

Climate Bar Symposium

Towards a Model Environmental Law
(Cóir Dlí an Chomhshaoil)



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Friday 21st January 2022

3pm - 5.45pm | Online Event

The Climate Bar Association was established in 2019 and it is a specialist association of the Bar of Ireland which aims to act at the forefront of environmental justice and law in Ireland and to become a thought leader of climate law expertise in Ireland. This is their inaugural event and the symposium is open to all to attend.

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Cliona Kimber SC is a Senior Counsel at the Bar of Ireland with a specialist practice in EU and employment and equality law. She has considerable experience in advising, litigation and dispute resolution. Before coming to the Bar Cliona was a lecturer on Environmental Regulation at the University of Aberdeen, Scotland and Director of the Centre for Environmental Law and Policy. She has written internationally on environmental regulatory law. She is also the co-author of two books on employment law and is currently completing a second edition of Employment Equality Law, to be published in 2022. She is a CEDR trained Mediator.

Déanann Cliona cleachtadh as Gaeilge chomh maith.

She is currently Chair of Comhshaol: the Climate Bar Association and a committee member of Cumann Barra na Gaeilge.

Environmental Courts – Models and Proposal for Ireland¹

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¹ Supported by research funding from Energy Co-operatives Ireland

ENVIRONMENTAL COURTS – MODELS AND PROPOSAL FOR IRELAND

Clíona Kimber SC

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Introduction

Solving the environmental crisis is not just about science, or government, it is also about law. Law is the embodiment of the rules by which people decide a society should run- who should do what, who can do what, and what should not be done. Like all rules, deciding what they are is not enough- there has to be enforcement. Any parent who has pinned the household rules of good behaviour onto the fridge knows that the rules are only as good as the reward and punishment- and the parent who enforces them.

In our legal system, enforcement is through the courts.² If rules are breached, and caution and appeal to conform do not work, the court proceedings are issued. The complaint is heard, a judge adjudicates, and a sanction is imposed. This can be under the criminal laws, or a civil monetary penalty, or an order to prohibit the conduct which breaches the rules.

The environmental crisis of the late 20th century has led societies to decide on many new rules on what can and cannot be done with nature, habitats, flora and fauna and the world around humans. These have been adopted in environmental laws worldwide, including in Ireland. And yet the environmental rules in Ireland are still routinely breached. Rivers are still polluted, hedges are cut out of season, trees are cut down, insect and bird numbers are dwindling.

The focus has therefore turned onto the enforcement of environmental laws. Is our current court system fit for purpose?

As leading writers have noted,³ the adjudication of the breaches of environmental laws and rights- the subject matter of this paper - creates particularly acute challenges. Because of the inherent nature of environmental issues, court adjudicators are often required to address normative conflicts, make predictive decisions about the future as opposed to fact-finding in relation to the past, allocate risk-burdens, and make decisions about issues with many variables. Environmental protection rules impact on a wide range of parties.⁴ The issues transcend traditional bi-party litigation. Courts may have to adjudicate on decisions which arose after a participatory and consultative processes, such as planning permission, within the confined structure of judicial review, when the real issue is a dispute between economic development and environmental protection. In adjudicating on breaches of environmental rules, Courts may have to draw upon and adapt a mix of substantive public and private law doctrine, give legal meaning to vaguely defined ecological concepts, and decide between disputed scientific evidence.

Our court system has not been designed to adjudicate on rules of environmental protection. There is often a lack of expertise. The procedural rules for bringing a case to court for breach are often too restrictive, in particular as regards standing. Awards made, are often too low to

² Robinson, N, “ The Nature of Courts’ in *Courts and the Environment* Voight, C and Makuch Z. (Edward Elgar:2018)

³ Ceri Warnock, ‘Reconceptualising Specialist Environmental Court and Tribunals’ (2017) *Legal Studies* Volume 37 Number 3 pp. 391-417

⁴ Warnock, at p391

deter the rule breach in the future. The system is too slow to prevent imminent damage, it is too costly for the ordinary citizen, the range of remedies are too limited and only punish past breaches.

Forty years ago, the Government of New South Wales in Australia decided that a new approach was needed, and established the Land and Environment Court. It has been widely seen as one of the best models worldwide.⁵ A landmark study ‘Greening Justice’ was written by G and K Pring in 2009⁶. It recognised that while governments, including Ireland, signed up to the Rio Declaration at the first Earth Summit, whose Principle 10 recognizes that effective access to judicial and administrative proceedings, including redress and remedy, are needed to successfully handle environmental issues, that Governments have done less well in offering new means to resolve environmental disputes, justly and effectively. Pring and Pring engaged in a two year worldwide study, from which they learned that where adjudicating institutions are effective, they provide greater accountability for decisions on environmental matters and a pathway to reconciling competing interests necessary for achieving sustainable development.⁷ Their volume *Greening Justice: Creating and Improving Environmental Courts and Tribunals* set out the results of their study, so as to help all those involved in creating or improving environmental courts and tribunals.

In 2016 The United Nations Environment Programme saw the need for sound governance and enforcement of the environmental rule of law as crucial to delivering the 2030 Agenda for Sustainable Development and the Paris Agreement on Climate Change and therefore commissioned the same Pring and Pring to produce a Guide to Environmental Courts and Tribunals to assist legislators in adopting environmental courts in their respective countries.⁸ By that time there were over 1,200 environmental courts and tribunals operating worldwide. Robinson states that environmental courts or tribunals are to be found now in over one third of all UN member states.⁹

The time has now come for Ireland to take its place among the countries of the world and create a specialised environmental court. While there are some tentative moves in this direction- the Programme for Government adopted by the coalition elected in 2020 provides for an environmental division of the High Court- there has yet to be any thorough examination of what best practice in Ireland for an environmental court or tribunal would be.

The purpose of this paper is to look at some of the best practice worldwide and consider it in an Irish context, and to present a model for an environmental court suitable for Ireland. Such a court must be more than a fast-track planning court accessible only to the well-resourced. An environmental court which can truly enforce the environmental rules of our society must have an open door to environmental justice.

⁵ Robinson, N, “ The Nature of Courts’ in *Courts and the Environment* Voight, C and Makuch Z. (Edward Elgar:2018), at page 30.

⁶ Pring G and Pring C, *Greening Justice: Creating and Improving Environmental Courts and Tribunals*.(2009: The Access Initiative of the World Resources Institute)

⁷ Pring, G and C, *Greening Justice*, foreword.

⁸ Pring G and Pring C, ‘Environmental Courts and Tribunals: A Guide for Policy Makers’ (2016) Global Environment Outcomes LLC (GEO) and University of Denver Environmental Court and Tribunal available at <https://wedocs.unep.org/bitstream/handle/20.500.11822/10001/environmental-courts-tribunals.pdf>

⁹ Robinson, N, “ The Nature of Courts’ in *Courts and the Environment* Voight, C and Makuch Z. (Edward Elgar:2018), at page 4.

Part I Environmental Courts and Tribunals in Ireland- What is the problem

1. Definition of a court

The most authoritative definition of what constitutes a court or tribunal in the Irish legal system is contained in the Supreme Court decision of *Zalewski v. An Adjudication Officer and the Workplace Relations Commission, Ireland and the Attorney General*¹⁰. In that case the Supreme Court considered a constitutional challenge to the adjudication of employment law disputes by the Workplace Relations Commission, a body established by statute. The Plaintiff argued that the adjudication amounted to the administration of justice outside the courts, contrary to Article 34 of the Constitution¹¹. The challenge was not successful, as the majority held that the WRC was saved by Article 37, which allows for the exercise of limited powers and functions of a judicial nature by a body or persons authorised by law.¹² In the course of the judgement the Supreme Court considered the ambit of Article 34 and Article 37¹³. Relying on the majority in *Zalewski*, the administration of justice under Article 34 therefore means adjudication on a dispute about legal rights or a violation of law, its resolution, and determination. The resolution of the dispute must not be dependent upon the agreement of the parties but must be capable of enforcement in cases of refusal of the losing party to comply.¹⁴ However, the majority in that case also viewed and affirmed the constitutionality of a tribunal or commission which exercises limited powers and functions of a judicial nature.

The Nature of Environmental Adjudication means that it can be an ill fit with the doctrine of Separation of Powers. Environmental problems are very messy and thus not easily solved. Normative conflicts also arise, particularly where it is proposed to restrict public resources to the use of private entities, or to prevent use of private property. While the doctrine of Separation of Powers is a Good frame for setting limits for legal institutions in general, the same Struggles to do so in the context of environmental adjudication. Dogmatic adherence may become a straitjacket on the ECT and undermine it entirely.¹⁵

Fortunately, the Constitution in Ireland seems to provide a way out of any requirement for dogmatic rigour, by providing a constitutional basis for the exercise of judicial functions outside the courts, albeit where the powers and functions must be limited.

To avoid putting an ECT in Ireland in a dogmatic straitjacket, it is important to be clear that what is suggested by this Task Force is an environmental court or tribunal (ECT), engaging in activities governed by both Article 34 and Article 37, or perhaps a combination of both. The protection of the environment, as will be discussed in this paper, needs a broad approach to the administration of justice and to access to justice. It is not feasible from a resource basis to have Article 34 Courts adjudicate at first instance on every minor matter of dispute. Also,

¹⁰ [2021] IESC 24.

¹¹ ARTICLE 34(1) Justice shall be administered in courts established by law by judges appointed in the manner provided by this Constitution, and save in such special and limited cases as may be prescribed by law, shall be administered in public.

¹² The Supreme Court did however find that certain procedures of the WRC were not compatible with the constitution, such as the conduct of hearings in private.

¹³ ARTICLE 37 (1) Nothing in this Constitution shall operate to invalidate the exercise of limited functions and powers of a judicial nature, in matters other than criminal matters, by any person or body of persons duly authorised by law to exercise such functions and powers, notwithstanding that such person or such body of persons is not a judge or a court appointed or established as such under this Constitution.

¹⁴ *Zalewski*, O'Donnell CJ at par 94.

¹⁵ Ceri Warnock, 'Reconceptualising Specialist Environmental Court and Tribunals' (2017) 373 *Legal Studies* pp. 398

environmental adjudicators may need to exercise broader powers of resolution of disputes which takes into account what is advisable or desirable in the future for the good of the environment and for future generations, even though these parties are not represented before an ECT. In other words, conciliation, arbitration, and collective solutions may be required. O'Donnell CJ noted in *Zalewski* that such practices were required in the field of industrial relations. These functions are still performed today by the Labour Court, in addition to its determination of individual legal rights and obligations.

2. Problems with current court system

Many courts worldwide currently suffer from the following inadequacies when it comes to adjudicating on environmental disputes. The following problems were identified in the major worldwide study conducted by the Pring and Pring, since endorsed by the UNEP¹⁶.

- “1. *Judges who do not understand or have not been trained in international and national environmental laws, who do not have the expertise to make decisions based on analysis of constantly changing, complex, uncertain scientific and technical information, and who may prefer not to be accountable for balancing the social, economic and environmental impacts of a proposed development, or who may not be able to make truly just and fair decisions*
2. *General court dockets that are overwhelmed by a large number of other cases resulting in lengthy delays and a denial of justice*
3. *High costs for litigants in court fees, attorney fees, expert witness fees, security bonds and appeals*
4. *Inability to prioritize cases that impact the environment*
5. *Insufficient remedies to resolve the environmental issues*
6. *A win-lose approach to decision-making versus a win-win, problem-solving approach that can promote long range sustainability.”*

Writers have gone so far as to say that Traditional Courts are the wrong bodies to deal with environmental adjudication, citing the fact that the approach to evidence is heavily conscribed, and that such courts are unhelpful with an evaluative/predictive role¹⁷

There is no need for a detailed study of the Irish court system to identify that many of the inadequacies set out above are present in the Irish court system.

Enforcement of environmental law is dispersed at present, with the following adjudication on breaches of environmental law and environmental disputes at first tier by the Commission for Regulation of Utilities (regulation of water and energy), An Bord Pleanála (appeals of grant of planning permission), District and Circuit Courts (criminal prosecutions), High Court (judicial review and rights-based disputes), Circuit or High Court (claims for damages for environmental damage). There are also very many other bodies which regulate environmental

¹⁶ Pring G and Pring C, ‘Environmental Courts and Tribunals: A Guide for Policy Makers’ (2016: Global Environment Outcomes LLC (GEO) and University of Denver) Page IX

¹⁷ Ceri Warnock, ‘Reconceptualising Specialist Environmental Court and Tribunals’ (2017) 37.3 *Legal Studies* pp. 406-7

issues, and make decisions on the grant of licenses, planning permission, integrated pollution prevention and control permits and so on. While these are not the concern of this paper, which is confined to bodies which solely adjudicate on disputes about legal rights or the violation of law, their existence adds to the lack of transparency and fragmentation of environmental matters.

Systems can change however and do change.

The legal system which operates in Ireland is based on the English common law system which replaced the indigenous system of Brehon law following the colonization of Ireland. Adjudicative systems arose to encompass bi-party litigation, determine legal rights between parties, or between parties and the state, provide compensation for past wrongs or enforce the public peace. Parliamentary legislation was overlaid in areas where there was a deficiency in the common law.

The legal system adapted as society adapted. For example, crimes against private citizens were historically privately investigated and prosecuted- paid state police forces are a comparatively recent development. Companies and corporations are also relatively recent innovations, resulting from a convenient legal device developed from around 1897 to give inanimate companies and bodies ‘legal personality’. In addition, there was a change in the bodies which engaged in the adjudication of disputes. O’Donnell CJ. In his comprehensive review of the development of administrative tribunals in the common law world notes that

“The Industrial Revolution led to a significant increase in the role of the state and a demand for adjudication and resolution by bodies other than courts. In some cases, this was driven by the simple desire to have bodies with expertise in specific areas, as was the case in relation to issues such as the developing law of taxation or the rapid expansion of the railway system, which gave rise to novel and complex disputes thought to require particular expertise. In other cases, perhaps most notably in the field of industrial relations, there was a desire for resolution by bodies other than courts (which, particularly in the late 19th and early 20th centuries, were perceived as hostile to employees, trade unions, and collective action) and a preference for a system of low-cost, relatively informal non-judicial dispute resolution.”¹⁸

The dispute adjudication and law enforcement systems in the common law world developed when the environment was not in crisis. Where they are no longer adequate, law and legal systems can and must change to adapt to current environmental needs.

3. Advantages of Environmental Courts and Tribunals (ECT)

The growing adoption worldwide of specialist environmental court and tribunals was reviewed in *Greening Justice*¹⁹, one of the most important studies of its kind. The study describes the widespread adoption of these courts as ‘one of the most dramatic changes in environmental law and institutions in the 21st century’. The explosion, according to the study,

¹⁸ Zalewski at para 38

¹⁹ *Greening Justice: Creating and Improving Environmental Courts and Tribunals*, which was published by The Access Initiative of the World Resources Institute; full text available at www.law.du.edu/documents/ect-study/greening-justice-book.pdf accessed 26 February 2018.

‘is being driven by the development of new international and national environmental laws and principles, by recognition of the linkage between human rights and environmental protection, by the threat of climate change, and by public dissatisfaction with the existing general judicial forums’.

Several advantages of ECT’s are cited in the study, and these advantages can be seen generally in the studies and writing worldwide.²⁰

First, ECT’s can provide remedies more directly applied to the inherent nature of an environmental breach or dispute, by engaging in new forms of problem solving and restorative justice. Brian J Preston, Chief Judge of the Land and Environment Court in New South Wales Australia, and one of the world’s leading experts on the development of Environmental Courts and Tribunals (ECT), states also that “*Successful ECTs are better able to address the pressing, pervasive, and pernicious environmental problems that confront society (such as climate change and loss of biodiversity)*”²¹ ECT’s can engage in the necessary long-term focus required for solutions to the loss of environment and habitat redressing climate change.²²

Second, an ECT can assist to reduce the cost of justice both for the state and for the litigator. It is inefficient and resource intensive to ask judges in Courts to judge at first instance every minor matter or dispute. Also, for the litigant the first tier administrative wing of an ECT can adopt procedures which provide relatively low cost, efficient quasi-judicial enforcement, thus improving access to justice²³

Third, an ECT building up a body of expertise. Courts need recourse to a principles and robust environmental jurisprudence to develop and give legal meaning to the fundamental principles of environmental law, such as the precautionary principle, the polluter pays principle, as well as the meaning of human rights in the context of environmental harm.²⁴ A dedicated court which builds up a body of expertise leads to better decisions and more respect for the decisions made. Warnock argues that where environmental laws/values are skeletal, an ECT with specialist knowledge can flesh it out. She notes that the NSW Land and Environment Court widened the meaning of law beyond positivist state law by recognising indigenous customary law in appropriate cases, thereby drawing upon an expanded range of 'legal' principles.²⁵

Fourth, an ECT can be given powers, governing structures, and procedural rules specifically to solve the problems which limit access to justice, such as narrow rules of standing, lack of class and multiparty actions, and rules on costs. Broadened standing is one of the important features of an ECT, in the view of writers.²⁶

²⁰ Voigt, C and Makuch, Z., *Courts and the Environment* (2018:Edward Elgar Publishing): Smith, Don C., “*Environmental courts and tribunals: changing environmental and natural resources law around the globe.*” *Journal of Energy and Natural Resources Law* (Vol 36, 2012, Issue 2).

²¹ Smith, Don C., “*Environmental courts and tribunals: changing environmental and natural resources law around the globe.*” *Journal of Energy and Natural Resources Law* (Vol 36, 2012, Issue 2).

²² Robinson, page 23.

²³ As required by Principle 10 of the Rio Declaration and the Aarhus Convention.

²⁴ Preston, B., Martin, P., and Kennedy A., “Bridging the gap between aspiration and outcomes: the role of the Court in ensuring ecologically sustainable development.” In Voigt et al, at page 42-45.

²⁵ Ceri Warnock, ‘Reconceptualising Specialist Environmental Court and Tribunals’ (2017) 37.3 *Legal Studies* pp. 398

²⁶ Ceri Warnock, ‘Reconceptualising Specialist Environmental Court and Tribunals’ (2017) 37.3 *Legal Studies* pp. 398

Fifth, an accessible ECT provides a forum for resolution of societal environmental disputes in a quicker and more direct manner, thus assisting environmentalists, but also developers and business. It is notable that if access to justice is limited, courts are denied their capacity adjudicate on grievances. Without recourse to justice, grievances fester, and can lead to societal disputes,²⁷ as is evidence by the Shell to Sea controversy in Ireland of recent years. An accessible ECT with broad rules of standing to accommodate all interested parties will reduce the possibility that unresolved minor or local disputes will lead to delay in permissible development through lengthy judicial review challenges, which are limited in any event to the decision-making process, rather than the real issues in controversy between the parties.

Sixth, ECTs can provide authority to the environmental legislation through standard and expert judicial enforcement and interpretation'.²⁸ Courts need to build up a sustained capacity to deal with disputes on sustainable development, protection of habitats, and climate change.²⁹

Seventh, and ECT can provide for Alternative Dispute Resolution (ADR) as an adjunct to its adjudicative role. ADR allows many different paths to justice³⁰. Resolving complex environmental issues and achieving sustainable development often requires a multi-faceted approach that goes beyond traditional legalistic decision-making and may include use of mediation and other forms of alternative dispute resolution or the participation of a broad group of stakeholders in collaborative decision-making.³¹

Eight, an ECT would have the power to engage in forward thinking resolutions, not just punitive remedies, the development of non-traditional remedies, and/or creative sentencing. Judges placed in an ECT with a mandate to view themselves as “problem solvers” could look beyond the narrow application right-or-wrong determination and come up with creative options for future short- and long-term outcomes for the parties and for the environment. As Preston J writes “*An ECT is better positioned than an ordinary court or tribunal to develop innovative remedies and holistic solutions to environmental problems.*” Warnock writes that ECT’s are Dynamic Adjudicatory Forums and lauds ECT’s as innovative and dynamic, with the power to create novel practices, procedures, and remedies that respond more accurately to the challenges of environmental dispute resolution.

Ninth, ECT’s have been adopted with the power to sit with scientific experts, or obtain reports for scientific experts, thus overcoming the burden placed on legal adjudicators to decide on complex scientific issues which can come before the courts as part of an environmental dispute.

The advantages set out above are not exhaustive but set out a broad-brush sketch of the advantages of an ECT, to provide a basis for the argument for the adoption of an ECT in Ireland. The practice in other jurisdictions will now be examined.

²⁷ Robinson, at page 4.

²⁸ Smith, see above.

²⁹ Robinson, page 23.

³⁰ Ceri Warnock, ‘Reconceptualising Specialist Environmental Court and Tribunals’ (2017) 37.3 *Legal Studies* pp. 399

³¹ Preston

Part II Models in Other Jurisdictions and Best Practice

1. New South Wales, Australia

The Land and Environment Court of New South Wales is the first specialist environmental superior court in the world. It was established on 1 September 1980 by the *Land and Environment Court Act 1979* (the Court Act). The Court's jurisdiction includes merits review, judicial review, civil enforcement, criminal prosecution, criminal appeals and civil claims about planning, environmental, land, mining and other legislation.

The Court's purpose is to safeguard and maintain:

- The rule of law
- Equality of all before the law
- Access to justice
- Fairness, impartiality and independence in decision making
- Processes that are consistently transparent, timely and certain
- Accountability in its conduct and its use of public resources
- The highest standards of competency and personal integrity of its judges, commissioners, and support staff.

There was a desire to create a specialised 'one stop shop' for environmental, planning and land matters.

Jurisdiction

The Land and Environment Court is a specialist court, part of the NSW court system, and has equal standing with the Supreme Court of NSW. It was established by legislation and can only deal with matters listed as being within its jurisdiction. Said jurisdiction is divided into 8 different classes, depending on the type of case, and different procedures apply to each class. There are two forms of appeal, merits appeals and judicial review. Listed below are the 8 different classes with the Court.

Classes within the Court

- Class 1 – Merits appeals
- Class 2 – Local government and miscellaneous appeals and applications (including disputes under the Trees (Disputes between Neighbours) Act 2006 (NSW))
- Class 3 – Land tenure, valuation, rating and compensation matters
- Class 4 – Civil enforcement and judicial review
- Class 5 – Summary enforcement (criminal matters)
- Class 6 – Appeals from convictions relating to environmental offences (criminal matters)
- Class 7 – Other appeals relating to environmental offences

- Class 8 – Mining matters.³²

Both Judges and Commissioners hear cases in the Land and Environment Court, depending on the nature of the case. Either a Judge or a Commissioner can hear Class 1, 2, 3 and 8 matters, whereas only a Judge can hear Class 4, 5, 6 and 7 matters.

As noted above, there are two forms of appeal, merits appeals and judicial review. Appeals to the NSW Court of Criminal Appeal are in relation to proceedings in Classes 5, 6 or 7 of the Land and Environment Court's jurisdiction. Appeals from the Local Court of New South Wales to the Land and Environment Court are with respect to an environmental offence under the *Crimes (Appeal and Review) Act 2001* and are in Classes 6 and 7 of the Land and Environment Court's jurisdiction. Proceedings can be transferred between the Supreme Court and the Land and Environment Court. In civil proceedings, there is capacity for either the Supreme Court or the Land and Environment Court to transfer proceedings to the other court if it is more appropriate for the proceedings to be heard by the other court (see s 149B of the *Civil Procedure Act 2005*). For proceedings in Classes 5-7, the Supreme Court also has the power to transfer any proceedings commenced or purporting to have been commenced in the Supreme Court to the Land and Environment Court if the Supreme Court is of the opinion that the proceedings could or should have been commenced in the Land and Environment Court (s 72 of the *Court Act*). The Land and Environment Court can sit in a number of locations including hearings on the site of the property in dispute, Local Court courthouses and in the Land and Environment Court building in Sydney.

Judges and commissioners

- It has six law judges, 22 science-technical commissioners, and a registrar with far-reaching administrative and quasi-judicial powers³³. Judges have the same rank, title, status and precedence as the Judges of the Supreme Court of New South Wales. Judges preside over all Class 3 (Aboriginal land claims) matters, most Class 3 (land tenure and compensation) matters, Class 4, 5, 6 and 7 matters, and can hear matters in all other Classes of the Court's jurisdiction. Suitably qualified people may be appointed as commissioners of the Court. The qualifications and experience required for a commissioner are specified in s 12 of the *Court Act* and include the areas of:
 - Administration of local government or town planning
 - Town, country or environmental planning
 - Environmental science, protection of the environment or environmental assessment
 - Land valuation
 - Architecture, engineering, surveying or building construction
 - Management of natural resources or Crown Lands
 - Urban design or heritage
 - Land rights for Aboriginal people or disputes involving Aboriginal people
 - Law.

People may be appointed as full-time or part-time commissioners for a term of seven years. An individual may also be appointed as an acting commissioner for a term of up to 12 months. Acting commissioners are called upon on a casual basis to exercise the functions of a

³² <https://www.edo.org.au/publication/land-and-environment-court-in-nsw/>

³³ <https://leap.unep.org/node/49>

commissioner as the need arises. The primary function of Commissioners is to adjudicate, conciliate or mediate merits review appeals in Classes 1, 2, and 3 of the Court's jurisdiction. On occasion the Chief Judge may direct that a Commissioner sit with a judge, or that two or more commissioners sit together to hear Class 1, 2 and 3 matters. A commissioner who is an Australian lawyer may also hear and determine proceedings in Class 8 of the Court's jurisdiction (when they are called a Commissioner for Mining).

Appeals can be made against decisions of the Land and Environment Court. Only a person who is a party to the proceedings may appeal. The appeal is to be commenced within 28 days after the date on which the decision or order was given. To lodge an appeal or commence a case in the Court, one will first need to pay a filing fee. The amount of the fee will vary depending on the type of case you are filing and whether the case is being commenced by an individual or a corporation. Generally, the registrar may postpone fees until the finalisation of your case if you have a grant of legal aid or pro bono legal assistance. A waiver or a postponement might also be granted if you are dependent on social security payments and lack sufficient income and capital either to pay a fee or to obtain credit on reasonable terms or are otherwise indebted to an extent that you are incapable of obtaining credit on reasonable terms.

If the Land and Environment Court gives a judgment or makes an order, parties are obliged to comply with the judgment or order. Where the order is to take some specified action, and to do so within a specified period of time, parties are obliged to take the action within the time. Failure to comply with a judgment or order of the Court may have criminal and civil consequences for the person in default. It is up to the parties to take enforcement action. It is not the Court's role to take action on behalf of the parties. The types of action you might be able to take to enforce a judgment are:

- Enforcement under Pt 40 Div 2 of the *Uniform Civil Procedure Rules 2005*
- Debt recovery through other courts
- Contempt proceedings

If the judgment or order requires a company to do an act within a specified time and the company fails to do the act within the required time, the judgment or order may be enforced by committal (imprisonment) of any officer of the corporation or sequestration of the property of any officer of the corporation or both: Part 40 r 40.6(1) and (2) of the *Uniform Civil Procedure Rules 2005*. If the Court orders payment of compensation or payment of costs associated with carrying out an order, the order can be enforced by action for recovery of the debt in the Local Court (civil claims jurisdiction) or District Court, depending on the amount of the debt.³⁴

Pearlman,³⁵ writing about the Land and Environment Court in New South Wales, note that while environmental law in Australia had traditionally arisen out of administrative law inherited from the British system (particularly in the areas of planning and local government law) it has in more recent times been influenced by the American model in terms of

³⁴ All of the above info found on <https://www.lec.nsw.gov.au/lec/decisions-and-heard-matters/enforcement.html>

³⁵ Pearlman, M.L. "The Land And Environment Court Of New South Wales A Model For Environmental Protection" <http://dx.doi.org.ucd.idm.oclc.org/10.1023/A:1005251101945>

environmental impact assessment. He states that New South Wales model, however, is not simply a hybrid of both the British and American models. “*Rather, it is a unique system which has been inspired by external sources, but ultimately it has been engineered to meet the specifications of its domestic jurisdiction.*” When the Land and Environment Court was established, it was unique in Australia. The states of Queensland and South Australia have now followed by establishing specialist environmental courts, but what sets the Land and Environment Court apart from its state equivalents is its exclusive jurisdiction. In New South Wales, the Land and Environment Court had and still has exclusive jurisdiction in all matters of environmental and planning law, and it is the only court in this State (except the appellate court) which may administer all forms of legal redress in those fields, including judicial review, civil enforcement, equitable orders and remedies, and summary criminal prosecutions. It has ranking and status equivalent to the Supreme Court in the hierarchy of courts in New South Wales. In all states of Australia, except New South Wales, Queensland and South Australia, environmental proceedings are somewhat fragmented.

2. Planning and Environment Court of Queensland

The Planning and Environment Court is recognised as an exemplary environment court by the United Nations Environment Program (UNEP).

The Planning and Environment Court (P and E Court) hears matters relating to:

- Planning and development
- Environmental protection
- Coastal protection and management
- Fisheries
- Marine parks
- Nature conservation
- Heritage
- Transport infrastructure
- Vegetation management.

The types of proceedings brought in the P and E Court, and the time limits for starting them, depends on the relevant legislation.

For example, the court may hear the following proceedings under the *Planning Act 2016*:

- Appeals against decisions on development applications
- Appeals about infrastructure charges
- Appeals against decisions on compensation claims
- Appeals from decisions of the Development Tribunal

- Applications for enforcement orders, to remedy or restrain the commission of a development offence
- Applications for declarations
- Contempt proceedings.

Legal representation is not necessary to bring a matter to the P and E Court. A party may appear personally or be represented by a lawyer or an agent who isn't a lawyer. The P and E Court can hear matters outside these major centres depending on the nature of the case. Wherever possible, the court ensures that local residents are able to observe the proceedings that affect their community. If necessary, the court conducts at least part of the hearing in a courtroom (or other suitable premises) near the disputed land or building. The vast majority of disputes in the P and E Court (the court encourages alternative dispute resolution and provides this service free of charge) are resolved, or at least narrowed, by agreement before any final hearing. Parties are usually required to have a dispute resolution plan to help resolve issues before trial. The plans usually include:

- Case management conferences and 'without prejudice' meetings between the parties
- Meeting of expert witnesses (without parties or their representatives)
- 'Without prejudice' meetings chaired by the ADR Registrar.

Queensland Government legislation regulates whether a person has the right to appeal a decision to, or seek a ruling from, the Planning and Environment Court (P and E Court), as well as the process you need to follow.

Costs:

Usually, parties must pay their own costs in Planning and Environment Court proceedings.

A party's costs will include:

- Fees charged by a lawyer you may engage
- Fees charged by any expert witnesses you engage to give evidence on your behalf
- Filing and other court fees
- Any other expenses you incur.

The court may award costs against a party in certain situations, including:

- When a party fails to comply with a directions order without a good reason
- In a procedural default
- When a party acts frivolously or vexatiously.

3. India

Background to the National Green Tribunal

India, a Common Law jurisdiction, is a country caught in a struggle between development and sustainability³⁶. It is remarkable then that it has become recognised internationally as a progressive environmental jurisdiction despite this tension. The present Indian Constitution as originally drafted contained little in the way of significant and effective environmental protection, dominated as it then was by business and property rights³⁷. Environmental law without the Constitution was little better, given the gulf that existed between the law and its actual enforcement³⁸. Indeed, environmental justice in India was in dire straits and would still be so were it not for the continuous intervention of the Indian Supreme Court³⁹.

From the 1980's on, the Indian Supreme Court developed a substantial body of environmental constitutional law to protect public health from environmental damage⁴⁰. In particular, the expansion of the Right to Life to include a Right to a Clean Environment stands out as the Right to Life was interpreted to go beyond mere physical existence and extend to a guarantee of a certain quality of life⁴¹. Other constitutional amendments enabled Indian judges to delve deeper into environmental law such as Articles 48(A) and 51(A), which require the State and Citizen respectively to commit to the protection of the environment⁴².

The Supreme Court went further still in the 1990's, declaring in a case that "*issues of environment must and shall receive the highest attention from this Court*"⁴³ and indeed they did, spurring further innovation. For example, in *Vellore Citizens' Welfare Forum* the Supreme Court created a special burden of proof limited to environmental cases through considered application of the 'Precautionary Principle'⁴⁴. Now in environmental cases the burden as to "*the absence of injurious effect of the actions proposed, is placed on those who want to change the status quo*"⁴⁵, meaning the polluter or the developer must prove that their proposed project or plan is harmless if they want to go ahead with it.

Despite their willingness to tackle environmental law's problems and indeed their success in doing so, the Indian Judiciary has recognized that they were not entirely suited to the task. Environmental problems are by their nature extremely complicated and have become increasingly transnational in nature⁴⁶. Judges ill-informed on a topic are ill suited to adjudicate upon it and the Indian Judiciary has often found it difficult to keep pace with scientific

³⁶ Raghav Sharma, 'Green Courts in India: Strengthening Environmental Governance' (2008) 4.1 *Law, Environment, and Development Journal* 52, 52.

³⁷ Sharma, 'Green Courts in India: Strengthening Environmental Governance' 52-3.

³⁸ Domenico Amirante, 'Environmental Courts in Comparative Perspective: Preliminary Reflections on the National Green Tribunal of India' (2012) 29.2 *Pace Environmental Law Review* 441, 442.

³⁹ Sharma, 'Green Courts in India: Strengthening Environmental Governance' 71.

⁴⁰ Sharma, 'Green Courts in India: Strengthening Environmental Governance' 53.

⁴¹ Gitanjali Nain Gill, 'The National Green Tribunal of India: A Sustainable Future through the Principles of International Environmental Law' (2014) 16.3 *Environmental Law Review* 183, 194.

⁴² Amirante, 'Environmental Courts in Comparative Perspective: Preliminary Reflections on the National Green Tribunal of India' 454.

⁴³ *Tarun Bharat Sangh, Alwar v Union of India*, Supreme Court of India, Judgement of 11 October 1991, 1992 Supp (2) SCC 448 as found in Sharma, 'Green Courts in India: Strengthening Environmental Governance' 53.

⁴⁴ *Vellore Citizen's Welfare Forum v Union of India*, Supreme Court of India, Judgement of 28 August 1996, (1996) 5 SCC 647 as found in Sharma, 'Green Courts in India: Strengthening Environmental Governance' 54.

⁴⁵ Sharma, 'Green Courts in India: Strengthening Environmental Governance' 54.

⁴⁶ Gitanjali Nain Gill, 'Environmental Justice in India: The National Green Tribunal and Expert Members' (2016) 5.1 *Transnational Environmental Law* 175, 176.

development⁴⁷. Thus, the calls for experts in environmental cases and the perception that their involvement in these cases will result in better results for the environment⁴⁸. It is no surprise then that the Supreme Court requested the creation of an Environmental Court or Tribunal (ECT)⁴⁹.

The Law Commission of India lent further weight to the Judiciary's request as it recommended the establishment of an ECT in its 186th Report, based upon a review of the technical and scientific problems that arise in these cases⁵⁰. These calls eventually culminated in the National Green Tribunal (NGT) in 2010. The NGT too has acquired a national and international reputation based upon progressive and innovative decisions whose consequences are felt far outside the Court⁵¹. Indeed, it may very well be largely responsible, in conjunction with the Supreme Court, for India's reputation as a progressive and innovative environmental jurisdiction. Indeed, Pring has commented that the NGT is "*incorporating a number of best practices... and has become a major arbiter of some of the most pivotal environmental battles in India*"⁵².

National Green Tribunal

The NGT is a federal judicial body and was created by the National Green Tribunal Act 2010 (2010 Act), which sets out its constitution, powers, and limits. Its mission is the "the effective and expeditious disposal of cases relating to environmental protection and conservation of forest and other natural resources"⁵³. Thus, the NGT takes an eco-centric, rather than anthropocentric, approach⁵⁴. This is further exemplified in the environmental dispute litigation that occurs in the NGT, as it is not simply adversarial. Instead, the NGT's approach is quasi-adversarial, quasi-investigative, quasi-inquisitorial, and quasi-collaborative so as to ensure all parties are fully involved in the process and can stand on equal footing⁵⁵.

The NGT enjoys three distinct levels of jurisdiction under the 2010 Act, civil, appellate, and special⁵⁶. The civil jurisdiction deals with all cases where substantial questions relating to the environment, including the enforcement of legal rights which relate to the environment, are involved and cases which arise out of the implementation of the legislation listed in Schedule I of the 2010 Act⁵⁷. Schedule 1 lists a number of environmental statutes. The NGT has thus far been content to remain within this jurisdiction. Its appellate jurisdiction determines questions of law and fact arising from orders and decisions passed by authorities under the Schedule 1 enactments⁵⁸. It is however more limited than the civil jurisdiction as it is only available where

⁴⁷ Raghuvver Nath and Armin Rosencranz, 'India: Determining Environmental Compensation in India: Lessons from a Comparative Perspective' (2019) 49.4/5 *Environmental Policy and Law* 246, 246.

⁴⁸ Gill, 'Environmental Justice in India: The National Green Tribunal and Expert Members' 176.

⁴⁹ Amirante, 'Environmental Courts in Comparative Perspective: Preliminary Reflections on the National Green Tribunal of India' 467.

⁵⁰ Law Commission of India, 186th Report on the Proposal to Constitute Environment Courts (2003) as found in Gill, 'Environmental Justice in India: The National Green Tribunal and Expert Members' 185.

⁵¹ Gitanjali Nain Gill, 'Mapping the Power Struggles of the National Green Tribunal of India: The Rise and Fall?' (2020) 7 *Asian Journal of Law and Society* 85, 86.

⁵² Pring and Pring (2016) as found in Gill, 'Mapping the Power Struggles of the National Green Tribunal of India: The Rise and Fall?' 86.

⁵³ Amirante, 'Environmental Courts in Comparative Perspective: Preliminary Reflections on the National Green Tribunal of India' 461.

⁵⁴ Gill, 'Mapping the Power Struggles of the National Green Tribunal of India: The Rise and Fall?' 102.

⁵⁵ Gill, 'Mapping the Power Struggles of the National Green Tribunal of India: The Rise and Fall?' 102.

⁵⁶ Gill, 'Environmental Justice in India: The National Green Tribunal and Expert Members' 186.

⁵⁷ Section 14(1) National Green Tribunal Act, 2010.

⁵⁸ Gill, 'Environmental Justice in India: The National Green Tribunal and Expert Members' 187.

the appellant has exhausted all other appeal forums available, which were listed in the Act under which the order was made⁵⁹.

Finally, under its special jurisdiction the NGT is empowered to order relief and compensation for victims of pollution and other forms of environmental damage arising under the enactments and to order the restitution of damaged property and environment⁶⁰. The NGT has no criminal jurisdiction and at most can recommend punishments for crimes committed under environmental legislation⁶¹.

The NGT is also able to fast track cases and is ostensibly able to decide cases within 6 months of the application or appeal⁶² though reality often differs. Its decisions are not subject to Judicial Review, but they may be appealed to the Supreme Court⁶³. The Supreme Court also stands above it, coordinating and supervising it along with all other inferior Courts in the Indian judicial system. Thus, the Indian Supreme Court has moved from exclusively acting as an adjudicator, to acting wholeheartedly as a policy maker, and now operates as a superior administrator⁶⁴.

The NGT is an open Court, and its decisions are often subject to public scrutiny. The NGT can issue directions to governments and these range in scale from directions to government authorities found deficient in their performance of statutory obligations to widespread bans upon environmentally damaging activities like sand mining⁶⁵. The NGT is not bound by government orders though the government controls its budget⁶⁶. The NGT may order up to three years' imprisonment and can also impose fines for non-compliance with any order issued and these fines may reach up to 10 crore rupees for individuals and up to 25 crore rupees for companies⁶⁷.

The NGT operates from five main benches, located in Delhi, Bhopal, Pune, Kolkata, and Chennai⁶⁸. It also has circuit benches to grant better access to poor or tribal populations in remote areas of the country⁶⁹. Indigent and illiterate litigants have been encouraged to speak in their vernacular language, particularly at the regional benches, which are ostensibly more accessible to them⁷⁰.

The NGT is bound to follow and employ internationally recognised environmental principles such as Sustainable Development, the Precautionary Principle and the "Polluter Pays" Principle

⁵⁹ Gill, 'The National Green Tribunal of India: A Sustainable Future...' 188.

⁶⁰ Gill, 'Environmental Justice in India: The National Green Tribunal and Expert Members' 187.

⁶¹ Sridhar Rengarajan, Dhivya Palaniyappan, Purjava Ramachandran, Ramesh Ramachandran, 'National Green Tribunal of India - An Observation from Environmental Judgements' (2018) 25 *Environmental Science and Pollution Research* 11313, 11314.

⁶² Section 18(3) National Green Tribunal Act, 2010.

⁶³ Gill, 'Environmental Justice in India: The National Green Tribunal and Expert Members' 183.

⁶⁴ Michael Rackernmann, 'Review: Environmental Justice in India - The National Green Tribunal' (2020) 45.4 *Denver Journal of International Law and Policy* 471, 472.

⁶⁵ Sudha Shrotria, 'Environmental Justice: Is the National Green Tribunal of India Effective?' (2015) 17.3 *Environmental Law Review* 167, 175.

⁶⁶ Shrotria, 'Environmental Justice: Is the National Green Tribunal of India Effective?' 173.

⁶⁷ Shrotria, 'Environmental Justice: Is the National Green Tribunal of India Effective?' 173.

⁶⁸ Rengarajan, Palaniyappan, Ramachandran, and Ramachandran, 'National Green Tribunal of India - An Observation from Environmental Judgements' 11313.

⁶⁹ Rengarajan, Palaniyappan, Ramachandran, and Ramachandran, 'National Green Tribunal of India - An Observation from Environmental Judgements' 11314.

⁷⁰ Gill, 'Mapping the Power Struggles of the National Green Tribunal of India: The Rise and Fall?' 102.

while issuing an order, decision or award and does so rigorously⁷¹. Indeed, their application by the NGT has formed a significant part of the country's famed environmental jurisprudence. The Precautionary Principle in particular stands out as noted above with regard to the *Vellore Citizens* case. The Doctrine of Public Trust has also been influential as it has enjoined the Indian State to act as a trustee over the country's natural resources so that all may benefit from them⁷². Taken together with the Principle of Intergenerational Equity which has been absorbed into the doctrine, it means that these resources must also be preserved for future generations⁷³.

There are three additional facets of the NGT and how it has conducted itself in the ten years it has operated which warrant particular attention. These are the NGT's approach to standing, the role of experts within it and their effect upon judgements, and the NGT's progressive and expansionist approach.

The Supreme Court in India liberalised the traditional rules of standing in environmental matters through the development of Public Interest Litigation(PIL)⁷⁴. PIL can be filed by citizens to address violations of statutory mandates by the executive and private parties or situations where gaps in the law remain⁷⁵. Article 39A of the Indian constitution mandates that the Indian State secure a legal system, which is both socially inclusive and equally accessible to all people. The Supreme Court used this recognition of the rights of the poor, deprived, and illiterate to create PIL⁷⁶.

The rules of standing before the NGT are as wide as those before the Supreme Court itself as not only can a person directly affected by the issue come before it but also representative bodies and other organisations. Under the NGT Act, an 'aggrieved person' has the right to approach the NGT under its original and appellate jurisdictions⁷⁷. The concept of the 'aggrieved person' has been interpreted by the NGT to mean a either a person directly affected by an issue or a person who has neither any direct nor any personal interest in invoking the provisions of the 2010 Act who can show the NGT that the matter affects the environment⁷⁸.

In *Jan Chetna*, it was decided that any person, regardless of whether they are resident of a specific area or have actually been aggrieved, can approach the tribunal⁷⁹. Naturally those more distant to the issue undergo greater scrutiny but fortunately the legitimacy of their interest is bolstered by the recognition that environmental damage often has far reaching consequences. This interpretation is reinforced by the aforementioned constitutional mandate of Article 51A(g) which makes the protection and improvement of the natural environment a fundamental duty of every citizen⁸⁰. Standing was further widened in *Betty C. Alvares*, as the concept of 'person' was interpreted to include non-national citizens⁸¹. This incredibly wide standing

⁷¹ Shrotria, 'Environmental Justice: Is the National Green Tribunal of India Effective?' 172.

⁷² Shrotria, 'Environmental Justice: Is the National Green Tribunal of India Effective?' 183.

⁷³ Gitanjali Nain Gill, 'The National Green Tribunal of India: A Sustainable Future through the Principles of International Environmental Law' (2014) 16.3 *Environmental Law Review* 183, 192.

⁷⁴ Amirante, 'Environmental Courts in Comparative Perspective: Preliminary Reflections on the National Green Tribunal of India' 459.

⁷⁵ Sharma, 'Green Courts in India: Strengthening Environmental Governance' 57.

⁷⁶ Sharma, 'Green Courts in India: Strengthening Environmental Governance' 58.

⁷⁷ Gill, 'The National Green Tribunal of India: A Sustainable Future...' 201.

⁷⁸ Shrotria, 'Environmental Justice: Is the National Green Tribunal of India Effective?' 180.

⁷⁹ *Jan Chetna v Ministry of Environment and Forests*, Judgement dated 9 February 2012 as found in Gill, 'The National Green Tribunal of India: A Sustainable Future...' 201.

⁸⁰ Gill, 'The National Green Tribunal of India: A Sustainable Future...' 201.

⁸¹ *Betty C. Alvares v State of Goa*, Judgement dated 14 February 2014 as found in Gill, 'The National Green Tribunal of India: A Sustainable Future...' 201.

enables the NGT to allow any person to bring a matter before it in the public interest and is one of its most desirable features.

As noted above, environmental problems are incredibly complex and necessitate the presence of experts in Courts. Experts lend themselves not only to the strength and efficacy of the adjudication process but also to its credibility⁸². To get the best of experts however, one must be careful as to how they are utilised in the adjudication process. Often in an adversarial setting a party will present scientific facts such that they seem to support their side alone⁸³. This is only natural but before an ill-informed Court, this may create the impression that that party has presented them with the whole picture. Indeed, it has been noted that Courts may be particularly vulnerable where one financially powerful party can call forth a parade of experts⁸⁴. All too often this financially powerful party is the developer who wishes to change the environment and thus potentially damage it. This is made worse as often this parade of experts uses the ideal of scientific objectivity to mask the intent with which they give their opinions⁸⁵. Thus, the need for ECT's and Courts in general to be sceptical of any claim to objectivity.

The NGT's members are appointed independently and judges and technical experts alike staff the NGT, meaning that its jurisprudence encompasses both legal doctrines and scientific knowledge⁸⁶. There is 1 chairperson who must be a judge, 10-20 other judges, and 10-20 technical experts on the NGT and all must meet extensive qualification requirements⁸⁷. Non-judicial experts include engineers and scientists with expertise in environmental sciences, environmental engineering, and industrial and urban environmental management to name but a few fields of expertise⁸⁸.

The presence of scientific experts on the NGT itself effectively produces an equality of arms amongst the parties as the more financially dominant party can no longer call forth their own parade of experts to walk over the other party in what is commonly public interest litigation⁸⁹. In addition, the Chairperson may call in experts on a case-by-case basis⁹⁰. The true benefit of expert inclusion in the decision making process, however, is that together judges and experts can look for the best available solution to the problem before them rather than limit themselves to traditional legal remedies which are often not up to the task⁹¹. Indeed, experts commonly employ constructive interpretation to broaden the scope of rules and regulations if the activity endangers public health and the environment⁹². This is in the name of the public, rather than the private, interest and in this way and others the NGT creates policies based in science, which it will often assist regulatory agencies in implementing⁹³.

⁸² Gill, 'Environmental Justice in India: The National Green Tribunal and Expert Members' 181.

⁸³ Gill, 'Environmental Justice in India: The National Green Tribunal and Expert Members' 179.

⁸⁴ Gill, 'Environmental Justice in India: The National Green Tribunal and Expert Members' 180.

