

## DRAFT/Code

## Dréacht/Cóir Dlí

### Part 1: Principles and Purposes/ Bunphrionsabail & Bunchúraim<sup>534</sup>

Purpose of the Code	1. — (1) The goal of this Act is the protection of humans, the environment and biodiversity for future generations.
Application	2. — (1) The principles in this Part are applicable to each and every provision of this Act and the environmental legislation listed in the Schedule. <sup>535</sup>
Definitions	3. “Environmental legislation” means— <ul style="list-style-type: none"> <li>(a) the Acts (including any instruments made thereunder) specified in Part I,</li> <li>(b) the statutory instruments specified in Part II,</li> <li>(c) the Regulations of an institution of the European Communities specified in Part III,</li> </ul> <p style="text-align: right; margin-right: 100px;">of the Schedule in so far as they relate to the environment,<sup>536</sup></p> <p>“The Commission” has the meaning assigned to it by section 8;</p> <p>and</p> <p>“a party” has the meaning assigned to it by section 9.</p>
Environmental Duties	4. — (1) The State shall endeavour to protect and improve the environment and to safeguard the marine and terrestrial flora and fauna within its jurisdiction.

<sup>534</sup> The principles in this Part have been derived from TFEU Articles 191-192; the Rio Declaration 1992, Principle 22; Aarhus Convention; the European Convention on Human Rights, the German Model Umweltgesetzbuch and the Indonesian Law No. 32 of 2009 on Environmental Protection and Management, (Linked document is an **unofficial** English translation).

<sup>535</sup> Provision modelled on Interpretation Act, 2005, section 4.

<sup>536</sup> Definition modelled on the definition of “*food legislation*” contained in Food Safety Authority of Ireland Act, 1998.

- (2) The State recognises the dependence of all persons on the natural environment and its responsibility to protect the natural environment for the benefit of all persons and all other living things and ecosystems.
- (3) The State recognises that ecosystems have a status and a right to exist independent of their benefits to humans.
- (4) The State has a duty of care to exercise its powers with reasonable care so as not to cause harmful environmental effects.
- (5) The State shall facilitate and promote citizens' access to information regarding the environment. All reasonable steps should be taken in order to ensure that:
  - (a) Public authorities act in a transparent manner;
  - (b) Information is provided in a timely fashion, not longer than two months following an application for information;
  - (c) Information is comprehensible, and supplied in a format requested by citizens;
  - (d) Environmental information is retained;<sup>537</sup> and
  - (e) Environmental information, including information in relation to categories of harm, relevant legal protection, and enforcement mechanisms, are publicly available in a comprehensible format.
- (6) A public body which exercises a function under environmental legislation shall, in the performance of its functions, have regard to:
  - (a) The principles defined in this Part;<sup>538</sup> and
  - (b) its duty to promote environmental education.
- (7) All persons in the State have a duty of care to act with reasonable care so as not to cause environmental harm.

Environmental  
Rights

5. – (1) All natural persons have the right to live in a healthy environment in which human life and biodiversity are preserved.
- (2) All persons in the State have the right to participate in

<sup>537</sup> Section 5(a) to (d) are drawn from Aarhus Convention, Article 4.

<sup>538</sup> Provision modelled on Irish Human Rights and Equality Act, 2014, section 42.

decision-making procedures regarding the environment.<sup>539</sup>

General  
principles of  
interpretation

6. – (1) For the protection of people and the environment, the following principles of interpretation shall be applied to this Act and the environmental legislation listed in the Schedule:

- (a) Dangers and damage to humans and to the environment are to be avoided;
- (b) As far as is possible, significant risks and damages for humans, the environment and biodiversity are to be limited and avoided; and
- (c) Standards for the protection of humans and the environment must be suitable, necessary, appropriate and reasonable. They should aim to achieve a high level of protection and for that reason the shifting of disadvantageous environmental effects from one environmental resource to another or onto humans is to be avoided.

