AN CHÚIRT UACHTARACH

THE SUPREME COURT

S:AP:IE:2023:000092

[2024] IESC 34

O'Donnell C.J.
Dunne J.
Hogan J.
Collins J.
Donnelly J.

In the Matter of an application pursuant to section 50, 50A and 50B of the Planning and Development Act, 2000

Between/

JOHN CONWAY

Appellant

-and-

AN BORD PLEANÁLA

First Respondent

-and-

THE MINISTER FOR HOUSING, LOCAL GOVERNMENT AND HERITAGE, IRELAND AND THE ATTORNEY GENERAL

Second, Third and Fourth Respondents

Judgment of Mr. Justice O'Donnell, Chief Justice delivered on the 23rd day of July, 2024.

1. I agree with Hogan J. that this appeal should be dismissed, and the order of the High Court affirmed. In the first place I agree with him that the claim by reference to Article 28A of the Constitution ought to be dismissed. The impact on local government of planning policy being set at central government level can give rise to issues of debate at the level of policy or practicality but does not, to my mind, raise any difficult issue of constitutional law. Section 28(1C) of the Planning and Development Act, 2000 ("the 2000 Act") has the effect that, where specific planning policy requirements ("SPPRs") are made, they remove from local planning authorities the capacity to make certain decisions which, moreover, could be made by the elected representatives. To that extent it transfers power from local government to central government, albeit for policy reasons which are readily discernible. I agree with both Humphreys J. in the High Court ([2023] IEHC 178 (Unreported, High Court, 18 April, 2023)), and Hogan J. that this does not, however, give rise to any constitutional frailty; it cannot be said to skeletonise or hollow out the functions of local government, recognised by Article 28A.

2. I also agree that the provisions of section 28(1C) do not infringe the sole and exclusive power make laws for the State vested in the Oireachtas by Article 15.2. However, as this was the central legal argument advanced in this case, and is one which continues to generate much litigation, I wish to offer some additional observations.

3. First, however, I should say that like Hogan J., I find the manner in which the application was advanced unsettling. It is entirely understandable that the parties would be content to see the constitutional argument separated from the

arguments as to the validity of the permission granted to the developer by the An Bord Pleanála ("the Board"). The applicant had a general objection to the use of section 28(1C) that was not only not in any way connected or specific to the particular development here, but was not even necessarily related to the content of the particular SPPRs in question. The applicant had, therefore, no particular interest in seeking a determination of the invalidity of the permission in this case. For the Board and the developer there was a pragmatic attraction to the possibility that the development would be allowed to proceed irrespective of the outcome of the legal argument. It may even have been considered from the applicant's point of view to be tactically beneficial to reduce the number of parties to effectively the applicant and the State parties, and to divorce the issue in question from the practicalities of any particular development.

4. It is also true that since the significant alteration to the jurisdiction of this Court effected by the Court of Appeal Act, 2014, enacted to give effect to the changes introduced by Article 34.5.3°, and 34.5.4°, this Court has been more willing to permit to entertain appeals that might previously have been considered moot – see *Odum & ors v. Minister for Justice and Equality* [2023] IESC 3, [2023] 2 I.L.R.M. 164. A number of factors have led to that approach, most notably the fact that the issue may have already been decided by the High Court and the Court of Appeal, which decision would be binding on all lower courts, together with the fact that if leave had been granted, then this Court had already determined that the issue involves one of general public importance, which was therefore, likely to recur. These factors militate against what would otherwise be the strong considerations which would have led courts here and in other jurisdictions to refuse to hear cases that are or have become moot.

5. It could be said that what was agreed and put in place here has superficial similarities to the practice of this Court on appeal in relation to claims contended to be moot. But the difference is significant and, in my view, should not be overlooked. Here, the events rendering the case moot did not occur at the appellate stage, when the proceedings had already been the subject of contest and determination: the events occurred *before* the High Court hearing, and furthermore, were not the result of some supervening event outside the parties' control, but were rather the consequence of the explicit agreement of the parties.