⁸⁵ Amirante, 'Environmental Courts in Comparative Perspective: Preliminary Reflections on the National Green Tribunal of India' 466-7.

⁸⁶ Gitanjali Nain Gill, 'The National Green Tribunal, India: Decision Making, Scientific Expertise, and Uncertainty' (2017) 29.3 Environmental Law and Management 82, 87

⁸⁷ Amirante, 'Environmental Courts in Comparative Perspective: Preliminary Reflections on the National Green Tribunal of India' 463.

⁸⁸ Gill, 'Environmental Justice in India: The National Green Tribunal and Expert Members' 188.

⁸⁹ Amirante, 'Environmental Courts in Comparative Perspective: Preliminary Reflections on the National Green Tribunal of India' 467.

⁹⁰ Section 4(2) National Green Tribunal Act, 2010.

⁹¹ Gill, 'Environmental Justice in India: The National Green Tribunal and Expert Members' 178.

⁹² Gill, 'The National Green Tribunal, India: Decision Making, Scientific Expertise, and Uncertainty' 84.

⁹³ Gill, 'The National Green Tribunal, India: Decision Making, Scientific Expertise, and Uncertainty' 87.

Environmental scholars have noted that judicial activism is essential as it compensates for the limited efficacy of political leadership and administrative authorities⁹⁴. The NGT in its work and tendency to go beyond traditional legal dispute adjudication and create environmental policies is a testament to this fact. Indeed, the NGT's most important innovation is its readiness to offer structural planning and policies rooted in science that respond creatively to frail, ineffectual, or even non-existent regulations⁹⁵.

The NGT has the power to issue directions to state authorities lax in their duties to enforce environmental regulations as mentioned above and has shown no hesitation in doing so, consistently and publicly rebuking them by virtue of the open nature of its proceedings. The NGT has identified the Ministry of the Environment and Forests (MoEF), and related regulatory agencies, as demonstrating indifference, negligence or acting *Ultra Vires* in the exercise of their responsibilities⁹⁶. In particular, the MoEF is frequently censured by the NGT for its failures to observe its own procedural rules, particularly with regard to licensing⁹⁷. Indeed, in *Sudeip Shrivastava*, the NGT audaciously criticised the Minister of State for Environment and Forest and the MoEF for acting arbitrarily and ignoring relevant material issues in their appraisal of the environmental problem⁹⁸.

The NGT's progressive nature is such that it has gone so far as to expand its own powers in its efforts to realise its mission. It has claimed for itself a Judicial Review jurisdiction, which it was not explicitly conferred in the 2010 Act⁹⁹ though bolder still was its claiming the ability to enact *Suo Motu* proceedings for environmental cases¹⁰⁰. The NGT was envisioned by its statutory creators to act on foot of an aggrieved person filing a motion¹⁰¹. In *Suo Motu* proceedings however, the NGT acts of its own volition in the absence of any party filing a motion.¹⁰² The NGT also tends to make massive orders, which intrude significantly upon the executive¹⁰³ such as the aforementioned ban on sand mining.

Problems with the NGT

Despite its progressive nature and its innovations however the NGT is far from a flawless organisation. ECT's have been noted for their potential for tunnel vision and capture by interest groups¹⁰⁴ while many members of the general public still find it challenging to access the NGT due to its formal procedures and the high fees of lawyers¹⁰⁵. Its efficacy is also limited by its lack of criminal jurisdiction. Its most egregious issues however have been evident for its very inception as the NGT began woefully underfunded and its staff poorly looked after.

Scholars have claimed that the judiciary's independence forms part of the fundamental structure of the Constitution¹⁰⁶. Independence too is crucial to the NGT, as it needs to be able

⁹⁴ Gill, 'Environmental Justice in India: The National Green Tribunal and Expert Members' 178.

⁹⁵ Gill, 'Mapping the Power Struggles of the National Green Tribunal of India: The Rise and Fall?' 110.

⁹⁶ Gill, 'Mapping the Power Struggles of the National Green Tribunal of India: The Rise and Fall?', 111.

⁹⁷ Gill, 'Mapping the Power Struggles of the National Green Tribunal of India: The Rise and Fall?' 111.

⁹⁸ *Sudeip Shrivastava v. State of Chhattisgarh*, Judgement, 24 March 2014 as found in Gill, 'Mapping the Power Struggles of the National Green Tribunal of India: The Rise and Fall?' 111.

⁹⁹ Rackemann, 'Review: Environmental Justice in India- The National Green Tribunal' 473.

¹⁰⁰ Gill, 'Environmental Justice in India: The National Green Tribunal and Expert Members' 197.

¹⁰¹ Gill, 'Environmental Justice in India: The National Green Tribunal and Expert Members' 197.

¹⁰² Gill, 'Environmental Justice in India: The National Green Tribunal and Expert Members' 197.

¹⁰³ Rackemann, 'Review: Environmental Justice in India- The National Green Tribunal' 473.

¹⁰⁴ Sharma, 'Green Courts in India: Strengthening Environmental Governance' 57.

¹⁰⁵ Shrotria, 'Environmental Justice: Is the National Green Tribunal of India Effective?' 187.

¹⁰⁶ Sharma, 'Green Courts in India: Strengthening Environmental Governance' 66.

to adjudicate free from political interests¹⁰⁷. It is unfortunate then that the NGT is not quite so independent as it may initially seem. Nor can it afford to be, as it does not exist within a vacuum.

As noted above the government controls the NGT's budget and it has been severely underfunded. Indeed, at its beginnings judges reported having to cover the costs of their own travel and the Bhopal bench began in the basement of a building¹⁰⁸. India remains a country caught between development and sustainability and as of late there has been significant tension between the Right to Develop and the Right to Environment¹⁰⁹. Presently environmental regulations are being diluted to promote ease of doing business and economic development¹¹⁰.

The NGT has been steadfast in trying to protect the environment, but it can only work with the laws that are in force despite its progressive nature. This is to say nothing of the effects this steadfastness is having upon its longevity. ECT's too eager to fight the good fight, though they earn public and even international admiration, may find that they have undermined and alienated too many national stakeholders, legislative supporters, and other agencies to continue fighting¹¹¹. They burn themselves out and their bridges with them. Though the failure of agencies to follow due process has been a consistent cause for persons to go to the NGT to hold them accountable for their failures¹¹², their public condemnation has been a major source of enmity from these agencies. Common accusations levied against the NGT include being called 'unrealistic' in its orders, 'power-hungry'¹¹³, and a threat to the Separation of Powers¹¹⁴.

The MoEF is perhaps the most drastic example of an alienated body. Gitanjali Nain Gill, Professor of Environmental Law at Northumbria Law School, has written extensively on the NGT and has characterised the MoEF as "apathetic, unresponsive, and dysfunctional"¹¹⁵. Indeed, it is plagued with structural inertia and indifference such that it was quite reluctant to provide the appropriate financial and structural support for the NGT¹¹⁶.

Apathy however has grown into contempt as the MoEF have now repeatedly gone to the superior Courts in efforts to reign in the NGT. It has approached the Supreme Court, claiming that the NGT has exceeded its jurisdiction such that it has become an embarrassment to the government¹¹⁷. In particular, a challenge was brought against the NGT by the MoEF in the Madras High Court for its adopted power of taking *Suo Motu* proceedings. The Court issued an order restraining the NGT Chennai bench from initiating such proceedings and further issued an order that the NGT should not initiate *Suo Motu* proceedings¹¹⁸. The NGT has argued that as it is empowered to evolve its own procedure, it may take *Suo Motu* cognisance of an environmental issue¹¹⁹. If such significant powers were intended however, they would have been conferred explicitly in the statute. The NGT's claim to a Judicial Review jurisdiction too may have brought further trouble on its head. This territorial expansion may have come at the

¹⁰⁷ Sharma, 'Green Courts in India: Strengthening Environmental Governance' 68.

¹⁰⁸ Gill, 'Mapping the Power Struggles of the National Green Tribunal of India: The Rise and Fall?' 106-7.

¹⁰⁹ Sharma, 'Green Courts in India: Strengthening Environmental Governance' 55.

¹¹⁰ Gill, 'Mapping the Power Struggles of the National Green Tribunal of India: The Rise and Fall?' 115.

¹¹¹ Rackemann, 'Review: Environmental Justice in India- The National Green Tribunal' 474.

¹¹² Gill, 'Mapping the Power Struggles of the National Green Tribunal of India: The Rise and Fall?' 113.

¹¹³ Shrotria, 'Environmental Justice: Is the National Green Tribunal of India Effective?' 186.

¹¹⁴ Gill, 'Mapping the Power Struggles of the National Green Tribunal of India: The Rise and Fall?' 87.

¹¹⁵ Gill, 'Mapping the Power Struggles of the National Green Tribunal of India: The Rise and Fall?' 107.

¹¹⁶ Gill, 'Mapping the Power Struggles of the National Green Tribunal of India: The Rise and Fall?' 107.

¹¹⁷ Shrotria, 'Environmental Justice: Is the National Green Tribunal of India Effective?' 175.

¹¹⁸ Gill, 'Mapping the Power Struggles of the National Green Tribunal of India: The Rise and Fall?' 108.

¹¹⁹ Shrotria, 'Environmental Justice: Is the National Green Tribunal of India Effective?' 181.

potential cost of alienating the High Courts that previously and exclusively enjoyed the exercise of these powers and who may regard it as a usurpation of their duty¹²⁰.

In 2014 the MoEF attempted to render the NGT utterly ineffective via a High-Level Committee, which sought to review several acts and their implementation. Though it had no authority to review the 2010 Act it still made recommendations, which would have crippled it though fortunately it was rejected¹²¹.

The Finance Act 2017, which would have given the central government vast powers over matters like appointment, term of office, salaries and allowances, registration, removal, and other terms and conditions of service of the chairpersons and members of the NGT. These powers were challenged in the Supreme Court by a former environment minister whose case fortunately resulted in a stay order in 2018 for those sections of the 2017 Act, which would have granted the powers in question¹²².

The most recent threat faced by the NGT is no less grave than those mentioned prior as it seems that the central government wants to cripple NGT utterly. They have continuously failed to appoint parties to fill in the NGT's vacancies, essentially killing it through inaction¹²³ and potentially rendering the NGT casualty "of its own success"¹²⁴.

4. New Zealand

Background to Environment Court of New Zealand

New Zealand, a Common Law jurisdiction, is a country that has long been on the cutting edge of environmental management due to its focus upon sustainability, a focus incarnate in the Resource Management Act, 1991 (RMA)¹²⁵. Indeed, it was the first country to base its environmental management system on the concept, though this task was neither "effortless nor foretold"¹²⁶. New Zealand is both a small and highly developed nation and counts itself among the most urbanised countries in the world. Its environmental challenges reflect this as both air pollution and loss of biodiversity plagued the country¹²⁷.

It is unfortunate then that prior to the RMA coming into force, New Zealand's environmental management system was dominated by the central government industriously promoting economic growth and developing the country's infrastructure while simultaneously significant emphasis was put upon private property rights¹²⁸.

This is not to say there was no environmental regulation whatsoever. Indeed, by the 1980's a number of environmental statutes were in effect. The issue was that these statutes were generally *ad hoc* responses to crises as they arose¹²⁹, and so were not envisaged and deliberately

¹²⁰ Gill, 'Mapping the Power Struggles of the National Green Tribunal of India: The Rise and Fall?' 108.

¹²¹ Gill, 'Mapping the Power Struggles of the National Green Tribunal of India: The Rise and Fall?' 116-7.

¹²² Gill, 'Mapping the Power Struggles of the National Green Tribunal of India: The Rise and Fall?' 118-9.

¹²³ Gill, 'Mapping the Power Struggles of the National Green Tribunal of India: The Rise and Fall?' 118.

¹²⁴ Gill, 'Mapping the Power Struggles of the National Green Tribunal of India: The Rise and Fall?' 121.

¹²⁵ Bret C. Birdsong, 'Adjudicating Sustainability: New Zealand's Environment Court' (2002) 29.1 *Ecology Law Quarterly* pp. 1, 2-3.

¹²⁶ Birdsong, 'Adjudicating Sustainability: New Zealand's Environment Court' 6.

¹²⁷ J. Michael Angststadt, 'Securing Access to Justice Through Environmental Courts and Tribunals: A Case in Diversity' (2016) 17.3 *Vermont Journal of Environmental Law* pp. 345, 355-6.

¹²⁸ Birdsong, 'Adjudicating Sustainability: New Zealand's Environment Court' 7.

¹²⁹ Birdsong, 'Adjudicating Sustainability: New Zealand's Environment Court' 8.

designed as part of a larger environmental management framework. Indeed, Sir Geoffrey Palmer, former Minister for the Environment, Prime Minister of New Zealand, and architect of the RMA, dubbed them an “uncoordinated, unintegrated hotch-potch of laws¹³⁰”. Simultaneously global attention was drawn to the international scale of the environmental crisis. 1987’s Brundtland Commission was one of the products of this attention and its response was to advocate for sustainability as the keystone concept, which should underlie all environmental policy going forward¹³¹.

It was at this time, despite mass deregulation, growing reliance on market mechanisms, and the transfer of central government powers to local authorities that New Zealand heeded the writing on the wall and took the radically sensible step of heeding the Brundtland Commission and “embracing sustainability as the core principle of its environmental and environmental and natural resources law and policy”¹³². This embrace eventuated in the aforementioned RMA, which sought to “promote the sustainable management of natural and physical resources” and in doing so, adopted a wide conception of resource management, acknowledging “social, economic, and cultural well-being” while highlighting the need to keep in mind “the reasonably foreseeable needs of future generations”¹³³.

Noted to be a radical departure from traditional methods of environmental decision making¹³⁴, the RMA is considered one of the most advanced models of environmental legislation in the world¹³⁵. The RMA established New Zealand’s Environment Court¹³⁶ (EC), a critical institution in New Zealand’s pursuit of sustainable management of the environment as it determines whether activities and policies affecting the environment meet New Zealand’s standard of sustainability¹³⁷. The EC too acts as a role model, albeit one for the development of Environmental Courts and Tribunals (ECT’s) around the world¹³⁸. The EC hears disputes concerning resource management, generally environmental planning or town planning disputes¹³⁹ and works among other quasi-independent regulatory bodies, which possess investigatory, regulatory, and adjudicatory functions¹⁴⁰.

A point to keep in mind going forward is that the Environmental Courts or Tribunals (ECTs) are considered the children of both the law and of politics¹⁴¹ and play an important role in environmental governance. Plainly put, in the process of enforcing environmental law, ECT’s cannot help but become political as they help “to create, to express, and to realise... public

¹³⁰ Birdsong, ‘Adjudicating Sustainability: New Zealand’s Environment Court’ 8.

¹³¹ Birdsong, ‘Adjudicating Sustainability: New Zealand’s Environment Court’ 9.

¹³² Birdsong, ‘Adjudicating Sustainability: New Zealand’s Environment Court’ 3.

¹³³ Angstadt, ‘Securing Access to Justice Through Environmental Courts and Tribunals: A Case in Diversity’ 356.

¹³⁴ Birdsong, ‘Adjudicating Sustainability: New Zealand’s Environment Court’ 3.

¹³⁵ Stephen Higgs, ‘Mediating Sustainability: The Public Interest Mediator in the New Zealand Environment Court’ (2007) 37.1 *Environmental Law* pp. 61, 67.

¹³⁶ Angstadt, ‘Securing Access to Justice Through Environmental Courts and Tribunals: A Case in Diversity’ 356.

¹³⁷ Birdsong, ‘Adjudicating Sustainability: New Zealand’s Environment Court’, 3-4.

¹³⁸ Ceri Warnock, ‘Reconceptualising Specialist Environmental Court and Tribunals’ (2017) 37.3 *Legal Studies* pp. 391, 400.

¹³⁹ Warnock, ‘Reconceptualising Specialist Environmental Court and Tribunals’ 400.

¹⁴⁰ Warnock, ‘Reconceptualising Specialist Environmental Court and Tribunals’ 407.

¹⁴¹ Warnock, ‘Reconceptualising Specialist Environmental Court and Tribunals’ 407.

purposes¹⁴²’. With that in mind this report can turn to the actual structure and operation of the New Zealand Environment Court.

The Environment Court of New Zealand

The Environment Court is an appellate national court¹⁴³ and replaced the Planning Tribunal, which preceded it and was by its enacting statute granted authority over “virtually every important mechanism for environmental management”¹⁴⁴. The EC’s decisions are binding¹⁴⁵ and most of its work revolves around the RMA¹⁴⁶, principally the appeals that arise from resource consent applications and the contents of regional and district plans¹⁴⁷.

Briefly, resource consents are permits issued by the appropriate local authority to allow an entity to engage in an activity that would otherwise violate either the RMA or a corresponding planning document¹⁴⁸. There are five types and they are land use consents, subdivision consents, coastal permits, water permits, and discharge permits¹⁴⁹. These permits provide local environmental managers with the opportunity to consider the environmental issues that may accompany the proposed resource use¹⁵⁰ and so modify or deny the use should they deem it unsustainable. The general public may participate in these matters though this depends on whether the applications themselves are processed on a notified or non-notified basis. Notified resource consent applications are open for public input while non-notified applications are not subject to public submissions, resulting in the decision being made by the authority sans public participation in the latter case. Though they are meant to be far less common, it is estimated that local authorities go through 95% of resource consent applications on a non-notified basis¹⁵¹.

It should be mentioned that the decision of a local authority not to notify the public can be the subject of judicial review in the High Court¹⁵². Once the local authority has made their decision, applicants or persons who have made submissions during the resource consent process can appeal their decision to the EC. Once the EC has heard evidence from both parties it will then make its determination and either confirm, amend or reject the local authority’s decision¹⁵³.

¹⁴² E Fisher *Risk Regulation and Administrative Constitutionalism* (Oxford: Hart, 2007), 30 citing B Cook, *Bureaucracy and Self Government: Reconsidering the Role of Public Administration in American Government* (Baltimore, MD: Johns Hopkins University Press, 1996), 16 as found in Warnock, ‘Reconceptualising Specialist Environmental Court and Tribunals’ 414.

¹⁴³ Website for the Environment Court of New Zealand - Date Accessed: 14th August 2021.

<https://www.environmentcourt.govt.nz/>

¹⁴⁴ Angstadt, ‘Securing Access to Justice Through Environmental Courts and Tribunals: A Case in Diversity’ 356.

¹⁴⁵ Birdsong, ‘Adjudicating Sustainability: New Zealand's Environment Court’ 4.

¹⁴⁶ Website for the Environment Court of New Zealand - Date Accessed: 14th August 2021.

<https://www.environmentcourt.govt.nz/>

¹⁴⁷ Website for the Environment Court of New Zealand - Date Accessed: 14th August 2021.

<https://www.environmentcourt.govt.nz/>

¹⁴⁸ Website for the Environment Court of New Zealand - Date Accessed: 14th August 2021.

<https://www.environmentcourt.govt.nz/>

¹⁴⁹ Birdsong, ‘Adjudicating Sustainability: New Zealand's Environment Court’ 23.

¹⁵⁰ Birdsong, ‘Adjudicating Sustainability: New Zealand's Environment Court’, 22.

¹⁵¹ Birdsong, ‘Adjudicating Sustainability: New Zealand's Environment Court’ 24.

¹⁵² Website for the Environment Court of New Zealand - Date Accessed: 14th August 2021.

<https://www.environmentcourt.govt.nz/>

¹⁵³ Birdsong, ‘Adjudicating Sustainability: New Zealand's Environment Court’ 31.

As for regional and district plans or policy statements, once the local authority has prepared a proposed plan or policy statement or made changes to either document, the public may make submissions as to change or document. These too are conducted on a notified or non-notified basis. The local authority will consider any submissions made before reaching its decision, which may be appealed to the EC who will then decide upon the appeal¹⁵⁴ in a public hearing. The EC will then either confirm the local authority's decision or instruct them to modify or remove the challenged provision or insert a new one provision and said local authority must comply¹⁵⁵. This review is limited to the specific provisions of a plan or policy statement challenged in the aforementioned submission which grounds the appeal¹⁵⁶. The EC's decisions may be appealed themselves, but only upon a point of law¹⁵⁷.

The EC conducts its reviews on a *De Novo* basis, meaning that they are considered afresh and the court makes its decision based on the actual evidence presented before it by the parties rather than the local authority's decision-making process¹⁵⁸. The EC can hear witnesses and issue *subpoenas* for its hearings¹⁵⁹ and the decision itself is usually made in writing and forwarded to all parties and the EC's tries to make it within three months of the final submission being made¹⁶⁰.

The court conducts these hearings while keeping in mind its duty to avoid, remedy, or mitigate any detrimental environmental impact and also the overarching duty to promote sustainable management of the environment¹⁶¹. These duties reflect that the court when conducting reviews is attempting to make predictive decisions about the future and potential impacts upon the environment rather than engaging in the fact-finding missions typical of Common Law courts¹⁶². Indeed, it enjoys a great degree of discretion in this regard so long as it stays within the confines of the RMA¹⁶³.

Thus it is easy to see how the EC has stepped beyond being a mere adjudicator and into the realm of sustainable environmental management as it indirectly becomes the primary decision maker¹⁶⁴. It is not however all-powerful as it should be noted that it can only affect those resource consent decisions which come before it just as it can only affect the provisions of a policy statement or plan object to and not the plan itself¹⁶⁵.

The EC is further empowered to make policy declarations¹⁶⁶. These declarations are made as the existence of any function, power, right or duty to clarify matters. These may also be used to determine whether certain acts by government entities have violated the general duty to

¹⁵⁴ Website for the Environment Court of New Zealand - Date Accessed: 14th August 2021.

<https://www.environmentcourt.govt.nz/>

¹⁵⁵ Birdsong, 'Adjudicating Sustainability: New Zealand's Environment Court' 30-1.

¹⁵⁶ Birdsong, 'Adjudicating Sustainability: New Zealand's Environment Court' 30.

¹⁵⁷ Website for the Environment Court of New Zealand - Date Accessed: 14th August 2021.

<https://www.environmentcourt.govt.nz/>

¹⁵⁸ Birdsong, 'Adjudicating Sustainability: New Zealand's Environment Court' 33.

¹⁵⁹ Birdsong, 'Adjudicating Sustainability: New Zealand's Environment Court' 34.

¹⁶⁰ Website for the Environment Court of New Zealand - Date Accessed: 14th August 2021.

<https://www.environmentcourt.govt.nz/>

¹⁶¹ Birdsong, 'Adjudicating Sustainability: New Zealand's Environment Court' 34.

¹⁶² Warnock, 'Reconceptualising Specialist Environmental Court and Tribunals' 392.

¹⁶³ Birdsong, 'Adjudicating Sustainability: New Zealand's Environment Court' 34.

¹⁶⁴ Birdsong, 'Adjudicating Sustainability: New Zealand's Environment Court' 34-5.

¹⁶⁵ Birdsong, 'Adjudicating Sustainability: New Zealand's Environment Court' 35.

¹⁶⁶ Website for the Environment Court of New Zealand - Date Accessed: 14th August 2021.

<https://www.environmentcourt.govt.nz/>

avoid, remedy, or limit the damage to the environment. These however are made only at the EC's discretion. Though the EC has proven reluctant to do so about more abstract statements, it is willing to do so on uncontested issues when public interest warrants judicial interpretation¹⁶⁷. The procedure is often used strategically by litigants, eliminating disputes early on in the process and hopefully preventing the needless cost¹⁶⁸.

Any person may generally apply for a declaration and also for an Enforcement Order¹⁶⁹. These orders can prevent actions against RMA provisions, regulations, rules in plans and resource consents, prevent actions that are likely to have a negative impact on the environment, require a person to act to ensure compliance with RMA provisions and instruments or to avoid, remedy, or limit environmental damage caused by or on behalf of that person, and compensate other parties for costs incurred in avoiding, remedying, or limiting the effects caused by a person's failure to comply with one of a number of instruments¹⁷⁰. This too is at the EC's discretion though the burden of proof lies with the applicant and the court gives the defendant the benefit of the doubt¹⁷¹. In addition the Court can determine appeals on public works or projects, and abatement notices¹⁷².

With the majority of its functions discussed, it would be worthwhile to discuss standing in relation to the Environment Court. The RMA, as part of its mission to improve the management of the environment, aimed to strip away standing requirements, which would act as a barrier blocking access for people to the EC¹⁷³. Section 274 of the RMA sets down the classes of people, which may come before the EC for an environmental claim¹⁷⁴. Any person who has participated in a government proceeding relating to planning instruments or resource consents and has made a submission has a right of appeal to the EC as noted above, even without proof of injury¹⁷⁵. Even those who have failed to make a submission may still participate in an EC action enacted by another party if they have an "an interest in the proceedings greater than the public generally"¹⁷⁶. Any person can seek a Declaration or enforcement order as noted above and also any person can request the EC to initiate proceedings when an alleged criminal offence under the RMA has occurred¹⁷⁷. Finally, certain government officials may bring suits to the EC as a matter of right¹⁷⁸.

Beyond the broad standing conferred by the RMA, the EC have also given it considerable thought as to best enable access to justice and indeed standing has not yet proven to be a significant bar to litigation¹⁷⁹. In addition, the EC has repeatedly interpreted the RMA in a very flexible fashion as to favour granting standing. The EC has proven willing to evaluate the

¹⁶⁷ Birdsong, 'Adjudicating Sustainability: New Zealand's Environment Court', 28-9.

¹⁶⁸ Birdsong, 'Adjudicating Sustainability: New Zealand's Environment Court' 29-30.

¹⁶⁹ Birdsong, 'Adjudicating Sustainability: New Zealand's Environment Court' 29 & 31.

¹⁷⁰ Birdsong, 'Adjudicating Sustainability: New Zealand's Environment Court' 31.

¹⁷¹ Birdsong, 'Adjudicating Sustainability: New Zealand's Environment Court' 32.

¹⁷² Website for the Environment Court of New Zealand - Date Accessed: 14th August 2021.

<https://www.environmentcourt.govt.nz/>

¹⁷³ Birdsong, 'Adjudicating Sustainability: New Zealand's Environment Court', 17-8.

¹⁷⁴ Angstadt, 'Securing Access to Justice Through Environmental Courts and Tribunals: A Case in Diversity' 360-1.

¹⁷⁵ Birdsong, 'Adjudicating Sustainability: New Zealand's Environment Court' 18.

¹⁷⁶ Birdsong, 'Adjudicating Sustainability: New Zealand's Environment Court' 18.

¹⁷⁷ Birdsong, 'Adjudicating Sustainability: New Zealand's Environment Court' 18.

¹⁷⁸ Angstadt, 'Securing Access to Justice Through Environmental Courts and Tribunals: A Case in Diversity' 361.

¹⁷⁹ Angstadt, 'Securing Access to Justice Through Environmental Courts and Tribunals: A Case in Diversity' 362.

merits of a claim when a party has dubious standing and in those rare cases where a party lacks standing, the Court will seek other parties with better standing to act in their stead as to enable the litigation to continue¹⁸⁰.

The EC is composed of two separate classes of adjudicator, Environmental Judges and Environmental Commissioners, to ensure that the court possesses a mix of legal and environmental knowledge and experience in the matters that come before it¹⁸¹. Environmental Judges are generally former barristers or judges¹⁸² and have joint appointments as either District or Maori Land Court judges and hold life tenure¹⁸³. Environmental Commissioners meanwhile have expertise in areas like engineering, environmental science, and planning among others and they hold their office for a five year term¹⁸⁴. The current Environmental Commissioners include engineers, ecologists, and scientists¹⁸⁵. Both are appointed by New Zealand's Governor-General¹⁸⁶.

The EC sits in court houses across the country but there are Environmental Judges permanently located in Wellington, Auckland, and Christchurch. Judges will travel from these registries to other areas to hear matters as is needed and will generally attempt to hear them as close to site of the dispute as they can¹⁸⁷. For some types of cases heard by the EC only a single judge is required, for appeals relating to plans and resource consents however, the Court is usually composed of one Environment Judge and two Environment Commissioners¹⁸⁸.

The EC, in addition to the services listed above provides a mediation service where appropriate to encourage parties to settle their dispute out of court and at no extra cost¹⁸⁹. This service is facilitated by Commissioners who are not only experienced in mediation but also trained in Alternative Dispute Resolution (ADR). Indeed, experience in ADR is one of the factors that determines a person's eligibility as a Commissioner¹⁹⁰. ADR includes mediation, conciliation, or other designed to facilitate the resolution of matters before or during the hearing¹⁹¹.

The RMA's provision for ADR arose from legislators acknowledging that Common Law court's characteristic adversarial process was often unsuited to addressing environmental disputes¹⁹². Mediation is generally the sole method of ADR employed by the EC¹⁹³. In

¹⁸⁰ Angstadt, 'Securing Access to Justice Through Environmental Courts and Tribunals: A Case in Diversity' 362.

¹⁸¹ Angstadt, 'Securing Access to Justice Through Environmental Courts and Tribunals: A Case in Diversity' 357.

¹⁸² Website for the Environment Court of New Zealand - Date Accessed: 14th August 2021.

<https://www.environmentcourt.govt.nz/>

¹⁸³ Birdsong, 'Adjudicating Sustainability: New Zealand's Environment Court' 32.

¹⁸⁴ Birdsong, 'Adjudicating Sustainability: New Zealand's Environment Court' 33.

¹⁸⁵ Website for the Environment Court of New Zealand - Date Accessed: 14th August 2021.

<https://www.environmentcourt.govt.nz/>

¹⁸⁶ Birdsong, 'Adjudicating Sustainability: New Zealand's Environment Court' 32-3.

¹⁸⁷ Website for the Environment Court of New Zealand - Date Accessed: 14th August 2021.

<https://www.environmentcourt.govt.nz/>

¹⁸⁸ Website for the Environment Court of New Zealand - Date Accessed: 14th August 2021.

<https://www.environmentcourt.govt.nz/>

¹⁸⁹ Higgs, 'Mediating Sustainability: The Public Interest Mediator in the New Zealand Environment Court' 63.

¹⁹⁰ Website for the Environment Court of New Zealand - Date Accessed: 14th August 2021.

<https://www.environmentcourt.govt.nz/>

¹⁹¹ Higgs, 'Mediating Sustainability: The Public Interest Mediator in the New Zealand Environment Court' 77.

¹⁹² Higgs, 'Mediating Sustainability: The Public Interest Mediator in the New Zealand Environment Court' 77.

¹⁹³ Higgs, 'Mediating Sustainability: The Public Interest Mediator in the New Zealand Environment Court' 77.

mediation, Commissioners help the parties involved reach a satisfying compromise and settle the matter themselves instead of waiting for a judge to make their decision¹⁹⁴.

Environmental Judges assess all appeals when lodged and save in exceptional circumstances, will refer the appeal to a Commissioner and then the EC will notify the parties involved and attempt to arrange mediation¹⁹⁵. In their capacity as mediators, Commissioners operate in sort of a hybrid role between traditional mediators who promote a neutral and constructive negotiation process and judges who focus more on the actual substantive outcome of the process¹⁹⁶.

Mediation is conducted at no extra cost as the settlements reached through this process often end up saving the Court both time and resources that would otherwise be spent on a full hearing. Parties can avail of private mediators but rarely do so, given the inconvenience and the expertise in the RMA Commissioners are perceived to possess¹⁹⁷. While awaiting mediation, parties may also place their cases on hold or continue their preparation by their choice or a judge's direction¹⁹⁸. A point to note is that these mediations are conducted on a tight timetable. Commissioners aimed to include mediation in a single session and only conduct more than three in exceptional circumstances¹⁹⁹.

Finally, something must be said with regard to the EC and how costs are dealt with. The EC was granted broad discretion by the RMA²⁰⁰ when it came to costs as it can order any party before it to pay any other party the costs and expenses, or at least a portion of them, incurred by that party²⁰¹. These costs include attorneys' fees, expert witness fees, and travel expenses for witnesses and attorneys and can become quite substantial²⁰². This is another way in which the EC differs from civil courts as costs do not follow the event by default and so successful parties are not automatically awarded costs²⁰³. Indeed, it has been argued that the EC with its discretion has used costs to regulate proceedings and punish unreasonable litigation behaviour²⁰⁴. Typically, the EC will reserve costs or set a timetable for applications for costs to be made and costs incurred before the local authority's whose decision which promoted the appeal or in court-facilitated mediation cannot be claimed²⁰⁵.

Problems of the Environment Court of New Zealand

As one of the oldest ECT's in the world²⁰⁶, there is much to be learned from not only the creation and operation of New Zealand's Environment Court but also from its problems. One

¹⁹⁴ Higgs, 'Mediating Sustainability: The Public Interest Mediator in the New Zealand Environment Court' 63.

¹⁹⁵ Website for the Environment Court of New Zealand - Date Accessed: 14th August 2021.

<https://www.environmentcourt.govt.nz/>

¹⁹⁶ Higgs, 'Mediating Sustainability: The Public Interest Mediator in the New Zealand Environment Court' 64.

¹⁹⁷ Higgs, 'Mediating Sustainability: The Public Interest Mediator in the New Zealand Environment Court' 78-9.

¹⁹⁸ Higgs, 'Mediating Sustainability: The Public Interest Mediator in the New Zealand Environment Court' 79.

¹⁹⁹ Higgs, 'Mediating Sustainability: The Public Interest Mediator in the New Zealand Environment Court' 80.

²⁰⁰ Birdsong, 'Adjudicating Sustainability: New Zealand's Environment Court' 58.

²⁰¹ Website for the Environment Court of New Zealand - Date Accessed: 14th August 2021.

<https://www.environmentcourt.govt.nz/>

²⁰² Birdsong, 'Adjudicating Sustainability: New Zealand's Environment Court' 58.

²⁰³ Website for the Environment Court of New Zealand - Date Accessed: 14th August 2021.

<https://www.environmentcourt.govt.nz/>

²⁰⁴ Birdsong, 'Adjudicating Sustainability: New Zealand's Environment Court' 60

²⁰⁵ Website for the Environment Court of New Zealand - Date Accessed: 14th August 2021.

<https://www.environmentcourt.govt.nz/>

²⁰⁶ Warnock, 'Reconceptualising Specialist Environmental Court and Tribunals' 401.

is that critics claim that it suffers from losing the generalist perspective enjoyed by the general courts due to its specialised nature²⁰⁷ though this is a common critique for specialised courts.

There have also been Criticisms of the Legal Nature of the Court. The New Zealand ECT is not a typical one. It Hears disputes which concern resource management (environmental/ town planning). It Attempts to make predictive decisions rather than go on fact finding missions 400

It adopts a Precautionary approach. Its creativity/responsiveness has caused tension 401. Critics have argued that it Should be faster and cheaper. Others have stated that it should not determine values/policy/political questions.²⁰⁸

An issue specific to the EC is that it has become a concern that the outcomes of mediation reflect not the public interest but the interest of those of the parties involved in the dispute²⁰⁹ and that rather than being the neutral affair envisaged, is in fact pro-development²¹⁰ and thus in the private, rather than public, interest. The presence of Environmental Commissioners in mediation goes some way to alleviating this concern as they can be said to bring the public interest into mediation as they conduct them²¹¹.

Other, more practical and political issues face the EC of late as well. In recent years, a chief priority of the New Zealand government's policy agenda has been to 'simplify and streamline' environmental adjudication processes to make them quicker and cheaper. To this effect, over 19 reports have been produced or commissioned on this topic in the last decade by the government on how best to do so. For example, in recent amendments to the RMA, which commenced with the Resource Management (Simplifying and Streamlining) Amendment Act. 2009²¹² the statutory presumption in favour of public notification for resource-consent applications was removed, which impacts on the public's ability to make submissions and participate in New Zealand's environmental management²¹³.

Writers have complained that there is a perception that the developers are favoured, as they are the ones who profit from this change, receiving faster decisions and with less public oversight²¹⁴, which are consequently less likely to be challenged.

Another change inhibiting the public's access to environmental management is an increase in the NZ's Court fees, as filings fees rose from \$511.11 to \$600 in September 2018²¹⁵.

A final problem faced by New Zealand's Environment Court is one endemic to ECT's and thus it warrants a more thorough examination as it is tied to an ECT's greatest strength, its innovative nature. As noted above, the RMA, and consequently the court it created, were a radical departure from what came before and naturally the court is a hugely innovative body as

²⁰⁷ Angstadt, 'Securing Access to Justice Through Environmental Courts and Tribunals: A Case in Diversity' 350.

²⁰⁸ The criticisms are listed at Warnock, 'Reconceptualising Specialist Environmental Court and Tribunals' at pp 400-401

²⁰⁹ Higgs, 'Mediating Sustainability: The Public Interest Mediator in the New Zealand Environment Court' 84-5.

²¹⁰ Higgs, 'Mediating Sustainability: The Public Interest Mediator in the New Zealand Environment Court' 85.

²¹¹ Higgs, 'Mediating Sustainability: The Public Interest Mediator in the New Zealand Environment Court' 103.

²¹² Warnock, 'Reconceptualising Specialist Environmental Court and Tribunals' 409.

²¹³ Warnock, 'Reconceptualising Specialist Environmental Court and Tribunals' 409-10.

²¹⁴ Warnock, 'Reconceptualising Specialist Environmental Court and Tribunals' 409-10.

²¹⁵ Website for the Environment Court of New Zealand - Date Accessed: 14th August 2021.

<https://www.environmentcourt.govt.nz/>

many ECT's are. The issue with this however is that innovative bodies, while being a welcome breath of fresh air, are hugely transgressive against the norms already in place. Indeed, New Zealand's own Law Commission has noted that such adjudicatory bodies "do not always sit well" in Common Law countries²¹⁶.

The EC is no exception as over time its creativeness and responsiveness, both of which are prized qualities for an ECT, have created significant tension. This tension has been such that the tone of the national discussion regarding the EC has become a harsher and more exacting debate²¹⁷. Some have argued that as a court, the EC should not be able to determine values, policy, or possess legislative powers such as amending local authorities' resource management planning documents, or be permitted to decide upon 'political questions'²¹⁸. Indeed, a government technical advisory group has expressed concerns regarding the court's power to both amend plans and to determine applications for resource use against the framework those plans put into place. Indeed, it said that one "constitutional grounds alone"²¹⁹ there was good reason to abolish these powers and the enthusiasm of even its earliest champions has waned in the face of questions as to its constitutional place in New Zealand²²⁰. These concerns as to the body's powers are only exacerbated by its influence as the court's substantive merits decisions can seriously affect New Zealand's economic and environmental well-being.

The Court's authority however is widely accepted and the fact that it is a statutory body whose powers were deliberately envisaged and granted by parliament lends it greater democratic legitimacy²²¹. As mentioned above, ECT's are by their very nature bodies born of the law and of politics. Indeed, the EC can, as Warnock notes, be seen as bridging the arbitrary divide between politics and the law to operate as a part of environmental governance in a positive and meaningful sense, facilitating and enforcing social policy²²².

This discomfort with the extent of the EC's powers and their intrusion into the spheres of legislation and politics is due in no small part to the Theory of the Separation of Powers, whose purpose is the avoidance of tyranny. As the name suggests, it achieves this by separating the great powers of government, the legislative, the executive, and the judiciary so that no one department is too powerful²²³. ECT's however only become problematic under this theory when it is strictly applied. Furthermore, the theory is often contested and dismissed as a relic. Even if this were not the case, the fact remains that it is ill suited to environmental adjudication due to the inherent nature of environmental disputes²²⁴. As Fisher has noted:

*"Environmental problems are inherently messy and thus not easily managed by engineered solutions. The non-linear processes of ecosystems, the unpredictability of human behaviour and the problems of scientific uncertainty all make the process of assessing environmental harm an intricate and often intractable business"*²²⁵.

²¹⁶ Warnock, 'Reconceptualising Specialist Environmental Court and Tribunals' 399.

²¹⁷ Warnock, 'Reconceptualising Specialist Environmental Court and Tribunals', 401.

²¹⁸ Warnock, 'Reconceptualising Specialist Environmental Court and Tribunals' 401.

²¹⁹ Warnock, 'Reconceptualising Specialist Environmental Court and Tribunals' 401.

²²⁰ Warnock, 'Reconceptualising Specialist Environmental Court and Tribunals' 408.

²²¹ Warnock, 'Reconceptualising Specialist Environmental Court and Tribunals' 401-2.

²²² Warnock, 'Reconceptualising Specialist Environmental Court and Tribunals' 408.

²²³ Warnock, 'Reconceptualising Specialist Environmental Court and Tribunals' 411.

²²⁴ Warnock, 'Reconceptualising Specialist Environmental Court and Tribunals' 412.

²²⁵ E Fisher 'Unpacking the Toolbox: Or Why the Public/Private Divide is Important in EC Environmental Law' in J B Auby and M Freedland (eds) *The Public Law/Private Law Divide: Une Entente Assez Cordiale* (Paris:

This complexity is only exacerbated by the prospective perspective taken by the EC in its review of planning or permitting decisions as there may be scientific uncertainty and the Court may have to evaluate risks involved²²⁶. Given the nature of the disputes that come before the EC and the decisions it makes like restricting access to public resources or preventing individuals from using their own property as they wish²²⁷, it is little wonder then that a New Zealand's Chief Justice observed that environmental law is "always a flash point. It is always politically contentious²²⁸". Both policy and planning instruments however are living documents that must be tested in real life and adjusted accordingly. Thus there must be a mechanism in place that can make these adjustments²²⁹.

ECT's play a deliberate, and indeed valuable, role in environmental governance²³⁰. It is disheartening then that despite the importance of this role and the fact that it was intentionally conferred upon the EC by New Zealand's parliament, there existed and may yet exist a marked reluctance on the part of the judiciary to take on and utilise these powers of environmental governance²³¹. Indeed, it may be said that the Separation of Powers, ingrained as it is in the minds of the judiciary, has become a straitjacket, undermining the Court's ability to effectively discharge its mission of ensuring sustainable management of the environment²³².

5. Vermont, USA

Uniform Environmental Law Enforcement Act 1989:

Legislative Issue:

The Uniform Environmental Law Enforcement Act 1989 ("Act 98") was established to improve the enforcement of environmental law in Vermont.²³³ The Act has four main objectives:

- 1) To enhance the administrative enforcement by the Secretary and the Natural Resources Board (NRB);
- 2) To enhance civil enforcement in Superior Court;
- 3) the creation of a dedicated Environmental Division within the judiciary; and
- 4) The standardization of the environmental enforcement process to help assure fair and consistent enforcement of Vermont's environmental laws and rules.²³⁴

LGDJ Diffuseur 2004), 240 as found in Warnock, 'Reconceptualising Specialist Environmental Court and Tribunals' 412.

²²⁶ Warnock, 'Reconceptualising Specialist Environmental Court and Tribunals' 412.

²²⁷ Warnock, 'Reconceptualising Specialist Environmental Court and Tribunals' 413.

²²⁸ S Elias, 'Righting environmental justice' (The Salmon Lecture, Auckland, 25 July 2013) as found in Warnock, 'Reconceptualising Specialist Environmental Court and Tribunals' 413.

²²⁹ Warnock, 'Reconceptualising Specialist Environmental Court and Tribunals' 414.

²³⁰ Warnock, 'Reconceptualising Specialist Environmental Court and Tribunals' 414.

²³¹ Birdsong, 'Adjudicating Sustainability: New Zealand's Environment Court' 6.

²³² Warnock, 'Reconceptualising Specialist Environmental Court and Tribunals' 416.

²³³ US Department of Environmental Conservation, Environmental Compliance Division, '2015 Report to the Legislature Regarding Act 98 (1989) Uniform Environmental Enforcement Act' (16 February 2016), 1.

²³⁴ *ibid*, 1.

Legal Authority:

The Environmental Division of the Vermont Superior Court is the main authority concerning environmental issues in Vermont.

Laws that govern the running of the Environmental Division:

- V.S.A. Title 4, Chapter 27;
- V.S.A. Title 10, Chapter 201.

A Note on Costs:

In terms of costs, The environmental division offers a free legal clinic in collaboration with the Vermont Bar Association Pro Bono/Low Bono Program. The lawyers who staff the clinic have knowledge and experience in environmental law and land use issues.²³⁵

V.S.A. Title 4, Chapter 27:

This piece of legislation sets out how Vermont's Environmental Division of the Superior Court functions. Section 1001(a) states that two judges will sit alone on the Environmental Division. These judges will be authorised to hear cases concerning environmental law, along with other matters that come before Vermont's Superior Court.²³⁶ The law stipulates that a judge of the Environmental Division must be an attorney admitted to practice before the Vermont Supreme Court.²³⁷ An Environmental Judge shall be nominated, appointed, confirmed, paid, and retained, and shall receive all benefits in the manner of a Superior Judge.²³⁸ An Environmental Judge can be appointed to this position for a term of 6 years.²³⁹

Evidentiary proceedings in the Environmental Division are to be held in the county where all or a portion of the land subject to the appeal is located, or where the violation is alleged to have occurred.²⁴⁰ Hearings may be held in another county where the parties agree to another location; so long as the Environmental Judge offers expeditious evidentiary hearings so that no such proceedings are moved to another county to obtain an earlier hearing.²⁴¹ Unless otherwise ordered by the court, all non-evidentiary hearings may be conducted by telephone or video conferencing using an audio or video record.²⁴² If a party objects to a telephone hearing, the court may require a personal appearance for good cause.²⁴³

The Vermont Supreme Court has the power to create rules and develop procedures consistent with this legislation to govern the operation of the Environmental Division and proceedings in it.²⁴⁴ However, the Vermont Supreme Court must ensure that any new rules provide for:

- 1) Expeditious proceedings that give due consideration to the needs of pro se litigants;

²³⁵ Vermont Judiciary, Environmental Division <<https://www.vermontjudiciary.org/environmental>> Accessed 19th July 2021.

²³⁶ 4 V.S.A., Ch. 27, s 1001(b).

²³⁷ 4 V.S.A., Ch. 27, s 1001(c).

²³⁸ 4 V.S.A., Ch. 27, s 1001(c).

²³⁹ 4 V.S.A., Ch. 27, s 1001(d).

²⁴⁰ 4 V.S.A., Ch. 27, s 1001(e).

²⁴¹ 4 V.S.A., Ch. 27, s 1001(e).

²⁴² 4 V.S.A., Ch. 27, s 1001(e).

²⁴³ 4 V.S.A., Ch. 27, s 1001(e).

²⁴⁴ 4 V.S.A., Ch. 27, s 1001(g).

- 2) The ability of the judge to hold pretrial conferences by telephone;
- 3) The use of scheduling orders under the Vermont Rules of Civil Procedure in order to limit discovery to that which is necessary for a full and fair determination of the proceeding; and
- 4) The appropriate use of site visits by the presiding judge to assist the court in rendering a decision.²⁴⁵

Conduct of Hearings:

Section 1002 of this Act expressly requires that hearings before the Environmental Division shall be conducted in an impartial manner subject to rules of the Supreme Court providing for a summary, expedited proceeding.

Evidence:

Section 1003(a) states that irrelevant, immaterial, or unduly repetitious evidence shall be excluded. However, evidence not admissible under the Rules of Evidence may be admitted if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.²⁴⁶ Section 1003(b) authorises Environmental Judges to take judicial notice of cognizable facts, and of generally recognized technical or scientific facts within the agency's specialized knowledge.

Access to Information:

Section 1004(a) states that each party shall provide all other parties with all written statements and information in the possession, custody, or control of the party relative to the violation, including any technical studies, tests and reports, maps, architectural and engineering plans and specifications, drawings, graphs, charts, photographs, and other data compilations from which information can be obtained, the names and addresses of the party's witnesses, and any other information which the Environmental Division deems necessary, in its sole discretion, to a fair and full determination of the proceeding. Section 1004(b) asserts that no other discovery or depositions, written interrogatories or requests to admit shall be permitted except that which is necessary for a full and fair determination of the proceeding.