(2) With a view to achieving social, ecological, and economic sustainable development, this Act and the environmental legislation listed in the Schedule shall be interpreted to further the following objectives:

- (a) Environmental resources, that cannot be renewed, should be conserved and their use should be reduced. Where possible, resources should be used to make renewable environmental goods so that the resources are available in the future for reuse or renewing;
- (b) The nature, capacity and function of natural habitats should be protected; and
- (c) Public and private undertakings, as well as authorities and other bodies, must contribute to corporate governance that ensures environmental sustainability and responsible management of the environment for the achievement of the goal of this Act.

(3) In any proportionality weighting by a court, tribunal or public body, economic imperatives and energy requirements cannot outweigh the need to maintain and preserve a healthy environment for all persons and nature.

Principles  
regarding the  
assessment of  
environmental  
liability and  
damage

7.– (1) Damage to the environment will be subject to the polluter pays principle, and other effective and dissuasive remedies and sanctions.<sup>540</sup>

<sup>539</sup> Aarhus Convention, Article 6.

<sup>540</sup> TFEU, Article 191 (2). (Polluter pays principle).

- (2) Whoever engages in, directs, or is responsible for activities which cause significant damage or are likely to cause damage to the environment, are to be made responsible for these activities or omissions.
- (3) It is recognised that environmental damage will rarely be traceable to one sole cause, therefore:
  - (a) partial causes are considered legally liable for environmental harm due to that cause among others;
  - (b) The cumulative effect of the entirety of processes involved in any activity, upstream and downstream of that activity, shall be taken into account in judging its environmental impact; and
  - (c) The cumulative effect of pollution shall be taken into account in apportioning fines.
- (4) Strict liability shall apply in relation to environmental harm.
- (5) Environmental damage should as a priority be rectified at source.<sup>541</sup>

## Part 2: The Environmental Relations Commission/ An Binsé Comhshaoil

The  
Environmental  
Relations  
Commission

- 8.– (1) On the establishment day, there shall stand established a court to be known as Binsé Comhshaol or, in the English language, the Environmental Relations Commission (in this Act referred to as “The Commission”), that performs the functions conferred on it by this Act.
- (2) The Commission may hear applications in relation to:
    - (a) violations of rights set out in section 5; and
    - (b) breaches of the environmental legislation listed in the Schedule.
  - (3) The Commission shall have a chief executive officer, appointed by the Minister for Environment, known as the Commissioner for the Environment.

<sup>541</sup> TFEU, Article 191 (2). (Rectification at source principle).

- (4) The chief executive officer shall appoint a panel of Environmental Commissioners, who have such qualifications, expertise, interests, or experience as, in the opinion of the chief executive officer, would enable them to determine or otherwise resolve disputes brought to the Commission in accordance with this Act and the environmental legislation contained in the Schedule.
- (5) The Commission, Environmental Commissioners and Environmental Officers shall, subject to the provisions of this Act, be independent in the performance of their functions.
- (6) The Commission may publish codes of practice and procedural rules.
- (7) Decisions of the Commission shall be subject to a general right to appeal to the Circuit Court.

### Part 3: Legal Standing /Locus Standii do Saoránaigh<sup>542</sup>

Generally applicable principles regarding legal standing

- 9.– (1) Any party, making a claim of environmental harm in their own right or demonstrating a bona fide interest in the protection of the environment, may seek appropriate relief before the Commission or the court, which has jurisdiction by reference to the rateable valuation or value of the claim, in respect of any breach or threatened breach of any provision of this Act, including a principle contained in Part 1, or any provision of the environmental legislation contained in the Schedule.
- (2) For the purposes of subsection (1), any party includes:
    - (a) any legal person, whose objects demonstrate a bona fide interest in environmental protection; and
    - (b) the State.
  - (3) The natural and imprescriptible rights of all children, as recognised in the Constitution, are understood to include the right to prohibit

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<sup>542</sup> The starting point for this Part was the Model Statute for Proceedings Challenging Government Failure to Act on Climate Change: An International Bar Association Climate Change Justice and Human Rights Task Force Report, February 2020, Article 4.

actions which will have possible or probable long-term effects on the environment. Any party, within the meaning of this section, may bring a claim, within the meaning of subsection (1), on behalf of children or future generations.