6. I fully agree with Hogan J. that the outcome is questionable at the very least. The decision in *Cahill v. Sutton* [1980] I.R. 269 ("*Cahill v. Sutton*") was a milestone in Irish constitutional law, but it should be recalled that it was controversial at the time, and for some time thereafter. It marked a decisive turning away from the possibility of constitutional challenges in the form of an *actio popularis*. There were, it should be recalled, quite persuasive reasons against adopting the approach to standing taken by the Supreme Court in *Cahill v. Sutton*: the Constitution is the fundamental law of the State. If legislation has been enacted by the Oireachtas, which, on scrutiny, can be said to have been a breach by the Oireachtas of the constitutional duty imposed by Article 15.4 not to enact legislation repugnant to the Constitution, then it was argued that it was the duty of the Court to so declare at the suit of any citizen. In doing so, it could be said, the Court was doing no more than seeking to require compliance with the Constitution.

7. The decision in *Cahill v. Sutton* was one, however, which had a strong and, in my view, persuasive justification at the level of constitutional principle. It is a

key feature of both the 1922 and 1937 Constitutions that they contained express provision for judicial review of legislation. It is significant that neither Constitution sought to confer that power upon a form of Council of State constituted by wise citizens empowered to review legislation on grounds of mixed policy and law. Instead, the power is conferred upon the ordinary courts. The jurisdiction of the High Court under Article 34 *"shall extend"* to the question of the validity of any law having regard to the provisions of the Constitution. This is an indication that the courts should bring to bear on constitutional questions the same disciplined approach they would bring to what might be termed 'ordinary litigation'. One central feature of this is the fact that the issues adjudicated on by courts, no matter how far reaching, and on occasions, momentous, arise in the determination of an individual dispute between parties, and are *necessary* to decide in order to administer justice between those parties.

8. It is possible to say, adopting de Tocqueville's famous observation about the United States, that many political issues in this jurisdiction, come, or are capable of coming before the courts. But it remains central to the balance established by the Constitution to maintain the distinction between the two, so that if issues do become the subject of litigation that are or were the subject of political controversy, it is clearly understood that the questions raised are decided in courts in a different way and by reference to different considerations. A general rule on standing is central to the performance of the judicial function in this regard. As Henchy J. observed in *Cahill v. Sutton* "*without concrete personal circumstances pointing to a wrong suffered or threatened, a case tends to lack the force and urgency of reality".* The general rule "*ensures that normally the*

controversy will rest on facts which are referrable primarily and specifically to the challenger, thus giving concreteness and firsthand reality to what might otherwise be an abstract or hypothetical legal argument".

9. This approach does not merely pursue accuracy of decision-making. Henchy J. considered that the existence of at least a general rule on standing was consistent with, and arguably derived from "*the working interrelation that must be presumed to exist between Parliament and the Judiciary in the democratic scheme of things postulated by the Constitution,* [which] *would not be served if no threshold qualification were ever required for an attack in the courts on the manner in which the Legislature has exercised its law-making powers*". I agree with Hogan J. that the question of standing is essentially akin to a jurisdictional issue, one which is ultimately for the Court itself to resolve and cannot be foreclosed by some form of private agreement between parties.

10. The problematic nature of the agreement in this case is not only that the argument has become the type of hypothetical and abstract legal argument criticised by Henchy J., but also arises from the consequences of the agreement. Once leave was granted in the High Court to challenge of the validity of section 28(1C), it followed that a question mark was raised over all decisions made by reference to any SPPR. In addition, it may have been considered necessary to defer any applications relying on an SPPR pending the resolution of this litigation, and any extant decision was capable of immediate challenge if commenced within the time limit provided for under the planning acts. If the claim in this case had succeeded, it would follow that no valid decision could be made or permission granted on the basis of any SPPR, and any permission

granted which had been challenged would have to be invalidated. However, the outcome of the arrangement between the parties in this case would be that the only decision in this cohort which would retain validity, and be immune from challenge, would be the grant of permission in this case – the grant of permission which was supposed to give rise to the claim in the first place, and to the necessity that the Court, in the proper administration of justice and in order to determine the case, was conferred with the power to determine the validity of the section. While I understand the considerations of pragmatism and practicality that suggested that this was a desirable course, in my view, it is one that a Court should be very slow to endorse.

11. However, I consider, as Hogan J. does, that the fact that the matter has now been the subject of determination by the High Court, and the fact that the arguments raised are of systemic importance in the arena of planning, as well as raising issues of very general application, mean that this Court should hear and entertain the appeal from the High Court, albeit with reluctance.