V.S.A. Title 10, Chapter 201:

This piece of legislation concerns administrative environmental law enforcement. Section 8001 of the legislation states that Vermont's Secretary of Natural Resources and the Natural Resources Board will be empowered to:

- 1) Enhance the protection of environmental and human health afforded by existing laws;
- 2) Prevent the unfair economic advantage obtained by persons who operate in violation of environmental laws;
- 3) Provide for more even-handed enforcement of environmental laws;

²⁴⁵ 4 V.S.A., Ch. 27, s 1001(g).

²⁴⁶ 4 V.S.A., Ch. 27, s 1003(a).

- 4) Foster greater compliance with environmental laws;
- 5) Deter repeated violation of environmental laws; and
- 6) Establish a fair and consistent system for assessing administrative penalties.

Enforcement Authority Of The Secretary And The Board:

Section 8003(a) stipulates that the Secretary may take action under this chapter to enforce the listed statutes and rules, permits, assurances, or orders implementing the listed statutes. The statutes cover almost all environmental matters from air and water quality, biodiversity protection to reduction of greenhouse gases and collection and disposal of heavy metals.²⁴⁷ Section 8003(b) authorises the Secretary of Natural Resources and the Natural Resources Board to initiate criminal or civil proceedings where an offence has been committed under this Act. Section 8003(d) states that the Secretary of Agriculture, Food and Markets may take action under this chapter to enforce the agricultural water quality requirements of rules adopted under, and permits and certifications issued under 6 V.S.A. chapter 215.

Enforcement:

Section 8004 of this legislation states that the Secretary of Natural Resources shall bring enforcement proceedings where the Board of Natural Resources requests that they do so. Both the Secretary and the Board must develop procedures for the cooperative enforcement of this Act.

Investigations; Inspections; Affidavit of Compliance:

Section 8005(a) states that an investigator may perform routine inspections to determine if this environmental legislation is being complied with.²⁴⁸ Investigators may initiate an investigation where they discover that an activity is being conducted that could amount to a violation.²⁴⁹ A District or Superior Court can issue an access order where permission to investigate or inspect is refused.²⁵⁰

A Superior Court Judge shall issue an access order when access has been refused and the investigator, by affidavit, describes the property to be examined and identifies:

- a) A provision of a permit that authorizes the inspection; or
- b) The property as being scheduled for inspection in accordance with a neutral inspection program adopted by the Secretary or the Natural Resources Board; or
- c) Facts providing reasonable grounds to believe that a violation exists and that an examination of the specifically described property will be of material aid in determining the existence of the violation.²⁵¹

²⁴⁷ 10 V.S.A., Ch. 201, s 8003(a)(1)-(31).

²⁴⁸ 10 V.S.A., Ch. 201, s 8005(a)(1).

²⁴⁹ 10 V.S.A., Ch. 201, s 8005(a)(2).

²⁵⁰ 10 V.S.A., Ch. 201, s 8005(a)(4).

²⁵¹ 10 V.S.A., Ch. 201, s 8005(b)(1).

A Superior Court shall issue an order requiring compliance with an information request submitted pursuant to section 6615c of this title when:

- a) The person served with the request fails to respond to the request in the time frame identified by the Secretary;
- b) The Secretary submits, by affidavit, facts providing reasonable grounds that a release or threatened release has taken place; and
- c) The information will be of material aid in responding to the release or threatened release.²⁵²

At any time, the Secretary, the Natural Resources Board, or a District Commission²⁵³ may require a permittee to file an affidavit under oath or affirmation that a development or activity of the permittee is in compliance with an assurance of discontinuance or order issued under this chapter, or a permit issued under a statute identified under subsection 8003(a) of this title, or under a rule enforceable under authority set forth under a statute identified under subsection 8003(a) of this title.²⁵⁴ Failure to file an affidavit within the period prescribed by the Secretary, Natural Resources Board, or District Commission or the material misrepresentation of fact in the affidavit shall be a violation and shall also constitute grounds for revocation of the permit to which the affidavit requirement, assurance of discontinuance, or order under this chapter applies.²⁵⁵

Warning- Notice of Alleged Violation:

Section 8006(a) stipulates that the Secretary of Natural Resources may issue a written warning where a violation of this act is likely to occur. Where the Secretary determines that a violation exists, they can create a written notice of the alleged violation.²⁵⁶

Assurances of Discontinuance- Alternative to Judicial/Administrative Proceedings:

The Secretary or the Natural Resources Board may accept an assurance of discontinuance of a violation as an alternative to administrative or judicial proceedings.²⁵⁷ An assurance of discontinuance must include the following to be valid:

- 1) A statement of the facts that provide the basis for claiming the violation exists and a description of the alleged violation determined by the Secretary or the Natural Resources Board; and
- 2) An agreement by the respondent to perform specific actions to prevent, abate, or alleviate environmental problems caused by the violation, or to restore the environment to its condition before the violation, including financial responsibility for such actions.²⁵⁸

²⁵² 10 V.S.A., Ch. 201, s 8005(b)(2).

²⁵³ For more on District Commissions, see 10 V.S.A. Ch. 151.

²⁵⁴ 10 V.S.A., Ch. 201, s 8005(c).

²⁵⁵ 10 V.S.A., Ch. 201, s 8005(c).

²⁵⁶ 10 V.S.A., Ch. 201, s 8006(b).

²⁵⁷ 10 V.S.A., Ch. 201, s 8007(a).

²⁵⁸ *ibid.*

Assurances of discontinuance can also include prevention, abatement, alleviation, or restoration schedules, and a contribution towards other projects related to the violation, that will enhance the natural resources of the affected area, or to their use and enjoyment.²⁵⁹ Contributions are not permissible where the project primarily benefits the respondent, such as:

- (i) Contributions required by law that are reasonably associated with the respondent's usual course of business; or
- (ii) Where the respondent has planned, budgeted for, initiated, or completed prior to or during the current enforcement action.²⁶⁰
- (iii) For a violation that does not affect the natural environment or cause any environmental harm, contribution toward public educational projects, to improve public awareness and compliance with statutes specified in this Act.²⁶¹

When an assurance of discontinuance is signed by the Environmental Division, the assurance shall become a judicial order.²⁶² Upon motion by the Attorney General made within 14 days after the date the assurance is signed by the Division and upon a finding that the order is insufficient to carry out the purposes of this chapter, the Division shall vacate the order.²⁶³ If the respondent complies with an assurance of discontinuance signed by the Division, the respondent shall not be liable for additional civil or criminal penalties with respect to the facts set forth in the assurance of discontinuance.²⁶⁴

Administrative Orders:

Section 8008(a) states that the Secretary may issue an administrative order when the Secretary determines that a violation exists. When the Board determines that a violation of chapter 151 of this title exists, the Board may issue an administrative order with respect to the violation.²⁶⁵

An administrative order to discontinue a violation under this Act must contain:

- 1) A statement of the facts that provide the basis for claiming the violation exists;
- 2) Identification of the applicable statute, rule, permit, assurance, or order;
- 3) A statement that the respondent has a right to a hearing under section 8012 of this title, and a description of the procedures for requesting a hearing;
- 4) A statement that the order is effective on receipt unless stayed on request for a hearing filed within 15 days;
- 5) If applicable, a directive that the respondent take actions necessary to achieve compliance, to abate potential or existing environmental or health hazards, and to restore the environment to the condition existing before the violation; and

²⁵⁹ 10 V.S.A., Ch. 201, s 8007(b).

²⁶⁰ 10 V.S.A., Ch. 201, s 8007(b)(2)(C).

²⁶¹ 10 V.S.A., Ch. 201, s 8007(b)(3).

²⁶² 10 V.S.A., Ch. 201, s 8007(c).

²⁶³ *ibid.*

²⁶⁴ 10 V.S.A., Ch. 201, s 8007(d).

²⁶⁵ 10 V.S.A., Ch. 201, s 8008(a).

- 6) A statement that unless the respondent requests a hearing under this section, the order becomes a judicial order when filed with and signed by the Environmental Division.

Additionally, an administrative order may contain a ‘stop work’ order, a stay of the effective date or processing of a permit, and a proposed penalty or penalty structure.

The Environmental Division of the Superior Court must sign the administrative order in the event that the order is properly served on the respondent, the respondent does not request an oral hearing, or otherwise meets the requirements of this Chapter.²⁶⁶ When an administrative order is signed by an Environmental Judge, it becomes a judicial order.²⁶⁷

Emergency Administrative Orders:

Section 8009(a) states that the Secretary of Natural Resources, or the Board of Natural Resources may issue an emergency administrative order where:

- a) A violation presents an immediate threat of substantial harm to the environment or an immediate threat to the public health; or
- b) An activity will or is likely to result in a violation that presents an immediate threat of substantial harm to the environment or an immediate threat to the public health; or
- c) An activity requiring a permit has been commenced and is continuing without a permit.

Section 8009(b) stipulates that emergency administrative orders may be issued only where:

- 1) The order has been presented to the Environmental Division;
- 2) All reasonable efforts have been made to notify the respondent of the presentation of the order to the Environmental Division; and
- 3) The Environmental Division has found that the agency issuing the order has made a sufficient showing that grounds for issuance of the order exist.

The emergency administrative notice will become effective upon the actual notice of the respondent.²⁶⁸ The respondent can request a hearing before the Environmental Division of the Superior Court where an emergency order is issued.²⁶⁹ The emergency administrative notice will be dissolved where it has been established on insufficient grounds.²⁷⁰ An appeal to the Supreme Court by the Secretary or the Board shall stay the dissolution of an emergency order; an appeal to the Supreme Court by the respondent shall not stay operation of an emergency order.²⁷¹

²⁶⁶ 10 V.S.A., Ch. 201, s 8008(d)(1).

²⁶⁷ 10 V.S.A., Ch. 201, s 8008(d)(2).

²⁶⁸ 10 V.S.A., Ch. 201, s 8009(c).

²⁶⁹ 10 V.S.A., Ch. 201, s 8009(d).

²⁷⁰ 10 V.S.A. Ch. 201, s. 8009(e).

²⁷¹ 10 V.S.A. Ch. 201, s. 8009(f).

Administrative Penalties:

Section 8010(a) of the Act states that administrative penalties may be included with an administrative order. Section 8010(b) stipulates that the Secretary must consider the following in charging a penalty:

- 1) The degree of actual or potential impact on public health, safety, welfare, and the environment resulting from the violation;
- 2) The presence of mitigating circumstances, including unreasonable delay by the Secretary in seeking enforcement;
- 3) Whether the respondent knew or had reason to know the violation existed;
- 4) The respondent's record of compliance;
- 5) The deterrent effect of the penalty;
- 6) The State's actual costs of enforcement; and
- 7) The length of time the violation has existed.²⁷²

The cost of the penalty cannot exceed \$42,500.00 for each violation.²⁷³ Additionally, the Secretary may assess a penalty of not more than \$17,000.00 for each day the violation continues.²⁷⁴ The maximum amount of penalty charged to a respondent shall not exceed \$170,000.00.²⁷⁵ The Secretary may also recapture economic benefit resulting from a violation up to the \$170,000.00 maximum allowed.²⁷⁶ The application of a penalty prevents a respondent from being liable for any other administrative or civil penalty for the same violation.²⁷⁷

Requests for Hearings:

Section 8012 sets out the process by which requests for hearings are handled. A respondent or the Attorney General may request a hearing on an order issued by the Secretary. Notice of a request for hearing shall be filed with the Environmental Division and the Secretary.²⁷⁸ Upon receipt of the notice, the Secretary shall forward a copy of the order to the Environmental Division.²⁷⁹

Requests for Hearings- Power of the Environmental Division:

Section 8012(b) asserts that the Environmental Division of the Superior Courts has the jurisdiction to:

- 1) Determine whether a violation has occurred. An order shall be reversed when it is determined that a violation has not occurred.

²⁷² 10 V.S.A. Ch. 201, s. 8010(b)(1)-(8).

²⁷³ 10 V.S.A. Ch. 201, s. 8010(c)(1).

²⁷⁴ *ibid.*

²⁷⁵ *ibid.*

²⁷⁶ 10 V.S.A. Ch. 201, s. 8010(c)(2).

²⁷⁷ 10 V.S.A. Ch. 201, s. 8010(d).

²⁷⁸ 10 V.S.A. Ch. 201, s. 8012(a).

²⁷⁹ 10 V.S.A. Ch. 201, s. 8012(a).

- 2) Affirm or vacate and remand to the Secretary an order issued under subdivision 8008(b)(5) of this title. The Environmental Division shall vacate and remand an order under this subdivision when a violation is found to exist but the procedure contained in the order is insufficient to carry out the purposes of this chapter.
- 3) Affirm, modify, or reverse any provision of any order issued by the Secretary except those identified by subdivision (2) of this subsection. In deciding whether to affirm or reverse a stop work order under this subdivision, the Environmental Division shall consider the economic effect of the order on individuals other than the respondent.
- 4) Review and determine anew the amount of a penalty by applying the criteria set forth in subsections 8010(b) and (c) of this title.
- 5) Affirm, modify, or dissolve an emergency order.²⁸⁰

The hearing shall be held before the Environmental Division within 30 days of receipt by the Division of the notice, unless continued for good cause. The Environmental Division shall issue a written decision within 20 days of the conclusion of the hearing, and no later than 60 days from the request for hearing, unless the hearing process is extended for good cause.²⁸¹

The Environmental Division's judgement will be sent to the parties by certified post, and must contain the following information:

- 1) A statement of conclusion as to whether a violation exists and findings of facts in support of the conclusion;
- 2) Identification of the applicable statute, rule, permit, assurance, or order;
- 3) The order to be imposed or penalty to be assessed, or both, if a violation is determined to exist;
- 4) A statement that the respondent, the Secretary, and the Attorney General have a right to appeal the decision, and a description of the procedures for requesting an appeal; and
- 5) A warning that the decision will become final if no appeal is requested within 10 days of the date the decision is received.

Conduct of Hearings/Appeals:

Section 8013(a) states that the agency issuing the order shall have the burden of proof. Parties may be represented by counsel in hearings before the Environmental Division. The Agency of Natural Resources or the Board each may represent itself. A party may conduct cross-examination required for a full and true disclosure of the facts.²⁸² Section 8013(c) states that an appeal from a decision of the Environmental Division may be taken by the Secretary, the Board, or the respondent to the Supreme Court. The Attorney General also may appeal if the Attorney General has appeared as a party. An appeal by a respondent or the Attorney General

²⁸⁰ 10 V.S.A. Ch. 201, s. 8012(b).

²⁸¹ 10 V.S.A. Ch. 201, s. 8012(c).

²⁸² 10 V.S.A. Ch. 201, s. 8013(b).

to the Supreme Court shall not stay an order, but shall stay payment of a penalty. A respondent may petition the Supreme Court for a stay of an order.²⁸³

Enforcement of final orders; Collection actions:

Section 8014(a) states that the Secretary may seek enforcement of a final administrative order, final orders pursuant to an assurance of discontinuance, or civil citations pursuant to section 8019 of this title, or a landfill extension order in the Civil, Criminal, or Environmental Division of the Superior Court. Where a penalty is not paid by a respondent, the Secretary can bring a collection action in any Civil or Criminal Division of the Superior Court.²⁸⁴ Additionally, where a respondent fails to pay an assessed penalty or fails to pay a contribution as part of an Assurance of Discontinuance within the prescribed time period, the Secretary or the Natural Resources Board shall stay the effective date or the processing of any pending permit application or renewal application in which the respondent is involved until payment in full of all outstanding penalties has been received.²⁸⁵ When a municipality fails to pay an assessed penalty or fails to pay a contribution as part of an Assurance of Discontinuance²⁸⁶~~[C.B.]~~²⁸⁷~~288~~

Statute of Limitations:

Notwithstanding any other provision of law, actions brought under this chapter or chapter 211 of this title shall be commenced within the later of:

- 1) Six years from the date the violation is or reasonably should have been discovered; or
- 2) Six years from the date a continuing violation ceases.

Rulemaking:

Section 8016 states that the Secretary, in consultation with the Natural Resources Board, shall adopt rules defining classes of violations and an appropriate range of administrative penalties to be assessed for each class of violation. The classes of violation and range of penalties shall take into account the degree of potential impact on public health, safety, and welfare and the environment resulting from the violation. No administrative penalty may be assessed as part of an administrative order pursuant to this chapter until applicable rules and procedures have been adopted.

Requests for hearings on landfill closure extension orders:

Section 8018(b) states that the Environmental Division has the power to determine whether the Secretary's decision concerning landfill closure extension orders is in conformance with the provisions of sections 8008a and 6605e of this title. The Environmental judge may affirm, modify, or reverse the Secretary's decision and any provision of any order issued by the Secretary under sections 8008a and 6605e of this title. A hearing about landfill closure extension orders shall be held before the Environmental Division within 30 days of receipt by

²⁸³ 10 V.S.A. Ch. 201, s. 8013(d).

²⁸⁴ 10 V.S.A. Ch. 201, s. 8014(b).

²⁸⁵ 10 V.S.A. Ch. 201, s. 8014(b).

²⁸⁶ Ibid.

²⁸⁸ Ibid.

the Division of the notice, unless continued for good cause. The Environmental Division shall issue a written decision within 20 days of the conclusion of the hearing, and no later than 60 days from the request for hearing, unless the hearing process is extended for good cause.²⁸⁹ Section 8018(e) stipulates that the Environmental Division may grant party status to an interested person in a hearing under this section.

As used in this section, "interested person" means a person who demonstrates that the interest of the person is not adequately represented by any other party and who has:

- 1) An ownership, leasehold, or contractual interest in real property affected by the order; or
- 2) An interest in the outcome of the proceeding that is distinct from the interest of the public-at-large because of the person's place of residence, place of employment, or place of business.²⁹⁰

Section 8019- *Civil Citations*.

§ 8020. *Public participation in enforcement:*

Section 80209(a) states that an "aggrieved person" means a person who alleges an injury to a particularized interest protected by a statute listed under subsection 8003(a) of this section, and the alleged injury is attributable to a violation addressed by an assurance of discontinuance, administrative order, emergency order, or civil citation issued under this chapter. An organization or association is an aggrieved person under this section when one or more of its members would be an aggrieved person in his or her own right, the interests at stake are germane to the purposes of the organization or association, and neither the claim asserted nor the relief requested by the organization or association requires participation of the individual member.

Section 8020(b) stipulates that prior to issuing an administrative order, assurance of discontinuance, or civil citation under this chapter and sending it to the Environmental Division, the Secretary or the Board shall post a draft copy of the administrative order, assurance of discontinuance, or civil citation for public notice and written comment for 30 days. At the conclusion of the 30-day notice and written comment period, the Secretary or the Board shall evaluate the proposed action pursuant to the written comments received. After the evaluation of the written comments, the Secretary or the Board may withdraw an administrative order, assurance of discontinuance, or civil citation. At the conclusion of the 30-day notice period, if no comments have been received, the Secretary or the Board shall file the draft as a final administrative order, assurance of discontinuance, or civil citation with the Environmental Division, and the Environmental Division may review and approve as an order of the court the administrative order, assurance of discontinuance, or civil citation as set out elsewhere in this chapter. When the Secretary or Board issues a final administrative order, assurance of discontinuance, or civil citation, it shall be sent to the Environmental Division along with any written comments received during the 30-day comment period. Concurrent with filing with the Environmental Division, the Secretary or Board shall post the final proposed action for public notice for 14 days.

²⁸⁹ 10 V.S.A. Ch. 201, s. 8018(c).

²⁹⁰ 10 V.S.A. Ch. 201, s. 8018(f).

Section 8020(c) states that if a comment was received on the draft document, the Environmental Division shall hold the administrative order, assurance of discontinuance, or civil citation for 14 days from the date of filing to allow any person who has filed written comments under subsection (b), who is not satisfied with the final action of the Agency or the Board, and who meets the definition of "aggrieved person" under subsection (a) of this section to file a motion for permissive intervention pursuant to the procedure in Rule 24(c) of the Vermont Rules of Civil Procedure.²⁹¹

Section 8020(d) asserts that if no comment was filed on the draft document or if, at the conclusion of the 14-day period, no motion to intervene has been filed, the Environmental Division in its discretion, with or without a hearing, shall issue an order to affirm, vacate, or remand the administrative order, assurance of discontinuance, or civil citation.

Section 8020(e) states that in order for a person to intervene permissively in an administrative order, assurance of discontinuance, or civil citation, the person shall have filed written comments with the Agency or Board setting out the specific objection to the proposed action during the 30-day comment period required under subsection (b) of this section.

Section 8030(f) states that a motion for permissive intervention shall clearly state the basis for the claim that the administrative order, assurance of discontinuance, or civil citation is insufficient to carry out the purposes of this chapter. A hearing may be held on the motion for permissive intervention in the discretion of the Environmental Division. When the Environmental Division determines that a motion to intervene fails to meet the requirements for permissive intervention, the court shall deny the motion.

Section 8020(g)- Emergency administrative order:

When the Secretary issues an emergency administrative order, the prefiling public notice and comment provisions contained in this section shall not apply. The Environmental Division, without comment or hearing, shall act on the emergency administrative order as required by section 8009 of this title and may issue its own order. The Secretary shall publish the emergency administrative order concurrent with filing it with the Environmental Division. A person shall have 14 days from the date the emergency administrative order is filed to file a motion for permissive intervention. A motion to intervene shall not stay an emergency administrative order.

Section 8020(h)- Standard of review on motion to intervene:

The Environmental Division shall evaluate a motion from an aggrieved person for permissive intervention in light of Rule 24(b)(1) of the Vermont Rules of Civil Procedure. When the Environmental Division permits an aggrieved person to intervene, it shall be for the sole purpose of establishing that the terms of an administrative order, emergency administrative order, assurance of discontinuance, or civil citation are insufficient to carry out the purposes of this chapter. The intervenor shall have the burden of proof by a preponderance of the evidence that the administrative order, emergency administrative order, assurance of discontinuance, or civil citation is insufficient to carry out the purposes of this chapter. A hearing may be held on the claim that the administrative order, emergency administrative order, assurance of discontinuance, or civil citation is insufficient to carry out the purposes of this chapter at the

²⁹¹ Subsection (c) is similar to Planning and Development Act 2000 a person has to have been involved with the issue at first instance to have standing, and to fit definition of "aggrieved person"

discretion of the Environmental Division. The Environmental Division, upon finding that the proposed action is insufficient to carry out the purposes of this chapter, shall inform the parties in writing and shall include the basis of its decision and shall vacate the proposed action.

Section 8020(i)- Authority of Secretary or Board to object:

The Secretary or Board shall not oppose any motion filed for permissive intervention. When the Environmental Division permits a person to intervene, the Secretary, the Board, or the respondent may oppose the intervenor's claim that the proposed action is insufficient to carry out the purposes of this chapter.

Section 8020(j)- Response to citizen citations:

The Secretary shall investigate all citizen complaints of a violation of a federally authorized or delegated program and shall respond to known complainants in writing.

§ 8021- Cost recovery:

- (a) In addition to any existing authority, the Secretary, in issuing an administrative order, emergency order, or assurance of discontinuance under this chapter, may recover monies expended from a special fund for a clean-up related to an environmental violation, provided that such recovered monies not exceed \$20,000.00.
- (b) When monies are recovered under this section, they shall be deposited into the special fund from which they were expended.

Washington (State):

*Environmental Land Use and Hearings Office (ELUHO):*²⁹²

This office was established in 2010 by the Washington State Legislature by means of Section 43.21B.005 of Chapter 43.21B of Title 43 of the Revised Code of Washington (RCW). The Purpose of ELUHO is to house and provide support to three independent quasi-judicial Boards:

- 1) Pollution Control Hearings Board (PCHB);
- 2) Shorelines Hearings Board (SHB);
- 3) Growth Management Hearings Board (GMHB).

Each Board, while funded and managed within ELUHO's administrative umbrella, operates in line with separate statutory authorities and hears appeals and decides cases within its separate areas of expertise and jurisdiction. The Boards are not affiliated with any other state government, regulatory agency, or local unit of government. All Board members are salaried employees of the state.

Pollution Control Hearings Board (PCHB):

Created in 1970, the PCHB hears and decides appeals from state and local governmental agencies on a wide variety of environmental permits or penalty orders. (RCW 43.21B.110).

²⁹² <https://www.eluho.wa.gov/content/23>.

The PCHB has three members, appointed by the governor, and confirmed by the State Senate for staggered six-year terms. One of the three must be an attorney.²⁹³

Shorelines Hearings Board (SHB):

Established in 1971 the SHB hears and decides appeals of shoreline building and construction permits, or penalty orders issued by local or state governmental agencies. (RCW 90.58.170). The SHB consists of the three PCHB members, plus one representative each from the Department of Natural Resources, Counties and Cities.²⁹⁴

Growth Management Hearings Board (GMHB):

Created in 1990, the GMHB hears and decides appeals of city or county decisions on comprehensive land use plans and development regulations or shoreline management plans. (RCW 36.70A.250) The GMHB has five members appointed by the governor for staggered six-year terms. The Board is comprised of a mix of attorneys and former county or city elected officials and represent three regions of the state; the Eastern Washington Region, the Central Puget Sound Region, and the Western Washington Region.²⁹⁵ The Growth Management Hearings Board assists local governments and the State of Washington in managing growth by providing a pathway for appeals arising from the Growth Management Act (Chapter 36.70A RCW).²⁹⁶

²⁹³ <https://www.eluho.wa.gov/content/23>.

²⁹⁴ <https://www.eluho.wa.gov/content/23>.

²⁹⁵ <https://www.eluho.wa.gov/content/23>.

²⁹⁶ <https://www.eluho.wa.gov/content/10>.

Regional Court/Administrative Bodies	Vermont Environmental Division of the Superior Courts	Washington Environmental Land Use and Hearings Office (ELUHO)
Jurisdiction	<p>This ECT was established under the Uniform Environmental Law Enforcement Act 1989.</p> <p>It is the main authority concerning environmental issues in Vermont.</p> <p>Its purpose is to enhance administrative decisions made by the Secretary and the Natural Resources Board (NRB), and to enhance civil enforcement in the Superior Courts.</p> <p>V.S.A. Title 4, Chapter 27 and V.S.A. Title 10, Chapter 201 are the two pieces of legislation that set out the regulations for the ECT.</p>	<p>An administrative body that houses and provides support for three independent Quasi-Judicial Bodies:</p> <ol style="list-style-type: none"> 1) Pollution Control Hearings Board (PCHB); 2) Shorelines Hearings Board (SHB); 3) Growth Management Hearings Board (GMHB). <p>The PCHB hears and decides appeals from state and local governmental agencies on a wide variety of environmental permits or penalty orders.</p> <p>The SHB hears and decides appeals of shoreline building and construction permits, or penalty orders issued by local or state governmental agencies.</p> <p>The GMHB hears and decides appeals of city or county decisions on comprehensive land use plans and development regulations or shoreline management plans.</p>

Type of Body (Administrative/Judicial)	Judicial	Administrative
Use of Experts	<p>Two judges will sit alone on the Environmental Division for a term of 6 years.</p> <p>These judges will be authorised to hear cases concerning environmental law, along with other matters that come before Vermont’s Superior Court.</p> <p>The law stipulates that a judge of the Environmental Division must be an attorney admitted to practice before the Vermont Supreme Court.</p> <p>In regards to expert knowledge as evidence in proceedings, Environmental Judges are authorised to take judicial notice of cognizable facts, and of generally recognized technical or scientific facts within the agency's specialized knowledge.</p>	<p>The PCHB has three members, appointed by the governor, and confirmed by the State Senate for staggered six-year terms. One of the three must be an attorney.</p> <p>The SHB consists of the three PCHB members, plus one representative each from the Department of Natural Resources, Counties and Cities</p> <p>The GMHB has five members appointed by the governor for staggered six-year terms. The Board is comprised of a mix of attorneys and former county or city elected officials and represent three regions of the state; the Eastern Washington Region, the Central Puget Sound Region, and the Western Washington Region.</p>
Stage (First/Appellate)	This ECT can hear first instance judicial challenges by means of Judicial Review, or can hear appellate challenges concerning civil matters from the lower courts in Vermont.	The PCHB, The SHB, and the GMHB all hear appellate challenges of administrative decisions made concerning each of their jurisdictions.

<p>Appeal</p>	<p>Parties may appeal decisions made by this ECT to the Supreme Court of Vermont, by filing a notice of appeal within 30 days of the ECT's decision.</p>	<p>A party to a PCHB or SHB decision may file a petition for reconsideration within 10 calendar days after the "date of mailing" of the final decision to the parties. Appeals will be heard in the Superior Courts.</p> <p>A GMHB decision may be appealed to the Superior Courts on Judicial Review. The aggrieved party must appeal the decision within 30 days of the issuance of the final Board order being appealed.</p>
<p>Federal/Regional</p>	<p>Vermont</p>	<p>Washington State</p>
<p>Use of Alternative Dispute Resolution (ADR) (Any/Preferred/Mandatory)</p>	<p>The Secretary or the Natural Resources Board may accept an assurance of discontinuance of a violation as an alternative to administrative or judicial proceedings. An assurance of discontinuance must include the following to be valid:</p> <ol style="list-style-type: none"> 1) A statement of the facts that provide the basis for claiming the violation exists and a description of the alleged violation determined by the Secretary or the Natural Resources Board; and 2) An agreement by the respondent to perform specific actions to prevent, abate, or alleviate environmental 	<p>Both parties can agree to avail of the ECT's mediation program instead of pursuing litigation through the ECT's quasi-judicial system.</p>

	<p>problems caused by the violation, or to restore the environment to its condition before the violation, including financial responsibility for such actions.</p> <p>When an assurance of discontinuance is signed by the Environmental Division, the assurance shall become a judicial order.</p> <p>Monies are paid alongside assurances of discontinuance to help mitigate the damage caused, or as donations to charities to raise awareness against environmental damage.</p>	
Relief	To grant or deny an appeal of civil or administrative decisions.	The PCHB, the SHB, and the GMHB may all either grant or deny appeals of administrative decisions that concern their jurisdictions.
Urgent Relief (Preventative Orders/Injunctions)	<p>The ECT can authorise the issuance of an emergency administrative order made by the Secretary of Natural Resources, or the Board of Natural Resources.</p> <p>These orders can be made where:</p> <p>a) A violation presents an immediate threat of</p>	A person appealing a Department of Natural Resources approval, or any operator, timber owner, or forest landowner appealing a stop work order, may request a temporary suspension or discontinuance of the department's decision. The Appellant must file a motion, supported by affidavit, setting out specific facts supporting a temporary suspension or

	<p>substantial harm to the environment or an immediate threat to the public health; or</p> <p>b) An activity will or is likely to result in a violation that presents an immediate threat of substantial harm to the environment or an immediate threat to the public health; or</p> <p>c) An activity requiring a permit has been commenced and is continuing without a permit.</p>	<p>discontinuance. Upon receipt of the motion, the presiding officer will schedule a hearing and serve notice of the hearing on all parties.</p> <p>In emergency situations, a temporary suspension or discontinuance may be granted by the presiding ELUHO officer without a hearing, only if it clearly appears from specific facts shown by affidavit that immediate and irreparable injury, loss, or damage will result to the moving party before any adverse party can be heard in opposition.</p>
<p>Sanctions</p>	<p>This ECT is authorised to review and redetermine the amount of a penalty by applying the criteria set out in subsections 8010(b) and (c) of V.S.A. Title 10, Chapter 201.</p> <p>A penalty seems to be either punitive and/or compensatory pending on the factors in each case.</p> <p>The factors to be determined are:</p> <p>1) The degree of actual or potential impact on public health, safety, welfare, and the environment resulting from the violation;</p> <p>2) The presence of mitigating circumstances,</p>	<p>N/A.</p>

	<p>including unreasonable delay by the Secretary in seeking enforcement;</p> <p>3) Whether the respondent knew or had reason to know that the violation existed;</p> <p>4) The respondent's record of compliance;</p> <p>5) [Repealed];</p> <p>6) The deterrent effect of the penalty;</p> <p>7) The State's actual costs of enforcement;</p> <p>8) The length of time that the violation existed.</p> <p>The maximum penalty that can be charged per violation is \$42,500.00. If the violation is ongoing, the Secretary may charge up to \$17,000 per day that the violation continues.</p> <p>The maximum penalty cannot exceed \$170,000.</p>	
<p>Costs- Filing Fees</p>	<p>Filing in the Environmental Division costs \$295.00 (32 V.S.A. § 1431(b)(1) (2015)).²⁹⁷</p>	<p>There is no fee to file an appeal with the PCHB or SHB.</p> <p>There is no cost or fee to file a petition for review with the GMHB.</p>
<p>Costs- Legal Representation</p>	<p>This ECT offers a free legal clinic in collaboration</p>	<p>Parties may represent themselves in an appeal to</p>

²⁹⁷ Vermont Judiciary, Fees <<https://www.vermontjudiciary.org/fees>> Accessed 19th July 2021.

	with the Vermont Bar Association Pro Bono/Low Bono Program.	the PCHB or the SHB. There is information on the bodies websites on how parties are to conduct themselves, participate in discovery, and file documents where they choose to represent themselves. A person or an organization is not required to be an attorney or be represented by an attorney to file a PFR or appear before the GMHB as a party. “Pro Se Petitioners” (parties representing themselves or citizen-group associates before the Board) may represent themselves before the GMHB.
Types of Decision (Binding/Recommendations)	Binding Decisions	Binding Decisions.

6. Philippines- Procedural Rules

The Philippines, a mixed Common and Civil Law jurisdiction²⁹⁸, stands out among other legal jurisdictions not only for its hybrid nature but also for the numerous innovations which mark its environmental jurisprudence. It would be prudent however to first provide some legal context for these innovations.

The Constitution of the Philippines has within it a right to a healthy environment and the Supreme Court in the Philippines has characterised this right as so basic that it “need not even be written in the Constitution for [it is] assumed to exist from the inception of humankind”²⁹⁹. Taking this attitude among the superior Courts into account and the perception that the Philippines is one of the countries whose environment is most degraded³⁰⁰, it is little wonder that many innovations have arisen in its environmental jurisprudence. Two cases come to mind which illustrate this and both pertain to standing, a key obstacle to effective environmental enforcement around the world. The first, *Oposa v Factoran* 1993, saw the Supreme Court

²⁹⁸ Elizabeth Barrett Ristroph, ‘The Role of Philippine Courts in Establishing the Environmental Rule of Law’ (2012) 42.9 *Environmental Law Reporter News and Analysis* pp. 10866, 10874.

²⁹⁹ Ristroph, ‘The Role of Philippine Courts in Establishing the Environmental Rule of Law’ 10871.

³⁰⁰ Hon. Hilario G Davide Jr. and Sara Vinson, ‘Green Courts Initiative in the Philippines’ (2010) 3.1 *Journal of Court Innovation* 123, 123.

recognised representative standing on behalf of unborn generations for environmental cases³⁰¹. The second *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay* 2008, saw representative standing granted to the people of Manila Bay on behalf of cetacean species such as dolphins and whales³⁰². The innovations of the Philippine's environmental jurisprudence extend beyond mere standing and the most important of these are the Green Courts Initiative, the Philippines Judicial Academy and the Rules of Procedure for Environmental Cases.

Green Courts Initiative

In January 2008, the Administrative Order Re: Designation of Special Courts to Hear, Try and Decide Environmental Cases was issued³⁰³. It designated 117 total courts around the Philippines to act as Environmental Courts which would hear cases involving violations of legislation aimed at protecting the nation's environment and natural resources³⁰⁴. Included with this order was a non-exhaustive list of environmental laws over which these newly Green Courts had jurisdiction. As of 2016 all 117 courts, some 84 Regional Trial Courts, 7 Metropolitan Trial Courts, and 26 Municipal Trial Courts³⁰⁵, were still in operation though their caseload seems to be declining³⁰⁶. These designated courts still operate as general courts, dealing with civil and criminal cases but also function as the only courts in which environmental cases may be filed and any environmental case wrongly filed in another court must be transferred to them³⁰⁷. These designated courts, according to Rules of Procedure for Environmental Cases, must be by staffed by so-called 'green judges' who possess not only an understanding of environmental law but also of environmental philosophy³⁰⁸. Naturally this requires training and thus the value of the Philippine Judicial Academy.

A final note with regard to these Green Courts is that per Rule 2, Section 12 of the Rules of Procedure for Environmental Cases, citizen suits permit deferring the payment of filing and legal fees until after their judgement is rendered³⁰⁹. Costs are recoverable but generally damages are not recoverable save where a Court order requires a defendant to pay for restoration.

Philippine Judicial Academy

The Philippine Judicial Academy (PJA) is the education sector of the Supreme Court and was created by Republic Act No. 8557³¹⁰. Distinct from the Supreme Court but still a part of it, the

³⁰¹ *Minors Oposa v Factoran*, GR No. 101083, 224 SCRA 792 July 30th 1993 as found in Ristroph, 'The Role of Philippine Courts in Establishing the Environmental Rule of Law' 10878.

³⁰² *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay* G.R. No. 171947-48, 574 SCRA 661 December 18th 2008, as found in Gregorio Rafael P Bueta, 'Environmental Jurisprudence from the Philippines: Are Climate Litigation Cases Just Around the Corner?' Fri 21st June 2019 *International Union for Conservation of Nature* (Online resource) - Dated Accessed 7th September 2021.

³⁰³ Davide Jr. and Vinson, 'Green Courts Initiative in the Philippines' 123-4.

³⁰⁴ Davide Jr. and Vinson, 'Green Courts Initiative in the Philippines' 124.

³⁰⁵ Davide Jr. and Vinson, 'Green Courts Initiative in the Philippines' 124.

³⁰⁶ George Pring and Catherine Pring, 'Environmental Courts and Tribunals: A Guide for Policy Makers' (2016) *Global Environment Outcomes LLC (GEO) and University of Denver Environmental Court and Tribunals Study* 29.

³⁰⁷ Pring and Pring, 'Environmental Courts and Tribunals: A Guide for Policy Makers' 29.

³⁰⁸ Amado S Tolentino Jr and Ana Maria E Tolentino 'Philippines: Environmental Law and Justice - Developments and Reforms' (2011) 41.3 *Environmental Policy and Law* pp. 152, 163.

³⁰⁹ Rule 2, Section 12 of The Rules of Procedure for Environmental Cases: Annotation to the Rules of Procedure for Environmental Cases.

³¹⁰ Davide Jr. and Vinson, 'Green Courts Initiative in the Philippines' 124.

PJA is a training school for justices, judges, court personnel lawyers and aspirants to judicial posts³¹¹. The PJA's mission is to develop judicial competence and instil a proactive attitude towards the pursuit of judicial excellence. To that end the PJA conducts seminars, workshops, and training programs on various topics such as orientation programs for new judges³¹². This includes various specialised environmental law training programs in order to ensure the efficacy of the adjudication and management of environmental cases. The training also acts as a means of keeping judges updated on environmental law and rules. The PJA does more than just train judges however, as it holds conventions and conferences, conducts surveys on the needs of judges, and forms Focus Groups such as the one which assesses the application of the Rules of Procedure for Environmental Cases³¹³.

The Rules of Procedure for Environmental Cases

The Rules of Procedure for Environmental Cases were created in 2010 to provide a simplified, speedy, and inexpensive procedure for the enforcement of environmental rights and duties in the Philippines³¹⁴. The Rules contain both general matters which improve the Green Court's functionality as a font of environmental justice and also specific innovations to render that justice more effective. The first general improvement is set down in Rule 4, Section 5, which provides that designated Green Courts shall prioritise the adjudication of environmental cases over their general caseload³¹⁵ so as to better facilitate swift disposal of environmental cases. Rule 20 adopts the Precautionary Principle which acts as a means for the Courts to bridge the gap between evidence and injury in cases where a causal link between human activity and environmental effect cannot be established with scientific certainty³¹⁶. It operates to shift the Burden of Proof to proponents of an activity to show that it will not harm the environment³¹⁷.

The Rules also provide for the Pre-Trial Alternate Dispute Resolution. Rule 3, Section 3 sets out that at the start pre-trial conference, if the parties have not settled, the Court shall make a mandatory referral for mediation for the parties or their counsel, if authorised by their clients³¹⁸. Rule 3, Section 5, enables a judge to issue a Consent Decree, approving a settlement agreement between parties³¹⁹, thus reducing the Court's caseload.

As it is often the case that violations of environmental law do not result in an immediate injury to a party, so called victimless offences, Rule 9, Section 3 is particularly useful. It provides for the appointment of a Special Prosecutor in criminal cases where there is no private offended party to better the enforcement of such laws³²⁰. The remaining Rules are the most significant and thus will be discussed in far greater detail. They govern Standing, Strategic Lawsuits

³¹¹ Website of the Philippine Judicial Academy - Dated Accessed 12th September 2021.

<https://philja.judiciary.gov.ph/index.php>

³¹² Website of the Philippine Judicial Academy. Dated Accessed 12th September 2021.

<https://philja.judiciary.gov.ph/index.php>

³¹³ Website of the Philippine Judicial Academy. Dated Accessed 12th September 2021.

<https://philja.judiciary.gov.ph/index.php>

³¹⁴ Rule 1, Section 3(b) of The Rules of Procedure for Environmental Cases.

³¹⁵ Rule 4, Section 5 of The Rules of Procedure for Environmental Cases.

³¹⁶ Rule 20, Section 1 of The Rules of Procedure for Environmental Cases.

³¹⁷ 'Margin of Safety in all Decision-Making' paragraph under Rule 20, Section 1 of The Rules of Procedure for Environmental Cases.

³¹⁸ Rule 3, Section 3 of The Rules of Procedure for Environmental Cases.

³¹⁹ Rule 3, Section 5 of The Rules of Procedure for Environmental Cases.

³²⁰ Rule 9, Section 3 of The Rules of Procedure for Environmental Cases.

Against Public Participation (SLAPP) Suits, Temporary Protection Orders, Writ of Continuing Mandamus and the Writ of Kalikasan.

The Rules dealing with Standing are significant not only for the fact that Standing is one of the key factors inhibiting Access to Justice but also for the extent to which the Rules liberalise it. Rule 2, Section 4, enables the “real party in interest, including the government and juridical entities authorized by law” to file a civil action regarding the enforcement or violation of any environmental law.³²¹ This is significant in that it grants citizens and non-citizens alike standing so long as they can show direct and personal injury³²². Rule 2, Section 5, takes the *Oposa* case and gives it statutory footing as it states that any “Filipino citizen in representation of others, including minors or generations yet unborn, may file an action to enforce rights or obligations under environmental laws”³²³. Though unavailable to non-nationals, this citizen suit is still an incredibly liberal example of representative standing. It is noted in the Annotations to the Rules of Procedure for Environmental Cases that this “collapses the traditional rule on personal and direct interest, on the principle that humans are stewards of nature”³²⁴.

Strategic Lawsuits Against Public Participation (SLAPP) are suits filed to harass, pressure or prevent any person from enforcing environmental laws or protecting or asserting environmental rights³²⁵. Rule 6, Section 2 enables a person who has a SLAPP filed against them to allege that the suit filed is indeed a SLAPP suit as a defence against it³²⁶. The hearing for a SLAPP defence is summary in nature per Rule 6, Section 3 and these hearings are prioritised per Rule 6, Section 4³²⁷. Per Rule 19, Section 1, in criminal cases the accused can file a motion to dismiss the criminal action as a SLAPP rather than motion to quash³²⁸.

In the Philippines there are Environmental Protection Orders (EPO’s), which enable the Court to issue an order directing any party to act or refrain from action so as to protect, preserve, or rehabilitate the environment³²⁹. Rule 2, Section 8 provides an additional complementary form of relief called the Temporary Environmental Protection Orders (TEPO’s). These are issued by judges in EPO applications where the issue is one of “extreme urgency and the applicant will suffer grave injustice and irreparable injury”³³⁰ on an *Ex Parte* basis. As the name suggests, they are issued only on a short-term basis and the Court must monitor the act or acts which are the subject matter of the order and may lift them at any time as the circumstances warrant³³¹. Per Rule 5, Section 3, the Court can convert a TEPO to a permanent EPO or a Writ of Continuing Mandamus³³².

³²¹ Rule 2, Section 4 of The Rules of Procedure for Environmental Cases.

³²² ‘Real Party in Interest’ paragraph under Rule 2, Section 4 of The Rules of Procedure for Environmental Cases.

³²³ Rule 2, Section 5 of The Rules of Procedure for Environmental Cases.

³²⁴ ‘Citizens Suit’ paragraph under Rule 2, Section 5 of The Rules of Procedure for Environmental Cases.

³²⁵ Rule 6, Section 1 of The Rules of Procedure for Environmental Cases.

³²⁶ Rules 6, Section 2 of The Rules of Procedure for Environmental Cases.

³²⁷ Rule 6, Section 3 and ‘Prioritisation on the Hearing and Resolution of a SLAPP Defense’ paragraph under Rule 6 Section 4 of The Rules of Procedure for Environmental Cases.

³²⁸ ‘SLAPP as Criminal Cases; motion to dismiss’ under Rule 19, Section 1 of The Rules of Procedure for Environmental Cases.

³²⁹ Rule 1, Section 4(d) of The Rules of Procedure for Environmental Cases.

³³⁰ Rule 2 Section 8 of The Rules of Procedure for Environmental Cases.

³³¹ Rule 2 Section 8 of The Rules of Procedure for Environmental Cases.

³³² Rule 5, Section 3 of The Rules of Procedure for Environmental Cases.

The Rules provide for two special remedies, the Writ of Continuing Mandamus and the Writ of Kalikasan (Nature). Both are civil remedies in environmental actions. Rule 8 deals with the Writ of Continuing Mandamus, which is available when a government agency, or entity unlawfully neglects to perform a duty which relates to either the enforcement or the violation of an environmental law, regulation, or right therein and where there is “no other plain, speedy, or adequate remedy”³³³. Upon the aggrieved person’s petition, the Court may issue the Writ to command the respondent to perform their duty, be it in an act or series of acts, until the judgment is satisfied and to pay damages sustained by the applicant due to malicious neglect to perform their duties³³⁴. In addition the subject of the writ must submit reports on their progress periodically, thus enabling the Court to monitor compliance, either on its own or by an appropriate agent³³⁵. The Court may also issue a TEPO for the preservation of the rights of the parties pending the proceedings³³⁶. This Writ has actually been adopted in different countries such as Australia, India, the USA, and Pakistan³³⁷.

Rule 7 governs the Writ of *Kalikasan*, the other unique judicial remedy. It is available to natural or juridical persons, entities authorised by law, people’s organisations, NGO’s, and any public interest group accredited by or registered with any government agency³³⁸. It is a remedy on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving “environmental damage of such magnitude as to prejudice life, health, or property of inhabitants in two or more cities or provinces”³³⁹. It is immediate in nature and Rule 7, Section 15 lists its specific remedies though the list is non-exhaustive. Remedies listed include directing the respondent public official, government agency, private person or entity to protect, preserve, rehabilitate or restore the environment and directing them to permanently cease and desist from committing acts or neglecting the performance of a duty in violation of environmental laws resulting in environmental destruction or damage among others³⁴⁰. Rule 7, Section 11, provides that the Court may call for a preliminary conference to simplify issues and address other matters before the actual hearing³⁴¹. The Writ can be filed with the Court of Appeal or Supreme Court for no fee and per Rule 7, Section 12, the Writ can even be used for discovery purposes³⁴².

Problems

There are however issues that plague the Philippines despite the progress and innovations made. There are of course issues in procuring evidence and crafting effective remedies, despite the availability of powerful civil remedies such as the Writs of *Kalikasan* and Continuing Mandamus. Corruption too is an issue hampering effective enforcement and commonly causes controversy in the Philippines³⁴³. The greatest obstacle however faced in the Philippines is the lack of adequate enforcement. Newspapers in the Philippines commonly report upon public and private failures to comply with environmental law, the most damaging being a sheer lack

³³³ Rule 8, Section 1 of The Rules of Procedure for Environmental Cases.

³³⁴ Rule 8, Section 1 of The Rules of Procedure for Environmental Cases.

