

## THE GOVERNMENT OF IRELAND ACT 1920

### A NOTE ON ITS CURRENT EFFECT AND OPERATION

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#### Introduction:

The Government of Ireland Act 1920 ('the 1920 Act') was entitled 'An Act to provide for the better Government of Ireland' and received the Royal Assent on 23 December 1920. It provided for separate legislatures and executives in Northern Ireland and in what it called Southern Ireland, it made provision for eventual unity of the island should the two Parliaments jointly agree to terminate the separation, and it provided for a Council of Ireland.

As will be generally known, and is explained in more detail below, the Act in effect became operative for Northern Ireland only, and on 3 May 1921 being 'the appointed day' in accordance with Section 1(1), the Parliament of Northern Ireland was established.<sup>1</sup>

The Stormont Parliament was prorogued on 30 March 1972 by Section 1(3) of the Northern Ireland (Temporary Provisions) Act 1972 and was abolished on 18 July 1973 by Section 31(1) of the Northern Ireland Constitution Act 1973.

Accordingly, in law and in reality the 1920 Act is largely of pure historical interest now.

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<sup>1</sup> SR & © 1920 No.533

Nevertheless, it is understood that there are those who consider it to be still of a considerable significance. Accordingly this note attempts to set in their correct legal perspective such portions of the 1920 Act as are still on the statute book.

#### **The Treaty of 6 December 1921**

It is a matter of history that the 1920 Act did not come into full operation in large parts of Ireland and that on 6 December 1921 Articles of Agreement for a Treaty between Great Britain and Ireland were signed by representatives of the United Kingdom Government and by appointed representatives of the provisional government in Dublin.

These Articles purported to make provision to give to the whole of Ireland, under the title of the 'Irish Free State', dominion status with the same constitutional status in the British Empire as Canada, Australia, New Zealand and South Africa. However, by Article 12 of the Treaty the Northern Ireland Parliament was given power to vote to prevent its inclusion in the Irish Free State.

This Treaty was scheduled to the Irish Free State (Agreement) Act 1922, and was ratified by the Irish Free State Constitution Act 1922. By the Irish Free State (Consequential Provisions) Act 1922, which received the Royal Assent on 5 December 1922, the necessary modifications to the 1920 Act were given legal effect. The Treaty was given legal effect in



the Irish Free State by the Irish Free State (Constitution of the Irish Free State) (Soaorstat Eireann) Act 1922.

The Treaty was ratified by the Irish Free State Constitution Act 1922 which received the Royal Assent on 5 December 1922. Article 12 of the Treaty, provided that if before the expiration of one month from the passing of the Act for ratification of the Treaty an address were presented to His Majesty by both Houses of the Parliament of Northern Ireland, the 1920 Act would so far as it related to Northern Ireland remain of full force and effect and the Treaty would have effect subject to the necessary modifications.

Both Houses of the Parliament of Northern Ireland duly presented such address in accordance with Article 12 of the Treaty on 8 December 1922.<sup>2</sup>

Accordingly, the 1920 Act remained of effect in Northern Ireland until it was largely replaced by the Northern Ireland Constitution Act 1973.

However, the 1920 Act did not continue in effect in regard to the Irish Free State.

The reason for this was that Section 1 of the Irish Free State (Consequential Provisions) Act 1922 ('the 1922 Act') provided that the 1920 Act would cease to apply to any part of Ireland

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<sup>2</sup> Recorded in the London Gazette of 12 December 1922.

other than Northern Ireland.

The Section goes on to provide that in the event of such an address as is specified in Article 12 of the Treaty being presented to His Majesty by both Houses of the Parliament of Northern Ireland within the time specified, then the 1920 Act would be duly modified so as to apply to Northern Ireland as set out in the First Schedule to the 1922 Act.

Accordingly, as the result of this legislation and of the events which happened in 1922 Northern Ireland continued to be governed from 1922 until 1973 by the 1920 Act as amended and modified, and the 1920 Act ceased to apply to the rest of Ireland.

**Saving for the Supreme Authority of the Parliament of the United Kingdom:**

Attention has been drawn to Section 75 of the 1920 Act which provides as follows:-

'Notwithstanding the establishment of the Parliament of Southern and Northern Ireland ... or anything contained in this Act, the supreme authority of the Parliament of the United Kingdom shall remain unaffected and undiminished over all persons, matters, and things in Ireland and every part thereof.'

Two points require to be made.



First, by virtue of Section 1 of the 1922 Act as above cited the 1920 Act as from 5 December 1922 applied only to Northern Ireland, and accordingly the saving of the supreme authority of the Parliament of the United Kingdom over all persons matters and things in 'Ireland and every part thereof' is a reference to Northern Ireland and every part thereof and involves no claim or exercise of jurisdiction over the remainder of Ireland.

Secondly, it should also be noted that by virtue of Part 1 of Schedule 6 to the Northern Ireland Constitution Act 1973 the words in Section 75 from 'the establishment' to 'Ireland or' are repealed. Accordingly the Section now reads as follows:-

'Notwithstanding ... anything contained in this Act, the supreme authority of the Parliament of the United Kingdom shall remain unaffected and undiminished over all persons, matters, and things in [Northern] Ireland and every part thereof.'

It is clear that the words of Section 75 were, and perhaps remain, important in that they expressed the intention of the Parliament at Westminster that the Northern Ireland Parliament would be subordinate to it.

It may be argued that the Westminster Parliament did not in fact from 1922 to 1973 fully or energetically exercise its competence over Northern Ireland and the point may be made

that in fact over the years consideration of Northern Ireland transferred matters was frequently ruled out of order in the House of Commons.

However, as Professor Harry Calvert pointed out in 'Constitutional in Law in Northern Ireland'<sup>3</sup> this shows a confusion between an alleged convention of legislative incompetence, and an alleged practice that transferred Northern Ireland matters could not be raised in the House of Commons at Westminster.

However, as Professor Calvert points out, Section 75 of the 1920 Act operated as a specific provision to make it clear that the Northern Ireland Parliament was a subordinate Parliament, and did not have dominion status, despite some attempts by certain spokesmen of the Northern Ireland Government to claim or imply such.

**Conclusions:**

By virtue of the 1922 Act the 1920 Act applies only to Northern Ireland, and not to any other part of Ireland.

Consequently, the claim of the saving of the supreme authority of the Parliament of the United Kingdom over every part of Ireland applies only to Northern Ireland.

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<sup>3</sup> At pages 87 to 110



Section 75 of the 1920 Act operated as a legislative restriction on the powers of the Northern Ireland Parliament.

There would be nothing to prevent in any new constitutional arrangement for a repeal by the Westminster Parliament of the few remaining provisions of the 1920 Act including Section 75.

However, if it is to be intended that any new devolved administration for Northern Ireland is to be of subordinate status, and presumably this is generally intended, (because otherwise one would contemplate arrangements little short of independence) then statutory provision reserving the ultimate authority of the Parliament at Westminster would be essential in the terms of Section 75 of the 1920 Act, or something broadly similar.

Dated this 17 day of *Sept* 1992

Signed: \_\_\_\_\_

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