12. The question of whether any statutory instrument or rules made pursuant to legislative power infringe the sole and exclusive power of lawmaking conferred upon the Oireachtas under Article 15.2 of the Constitution, is an argument that has been among the issues most regularly advanced in these courts since independence, but more particularly in modern times, since the decision of this Court in *Cityview Press v. An Chomhairle Oiliúna* [1908] I.R. 381 ("*Cityview Press*"), reported as it happens in the same volume of the Irish Reports as *Cahill v. Sutton*. In the judgment of the Court delivered by O'Higgins C.J. it was said at page 399: "*In the view of this Court, the test is 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". The short decision in *Cityview Press*, and that single sentence, has given rise perhaps to more litigation (not always productive or illuminating) than almost any other decision.

13. Standing back for a moment, it might be thought that once it is accepted, as it has been since the foundation of the State, that the Oireachtas may confer upon – or, in the slightly misleading language of the case law, delegate to – a subordinate body the power to make rules which are binding and enforceable *vis-à-vis* individuals or entities, in some cases pursuant to the criminal law of the State, that this was a classic case where the conferral of such a power did not give rise to any question of infringement of Article 15.2. As Humphreys J. observed in the High Court, there are a cascade of factors which point to the conclusion that the conferral of rule-making power in this case is entirely logical and consistent with the constitutional structure. The structure created is detailed, measured and balanced, and the area for the exercise of the power is both technical and requires a degree of flexibility, either by reference to local conditions, or changes from time to time. The guidelines issued under section 28 more generally must be laid before each House of the Oireachtas, must be made available by any planning authority for inspection by members of the public, and shall be published under section 28(7). A planning authority must have regard to those guidelines in the performance of their functions, and particularly, in the context of preparing and making the draft development plan. Moreover, such an authority must append a statement to the draft development plan demonstrating how the planning authority has implemented the policies

and objectives contained in the guidelines and if the planning authority has formed the opinion that it is not possible to implement certain policies or objectives, why that is so. Where appropriate, a strategic environmental assessment or appropriate assessment may be required to be conducted in accordance with section 28(1D).

14. The significance of the SPPRs issued under section 28(1C) is, of course, that they are not merely guidelines to which the general provisions of section 28(1) apply, and to which planning authorities shall *"have regard"*; they are guidelines which planning authorities, regional assemblies and the board *"shall… comply"*. I agree with Hogan J. at paragraph 29 of his judgment that these words place significant constraints upon the Minister. As he says:-

> "*The Minister is not at large in exercising the s. 28(1C) powers. The guidelines must relate exclusively to planning policy and the performance of the functions conferred on local authorities and the Board. The powers must furthermore be exercised within the four corners of the 2000 Act and it follows by extension that any guidelines must further relate to proper planning and sustainable development: see s. 34(2)(a) of the 2000 Act".*

15. It is, in my view, central to this analysis that the guidelines must be specific requirements which, moreover, only apply to planning authorities, regional assemblies and the Board in the proper performance of their functions. By definition, therefore, the scope of application of any such SPPRs are and can only be a subset (normally small) of the functions of such authorities under the 2000 Act as amended. As Humphreys J. put it "*the vast powers given to local*

authorities under the 2000 Act renders it implausible that a more limited power given to the Minister must be unconstitutional". If local authorities can properly make development plans without infringing Article 15.2, then it would seem clear that the Minister can make SPPRs in respect of the content of some specific aspects of such plans, without infringing the Oireachtas' power under that Article. For the reasons set out in the judgment of Hogan J., I am satisfied that the power conferred by section 28(1C) is not in breach of Article 15.2 of the Constitution.

16. It is, however, worth considering why it was that the argument was considered plausible. Again, this is identified by Humphreys J. at paragraph 90 of his judgment, namely that "*the fact that s.28 itself is light on principles and policies, and the lack of meaningful parliamentary scrutiny beyond the bare minimum.*" Taking the first of these reasons, i.e. that the section is *"light"* on principles and policies, this issue and the implicit suggestion that it gives rise to a possible constitutional frailty can, I think, be fairly traced back to the single sentence in *Cityview Press* quoted above. It is undoubtedly the case that section 28 on its own terms does not itself guide the decision made by the Minister to make guidelines on, for example, maximum permissible height, still less what that height should be. In this respect of course it could be said that this section is similar to section 21 of the Industrial Training Act, 1967 considered in the *Cityview Press* case, which itself gave no guidance as to the employers who might be exempted by levy order and still less as to the amount of any such levy.