³³⁵ Rule 8, Section 7 of The Rules of Procedure for Environmental Cases.

³³⁶ Rule 8, Section 5 of The Rules of Procedure for Environmental Cases.

³³⁷ Bueta, ‘Environmental Jurisprudence from the Philippines: Are Climate Litigation Cases Just Around the Corner?’ Accessed 7th September 2021.

³³⁸ Rule 7, Section 1 of The Rules of Procedure for Environmental Cases.

³³⁹ Rule 7, Section 1 of The Rules of Procedure for Environmental Cases.

³⁴⁰ Rule 7, Section 15 of The Rules of Procedure for Environmental Cases.

³⁴¹ Rule 7, Section 11 of The Rules of Procedure for Environmental Cases.

³⁴² Rule 7, Section 12 of The Rules of Procedure for Environmental Cases.

³⁴³ Ristroph, ‘The Role of Philippine Courts in Establishing the Environmental Rule of Law’ 10885.

of administrative and judicial capacity³⁴⁴. Indeed, the Courts are simply unequipped to handle all the executive and legislative work needed to address the country's environmental problems. That being said, there is some hope in the fact that where the Rules are properly understood and employed, environmental cases are dealt with faster and more in favour of the pro-environment litigant³⁴⁵.

7. Canada

Jurisdiction – Canada

Background

Canada, a Common Law jurisdiction, is a federal state under its constitution, composed of several provinces. Power is divided along federal and provincial lines³⁴⁶ and consequently, so too is responsibility for the environment dealt with at both the federal and provincial level. The Canadian federal government has power over matters like fisheries and shipping while also retaining residual power over matters of general concern like the environment³⁴⁷. Provincial governments too have powers, which are eminently important in the environmental context. Authority for provincial public lands, the use of natural resources, local works or developments all lies with the provincial governments³⁴⁸. Indeed, Harbell has noted that provinces are in fact the “most important environmental regulators in Canada...”³⁴⁹ though “...they are limited by overriding federal authority in certain areas and geographic restrictions”³⁵⁰. Reflecting this is the abundance of provincial ECT’s in Canada as nigh every province possesses at least one ECT and some possess much more. Another ECT operates at the federal level, though it is among the most limited in its jurisdiction.

In this study of Canada’s ECT’s, a number of common factors arose. They are generally administrative bodies and quasi-judicial in nature. Their jurisdictions are exclusively civil with no ECT examined in this study possessing anything in the way of a criminal jurisdiction. Their jurisdictions also tend to be limited to decisions made under certain acts like the Alberta Environmental Appeals Board, planning projects or development and environmental impact assessments like the Mackenzie Valley Review Board in the Northwest Territories, the extraction of natural resources and their proper use, which are rather abundant in Canada, like the Oil and Gas Appeal Tribunal in British Columbia, or confined to certain industries such as the Forest Appeals Commission in British Columbia.

Generally, ECT’s in Canada can vary, affirm, or revoke decisions appealed to them. Some ECT’s are actually able to order damages or make costs orders though such powers are not particularly common. Others are quite involved in resolving disputes between interested parties. The Surface Rights Board of British Columbia for example exclusively focuses on resolving disputes between companies and private landowners whose lands those companies require access to for the detection and extraction of subsurface resources such as oil³⁵¹. Some

³⁴⁴ Ristroph, ‘The Role of Philippine Courts in Establishing the Environmental Rule of Law’ 10885.

³⁴⁵ Ristroph, ‘The Role of Philippine Courts in Establishing the Environmental Rule of Law’ 10886.

³⁴⁶ Roger Cotton and John S Zimmer, ‘Canadian Environmental Law: An Overview’ (1992) 18 *Canada-United States Law Journal* 63, 63.

³⁴⁷ James W Harbell, ‘Canada Tackles Environmental Problems’ (2002) 12:2 *Business Law Today* 37, 37-8.

³⁴⁸ Harbell, ‘Canada Tackles Environmental Problems’ 38.

³⁴⁹ Harbell, ‘Canada Tackles Environmental Problems’ 38.

³⁵⁰ Harbell, ‘Canada Tackles Environmental Problems’ 38.

³⁵¹ Website for the Surface Rights Board of British Columbia – Date Accessed: 6th August 2021.

<http://www.surfacerightsboard.bc.ca/>

however are effectively powerless as the most they can do is investigate issues and inform the public and advise Ministers.

The Bureau d'Audiences Publique sur l'Environment of Quebec is one such ECT though the power of its influence must be noted. Experts are generally involved in the deliberation or investigative efforts of these bodies and indeed the Boards and Panels in these ECTs are themselves composed of experts like foresters or scientists. Generally Canadian ECTs' decisions themselves are generally subject to Judicial Review. One distinct feature of Canadian ECTs is the integration of Alternative Dispute Resolution (ADR) in their operations. ADR has been noted for its capacity to help save time and money, to better meet the interests of the parties, to produce better outcomes, and ensure better compliance with any agreement reached³⁵². Indeed, among some Canadian ECT members there is a shared consensus that ADR processes surpass formal hearings in efficiency and can save all involved considerable time and money³⁵³. The Ontario Land Tribunal (OLT) for example engages in Case Management Conferences prior to a hearing. These meetings serve to help identify issues, establish uncontested evidence, and discuss the possibility of Alternative Dispute Resolution³⁵⁴.

The most common method by far is mediation, which is practiced in, encouraged by, and even facilitated in ECT's across Canada. In mediation, both parties to an appeal come together in a private and somewhat less formal setting to discuss the issues at the heart of an appeal to see if the issue can be resolved without the direct involvement of the ECT. There is also a single federal ECT, the Environmental Protection Tribunal Canada (EPTC), which reviews Administrative Monetary Penalties, and the Compliance Orders issued by the enforcement officers of Environment and Climate Change Canada, (ECCC) the Canadian federal government's department for the Environment. Interestingly, the ECCC keeps a record of corporations convicted of environmental offences³⁵⁵.

A final point to note is the perhaps novel idea of Intervenor Funding, which the short-lived *Intervenour Funding Project Act*, R.S.O. 1990, c. I.13 attempted to enact. This statute enabled a person, an intervenor, to apply to the Board, either the Ontario Energy Board or the Environmental Assessment Board³⁵⁶, for Intervenor Funding³⁵⁷. Put simply, Intervenor Funding enables an intervenor to object to a project that they otherwise could not afford to object to, as it requires one of the project's proponents to fund the intervenor's objection. A panel is established to consider the application, considering the applicant's eligibility for the funding, the amount of funding required, and other factors³⁵⁸. This panel also determines the funding proponent(s)³⁵⁹, who may object to being designated as such³⁶⁰. Any decision on Intervenor Funding could only be appealed with regard to a matter of law³⁶¹.

³⁵² Matthew Taylor, Patrick Field, Lawrence Susskind, and William Tilleman, 'Using Mediation in Canadian Environmental Tribunals: Opportunities and Best Practices' (1999) 22.2 *Dalhousie Law Journal* 51, 55.

³⁵³ Taylor, Field, Susskind, and Tilleman, 'Using Mediation in Canadian Environmental Tribunals: Opportunities and Best Practices' 63.

³⁵⁴ Website for the Ontario Land Tribunal - Date Accessed: 12th August 2021. <https://olt.gov.on.ca/>

³⁵⁵ Website for Environment and Climate Change Canada - Date Accessed: 14th August 2021.

<https://www.canada.ca/en/environment-climate-change.html>

³⁵⁶ Section 1 Intervenor Funding Project Act, R.S.O. 1990, c. I.13.

³⁵⁷ Section 3(1) Intervenor Funding Project Act, R.S.O. 1990, c. I.13

³⁵⁸ Section 7 Intervenor Funding Project Act, R.S.O. 1990, c. I.13.

³⁵⁹ Section 6 (1) Intervenor Funding Project Act, R.S.O. 1990, c. I.13.

³⁶⁰ Section 6(3) Intervenor Funding Project Act, R.S.O. 1990, c. I.13.

³⁶¹ Section 13 Intervenor Funding Project Act, R.S.O. 1990, c. I.13.

The Natural Resource Conservation Board of Alberta too makes use of intervener funding. This ECT determines whether a proposed natural resource project requires an Environmental Impact Assessment and if it is in the public interest. Upon application, an intervener in this process can apply for funding to better participate in the ECT's process so as to better allow access to Justice³⁶². Given the sheer volume of ECT's in Canada, this report shall not contain a summary of each ECT in Canada and their operation. Instead it shall contain a representative selection of the ECT's active in Canada's provinces and along with the aforementioned EPTC.

Alberta

Environmental Appeals Board

The Environmental Appeals Board is an independent administrative agency and can be considered a quasi-judicial body³⁶³. It operates at first instance and hears appeals based on certain decisions, including Water Licences, Approvals, Enforcement Orders, and Environmental Protections Orders. The Board retains final say for certain decisions and for others merely makes recommendations to the Minister of Environment and Parks who has the final say. There was mass public participation in its creation and various statutes govern its jurisdiction such as the Environmental Protection and Enhancement Act and the Water Act. The Board uses mediation to resolve disputes where possible, encourages its use as the primary method of appeal resolution, and educates parties as part of the mediation process. It can enact mediation on request or upon its own initiative. The Board is composed of scientists, lawyers, and professional mediators and it has the power to retain experts and compel persons and evidence. Its decisions are subject to Judicial Review to ensure compliance with the legislation and parties may make applications for an award of costs but such awards remain at the Court's discretion.

Natural Resources Conservation Board (NRCB)

The Natural Resources Conservation Board is a quasi-judicial regulatory agency, which operates at the first instance and reviews major Natural Resource projects and the regulation of Confined Feeding Operations³⁶⁴. The NRCB determines whether proposed natural resource projects require an Environmental Impact Assessment and if they are in the public interest, considering social, environmental, and economic effects. There is a two-stage review process in which the Board meets to discuss the merits of the request and decide whether to deny review or hold a hearing, be it public or written.

The NRCB also coordinates mediation and can award intervener funding to allow interveners to participate fully in project reviews where otherwise it would not have been possible for them to do so, though an application must be made first and their need for funding must be assessed. The applicant and directly affected parties can, with leave of the Court of Appeal, apply to the Court of Appeal to appeal a decision issued by the NRCB, following a Board review of an approval officer decision. This appeal however may only address questions of law or jurisdiction. Judicial Review is also available against enforcement orders.

³⁶² Website for the Natural Resources Conservation Board of Alberta – Date Accessed: 5th August 2021.
<https://www.nrcb.ca/>

³⁶³ Website for the Environmental Appeals Board of Alberta – Date Accessed: 5th August 2021.
<http://www.eab.gov.ab.ca/>

³⁶⁴ Website for the Natural Resources Conservation Board of Alberta – Date Accessed: 5th August 2021.
<https://www.nrcb.ca/>

British Columbia

Environmental Appeals Board/Forest Appeals Commission/Oil and Gas Appeal Tribunal

The Environmental Appeals Board is an independent administrative agency, which hears appeals from certain decisions made by government officials related to environmental issues³⁶⁵. Its appeals process is public. It operates at the first instance and can confirm, vary or rescind the decision being appealed or make a decision the original decision-maker could have made, provided that it is reasonable. The Board's preferred method of dispute resolution however is mediation and indeed it will encourage and facilitate mediation upon request and with the consent of all involved. The Board actually reviews notices of appeals for any potential of Alternative Dispute Resolution to make mediation more readily available. The Board is jointly administered with the Forest Appeals Commission and the Oil and Gas Appeal Tribunal to limit costs and so all three share the same members who themselves are experts, including lawyers, biologists, engineers, and foresters. The Board is not accountable to the government for any quasi-judicial decision but its decisions can be reviewed by the Court or Cabinet or overseen by a Minister. The Board's decision can be appealed within 60 days to the SC of British Columbia for Judicial Review.

Forest Practices Board

The Forest Practices Board is a watchdog body, which conducts audits/investigations and issues public reports on compliance with BC forest practices compliance³⁶⁶. The FPB cannot issue penalties, merely issue recommendations. It does however have standing to appeal certain decisions made by government officials under the *Forest and Range Practices Act* and *Wildfire Act*, either on its own initiative or upon public request, to the Forest Appeals Commission. These decisions include determinations of noncompliance, penalties, or approval approvals of plans for forestry or range operations.

Surface Rights Board

The Surface Rights Board is an independent administrative agency, which resolves disputes between landowners and companies that require access to private land for subsurface resources³⁶⁷. It operates at the first stage and its members are appointed by the provincial government's cabinet. The SRB facilitates and prefers mediation as a means of dispute resolution between parties. Mediation is conducted privately and any position adopted by a party in mediation may not be used against them in subsequent arbitration proceedings, should the mediation fail. Landowners are normally entitled to receive costs for preparing for and attending mediation proceedings. The SRB conducts arbitration between companies and landowners and may find with either side. Beyond access disputes, the SRB also handles rent renegotiations. In cases where the SRB finds that the company had no right of entry to the land, it may determine that compensation is due to the landowner as well as fix the amount of compensation due. It can also order damages where there has been damage to or loss of land due to the company's activity. It can also make cost orders against any party, either on its initiative or upon request. In exceptional circumstances, the SRB may order a party to pay its

³⁶⁵ Website for the Environmental Appeals Board of British Columbia – Date Accessed: 6th August 2021.

<http://www.eab.gov.bc.ca/index.htm>

³⁶⁶ Website for the Forest Practices Board of British Columbia – Date Accessed: 6th August 2021.

<https://www.bcfpb.ca/>

³⁶⁷ Website for the Surface Rights Board of British Columbia – Date Accessed: 6th August 2021.

<http://www.surfacerightsboard.bc.ca/>

own costs. Its decisions are binding though subject to appeal to the Court of Appeal with said Court's leave and Judicial Review by the British Columbian Supreme Court.

Manitoba

Clean Environment Commission

The Clean Environment Commission is an administrative governmental agency which aims to provide for public participation in environmental protection³⁶⁸. Thus, its efficacy is very much linked to an engaged public. The CEC conducts investigations and hearings and prepares reports for the Minister. The Minister is under no legal obligation to adhere to these reports but must give the reasons for any deviations from them. It also provides mediation services to parties in an environmental management dispute at the Minister's request and its members are experts such as civil engineers, managers, politicians, consultants, and conservationists.

Nova Scotia

Nova Scotia Environment

Nova Scotia Environment is the provincial government department dealing with the environment³⁶⁹. Its enforcement conservation officers conduct investigations and respond to calls to the public. NSE also provides subject matter expertise and support. It is also the body to which the Environmental Assessment Review Panel and Environmental Trust Advisory Board answers.

Northwest Territories

Mackenzie Valley Review Board

The Mackenzie Valley Review Board is an independent co-managed administrative tribunal, which is responsible for the environmental impact assessment process for land development and management in the Mackenzie Valley³⁷⁰. It operates at the first stage. The MVRB is unique in that its enacting legislation's purpose was to give the aboriginal people of the Mackenzie valley a greater say in its resource development and management. Though the MVRB is nominally independent, it is funded by the federal government, which may call into question its independence.

Ontario

Ontario Land Tribunal

The Ontario Land Tribunal is a recently established independent administrative quasi-judicial tribunal, which replaced the ELTO in June 2021 and it consists of lawyers, planners and mediators³⁷¹. It amalgamates the Local Planning Appeal Tribunal, Environmental Review Tribunal, Board of Negotiation, Conservation Review Board and the Mining and Lands

³⁶⁸ Website for the Clean Environment Commission of Manitoba – Date Accessed: 7th August 2021

<http://www.cecmnitoba.ca/cecm/>

³⁶⁹ Website for Nova Scotia Environment– Date Accessed: 9th August 2021. <https://novascotia.ca/nse/>

³⁷⁰ Website for the Mackenzie Valley Review Board of the Northwest Territories– Date Accessed: 9th August 2021. <https://reviewboard.ca/>

³⁷¹ Website for the Ontario Land Tribunal – Date Accessed: 12th August 2021. <https://olt.gov.on.ca/>

Tribunal. The OLT adjudicates or mediates on appeals and matters related to land use planning, environmental and natural features and heritage protection, land valuation, land compensation, municipal finance and related matters. In addition, the OLT also deals with mining and land disputes as well as planning appeals and it operates at the first stage.

Appeals to the OLT on the environmental matters generally relate to decisions made by the Director of the Ministry of the Environment, Conservation and Parks and the OLT also holds hearings on whether to grant leave to appeal certain decisions. The OLT may also direct parties to a proceeding to participate in a Case Management Conference (CMC) prior to the hearing so as to identify issues in the hearing, establish agreed upon evidence, and to discuss possible ADR such as mediation. Mediations are entirely private affairs and which may be requested at no fee. Any party to a mediation need not have representatives but they may be present.

As for heritage matters, a pre-hearing process and mediation is used to attempt to settle. In the absence of settlement, mediators may make non-binding recommendations and parties may also reconvene if there remain unresolved issues that prevent settlement. Also, the OLT will make a recommendation to a municipal council or Minister who has the final say. Parties can still appeal for arbitration post mediation. Only certain appeals filed under certain statutes are charged to the OLT and appeal fees range from \$400-\$1,100. The decisions of the OLT may be appealed to the Divisional Court with said Court's leave but only on a question of law.

Saskatchewan

Surface Rights Board of Arbitration

The Surface Rights Board of Arbitration is a last resort arbitration board where landowners or occupiers and oil and gas operators cannot agree to private land access and/or compensation³⁷². Its hearings operate at the first stage and include entry rights, damage claims, and rent review among other things. In addition, the SRBA can award an owner or occupant reasonable costs and expenses related to the hearing though this is limited to right of entry and compensation hearings. The SRBA also facilitates mediation. The SRBA's orders, decisions, and determinations can be appealed to the Court of Appeal with said Court's leave on questions of law or jurisdictions. Despite this, the SRBA is a weak body due to its unclear degree of independence and it is subject to lobbying by public and private industry bodies.

Quebec

Bureau d'Audiences Publiques sur l'Environnement

The Bureau d'Audiences Publiques sur l'Environnement is an independent administrative advisory body which informs the republic, investigates issues, and advises the relevant Minister³⁷³. The Bureau is influential but has no real power of its own to authorise or refuse projects as the final say lies with the Minister though it can facilitate mediation.

³⁷² Website for the Surface Rights Board of Arbitration of Saskatchewan – Date Accessed: 13th August 2021. <https://www.saskatchewan.ca/government/government-structure/boards-commissions-and-agencies/surface-rights-board-of-arbitration>

³⁷³ Website for the Bureau d'Audiences Publiques sur l'Environnement (Office of Public Hearings on the Environment) of Quebec – Date Accessed: 13th August 2021. <https://www.bape.gouv.qc.ca/fr/>

Federal

Environment and Climate Change Canada

The Environment and Climate Change Canada (ECCC) is the Canadian government department tasked with dealing with the environment³⁷⁴. Its responsibilities include Weather, Climate and Hazards, Energy, Natural Resources (Forestry, Water...), Agriculture and the Environment, Fisheries, Wildlife, Plants, and Species, Pollution and Waste Management, and Environmental Conservation and Protection. The ECCC has a website which contains vast and easily comprehensible swathes of information under each of these topics, and is designed with the goal of informing the public and enabling their participation at the forefront. The website also lists the laws which govern a particular area such as those of forestry and furthermore it is also noted in places where jurisdiction lies. To take again the example of forestry, jurisdiction lies at the provincial and territorial level.

As noted above an immense amount of information is available on this website and this includes reports upon weather monitoring hazards. The website also provides maps of protected areas such as marine protected areas along with a database of sites contaminated by pollution. One section of note is the Environmental Conservation and Protection which contains information on the Federal Sustainable Development strategy and provides a forum for engaged citizens to submit their feedback on the strategy. There is also an Environmental Offenders Registry, which contains information on the convictions of corporations under certain federal environmental laws.

Environmental Protection Tribunal Canada

The Environmental Protection Tribunal Canada (EPTC) is a quasi-judicial agency that operates at the federal level and carries out review hearings of Administrative Monetary Penalties (AMPs) and Compliance Orders issued by Environment and Climate Change Canada (ECCC) enforcement officers³⁷⁵. The EPTC is composed of expert adjudicators known as Review Officers. For AMPs, Review Officers can review not only the amount of the fine but also whether the alleged violation actually occurred. Compliance Orders are issued to prevent violations, stop on-going violations, and require that violations be corrected. Review Officers have the power to confirm, cancel, and amend these Compliance Orders and may also suspend, add, and delete terms and conditions. The Tribunal will arrange pre-hearing conferences so as to clarify issues, establish a timetable, and how to handle confidential information and expert witnesses. The EPTC also provides for mediation though interestingly settlement is not seen as the sole goal by EPTC, though it is the preferred one. The EPTC notes that an alternative view often taken is that mediation may be entered with the hope to reduce, clarify, and simplify the issues to be heard at the actual hearing itself. Naturally, no reference to information disclosed during mediation may be made during the hearing save with the parties' consent.

A point to note with regard to the review of Compliance Orders is that the request for Review does not suspend the Compliance Order's operation though the Review Officer handling the case does have the discretion to put a stay on the order until the review is complete. An applicant may file for a review to be stayed, during the process of which the ECCC may file a

³⁷⁴ Website for Environment and Climate Change Canada - Date Accessed: 14th August 2021. <https://www.canada.ca/en/environment-climate-change.html>

³⁷⁵ Website for the Environmental Protection Tribunal Canada – Date Accessed: 14th August 2021. <https://eptc-tpec.gc.ca/en/index.html>

counter affidavit about why it must stay in place. An interim stay may also be applied for pending the decision on the actual stay application.

The Tribunal’s decision as to an ADM is final and binding and is not subject to appeal by any Court save Judicial Review under the Federal Courts Act. Compliance Orders differ in that the Minister and applicant may appeal the decision of the Review Officer to the Federal Court Trial Division.

Problems

Canada’s ECTs are all administrative organisations, though some are quasi-judicial, and so all possess a strictly civil jurisdiction and thus are precluded from considering any criminal environmental matter. Their remedies too are limited as often Canadian ECTs can only determine whether to uphold, amend, or rescind decisions and many lack the power to impose sanctions or anything in the way of injunctive relief. Costs too are an issue. Some have fees as high as \$1,100 and this, taken into account with likely lawyer fees can render them prohibitively expensive.

ECT’s in Canada are, for the most part, very limited bodies and can do little outside of their small jurisdiction with regard to other environmental issues. The Saskatchewan Surface Rights Board of Arbitration for example has no jurisdiction to hear matters regarding forestry though such issues may arise within the province. On the other hand, it should be noted that in some provinces there has been an effort to unite disparate ECTs to create an ECTs which can act as ‘one stop shop’ for environmental issues. The OLT comes to mind. Once five separate ECTs, the OLT came into being in 2021 with the Ontario Land Tribunal Act 2021. It should also be noted that some ECTs like the BAPE, despite their potential influence have such little power in and of themselves that their classification as ECTs must be called into question.

Canadian ECT's

Body	Environmental Appeals Board (Alberta)	Natural Resources Conservation Board (Alberta)	Environmental Appeals Board (British Columbia)	Forest Appeals Commission (British Columbia)
Jurisdiction	Hears appeals from certain decisions made under the Environmental Protection and Enhancement Act, the Water Act, and the Climate Change and Emissions Management Act.	Conducts Quasi-Judicial reviews for proposed major natural resource projects under the <i>Natural Resources Conservation Board Act</i> . Regulates Confined Feeding Operations and hears appeals	Hears appeals from certain decisions made under the Environmental Management Act, Greenhouse Gas Industrial Reporting and Control Act, Greenhouse Gas Reduction	Hears appeals from certain decisions made under the <i>Forest Act, Forest and Range Practices Act, Private Managed Forest Land Act, Range Act, Wildfire Act</i> , and <i>Government</i>

	These decisions include Water licences, Approvals, Enforcement orders, Environmental Protections Orders...	under the <i>Agricultural Operation Practices Act.</i>	<i>(Renewable and Low Carbon Fuels Requirements) Act, Integrated Pest Management Act, Mines Act, Water Sustainability Act, Water Users' Communities Act, and Wildlife Act.</i>	<i>Organization Act.</i>
Independence	Independent	Independent	Independent	Independent
Type of Body (Administrative/Judicial)	Administrative Quasi-Judicial	Quasi-Judicial Regulatory	Administrative Quasi-Judicial	Administrative Quasi-Judicial
Use of Experts (Judges/Advisors)	Yes Experts are retained by the Board to give their expertise during hearings.	Members of the Board seem to include experts, positions including Director of Science and Technology and Environmental Technical Specialist.	The Board's members include lawyers, biologists, engineers, and foresters.	The Board's members include lawyers, biologists, engineers, and foresters.
Stage (First Instance Challenge/Appellate)	First instance.	First instance.	First instance.	First instance.
Appeal	Judicial Review	Court of Appeal on Question of Law/ Jurisdiction with their leave. Judicial Review for enforcement orders and grandfathering determinations at Court of Queen's Bench	Judicial Review by the SC of British Columbia	Judicial Review by the SC of British Columbia

Federal/Regional	Alberta	Alberta	British Columbia	British Columbia
Use of ADR (Any/Preferred/Mandatory)	Prefers mediation	Coordinates mediation	Yes, review for ADR potential (mediation)	Yes, review for ADR potential (mediation)
Relief	Grant or deny appeal.	Approve or reject the project. Grant or deny appeal.	Grant or deny appeal. Vary decisions	Grant or deny appeal.
Urgent Relief (Preventative Orders/Injunctions)	It can decide upon Enforcement Orders and Environmental Protection Orders	N/A	N/A	N/A
Sanctions	N/A	N/A	N/A	N/A
Costs	Parties can make an application for costs at the Court's discretion	The Board can award intervener funding to allow interveners to participate fully in project reviews.	Unclear	Costs may be ordered.
Types of Decision (Binding/Recommendations)	Generally makes recommendations but has final say in some matters.	Binding but can be appealed.	Binding but can be appealed	Binding but can be appealed
Body	Forest Practices Board (British Columbia)	Oil and Gas Commission (British Columbia)	Oil and Gas Appeal Tribunal (British Columbia)	Farm Industry Review Board (British Columbia)
Jurisdiction	Watchdog group. It conducts audits, investigates, and publishes reports on compliance.	The Commission regulates Oil and Gas activities, grants or denies permits to companies trying to enter these areas, and ostensibly	The Tribunal hears appeals of the Oil and Gas Commission's decisions. These decisions	The Board has complaints and appeals under The Natural Products Marketing (BC) Act, The Farm Practices

	<p>The Board itself can appeal decisions made by government officials under the <i>Forest and Range Practices Act</i> and <i>Wildfire Act</i>, either on its own or upon public request.</p> <p>These decisions include determinations of noncompliance, penalties, or approval approvals of plans for forestry or range operations.</p>	<p>protects the environment.</p> <p>It also commissions audits and investigations.</p>	<p>include certain orders, administrative penalties, permits, declarations...</p>	<p>Protection (Right to Farm) Act, The Prevention of Cruelty to Animals Act, and The Administrative Tribunals Act.</p> <p>The Board also conducts farm practice studies.</p>
Independence	Independent	Independent	Independent	Independent
Type of Body (Administrative/Judicial)	Watchdog	Regulatory and administrative body.	Administrative Quasi-Judicial	Administrative
Use of Experts	Its members include foresters, forestry consultants, and natural resource managers.	It is unclear at what stage experts become involved in the process but they are likely employed as part of any audits or investigations.	The Board's members include lawyers, biologists, engineers, and foresters.	Experts may be used at hearings by the parties involved.
Stage (First/Appellate)	N/A	N/A	First stage.	First stage
Appeal	N/A	N/A	Judicial Review by the SC of British Columbia	Judicial Review by the SC of British Columbia
Federal/Regional	British Columbia	British Columbia	British Columbia	British Columbia

Use of ADR (Any/Preferred/ Mandatory)	N/A	N/A	Yes, review for ADR potential (mediation)	Promotes mediation
Relief	N/A	Order corrective works Shut down non- compliant activity.	Grant or deny the appeal.	Grant or deny the appeal. Investigate or act on the appeal.
Urgent Relief (Preventative Orders/ Injunctions)	N/A	N/A	N/A	N/A.
Sanctions	N/A	N/A	Administrative penalties.	N/A
Costs	N/A	N/A Body that deals primarily with companies rather than citizens.	The Tribunal can make an order for costs.	The filing fee for Animal Custody Appeals is \$100 and the Board may make cost decisions. Farm Practice Complaints must be accompanied with a \$100 payment.
Types of Decision (Binding/ Recommendatio ns)	Recommendation s	Binding	Binding	Decisions are final and conclusive
Body	Surface Rights Board (British Columbia)	Clean Environment Commission (Manitoba)	Nova Scotia Environment (Nova Scotia)	Mackenzie Valley Review Board (Northwest Territories)

Jurisdiction	<p>Resolves disputes between landowners and companies that require access to private land for subsurface resources</p> <p>Refers to the Oil and Gas Commission as is appropriate.</p>	<p>Provides for public participation in environmental protection</p> <p>Conducts hearings and prepares reports for the Minister</p> <p>Conducts investigations.</p>	<p>This is the provincial government department which deals with environmental issues like air quality, compliance enforcement, land, and water.</p> <p>Conducts investigations and responds to public complaints.</p>	<p>Co-management board responsible for conducting environmental impact assessment process for land development and management in the Mackenzie Valley.</p>
Independence	Independent	Government	Government	Independent
Type of Body (Administrative/Judicial)	Administrative	Administrative	Administrative	Administrative
Use of Experts	<p>The Board accepts expert evidence but it must be submitted by the parties as the Board does not seek expert evidence out.</p> <p>Experts may also be cross-examined on their evidence by opposing parties.</p>	<p>Members include engineers, farmers, electrical technologists, habitat conservationists</p>	<p>It is unclear but reasonable to presume that this provincial government department makes use of experts while drawing up its policies.</p>	<p>It is unclear from the website but it is likely experts are consulted during the Environment Impact Assessment process.</p> <p>It is more likely that experts are consulted at the Environment Impact Review stage given that it is conducted more thoroughly.</p>
Stage	First	N/A	N/A	First

(First/Appellate)				
Appeal	Judicial Review by the SC of British Columbia Appeal to Court of Appeal with said Court's leave.	N/A	N/A	N/A
Federal/Regional	British Columbia	Manitoba	Nova Scotia	Northwest Territories
Use of ADR (Any/Preferred/Mandatory)	The Board facilitates mediation and then moves onto arbitration should that fail.	Provides mediation	N/A	N/A
Relief	Finds that the company does or does not have a right of entry and determines compensation, if any is necessary. Damages in circumstances where there has been loss or damage to the land due to company activity. Rent renegotiation.	N/A	N/A	N/A
Urgent Relief (Preventative Orders/Injunctions)	N/A	N/A	N/A	N/A
Sanctions	N/A	N/A	N/A	N/A
Costs	The Board has the discretion to	N/A	N/A	

	make a costs order, either on its own initiative or upon request.			
Types of Decision (Binding/Recommendations)	Binding	Makes non-binding recommendations to the Minister	N/A	<p>The Board either finds no issue and allows the proposed development to go to the permit/licensing stage, or requires that it undergo further assessment.</p> <p>From there the Board recommends to the Minister either that the development be rejected entirely, go to the permit/licensing stage, or go to the permit/licensing stage provided that mitigating measures are imposed.</p>
Body	Ontario Land Tribunal (Ontario)	Surface Rights Board of Arbitration (Saskatchewan)	Bureau d'Audiences Publiques sur l'Environnement (Quebec)	Environmental Protection Tribunal Canada (Federal)
Jurisdiction	It hears/decides appeals and matters related to land use planning, environmental and natural features and heritage protection, land valuation, land	It is a last resort Board when landowners/occupants and oil/gas/potash operators cannot reach an agreement for private land access/compensation.	It advises Minister responsible for the Environment on governmental decisions It informs and consults the	Carries out review hearings of Administrative Monetary Penalties (AMPs) and Compliance Orders issued by Environment and Climate

	compensation, municipal finance, and related matters.	Its hearings relate to entry rights, damage claims, compensation, reclamation of abandoned land sights and rent reviews.	public and investigates issues prior to inform these recommendations	Change Canada (ECCC) enforcement officers.
Independence	Independent	Independent (Unclear from the website but it is a government adjacent body that deals with private, public, and commercial entities).	Independent	Governmental/Non-independent
Type of Body (Administrative/Judicial)	Administrative Quasi-Judicial	Administrative Quasi-Judicial	Governmental	Governmental Quasi-judicial
Use of Experts	The website is currently unfinished, and so there is limited information but presumably expert evidence can be submitted prior to any hearing.	Its members include land surveyors, farmers, and lawyers.	Its members include biologists, scientists, lawyers, environmental consultants, and toxicologists.	Uses expert witnesses
Stage (First/Appellate)	First	First	N/A	First
Appeal	Decisions may be appealed to the Divisional Court with said Court's leave, but only on a question of law.	The Board's orders/decisions/determinations can be appealed by those affected within 30 days to the Court of Appeal, with the leave of a Court of Appeal judge on a question of law/jurisdiction.	N/A	N/A

Federal/Regional	Ontario	Saskatchewan	Quebec	Canada (Federal)
Use of ADR (Any/Preferred/Mandatory)	Prefers mediation Arbitration	Arbitration	Facilitates mediation	Pre-hearing conferences Mediation
Relief	Grants or denies any appeal Compensation for land appropriation.	Compensation. Reclamation and restoration of well Restore acts of operator damage valued at less than \$1,000.	N/A	Review Officers can review whether the violation warranting the AMP actually occurred and if the fine is correct. Thus they can uphold the AMP, cancel it, or modify the amount removed. Review Officers can confirm or cancel Compliance Orders. They can also amend, suspend or delete terms/conditions of the Compliance Order. Compliance Orders are not automatically suspended upon review though Review Officers do have the discretion to suspend them.

Urgent Relief (Preventative Orders/ Injunctions)	N/A	N/A	N/A	N/A
Sanctions	N/A	N/A	N/A	N/A
Costs	Appeals (\$400-\$1,100)	The Board can award to an owner/occupant reasonable costs and expenses incurred relating to the hearing. They may only be awarded during right of entry/compensation hearings.	N/A	No information is available as to costs.
Types of Decision (Binding/ Recommendations)	Binding.	Binding.	It makes recommendations but the final decision lies with the Minister responsible for the Environment.	Decisions on ADM's are final, binding and may not be appealed save by Judicial Review Decisions on Compliance Orders are binding but may be appealed to the Federal Court – Trial Division.

8. UK United Kingdom: England and Wales

In Britain, state-sponsored adjudication began as a mode of administration.³⁷⁶ The ordinary Courts were merely one tool in the adjudication box and the one last used, as they could not adequately respond to socially reforming legislation or the wider public interest. Robson who states that:

*“the failure of the judicature to endow the general public with an enforceable interest in matters where a regard for the social good is of the first moment that led to the development of the administrative tribunals”*³⁷⁷

³⁷⁶ Warnock, at page 405

³⁷⁷ As Quoted in Warnock, at page 406

In May 2000, the Lord Chancellor of the UK appointed Sir Andrew Leggatt to carry out a review of the tribunal system. This was the driving force behind Leggatt's recommendation that all tribunals should be brought together into a unified Tribunals Service. The Tribunals, Courts and Enforcement Act 2007 provided the legal basis for reshaping the tribunal system, and implementing most of the recommendations of the Leggatt Report. As part of this system, an environmental chamber was established.

Legal Authority:

The Environmental Chamber of the First-Tier Tribunal (“Environmental Chamber”) is the main authority concerning environmental issues in England and Wales. The Environmental Chamber was founded in 2010 as a part of a new Tribunal System for England and Wales.³⁷⁸ This Tribunal System comprises of seven chambers in total, which are collectively known as General Regulatory Chamber.³⁷⁹ Consequently, this means that the environment is merely one category of dispute that the First Tier Tribunal may consider.

The Senior President of Tribunals oversees both the First-Tier Tribunal and the Upper Tribunal; the tribunal system’s appellate body. It should be noted that the Senior President of Tribunals is an independent position from the Executive and the Chief Justices.³⁸⁰

The Environmental Chamber is authorised to address appeals against fines or notices for environmental offences in a civil capacity.³⁸¹ Decisions of the following bodies may be brought before the Environmental Chamber:

- Environment Agency;
- Natural England;
- Marine Management Organisation;
- National Measurement Office;
- Local flood authorities;
- Department for Environment, Food and Rural Affairs;
- Department for Business, Energy and Industrial Strategy;
- Department of Enterprise, Trade and Investment;
- The Health and Safety Executive;
- Welsh ministers;
- Local authorities in England and Wales.³⁸²

Legislation:

The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (“The 2009 Rules”) set out how the Environmental Chamber is conducted. Additionally, The

³⁷⁸ For discussion see Macrory, R., *Consistency and Effectiveness-Strengthening the New Environment Tribunal* (Center for Law and the Environment University College London 2011), 8.

³⁷⁹ HM Courts and Tribunals Service, First-tier Tribunal (General Regulatory Chamber) <<https://www.gov.uk/courts-tribunals/first-tier-tribunal-general-regulatory-chamber>> [Accessed 20 September 2021].

³⁸⁰ HM Courts and Tribunals Judiciary, ‘Senior President of Tribunals’ <<https://www.judiciary.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/tribunals/senior-president-tribunals/>> [Accessed 23rd September 2021].

³⁸¹ HM Courts and Tribunals Service, First-tier Tribunal (General Regulatory Chamber) <<https://www.gov.uk/courts-tribunals/first-tier-tribunal-general-regulatory-chamber>> [Accessed 20 September 2021].

³⁸² *ibid.*

Environmental Civil Sanctions (England) Order 2010 and The Environmental Civil Sanctions (Wales) Order 2010 stipulate the costs that litigants may face in the Environmental Chamber regarding legal representation and filing fees. These orders also set out the forms of relief available through the Environmental Chamber. These pieces of legislation will now be assessed to convey how the Environmental Chamber operates.

Type of Body:

The Environmental Chamber is established as being quasi-judicial in nature. This is set out in Section 4(1) of the 2009 Rules, which states that “Tribunal staff may carry out functions of a judicial nature permitted or required to be done by the Tribunal”.

Use of Experts:

According to the Institute of Paralegals, one of the following criteria must be met in order to be eligible to sit as a judge of the First-Tier Tribunal:

- 1) The candidate satisfies the judicial-appointment eligibility condition on a 5-year basis;
- 2) The candidate is an advocate or solicitor in Scotland of at least 5 years’ standing;
- 3) The candidate is a barrister or solicitor in Northern Ireland of at least 5 years’ standing;
- 4) In the opinion of the Senior President of Tribunals, the candidate has gained experience in law which makes the person as suitable for appointment as if he or she had met one of the criteria above.³⁸³

Therefore, the judiciary that preside over the Environmental Chamber must have the requisite legal qualifications and experience to determine the legal disputes before the tribunal.

Stage of Deliberation (First/Appellate/etc.):

As stated above, the Environmental Chamber address appeals against fines or notices for environmental offences from bodies such as the Environment Agency, and local English and Welsh authorities.³⁸⁴

Appeal:

Section 4(3) of the 2009 Rules states that within 14 days after the date that the Tribunal sends notice of a decision made by a member of staff under paragraph (1) to a party, that party may apply in writing to the Tribunal for that decision to be considered afresh by a judge. Therefore, where a litigant attains permission to appeal a decision of the Environmental Tribunal, they may appeal to the Upper Tribunal. The Upper Tribunal consists of High Court Judges and other specialist judges appointed by the Queen.³⁸⁵ Appeals of decisions of the Upper Tribunal may be brought before the Court of Appeal in England and Wales.³⁸⁶

Use of Alternative Dispute Resolution (ADR):

³⁸³ The Institute of Paralegals, ‘Become a Judge’, <<https://theiop.org/become-a-judge/>> [Accessed 21st September 2021].

³⁸⁴ HM Courts and Tribunals Service, First-tier Tribunal (General Regulatory Chamber) <<https://www.gov.uk/courts-tribunals/first-tier-tribunal-general-regulatory-chamber>> [Accessed 20 September 2021].

³⁸⁵ HM Courts and Tribunals Service, *Appealing to the Administrative Appeals Chamber of the Upper Tribunal* (UT11 Notes, 2015), 3.

³⁸⁶ *ibid*, 12.

Section 3 of the 2009 Rules state that the Tribunal should make the effort to inform the parties of any ADR available pending on the circumstances of the case. However, Section 3(2) states that arbitration as authorised under the Arbitration Act 1996 is not applicable for cases before the First Tier Tribunal (General Regulatory Chamber). Therefore, these sections of the 2009 Rules indicate that mediation will be the only form of ADR available in cases before the Environmental Chamber where applicable.

Forms of Relief:

Section 3 of the Environmental Civil Sanctions (England) Order 2010 states that there are four schedules which indicate the relief that will be awarded for different offences:

- 1) Schedule 1 makes provision for fixed monetary penalties;
- 2) Schedule 2 states that fixed monetary penalties may be pursued, along with compliance notices and third party undertakings;
- 3) Schedule 3 makes provision for stop notices;
- 4) Schedule 4 makes provision for enforcement undertakings.

These forms of relief are also available in Wales through The Environmental Civil Sanctions (Wales) Order 2010.

Section 5(1) of both 2010 Orders states that a regulator may not serve a notice of intent relating to a fixed monetary penalty if a variable monetary penalty has been imposed or a compliance notice, restoration notice or stop notice has been served on that person relating to the same act or omission. Additionally, Section 5(2) states that a regulator may not serve a notice of intent relating to a variable monetary penalty, compliance notice or restoration notice, or serve a stop notice, on any person if, in relation to the same act or omission—

- a) a fixed monetary penalty has been imposed on that person; or
- b) that person has discharged liability for a fixed monetary penalty following service of a notice of intent to impose that penalty.

Therefore, fixed monetary penalties can only be imposed in very limited circumstances. However, Section 7(1) states that a non-compliance monetary penalty may be applied where a person fails to comply with a compliance notice, a restoration notice or a third party undertaking; regardless of whether a variable monetary penalty is already imposed against that person.

Sanctions:

Section 10 of the 2009 Rules state that the Environmental Chamber is authorised to implement a punitive charge against parties who unreasonably bring, defend or conduct proceedings.

Costs-Filing Fees:

Section 8 of the Environmental Civil Sanctions (England) Order 2010 states that a regulator may serve a notice (“an enforcement cost recovery notice”) on a person on whom a variable monetary penalty notice, compliance notice, restoration notice or stop notice has been served requiring that person to pay the costs incurred by the regulator in relation to the imposition of that notice up to the time of its imposition. This section is also enshrined in Section 8 of the Environmental Civil Sanctions (Wales) Order 2010.

Costs-Legal Representation:

Section 11 of the 2009 Rules state that a party may appoint a representative (whether legally qualified or not) to represent that party in the proceedings. Therefore, costs for legal representation may be avoided in pursuing an appeal before this ECT.

England and Wales ECT Table	
Regional Court/Administrative Bodies	First Tier Tribunal (General Regulatory Chamber (Environment))
Jurisdiction	<p>This ECT deals with appeals against fines or notices for an environmental offences in a civil capacity.</p> <p>Appeals of decisions from the following environmental bodies may be brought before this ECT:</p> <ul style="list-style-type: none"> - Environment Agency - Natural England - Marine Management Organisation - National Measurement Office - Local flood authorities - Department for Environment, Food and Rural Affairs - Department for Business, Energy and Industrial Strategy - Department of Enterprise, Trade and Investment - The Health and Safety Executive - Welsh ministers - Local authorities in England and Wales
Type of Body (Administrative/Judicial)	Quasi-judicial- Section 4(1) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 state that Tribunal staff may carry out functions of a judicial nature permitted or required to be done by the Tribunal.
Use of Experts	<p>In order to sit as a member of this ECT, a candidate must meet one of the following criteria:</p> <ol style="list-style-type: none"> 1) They satisfy the judicial-appointment eligibility condition on a 5-year basis; 2) They are an advocate or solicitor in Scotland of at least 5 years' standing; 3) They are a barrister or solicitor in Northern Ireland of at least 5 years' standing; 4) In the opinion of the Senior President of Tribunals, they have the necessary experience in law that makes the person suitable for the appointment as if they met one of the above criteria.
Stage (First/Appellate)	This ECT deals with appeals of administrative decisions and its own decision may be appealed on judicial review after this ECT makes a ruling.

Appeal	<p>Section 4(3) of the 2009 Rules states that within 14 days after the date that the Tribunal sends notice of a decision made by a member of staff under paragraph (1) to a party, that party may apply in writing to the Tribunal for that decision to be considered afresh by a judge.</p> <p>Appeals can be made to the Upper Tribunal, which in turn can be made to the Court of Appeal.</p>
Federal/Regional	<p>England, Wales, and Northern Ireland.</p> <p>** Scotland (a separate jurisdiction) is considering establishing an ECT.³⁸⁷</p>
Use of Alternative Dispute Resolution (ADR) (Any/Preferred/Mandatory)	<p>Section 3 of the 2009 Rules state that the Tribunal should make the effort to inform the parties of any ADR available pending on the circumstances of the case.</p> <p>However, Section 3(2) states that arbitration as authorised under the Arbitration Act 1996 is not applicable for cases before the First Tier Tribunal (General Regulatory Chamber).</p>
Relief	<p>Section 3 of The Environmental Civil Sanctions (England) Order 2010 states that there are 4 schedules which indicate the relief that will be awarded for different offences:</p> <ul style="list-style-type: none"> - Schedule 1 makes provision for fixed monetary penalties - Schedule 2 states that fixed monetary penalties may be pursued, along with compliance notices, restoration notices and third party undertakings. - Schedule 3 makes a provision for stop notices. - Schedule 4 makes provision for enforcement undertakings. <p>These forms of relief are also available in Wales through The Environmental Civil Sanctions (Wales) Order 2010.</p>
Urgent Relief (Preventative Orders/Injunctions)	N/A
Sanctions	Section 10 of the 2009 Rules state that this ECT is authorised to implement a punitive charge against parties who unreasonably bring, defend or conduct proceedings;

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****Note**- Appeals of decisions of the Upper Court may be appealed in Scotland to the Court of Session and may be appealed in Northern Ireland to the Court of Appeal.

Costs- Filing Fees	<p>Section 8 of the Environmental Civil Sanctions (England) Order 2010 states that a regulator may serve a notice (“an enforcement cost recovery notice”) on a person on whom a variable monetary penalty notice, compliance notice, restoration notice or stop notice has been served requiring that person to pay the costs incurred by the regulator in relation to the imposition of that notice up to the time of its imposition.</p> <p>This is also enshrined in Section 8 of the Environmental Civil Sanctions (Wales) Order 2010.</p>
Costs- Legal Representation	<p>Section 11 of the 2009 Rules state that a party may appoint a representative (whether legally qualified or not) to represent that party in the proceedings.</p> <p>Therefore, costs for legal representation may be avoided in pursuing an appeal before this ECT.</p>
Types of Decision (Binding/Recommendations)	Binding decisions.

Part III Characteristics of Successful Environmental Courts-

1. Reconceptualising Specialist ECTs

Specialist Environment Courts and Tribunals in the Literature have encompassed a number of different types of bodies. Warnock provides a useful Taxonomy³⁸⁸. Many ECT’s have a comprehensive jurisdiction. They combine civil powers (deciding ex post facto compensatory disputes) and a criminal jurisdiction with administrative review. An increasing number have the ability to make or review substantive decisions concerning proposed projects, on their merits rather than just on points of law. Some bodies listed in the literature as ECT’s in fact perform the role of primary decision makers, permitting or licensing activities. Environmental harm is controlled by limiting or regulate access to and the rate of exploitation of natural resources. Some ECT’s act as appellate bodies that conduct substantive merits review (i.e., having the power to retake the original merits decision in various ways) or undertake *de novo* appeals.