Standing for  
Interveners and  
*Amicus Curiae*

10.–(1) On appropriate notice to the parties in any claim, within the meaning subsection 1 of section 9, any court or tribunal may grant standing as intervener or *amicus curiae* to:

- (a) any natural person who demonstrates a particular expertise in an issue raised in any such proceeding; and
- (b) any legal person whose objective is to protect the public interest and demonstrates a particular expertise in an issue raised in any such proceeding.<sup>543</sup>

Standing to  
bring  
enforcement  
actions

11.– (1) Where, on application by any party to the High Court or the Circuit Court, the Court is satisfied that a person has failed to comply with a requirement of or under the legislation in the Schedule, and that that failure has caused, or is likely to cause, a risk to human health or the environment, it may by order—

- (a) direct the person to comply with the requirement, and
- (b) make such other provision, including provision in relation to the payment of costs, as the court considers appropriate.

(2) An application to the High Court or Circuit Court for an order under this section shall be by motion, and the court when considering the matter may make such interim or interlocutory order as it considers appropriate.

(3) An application for an order under this section may be made whether or not there has been a prosecution for an offence under any enactment in relation to the activity concerned and shall not

<sup>543</sup> Model Statute for Proceedings Challenging Government Failure to Act on Climate Change: An International Bar Association Climate Change Justice and Human Rights Task Force Report, February 2020, Article 5.

prejudice the initiation of a prosecution for an offence under any enactment in relation to the activity concerned.<sup>544</sup>

#### Part 4: Class Actions/Cásanna Grúpaí

Class Actions

12.–(1) One or more members of a class may apply for certification to initiate proceedings, in the Commission or the ordinary courts, as representative parties on behalf of all members of that class, only if:

- (a) the claim relates to the protection of the environment, this Act or the environmental legislation contained in the Schedule;
- (b) the class in question has 7 or more members;<sup>545</sup>
- (c) there are questions of law or fact common to the class;
- (d) the claims of the representative parties are typical of the claims of the class; and
- (e) the representative parties will fairly and adequately protect the interests of the class.<sup>546</sup>

(2) A Judge, or an Environmental Commissioner, as appropriate, shall not refuse to certify a proceeding as a class proceeding

solely on one or more of the following grounds:

- (a) the relief claimed includes a claim for damages that would require an individual assessment after a determination of the common questions of law or fact;
- (b) the relief claimed relates to separate contracts involving different class members;
- (c) different remedies are sought for different class members;
- (d) the precise number of class members or the identity of each class member is not known; or
- (e) the class includes a sub-class, whose members have claims that raise common questions of law or fact not shared by all the class members.<sup>547</sup>

(3) Once subsection (1) is satisfied, the class proceedings may proceed only if the court or the Commission is satisfied that:

- (a) the proposed respondent to the proceedings has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or

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<sup>544</sup> This starting points for this provision were section 160 of the Planning and Development Act 2000 and section 10 the Local Government (Water Pollution) Act 1977.

<sup>545</sup> Federal Court of Australia Act, 1976. Section 33C specifies “7 or more persons”.

<sup>546</sup> U.S. Federal Rules of Civil Procedure, Rule 23(a).

<sup>547</sup> Federal Court Rules (Canada), 334.18.

- (b) the court or the Commission finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a<sup>548</sup> class proceeding is the preferable procedure for the just and efficient resolution of the common questions of law or fact.<sup>549</sup>
- (4) For any class certified under subsection (3)(a), the court will have discretion to relax the requirement of subsection (1)(b) where it is satisfied that it is in the public interest to do so.
- (5) For any class certified under subsection (3)(b), the court or the Commission must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members, who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language:
- (a) the nature of the action;
  - (b) the definition of the class certified;
  - (c) the class claims or issues;
  - (d) that a class member may enter an appearance through a firm of solicitors if the member so desires;
  - (e) that the court will exclude from the class any member who requests exclusion;
  - (f) the time and manner for requesting exclusion; and
  - (g) the binding effect of a class judgment on members.<sup>550</sup>
- (6) The powers of a court or the Commission in relation to all class proceedings instituted under this Section shall include, but are not limited to:
- (a) the power to discontinue the class proceedings where the requirements of subsections (1) and (2) are not satisfied or where the interests of absent class members are otherwise not sufficiently protected;
  - (b) the power to substitute a representative party who is not adequately representing the interests of class members in accordance with the requirements of subsection (1);
  - (c) the power to order that notice of 'any matter' be given to class members;
  - (d) the ability to decline or approve settlements; and
  - (e) the power to make any order it considers appropriate or necessary to ensure that justice is done in the proceeding.<sup>551</sup>