17. The argument, however, points, in my view, to a misunderstanding of the correct test and perhaps the decision in *Cityview Press* itself. It would be futile

for the Oireachtas to confer a power and dictate the manner in which that power should be exercised in every case, and it is not surprising that few, if any examples of legislation would satisfy such a demanding, if misguided test. Furthermore, the approach of seeking principles and policies in legislation can actively mislead. It is possible to provide a long list of principles and policies which will, at least at a superficial level, satisfy this approach. But such an approach can in fact expand, rather than limit, the area of decision making afforded to the subordinate body. It is, for example, not unusual to find principles or policies stated not only at a level of generality but without any guidance as to how they are to be reconciled to any particular case, which is, or ought to be, the critical question. In some cases, the principles and policies stated in the abstract can point in opposite directions. For example, a statutory body may be required to have regard to the desirability of promoting employment in rural areas, alongside a policy of maintaining the integrity of the rural landscape. A decision citing one or other such policy will illustrate consistency with the requirement of principles and policies, but it does not answer the fundamental question of whether the decision in question is one of *"the important policy choices of a kind often regarded as a hallmark of the legislative power"*, as Hogan J. puts it at paragraph 32 of his judgment and which can only be made by the Oireachtas under Article 15.2.

18. It is open to doubt that the search for principles and policies and for whether the power conferred is not a mere filling in or completion of details, was ever intended to be the sole and precise guide to what was permissible pursuant to Article 15.2. The argument of counsel for the State in *Cityview Press,* which was accepted in the High Court by reference to US authorities, was that anything

clearly identifiable as policy making should be retained in the control of the Oireachtas but that administrative agencies must be given considerable scope within which to fulfil the task entrusted to them of implementing policies formulated by the legislature. In any event, it is correct to say that in recent years this Court has adopted what Hogan J. describes as a "*more holistic broader based consideration of the question*" illustrated in cases such as *O'Sullivan v. Sea Fisheries Protection Authority* [2017] IESC 75, [2017] 3 I.R. 751, *Bederev v. Ireland* [2016] IESC 34, [2016] 3 I.R. 1 ("*Bederev*"), and *Náisiúnta Leictreach Contraitheroir Éireann v. The Labour Court* [2021] IESC 36, [2022] 3 I.R. 515 ("*Náisiúnta Leictreach*"). The law in this regard was surveyed recently at paragraphs 169 to 173 of the judgment of Collins J. in *Delaney v. PIAB* [2024] IESC 10 (Unreported, Supreme Court, Charleton, Hogan, Murray, Collins, Whelan, Faherty and Haughton JJ., 9 April, 2024), which in this aspect of the case was the majority judgment, and I agree with it.

19. I agree that the passage from the judgment of MacMenamin J. in *Náisiúnta Leictreach* set out at paragraph 27 of the judgment of Hogan J. is one useful guide, subject to the observation made by Hogan J. at paragraph 28, that the passage should be read as stating that the Oireachtas may vest a decision making body with a decision making power which involves choices. The logic of the passage, and indeed, this part of the judgment, makes it clear that, in this respect, MacMenamin J. was addressing the narrow and mistaken understanding of *Cityview Press*, which seemed to suggest that the primary legislation had to constrain – indeed, dictate – the choices to be made by the subordinate body. On the contrary, it was an important starting point to acknowledge that the Oireachtas in every case was conferring a limited decision making function

upon a subordinate body, which necessarily implied that that body could make a range of decisions within that area, and which the legislature was content to leave to the body, and not to seek to constrain or attempt to set out in detail in primary legislation. I agree with Hogan J. at paragraph 27 of his judgment, therefore that the sentence must be read as if it stated that the vesting of a decision making power in a body necessarily contemplates that body having the capacity to make choices.