From the research above, and from studies by leading commentators, establishing an ECT requires certain decisions to be made.

³⁸⁸ Ceri Warnock, ‘Reconceptualising Specialist Environmental Court and Tribunals’ (2017) *Legal Studies* Volume 37 Number 3 pp. 391-417

2. Characteristics of Successful Environmental Courts

A successful ECT is defined in this paper as one closely linked with, and mostly aimed at, increased access to environmental justice. The ECT is a forum which has as its objective the provision of a body for resolving environmental disputes, which has sufficiently wide jurisdiction to consider as many environmental disputes as possible which arise in a jurisdiction, and thereby to resolve them through the ECT rather than through societal unrest or civil disobedience. A successful ECT must also be one which has legitimacy for its decision, and therefore one in which all sectors of society have confidence in its decisions.

It cannot be forgotten that by its very nature as Lord Woolf once remarked: '[t]he primary focus of environmental law is not on the protection of private rights but on the protection of the environment for the public in general.' The legislature, by enacting legislation which places a limit on the use of land by a private party, does so for a greater societal good. The court system must be empowered to achieve this fundamental purpose, rather than to view environmental law disputes as bi-partisan issues divorced from their societal context and value.

A study³⁸⁹ commissioned by the Department of Environment, Transport and the Regions in the UK identified 12 basic building blocks or design decisions in relation to the type of court or tribunal to be adopted. It adopted the categories identified by the Pring and Pring, arising out of its worldwide study of existing environmental courts and tribunals at various levels. These design decisions are as follows:

1. Type of forum (whether to choose a judicial court or administrative tribunal and at what level of independence).
2. Legal jurisdiction (over what substantive laws, policies, and principles will the court or tribunal be given authority).
3. Decisional level, trial (first-instance), intermediate, appeal, and/or final review to the highest Court level or Supreme Court, and should its power(s) be civil, criminal, or administrative.
4. Geographic area.
5. Case volume (will the jurisdiction make the workload appropriate or too low or too high).
6. Standing (what qualifications will be required of parties to bring an action in the ECT or otherwise participate in a case).
7. Costs (what are the expenses for parties from the time of first making a complaint to a final decision and what are the mechanisms to reduce those costs).
8. Access to scientific and technical expertise (how will the ECT manage to get adequate, unbiased input on the increasingly complex scientific-technical issues in environmental cases).

³⁸⁹Malcolm Grant, *Environmental Court Project: Final Report* (Report to the Department of Environment, Transport and the Regions UK : 2000)

9. Can Alternative Dispute Resolution be incorporated?
10. Judges and decision makers; they should be competent judges with relevant qualifications and training, who have tenure, and an appropriate salary. All are needed for quality decision-makers.
11. Case management (what process mechanisms will permit ECTs to move cases through the decision-making process more efficiently and effectively and less expensively).
12. Enforcement tools and remedies (what powers will be needed to make the ECT's decisions effective, from mediated agreements to injunctions to criminal fines and incarceration, and all the creative alternatives in between)³⁹⁰.

Preston, writing in the *Journal of Environmental Law* in 2014³⁹¹, built on his practical experience as Chief Judge of the Land and Environmental Court of New South Wales, as well as his extensive research and study, set out an exhaustive and comprehensive discussion of the characteristics of successful environmental courts and tribunals. We now turn to a discussion of these characteristics.

First, an ECT must have a wide jurisdiction. Preston notes that many of the successful ECTs enjoy a more comprehensive jurisdiction than those which struggle to be accepted. He credits the success of environmental courts in Sweden to the presence of two characteristics. First, the Swedish ECTs are granted a comprehensive civil and administrative jurisdiction and a range of enforcement powers by Sweden's Environmental Codes, thus giving them a substantial caseload.¹⁷ Although Preston does not state so explicitly, it would seem that a substantial caseload allows for the development of expertise, leading to quality decisions. Secondly, and this would seem to go along with the first characteristic, the Swedish ECTs have been viewed as highly credible institutions that 'are fully accepted' by both industry groups³⁹². He continues

*"The status and authority of a more successful ECT are often enhanced through the presence of judges who are environmentally literate, or alternatively who may be trained to be so literate, and who can contribute to the development of environmental jurisprudence. Such expertise maintains public trust and confidence in the ECT as the forum for resolving environmental disputes. The ability of an ECT to develop environmental jurisprudence is, in turn, dependent upon it being presented with opportunities to do so"*³⁹³

Second, the adjudicators must be independent and impartial and have long term tenure and security. Where an ECT is independent, it increases confidence and legitimacy of the decisions. The independence of adjudicators is clearly of central importance in Ireland, as determined by the Supreme Court in *Zalewski*. The tenure of adjudicators in administrative tribunals is clearly

³⁹⁰ Pring G and Pring C, *Greening Justice: Creating and Improving Environmental Courts and Tribunals*.(2009: The Access Initiative of the World Resources Institute) Chapter 3

³⁹¹ Preston, B, "Characteristics Of Successful Environmental Courts And Tribunals' (2014) 26 *Journal of Environmental Law* 365-393

³⁹² Preston, B, "Characteristics Of Successful Environmental Courts And Tribunals' (2014) 26 *Journal of Environmental Law* at p 368

³⁹³ Preston, B, "Characteristics Of Successful Environmental Courts And Tribunals' (2014) 26 *Journal of Environmental Law* 365-393

an important factor in securing independence, as is recognised by the Supreme Court in *Zaleski*. Internationally, security of tenure has been recognised as of high importance. Preston writes

*“The independence and impartiality of ECT members may also be undermined in circumstances where those members are appointed for short-term periods without long-term security of tenure. upon expiration of his or her term”*³⁹⁴

Third, successful ECT’s should have a comprehensive and centralised jurisdiction. This is on the basis that *“There are also economic efficiencies, including lower transaction costs, for users and public resources in having a ‘one-stop shop’*. Paul Stein, a former judge of the Land and Environment Court of NSW, referred to by Preston was of the view that that having an integrated, wide-ranging jurisdiction

*“decreases multiple proceedings arising out of the same environmental dispute; reduces costs and delays and may lead to cheaper project development and prices for consumers; greater convenience, efficiency and effectiveness in development control decisions; a greater degree of certainty in development projects; a single combined jurisdiction is administratively cheaper than multiple separate tribunals; litigation will often be reduced with consequent savings to the community”*³⁹⁵

Fourth, judges and members should be knowledgeable and competent with relevant qualifications and training. This is facilitated by the specialisation of judges and adjudicators. Environmental expertise promotes litigation efficiency, reduces the cost of proceedings, and provides uniform decision making.³⁹⁶ Specialist adjudicatory bodies are not unusual in Ireland, one can point to the Tax Commissioners, applying tax legislation and adjudicating on taxation disputes and to the Scope section of the Department of Social Welfare, where Inspector’s judge on insurability of employment, applying legal tests as to employment status, as well as the Workplace Relations Commission and the Labour Court, which specialise in adjudication in employment and equality law complaints.

Fifth, an ECT must operate as what Preston has termed ‘a multi-door courthouse.’, that is a the ECT must provide that a complaint can be resolved by adjudication by a judge, but also by mediation, arbitration, conciliation and forms of neutral evaluation by an administrator or expert Environmental Rights Commissioner. Experts on ECT’s have found that they have most success in resolving environmental law complaints when they have a good degree of flexibility in the judgment options and resolution methods.³⁹⁷

Preston describes the practice of The Land and Environmental Court of New South Wales as operating as the aforementioned multi-door courthouse, because it assesses the forum and dispute resolution mechanism at time of filing of the initial complaint. It offers, for example, a variety of ADR processes, both in-house and externally to parties. The Court screens, diagnoses

³⁹⁴ Preston, B, ‘Characteristics Of Successful Environmental Courts And Tribunals’ (2014) 26 *Journal of Environmental Law* 365-393

³⁹⁵ Preston, B, ‘Characteristics Of Successful Environmental Courts And Tribunals’ (2014) 26 *Journal of Environmental Law* at pp 396.

³⁹⁶ Guidone, R., ad Jonas, H., ‘A review of environmental courts and tribunals for CSO’s and the judiciary.’ in Voigt, C and Makuch, Z., *Courts and the Environment* (2018:Edward Elgar Publishing) at p383.

³⁹⁷ Guidone, R., ad Jonas, H., ‘A review of environmental courts and tribunals for CSO’s and the judiciary.’ in Voigt, C and Makuch, Z., *Courts and the Environment* (2018:Edward Elgar Publishing) at p383. Preston, Pring and Pring

and refers matters to the appropriate dispute resolution process, not only in consultation with the parties, but also by its own motion.

The Planning and Environment Court of Queensland, Australia is cited as another notable example of an ECT offering ADR processes. He notes that the Queensland Court has specifically appointed an ADR Registrar who is a former senior practitioner in the planning and environmental law field.

“The ADR Registrar is responsible for conducting mediations, case management conferences, chairing without prejudice meetings and meetings between experts appearing for the parties to a dispute. ADR is not used simply as a last resort, prior to trial, in the absence of an agreement otherwise reached through consent of the parties. Rather, the ADR Registrar is involved at an early stage in the dispute resolution process and assists the parties to identify and narrow the issues in dispute and works towards their resolution in a collaborative, problem-solving manner. This program has been a great success, with approximately 60–70% of all cases filed with the Court being settled through the help of the ADR”³⁹⁸

Sixth, the ECT must provide access to scientific and technical expertise. The nature of environmental disputes is that they can often involve complex scientific evidence in deciding on issues of causation, damages, and likely environmental harm if development is approved. The lack of expertise for adjudicators causes problems.

“One of the most significant barriers to enhanced environmental litigation is the lack of decision maker expertise both in terms of the interpretation of national and international law and the technical scientific jargon at the heart of most cases. ECT’s provide a forum in which adjudicators have a background in environmental law and essential scientific principles.”³⁹⁹

Where there is access to proper expertise, or, indeed where expertise is gained through specialisation over time, less time is wasted on putting before the Court the background and building blocks of the complex evidence presented in hearings. The system of non-specialist courts relying on experts briefed by litigants can cause difficulties where parties rely on opposing experts. On other occasions, where there is inequality of arms between parties to a dispute, there may be inequality or absence of experts for one view or another. Studies have found that ECT’s which sit with an expert on the panel, or perhaps have access to a panel of experts to give independent advice, are of great assistance to making a quality decision. Access to expertise can be by way of joint expert reports, or by internal experts.

The addition of experts to a specialist tribunal is common in Ireland in many areas, such as the Labour Court, which has a three-person panel, composed of a lawyer, a business and union representation. Other tribunals such as mental health tribunal, and fitness to practice boards, also avail of court appointed experts to assist with technical knowledge.

Seventh, the ECT should facilitate access to justice. Access to environmental justice is recognised as both a human right and also, as a right in international environmental law. Principle 10 of the Rio Declaration as well as the Aarhus Convention accord a central

³⁹⁸ Preston, B, “Characteristics Of Successful Environmental Courts And Tribunals’ (2014) 26 *Journal of Environmental Law* at pp 381

³⁹⁹ Guidone, R., ad Jonas, H., “A review of environmental courts and tribunals for CSO’s and the judiciary.” in Voigt, C and Makuch, Z., *Courts and the Environment* (2018:Edward Elgar Publishing) at p384

importance to access to justice in achieving the goal of environmental protection. There is a moral principle at play here. The destruction of the environment has reached such a level that the existence of future generations is in threat, or at best severely compromised. Present generations have a moral duty, and in many jurisdictions a legal obligation, to refrain from damaging the environment to the greatest extent possible. Legal adjudication of rights and obligations has a key role. Courts and tribunals in adjudicating on rights and obligations exercise significant power to either assist or hamper environmental protection. Shutting out societal parties from the court system because of restrictive rules of standing or court procedure or excessive costs, does not facilitate access to justice for those parties.

An ECT facilitate access to justice both by its substantive decisions, which allow access to environmental information, participation in environmental decision making, and adequate rights of public notification but also in its practice and procedures. Access is provided through expansive rules of rules of practice and procedure, such as rules on standing and access and costs. Innovative rules can also facilitate public interest litigation and class and group actions. One of the best examples of rules of procedure can be seen in the Philippines, when in 2010, the Supreme Court of the Philippines also adopted ‘Rules of Procedure for Environmental Cases’. These are discussed earlier in this paper.

Eighth, the ECT achieves just, quick and cheap resolution of disputes. It is a truism that the delay of justice is a denial of justice. Preston writes that “*Delay is particularly pernicious for environmental public interest litigation and dispute resolution*”. The purpose of much environmental litigation is to prevent or mitigate harm to the environment. Delay in the final determination of the proceedings defers making of an order preventing or mitigating that environmental harm.⁴⁰⁰

“The Court order may come too late—the harm may have already occurred and be irreversible. The heritage building may have been demolished, the old growth forest clear felled or the wetland drained or filled.”⁴⁰¹

ECTs need to deal promptly with interlocutory applications and rebut attempts to adjourn or delay the final hearing and disposal of the proceedings. Further, for developers, delay in the courts of a project which may ultimately be permitted causes loss of time and money and may even lead a developer to abandon the project. Speed and cost effectiveness of adjudication is in the interests of all parties. Environmental litigation, therefore, needs to be heard and determined in a timely manner.

Delay can be reduced by efficient case management. This one of the advantages of the multi-door courthouse, as such policies can employ differential case management to deal discriminatingly with different types of cases.

Ninth, the ECT must be responsive and relevant to the pressing, pervasive and pernicious environmental problems that confront society (such as climate change and loss of biodiversity) as they require innovative and creative solutions.⁴⁰² Successful courts have had relevant solutions for example, in relation to climate change. They have also engaged in remedies which have been supported by the litigants, such as restorative justice which are in touch with what

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⁴⁰¹ Preston, B, “Characteristics Of Successful Environmental Courts And Tribunals’ (2014) 26 *Journal of Environmental Law*

⁴⁰² Preston, B, “Characteristics Of Successful Environmental Courts And Tribunals’ (2014) 26 *Journal of Environmental Law*, at p387.

people want. Preston notes, for example, that one of the key issues for society is addressing climate change, and that to make decisions which accord to the needs of society, Courts need to move beyond the primary function of resolving disputes between private individuals. This is because,

“The goals of climate change litigation include indirect effects beyond the parties to the litigation and beyond the litigation’s specific claims. Even unsuccessful cases can focus public attention on a particular issue through media exposure and may reveal weaknesses in the law that require reform. One way in which the NSWLEC has remained relevant and influential has been through its decisions in climate change litigation matters.”⁴⁰³

Tenth, the ECT should develop environmental jurisprudence. An ECT which develops environmental jurisprudence is likely to assist society with understanding the meaning and scope of the legislation enacted, thus assisting lawyers to advise clients, NGO’s and developers. Also, with a well-developed environmental jurisprudence, decisions are of better quality, and therefore have greater credibility and legitimacy. Also, once environmental jurisprudence is mature and developed, the burden on courts and therefore on the legal system as well as delays caused by the litigation of uncertain legal meaning, is reduced.

Eleventh, it must have an underlying ethos and mission. Writers note that many of the ECTs located throughout the world that have enjoyed greater success have a clear sense of direction with respect to the role they play in the broader schema of environmental governance. This characteristic returns to the purpose of environmental law, which is enacted to restrict otherwise untrammelled use of private property or public resources. The Habitats Directive, the Wildlife Act 1976, the legislation prohibiting water pollution, aim to protect these resources by restricting private behaviour. To have the confidence of its respective society, an ECT needs to be able to take the purpose of the legislation into account, and an underlying ethos or mission can assist in this endeavour. This clear sense of direction can be encapsulated in the form of a statement of purpose, mission statement or charter, as with the NSW Land and Environment Court, or, through a law which sets out overarching principles and purposes to govern the interpretation of the statutes to which it applies. This latter approach is what is envisaged in the Model Code drafted by the Task Force.

Twelfth, the ECT must be flexible, innovative and provide a value-adding function. Here, the value added follows on from the development of an environmental jurisprudence. The decision in a particular case has a ripple effect through society, clarifying legislation and practice. The ECT can add value to governmental decisions by achieving certainty of law. Specialised knowledgeable judges and adjudicators, with a sufficient jurisdiction to allow the consideration of all relevant environmental legal disputes, possess a regulatory value to society.⁴⁰⁴

In summary, therefore, we can say, having reviewed the practice in other jurisdictions, as well as leading practitioners and experts, that a successful ECT should have the following characteristics:

1. A wide and comprehensive jurisdiction.

⁴⁰³ Preston, B, “Characteristics Of Successful Environmental Courts And Tribunals’ (2014) 26 *Journal of Environmental Law*, at p387.

⁴⁰⁴ Preston, B, “Characteristics Of Successful Environmental Courts And Tribunals’ (2014) 26 *Journal of Environmental Law*, at p390.

2. It should have broad rules of standing, facilitating access to justice.
3. The judges or adjudicators appointed should be independent and have security of tenure.
4. The adjudicators in the ECT should be composed not only of judges but also of mediators and conciliators.
5. The adjudicators should be able to build expertise through specialisation and also have access to technical scientific expertise in decision making.
6. It must have a capacity to engage in alternative dispute resolution, including mediation, conciliation and arbitration of a dispute.
7. It can be either an administrative tribunal or judicial body, or a combination of both.
8. There should be a limitation on costs.
9. It should provide for just, quick and cheap resolution of disputes

We now turn to the model proposed for Ireland.

Part IV Model proposed for Ireland

Constitutional Framework and Three Possible Models

In a paper given in 2015,⁴⁰⁵ the former Chief Justice, Mr Frank Clarke S.C. noted that there were many ways in which an “environmental court” might be configured. However, broadly speaking, in the absence of a constitutional amendment it is considered that there are three possible models. The first is to provide for a discrete environmental law court with a unified jurisdiction in relation to environmental law matters functioning as a division of the existing courts system. The second is to establish a new court or courts of local and limited jurisdiction to deal with environmental matters only. The third is to legislate for the creation of an entirely new administrative tribunal along the lines of a body such as the Workplace Relations Commission, with a full appeal to an appropriate appellate court and at least some scope to appeal from that appellate court to the High Court.

The main advantage of the first model, which involves the creation of an environmental court within the existing courts’ structure, is that it is the easiest to implement. It would require some legislation, similar to Part 3 of the Judicial Separation and Family Law Reform Act 1989 which established the family law courts. However, many of less systematic changes could be governed by new court rules and/or practice directions which could be amended with relative ease to meet the particular needs of the court. In particular, new rules or practice directions could be introduced to allow officers such as the Master of the High Court and the Circuit County Registrar to operate specific case management procedures tailored to the needs of environment-related disputes.

⁴⁰⁵ “A Possible Environmental Court – The Constitutional and Legal Parameters”, Mr. Justice Frank Clarke, School of Law, University College Cork conference on the theme “*Environmental Courts, Enforcement, Judicial Review & Appeals: Exploring the Options for Ireland*”, 19 June 2015.

Another advantage of adopting this model is that it would be possible to include a criminal jurisdiction within it. Judges operating within the existing courts' structure, who are appointed in accordance with Article 35 of the Constitution, have the power to grant a wide range of remedies, including injunctive relief, which would be particularly important where what is at issue is a threat to the environment. Further, decisions issued by the established courts tend to attract more publicity and public scrutiny than those issued by administrative tribunals.

As against this, there are a number of features inherent in the existing courts' structure which would make it difficult to establish a system well-equipped to deal with the particular challenges arising in environmental law cases. Firstly, it is an adversarial system which is not necessarily suited to achieving the kind of mediated compromise that will be desirable in many cases. Secondly, the courts' system is already overwhelmed and struggling to allocate sufficient resources to the existing workload. Thirdly, taking a case to court can be both expensive and intimidating for litigants.

The second model would involve the creation of a new court of local and limited jurisdiction in accordance with Article 34.3.4 of the Constitution. Article 34.3.4 provides that "(t)he Court of first instance shall also include Courts of local and limited jurisdiction with a right of appeal as determined by law". This is the provision which was used to establish both the District Court and the Circuit Court. Both courts were originally created by the Courts of Justice Act 1924 and their powers are limited by statute. On the civil side, the Civil Law (Miscellaneous Provisions) Act 2013 caps the awards which each Court can make in respect of individual claims.

The constitutionality of these courts has been challenged in a number of cases. However, the Supreme Court has leaned in favour of interpreting Article 34.3.4 in a practical manner which allows the court system to function efficiently. In *Tormey v. Ireland*,⁴⁰⁶ the plaintiff had argued that the statutory provision which gave the Circuit Court an exclusive jurisdiction in relation to most indictable crimes was unconstitutional. However, the Supreme Court held that it was clear from Article 34.3.1 of the Constitution, read together with Article 34.4.3, that it was envisaged that the Circuit Court would be able to exercise jurisdiction in relation to certain matters to the exclusion of the High Court.

Similarly, in *Permanent TSB v. Langan*,⁴⁰⁷ the Supreme Court rejected a challenge to the Circuit Court's jurisdiction to deal with cases involving certain categories of buildings where the rateable valuation had not been prescribed by law. It did not accept that this constituted the conferral of an unlimited jurisdiction on the Circuit Court, with Clarke C.J. noting that there are a variety of means by which jurisdiction can be limited. He held that the requirement to limit jurisdiction did not necessitate a value limit in every case. He considered it significant that the jurisdiction in question was limited by reference to a defined and not overbroad category of cases.

It appears to follow from the above that the Oireachtas could legislate for the creation of a specialised environmental court of local and limited jurisdiction if it wished to do so. This could be an entirely new court model, so long as its jurisdiction was clearly limited by statute. This would be similar to the model adopted by the first, and perhaps the most famous, environmental court, the Land and Environment Court of New South Wales.

⁴⁰⁶ [1985] I.R. 289.

⁴⁰⁷ [2017] IESC 71

Many of the specific features of the Land and Environment Court of New South Wales have been discussed above but for present purposes it is sufficient to note that the court was created by the Land and Environment Court Act 1979. Section 16 of that Act provides that the jurisdiction of that court shall be divided into the following eight separate but related classes:

1. Environmental planning and protection appeals;
2. Local government and miscellaneous appeals and applications;
3. Land tenure, valuation, rating and compensation matters;
4. Environmental planning and protection, development contract and strata renewal plan civil enforcement;
5. Environmental planning and protection summary enforcement;
6. Appeals from convictions relating to environmental offences;
7. Other appeals relating to environmental offences and
8. Mining matters.

However, s. 22 of the 1979 Act appears to vest the New South Wales Court with a power akin to original jurisdiction and ss. 20(2) and 71 grant the Court some of the powers which would ordinarily be exercised by the Supreme Court. Further, s. 56 of the 1979 Act appears to preclude any appeal in respect of broad categories of cases. These are features which a court of limited and local jurisdiction established in accordance with Article 34.3.4 of the Constitution could not adopt. As such, it appears that a constitutional amendment would be required to replicate these features of the New South Wales model in Ireland.

The third model is perhaps the more attractive option from the perspective of those interested in founding a more dynamic court which has the ability to respond with the urgency which environmental law cases often require. The Constitution also allows for this. While Article 34.1 provides that “*justice shall be administered in courts established by law by judges*”, Article 37.1 qualifies this by providing that

“nothing in this Constitution shall operate to invalidate the exercise of limited functions and powers of a judicial nature, in matters other than criminal matters, by any person or body of persons duly authorised by law to exercise such functions and powers, notwithstanding that such person or such body of persons is not a judge or a court appointed or established as such under this Constitution.”

The interaction of these provisions, and the extent to which they permit the creation of new courts was recently considered by the Supreme Court in *Zaleski v. An Adjudication Officer and the Workplace Relations Commission, Ireland and the Attorney General*⁴⁰⁸. It is clear from the majority judgment that justice may be administered in bodies which are not courts, and by people other than judges, in cases which do not involve criminal trials.⁴⁰⁹ However, O’Donnell J. (as he then was) stressed that the Constitution provides that only limited functions and powers of a judicial nature may be exercised by such a body. He considered that the functions conferred on the Workplace Relations Commission were limited for a number of reasons: the subject-matter was confined to employment issues only, there was no question of the Commission enjoying original jurisdiction and its powers were set out exhaustively in legislation, the awards which could be made were limited, one of the available remedies (reinstatement) could be substituted by the District Court, there was a full appeal to the Labour

⁴⁰⁸ [2021] IESC 24.

⁴⁰⁹ Para. 110.

Court, which could itself be appealed on a point of law to the High Court and the Commission could be subject to judicial review.

Having regard to the decision in *Zalewski*, it appears that it is open to the legislature to establish an analogous environmental law commission or tribunal. This option is attractive for a number of reasons. It would provide for a readily identifiable one-stop-shop for all environmental law cases of a civil nature. Legislation could require adjudicating officers to have particular expertise in a relevant field which would be particularly useful given the scientific nature of many of the disputes likely to arise. It could also make provision for the resources that are appropriate to deal with cases involving environmental law issues and in particular, the urgency that will often arise. While the creation of such a body would involve a significant degree of up-front investment, in the longer term it should prove more cost effective than the existing courts' system. In light of the decreased formality inherent in such a system, it is also likely to be less intimidating for prospective litigants.

However, in order to be constitutionally permissible, the jurisdiction and powers of any such tribunal or commission would have to be strictly limited. It is clear from Article 37.1 of the Constitution that it could not exercise any jurisdiction in criminal matters- a limitation which is significant given that many environmental law cases are criminal in nature. In addition, it seems unlikely that it could grant any form of injunctive relief. Again, this limitation is problematic given that so many prospective litigants will be seeking to avoid imminent and irreparable harm to the environment. It is also implicit in the majority decision in *Zalewski* that the awards which such a body could make would be limited which could make it difficult to disincentivise larger entities from committing further acts which are damaging to the environment. Further, as a body operating outside the existing courts' structure, its decisions are likely to attract less attention than decisions of the court, which may stunt its influence.

On balance and in light of the mixed civil and criminal nature of environmental cases, it seems that the first model, which involves the creation of a specialised environmental court, or a "green division", within the existing courts' structure, combined with an administrative tribunal along the lines of the WRC provides the most straightforward option. It avoids the jurisdictional limitations inherent in courts of local and limited jurisdiction and administrative tribunals. While it would require some legislation to separate it from the ordinary civil and criminal law courts, the general framework is already there so the task of legislators would not be unduly onerous. In circumstances where the structure already exists, it would be constitutionally sound. Further, in light of the High Court's inherent jurisdiction, it is best equipped to provide the broad range of remedies which environmental law disputes demand.

The appropriate forum will have to be studied and decided upon by Government. However, two observations can be made:

First, there is an international consensus that to facilitate real environmental justice, the establishment of a court by itself is not sufficient, in addition the ECT needs to operate with suitable procedural rules, including wide rules of standing, the ECT system cannot cost too much for litigants, decision makers need access to scientific and technical expertise, and the remedies which the ECT can apply need to be able to broker agreed solutions and future action, using alternative dispute resolution and mediation.

Second, looking at the Irish system, an environmental division of the High Court - a so called Green Chamber with a judge appointed from the roster of other High Court judges within a regular (nonspecialized) court assigned environmental cases- is not likely to give the benefit of

ease of access to justice, reduced costs, expert decision maker or provide innovative problem solutions. The High Court is still bound by all the well cited barriers to access to justice. The Commercial Court model is not suitable: it is significantly more expensive to go the Commercial Court than an ordinary court, and it is designed to move commercial and high value multinational type disputes through quickly. A green Chamber judge would not build up long term expertise, because a High Court judge assigned to any specialised Court is only there for a limited period of time and would be rotated to other High Court wings such as family, commercial, criminal etc., or promoted.

Finally, the normal practice and procedures of the High Court would apply, and the law likely to be interpreted in line with existing legal methods of interpretation. Pring and Pring note in their extensive study of environmental courts worldwide, that “*it is difficult for a green chamber to adopt different rules, fees, or court procedures from those used by its parent regular court*”⁴¹⁰

The opportunity to create a truly innovative tribunal, with a problem-solving approach, restorative justice and ADR could not easily be realised in the traditional high court model. A specialist tribunal in Ireland could, however, operating an environmental code described in this blueprint, create its own culture.

This paper, and the work of the Task Force aim to stimulate developments in Ireland so as to achieve the adoption of a successful ECT in Ireland.

⁴¹⁰ Experiences of Sweden’s Environmental Courts Ulf Bjällås, Presiding Judge on the Environmental Court of Appeal in Stockholm from 1999 until his retirement in 2010, Accessed at https://law.pace.edu/sites/default/files/IJIEA/jciBjallas_Final%203-17_cropped.pdf, 15th October 2020.



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Remembering our Place in the Scheme of Things Duties and Principles Necessary for an Effective Environmental Law⁴¹¹

Bartholomew Begley, Charlotte Rose Bishop, Mercedes McGovern & Louise Reilly BL

INTRODUCTION

This paper was drafted as part of an ambitious project undertaken by the Climate Bar Association of the Bar of Ireland to establish a Model Environmental Law. The objective of the project is to make environmental law accessible and enforceable.

Environmental law in Ireland, perhaps more than any other area of the law, is a disparate collection of regulation at domestic, European and international level, which is difficult to understand cohesively, and even more difficult to enforce. Environmental laws have so far proved futile in halting the ecological crisis in which we find ourselves. Designed to, at best, regulate the harm inflicted on the environment, these laws have enabled the development of an economic system that has put people and planet in a perilous state, so much so that we must, with great urgency, change every aspect of how we live our lives. Fundamental to this change is the restoration of humanity's relationship with nature, shifting it from one of exploitation, to one of stewardship and care. Living through Covid lockdowns and restrictions, brought about a new appreciation for our natural world and the need to protect it. This paper and the wider project aim to be part of that change.

This paper focuses on the duties and principles that the authors consider are a necessary part of a modern and effective environmental legal regime. This paper will (I) set out duties and principles, and (II) suggest principles that should be applied to drafting, interpreting, and enforcing environmental legislation.

CONTEXTUAL LENS

This paper advocates that environmental considerations should be a fundamental feature of political considerations, and that environmental protection should be a factor in all policies, programmes, activities and funding decisions of the government. A key piece in advancing environmental protection is education: learning about the environment develops skills, understandings, and attitudes which future generations can implement to protect the environment. During the drafting of this paper, the authors discussed the apparent disconnect between individuals' behaviour and their impact on the environment. One simple example is the fact that more than half of the cars bought in Ireland in 2021 were sports utility vehicles (SUVs),⁴¹² despite the fact that on average, SUVs consume 20 per cent more energy per kilometre than a medium-sized car,⁴¹³ and were the second largest cause of the global rise in carbon dioxide emissions over the past decade.⁴¹⁴ The authors believe that education is key in overcoming this disconnect; it also helps us realign ourselves within the natural world and remember our place in the scheme of things.

⁴¹² Geraldine Herbert, 'Our growing love affair with the SUV has a toxic side', IRISH INDEPENDENT, Jan. 14, 2022, <https://www.independent.ie/entertainment/our-growing-love-affair-with-the-suv-has-a-toxic-side-41237806.html>.

⁴¹³ Michael le Page, 'People buying SUVs are cancelling out climate gains from electric cars', NEW SCIENTIST, Jan. 21, 2021, <https://www.newscientist.com/article/2265449-people-buying-suvs-are-cancelling-out-climate-gains-from-electric-cars/#ixzz7IFPEpMbY>.

⁴¹⁴ Oliver Milman, 'How SUVs conquered the world – at the expense of its climate', THE GUARDIAN, Sept. 1, 2020, <https://www.theguardian.com/us-news/2020/sep/01/suv-conquered-america-climate-change-emissions>.

I. DUTIES AND PRINCIPLES

1. DUTY TO EDUCATE

As outlined above, the authors believe that education is key in effectively addressing the climate crisis.

International Perspective

Obligations and statements to promote environmental and climate change education (E/CC) (also referred to in this document as sustainable development education or ecological education) can be found in numerous international declarations, governmental agreements, and top-down policy guidance. Article 12 of the Paris Agreement commits parties to ‘*taking measures, as appropriate, to enhance climate change education...*’, while Article 3 of the Aarhus Convention imposes a binding obligation on Parties to the Convention to ‘*promote environmental education and environmental awareness among the public, especially on [environmental procedural rights].*’ The IPCC highlights a range of education options to adapt to as well as mitigate climate change including the integration of climate change education in school curricula.⁴¹⁵ These, as well as numerous other declarations, agreements and guidelines,⁴¹⁶ have informed government-mandated E/CC education programs throughout the world. India, Brazil, Kenya, Philippines, China, Japan, Tanzania, Colombia, Italy and Finland are just some of the countries where policy exists within the federal level that formally embeds environmental education into the primary and/or secondary education system.⁴¹⁷

In India, environmental education was mandated by the Supreme Court in 1991. The order required mandatory environmental education in formal education to fulfill the fundamental duties of citizens to ‘*protect and improve the natural environment,*’ as set out in India’s Constitution.

In Brazil, environmental education is a state policy. The Constitution establishes that environmental education in all levels of education is a citizenship right and a duty of the state.⁴¹⁸ Brazil National Policy for Environmental Education (PNEA), is coordinated by the Ministry of Environment and Ministry of Education. Article 2 states that environmental education must be present in both formal and nonformal education.⁴¹⁹

⁴¹⁵ IPCC 2014, p.27

⁴¹⁶ The UNESCO-UNEP Belgrade Charter of 1976 established the aim of environmental education to be the development of a world population that is aware of and concerned about the environment, o. One that had the skills and motivation to work towards solutions and prevent additional problems. The Tbilisi Declaration of 1977, adopted at the world’s first intergovernmental conference on environmental education, elaborated on the objectives of environmental education. Principle 19 of the Stockholm Declaration states that ‘Education in environmental matters...is essential in order to broaden the basis for an enlightened opinion and responsible conduct by individuals, enterprises and communities in protecting and improving the environment in its full human dimension.’ Article 6 of the UNFCCC, whereby the 197 parties committed to ‘the development and implementation of educational and public awareness programmes on climate change and its effects’. Initiatives to promote environmental education include the UNESCO Education for Sustainable Development (ESD) 2030 Framework develops on the aforementioned declarations and agreements by presenting a global and holistic framework that supports countries in developing ESD action in all areas of education and learning. UNESCO aims to make environmental education a core curriculum component in all countries by 2025. The Berlin Declaration on Education for Sustainable Development 2021 calls for urgent action to accelerate sustainability and climate action through education what about commitment

⁴¹⁷ <https://www.earthday.org/wp-content/uploads/2020/07/World-Bank-Environmental-and-Climate-Literacy-Final-Report.pdf>

⁴¹⁸ <https://www.researchgate.net/publication/309128653> Environmental Education in Brazil

⁴¹⁹ <https://thegeep.org/learn/countries/brazil>

As of 2020, climate change and sustainability education became mandatory across Italian schools as part of civics education. All state schools must dedicate 33 hours per year, almost one hour per school week, to climate change issues. Many traditional subjects, such as geography, mathematics and physics, are studied from the perspective of sustainable development.⁴²⁰

The Education (Environment and Sustainable Citizenship) Bill was introduced in the House of Lords, UK in May 2021. It would amend the Education Act 2002 so that the national curriculum includes education on the environment and sustainable citizenship. It would require schools to follow a curriculum that ‘*instills an ethos and ability to care for oneself, others and the natural environment for present and future generations*’.

Irish Perspective

An overemphasis on STEM in the Irish education system might prepare people for the world of work but not to live together sustainably and in an ethical way.⁴²¹ The Irish Youth Assembly on Climate,⁴²² has recommended ‘*[m]andatory sustainability education from primary level to the workplace...*’ while Ireland’s National Strategy on Education for Sustainable Development,⁴²³ has highlighted the need to integrate sustainable development education in the curriculum from pre-school up to senior cycle so as to motivate and empower students to take action for a more sustainable future.

The redevelopment of the junior cycle programme to include themes of sustainability and climate change has faced criticism for its lack of standardised coverage and failure to provide effective teacher training. A further challenge for schools is how to reconcile the benefits of interdisciplinary sustainable development education in a curriculum that consists of separate subjects. Organisations such as Eco-Unesco, Trócaire and An Taisce (Green Schools programme) are currently left to bridge the environmental education gap. A new development in the form of the ‘Climate Action Short Course’,⁴²⁴ developed for both students and teachers of the Junior Cycle, provides, perhaps, the key as to how Ireland might improve on its ‘ecological literacy’. The ‘participatory, active, engaging [and] empowering’ approach to e/cc education and its emphasis on critical thinking, place-based education, deep ecology and emotional-thinking,⁴²⁵ is supported by the research and literature of climate change education.⁴²⁶

Why is environmental education important? How might it/legislation look?

Climate change education literature suggests that climate change and environmental education currently prioritises knowledge acquisition (i.e., helping students understand the science of

⁴²⁰ <https://www.capstan.be/confronting-the-climate-crisis-one-more-21st-century-skill-for-students-to-learn/> and [National Reforms in School Education | Eurydice \(europa.eu\)](#)

⁴²¹ [Lack of critical thinking in schools and society a concern - Higgins \(irishtimes.com\)](#)

⁴²² [Youth Assembly on Climate takes over Dáil Chamber for day of debate – 15 Nov 2019, 19.19 – Houses of the Oireachtas](#)

⁴²³ 2014-2020

⁴²⁴ [Short+Course+in+Climate+Action+-+Junior+Cycle+specification\(2\).pdf \(squarespace.com\)](#)

⁴²⁵ The approach brings together influences from different fields of education, and is based on • Holistic learner-centred education, (including starting from students intertwined feelings and thinking, students’ life experiences, students participating in decision-making, and cocreating learning and action) • Democratic global citizenship; (involving critical reflection on global issues, democratic participation and informed and meaningful action) and • Place-based education (building students’ sense of belonging and connection to place, nature and community through enjoyable outdoor experiences, group experiences and learning in my local community).

⁴²⁶ [The Role of Universities Building an Ecosystem of Climate Change Education \(nih.gov\)](#)

climate change). Largely unchanged since the 1970s and 1980s, environmental/climate change education assumes that ‘*environmental problems [can] be adequately addressed through resource conservation and incremental changes to technology and [individual] human behaviour*’.⁴²⁷ This exclusive focus - on low levels of cognition with a priority on individual action - is simplistic and inadequate in responding to climate change (‘*a systemic problem of such scale and complexity*’)⁴²⁸ and environmental issues. Numerous studies have found no relationship between scientific knowledge and pro-environmental behaviour,⁴²⁹ leading instead to a superficially informed society that is unable to act.⁴³⁰ Similarly, climate change education that is didactic and siloed into a single subject as a simple add-on to the curriculum has proved unsuccessful in effecting change.

The literature emphasises the importance of going beyond equipping people with the cognitive skills to simply understand climate change.⁴³¹ It is not enough to ‘green’ the existing curriculum.⁴³² Doing so, facilitates the continuity of the existing system, one that is ‘premised on the dominance of a particular subset of humanity at the expense of the wellbeing of all other humans and the wider ecology of the planet’.⁴³³ For knowledge to impact attitudes and behaviours, for it to be transformative and transgressive, climate change/environmental education must go ‘deeper’. It must be participatory, interdisciplinary, experiential, creative and emotional. It must focus on systems level change and collective action rather than individual behaviour. A ‘whole school approach’ rather than a singular climate change/environmental class must be adopted. Andreotti suggests that climate change/environmental education ‘*requires a shift, not unlike Galileo’s*’ that decentres ourselves so as to centre the world and recognise the interdependency of all life forms.⁴³⁴ Fundamental to the facilitation of deeper learning among students is developing the capacity of teachers and schools. Teachers must be trained and supported in advancing pedagogies that foster this ‘deeper learning’. The education must be designed to serve the particularities of each jurisdiction, locality and education system or school.

2. ECOCIDÉ

The authors advocate that the legislature must pass legislation to make ecocide a domestic offence and support the recognition of the crime of ecocide at international level.

The term ‘ecocide’ is generally understood to mean the mass damage and destruction of nature. Deriving from the Greek word ‘oikos’ meaning house or home, and ‘cide’ from Latin, meaning strike down, demolish or kill, it literally translates as ‘killing our home’.⁴³⁵ Ecocide occurs

⁴²⁷ Jorgenson et al, 2019, p. 160)

⁴²⁸ [The Role of Universities Building an Ecosystem of Climate Change Education \(nih.gov\)](#)

⁴²⁹ Rousell and Cutter-Mackenzie-Knowles 2020, p. 196 in [The Role of Universities Building an Ecosystem of Climate Change Education \(nih.gov\)](#)

⁴³⁰ [The Failure of Environmental Education \(and How We Can Fix It\) \(nih.gov\)](#)

⁴³¹ (Rousell and Cutter-Mackenzie-Knowles 2020, p. 196)

⁴³² [ESD - full paper - pre-print \(researchgate.net\)](#)

⁴³³ [ESD - full paper - pre-print \(researchgate.net\)](#)

⁴³⁴ See Sharon Todd, ‘Landing on Earth:’ an educational project for the present. A response to Vanessa Andreotti’, *Ethics and Education*, 2021, Vol. 16, No. 2, 159–163, <https://doi.org/10.1080/17449642.2021.1896636>

⁴³⁵ EJOLT, [Europe: Eradicate Ecocide \(ejolt.org\)](#)

where any state, individual or organisation causes or permits ‘harm to the natural environment on a massive scale’ and, in so doing, breaches ‘a duty of care owed to humanity’.⁴³⁶

International Perspective

First used to describe the destruction of over one-fifth of Vietnam’s forests by US forces during the Vietnam war in the 1970s, academics, legal scholars and activists have since pushed for the criminalisation of ecocide as an international crime, to sit within the Rome Statute of the International Criminal Court.⁴³⁷

The Independent Expert Legal Panel for the Definition of Ecocide (‘IEP’), convened by the Stop Ecocide campaign, has proposed the following definition for an international crime of ecocide:

‘Ecocide’ means unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts’.⁴³⁸

Making ecocide a crime creates an arrestable offence. Those individuals who are most responsible for decisions and acts that lead to mass environmental harm will be liable to criminal prosecution (by States or, if nation states cannot or will not prosecute, by the ICC, as a court of last resort). The threat of facing criminal procedures (and being considered a war criminal) will act as a deterrent, shifting companies from the ‘polluter pays’ principle to ‘the polluter doesn’t pollute’.⁴³⁹ The ICC has been shown to be largely effective in its deterrence objective, through both the threat of punishment and shame.

A Head of State (or more than one) must now formally propose an ecocide amendment to the Rome Statute. Two thirds of the State Parties to the Rome Statute (currently 82 out of 123) must agree to add the crime of ecocide to the Statute, making it the 5th Crime against Peace. It is enforceable for ratifying states 12 months after they submit their ratification and they must incorporate it into domestic legislation.⁴⁴⁰

Irish Perspective

Ecocide, by its very definition, is a ‘supranational crime’ that criminalises the most serious violations to the environment. Amending the Rome Statute of the International Criminal Court so as to make ecocide an international crime, while feasible, is a long-term project. In light of the urgency to respond to the crisis, Ireland must pass legislation to make ecocide a domestic offence (while at the same time, pursue the campaign to make ecocide an international crime). Ten countries have already codified ecocide as a crime within their borders. In most cases, the crime of ecocide is set down in the country's penal code and listed as a ‘Crime Against Peace’. In creating legislation, we must be incredibly careful not to weaken what ecocide is intended

⁴³⁶ 44 M. A. Gray ‘The International Crime of Ecocide’ [1996] 26 Cal W Int’l LJ 215, 216

⁴³⁷ Ecocide Law Alliance, ‘Q&A on Ecocide Law’

<https://www.ecocidelawalliance.org/assets/files/Ecocide_Law_Alliance_QA_052021.pdf>

⁴³⁸ Stop Ecocide, ‘Top International Lawyers Unveil Definition of Ecocide’

<<https://www.stopecocide.earth/press-releases-summary/top-international-lawyers-unveil-definition-of-ecocide>>

⁴³⁹ The Guardian, ‘The Earth is Our Business’

<<https://www.theguardian.com/law/2012/jun/04/ecocide-earth-business-extract>>

⁴⁴⁰ Ecocide Law Alliance, ‘Q&A on Ecocide Law’

<https://www.ecocidelawalliance.org/assets/files/Ecocide_Law_Alliance_QA_052021.pdf>

to address. It cannot be used loosely; doing so would mean arriving at a ‘perspective so partial that it becomes a barrier to understanding and to action’.

i) The purpose of domestic ecocide legislation

The purpose of creating domestic ecocide legislation is to make it a criminal offence to act in a way which causes severe and either widespread or long-term damage to parts of the environment both in Ireland and abroad. An ecocide law will hold those in a position of superior responsibility (e.g. CEOs of Irish corporations or decision-makers within government) criminally liable for severe environmental damage such as deforestation, ocean damage or pollution of waters.⁴⁴¹ Making ecocide an arrestable offence, acts as a deterrent, shifting perpetrators away from the ‘polluter pays’ principle (via fines and suing, for which they have often budgeted) towards the ‘polluter doesn’t pollute’.⁴⁴² A duty of care towards the environment will guide companies and decision-makers, rather than a duty to profit.⁴⁴³

Language dictates how we see and therefore act in the world. The addition (and removal) of words to a language expands (and reduces) how and what we see. Failure to explicitly name and speak to the crime of mass destruction of nature within our legal arsenal, hampers our ability to fully see and acknowledge the gravity of such an act.⁴⁴⁴ Creating ecocide legislation has an expressive function; beyond establishing and enforcing rules, it expands our moral spectrum, establishes a new baseline, helping us discern what is acceptable and unacceptable regarding our relationship with nature. Transforming our relationship with nature and cultivating one of care rather than exploitation, becomes the new norm.⁴⁴⁵ It is not unrealistic to predict that this shift will have a butterfly effect, transforming and improving how we engage with and enforce the plentiful and impressive international, European and domestic environmental laws that do already exist (but are weakly applied).⁴⁴⁶

ii) How legislation might look

Legislation that prohibited ecocide in Ireland might be informed by the definition proposed by the IEP. Additionally, it would benefit drafters of a proposed ecocide bill, to look to the UK, Belgium, Mexico and others and their current efforts to legislate for ecocide as a domestic offence. They, in turn, are being guided by the IEP definition. Thus, those who caused harm or risked causing harm to the environment, that was considered severe and either widespread or long-term, would face criminal proceedings.

It is important that ecocide legislation criminalises both ‘legal’ and ‘illegal’ acts that lead to ecocide. The ecocide carried out may be illegal: perhaps that of setting fire to our ancient forests. But it might also be legal and carried out under the guise of regulation. Should that act

⁴⁴¹ Ecocide Law Alliance, ‘Q&A on Ecocide Law’

<https://www.ecocidelawalliance.org/assets/files/Ecocide_Law_Alliance_QA_052021.pdf>

⁴⁴² The Guardian, ‘The Earth is Our Business’

<<https://www.theguardian.com/law/2012/jun/04/ecocide-earth-business-extract>>

⁴⁴³ Anastacia Greene, ‘The campaign to make ecocide an international crime: Quixotic Quest or Moral imperative?’

(2019) 30(1) Fordham Environmental law review,

⁴⁴⁴ Thomas McGinn, ‘The Expressive Function of Law and the *lex imperfecta*’ <

<https://as.vanderbilt.edu/history/docs/McGinn2015ExpressiveFunctionofLaw.pdf>>

⁴⁴⁵ Rachel Killean, email exchange

⁴⁴⁶ National Biodiversity Action Plan 2017-2021

<<https://www.npws.ie/sites/default/files/publications/pdf/National%20Biodiversity%20Action%20Plan%20English.pdf>>

though cause severe and either widespread or long-term damage to the environment, it is ecocide, regulated or otherwise.⁴⁴⁷

Important too is that legislation would have extraterritorial provisions. It might be the case that an Irish registered company is sourcing their material from, for example, a mine in Columbia that is known to be contributing to the severe destruction of natural and human communities living close to the mine. Legislation prohibiting ecocide would ensure that the CEO of the company could be charged with ecocide.

