occasionally, in respect of legislation which impacts on the Court itself, the Court may be consulted in much the same way as other interested bodies may be consulted in relation to legislation touching their area.

The courts do not offer any formal feedback on legislation. However, it would not be unusual for the draftsman's office to have regard to the case law of the Court in drafting legislation. Furthermore, it may occasionally be the case that a judge, in delivering a written judgment, may include observations about perceived inadequacies in the legislation. However, there is no mechanism for bringing that matter further.

It is not considered that it would be regarded as consistent with the separation of powers as it is understood under the Irish Constitution for the courts to have any formal role in the drafting of legislation.

B. Input from Advisory Bodies

Other than the Law Reform Commission to which reference has already been made there does not appear in Ireland to be a category of advisory body in the sense in which that term is used in the questionnaire. Where there are statutory agencies which are involved in a particular area (such as, for example, the Competition Authority) it would be normal for such a body to be consulted in relation to legislation relating to it or within its field. However, such bodies are not advisory bodies as such but rather bodies set out to carry out specific statutory functions.

Apart from persons or bodies who might be perceived as having a vested interest in a particular piece of legislation, the professional bodies representative of the practising legal profession frequently do make representations in respect of proposed legislation. Ireland operates a divided profession of solicitors and barristers along the same lines as some common law countries such as the United Kingdom, Australia, South Africa and the like. The Law Society is the representative body of solicitors while the Bar Council represents barristers. Both of those organisations have a range of committees comprising of practitioners in specialised fields.

While the role of those bodies in making representations on legislation which impacts on the legal profession itself might not be significantly different from that of any other sectoral interest which may make representations to its own advantage, it is frequently the case that committees of legal specialists, organised by the professional bodies, give technical and non partisan advice on proposed legislation including commenting on any perceived inadequacies of the existing legislative regime or technical questions about the implementation of what may be under consideration at government level.

Sometimes the relevant government department sponsoring a potential item of legislation may invite representations from the public. The technical commentary by committees of the professional bodies may, on such occasions, follow from a general invitation of that type. Furthermore, even where a general invitation to make representations does not take place, such bodies frequently make commentary of their volition. Normally any such representations would be covered by freedom of information legislation and would be capable of being made public.

There would not appear to be any reason in principle why the Irish legislative process might not include some form of more formal advisory body or bodies. It may be that, historically, the legislative process has been seen to be one which is largely governed by proposals from the Executive, with the detailed provisions of proposed legislation emanating, so far as policy is concerned, from the relevant government department and so far as legislative drafting is concerned from the draftsman's office of the attorney general. It may simply be that Ireland has no tradition of involving a body such as the type of advisory body contemplated in the questionnaire.

C. General

There are no formal mechanisms providing for input of the type mentioned. However, in certain cases the government may publish a general paper (referred to as a White Paper) containing proposals for legislation and may, as noted above, invite public response prior to the drafting stage. Whether this is done in any particular is a matter for the relevant ministry.

PART II – Input Mechanisms after Legislation has been drafted

A. Feedback from Courts

There is no formal feedback from the courts save that judges delivering judgment in individual cases may comment on aspects of the legislation in their judgments. It is possible for a Court President informally to raise with the government through the Attorney General any perceived problems for the courts at a systemic level which have been caused by particular legislation.

As an example, it might be appropriate to refer to a number of aspects of the legislation in Ireland which governed the consideration of international protection applications. A number of judgments of the courts including some judgments of the Supreme Court (see for example, the *Okunade* case) were extremely critical of the system and suggested that it led to a large increase in the amount of litigation in the field. Similar criticism was voiced from other sources. As a result the government has recently introduced new legislation. In passing it is worth noting that the courts

were not consulted on that new legislation but it is understood that the criticisms by the courts were taken into account in the process.

In the Irish constitutional model it would not be considered appropriate for the courts to have any formal role in dealing with legislation other than legislation which directly governs the operation of the courts themselves.

B. Input from Advisory Bodies

See the comments made above to the effect that there really are not advisory bodies of the type described in the Irish system.

As there are no formal mechanisms the same sort of bodies who may have an input at the pre-drafting stage may also make representations during the legislative process in parliament. The same comments which are made in respect of that stage at part 1B above apply equally here.

C. General

There are no general or specific mechanisms save that, during the parliamentary process, members of the public may make representations including contacting members of parliament for the purposes of urging a particular view. While, again, much of the involvement of the public at the legislative stage is based on the representation of particular interests or view points there nonetheless can be interventions from, for example, professional legal bodies which are more technical in nature.