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<sup>548</sup> U.S. Federal Rules of Civil Procedure, Rule 23(b).

<sup>549</sup> Federal Court Rules (Canada), 334.16(1)(d).

<sup>550</sup> U.S. Federal Rules of Civil Procedure, Rule 23(c)(2).

<sup>551</sup> Johnson, Briggs and Gaertner, "The Class Actions Law Review: Australia"  
<https://thelawreviews.co.uk/title/the-class-actions-law-review/australia#footnote-037-backlink>

## Part 5: Sanctions/ Smachtbhanna Riaracháin<sup>552</sup>

Sanctions

13.–(1) A breach of a provision of legislation in the Schedule, which gives rise to a criminal liability, may also give rise to one or more administrative sanctions, which are provided for subsection 2.

(2) Where a breach of a provision of legislation contained in the Schedule by any person has been proven, either the Commission or an appropriate court may impose one of more of the following administrative sanctions, on that person:

(a) a caution,<sup>553</sup>

(b) a reprimand;<sup>554</sup>

(c) a requirement to take such steps as the Commission or the appropriate court may specify, within such period as it may specify, to secure that the breach does not continue or recur (“a compliance notice”);<sup>555</sup>

(d) a requirement to take such steps as the Commission or the appropriate court may specify, within such period as it may

specify, to secure that the position is, so far as possible, restored to what it would have been if the legislation had not been breached (“a restoration notice”);<sup>556</sup>

(e) a requirement that to pay a sum of money as restitution or part restitution to any aggrieved party, without prejudice to any legal right of the aggrieved party;<sup>557</sup> and

(f) administrative financial sanctions.

(3) All administrative financial sanctions shall be paid to the exchequer and will be appropriately segregated to pay reparations for environmental damage.

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<sup>552</sup> A range of existing administrative sanctions regimes were consulted when drafting this Part, including Part 7A of the [Residential Tenancies Act 2004](#) and the Central Bank Act, 1942. We also consulted the [General Scheme of the Gambling Regulation Bill 2021](#), Sections 86-89 and the [Environmental Civil Sanctions \(England\) Order 2010, SI No 1157 of 2010](#).

<sup>553</sup> Central Bank Act, 1942, Section 33AQ.

<sup>554</sup> *ibid*

<sup>555</sup> Environmental Civil Sanctions (England) Order 2010, SI No 1157 of 2010.

<sup>556</sup> *ibid*

<sup>557</sup> Section 7(9) of the Solicitors (Amendment) Act 1960 provides the Solicitors’ Disciplinary Tribunal with the power to make an award of restitution in favour of a complainant.

(4) A decision by the Commission to impose a sanction on any person, save for a decision to impose a sanction pursuant to subsection (2)(a), shall not take effect unless it is confirmed by the Circuit Court.<sup>558</sup>

(5) In this section, “appropriate court” means

- (a) in case a caution or reprimand imposed under subsection 2(a) or (b) or an administrative financial sanction up to €5,000, the District Court, or
- (b) in the case of any sanction under subsection 2, the Circuit Court, subject to a maximum administrative financial sanction of €15,000, including in respect of an order of restitution or part restitution, or
- (c) in any case, the High Court.

#### **Part 6: The offence of Ecocide/I gCoinne Comhshaoldhíothú<sup>559</sup>**

The offence of ecocide

14.–(1) A person shall be guilty of the offence of ecocide who acting unlawfully, either intentionally or recklessly, causes severe and either widespread or long-term damage to the environment. For the avoidance of doubt, the offence of ecocide may consist of a single act or a series of acts.