Finally, Ecocide legislation must be grounded in restorative justice, which is dealt with below.

3. RIGHTS OF NATURE

The authors advocate that nature should have a status and a right to exist independent of its benefits to humans.

The *Dejusticia Case* was a Colombian lawsuit based on the rights of future generations, linking deforestation and climate change.⁴⁴⁸ The Colombian Supreme Court's ultimate recognition of the Colombian Amazon as a rights-bearing subject follows a global trend of both judicial and legislative actions granting legal rights to natural elements.⁴⁴⁹ Alongside the Amazon and the Atrato river in Colombia, other examples are the Vilcabamba River in Ecuador;⁴⁵⁰ the Te Urewera forest and the Whanganui river in New Zealand;⁴⁵¹ and the Ganges and Yamuna rivers in India.⁴⁵² In fact, the idea of the 'rights of nature' was first advanced by Christopher Stone in 1972,⁴⁵³ and has been the subject of academic and legal commentary since.⁴⁵⁴ The recognition of nature's legal subjectivity not only enhances environmental protection but also constitutes a potential solution to the issue of legal standing which would be easier to claim without having to prove any specific harm to people.⁴⁵⁵

The *Dejusticia Case* stands as an example of a national court engaging with existing or new legal concepts to promote climate justice from the perspectives of intergenerational and

⁴⁴⁷ Kate Mackintosh, '200 Words to Save the Planet'

<<https://legal-planet.org/2021/07/13/guest-contributor-kate-mackintosh-200-words-to-save-the-planet-the-crime-of-ecocide/?fbclid=IwAR1y5RTYb4xY8Xodi02u-STzdIBFsvHuNCMOIq7PvHKSCb8eWANdsZcbWN0>>

⁴⁴⁸ Dejusticia, 'The Colombian government has failed to fulfil the Supreme Court's landmark order to protect the Amazon' (Dejusticia, 5 April 2019) <https://www.dejusticia.org/en/the-colombian-government-has-failed-to-fulfill-the-supreme-courts-landmark-order-to-protect-the-amazon/>; ESCR-Net – Caselaw Database, 'STC 4360-2018' <https://www.escr-net.org/caselaw/2019/stc-4360-2018>; Tigre A M, 'Brazil's First Climate Case to Reach the Supreme Court' (Opinio Juris, 13 October 2020) <http://opiniojuris.org/2020/10/13/brazils-first-climate-case-to-reach-the-supreme-court/>.

⁴⁴⁹ Acosta Alvarado P A, Rivas-Ramirez D, 'A Milestone in Environmental and Future Generations' Rights Protection: Recent Legal Developments before the Colombian Supreme Court' (2018) 30 J. Environ. Law 519.

⁴⁵⁰ *Wheeler et al v Director de la Procuraduria General del Estado* [2011] Provincial Court of Justice of Loja 11121-2011-0010 [2011].

⁴⁵¹ See The Te Urewera Act (Public Act 2014 No 51) and the Te Awa Tupua (Whanganui River Claims Settlement) Act of 2017.

⁴⁵² *Mohd Salim v State of Uttarakhand & others* [2014] WPPL 126/2014 [2014]. These examples are particularly common in places influenced by local indigenous perspectives in light of their distinctive relationship with nature. Calzadilla (n 3) 58; Alvarado, Rivas-Ramirez (n 3) 119-120; Pelizzon (n 7) 38-39.

⁴⁵³ Christopher Stone, 'Should trees have standing? - Toward Legal Rights for Natural Objects' (1972) 45 S Cal L Rev 450.

⁴⁵⁴ Pelizzon A, 'An Intergenerational Ecological Jurisprudence: The Supreme Court of Colombia and the Rights of the Amazon Rainforest' (2020) 2 Law, Tech & Hum 33.

⁴⁵⁵ *Sierra Club v Morton* [1972] 405 US 727, Justice Douglas dissenting opinion.

ecological equity, but also of the recognition of a free-standing right held by an element of the natural world itself in its own right.⁴⁵⁶

International Perspective

Almost three quarters of States' constitutions around the world provide for the protection of nature in some fashion.⁴⁵⁷ This may be through committing to environmental stewardship or enabling procedural environmental rights.⁴⁵⁸ These provisions may, however, participate in the traditional 'environmental law' discourse that renders the world as property thus suiting the needs of market and state. Imbuing nature with its own rights, on the other hand, reflects a paradigm shift, whereby an ecocentric approach is adopted.⁴⁵⁹ The concept of the rights of nature - or at least elements of the concept - have found their way into instruments such as the 1982 UN Charter for the Rights of Nature that declared rights for all living things.⁴⁶⁰ This was affirmed in the Stockholm Convention, which declares that 'man is both creature and moulder of his environment.'⁴⁶¹ Such inclusions give strength to Oliver Houck's assertion that nature rights 'are already boarding the ark' at an international level.⁴⁶² They lay a foundation for the development parameters of rights-holders to include non-human entities.⁴⁶³

New Zealand, Bolivia and Ecuador all demonstrate how the rights of nature could be formulated and exercised.

The New Zealand *Te Urewera* Act (2014)⁴⁶⁴ and the *Whanganui* River Claims Settlement Bill (2017)⁴⁶⁵ are informed by indigenous philosophies and recognise nature's intrinsic worth. Native peoples recognise an equitable relationship between nature and humans reflected in the indigenous saying '*Ko au te awa, do to awa ko au*' which translates as 'I am the river and the river is me'.⁴⁶⁶ The concept of 'legal personhood' is expanded to include parts of nature. *Te Urewera* land has the rights, powers, obligations as well as liabilities of a legal person. The *Whanganui* River has also been ascribed the status of legal personhood and is a 'rights-bearing entity'. The Acts are explicit and establish that nature is a rights-holder, grants it personhood, and clearly names those who are meant to represent the interests of the river and land.⁴⁶⁷

⁴⁵⁶ Pelizzon A, 'An Intergenerational Ecological Jurisprudence: The Supreme Court of Colombia and the Rights of the Amazon Rainforest' (2020) 2 Law, Tech & Hum 33.

⁴⁵⁷ Lael K. Weis, "Environmental constitutionalism: Aspiration or transformation?" International Journal of Constitutional Law (2018), Vol. 16 No. 3, 836–870, 837.

⁴⁵⁸ Tamlyn Jayatilaka, 'Rights of Nature: The Right Approach to Environmental Standing in the EU?' (2016) Ghent

⁴⁵⁹ Sam Adelman, 'Rethinking Global Environmental Governance' in Tabios Hillebrecht, Anna Leah and Berros, María Valeria (Eds). *Can Nature Have Rights? Legal and Political Insights*, (2017) 6 RCC Perspectives: *Transformations in Environment and Society* <doi.org/10.5282/rcc/8164

⁴⁶⁰ Oliver A. Houck, 'Noah's Second Voyage: The Rights of Nature as Law,' 31 Tul. Env'tl. L.J. 1 (2017)

⁴⁶¹ Principle 21 Stockholm Convention (1972) <http://www.worldservice.org/stockholm.html>

⁴⁶² Houck op cit n.56.

⁴⁶³ Karen Morrow, The Continuing Need for Innovation in Erinn Daly, Louis Kotze, James May, Caiphaz Soyapi, Arnold Kreilhuber, Lara Ognibene and Angela Kariuki (eds): *New Frontiers in Environmental Constitutionalism* (2017) United Nations Environment Programme (UN Environment)

⁴⁶⁴ *Te Urewera* Act (2014) < <http://www.legislation.govt.nz/act/public/2014/0051/latest/DLM6183601.html>

⁴⁶⁵ *Whanganui* River Claims Settlement Bill (2017) <https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/00DBHOH_BILL68939_1/te-awa-tupua-whanganui-river-claims-settlement-bill>

⁴⁶⁶ Lidia Cano Pecharroman, 'Rights of Nature: Rivers That Can Stand in Court' (2018) 7 (1) (Resources) 13

⁴⁶⁷ Lidia Cano Pecharroman, 'Rights of Nature: Rivers That Can Stand in Court' Resources (2018) 7 (1) 13

Since 2008, Ecuador has recognised the rights of nature in its Constitution. The concept of *Buen Vivir* – a multidimensional form of well-being, integrating strong cultural and ecological aspects based on indigenous communities’ knowledge⁴⁶⁸ – presents a new model of development whereby people live and fulfil their obligations in harmony with nature.⁴⁶⁹ Informed by indigenous peoples, this concept cultivates a new understanding of nature – *Pachamama* – that embraces an ecocentric,⁴⁷⁰ rather than anthropocentric, concept of rights. Nature is offered ‘the right to integral respect, to existence and to the maintenance and regeneration of life cycles, structure, functions and evolutionary processes,’ and ‘All persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature.’⁴⁷¹ In the case of *Wheeler c. Director de la Procuraduría General Del Estado de Loja*, in an Ecuadorian provincial court, the *Vilcambamba* river was granted the right of legal standing and subsequently received recognition of the violation it suffered during the construction of a road. The Court confirmed nature’s right to ‘exist, to be maintained and to the regeneration of its vital cycles, structures and functions’.⁴⁷²

Bolivia’s new Constitution in 2009 saw a move away from a dominant anthropocentric worldview to one that was more ecocentric. It addresses the importance of ‘intercultural understanding’, and “intercultural dialogue”⁴⁷³ between the different cultures (indigenous and otherwise) that share Bolivian territory. Bolivian law is informed by indigenous knowledge of *Vivir Bien* or *Suma Qamana*, a worldview that embraces a harmonious way of living in and with nature. A statutory framework of the Law of the Rights of Mother Earth was created that drew on this reframed discourse.⁴⁷⁴ The right to a ‘healthy, protected, and balanced environment’ is ‘granted to individuals and collectives of present and future generations, as well as to other living things, so they may develop in a normal and permanent way.’⁴⁷⁵ The rights to which Mother Earth is a titleholder - to life, to equilibrium, to restoration, to exist pollution free - are considered inherent rights.⁴⁷⁶ There is a responsibility placed on individuals, the state, and collectives to ensure that the rights of nature are respected.⁴⁷⁷

⁴⁶⁸ Marchand L and Hérault M, ‘The Implementation of Buen Vivir in Ecuador: An Analysis of the Stakeholders’ Discourses’, *European Journal of Sustainable Development* (2019) Vol. 8 No. 3.

⁴⁶⁹ Natalia Greene, *Pachamama Alliance, Ecuador Rights of Nature Symposium* (2017)

⁴⁷⁰ Ecocentrism finds inherent (intrinsic) value in all of nature. It takes a much wider view of the world than does anthropocentrism, which sees individual humans and the human species as more valuable than all other organisms.

⁴⁷¹ The Constitution of Ecuador, Article 71 <<https://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>>

⁴⁷² Pecharroman

⁴⁷³ The Constitution of Bolivia, Articles 79, 80, 91, 98, 394, inter alia <https://www.constituteproject.org/constitution/Bolivia_2009.pdf>

⁴⁷⁴ Villavicencio Calzadilla and Louis J. Kotze, Environmental constitutionalism and the ecocentric rights paradigm: the rights of nature in Ecuador and Bolivia in Erin Daly, Louis Kotze, James May, Caiphaz Soyapi, Arnold Kreilhuber, Lara Ognibene and Angela Kariuki (eds): *New Frontiers in Environmental Constitutionalism* (2017) United Nations Environment Programme (UN Environment) <<http://tinyurl.com/y4m43xyf>>

⁴⁷⁵ Law of the Rights of Mother Earth (Bolivia) <<http://www.worldfuturefund.org/Projects/Indicators/motherearthbolivia.html>>, Article 33

⁴⁷⁶ Article 7 of the Law Of The Rights Of Mother Earth (Bolivia)

⁴⁷⁷ Article 2(4) of the Law of the Rights of Mother Earth (Bolivia)

In outlining its commitment to the rights of nature, the Ecuadorian Constitution refers to the importance of the Precautionary Principle as guiding the implementation of the rights of nature. Article 73 states “The State will apply precaution and restriction measures in all the activities that can lead to the extinction of species, the destruction of the ecosystems or the permanent alteration of the natural cycles” in ‘Rights for Nature Articles in Ecuador’s Constitution’ (The Rights of Nature) <<https://therightsofnature.org/wp-content/uploads/pdfs/Rights-for-Nature-Articles-in-Ecuadors-Constitution.pdf>>

Irish perspective

The proposal that nature has rights and the State recognise that ecosystems have a status and a right to exist independent of their benefits to humans, might seem like a radical idea. However, this principle was long recognised in Brehon law before the imposition of the common law system in Ireland. According to Brehon Law, penalties were imposed for harming trees that were not dissimilar to the penalties for mistreating other humans.⁴⁷⁸ Furthermore, the basic unit of value was one milk cow (*bó mlicht*), with the term *sét* (precious object) used to denote a unit of value equivalent to half a cow.⁴⁷⁹ Specific rights of nature were addressed under this system, including trees being categorised into four classes, with penalties for harming or killing them.

The authors advocate that Ireland follow the example set by countries such as New Zealand, Ecuador and Bolivia in relation to rights of nature, and draw inspiration from Brehon law to restore rights to nature. Councils in Northern Ireland have already begun the process to recognise the rights of nature.⁴⁸⁰

4. RIGHT TO A HEALTHY ENVIRONMENT

The authors advocate for the express right to a healthy environment in which human life and biodiversity are preserved.

Conscious of the Supreme Court's judicial reticence in this regard,⁴⁸¹ this paper sets forth a basis for the Irish legislature to adopt which would facilitate the inclusion of this right. The authors believe there is scope for the legislature to base the right to a healthy environment on existing Constitutional and human rights. This will be detailed below: first, by examining the existing Irish basis and second, by examining the European basis.

Irish Perspective

In *Friends of the Irish Environment v. The Government of Ireland & Others*, (“*FIE Case*”) FIE invoked the constitutional right to life (in particular, ‘the obligation of the State to seek to protect persons against a future threat to life arising from climate change’); the unenumerated right to bodily integrity (due to the fact that ‘the consequences of climate change will significantly impact on the health and bodily integrity of persons’); and the emerging unenumerated right to an environment consistent with human dignity.

The Supreme Court denied FIE, a corporate entity, standing to invoke such constitutional rights, on the basis that Irish constitutional law does not permit a so-called *actio popularis*, *i.e.*, an action brought on behalf of the public. The Court considered that this aspect of the challenge ought to have been brought by natural persons who would undoubtedly enjoy the right to life and the right to bodily integrity. While one reading may suggest there is an opening to such natural persons seeking to rely upon these established constitutional rights in the future, it is notable that the Court distanced itself from recognition of an unenumerated right to a healthy environment. The Court stated ‘[I]est by not commenting on those matters it might in the future be argued that this Court had implicitly accepted the position’. In addition to concerns regarding a possible ‘blurring of the separation of powers’, the Court doubted that such a

⁴⁷⁸ Fields T R, ‘Trees in Early Irish Law and Lore: Respect for Other-Than-Human Life in Europe’s History’, (2020) *Ecopsychology* Vol. 12, No. 2.

⁴⁷⁹ Fields T R, ‘Trees in Early Irish Law and Lore: Respect for Other-Than-Human Life in Europe’s History’, (2020) *Ecopsychology* Vol. 12, No. 2.

⁴⁸⁰ [FOE-NI-Briefing-Rights-of-Nature-and-Councils-sept-2021.pdf \(ejni.net\)](#) and [Microsoft Word - Sharing Rights with Nature PD and RK.docx \(ssrn.com\)](#)

⁴⁸¹ *Friends of the Irish Environment v. The Government of Ireland & Others*, [2020] IESC 49.

purported right would provide any protection additional to the established rights to life and bodily integrity, and also described it as ‘impermissibly vague’, suggesting that ‘there needs to be at least some concrete shape to a right before it is appropriate to identify it as representing a standalone and separate right derived from the Constitution’. In a further justification of its approach, the Court noted that, with the exception of India, ‘no such right has been recognised in countries within the broad common law family’.

The authors consider that, following the *FIE Case*, the Supreme Court has opened the possibility for the Irish legislature to build a foundational basis for the express right to a healthy environment. It was not possible for FIE to succeed on this point given it was denied standing, and *obiter* comments from the Court suggest that a natural person might also face a challenge here. However, the starting point has been marked for the legislature to act and recognise this fundamental right. The authors believe that the legislature may also draw on the existing rights to life, bodily integrity and property to support the right to a healthy environment.

The authors consider that the right to life may act as a springboard for an express right to a healthy environment on the basis that a healthy environment is a prerequisite for the preservation of human life. The right to bodily integrity may encompass a right to a healthy environment, which cannot be protected without a recognition of the interconnectedness of all of life. Furthermore, the right to property cannot be protected in an Ireland experiencing the effects of the climate crisis. In the case of *Duarte Agostinho v Portugal*,⁴⁸² the litigants pleaded the right to property to support their asserted right to a healthy environment. This case is awaiting a hearing and subsequent judgment before the European Court of Human Rights (“ECtHR”).

European Perspective

In the *FIE Case*, citing the Netherlands Supreme Court’s judgment in the *Urgenda Case*,⁴⁸³ FIE sought to rely on Articles 2 (Right to Life) and 8 (Right to Private and Family Life) of the European Convention on Human Rights (“ECHR”). The *Urgenda Case* was the first time a court gave human rights norms a central role in defining the greenhouse gas (“GHG”) emission standards that governments are obliged to uphold. The Advisory Opinion cites existing jurisprudence from the ECtHR which sets out States’ positive obligations in cases of environmental disaster and serious environmental harm.⁴⁸⁴ The ECtHR confirmed that such jurisprudence is applicable to the obligations of the State to protect its population from long-term risks of harm attributable to climate change. Similarly, it is not necessary for prospective victims of climate-related harm to be individually identified, nor to identify immediate risks of harm to the general population, provided there is evidence of long-term risks.⁴⁸⁵ Greater still, the ECtHR held that the existence of scientific uncertainty does not render a risk of harm irrelevant for the purpose of the State’s positive obligations.

5. PRINCIPLE OF INTERGENERATIONAL EQUITY

The goal of the Model Environmental Law is to protect humans, the environment and biodiversity for future generations.

⁴⁸² Application No. 39371/20 Cláudia DUARTE AGOSTINHO and others v. Portugal and 32 other States

⁴⁸³ Rechtbank Den Haag [District Court of The Hague, Chamber for Commercial Affairs], June 24 2015 *Urgenda Foundation v The State of the Netherlands*, Case No. C/09/456689/HA_ZA 13-1396 (Netherlands).

⁴⁸⁴ *Oneryildiz v Turkey* App no 48939/99 (ECtHR, 30 November 2004). *Budayeva and other v Russia* App nos. 15339/02. 21166/02, 20058/02. 11673/02 and 15343/02 (ECtHR, 29 September 2008).

⁴⁸⁵ *Taskin and others v Turkey* App no 46117/99 (ECtHR 30 March 2005).

Climate change is often viewed as an issue of intergenerational equity: consumption today has a cost for future generations. The principle of intergenerational equity is arguably the basis of sustainable development. It supports a concept of fairness between generations in the use and conservation of the environment and its natural resources. It encapsulates the concept that ‘...every generation holds the Earth in common with members of the present generation and with other generations, past and future.’⁴⁸⁶

International Perspective

In the *Dejusticia Case*, the Columbian Supreme Court recognised future generations as a subject of rights.⁴⁸⁷ This fundamentally changes how rights are understood, since it implies that constitutional provisions of protection can be used to protect future generations. Furthermore, the ruling confirms the right of future generations to participate in the adoption of policies that will affect them. In *Dejusticia*, the plaintiffs – a group of 25 children and young people – submitted that given their average life expectancy of 78 years, they expected to experience most of their adult lives in the period 2041- 2070 when the annual temperature is projected to increase by 1.6°C, and part of their old age from the year 2071 when it will increase by 2.14°C.

In Canada, the Quebec Superior Court rejected Environnement Jeunesse’s (‘EnJeu’) – a Montreal-based non-profit focusing on raising awareness and encouraging advocacy among Quebec youth on environmental issues - request to bring a class action lawsuit against the Canadian government on behalf of all Quebecers under the age of 35.⁴⁸⁸ The Court held that EnJeu did not meet the requirements to proceed as a class action lawsuit, and found the cut-off age of 35 to be arbitrary and therefore inappropriate. The Court also held that EnJeu did not have authority to act on behalf of persons under the age of 18, and the Court was uncomfortable with the theoretical nature of the violations in question and whether a class action was the appropriate vehicle for such an issue. EnJeu appealed the Superior Court’s decision to the Quebec Court of Appeal which is pending.

The Supreme Court of the Philippines considered the principle of intergenerational equity in a case concerning a class action seeking the cancellation and non-issuance of timber licence agreements.⁴⁸⁹ The plaintiffs advanced the argument that such licences infringed upon constitutional right to a balanced and healthy environment. This landmark decision recognised the doctrine of intergenerational responsibility applicable to the environment in the Philippines legal system.

European Perspective

There is a case pending before the ECtHR, *Duarte Agostinho and Others v. Portugal and Others* - 39371/20, in which the applicants, six Portuguese children, allege the failure by thirty-three signatory states to the 2015 Paris Agreement to comply with their commitments in order to limit climate change, thus contributing to global warming and affecting the applicants’ living conditions and health. The applicants emphasise the absolute urgency of taking action in favour of the climate and the States’ shared responsibility, and the case has been fast-tracked for hearing.

⁴⁸⁶ Oxford Public International Law available at <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1421> accessed on 21 November 2021 at 11:17.

⁴⁸⁷Dejusticia, ‘The Colombian government has failed to fulfil the Supreme Court’s landmark order to protect the Amazon’ (Dejusticia, 5 April 2019) <https://www.dejusticia.org/en/the-colombian-government-has-failed-to-fulfill-the-supreme-courts-landmark-order-to-protect-the-amazon/>

⁴⁸⁸ Environnement Jeunesse (ENJEU) v. Attorney General of Canada no. 500-06-000955-183, July 11, 2019.

⁴⁸⁹ Oposa et al. v. Fulgencio S. Factoran, Jr. et al. (G.R. No. 101083)

Irish Perspective

The authors advocate that the legislature draws on international jurisprudence and recognise the principle of intergenerational equity. Support for this proposal can be found in Article 42A of Bunreacht na hÉireann, to include with the natural and imprescriptible rights of all children, the duty to prohibit actions that will have possible or probable long-term effects on the environment.

6. PRINCIPLE OF THE DUTY OF CARE

The authors submit that the State has a duty of care to exercise its powers with reasonable care so as not to cause harmful environmental effects.

The concept is not novel and already in 2007 the need was recognised for an extension of traditional negligence concepts to climate change litigation.⁴⁹⁰

International Perspective

In the *Federal Court of Australia case Sharma and others v. Minister for the Environment*,⁴⁹¹ the plaintiffs claimed to represent all Australian youths under 18, and argued that the Minister for the Environment had a common law duty of care towards young people. The Federal Court of Australia held that, in principle "the applicants have established that the Minister has a duty to take reasonable care to avoid causing personal injury to the Children when deciding [whether to approve the mining project in question]" In establishing the duty of care, the Court drew on the precautionary principle and found that if the foreseeable risks were to manifest, it would be "catastrophic", and therefore children should be considered persons who would be so directly affected that the Minister ought to consider their interests when making the approval decision. However, in declining to issue an injunction, the Court found that the plaintiffs had not established that it was probable that the Minister would breach the duty of care in making the approval decision, and had not established that they would have no further opportunity to apply for an injunction. While the plaintiffs failed to establish a breach of the duty of care, the principle was recognised by the Court.

In the *New Zealand case of Thomson v. Minister for Climate Change*, the court addressed the principle of the duty of care through a separation of powers lens, noting: "It may be appropriate for domestic courts to play a role in Government decision making about climate change policy..."⁴⁹²

European Perspective

When the District Court of the Hague ordered the Dutch government to commit to a greater cut in emissions, by a minimum of 25 per cent as opposed to the projected 14-17 per cent – it became the first court in the world to do so, applying Dutch Tort Law to this end.⁴⁹³ The

⁴⁹⁰ David Hunter & James Salzman, 'Negligence In The Air: The Duty Of Care In Climate Change Litigation,' *University of Pennsylvania Law Review*, Vol. 155, No. 6, Symposium: Responses to Global Warming: The Law, Economics, and Science of Climate Change (Jun. 2007), pp. 1741-1794

⁴⁹¹ *Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment* [2021] FCA 560

⁴⁹² *Thomson v. Minister for Climate Change Issues* [2017] NZHC 733.

⁴⁹³ *Rechtbank Den Haag* [District Court of The Hague, Chamber for Commercial Affairs], June 24 2015 *Urgenda Foundation v The State of the Netherlands*, Case No. C/09/456689/HA_ZA 13-1396 (Netherlands)

Urgenda case,⁴⁹⁴ indicated that a state has a duty of care to reduce GHG emissions in line with human rights obligations.

Irish Perspective

The authors propose that a similar duty of care may derive from Irish tort law. This duty would apply to the government and other authorities to exercise their powers with reasonable care so as not to cause harm to those affected by their decisions through environmental effects. This duty would also apply to companies to act with reasonable care so as not to cause environmental harm. The precautionary principle may also inform the application of the duty of care in an environmental context.

7. PRINCIPLE OF RESTORATIVE JUSTICE

As mentioned above, Ecocide legislation must be grounded in restorative justice.

A restorative justice approach to environmental proceedings recognises that to truly prevent the continuous cycle of violence and destruction (of people and planet), a judicial system should challenge the adversarial paradigm of criminal law and move beyond its own destructive practices of condemnation and punishment. To reduce reoffending, to help victims recover and to cultivate relationships of care between people and planet, principles of participation, harm reparation and healing must play a pivotal role in the legal proceedings. The restorative justice process is voluntary and brings perpetrator and victim(s) into direct communication in the hope that meaningful dialogue can occur. The perpetrator listens to the victim(s) recount the harm suffered and participants aim to come to a common understanding on how such harm can be repaired and justice achieved.⁴⁹⁵

Victims within the restorative justice process can be people affected but can also include future generations and ecosystems. Environmental NGOs act as surrogate, providing a voice for those who cannot speak.⁴⁹⁶

The European Forum for Restorative Justice (‘EFRJ’) presents the possible outcomes of a restorative justice process. These include action plans or restorative contracts whereby a range of commitments to prevent or repair ecological damage, are contained. Restorative outcomes might include ‘apologies, restoration of environmental harm, prevention of future harm, compensatory restoration of environments elsewhere if the affected environment cannot be restored to its former condition....’⁴⁹⁷

Using restorative justice in the environmental domain, raises particular questions that are worth considering. ‘How can we identify the victims of environmental harm and who should have a voice in the restorative processes? Who can speak on behalf of future or past generations and of other-than-human (animals, plants, rivers, land, places)? What kind of expertise is required to speak adequately for the non-human? What are the criteria by which judgements around

⁴⁹⁴ Rechtbank Den Haag [District Court of The Hague, Chamber for Commercial Affairs], June 24 2015 *Urgenda Foundation v The State of the Netherlands*, Case No. C/09/456689/HA_ZA 13-1396 (Netherlands)

⁴⁹⁵The International Journal of Restorative Justice, ‘Inhabiting a vulnerable and wounded earth: restoring

response-ability’ <<https://www.elevenjournals.com/tijdschrift/TIJRJ/2021/1/TIJRJ-D-21-00004>> and Femke Wijdekop, Great Transition Initiative, ‘Author’s Response to GTI Roundtable “Against Ecocide”’ <<https://greattransition.org/commentary/author-response-against-ecocide>>

⁴⁹⁶ Bryan Jenkins, ‘Environmental Restorative Justice: Canterbury Cases’

<<https://conferences.iaia.org/2018/final-papers/Jenkins,%20Bryan%20-%20Environmental%20Restorative%20Justice.pdf>>

⁴⁹⁷ European Forum for Restorative Justice, <<https://www.euforumrj.org/en/environmental-justice>>

repair and restoration are to be made? Can irreversible and irreparable environmental degradation be healed and repaired, and if so, how? How can we ensure that the ones that harm and damage the environment participate voluntarily in restorative processes?’⁴⁹⁸

International Perspective

Best practice is provided by New Zealand;⁴⁹⁹ the legal framework facilitated the adoption of restorative justice processes with the passing of the Sentencing Act 2002,⁵⁰⁰ and the Resource Management Act 1991.⁵⁰¹ The Land and Environment Court of New South Wales has also experimented with using restorative justice conferences and sentencing.⁵⁰²

Irish Perspective

In Ireland, restorative processes have been used in the criminal justice system since the late 1990s. It appears in the Children’s Act 2001,⁵⁰³ and in the Criminal Justice (Victims of Crime) Act 2017,⁵⁰⁴ which outline what the process should look like and how to provide safeguards for participants. Ireland has also remained at the forefront of research on the use of restorative justice in cases of sexual abuse. The Council of Europe Recommendation CM/Rec (2018), emphasises that restorative justice should be a ‘generally available service’ (Rule 18).⁵⁰⁵

II. PRINCIPLES AND DUTIES IN DRAFTING, INTERPRETATION AND ENFORCEMENT

This section sets out principles the authors advocate should be applied to drafting, interpreting, and enforcing environmental legislation.

Drafting Rules for Legislators

1. INTEGRATION PRINCIPLE

*The integration principle seeks to apply environmental considerations across all policy areas.*⁵⁰⁶

This is perhaps the lynchpin of our efforts in the draft Model Environmental Law. Since the 1972 Stockholm Declaration, of the United Nations Conference on the Human Environment, it has been understood that if states want to protect and improve the environment, environmental considerations must inform all areas of policy making. It has since been

⁴⁹⁸ European Forum for Restorative Justice (EFRJ)

⁴⁹⁹ John Verry Felicity Heffernan, Richard Fisher, [Restorative justice approaches in the context of environmental prosecution](#)

⁵⁰⁰ Sentencing Act 2002, Section 7 <<https://www.legislation.govt.nz/act/public/2002/0009/latest/DLM135342.html>>

⁵⁰¹ Resource Management Act 1991 <<https://www.legislation.govt.nz/act/public/1991/0069/latest/DLM230265.html>>

⁵⁰² Land and Environment Court of New South Wales, [Land and Environment Court of New South Wales \(nsw.gov.au\)](#)

⁵⁰³ [Children Act, 2001 \(irishstatutebook.ie\)](#) Sections 26, 29-43, 78-87

⁵⁰⁴ Criminal Justice (Victims of Crime) Act 2017, Section 6 and 26 <<http://www.irishstatutebook.ie/eli/2017/act/28/enacted/en/html>>

⁵⁰⁵ in Ian Marder, ‘Restorative Justice as the New Default in Irish Criminal Justice’, IRISH

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⁵⁰⁶ Stuart Bell et al., *Environmental Law*, Oxford, oxford University Press, 2013, 57.

included as Article 11 of the TFEU, that “environmental protection requirements must be integrated into the definition and implementation of the Union policies and activities, in particular with a view to promoting sustainable development.” While the authors advocate elsewhere in this paper for the rights of nature, at the very least, we must not see environmental legislation as isolated from any other area of legislative activity. Legislators must consider environmental impact in every piece of legislation.

This necessary integration of environmental protection into the development and implementation of EU policies and activities could be understood to mean that already any member state has an obligation to respect the principle when implementing EU policies and activities,⁵⁰⁷ but, to be effective, it needs to be binding in all areas of law.

Integration means that all the other principles and duties which are discussed above, from the rights of nature to intergenerational equity and the precautionary principle, must be an integral part of the development of our policies and activities, in their drafting, interpretation and enforcement.

2. PROPORTIONALITY OF ECONOMIC ACTIVITY AND ENVIRONMENTAL PROTECTION

The integration of environmental considerations into legislative activity, will not *per se* protect the environment. Integration must take place against a background of the weighing of interests to prioritise environmental requirements. Proportionality in this context is the principle that an activity having potentially adverse environmental effects must be effective, necessary and appropriately weighed against those effects.

The first step in such an assessment is to ensure that the action is effective and necessary, and cannot be substituted with a better alternative. There must be a requirement on decision-makers to ask if the given action is the best option for the environment. This is already a relatively uncontroversial but effective way to weigh the environment heavily in the balance, and to give substance to the integration principle.

Once this is done, there remains the requirement for balancing of interests, a weighing between a socio-economic gain (be it private gain or public) and protection of the environment. This is often a comparison between two essentially incomparable values. As has so often been pointed out, it is not for a court to second-guess the weight which the legislator may decide to place on any given criterion of good government. This is why legislation must lay out the methods by which the needs of the environment are to be weighed. This is required for the legislature itself in its methods, and also for courts in assessing the method of that decision-making.

Recognising the need to find that balance, but recognising also the imperative of protecting the environment, legislators must give added weight in their considerations of proportionality to the needs of the environment. As a form of strict precautionary principle, when the environment weighs in the balance, and there is any doubt as to the decision, the environment must take precedence in all but the case of the strongest public need. If the socio-economic gain is overriding, then compensatory environmental measures must be required.

We have said that this is often a comparison between incomparable values. But there is often intrinsic connection between the methods of tackling environmental harms and such economic issues as fair access to housing, energy, and food, both nationally and internationally, so that economic imperatives, energy requirements, or other socio-economic concerns, cannot be allowed to be drawn as always inimical to environmental care and allowed outweigh the need

⁵⁰⁷ Massimiliano Montini, ‘The principle of integration,’ *Principles of Environmental Law* (eds. Ludwig Krämer & Emanuela Orlando), Cheltenham: Edward Elgar, 2018, 139, 145.

to maintain and preserve the environment.⁵⁰⁸ This means that legislators must bind themselves to consider in all cases the benefits accrued by us all when we protect the environment.

Nonetheless, that incomparability of economic gain with environmental protection remains, so that in such a proportionality-weighting, recognition must be given to the status of nature in its own right, aside from human ends. To return to the issue of effectiveness and necessity, the argument that, if a person, company or group is prohibited in its activities, competitors will take them up instead, cannot absolve any individual company, group or country of its individual partial responsibility to do its part over what it can control and influence. Moreover, it is not to be taken for granted that any reduction in activity by one entity will be replaced by another such that pollution prevention would be ultimately unavailing.

It may be necessary also for government to impose restrictions on land use by landowners or impose certain actions, if we are to protect our environment, for example agricultural or industrial landowners being required to offset some of the effects of their agricultural or industrial activities, or restricted in their interventions on the land. There is always a balance to be struck between the individual's peaceful enjoyment of her possession and the public interest. Some restrictions or impositions may face challenge on the grounds of property rights under Article 43 of the Constitution. However, the proportionality principle, long recognised in Irish courts, should be considered to allow state intervention in property rights where required, as long as the legislation in question is clear and clearly meets the requirements of Article 43.⁵⁰⁹

All other things being equal, the interest in environmental protection must be understood to outweigh, proportionately, commercial or personal interests of individuals, companies or countries, so that they may be required to make financial and other sacrifices to prevent environmental damage.

Court Powers and Interpretation

3. INTERPRETATION OF LEGISLATION

Given that the ultimate purpose, or at least a primary purpose, of legislation with an environmental aspect is the attainment of improved environmental protection, courts should interpret provisions generally in a manner that gives the greatest possible environmental protection.

4. POWERS AND PROCEDURES OF LEGAL REPRESENTATION BEFORE THE COURTS

Some of the rights described here, because they are held by non-human beings, cannot be defended by means of the traditional understanding of legal standing, so allowance would have to be made through legislation for vicarious representation before the courts and administrative bodies.

Because situations will arise in which a large number of persons can be harmed or may be harmed by the same practices, and the possibility of joining claims and pursuing them collectively may constitute a better means of access to justice, in particular when the cost of individual actions would deter the harmed individuals from going to court, there should be in

⁵⁰⁸ Cf the Paris Agreement preamble, with particular reference to climate-change actions.

⁵⁰⁹ Cf the decision of the Supreme Court in *Albatross Feeds Limited v. Minister for Agriculture* [2007] 1 I.R.

221, which held that the exercise of a power depriving a citizen of his property rights would need to be justified by clear legal authority. See also *In the Matter of Linen Supply of Ireland Limited (formerley CWS-Boco Ireland Ltd) & Companies Acts* [2010] IEHC 28, applying this decision.

place collective redress systems, allowing for both group actions and representative actions in injunctive and compensatory actions. Such group and representative actions should not be under the auspices of state actors but should allow for freedom of action for those harmed or potentially harmed.

5. COURT POWERS OF SCRUTINY

The authors advocate that 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.

If any of the principles outlined above are to be binding on legislators, courts must have the power and duty to uphold and enforce them, understanding that such action is not an encroachment of executive powers. Concomitantly, it is not the role of courts to make decisions for the democratically elected legislator. However, in guaranteeing the protection of the rights and principles outlined in this paper, courts do have the power when necessary to review the merits of an administrative decision, as with any governmental action, to the extent that they infringe upon those rights and principles. This protection of agreed binding principles is not an encroachment on the legislative domain, but proper judicial scrutiny of it, on strictly democratic principles.

Enforcement

6. PRINCIPLE OF STRICT LIABILITY

Irish law already allows for strict liability in environmental legislation, but not absolute liability, so therefore allows for a defence of reasonable due care. Given “the virtual impossibility in many regulatory cases of proving wrongful intention, [i]n a normal case, the accused alone will have knowledge of what she or he has done to avoid the breach and it is not improper to expect the accused to come forward with the evidence of due diligence.”⁵¹⁰

This strict, but not absolute, liability should extend within group company structures, dependant on the relationship between the businesses and the concomitant duty of care, and to the personal liability of managers and directors of the undertaking responsible for environmental damage, including fall-back orders, even absent fraudulent or improper purpose, in order to give real effect to the polluter-pays principle.⁵¹¹

Any new statute which provides for strict liability should be clearly worded as such. Older statutes should be interpreted to make provision for strict liability when the creation of strict liability would be effective to promote the objects of the statute by encouraging greater vigilance to prevent the commission of the prohibited act.

⁵¹⁰ *R v City of Sault Ste Marie* 1978 2 SCR 1299, 1325. This was a seminal case in the area. It was approvingly cited by Keane J, dissenting, in *Shannon Regional Fisheries Board v Cavan County Council* [1996] 3 IR 267.

⁵¹¹ Cf *EPA v Neiphin Trading Ltd and Others* [2011] IEHC 67, where Edwards J held that the Waste Management Act 1996 did not transpose the Waste Framework Directive 2008/98/EC so as to give full application to the polluter-pays principle and allow the lifting of the veil of incorporation to allow fall-back orders against directors when a company is unable to comply with an order made against it under the Act, rather than leave it to an innocent party or the community to pay for environmental pollution.

Regarding the intent of the Oireachtas to give full application to the Directive in this regard, it is notable that two of the three primary references to the polluter-pays principle in the Act which Edwards J refers to, in section 5, defining it, and in section 22(6)(d), have since been deleted by Statutory Instrument (see *EPA v Neiphin Trading Ltd and Others* paras. 6.47-48).

7. LEGAL STANDARDS AIMED AT RECTIFICATION AT SOURCE, RATHER THAN MONITORING ENVIRONMENTAL QUALITY⁵¹²

It is not possible to stop all pollution, but, as a general principle, it is clearly preferable to stop pollution happening rather than monitor and control its effects. In the prevention of climate change, for example, it is recognised in the Paris Agreement that we must stop GHGs at source. In 1973, the EEC laid down as the first principle of its environmental action programme: “*The best environmental policy consists of preventing the creation of pollution or damage at source; rather than subsequently trying to counteract their effects ...*” and TFEU article 191 continues to hold to it.

If this method is to work, it requires clear identification of the pollutants in question, the limits applicable, and, crucially, the sources of those pollutants and the limits to be placed on them. It also requires such limits to apply to both individual sources and to all such sources taken as a whole. This is a method which can be well-targeted and proportionate, where compliance can be easily monitored, and through which the polluter pays principle can be relatively easily applied. It is a relatively cheap and sustainable measure by which to limit many environmental harms.

However, under pressure from various quarters, this emission-limit approach has often been replaced by a quality-objective approach. However, this cannot be as effective as a means of really limiting pollution and in any case, is impossible to enforce properly. Similarly, emission-limit values, under pressure from industry, have often been replaced with best-available-technology requirements, which, again, cannot be as effective and are almost impossible to enforce in practice.

To meaningfully tackle climate change, provision must be made in legislation for controlling of the levels and standards of emissions and other by-products, rather than measuring the effects of such by-products.

8. THE RECOGNITION OF THE CUMULATIVE NATURE OF POLLUTION AND THE MULTIPLICITY OF ITS CAUSES

The authors advocate that it is better to limit potential pollution at source rather than to monitor their effects. However, when monitoring or estimating the effects of pollution, it must be done holistically. In assessing the environmental impact of any activity, and therefore in legislating to reduce the pollution at source, the cumulative effect of the entirety of processes involved in any activity, upstream and downstream of that activity, must be taken into account.

Secondly, environmental damage will rarely be traceable to one sole cause. Therefore, partial causes can be considered legally liable for environmental harm due to that cause among others. Irish legislation should continue to make provision for joint and several liability when an incident or situation involving multiple, concerted or unconcerted, causes occurs and pollution damage results or may result therefrom.

This recognition of the totality of the effects of any activity, and the difficulty of tracing the sole cause of pollution, imply a necessarily systemic view of causes and effects, in the drafting of legislation and in its enforcement. Such an understanding is also part and parcel of the integration principle, such that decision-makers understand that activities and policies have wide-ranging effects, and are bound to explicitly take them into account.

⁵¹² Drawing on Ludwig Krämer, ‘The principle of fighting environmental harm at source,’ *Principles of Environmental Law* (eds. Ludwig Krämer & Emanuela Orlando), Cheltenham: Edward Elgar, 2018, 186.

9. THE USE OF ADMINISTRATIVE PENALTIES IN ENVIRONMENTAL LAW⁵¹³

The authors advocate that Irish law should allow for administrative sanctions in environmental law. Administrative fines are sanctions imposed by a body other than a court. A regulator is empowered to impose the sanction directly on the offender. Criminal prosecutions are thereby reserved for the truly criminal. The law should allow for the use of administrative sanctions to deal with cases where there is no evidence of intention or recklessness, but where, equally, a caution or warning is not a sufficient response.

The proposal for the application of administrative sanctions is compatible with ECHR art. 6(1). *Ozturk v Germany* 8544/79 21 February 1984 held that a system for civil/administrative penalties in road traffic offences is criminal, but a right to appeal satisfies ECHR art. 6(1)

The aim of administrative sanctions is to improve environmental outcomes and should, therefore, meet the following principles, often called the Macrory principles as they were first appeared as a unit in a 2006 review on sanctions in environmental law by Richard Mcrory.⁵¹⁴ They should:

1. Aim to change the behaviour of the offender [*i.e.*, punishment per se is not the objective] e.g., through awareness courses (as for driving offences);
2. Aim to eliminate any financial gain or benefit from noncompliance;
3. Be responsive and consider what is appropriate for the particular offender and regulatory issue, so that regulators have discretion, [this can include punishment and the public stigma that should be associated with a criminal conviction];
4. Be proportionate to the nature of the offence and the harm caused [and thus flexible];
5. Aim to restore the harm caused by regulatory noncompliance, where appropriate; and
6. Act as a deterrence to others

The possible penalty options under an administrative penalty regime could include monetary penalties; enforcement undertakings (offender would give an undertaking of steps that would be taken, e.g. retraining of staff or investment in new equipment, to avoid non-compliance in the future); third party undertakings (where the offender promises to compensate those affected by pollution); and restoration notices requiring specified steps within a stated period to ensure that things are restored, as far as this is possible, to the situation before pollution took place.

CONCLUSION

In *Don't Look Up*, a film using an imminent meteor strike as a metaphor for climate change, President Orlean, played by a brilliant Meryl Streep states, "*The timing is just, it's atrocious. OK, at this very moment, I say we sit tight and assess.*" The duties and principles outlined in this paper are far-reaching and arguably, aspirational in part. However, the time to sit tight and assess is over. It's time to act.

⁵¹³ These points are drawn to a large extent from Richard Macrory, *Irresolute Clay: Shaping the Foundations of Modern Environmental Law*, Oxford: Hart, 2020, Chapter 11.

⁵¹⁴ Richard Mcrory, *Regulatory Justice: Making Sanctions Effective*, London, Cabinet Office, 2006. For a full reprint of this report, see Richard Mcrory, *Regulation, Enforcement and Governance in Environmental Law* (2nd edition), Oxford: Hart, 2014, 21.



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Deirdre's interest in environmental protection and enforcement derives in part from her period as a local councillor for Dún-Laoghaire Rathdown from 2019-2020.

Stakeholder Feedback Report

Cóir Environmental Code Project 2021-2022

Stakeholder engagement and research team:

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Introduction

The team involved in gathering feedback from stakeholders was headed by Deirdre Ní Fhloinn BL, along with the support of two interns – Demetra Herdes and Ruairí McCabe. The primary goal for this stage of the Project was to establish connections with individuals who work in the environmental justice field, and to learn what we could from their collective experiences.

Through a series of interviews and questionnaires, we hoped to accumulate our findings into a well-rounded and representative document, which could be used to inform many of the decisions of Comhshaol in respect of the final Code.

This is a crucial step in the process, as we seek to engage those who understand the struggles on the ground, in day-to-day work in the environmental field. These are the people for whom the Code will have perhaps the greatest impact and for that reason, their voices must be heard in the drafting process for the Code.

The stakeholders may see Comhshaol as an essential resource in the future, and similarly, Comhshaol would benefit from gaining key partners across the country, working in different ways to protect the environment and promote environmental justice.

In this report, we will explain the methodology behind our information gathering, as well as the subsequent findings and any recurring themes which became apparent during the interview phase. Furthermore, with the permission of our respondents, we have included transcripts of the interviews and the questionnaires which were carried out. In this way, we hope that our report will provide guidance during the drafting of the final Code and help the group to address many of the issues which were brought up by the stakeholders.

Methodology

Drafting the Questionnaire

Early in the process, we met to brainstorm a questionnaire, which would serve as a means of obtaining a greater volume of feedback from stakeholders who may not have been available to interview. After a process which involved editing drafts, reworking our questions and continued dialogue amongst the team, Demetra put together a series of questions and set up a document in the Drive. The questionnaire questions can be found in the appendix of this report.

The questions were selected in such a way that we could address legal issues - inviting respondents to reflect upon the current state of environmental legislation, its implementation, and its shortcomings. Our intention was that these questions would be of relevance to the legal minds and the local politicians to whom we extended invitations to take part in interviews or complete our questionnaire. With that being said, there was still an opportunity for all respondents to give their view on the current legislative landscape. In some ways, it can be just as useful to hear from those without a legal background, as they will have more experience as to the true operation of the legislation. The lawyers should then be able to add to this with a knowledge of how the legislation is *supposed* to operate, and how we may bridge that gap between intended outcomes and reality.

Furthermore, we included several questions relating to common areas of complaint, which either the respondents themselves have witnessed, or which the respondents have received

complaints about, in their day-to-day work. This should in turn, help to inform the committee when putting forward proposals of areas which must be addressed. With these questions, we hoped to receive a wide and varied range of responses, all depending on the area in which the respondent operates. For example, a representative from [NGO], will deal with different complaints to a representative from [NGO]. NGOs in general will handle situations in a different way to local councillors, etc.

We hoped that we would be able to find themes running through all the feedback, which is how we could effectively utilise what could otherwise be disjointed and disconnected information from various sources.

Selection of Stakeholders

After putting together our questionnaire, the next step was to decide the individuals and organisations to whom we should send out the questionnaire. Of course, we wanted to make sure that we sent it to a wide range of stakeholders but at the same time, we could not send the questionnaire to every single NGO we could find. We needed to be selective, while still covering all our bases. We knew from early on that we wanted to involve NGOs, climate activists, politicians, and environmental lawyers, and with this in mind, we set out in search of candidates. Ruairi put together a spreadsheet which could be updated, with the names, organisations, contact details, etc. of our stakeholders. This was updated regularly, if there were any further suggestions or if we felt that we were missing any particular groups.

