

The continuing saga of sections 12 and 13 of the National Cultural Institutions Act 1997

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The Attorney-General has expressed his opinion that the National Cultural Institutions 1997 does provide sufficient authority for the granting of arms by the Board of the National Library of Ireland. The purpose of the Act was undoubtedly to bring the powers and functions of the Genealogical Office into the National Library of Ireland (“for the avoidance of doubt”, since this had already been done by the Allocation of Administration (Genealogical Office) Order 1943). But since the powers to grant arms did not exist prior to 2005 (when section 13 was brought into effect, and as the Attorney-General concedes), the implementation of the new Act could not create such a power, unless clearly and expressly stated.

Subsection 2 of section 13 is crucial. It states that:

—(2) The Board shall, from time to time as occasion requires, designate a member of its staff to perform the duty of researching, granting and confirming coats of arms and such member shall use the appellation Chief Herald of Ireland or, in the Irish language, *Príomh-Aralt na hÉireann* while performing such duties.

This appears to confer an express authority to grant arms, and this would seem to be the interpretation adopted by the Attorney-General. However, the “duty” of “researching, granting and confirming coats of arms” is assigned, but no express authority is stated for the power to grant or confirm arms. This is perhaps a slight distinction, but is nonetheless legally significant – especially so in light of the prior confusion over heraldic authority, and its probable absence prior to 2005.

The original wording of section 13, when a Bill, not merely dis-established and restored the Genealogical Office as a new institution within the National Library, but also provided (in s 13(2)) that “the Board of the Library shall, in relation to the functions assigned to it by section 12, perform the functions heretofore performed by the Genealogical Office including the duty of granting and confirming coats of arms under the style of heraldry.” This clearly indicates that the source of the granting and confirming authority lay, not in section 13, but in section 12.

The limitation in the wording in s 13(2) is echoed in s 12, which describes the functions of the Board of the National Library of Ireland. This provides, *inter alia*, that:

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(2) The Board shall have all such powers as it considers necessary or expedient for the performance of its functions under this Act including, but without prejudice to the generality of the foregoing, the following powers:

(c) to facilitate, encourage, assist and promote the granting and confirming of coats of arms,

This could be the requisite source for authority to grant or confirm arms – and should be, were the section drafted more carefully and with greater awareness of the preceding controversy over heraldic powers. However, it does not expressly authorise the granting of arms. The provision “such powers as it considers necessary or expedient for the performance of its functions” is insufficiently precise, being too broad. Indeed section 12 seems to suggest that the ultimate authority for grants lies elsewhere than in the hands of the Board of the National Library of Ireland. The expression “facilitate, encourage, assist and promote” could describe the role of an independent heraldic agent, and is insufficiently clear as a source of authority to grant arms. The section as originally drafted did not even mention heraldry or coats of arms, which was ever more unsatisfactory.

The learned opinion of the Attorney-General may constitute the best official advice available to the Government, but is not itself law. If the advice is uncertain, or is subject to controversy or contradiction by other legal experts, then it does not constitute a sufficiently robust basis upon which to proceed.

As suggested in my paper, “The Law of Arms of Ireland – a lingering question of authority” (2006) 7(2) *Journal of the Genealogical Society of Ireland* 75-103, s 12(2) could be amended as follows (new text in italics):

(2) The Board shall have all such powers as it considers necessary or expedient for the performance of its functions under this Act including, but without prejudice to the generality of the foregoing, the following powers:

... (c) to *grant and confirm coats of arms in accordance with the Law of Arms of Ireland, ...*

Section 13 could become

13.—(1) For the avoidance of doubt, it is hereby declared that the Genealogical Office is a branch of the Library, *and is the successor in law to all the rights, privileges, powers and immunities of the Office of Ulster King of Arms as existed prior to 1st April 1943, and for the further avoidance of doubt the Genealogical Office shall be deemed to have existed since 1st April 1943 and to have enjoyed the said rights, privileges, powers and immunities without interruption since that date.*

This provision would ensure that the grants of arms made prior to 2005 would be valid.

The Genealogy and Heraldry Bill should be pursued, but in the meantime the above simple amendments would put to rest the deplorable saga of legal uncertainty which has done much to harm the standing of Irish heraldry internationally.