(2) A person guilty of an offence under this section shall be liable on indictment to a fine not exceeding €20,000,000 or to imprisonment for a term not exceeding 10 years or to both.

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<sup>558</sup> Residential Tenancies Act, 2004, Part 7A.

<sup>559</sup> This definition is adapted from the Independent Expert Panel for the Legal Definition of Ecocide. The only addition is: “*For the avoidance of doubt, the offence of ecocide may consist of a single act or a series of acts*”.

## Part 7: Regulation of Strategic Lawsuit Against Public Participation<sup>560</sup>

### Rialachán (CE) maidir le, Rannpháirtíocht Phoiblí sa Phróiseas Cinnteoireachta

Regulation of  
Strategic  
Lawsuit against  
public  
participation

15.–(1) Strategic lawsuit against public participation (“SLAPP”) refers to an action whether civil or criminal, brought against any person, institution or any government agency or local government unit or its officials and employees, with the intent to harass, vex, exert undue pressure, or stifle any legal recourse that such person, institution or government agency has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights.

(2) It shall be a defence to any civil or criminal claim filed against a person involved in the enforcement of environmental laws, protection of the environment, or assertion of environmental rights, that the proceedings in question are a SLAPP.

## Part 8: Miscellaneous/ Forálacha Ilghnéitheacha

Paralell claims

16.–(1) Where a party has referred an application to the Commission and either a settlement has been reached by mediation or the Commission has begun an inquiry into that application, the party:

(a) shall not be entitled to recover damages at common law in respect of the case, and

(b) shall not be entitled to seek redress in any other forum in respect of the breach,<sup>561</sup>

unless the Commission, having completed the inquiry, and in an appropriate case, directs otherwise and so notifies the applicant and respondent.

(2) Where a party has initiated proceedings in the District, Circuit or High court in relation to any breach of the legislation in the schedule to

<sup>560</sup> This Part is modelled on the Rules of Procedure in Environmental Cases of the Philippines, Rule 6. It is also influenced by the Indonesian Law No. 32 of 2009 on Environmental Protection and Management, Article 66. (Linked document is an **unofficial** English translation). Anti-SLAAP defences have been successfully relied upon in a number of cases in Indonesia, including *Willy Suhartanto vs H. Rudy*, Pengadilan Negeri Malang, Decision Number 177/Pdt.G/2013/PN.Mlg; Pengadilan Tinggi Surabaya, Decision Number 701/PDT/2014/PT.SBY; Mahkamah Agung, Decision Number 2263 K/Pdt/2015.

<sup>561</sup> Employment Equality Act, 1998, section 101.

this Act, the party shall not be entitled to refer a complaint to the Commission, unless those proceedings are withdrawn.

Amendment of  
Schedule

17.–(1) The Minister with responsibility for environmental issues may by order amend the Schedule 1 by making additions thereto or deletions therefrom.<sup>562</sup>

Inventory

18.–(1) Within 12 months of the coming into force of this act, the Minister will publish online an inventory of all environmental law in Ireland, gathered and organised into relevant environmental sectors, in both the Irish and English languages, to include all domestic law currently in force, Directives and Regulations of the European Union and all international conventions to which Ireland is a signatory, presently in force.<sup>563</sup>

## **Part 9: Schedule<sup>564</sup>**

### **Environmental Legislation**

#### **Part I Acts**

#### **Part II Secondary Legislation**

#### **Part III Regulations of an Institution of the European Communities**

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<sup>562</sup> Modelled on Food Safety Authority of Ireland Act, 1998, section 5.

<sup>563</sup> A blueprint for the structure and style of the Inventory is contained in the collection of papers for the Comhshaol - the Climate Bar Symposium, January 2022.

<sup>564</sup> See blueprint. That inventory does not directly correspond with the Schedule for two reasons: The definition of “environmental legislation” contained in this Act does not require statutory instrument made under Acts, which appear in Part I of the Schedule to be listed in Part II. Also, while the Inventory includes European legislation, which require incorporation, Part III of the Schedule only contains European Regulations.