Along the way, Ruairi heard about an EJNI virtual seminar, which was focused on cross-border environmental issues, and, conveniently, Aarhus Convention compliance. Both Demetra and Ruairi attended this, collecting notes on the event, and picking out potentially important contacts.

We tried to find representatives from NGOs which dealt with as many areas of environmental protection as possible, from habitat and animal conservation organisations, to the EPA, a state-body. As with all our work, we hoped that having a wider range of organisations would provide us with more data and importantly, give us an idea how the current legislative regime affects all these organisations.

To find interested parties who were not connected to an organisation, we looked to universities - social policy and law professors, and then to those involved in high-profile environmental initiatives such as Climate Case Ireland. The academics identified, it was hoped, could bring legal expertise, while many others would have experience with environmental justice, class actions, and issues of *locus standi* in environmental cases in Ireland.

One concern which Deirdre brought up, which unfortunately was difficult to rectify, was the perceived lack of diversity in our list of stakeholders. It should be imperative that any discussion around the climate crisis involves ethnic and class diverse stakeholders, particularly minority groups who are so often side-lined in these discussions, despite being at the highest risk of being negatively affected by climate change.

Arranging Interviews

- Demetra used an innovative online voting and scheduling tool in order to set up the timetable for interviews.

- We found, however, that respondents generally preferred to complete the questionnaire in their own time rather than take part in interviews, or it proved difficult to find suitable times for the interviews. For this reason, the responses are via completed questionnaires.
- Work and college demands also made it difficult to arrange for meetings with all three of us present, hence the switch of focus to obtaining questionnaire responses.

Key Findings

Recurring Themes

The recurring themes included both expected and unexpected issues that became apparent in the course of our work:

- enforcement of environmental legislation is a significant problem identified across all our respondents;
- legislation protective of the environment tends to be piecemeal, which is a barrier to enforcement;
- there is an overarching need for an effective national enforcement strategy which is implemented consistently;
- cultural factors (such as unwillingness to report one's neighbours for breaches of environmental regulations) may be a significant barrier to enforcement even if access to enforcement is enabled at an individual/local level;
- some environmental harm is occurring gradually and out of sight of citizens, which suggests that enforcement may be proactive and comprehensive and not rely on the efforts of NGOs and concerned citizens. This has been described by one Local Authority Heritage Officer as "*the shifting baseline downwards each year where an environmental resource or ecosystem is declining in quality are invisible and quiet*".
- Poor regulation of activities that have the potential for significant environmental harm, such as commercial peat extraction and turbarry (where a licence holder is allowed to cut turf for family), which one respondent told us "*has never been properly regulated,*" resulting in discharge of water from peat silts and chemicals into waterways, and direct loss of biodiversity and carbon sequestration from the loss of the peatland habitat.

Lack of Knowledge

One of the primary responses which cropped up repeatedly was the lack of knowledge on environmental laws, particularly in rural areas, where this kind of information is most important and would be most impactful.

Many of our respondents noted that even where legislation may exist to prohibit certain environmental breaches, such prohibitions are not widely known, or else the consequences/damage of such actions are not recognised sufficiently. The problems that this lack of awareness leads to are plentiful.

Primarily regarding farmers, landowners, or small rural businesses, who can cause huge harm to the environment and their local communities, without fully comprehending the detrimental effects of their actions. Furthermore, those who may have a desire to tackle these issues suffer from a lack of resources, to understand what steps are available to them to

Worryingly, there was no consensus at all in answering our question about where the public currently goes for information or resources about environmental enforcement. This lends evidence to our existing belief that there is no destination with a comprehensive set of resources for the public. This reveals the need for a project such as ours, and reveals a need for campaigns in rural communities, to inform citizens of common environmental breaches, how to report them, and what they can personally do to ensure that these breaches do not reoccur in their areas.

Enforcement Issues

As one would expect, given the lack of information available to the public, many of our respondents commented on enforcement issues. One of the overarching themes from our respondents was the feeling of helplessness, again mostly in rural communities. In rural areas, it is harder to police actions such as hedge cutting, hillside burning and illegal dumping, for obvious reasons.

Unregulated and unlawful activities such as illegal peat extraction and quarrying were specifically mentioned by respondents.

The general feeling however, is that there are insufficient deterrents in place to stop these things from happening. Furthermore, the feeling is that there is nowhere to turn for individual citizens, whether that be in the form of national organisations who may be able to assist citizens in reporting these illegal actions, or community groups with knowledge and experience in tackling these issues.

There was a consensus that the system tends to favour the larger landowners or farmers, and that there is a culture of complacency, which prevents reporting against more powerful or financially strong parties. Much of this complacency stems from the fact that there is no real track record of successful legal action being taken against such parties, who seem never to be held accountable for their actions. Many citizens believe that current legislation provides too many loopholes, which seem to conveniently get more financially powerful offenders off the hook.

It seems clear from our respondent's answers that existing sanctions do very little to prevent reoffending. There is a sense that even where there are pecuniary sanctions, the offending parties are rarely the ones left to foot the bill, but it is left to the State.

Lastly, a major issue, again mostly affecting the public in smaller, rural communities, which tend to be remarkably close, is the reluctance to report environmental breaches out of fear for one's safety or fear for one's reputation. Often the biggest environmental offenders are also large employers in these communities, and with no real support system in place for whistleblowers, along with a history of threats to environmental activists, often characterised as 'serial objectors,' it is no surprise that the situation on the ground does not favour well-intentioned members of the public.

Compliance Issues

It is evident that many of our respondents do not have the utmost faith in the government to fully comply with many of their obligations, particularly with EU Directives. This ties in with the previous issues discussed, as there remains very little confidence in the system of enforcement, from the top down.

Suggested Actions

- There is a need for recognition of **personhood rights to ecosystems** or **rights of nature**. One observation from a Local authority heritage officer who took part in the questionnaire is worth quoting in full:

“The entire thing needs to be turned on its head. Rights of Nature recognition is essential or the ecosystems on which we depend will continue to be nibbled away, and environmental trends continue to decline. The recognition of the rights of nature to thrive and survive is a missing piece of the jigsaw. The legislation as it stands is simply “permitting” or penalising or compensating for environmental losses.”

- There is a need to build a consensus across Irish society for strong climate action in order to have the support of people living in Ireland for the measures that will be required in order to protect the environment against harm and climate change.
- Examine what measures have been taken to improve enforcement in other countries, to see what could be learned for Ireland.
- A strong campaign should be implemented nationally to show the damage done by those polluting the environment to flora and fauna and river systems, etc.
- A re-balancing is necessary towards environmental protection and away from the industrial processes that are most harmful such as intensive agriculture and data centres. This must be Government-led as the Department of Agriculture, for example, is amongst those driving intensification of dairy farming.
- There should be strong and serious consequences for those deliberately causing environmental harm such as setting fires. There should be significant penalties for crimes against wildlife such as hedgerow destruction and the killing of birds and animals, illegal tree felling, etc..
- Citizens need to see the know where to find information about what action they can take to deal with environmental harm and need to see credible and effective enforcement. We need to be seen to be taking environmental harm very seriously.
- Resourcing of environmental protection by public bodies is essential. One respondent pointed to the extreme under-staffing and under-resourcing of the National Parks and Wildlife Service, which is responsible for designated sites and wildlife crime.
- Citizen engagement in enforcement will also need to be resourced, as costs and lack of civil legal aid was identified as one of the barriers to citizen action.

- Education and accessible information for citizens is key to citizen engagement in enforcement.
- Simplification of laws and consolidation of responsibility into fewer public bodies was also identified as a means of improving citizen engagement and enforcement.

Limitations to Findings

- The sample size was limited. The respondents are listed below and included one academic expert, two Local Authority heritage officers, four NGO members. However, they all provided different perspectives and a rich level of detail in their responses which informed this work considerably. The respondents were all based in Ireland and it was not possible within the time available to generate a more international sample of respondents or a sample that fully reflected Ireland's demographic diversity and the many voices that could contribute to this research (for example, we regret that we did not have the opportunity to establish links with the Travelling community or with people living in Direct Provision who might have hugely different perspectives to offer).

List of Questionnaire Respondents/Interviewees

Questionnaire Respondents have been anonymised but included several representatives of NGOs and advocacy groups active in environmental protection in Ireland, a retired TD and Local Councillor, a University Professor, and several Local Authority Heritage officers.

Appendix

Questionnaire Respondees:

Respondent 1: former public representative

1. In your experience, what are the environmental issues most often litigated/complained of? (pollution, unauthorised cuttings, etc)

A: Illegal dumping and littering in both town and countryside, leaking septic tanks and farm pollution, air pollution from vehicles in built up areas.

2. What do you think are 3 most common areas where there is insufficient enforcement of environmental legislation?

A: Those listed in response to Q.1.

3. What national and European laws (environmental or otherwise) are most used in practice, when legal action is brought against entities that harm the environment?

A: N/A

4. Could you provide examples of laws where the mechanism of enforcement can be more efficient?

A: The laws to tackle illegal dumping.

5. Are there International environmental law principles that are used in practice that you think should be codified into national law? Can you provide examples?

A: I am sure there are. An examination as to what works best in other countries would be worthwhile to try to improve the situation in Ireland.

6. Over the course of your career, have you noticed any trends related to why legal action against genuine breaches of environmental regulations fail? (any arguments, legal provisions, or technicalities)

A: For litter wardens it is difficult to pursue cases if there are no names and addresses in amongst the dumped rubbish. Also, those involved in illegal dumping sometimes hang garments over CCTV cameras to prevent identification.

7. What gaps in the current ensemble of laws that protect the environment do you feel need to be patched?

A: N/A

8. What do you think prevents Irish citizens from bringing legal action against agents (individuals, companies, institutions) that harm the environment?

A: Fear and a sense that people do not want to be seen as snitches.

9. What do you think aids/would aid Irish citizens in bringing legal action against such agents?

A: A strong campaign to indicate the damage those polluting the environment due to fauna and flora, river systems etc.

10. Where are people currently going to get environmental information and information on legal enforcement of environmental laws?

A: The internet.

11. Who do you (or citizens) contact after becoming aware of an environmental breach?

A: Co. Council/ Gardaí.

12. Do you think sanctions for breaches of environmental laws are appropriate? Do they function well in practice?

A: No and no.

Respondee 2: NGO Representative

1. In your experience, what are the environmental issues most often litigated/complained of? (pollution, unauthorised cuttings, etc)

A:

- Extinction of native species or sub-species by Invasive Alien Species.
- Destruction of Hedgerows/native vegetation and replacement with non-native cultivars.
- Intensive industrial farming at the expense of the environment, causing critical biodiversity loss, nature, and environment.
- Intensive farming uses single species grassland, wiping out native vegetation, they use pesticides, herbicides and excess fertilisers causing pollution of waterways and soil destruction.
- Burning of hillside vegetation such as heather and gorse wipes out wildlife and nature.

2. What do you think are 3 most common areas where there is insufficient enforcement of environmental legislation?

A:

IF such legislation exists then it is not sufficiently well known or promoted.

- 1) Hedgerows are ripped out and replaced with barbed wire with no consequences, nature and wildlife not even considered. Huge 'get-outs' are allowed by current legislation. Departments seem to turn a blind eye.
- 2) Little control over intensive agriculture - if someone wants to create a massive dairy operation there seems to be no restriction over them doing that - regardless of the effects

on the planet or on their neighbours e.g., sudden expansion of dairy herd threatens the water supply in neighbours' wells because of the massive daily amounts of water required for dairy cows. Wildlife is destroyed if they are perceived to 'get in the way' of industrial farming.

- 3) Burning land and hillsides happens regularly and it appears that everyone knows it was set deliberately but there appear to be no consequences.

Further Comments:

- The official advice from Teagasc re hedgerows includes "Three large native Irish trees are frequently found in hedges - oak, ash and willow provide a habitat for numerous invertebrates as well as birds such the two Irish owls - barn owl and long eared owl. Ivy is a plant of immense biodiversity value... The most predominant shrub in our native Irish hedges is whitethorn (hawthorn... Such 'sceach' or thorn hedges also include blackthorn ... Deep within these thorny bushes is a safe nesting place for songbirds such as blackbirds and thrushes. Flowering climbers such as bramble or blackberry are a valuable food source for bees and fruit for birds and mammals. Key criteria for routinely trimmed hedges are a) at least 1.5m high above ground level, b) contain occasional thorn trees and c) only cut one year in 3 etc., etc.,".
- Despite this, hedgerows are regularly slashed and everything depending on them destroyed
- Ireland is losing an abundance of its hedgerow heritage every year – with at least 3,000km cut back by local authorities since 2018 during the prohibited season between March and August. (noteworthy.ie)
- The latest review of the Birds of Conservation Concern in Ireland provides alarming reading, with a 46% increase in the number of Red-listed species, those of highest conservation concern" - Irish birds are faring worse than ever before - BirdWatch Ireland

3. What national and European laws (environmental or otherwise) are most used in practice, when legal action is brought against entities that harm the environment?

A:

- The Habitats Directive.
- The Wildlife Act 1975-2000.

4. Could you provide examples of laws where the mechanism of enforcement can be more efficient?

A: N/A

5. Are there International environmental law principles that are used in practice that you think should be codified into national law? Can you provide examples?

A:

- Invasive Alien Species regulations (EU No 1143/2014) could be used in Ireland to protect the native Irish honeybee, *Apis mellifera*.
- The Habitats Directive.
- The Convention on Biological Diversity, Council Decision 93/626/EEC.

6. Over the course of your career, have you noticed any trends related to why legal action against genuine breaches of environmental regulations fail? (any arguments, legal provisions, or technicalities)

A: Since dairy quotas went, intensification of dairy farming has been driven hard by the Department of Agriculture, Food, and the Marine at the expense of the environment, particularly biodiversity which tends to be ignored.

7. What gaps in the current ensemble of laws that protect the environment do you feel need to be patched?

A: N/A

8. What do you think prevents Irish citizens from bringing legal action against agents (individuals, companies, institutions) that harm the environment?

A:

- Very little evidence of successful legal actions being taken.
- Penalties are so small - is it worth the effort?
- Fear of retribution - reluctance to provoke in case you get a 'tankful of slurry through your door'
- The 'system' appears to favour 'big' intensive farmers and landowners. TDs and government appear to be in thrall. Government agencies e.g., Teagasc provided wrong advice in the past and should correct that now. When laws change there should be major investment in communicating the new rules and regulations AND they should be taken seriously.

9. What do you think aids/would aid Irish citizens in bringing legal action against such agents?

A:

- Better understanding and communication of the law.
- Visible successful legal actions.
- Higher penalties for crimes against wildlife particularly hedgerow destruction and killing of birds and animals.
- More education for the media so that they know the questions to ask when interviewing relevant parties. More focus from the media on the environment, biodiversity, and nature.

10. Where are people currently going to get environmental information and information on legal enforcement of environmental laws?

A: Europe, AIPP, Biodiversity Ireland, Irish Wildlife Trust.

11. Who do you (or citizens) contact after becoming aware of an environmental breach?

A: The Hedgecutter or landowner - but you will just be laughed at and ignored.

12. Do you think sanctions for breaches of environmental laws are appropriate? Do they function well in practice?

A: The 'official' stance e.g., from Teagasc says X or Y is illegal BUT when someone does not abide by the law, it is described by Teagasc ConnectEd broadcasts as 'unfortunate' whereas it should be severely stamped on, to set an example. Illegal slurry spreading for example is described as unfortunate, but it should be regarded as an absolute no. Anyone can see the effect in rural Ireland of 'out of season' slurry spreading.

Respondee 3: Local Authority Heritage Officer

1. In your experience, what are the environmental issues most often litigated/complained of? (pollution, unauthorised cuttings, etc)

A: Ecological issues, habitat destruction, tree felling.

2. What do you think are 3 most common areas where there is insufficient enforcement of environmental legislation?

A: Planning, Wildlife Regulations, and the provisions of the Forestry Act, specifically felling licenses.

3. What national and European laws (environmental or otherwise) are most used in practice, when legal action is brought against entities that harm the environment?

A: Planning regulations, Habitat Directive.

4. Could you provide examples of laws where the mechanism of enforcement can be more efficient?

A: In relation to ecology many of the issues come to the council from the NPWS. There is a certain amount of duplication. There is also a lack of resources in planning enforcement and a dearth of suitably qualified ecological personnel.

5. Are there International environmental law principles that are used in practice that you think should be codified into national law? Can you provide examples?

A: Polluter pays principle, more honoured in the breach than in observance.

6. Over the course of your career, have you noticed any trends related to why legal action against genuine breaches of environmental regulations fail? (any arguments, legal provisions, or technicalities)

A: It has got more complex and sometimes focuses more on legal procedure than actual ecological or environmental damage. In one sense this defeats the purpose of the law in that it becomes more about semantics than preventing ecological damage.

7. What gaps in the current ensemble of laws that protect the environment do you feel need to be patched?

A: Their actual enforcement.

8. What do you think prevents Irish citizens from bringing legal action against agents (individuals, companies, institutions) that harm the environment?

A: There are a few factors, lack of information access to suitably focused legal people and sometimes cost.

9. What do you think aids/would aid Irish citizens in bringing legal action against such agents?

A: Dispensing information on the issue of the legal background.

10. Where are people currently going to get environmental information and information on legal enforcement of environmental laws?

A: Websites such as FOIE, Heritage and Environmental Awareness Officers.

11. Who do you (or citizens) contact after becoming aware of an environmental breach?

A: Planning Enforcement usually or NPWS. I work In Planning.

12. Do you think sanctions for breaches of environmental laws are appropriate? Do they function well in practice?

A: No. It all depends on enforcement and adequate penalties being put in place in court. It is very much a hit or miss affair.

Respondee 4: Local Authority Heritage Officer

1. In your experience, what are the environmental issues most often litigated/complained of? (pollution, unauthorised cuttings, etc)

A: The calls I get from the public generally relate to a direct loss/removal of environmental resources such as tree felling, hedgerow cutting, wetland infilling. These activities are immediately apparent, that cause changes in the landscape which are therefore “noticed” by members of the public. The insidious nature of other environmental changes is not noticed – the shifting baseline downwards each year where an environmental resource or ecosystem is declining in quality are invisible and quiet, and therefore are not complained about to the same degree. Often these are much more serious issues.

The issues I see getting the most media attention are the legal cases brought by Peter Sweetman, where he is using the courts to build precedent and Irish interpretation to EU directives at site and consent levels, and to highlight gaps in the implementation of the directives here.

2. What do you think are 3 most common areas where there is insufficient enforcement of environmental legislation?

A: In my opinion the lack of enforcement starts with an inadequacy of the legislation in the first instance. I do not consider most of it fit for purpose in the current climate (no pun, or full pun intended.) Anything outside a “protected” site is at risk with no or little punitive

deterrents, even if there are provisions dotted around in various legislative acts to prevent or control damaging activities. Wetlands, hedgerows, cumulative impacts of agricultural enterprises all come to mind.

The infilling, drainage of wetlands remains an issue despite changes in 2011 to planning and agricultural regulations.

Hedgerows do not really have any protection that is meaningful. The wildlife act provisions are inadequate and do not deal with the different types of hedges – townland boundaries, hedges that link to native woodland sites, hedges that are remnants of old ancient woodlands are all more species rich than the average but have no specific protection. A new report that will be published for Monaghan Heritage Office in the next couple of weeks show terrible results for this habitat over last 10 years, despite the legislation.

Ammonia levels and nitrogen deposition is an issue here, due to concentration of intensive poultry, pig, and bovine practices. Extremely poor link up between agricultural regulation and planning applications, which has caused proliferation of these enterprises here with no real examination of the potential impacts before consents were given.

3. What national and European laws (environmental or otherwise) are most used in practice, when legal action is brought against entities that harm the environment?

A:

- EU Habitats and Birds Directives
- EIA directives
- Nitrates Directive will become the big one I suspect
- Aarhus Access to environmental information

4. Could you provide examples of laws where the mechanism of enforcement can be more efficient?

A: See my previous answers.

5. Are there International environmental law principles that are used in practice that you think should be codified into national law? Can you provide examples?

A: The entire thing needs to be turned on its head. Rights of Nature recognition is essential or the ecosystems on which we depend will continue to be nibbled away, and environmental trends continue to decline. The recognition of the rights of nature to thrive and survive is a missing piece of the jigsaw. The legislation as it stands is simply “permitting” or penalising or compensating for environmental losses.

The attribution of legal standing / personhood for natural resources such as large bog sites or rivers or wetlands has potential too by giving a voice to these essential resources in a universal system approach to decision making.

The big shift in 21st century must be that we move our thinking from masters to custodians to recognising that we are part of nature. Legislation needs to reflect these philosophical, ethical, and scientific parameters.

Rights of Wetlands by the US Society of Wetland Scientists.

6. Over the course of your career, have you noticed any trends related to why legal action against genuine breaches of environmental regulations fail? (any arguments, legal provisions, or technicalities)

N/A

7. What gaps in the current ensemble of laws that protect the environment do you feel need to be patched?

A: I think I said this already in previous answers. May I say that “patching” in my experience often leads to over complication of matters and can lead to box ticking and complicated procedures that do not actually protect anything in the end.

8. What do you think prevents Irish citizens from bringing legal action against agents (individuals, companies, institutions) that harm the environment?

A:

- Lack of knowledge on how to go about it.
- Concern about costs and length of litigation,
- Inter-personal/family/small community/ everybody knows everybody issue,
- Genuine fear of reprisal including threats by those engaged in criminal activity

9. What do you think aids/would aid Irish citizens in bringing legal action against such agents?

A:

- Environmental legal defence fund.
- Explanatory guides – how to do it
- Mentoring or support organisation
- Granting personhood rights to ecosystems so that decision making is put on a different footing from the outset.

10. Where are people currently going to get environmental information and information on legal enforcement of environmental laws?

A: No Idea. Genuinely!

11. Who do you (or citizens) contact after becoming aware of an environmental breach?

12. Do you think sanctions for breaches of environmental laws are appropriate? Do they function well in practice?

A: No and No.

Respondee 5: NGO Representative

1. In your experience, what are the environmental issues most often litigated/complained of? (pollution, unauthorised cuttings, etc)

- The extraction of peat for turbary/energy/horticulture and wind energy developments.
- “Peat Piracy” - unauthorised extraction for turbary, essentially a contractor moving on to turbary banks that they do not own. Industrial extraction complaints also occurs where members of the public who live near a horticultural peat extraction site see their local environment being destroyed and lorry after lorry removes the peat.
- There are also planning issues as such with Wind Farms where turbines have been installed into SACs or near to and affecting the Qualifying Interests.
- There is also Ireland's poor implementation of the EIA directive, evident by the number of bog slides after Windfarm developments and the legal proceedings initiated by the EU Commission.

2. What do you think are 3 most common areas where there is insufficient enforcement of environmental legislation?

- Peat extraction has never been properly regulated. Bord na Mona (BnM) have been the only licensed peat extraction company operating in Ireland (but even Bord Na Mona are applying for substitute consent). All other peat extraction companies have been essentially operating illegally without planning. There is no onus to minimise damage to the environment such as managing the water leaving the site through drainage with all the peat silts and chemicals affecting Ireland’s waterways. There is also the direct loss of biodiversity and carbon sequestration from the loss of the peatland habitat. Evident by the recent River Basin Management Plan draft is that peat extraction is having detrimental effects on Ireland's aquatic network. Peat entering rivers from peatland drainage is extremely damaging yet all turbary is unregulated and other than BnM all industrial peat extraction has not been regulated. This is going against Ireland’s efforts towards the Water Framework Directive where we must have all waters of “Good Ecological Status” and our SACs need to be of “Favourable Conservation Status.”
- There is currently a land grab for Wind Farm developments where lots of companies are throwing darts at the map and applying for planning permission. We have reached a point where many SACs are being surrounded by these developments. How is this going to affect the birdlife and other qualifying interests that the site was designated for? The developments are not accounting for their impact cumulatively with all the other developments already operating or planned and they are not considering the supporting habitat for these sites. We have also seen many times within planning scoping and planning applications that the developer wants to remove some habitat and replace it somewhere else as mitigation. This is the developers deciding where conservation happens.

3. What national and European laws (environmental or otherwise) are most used in practice, when legal action is brought against entities that harm the environment?

- EU Habitats Directive, but this only applies to designated sites in practice, and the habitats and species listed rarely afford real protection and prosecutions are minimal.
- Irish Wildlife Acts - which actually applies to all species although some have moratoriums to allow predator management on farms etc.
- EIA Directive
- Section 40 of the Irish Wildlife Acts, vegetation removal during the bird nesting season (1st March to 31st August).

- Planning and development acts (IPCC would submit planning enforcement enquiries to County Councils/EPA and NPWS when a member of the public alerts us to what they think is illegal peat extraction).

4. Could you provide examples of laws where the mechanism of enforcement can be more efficient?

- Turbary, while a turbary licence holder is allowed to cut turf for the family, it is not regulated or monitored by anyone. Contractors can operate freely and rarely have they been forced to stop (if ever). County Councils could regulate this by operating an annual ticket service, or something similar. The impact of turf cutting could then be better managed as the extent would be better known and followed.
- Peat extraction needs to be fully regulated; planning laws could be extended to provide protection for carbon stocks remaining in man-modified peatlands.
- As Bord na Mona are licenced, condition 10 of the licence means they must rehabilitate once industrial production of the site has ended. This means that BnM kept extracting until it was uneconomical to do so. If the licence stated “restoration” instead then BnM would have stopped extracting earlier and there would be a greater possibility of restoring the site to a raised bog rather than letting the site birch up or turn into a lake/fen (which is deemed environment stabilisation). The EPA issues the licence. All other peat extraction companies that have been operating do not have any onus to rehabilitate or restore at all.

5. Are there International environmental law principles that are used in practice that you think should be codified into national law? Can you provide examples?

Polluter Pays

Precautionary Principle

6. Over the course of your career, have you noticed any trends related to why legal action against genuine breaches of environmental regulations fail? (any arguments, legal provisions, or technicalities).

- The EU Commission noted that Ireland was the only country that had never implemented an Environmental Impact Assessment, highlighted by the Derrybrien Windfarm case where we are still getting fined for not implementing it in relation to that case.
- Some County Councils also seem better (or more stringent) at implementing planning law regarding the environment. E.g., Wind Farms getting planning within SACs in Donegal.
- Generally planning is not refused because of the environment, but because of other factors such as Defence Forces land requirements etc. Environment is usually down the list of reasons to refuse. It should be at the top as once a habitat is gone, it is gone. Death by a thousand cuts.
- There are also issues with locations and ability of councils to ascertain where an unauthorised development is taking place. We have sent in planning enquiries to planning departments and they have not been able to find the location of the possible illegal development even with directions. (Though they have noted that they will continue to monitor the area).

- Not enough emphasis has ever been put on how important peatland habitats are as a keystone habitat in Ireland. Over 20% of the land area was originally peatland (raised, blanket and fen) which has been regulating climate for 1000s of years and providing refugia for specialist peatland species. Now less than 15% of raised bog is left in a conservation worthy condition and less than 1% is considered actively growing. In terms of raised bog - emphasis has always been on the employment benefits that peat extraction brought. Yet there was a big turnaround as soon as it was deemed uneconomical to continue, so even though the habitat is nearly lost, we still must find more jobs for citizens, which is a double loss. We should have ended peat extraction sooner.

7. What gaps in the current ensemble of laws that protect the environment do you feel need to be patched?

- The protection of designated sites needs to be enforced. 27% of the Active raised bog portions were lost within the designated sites in the years after designation due to ongoing drainage and inability of the National Parks & Wildlife Service to enforce protection. Less than 1% of Ireland's raised bogs are now considered active (in Ireland). Turf cutting has also been continued on SACs. Yet this is not generally considered illegal. It is illegal to open a new bank on an SAC and illegal to re-open a bank that has been left, but if you had not stopped cutting when the designation came in you are entitled to continue.
- Another issue is the screening out of detrimental effects during the planning/screening stage. I have heard from ecological consultants on numerous occasions that they feel bad about the screening process for developments as they know inherently that there are detrimental effects from loss of habitat and from hydrological disruption etc. How can it be made fairer so when an independent ecological consultant is hired and they give their true opinion/report and then the developer loses the planning application, that consultant will not be hired again, or might not get paid even. The only defence here is the local authority or An Bord Pleanála who are meant to be independent.

8. What do you think prevents Irish citizens from bringing legal action against agents (individuals, companies, institutions) that harm the environment?

Cost of litigation and knowledge of how to do this. I think there is a real feeling that planning is not enforced anyway.

9. What do you think aids/would aid Irish citizens in bringing legal action against such agents?

Maybe some sort of information campaign about how to do this and how environmental laws work would benefit members of the public. This should be in an Irish Context (wildlife acts etc) and an international context (Eu habitats, WFD) and disseminated to the public. Environmental law courses would be too strong but information evenings maybe in person in different areas around the country would benefit the members of the public. These could be held in conjunction with government agencies and/ or eNGOS, for instance SWAN (sustainable water network) or LAWPRO, EPA and NPWS.

10. Where are people currently going to get environmental information and information on legal enforcement of environmental laws?

- In [NGO's] experience the public does not generally know where to go. IPCC deals with the public looking to complain about peat extraction and we would pass on the query to NPWS/EPA and Planning departments within the County Councils. It generally fits the habitats in question. Some County Councils have an environmental officer some do not, same with the heritage officer which also covers natural and built heritage.
- The National Parks and Wildlife Service have been extremely understaffed and even though they are responsible for designated sites and wildlife crime, pointing a member of the public to their local ranger has been near impossible. Rangers should be able to inform on legalities around environmental law and enforcement but being so under-funded has hindered this. Many people do not know that there is supposed to be a team of rangers on the ground for each county (or that they even exist as a government organisation).
- In recent years I think Friends of the Irish Environment have won a few cases in the high court and this has raised their profile, so some members of the public are aware that there is an eNGO with legal experience.

11. Who do you (or citizens) contact after becoming aware of an environmental breach?

- County Council Planning departments/Environmental Protection Agency/National Parks and Wildlife Service, (An Bord Pleanála possibly), EU Commission. Company responsible (e.g., Bord na Mona).
- We request that the planning department “initiate enforcement procedures” if the said development is found to be deemed unauthorised. The department does not have to get back with an update unless they do find that the development is unauthorised. We also notify the NPWS and/or the local Ranger (if a designated site we would also notify the Designated Sites Unit). We will also issue an environmental complaint to the Environmental Protection Agency.

12. Do you think sanctions for breaches of environmental laws are appropriate? Do they function well in practice?

- If a company is found to be neglecting environmental law and/or not following best practice, then they should not be able to do business in the future. A sanction on their ability to operate here must be a deterrent.
- A financial punishment also needs to be a factor so that the state is not left paying the fine (e.g., Derrybrien), but companies like Apple and Shell are not affected by this as their accounts are massive.

Respondee 6: NGO

1. In your experience, what are the environmental issues most often litigated/complained of? (pollution, unauthorised cuttings, etc)

illegal quarries, inappropriate development of wind farms, nitrate runoff, disrespect and degrading of SACs and SPAs

2. What do you think are 3 most common areas where there is insufficient enforcement of environmental legislation?

as above

3. What national and European laws (environmental or otherwise) are most used in practice, when legal action is brought against entities that harm the environment?

EIA directive, Water framework directive and Habitat directive

4. Could you provide examples of laws where the mechanism of enforcement can be more efficient?

concerning illegal quarries

5. Are there International environmental law principles that are used in practice that you think should be codified into national law? Can you provide examples?

Sustainability: especial concerning circularity, reuse, energy reduction, recycling, and the manufacture design of stuff to accommodate recycling and reuse especially where minerals are concerned such as those used in electronic gadgets and energy production. These are a priority, and such infrastructures and legislation should exist before any planning decisions are considered to mine such minerals in Ireland. To do no significant harm principle should be crystalized especially important her in Ireland due to being on the frontier of the EU

6. Over the course of your career, have you noticed any trends related to why legal action against genuine breaches of environmental regulations fail? (any arguments, legal provisions, or technicalities).

Access to justice is still a hurdle for most people, mainly due to costs

7. What gaps in the current ensemble of laws that protect the environment do you feel need to be patched?

access to justice and costs. Public participation in decision making is not fit for purpose. EIA and AAs cannot be considered independently assessed either by private firms or state authorities due to conflict of interests within.

8. What do you think prevents Irish citizens from bringing legal action against agents (individuals, companies, institutions) that harm the environment?

as above in Q7

9. What do you think aids/would aid Irish citizens in bringing legal action against such agents?

free legal aid for environmental cases that can be verified by a separate established environmental court to be genuine in the interest of our environment

10. Where are people currently going to get environmental information and information on legal enforcement of environmental laws?

Each region should have an Aarhus centre to facilitate the public and to educate

11. Who do you (or citizens) contact after becoming aware of an environmental breach?

Good question! therefore the need for a regional Aarhus centres

12. Do you think sanctions for breaches of environmental laws are appropriate? Do they function well in practice?

they are far from appropriate and are not a deterrent

Respondee 7: NGO

1. In your experience, what are the environmental issues most often litigated/complained of? (pollution, unauthorised cuttings, etc)

Water & air pollution, illegal dumping, environmental health issues relating to housing standards, nuisance/danger caused by derelict sites, flood risk

2. What do you think are 3 most common areas where there is insufficient enforcement of environmental legislation?

Emissions targets, water quality, derelict sites

3. What national and European laws (environmental or otherwise) are most used in practice, when legal action is brought against entities that harm the environment?

N/A

4. Could you provide examples of laws where the mechanism of enforcement can be more efficient?

N/A

5. Are there International environmental law principles that are used in practice that you think should be codified into national law? Can you provide examples?

N/A

6. Over the course of your career, have you noticed any trends related to why legal action against genuine breaches of environmental regulations fail? (any arguments, legal provisions, or technicalities).

N/A

7. What gaps in the current ensemble of laws that protect the environment do you feel need to be patched?

N/A

8. What do you think prevents Irish citizens from bringing legal action against agents (individuals, companies, institutions) that harm the environment?

Costs-lack of civil legal aid. Complexity of law/multitude of state bodies with responsibility. Lack of awareness of how to bring such action i.e., how the law is relevant to their situation, who is their action against, how should they progress it.

9. What do you think aids/would aid Irish citizens in bringing legal action against such agents?

Legal aid in environmental matters/for ENGOs. Education/accessible information

10. Where are people currently going to get environmental information and information on legal enforcement of environmental laws?

Internet-EPA and other websites. Contacting EPA & local authorities

11. Who do you (or citizens) contact after becoming aware of an environmental breach?

EPA, Local Authorities, National Environmental Complaints Line, alleged offender

12. Do you think sanctions for breaches of environmental laws are appropriate? Do they function well in practice?

No, not stringent enough and EPA under resourced. Issue of lack of enforcement of the laws that are there.



Louise Beirne BL

Louise Beirne was called to the bar in 2010. She has a general civil practice. Her experience includes advising statutory bodies in relation to their governing legislation, drafting statutory instruments and acting for statutory bodies.

Drafting a new Environmental Code – What it would look like and what would it do?

Cóir Environmental Code Project 2021-2022

Legislative Drafting Team:

Louise Beirne BL, Dirayati Fatima Turner and Stuart McCabe

Introduction

1. This short paper serves as a foreword to a draft Code, which was written as part of the Climate Bar Association Task Force on a Model Environmental Code. The annexed draft Code is the work product of the entire Task Force and was drafted following research by a number of teams working on specific areas of research. The purpose of the draft Code is to set out elements of a Model Environment Code, with a view to promoting legislative reform in this area.
2. Public interest litigation is a well-established means of achieving social change. However, if we listen to the stories of the people behind many of the landmark cases, we hear of the immense stress and difficulty which the litigating parties experienced.⁵¹⁵ Also, some of the great legal victories that had a profound positive impact on the law, did not necessarily have a corresponding impact on the lives of the individual litigants. For example, Irene Grootboom, the housing activist, who successfully invoked her Constitutional right to housing to challenge South Africa's housing policy, was still living in a shack when she died some eight years after the landmark judgment, which bears her name, was delivered.⁵¹⁶
3. Also, we know that a litigant's prospects of success are dependent on the wording of the legislation or Constitutional provision upon which they seek to rely. In the first instance, a claim may not be justiable. Secondly, even if it is, it may fail if it does not come squarely within the scope of available legal provisions. Thirdly, existing legislation may not envisage the remedy desired or required by a potential litigant. Moreover, issues around standing and costs may pose barriers.
4. The "landmark ruling" of the Supreme Court in the case of *Friends of the Irish Environment v. Government of Ireland* [2020] IESC 49 has been widely recognised as a "significant victory for climate action" and a "turning point for climate governance".⁵¹⁷

⁵¹⁵ Paulyn Marrinan Quinn's podcast series "Cases that Changed People's Lives" offers an interesting insight into several of the landmark Irish constitutional law cases from the perspective of both the litigants and the parties who represented them.

⁵¹⁶ *Government of the Republic of South Africa. & Ors v Grootboom & Ors* 2000 (11) BCLR 1169; Joubert, Pearlie (8 August 2008), "Grootboom dies homeless and penniless", Mail & Guardian. <https://mg.co.za/article/2008-08-08-grootboom-dies-homeless-and-penniless>

⁵¹⁷ Áine Ryall, "Supreme Court ruling a turning-point for climate governance in Ireland", Irish Times, 7th August 2020

5. For our purposes, it is useful to recognise that that decision hinged upon the wording of the *Climate Action and Low Carbon Development Act 2015* (“the 2015 Act”). It is clear from the judgment in that case that the use of clear, specific and mandatory words in the 2015 Act; for example, “achieve”, “shall” and “specify”, were key to the Supreme Court’s decision that the Government’s plan to address climate change, and particularly the substance thereof, were justiciable issue.

***Friends of the Irish Environment v. Government of Ireland*⁵¹⁸**

1. The central issue in that case was:
“whether the Government of Ireland (“the Government”) ha[d] acted unlawfully and in breach of rights in the manner in which it ha[d] adopted a statutory plan for tackling climate change”.
2. The plaintiffs argued that the government’s plan (“the Plan”) was unlawful on the basis that the level of detail, which it contained, did not meet the requirements of the 2015 Act. Further, while accepting that the Government enjoys a very wide degree of discretion in determining measures required to combat climate change, the plaintiffs argued that *“in adopting in the Plan, measures which will allow for an increase in emissions over the lifetime of the Plan, the Government had acted unlawfully”.*
3. The Government’s position was that it had complied with mandatory requirements in the Act, identified by the plaintiffs. Moreover, while the Government accepted that *“questions concerning compliance with the provisions of the 2015 Act, concerning the procedures adopted in formulating the Plan”* were justiable, it argued that the substantive provisions of the Plan were not so on the basis that they *“involve policy choices made by the Government”.*
4. Sections 3 and 4 of the 2015 Act provided:
“3. (1) For the purpose of enabling the State to pursue, and achieve, the transition to a low carbon, climate resilient and environmentally sustainable economy by the end of the year 2050 (in this Act referred to as the “national transition objective”) the Minister shall make and submit to the Government for approval—
 - (a) a national mitigation plan, and*
 - (b) a national adaptation framework”.*
“4. (1) The Minister shall—
 - (a) not later than 18 months after the passing of this Act, and*
 - (b) not less than once in every period of 5 years, make, and submit to the Government for approval, a plan, which shall be known*

⁵¹⁸ *Friends of the Irish Environment v. Government of Ireland & Ors* [2020] IESC 49

as a national low carbon transition and mitigation plan (in this Act referred to as a “national mitigation plan”).

(2) *A national mitigation plan shall—*

(a) *specify the manner in which it is proposed to achieve the national transition objective,*

(b) *specify the policy measures that, in the opinion of the Government,*

would be required in order to manage greenhouse gas emissions and the removal of greenhouse gas at a level that is appropriate for furthering the achievement of the national transition objective,

(c) *take into account any existing obligation of the State under the law of the European Union or any international agreement referred to in section 2, and*

(d) *specify the mitigation policy measures (in this Act referred to as the “sectoral mitigation measures”) to be adopted by the Ministers of the Government, referred to in subsection (3)(a), in relation to the matters for which each such Minister of the Government has responsibility for the purposes of—*

(i) *reducing greenhouse gas emissions, and*

(ii) *enabling the achievement of the national transition objective.*

(3) *For the purpose of including, in the national mitigation plan, the sectoral mitigation measures to be specified for the different sectors in accordance with subsection (2)(d)—*

(a) *the Government shall request such Ministers of the Government they consider appropriate to submit to the Minister, within a specified period, the sectoral mitigation measures that each such Minister of the Government proposes to adopt in relation to the matters for which each such Minister of the Government has responsibility, ...”*

.....

(8) *The Minister shall, before making a national mitigation plan—*

(a) *publish, in such manner as he or she considers appropriate, a draft of the national mitigation plan that he or she proposes to make,*

(b) *publish a notice on the internet and in more than one newspaper circulating in the State inviting members of the public and any interested parties to make submissions in writing in relation to the proposed national mitigation plan within such period (not*

exceeding 2 months from the date of the publication of the notice) as may be specified in the notice, and

- (c) *have regard to any submissions made pursuant to, and in accordance with, a notice under paragraph (b)."*

5. Having conducted an analysis of the relevant statutory provisions, Clarke CJ. concluded that: *"the overriding requirement of a compliant plan is that it specifies how [the national transition objective] is to be achieved by 2050"*. Further, having particular regard to section 4(1)(b), which requires that there be *"new plan at least every fifth year"*, he concluded that:

"the legislation contemplates a series of rolling plans each of which must be designed to specify, both in general terms and on a sectoral basis, how it is proposed that the NTO is to be achieved"

as opposed to a series of consecutive plans, which the Government posited that the Act envisaged.

6. As regards the justiciability issues raised by the Government, he noted:

"If the government of the day were to announce that, as a matter of policy, it was going to publish, after public consultation, a plan designed to achieve precisely that which is defined in the 2015 Act as the NTO and then publish a plan which arguably failed to do what it was said it should do, then such questions might well arise. However, the position here is that there is legislation [emphasis added]."

7. The Chief Justice concluded that while *"there may be elements of a compliant plan under the 2015 Act which may not truly be justiciable"*, the question of whether the Plan complied with *"specificity requirements in s.4"* of the 2015 Act was *"clearly justiciable"*. Having considered the Plan, he concluded that it fell *"a long way short of the sort of specificity which the statute requires."* In so doing, he accepted that it seemed *"reasonable to characterise significant parts of the policies as being excessively vague or aspirational"*. Further, in so doing, he determined that the legislation envisaged a 33-year plan, which was reviewable on 5 year basis. Finally, for our purposes, having quashed the Plan *"on grounds which are substantive rather than purely procedural"*, the Chief Justice set out elements of a Plan which would comply with the 2015 Act.

Key Elements of a Model Code

8. Inez McCormack, a signatory of the McBride Principles, whose successful campaigns included the inclusion of groundbreaking human rights and equality provisions in the Good Friday/Belfast agreement, spoke about rights holders not needing lawyers and policy-makers to tell them their rights. Rather, she spoke about the need for *"technicians"*, who would use their skills to assist rights holders in realising their rights.

9. Having regard to the foregoing, the starting point for any environmental legislative drafting project must be issues identified by stakeholders. It is clear from the Stakeholder Feedback Report that “*enforcement of environmental legislation [was] a significant problem identified across all of [the] respondents*”. The “*piecemeal*” nature of environmental legislation was identified as a particular “*barrier to enforcement*”. Additional barriers identified included the usability and accessibility of environmental law.⁵¹⁹
10. It is notable that the key issues raised by the stakeholders were the need to ensure compliance with existing legislation and make it easier for people to rely on rather than; for example, a need for more stringent penalties for breaches of environmental legislation. Those observations chime with the findings of the Sanctions Team, insofar as that Team noted a greater emphasis on criminal, as opposed to administrative sanctions, in Ireland compared to other jurisdictions. The observations of the stakeholders and the findings of the Sanctions Team are reflected in the draft Code insofar as it provides for administrative sanctions, in addition to enforcement actions by individuals and groups.
11. Difficulties in enforcing environmental legislation raised by stakeholders also chime with issues around justiciability, such as those which we have discussed in the *Friends of the Irish Environment Case*, and standing, which are commonly identified by lawyers as barriers to effective environmental litigation.⁵²⁰ In that regard, and as previously noted, the aspects of the 2015 Act, which were challenged in that case, were justiciable because of the wording of specific provisions contained in that particular Act. Further, while the Supreme Court concluded that the plaintiffs had standing to bring a claim to challenge the compliance of the government’s climate change Plan with the Act, the Supreme Court ultimately concluded that the plaintiffs did not have standing to bring a claim under the Constitution or the European Convention on Human Rights in that case. Therefore, while the *Friends of the Irish Environment Case* was indeed a ‘gamechanger’ in terms of climate litigation, significant challenges in enforcing environmental rights through the courts remain.
12. With a view to addressing those types of challenges, the draft Code includes specific provisions which relax the general rules around standing for environmental litigation, to include provisions which allow for natural or legal persons to be granted standing as *amicus curiae*, in addition to provisions which allow for class action proceedings. Additional provisions aimed at increasing the enforceability and implementation of environmental legislation include statutory duties in terms of public education and decision-making, including policy-making, a proposal for a specialist Tribunal dealing with environmental law and provisions aimed at protecting those, who are acting to protect the environment, against vexatious proceedings.
13. However, rather than any one provision, it is hoped that the key strength of an Environmental Code would be the simple act of bringing together all of Ireland’s existing legislation through a single piece of legislation in order to increase its usability. The compilation of such a Code would be in keeping with projects of the Law Reform

⁵¹⁹ Stakeholder Feedback Report, p. 4.

⁵²⁰ 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, pp. 7 – 9. The *Friends of the Irish Environment Case*, supra note 518, also contains a significant discussion on the issue of standing.

Commission to increase access to legislation through its compilation and maintenance of a series of revised Acts. The usefulness of such a legal tool is evident when the Law Reform Commission's commentary on the revised *Planning and Development Act 2000* is considered:

*“For example, the Planning and Development Act 2000 has been amended or otherwise affected by over 160 Acts and Statutory Instruments since it was originally enacted. The costly exercise of assembling, reading and understanding the amendments made to the 2000 Act is avoided by the availability of a consolidated Revised Act version of the Planning and Development Act 2000”*⁵²¹.

14. Ideally, existing environmental law would be consolidated into a single Act, which would unify and consolidate environmental law, similar to the *Companies Act 2014* for company law. However, having regard to the significant impact which European law has on environmental law, it is not necessarily practical to seek to reduce the amount of environmental legislation, which is currently in force, to a single piece of legislation. Rather, in order to address the usability and accessibility concerns raised by the stakeholders, our key task involved finding a way to unify and increase the user-friendliness of the existing legislation.
15. It is envisaged that an Environmental Code would exercise a function akin to the *Interpretation Act 2005*, save that it will apply to environmental legislation only. In order to achieve that aim, Part I sets out principles which apply to environmental legislation. Environmental legislation is defined in the draft Code as Acts, statutory instruments and European Regulations, which are listed in the Schedule to that Code and the Code contains a specific provision that allows for the Code to be updated by Ministerial Order.⁵²²

Advantages and Pitfalls of Codification

16. *“A code is a complete system of positive law, scientifically arranged, and promulgated by legislative authority.”*⁵²³ Traditionally, of course, codes form the basis of legal systems in civil law jurisdictions, while common law jurisdictions tend to lean on legal precedent. According to Byrne and McCutcheon:
*“Since [the development of common law] depended on cases being brought before the courts by the aggrieved parties, the law responded to actual rather than anticipated problems. The law in a civil law system is now contained in comprehensive legal codes, which are enacted by legislators and which attempt to provide for every legal contingency.”*⁵²⁴

⁵²¹ <https://revisedacts.lawreform.ie/revacts/intro> [Accessed: 3 January 2022].