20. I consider that the passage in MacMenamin J.'s judgment in *Náisiúnta Leictreach* is helpful in describing some of the ways in which a provision may be tested for compliance with Article 15.2. It should not, however, be converted into a checklist, each component of which must be satisfied if the provision is to be found valid. It is not clear to me that this is how it is treated in the judgment of Hogan J., but if so, I would not agree. In particular, the seventh factor referred to by MacMenamin J., namely whether there has been an abdication by the Oireachtas of its constitutional role, is not in my view a separate or freestanding item, it is instead the fundamental test to which all the other factors and considerations are directed.

21. While these differences of approach, if they exist, may rarely lead to a difference of outcome in any given case, it is, I think, desirable to be as clear as possible about the test to be applied, since this is an issue very regularly encountered and has given rise to much confusion and consequent litigation. In particular, there is in my view no warrant for reading into that seventh factor a separate requirement of democratic accountability or a more general requirement for publicity derived, it appears, from Article 5 of the Constitution. It was not

argued in this case that Article 5 was infringed by the making of the SPPRs nor, perhaps for obvious reasons, was it suggested that there was any deficit in relation to their publication. The issue simply did not arise.

22. Article 5 and the democratic nature of the State have, however, been invoked recently in a number of different contexts, almost as a separate ground of challenge, and with an undefined content. In that regard, while I have no doubt that promulgation and publication are essential aspects of a valid law in accordance with the detailed provisions laid down by Article 25.4, and I have little doubt that publication and promulgation are essential to the validity of rules and guidelines made under legislative authority, I would not, with respect, derive such a requirement from the provisions of Article 5 declaring Ireland to be a democratic State. Rather, I see it as following from the principle of legality and the fact that the Oireachtas, in exercise of its law-making power under Article 15.2, gives to a delegate the power to make rules or regulations with binding force and by analogy, therefore, with the requirements of Article 15.2 and Article 25.4.

23. This distinction is not critical to the resolution of this case, since the Court is unanimous both that promulgation and publication are essential to the validity of these guidelines, and that the requirements of such promulgation and publication are amply satisfied here. It may not seem necessary to engage in any detailed analysis of the source of any such obligation. However, it is desirable to set out my own view on Article 5 at this point, since it seems likely further argument will be addressed to the issue in the future in circumstances where the interpretation of the provision may be critical. Accordingly, I think it is helpful

to discuss in a little greater detail the question of whether an obligation of promulgation and publication can be derived from Article 5.

24. The example of the Emperor Caligula is sometimes cited as in this context. It is said that he sought to comply with the obligation to publish laws by posting them up "*but in an awkwardly cramped spot and written so small that no one could take a copy*": Suetonius, *Lives of the Twelve Caesars*, Ch.4 para 41. That vivid example illustrates the fact that the obligation of publication of laws is not derived from the concept of democracy, but rather from something more basic: the principle of legality and the rule of law.

25. Accessibility of the law is treated as a basic requirement of the rule of law by the late Lord Bingham in *The Rule of Law* (1st edn, Allen Lane 2010 at 37). As I understand it, publication of law has always been seen as an aspect of *legality*, but until now not derived from the concept of democracy, nor in Irish law from Article 5's reference to the democratic nature of the state . As one distinguished scholar put it: "[i]*t is also to be insisted that the rule of law is just one of the virtues which a legal system may possess and by which it is to be judged. It is not to be confused with democracy, justice, equality (before the law or otherwise), human rights of any kind or respect for persons or for the dignity of man"* (Joseph Raz*, The Authority of Law* (2nd edn, OUP 2009) p. 211), and there are other statements to like effect. Similarly, shortly after the expansion of the European Union in 2004, the European Court of Justice had to consider the question of the applicability and enforceability of a regulation in a Member State where it had not been formally published in the language of the Member State (although it was available on a database), and held, unsurprisingly, that such

provisions could not be enforced while it was not published in accordance with law, relying, not on democracy but on the principle of legal certainty: Case C-161/06 *Skoma-Lux sro v. Celní ředitelství Olomouc* [2007] ECR I-10841 paragraph 38; see also Case C-345/06 *Gottfried Heinrich* [2009] ECR I-01659.

26. My concern is not to dispute that Irish law recognises publication as essential to the validity of any law or any provision having binding force, or that the provisions of the Constitution which together make Ireland a democracy may be and have been relied upon in litigation. Nor do I dispute the importance of those provisions, or that the principle of legality is a basic element of the State established by the Constitution. If anything, I think it understates the significance of that principle to attempt to locate it in a single provision of the Constitution when it can be said to be intrinsic to it. My concern, however, is that I do not see Article 5's reference to the democratic nature of the State as a receptacle for specified values thought important, not comprehensively specified but necessarily of very broad scope if it is capable of encompassing matters such as the promulgation and publication of rules regulations and legislation. In particular, Article 5 of the Constitution should not be introduced into the Article 15.2 question as a requirement of democratic accountability under the rubric of the question whether the Oireachtas is to be understood as having abdicated its constitutional duty.

27. In addition, I do not think that the reference by the High Court judge to the requirements for laying of the guidelines before the Oireachtas has *"the bare minimum in this regard"*, can or should be understood as creating a separate test which, if not satisfied, could be decisive on the Article 15.2 issue. The law may

develop, and indeed progress, through case law which can be a continuous process of tacking and gybing – correcting a course adopted and then seeking to avoid over-correction. In this regard, the correct course was, I consider, set in the *Cityview Press* case, and in the judgment of O'Higgins C.J. at page 398:-

> "*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."* [emphasis added]

28. It is clear that subsequent consideration by the Oireachtas, whether negative by reference to a power of annulment, or positive by requiring adoption by resolution, or passive by the laying of the relevant rules or guidelines before the Houses of the Oireachtas, is a relevant factor in considering whether there has been excessive delegation. Indeed, it was a factor which the Court took into account in considering that Article 15.2 was not exceeded in the *Cityview Press* case (page 399).

29. Thereafter, however, the passage in *Cityview Press* came to be read as suggesting that the question of laying before the Houses of the Oireachtas of annulment or even positive approval, was not a relevant consideration at all.

Thus, in *Meagher v. Minister for Agriculture* [1994] 1 I.R. 329, Johnson J. discounted the procedure because it was an action of the Houses without the President who together constituted the Oireachtas under Article 15.1.2°. This, it should be noted, was said in the different context of considering the validity of regulations made under the European Communities (Amendment) Act, 1973. Nevertheless, this approach led in turn to the contention that any procedure for consideration by the Houses of the Oireachtas was somehow irrelevant to the question of compliance with Article 15.2.

30. That misconception was addressed in *Bederev*. In the Court of Appeal judgment in that case, it had been said that this would *"rarely be a decisive consideration"*. In the Supreme Court, Charleton J. emphasised that annulment or approval by the Houses of the Oireachtas was a relevant factor to which weight should be given. If it is a relevant factor, then it must follow as a matter of logic that it could in some cases be decisive in tipping the balance one way or the other.

31. But this correction should not, in turn, give rise to the perception that there is a separate test of democratic accountability, and that if there is no, or no adequate provision for subsequent consideration by the Houses of the Oireachtas, that can in itself be fatal in any challenge by reference to Article 15.2. The correct position is that this is, and remains, a factor to which weight must be given. It is, however, perfectly possible to have an entirely valid regulation or guideline adopted pursuant to statutory authority, and which is never even laid before the Houses of the Oireachtas. By the same token, a procedure for nullification, even one which requires positive consideration by the Houses of the Oireachtas

within a limited time, will not be capable of validating a provision which is considered to be an abdication by the Oireachtas of its function under Article 15.2.

32. Here, the factor was one which weighed in favour of validity, although this was not a borderline case where that might be decisive. As already discussed, the delegation was within a limited area. It was a technical area in which flexibility was necessary. There were discernible principles and policies. There was no impermissible abdication by the Oireachtas of its constitutional role. Furthermore, there was also, as it happened, a significant degree of democratic control, first because of the requirement to lay the regulations before the Oireachtas, but also because the Minister was accountable to the Dáil.

33. While the paths the individual members of the Court have followed on some of the finer points of theory discussed in this case have diverged, there is clear and unanimous agreement that: the SPPRs do not infringe Article 28A of the Constitution; that in permitting such SPPRs to be made the Oireachtas did not abdicate its function of lawmaking under Article 15.2; and that insomuch as it arises in this case, the SPPRs, while not Statutory Instruments, nevertheless are required to be published, that this obligation was comprehensively satisfied in this case and accordingly that the appeal should be dismissed.