⁵²² This mechanism for consolidating and updating an extensive list of legislation is drawn from the Food Safety Authority of Ireland Act, 1998.

⁵²³ *The Law Dictionary Featuring Black's Law Dictionary Free Online Legal Dictionary 2nd Ed.* [Online]. What is CODE? Available at: <https://thelawdictionary.org/code/> [Accessed: 6 October 2021].

⁵²⁴ Byrne et al (2020), *Byrne and McCutcheon on the Irish Legal System.* (7th edn). London: Bloomsbury Professional. para. [1.12]

17. This dichotomous view is not entirely true. Legal historian Masferrer clarifies that it was not the intention of the original drafters of the French *Code Civil*, regarded as the first modern code, to provide “*for every legal contingency*”.⁵²⁵ The most prominent of the drafters of the *Code Civile*, Portalis, stated that:

*“The possibility of supplementing the law by natural truths and the right directions of common sense should be left to the judges. Nothing could be more childish than to endeavor to take necessary steps in order to provide the judges with strict rules.”*⁵²⁶

Further, he stated that his Code did not pretend “*to govern all and to foresee all,*” because “*whatever one does, positive law can never completely replace the use of natural reason in the affairs of life.*”⁵²⁷

18. A code can provide more legal certainty and easier access to law, and it does not strictly have to be in the same model as European civil codes. Some common law jurisdictions, notably Australia,⁵²⁸ have implemented codes as part of their legal system. Indeed, Australian law students are taught in their first-year law curriculum that legislation is today the main legal source.⁵²⁹ As Masferrer says:

*“[t]he time is ripe for legal historians to admit that codification neither belongs to the civil law tradition nor constitutes a peculiarity of the civil law tradition, as if it was incompatible with common law tradition unless common law itself is abrogated altogether.”*⁵³⁰

19. It should be noted that codification does not always yield positive results. Meiners and Yandle suggest that the rise of codification in the United States in the 1970s may have undermined their environmental law regime, due to its focus on meeting legal limits instead of avoiding damages to a person. They observed that: “*[a]t common law, there were no EPA permits or uniform technology requirements that sanctioned the action of the polluter.*”⁵³¹

20. While we must, of course, be alive to these dangers, it is suggested that an Environmental Code, if drafted properly, would complement the existing common law system and create a more robust environmental law regime.

⁵²⁵ Masferrer, A. (2019) French Codification and “Codiphobia” in Common Law Traditions. *The Tulane European and Civil Law Forum*, 34.

⁵²⁶ Portalis, J. (1803) *Code Civil*. Quoted by Wienczyslaw J. Wagner, *Codification of Law in Europe and the Codification Movement in the Middle of the Nineteenth Century in the United States*, 2, 1952, *St. Louis U. L.J.* 335, pp. 350-351.

⁵²⁷ Portalis, J. (1827; reprinted 1968) *Discours préliminaire prononcé lors de la présentation du projet de la commission du gouvernement*, P.A. Fenet, *Recueil Complet des Travaux Préparatoires du Code Civil* 469.

⁵²⁸ Australian Capital Territory: Crimes Act 1900 and Criminal Code Act 2002; Northern Territory: Criminal Code Act 1983 (NT); Western Australia: The Criminal Code; Queensland: The Criminal Code Act 1899 (Qld); Tasmania: Criminal Code Act 1924 (Tas).

⁵²⁹ Hall, K. (2002) *Legislation*. Butterworths. “*Our common law system has two main sources of law, cases (law made by judges through judicial decisions) and legislation (law made by parliament). Traditionally, case law was considered the most important source of law in our common law legal system. Today, however, legislation has overtaken case law as the most prolific and significant source of law.*”

⁵³⁰ *supra* note 525

⁵³¹ Roger Meiners & Bruce Yandle (1999) *Common Law and the Conceit of Modern Environmental Policy*, 7 *Geo. Mason L. Rev.*

Conclusion

21. Our draft Environmental Code is, of course, not the first such initiative. For example, in Germany in the 1990s, the “Group of Professors” developed a draft Code. That project was in turn taken on by the Ministry of Environment during Angela Merkel’s tenure in that role. Ultimately, the project’s aim to develop a “*uniform Environmental Code for the whole of Germany*” was not realised. However, “*four so-called Environmental Code Replacement Acts* (the Act on the Consolidation of Environmental Law, the Act on the Revision of Water Legislation, the Act on the Revision of the Federal Nature Conservation Act and the Act on the Protection against Non-Ionizing Radiation)” were achieved.⁵³²
22. The International Bar Association has also developed a “Model Statute for Proceedings Challenging Government Failure to Act on Climate Change”.⁵³³
23. The annexed draft Code is but a draft document, which sets out in broad brushstrokes what the Taskforce has concluded that a comprehensive Environmental Code ought to contain. However, we hope that it starts a conversation to the effect that an environmental Code is not only a moral imperative, but desirable and achievable.

⁵³² <https://www.umweltbundesamt.de/en/environmental-code-0#development-of-the-environmental-code>;

⁵³³ supra note 520

DRAFT/Code

Dréacht/Cóir Dlí

Part 1: Principles and Purposes/ Bunphrionsabail & Bunchúraim⁵³⁴

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. ⁵³⁵
Definitions	<p>3. “Environmental legislation” means—</p> <ul style="list-style-type: none"> (a) the Acts (including any instruments made thereunder) specified in Part I, (b) the statutory instruments specified in Part II, (c) the Regulations of an institution of the European Communities specified in Part III, <p style="text-align: right;">of the Schedule in so far as they relate to the environment,⁵³⁶</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.

⁵³⁴ 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).

⁵³⁵ Provision modelled on Interpretation Act, 2005, section 4.

⁵³⁶ 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;⁵³⁷ 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;⁵³⁸ 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

⁵³⁷ Section 5(a) to (d) are drawn from [Aarhus Convention](#), Article 4.

⁵³⁸ Provision modelled on Irish Human Rights and Equality Act, 2014, section 42.

decision-making procedures regarding the environment.⁵³⁹

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.⁵⁴⁰

⁵³⁹ Aarhus Convention, Article 6.

⁵⁴⁰ 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.⁵⁴¹

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.

⁵⁴¹ 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 Saoránaigh⁵⁴²

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

⁵⁴² 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.⁵⁴³

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

⁵⁴³ 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.⁵⁴⁴

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;⁵⁴⁵
- (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.⁵⁴⁶

(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.⁵⁴⁷

(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

⁵⁴⁴ 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.

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

⁵⁴⁶ U.S. Federal Rules of Civil Procedure, Rule 23(a).

⁵⁴⁷ 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 a⁵⁴⁸ class proceeding is the preferable procedure for the just and efficient resolution of the common questions of law or fact.⁵⁴⁹
- (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.⁵⁵⁰
- (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.⁵⁵¹

⁵⁴⁸ U.S. Federal Rules of Civil Procedure, Rule 23(b).

⁵⁴⁹ Federal Court Rules (Canada), 334.16(1)(d).

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

⁵⁵¹ 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 Riaracháin⁵⁵²

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 or more of the following administrative sanctions, on that person:

(a) a caution,⁵⁵³

(b) a reprimand;⁵⁵⁴

(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”);⁵⁵⁵

(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”);⁵⁵⁶

(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;⁵⁵⁷ 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.

⁵⁵² 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](#).

⁵⁵³ Central Bank Act, 1942, Section 33AQ.

⁵⁵⁴ *ibid*

⁵⁵⁵ Environmental Civil Sanctions (England) Order 2010, SI No 1157 of 2010.

⁵⁵⁶ *ibid*

⁵⁵⁷ 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.⁵⁵⁸

(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 Comhshaoldhíothú⁵⁵⁹

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.

⁵⁵⁸ Residential Tenancies Act, 2004, Part 7A.

⁵⁵⁹ 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 Participation⁵⁶⁰

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,⁵⁶¹

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

⁵⁶⁰ 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.

⁵⁶¹ 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.⁵⁶²

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.⁵⁶³

Part 9: Schedule⁵⁶⁴

Environmental Legislation

Part I Acts

Part II Secondary Legislation

Part III Regulations of an Institution of the European Communities

⁵⁶² Modelled on Food Safety Authority of Ireland Act, 1998, section 5.

⁵⁶³ 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.

⁵⁶⁴ 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.

Inventory of Legal Measures/Clár Reachtaíochta ^{*565}

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⁵⁶⁵ This inventory was prepared by Cárthach Ó Faoláin, Dirayati Fatima Turner and Stuart McCabe. While every effort has been made to ensure that it is comprehensive and upto date, it is a draft document. Accordingly, feedback is most welcome. Also, for the avoidance of doubt, the Taskforce can assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions.

1. Access to Information /Rochtain ar Fháisnéis

Year	Title
	International Conventions and Agreements
2001	Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)
	European Union Law
	<p>Treaty (TFEU) Provision</p> <p>Article 67.4: “<i>The Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters.</i>”</p> <p>Article 81.2 (e): “<i>For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring: e) effective access to justice</i>”</p>
2003	<p>Directives</p> <p>Directive 2003/4/EC on public access to environmental information and repealing Council Directive 90/313/EEC.</p> <p>Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC</p>
	National Law
	Bunreacht na hÉireann Unenumerated Rights
1998	<p>Statutory Instruments</p> <p>Freedom of Information Act 2014 (Section 25(6)) Regulations 1998. S.I. 520/1998</p>
1999	<p>Statutory Instruments</p> <p>Freedom of Information Act 2014 (Prescribed Bodies) Regulations 1999. S.I. 329/1999</p> <p>Freedom of Information Act 2014 (Section 6(4)(b)) Regulations 1999. S.I. 46/1999</p>

<p>2000</p>	<p>Statutory Instruments Freedom of Information Act 2014 (Prescribed Bodies) (No. 2) Regulations 2000. S.I. 115/2000</p>
<p>2001</p>	<p>Statutory Instruments Freedom of Information Act 2014 (Prescribed Bodies) (No. 2) Regulations 2001. S.I. 127/2001</p>
<p>2007</p>	<p>Statutory Instruments European Communities (Access to Information on the Environment) Regulations 2007. S.I. 133/2007</p>
<p>2011</p>	<p>Statutory Instruments European Communities (Access to Information on the Environment) (Amendment) Regulations 2011. S.I. 662/2011</p>

<p>2014</p>	<p>Acts of the Oireachtas Freedom of Information Act 2014: <i>“An Act to enable members of the public to obtain access, to the greatest extent possible consistent with the public interest and the right to privacy, to information in the possession of public bodies”</i></p> <p>Statutory Instruments European Communities (Access to Information on the Environment) (Amendment) Regulations 2014. S.I. 615/2014 Freedom of Information Act 2014 (Effective Date for Certain Bodies) Order 2015. S.I. 148/2015 Freedom of Information Act 2014 (Exempted Public Bodies) Order 2015. S.I. 144/2015 Freedom of Information Act 2014 (Fees) (No. 2) Regulations 2014. S.I. 531/2014</p>
<p>2016</p>	<p>Statutory Instruments Freedom of Information Act 2014 (Amendment of Schedule 3) Regulations 2016. S.I. 330/2016 Freedom of Information Act 2014 (Section 34(6)(b)) Regulations 2016. S.I. 452/2016 Freedom of Information Act 2014 (Section 37(8)) Regulations 2016. S.I. 218/2016 Freedom of Information Act 2014 (Sections 9(6), 10(6) and 37(8)) Regulations 2016. S.I. 558/2016</p>
<p>2017</p>	<p>Statutory Instruments Freedom of Information Act 2014 (Sections 9(6), 10(6) and (37(8)) Regulations 2017. S.I. 53/2017</p>
<p>2018</p>	<p>Acts of the Oireachtas European Communities (Access to Information on the Environment) (Amendment) Regulations 2018. S.I. 309/2018</p>

2. EIA, SEA and Planning Legislation/MTT, MST agus Reachtaíocht Pleanála

Year	Title
	International Conventions and Agreements
1990	Convention on Environmental Impact Assessment In a Transboundary Context (Espoo Convention) 1990
2003	Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment In a Transboundary Context (SEA Protocol, Kyiv 2003)
	European Union Law
	<p>Treaty (TFEU) Provision</p> <p>Article 191: “<i>Union policy on the environment shall contribute to pursuit of the following objectives:</i></p> <p>— preserving, protecting and improving the quality of the environment”</p> <p>Article 192: “<i>Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.</i>”</p> <p>Article 193: “<i>The protective measures adopted pursuant to Article 192 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with the Treaties. They shall be notified to the Commission.</i>”</p>
1997	<p>Directives</p> <p>Directive 97/11/EC (amending Directive 85/337/EEC (assessment of the effects of certain public and private projects on the environment))</p>
2001	SEA Directive 2001/42/EC
2003	Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC
2011	Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (codification)
2014	Directive 2014/52/EU (amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment)
	National Law

	<p>Bunreacht na hÉireann Unenumerated Rights</p>
<p>1930 - 2020</p>	<p>Acts of the Oireachtas Planning and Development Acts 2000-2020 including: Planning and Development Act 2000 (30/2000) Local Government Act 2001 (37/2001), ss. 2, 5(3) and Schedule 4 (in so far as they relate to the Act of 2000) and s. 247 Planning and Development (Amendment) Act 2002 (32/2002), Parts 2 and Housing (Miscellaneous Provisions) Act 2004 (43/2004), s. 2</p> <p>Housing (Miscellaneous Provisions) Act 2009 Housing (Miscellaneous Provisions) Act 2014</p> <p>Planning and Development (Strategic Infrastructure) Act 2006 (27/2006)</p> <p>Water Services Act 2007 (30/2007), ss. 1(6) and 114</p> <p>Harbours Act 1996</p> <p>Harbours (Amendment) Act 2000</p>

Harbours (Amendment) Act 2009 (26/2009), ss. 7(1) and (2) and 21(3)

Harbours Act 2015

Compulsory Purchase Orders (Extension of Time Limits) Act 2010 (17/2010)

Planning and Development (Amendment) Act 2010 (30/2010), other than Part 3

Environment (Miscellaneous Provisions) Act 2011 (20/2011)

Electoral, Local Government and Planning and Development Act 2013 (27/2013), Part 8

Local Government Reform Act 2014 (1/2014), ss. 1(8), 5(7) and sch. 2 part 4

Environment (Miscellaneous Provisions) Act 2015

Urban Regeneration and Housing Act 2015 (33/2015)

Planning and Development (Amendment) Act 2015 (63/2015)

Urban Regeneration and Housing Act 2015 (Section 11) Order 2018. S.I. 374/2018

Planning and Development (Housing) and Residential Tenancies Act 2016 (17/2016), other than s. 1(2)(b) and (c), Parts 3 to 5 and sch.

Planning and Development (Amendment) Act 2017 (20/2017)

Planning and Development (Amendment) Act 2018 (16/2018), other than Part 4 and sch. 3 ref. nos. 12-18

Aircraft Noise (Dublin Airport) Regulation Act (12/2019), Part 3

Residential Tenancies Act 2004

Residential Tenancies (Amendment) Act 2009

Residential Tenancies (Amendment) Act 2015

Residential Tenancies (Amendment) Act 2019 (14/2019), s. 38

Residential Tenancies Act 2020

Residential Tenancies Act 2021

Residential Tenancies (No. 2) Act 2021

Residential Tenancies (Amendment) Act 2021

Residential Tenancies and Valuation Act 2020

Planning and Development, and Residential Tenancies, Act 2020

Local Government Rates and Other Matters Act 2019 (24/2019), ss. 23, 24

	<p>Roads Acts 1993 to 2015 : this Act is one of a group of Acts included in this collective citation, to be read together as one (Roads Act 2015, s. 1(2)). The Acts in the group are: Roads Act 1993 (14/1993) Roads (Amendment) Act 1998 (23/1998), other than s. 7 Planning and Development Act 2000 (30/2000), s. 215 and Part XX Local Government Act 2001 (37/2001), ss. 81 and 245 Planning and Development (Strategic Infrastructure) Act 2006 (27/2006), s. 51 Planning and Development (Amendment) Act 2021 Roads Act 2007 (34/2007), other than ss. 12 and 13 Roads Act 2015 (14/2015)</p>
<p>1936-1979</p>	<p>Statutory Instruments Sheepstown National Monument Order 1936. S.I. 389/1936 Aghowle National Monument Order 1944. S.I. 78/1944 Claregalway Abbey National Monument (Prohibition of Burials) Order 1938. S.I. 116/1938 Drumacoo Church National Monument (Prohibition of Burials) Order 1937. S.I. 276/1937 Killeshin National Monument (Prohibition of Burials) Order 1946. S.I. 17/1946 Hore Abbey National Monument (Prohibition of Burials) Order 1942. S.I. 74/1942 National Monuments (Amendment) Act, 1954 (Appointed Day) Order, 1955. S.I. 39/1955 Road Traffic (Construction, Equipment and Use of Vehicles) Regulations 1963. S.I. 190/1963 Minerals Development Regulations 1979. S.I. 340/1979</p>

<p>1988</p>	<p>Statutory Instruments European Communities (Environmental Impact Assessment) (Motorway) Regulations 1988. S.I. 221/1988</p>
<p>1989</p>	<p>Statutory Instruments European Communities (Environmental Impact Assessment) Regulations 1989. S.I. 349/1989</p>
<p>1993</p>	<p>Statutory Instruments National Roads Authority (Establishment) Order 1993. S.I. 407/1993</p>
<p>1994</p>	<p>Statutory Instruments European Communities (Environmental Impact Assessment) (Amendment) Regulations 1994. S.I. 84/1994</p> <p>National Monuments (Exhibition of Record of Monuments) Regulations 1994. S.I. 341/1994</p> <p>National Monuments (Prescription of Form) Regulations 1994 S.I. 339/1994</p> <p>National Monuments (Prescription of Form) (No. 2) Regulations 1994. S.I. 340/1994</p> <p>Roads Regulations 1994. S.I. 119/1994</p>
<p>1995</p>	<p>Statutory Instruments Heritage Act 1995 (Establishment Day) Order 1995. S.I. 177/1995</p> <p>National Monuments Acts 1930 to 1994 (Approval of Consent) (No. 1) Order 1995. S.I. 203/1995</p>
<p>1996</p>	<p>Statutory Instruments European Communities (Environmental Impact Assessment) (Amendment) Regulations 1996. S.I. 101/1996</p> <p>Heritage Act, 1995 (Designation of Heritage Building) Order. 1996, S.I. 206/1996</p>

<p>1997</p>	<p>Statutory Instruments Harbours Act 1996 (Companies) (Vesting Day) Order 1997. S.I. 96/1997</p> <p>Harbours Act 1996 (Staff of Dun Laoghaire Harbour Company) Regulations 1997. S.I. 188/1997</p> <p>Harbours Act 1996 (Election of Employee Directors) (General) Regulations 1997. S.I. 189/1997</p> <p>Harbours Act 1996 (Election of Employee Directors) (Postal Voting) Regulations 1997. S.I. 190/1997</p> <p>Harbours Act 1996 (Initial Organisation of Pilotage Services) Regulations 1997. S.I. 325/1997</p>
<p>1998</p>	<p>Statutory Instruments European Communities (Environmental Impact Assessment) (Amendment) Regulations 1998. S.I. 351/1998</p> <p>Harbours Act 1996 (Companies) (Vesting Day) (No 2) Order 1998. S.I. 543/1998</p> <p>Harbours Act 1996 (Initial Organisation of Pilotage Services) (Amendment) Regulations 1998. S.I. 272/1998</p>
<p>1999</p>	<p>Statutory Instruments European Communities (Environmental Impact Assessment) (Amendment) Regulations 1999. S.I. 93/1999</p> <p>Harbours Act 1996 (Transfer of Ballyshannon and Bunrana Harbours To Donegal County Council) Order 1999. S.I. 394/1999</p>
<p>2000</p>	<p>Statutory Instruments European Communities (Environmental Impact Assessment) (Amendment) Regulations 2000. S.I. 450/2000</p> <p>Harbours Acts 1996 and 2000 (Transfer of Functions of Foynes Port Company and Shannon Estuary Ports Company) Order 2000. S.I. 283/2000</p> <p>Planning and Development Act, 2000 (Designation of Strategic Development Zone - Clonmagadden Valley, Navan) Order, 2001. S.I. 274/2001</p> <p>Planning and Development Act, 2000 (Designation of Strategic Development Zone - Hansfield, Blanchardstown) Order, 2001. S.I. 273/2001</p> <p>European Union (Waste Water Discharge) Regulations 2020 (S.I. No. 214 of 2020), Part II (reg. 5)</p>

<p>2001</p>	<p>Statutory Instruments European Communities (Environmental Impact Assessment) (Amendment) Regulations 2001. S.I. 538/2001</p> <p>Harbours Act 1996 (Limits of Burtonport Harbour) Order 2001. S.I. 8/2001</p> <p>Harbours Act 1996 (Limits of Greencastle Harbour) Order 2001. S.I. 7/2001</p> <p>Planning and Development Act, 2000 (Designation of Strategic Development Zone - Adamstown, Lucan) Order, 2001. S.I. 272/2001</p> <p>Planning and Development Regulations 2001. S.I. 600/2001</p>
<p>2002</p>	<p>Statutory Instruments Harbours Acts 1996 and 2000 (Companies) (Vesting Day) (No. 3) Order 2002. S.I. 182/2002</p> <p>Harbours Acts 1996 and 2000 (Companies) (Vesting Day) (No. 4) Order 2002. S.I. 183/2002</p> <p>Planning and Development Regulations 2002. S.I. 70/2002</p> <p>Planning and Development (No. 2) Regulations 2002. S.I. 149/2002</p> <p>Sustainable Energy Act 2002 (Establishment Day) Order 2002. S.I. 655/2002</p>
<p>2003</p>	<p>Statutory Instruments Planning and Development Act 2000 (Certification of Fairground Equipment) Regulations 2003. S.I. 449/2003</p> <p>Planning and Development (Regional Planning Guidelines) Regulations 2003. S.I. 175/2003</p> <p>Planning and Development Regulations 2003. S.I. 90/2003</p>

<p>2004</p>	<p>Statutory Instruments European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations 2004 - S.I. 435/2004 (Criteria for determining whether a plan is likely to have significant effects on the environment)</p> <p>Planning and Development (Strategic Environmental Assessment) Regulations 2004 (S.I. 436/ 2004) as amended by S.I. 200/2011 and S.I. 201/2011. Planning and Development (Strategic Environmental Assessment) Regulations 2004. S.I. 436/2004</p>
<p>2005</p>	<p>Statutory Instruments Planning and Development Regulations 2005. S.I. 364/2005</p> <p>National Monuments Act, 1930 (Section 14B) Regulations 2005. S.I. 229/2005</p>
<p>2006</p>	<p>Statutory Instruments European Communities (Environmental Impact Assessment) (Amendment) Regulations 2006. S.I. 659/2006</p> <p>European Communities (Environmental Impact Assessment) (Forestry Consent System) (Amendment) Regulations 2006. S.I. 168/2006</p> <p>Harbours Act 1996 (Annagassan Pier Commissioners) Transfer Order 2006. S.I. 712/2006</p> <p>Harbours Act 1996 (Transfer of Sligo Harbour to Sligo County Council) Order 2006. S.I. 316/2006</p> <p>Planning and Development Regulations 2006. S.I. 685/2006</p>
<p>2007</p>	<p>Statutory Instruments Harbours Act 1996 (Compulsory Acquisition) (Dublin Port Company) Order 2007. S.I. 63/2007</p> <p>National Oil Reserves Agency Act 2007 (Returns and Levy) Regulations 2007. S.I. 567/2007</p> <p>National Oil Reserves Agency Act 2007 (Share Transfer) Order 2007. S.I. 155/2007</p> <p>National Oil Reserves Agency Act 2007 (Share Transfer Day) Order 2007. S.I. 566/2007</p>

	<p>Planning and Development Regulations 2007. S.I. 83/2007</p> <p>Planning and Development (No. 2) Regulations 2007. S.I. 135/2007</p> <p>Planning and Development Act 2000 (Certification of Fairground Equipment) (Amendment) Regulations 2007. S.I. 590/2007</p>
2008	<p>Statutory Instruments</p> <p>Harbours Act 1996 (River Moy Commissioners) Transfer Order 2008. S.I. 387/2008</p> <p>Planning and Development Regulations 2008. S.I. 235/2008</p> <p>Planning and Development (Amendment) Regulations 2008. S.I. 256/2008</p> <p>Roads Act 2007 (Declaration of Motorways) Order 2008. S.I. 279/2008</p> <p>Roads (Schemes) (Forms) Regulations 2008. S.I. 49/2008</p>
2009	<p>Statutory Instruments</p> <p>Harbours Act 1996 (Kilrush Harbour) Transfer Order 2009. S.I. 29/2009</p> <p>Harbours Act 1996 (Westport Port and Harbour Commissioners) Transfer Order 2009. S.I. 89/2009</p> <p>Harbours Act 1996 (Youghal Harbour) Transfer Order 2009. S.I. 28/2009</p> <p>National Oil Reserves Agency Act 2007 (Returns and Levy) (Amendment) (No. 2) Regulations 2009. S.I. 220/2009</p> <p>Planning and Development (Regional Planning Guidelines) Regulations 2009. S.I. 100/2009</p> <p>Roads Act 2007 (Declaration of Motorways) Order 2009. S.I. 255/2009</p>

<p>2010</p>	<p>Statutory Instruments European Communities (Direct Support Schemes) Regulations 2010. S.I. 309/2010</p> <p>Cherrywood, Dún Laoghaire-Rathdown County) Order 2010. S.I. 535/2010</p> <p>Harbours Act 1996 (Wexford Harbour Commissioners) Transfer Order 2010. S.I. 292/2010</p> <p>National Oil Reserves Agency Act 2007 (Returns and Biofuel Levy) Regulations 2010. S.I. 356/2010</p> <p>National Oil Reserves Agency Act 2007 (Biofuel Obligation Buy-out Charge) Regulations 2010. S.I. 644/2010</p> <p>Planning and Development Act 2000 (Strategic Development Zone) Order 2010. S.I. 678/2010</p> <p>Planning and Development Act 2000 (Strategic Development Zone) (No. 2) Order 2010. S.I. 540/2010</p> <p>Planning and Development Act 2000 (Strategic Development Zone: Planning and Development Regulations 2010. S.I. 406/2010</p>
<p>2011</p>	<p>Statutory Instruments European Communities (Environmental Assessment of Certain Plans and Programmes) (Amendment) Regulations 2011. S.I. 200/2011</p> <p>European Communities (Environmental Impact Assessment) (Agriculture) Regulations 2011. S.I. 456/2011</p> <p>European Union (Environmental Impact Assessment and Habitats) Regulations 2011. S.I. 473/2011</p>

2012	<p>Statutory Instruments</p> <p>European Communities (Direct Support Schemes) Offences and Control Regulations 2012. S.I. 115/2012</p> <p>European Union (EIA) (IPPC) Regulations 2012 S.I. 282/2012</p> <p>European Union (EIA) (IPPC) (No. 2) Regulations 2012 S.I. 457/2012</p> <p>European Union (Environmental Impact Assessment) (Waste) Regulations 2012, S.I. 283/2012</p> <p>European Union (Environmental Impact Assessment) (Gas) Regulations 2012. S.I. 403/2012</p> <p>European Union (Environmental Impact Assessment) (Foreshore) Regulations 2012. S.I. 433/2012</p> <p>European Union (Environmental Impact Assessment) (Arterial Drainage) Regulations 2012. S.I. 469/2012</p> <p>European Union (Environmental Impact Assessment) (Flood Risk) Regulations 2012. S.I. 470/2012</p> <p>European Union (Environmental Impact Assessment) (Integrated Pollution Prevention and Control) Regulations 2012. S.I. 282/2012</p> <p>European Union (Environmental Impact Assessment) (Integrated Pollution Prevention Control) (No. 2) Regulations 2012. S.I. 457/2012</p> <p>European Union (Environmental Impact Assessment) (Petroleum) Regulations 2012. S.I. 404/2012</p> <p>European Union (Environmental Impact Assessment) (Planning and Development Act 2000) Regulations 2012. S.I. 419/2012</p> <p>European Union (Environmental Impact Assessment and Habitats) Regulations 2012. S.I. 246/2012</p> <p>European Union (Environmental Impact Assessment of Proposed Demolition of National Monuments) Regulations 2012. S.I. 249/2012</p> <p>Roads Act 1993 (Classification of Regional Roads) Order 2012. S.I. 54/2012</p> <p>Roads Act 1993 (Classification of National Roads) Order 2012. S.I. 53/2012</p> <p>Planning and Development Act 2000 (Designation of Strategic Development Zone: North Lotts and Grand Canal Dock) Order 2012. S.I. 530/2012</p>
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Planning and Development (Amendment) Regulations 2012. S.I. 116/2012

Sustainable Energy Act 2002 (Section 8(2)) (Conferral of Additional Functions – Renewable Energy) Order 2012. S.I. 158/2012

<p>2013</p>	<p>Statutory Instruments</p> <p>European Communities (Environmental Impact Assessment) (Agriculture) (Amendment) Regulations 2013. S.I. 142/2013</p> <p>European Union (Environmental Impact Assessment) (Petroleum Exploration) Regulations 2013. S.I. 134/2013</p> <p>European Union (Environmental Impact Assessment) (Waste) Regulations 2013. S.I. 505/2013</p> <p>European Union (Environmental Impact Assessment and Habitats) (Section 181 of the Planning and Development Act 2000) Regulations 2013. S.I. 403/2013</p> <p>European Union (Environmental Impact Assessment of Material Alterations of Approved Road Developments Consequent on Ministerial Directions in Respect of Discoveries of National Monuments) Regulations 2013. S.I. 114/2013</p> <p>Harbours Act 1996 (Limits of Harbour of Port of Cork Company) (Alteration) Order 2013. S.I. 487/2013</p> <p>Harbours Act 1996 (Section 87A) (Appointment of Transfer Day in respect of Bantry Bay Harbour) Order 2013. S.I. 485/2013</p> <p>Harbours Act 1996 (Establishment of the Pilotage District of Bantry Bay Harbour) Order 2013. S.I. 486/2013</p> <p>Harbours Act 1996 (Establishment of the Pilotage District of Fenit Harbour) Order 2013. S.I. 205/2013</p> <p>Harbours Act 1996 (Establishment of the Pilotage District of Sligo Harbour) Order 2013. S.I. 206/2013</p> <p>Planning and Development (Amendment) Regulations 2013. S.I. 219/2013</p> <p>Planning and Development (Amendment) (No. 2) Regulations 2013. S.I. 520/2013</p>
<p>2014</p>	<p>Statutory Instruments</p> <p>European Union (Environmental Impact Assessment and Appropriate Assessment) (Foreshore) Regulations 2014. S.I. 544/2014</p> <p>Sustainable Energy Act 2002 (Conferral of Additional Functions – Renewable Energy) (Amendment) Order 2014. S.I. 482/2014</p>

	<p>Statutory Instruments</p> <p>European Union (Environmental Impact Assessment) (Planning and Development) Regulations 2014. S.I. 543/2014</p> <p>European Union (Environmental Impact Assessment and Habitats) Regulations 2015. S.I. 301/2015</p> <p>European Union (Environmental Impact Assessment and Habitats) (No. 2) Regulations 2015. S.I. 320/2015</p> <p>Roads Act 2007 (Declaration of Motorways) Order 2015. S.I. 273/2015</p> <p>Roads Act 2015 (Operational Name of National Roads Authority) Order 2015. S.I. 297/2015</p> <p>Roads Act 2015 (Railway Procurement Agency Dissolution Day) Order 2015. S.I. 298/2015</p> <p>Planning and Development (Amendment) Regulations 2015. S.I. 264/2015</p> <p>Planning and Development (Amendment) (No. 2) Regulations 2015. S.I. 310/2015</p> <p>Planning and Development (Amendment) (No. 3) Regulations 2015. S.I. 387/2015</p>
<p>2015</p>	<p>Planning and Development (Amendment) (No. 4) Regulations 2015. S.I. 582/2015</p> <p>Planning and Development Act 2000 (Designation of Strategic Development Zone: Balgaddy-Clonburris, South Dublin County) Order 2015. S.I. 604/2015</p> <p>Section 16A(5) Energy (Miscellaneous Provisions) Act 1995 (Deemed Contracts) Regulations 2015. S.I. 603/2015</p> <p>European Union (Direct Support Rural Development Schemes) Offences and Control Regulations 2015. S.I. 93/2015</p>

<p>2016</p>	<p>Statutory Instruments</p> <p>European Communities (Direct Support Schemes) Offences and Controls Regulations 2016. S.I. 169/2016</p> <p>European Communities (Direct Support Schemes) Offences and Control (Amendment) Regulations 2016. S.I. 483/2016</p> <p>Harbours Act 2015 (Wicklow Port Company Transfer and Dissolution Day) Order 2016. S.I. 462/2016</p> <p>Planning and Development Act 2000 (Designation of Strategic Development Zone: North Quays, Waterford City) Order 2016. S.I. 30/2016</p> <p>Planning and Development Act 2000 (Designation of Strategic Development Zone: Poolbeg West, Dublin City) Order 2016. S.I. 279/2016</p>
	<p>Roads Act 1993 (Classification of National Roads) (Smithstown-Shannon Airport) Order 2016. S.I. 131/2016</p> <p>Waste Water Discharge (Authorisation) (Environmental Impact Assessment) Regulations 2016 S.I. No. 652/2016</p>

2017	<p>Statutory Instruments European Communities (Environmental Impact Assessment) (Agriculture) (Amendment) Regulations 2017. S.I. 407/2017</p> <p>Harbours Act 2015 (Drogheda Port Company Transfer Day) Order 2017. S.I. 424/2017</p> <p>National Roads Authority Superannuation Scheme 2017. S.I. 412/2017</p> <p>Planning and Development Act 2000 (Designation of Strategic Development Zone: Ireland West Airport Knock) Order 2017. S.I. 266/2017</p> <p>Planning and Development (Strategic Housing Development) Regulations 2017. S.I. 271/2017</p> <p>Planning and Development (Amendment) Regulations 2017. S.I. 342/2017</p> <p>Roads Act 1993 (Extinguishment of Public Right of Way) Order 2017. S.I. 238/2017</p>
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2018	<p>Statutory Instruments</p> <p>European Union (Planning and Development) (Environment Impact Assessment) Regulations 2018 (S.I. No. 296 of 2018), Parts 2, 3, 4 and schs. 1 and 2</p> <p>European Union (Environmental Impact Assessment) (Minerals Development Act 1940) (Amendment) Regulations 2018,. S.I. 384/2018</p> <p>European Union (Planning and Development) (Environmental Impact Assessment) (No. 2) Regulations 2018, S.I. 404/2018</p> <p>European Union (Planning and Development) (Environmental Impact Assessment) (Amendment) Regulations 2018. S.I. 646/2018</p> <p>Harbours Act 2015 (Dún Laoghaire Harbour Company Transfer and Dissolution Day) Order 2018. S.I. 391/2018</p> <p>Planning and Development (Fees) Regulations 2018. S.I. 501/2018</p> <p>Planning and Development (Amendment) Regulations 2018. S.I. 29/2018</p> <p>Planning and Development (Amendment) (No. 2) Regulations 2018. S.I. 30/2018</p> <p>Planning and Development (Amendment) (No. 3) Regulations 2018. S.I. 31/2018</p> <p>Roads Act 1993 (Classification of National Roads) (Amendment) Order 2018. S.I. 434/2018</p> <p>Roads Act 1993 (Classification of Regional Roads) (Amendment) Order 2018. S.I. 435/2018</p>
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<p>2019</p>	<p>Statutory Instruments</p> <p>European Union (Environmental Impact Assessment) (Arterial Drainage) Regulations 2019. S.I. 472/2019</p> <p>European Union (Environmental Impact Assessment) (Minerals Development Act 1940) (Amendment) Regulations 2019. S.I. 164/2019</p> <p>European Union (Environmental Impact Assessment) (Peat Extraction) Regulations 2019. S.I. 4/2019</p> <p>European Union (Environmental Impact Assessment) (Petroleum Exploration) (Amendment) Regulations 2019. S.I. 124/2019</p> <p>European Union (Environmental Impact Assessment and Habitats) (Section 181 of the Planning and Development Act 2000) Regulations 2019. S.I. 418/2019</p> <p>European Union (Roads Act 1993) (Environmental Impact Assessment) (Amendment) Regulations 2019. S.I. 279/2019</p> <p>Harbours Act 1996 (Limits of Wexford Harbour) Order 2019. S.I. 625/2019</p> <p>Harbours Act 2015 (New Ross Port Company Transfer and Dissolution Day) Order 2019. S.I. 410/2019</p> <p>National Oil Reserves Agency Act 2007 (Biofuel Obligation Rate) Order 2019. S.I. 38/2019</p> <p>Planning And Development Act 2000 (Section 181(2)(a)) Order 2019. S.I. 57/2019</p> <p>Planning and Development Act 2000 (Section 181(2)(a)) (No. 2) Order 2019. S.I. 100/2019</p> <p>Planning and Development Act 2000 (Section 181(2)(a)) (No. 3) Order 2019. S.I. 284/2019</p> <p>Planning and Development Act 2000 (Section 181(2)(a)) (No. 4) Order 2019. S.I. 285/2019</p> <p>Planning and Development Act 2000 (Section 181(2)(a)) (No. 5) Order 2019. S.I. 521/2019</p> <p>Planning and Development Act 2000 (Part IIB) (Establishment Day) Order 2019. S.I. 134/2019</p> <p>Planning And Development Act 2000 (Exempted Development) Regulations 2019. S.I. 12/2019</p>
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Planning And Development Act 2000 (Exempted Development) (No. 2)
Regulations 2019. S.I. 235/2019

Planning and Development (Housing) and Residential Tenancies Act 2016
(Section 4) Order 2019. S.I. 598/2019

Roads Act 1993 (Classification of Regional Roads) (Amendment) Order 2019.
S.I. 577/2019

Roads Act 1993 (Classification of National Roads) (Amendment) Order 2019.
S.I. 576/2019

Roads (Schemes) (Forms) (Amendment) Regulations 2019. S.I. 485/2019

Roads (Amendment) Regulations 2019. S.I. 486/2019

2020	<p>Statutory Instruments</p> <p>European Union (Waste Management) (Environmental Impact Assessment) Regulations 2020 S.I. 130 of 2020</p> <p>European Union (Environmental Impact Assessment) (Environmental Protection Agency Act 1992) (Amendment) Regulations 2020 S.I. 191/2020</p> <p>European Union (Environmental Impact Assessment) (National Monuments Act 1930) (Section 14D) (Amendment) Regulations 2020. S.I. 528/2020</p> <p>Harbours Act 1996 (Section 23) (Dublin Port Company) Order 2020. S.I. 41/2020</p> <p>Harbours Act 2015 (Galway Harbour Company Transfer Day) Order 2020. S.I. 661/2020</p> <p>Planning and Development Act 2000 (Subsection (3) of Section 251A) Order 2020. S.I. 129/2020</p> <p>Planning and Development Act 2000 (Subsection (4) of Section 251A) Order 2020. S.I. 131/2020</p> <p>Planning and Development Act 2000 (Subsection (4) of Section 251A) (No. 2) Order 2020. S.I. 165/2020</p> <p>Planning and Development Act 2000 (Section 181(2)(a)) Order 2020. S.I. 231/2020</p> <p>Planning and Development Act 2000 (Section 181(2)(a)) (No. 2) Order 2020. S.I. 232/2020</p> <p>Planning and Development Act 2000 (Section 181(2)(a)) (No. 3) Order 2020. S.I. 371/2020</p> <p>Planning and Development Act 2000 (Section 38) Regulations 2020. S.I. 180/2020</p> <p>Planning and Development Act 2000 (Section 44A) Order 2020. S.I. 61/2020</p> <p>Planning and Development Act 2000 (Section 181) Regulations 2020. S.I. 93/2020</p> <p>Planning and Development Act 2000 (Exempted Development) Regulations 2020. S.I. 45/2020</p> <p>Planning and Development Act 2000 (Exempted Development) (No. 2) Regulations 2020. S.I. 92/2020</p> <p>Planning and Development Act 2000 (Exempted Development) (No. 3) Regulations 2020. S.I. 293/2020</p> <p>Planning and Development (Amendment) Regulations 2020. S.I. 46/2020</p> <p>Planning and Development (Amendment) (No. 2) Regulations 2020. S.I. 692/2020</p>
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	National Oil Reserves Agency Act 2007 (Returns and Biofuel Levy) (Amendmen) Regulations 2020. S.I. 279/2020
2021	<p>Acts of the Oireachtas Planning and Development, Heritage and Broadcasting (Amendment) Act 2021</p> <p>Statutory Instruments European Union (Foreshore Act 1933) (Environmental Impact Assessment) (Amendment) Regulations 2021. S.I. 145/2021 European Union (Gas Act 1976) (Environmental Impact Assessment) Regulations 2021. S.I. 174/2021 Roads Act 1993 (Classification of Regional Roads) (Amendment) Order 2021. S.I. 12/2021 Planning and Development Act 2000 (Section 254 – Overground Telecommunication Cables) Regulations 2021. S.I. 422/2021 Planning and Development Act 2000 (Exempted Development) Regulations 2021. S.I. 114/2021 Planning and Development Act 2000 (Exempted Development) (No. 2) Regulations 2021. S.I. 115/2021 Planning and Development Act 2000 (Exempted Development) (No.3) Regulations 2021. S.I. 208/2021 Planning and Development (Street Furniture Fees) Regulations 2021. S.I. 209/2021 Planning and Development (Amendment) Regulations 2021. S.I. 9/2021 Planning and Development (Amendment) (No. 2) Regulations 2021. S.I. 210/2021 Planning and Development (Amendment) (No. 3) Regulations 2021. S.I. 459/2021 Planning and Development (Amendment) (No. 3) Regulations 2021. S.I. 586/2021</p>

3. IPPC/ Industrial Emissions/ Waste Management

Year	Title
	International Conventions and Agreements
2001	Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)
	European Union Law
	Treaty (TFEU) Provision Article 4.2 (e): “ <i>Shared competence between the Union and the Member States applies in the following principal areas: (e) environment</i> ”
1986-1999	Directives Directive 86/278/EEC - Sewage Sludge Directive Directive 94/62/EC - Packaging Waste Directive Directive 96/61/EC - IPPC Directive Directive 96/59/EC - PCB/PCT Directive Directive 99/31/EC - Landfill Directive
2000	Directive 2000/53/EC - End-of-Life Vehicles Directive Directive 2000/76/EC - Directive on Waste Incineration
2006	Directive 2006/12/EC - Waste Framework Directive
2008	Directive 2008/98/EC - Waste Framework Directive
2010	Directive 2010/75/EU - Industrial Emissions (IPPC) Directive / (IED) Directive
2012	Directive 2012/19/EU - WEEE Directive

	National Law
	Bunreacht na hÉireann Unenumerated Rights
1938	Statutory Instruments Hay Straw and Peat Moss Litter Order 1938. S.I. 230/1938
1960	Acts of the Oireachtas Petroleum and Other Minerals Development Act 1960
1979	Statutory Instruments European Communities (Waste) Regulations 1979. S.I. 390/1979
1982	Acts of the Oireachtas Litter Act 1982 Statutory Instruments European Communities (Toxic and Dangerous Waste) Regulations 1982. S.I. 33/1982 Litter Regulations 1982. S.I. 233/1982 Litter Act, 1982 (Section 5 Payment) Regulations 1986. S.I. 176/1986
1984	Statutory Instruments European Communities (Waste) Regulations 1984. S.I. 108/1984
1990	Statutory Instruments European Communities (Asbestos Waste) Regulations 1990. S.I. 30/1990 Petroleum and Other Minerals Development Act 1960 (Section 13A) Regulations 1990. S.I. 141/1990

<p>1992</p>	<p>Statutory Instruments Environmental Protection Agency Act 1992 (Control of Volatile Organic Compound Emissions Resulting From Petrol Storage and Distribution) Regulations 1997. S.I. 374/1997 European Communities (Waste Oils) Regulations 1992. S.I. 399/1992</p>
<p>1994</p>	<p>Statutory Instruments EPA (Licensing Fees) Regulations 1994 S.I. No. 130 of 1994 European Communities (Asbestos Waste) Regulations 1994. S.I. 90/1994 European Communities (Transfrontier Shipment of Waste) Regulations 1994. S.I. 121/1994</p>
<p>1996</p>	<p>Acts of the Oireachtas Waste Management Act 1996 Statutory Instruments EPA (Licensing Fees)(Amendment) Regulations 1996 S.I. No. 239 of 1996</p>
<p>1997</p>	<p>Acts of the Oireachtas Litter Pollution Act 1997 Statutory Instruments Waste Management (Register) Regulations 1997. S.I. 183/1997 Waste Management (Planning) Regulations 1997. S.I. 137/1997</p>
<p>1998</p>	<p>Statutory Instruments European Communities (Amendment of Waste Management Act, 1996) Regulations, 1998. S.I. 166/1998 European Communities (Licensing of Incinerators of Hazardous Waste) Regulations 1998. S.I. 64/1998 European Communities (Mammalian Animal Waste) Regulations 1998. S.I. 2/1998 Waste Management (Use of Sewage Sludge in Agriculture) Regulations 1998. S.I. 148/1998 Waste Management (Licensing) (Amendment) Regulations 1998. S.I. 162/1998 Waste Management (Hazardous Waste) Regulations 1998. S.I. 163/1998 Waste Management (Miscellaneous Provisions) Regulations 1998. S.I. 164/1998 Waste Management (Packaging) (Amendment) Regulations 1998. S.I. 382/1998 Waste Management (Amendment of Waste Management Act 1996) Regulations 1998. S.I. 146/1998</p>

<p>1999</p>	<p>Statutory Instruments European Communities (Processing Mammalian Animal Waste) (Amendment) Regulations 1999. S.I. 200/1999 Litter Pollution Regulations 1999. S.I. 359/1999</p>
<p>2000</p>	<p>Statutory Instruments Waste Management (Licensing) Regulations 2000. S.I. 185/2000 Waste Management (Hazardous Waste) (Amendment) Regulations 2000. S.I. 73/2000</p>
<p>2001</p>	<p>Acts of the Oireachtas Waste Management (Amendment) Act 2001 Statutory Instruments Waste Management Act 1996 (Prescribed Date) Order 2001. S.I. 345/2001 Waste Management (Prescribed Date) Regulations 2001. S.I. 390/2001 Waste Management (Use of Sewage Sludge in Agriculture) (Amendment) Regulations 2001. S.I. 267/2001 Waste Management (Environmental Levy) (Plastic Bag) Regulations 2001. S.I. 605/2001</p>
<p>2003</p>	<p>Acts of the Oireachtas Protection of the Environment Act 2003 Statutory Instruments Waste Management (Packaging) Regulations 2003. S.I. 61/2003 Waste Management (Environment Fund) (Prescribed Payments) Regulations 2003. S.I. 478/2003</p>
<p>2004</p>	<p>Statutory Instruments Waste Management (Licensing) Regulations 2004 S.I. No. 395/2004 EPA (Licensing Fees)(Amendment) Regulations 2004 S.I. No. 410 of 2004 Waste Management (Packaging) (Amendment) Regulations 2004. S.I. 871/2004</p>
<p>2005</p>	<p>Statutory Instruments European Communities (Waste Water Treatment) (Prevention of Odours and Noise) Regulations 2005. S.I. 787/2005 Waste Management (Electrical and Electronic Equipment) Regulations 2005. S.I. 290/2005</p>

<p>2006</p>	<p>Statutory Instruments Waste management (End-of-Life Vehicles) Regulations 2006 S.I. No. 282/2006 Waste Management (Packaging) (Amendment) Regulations 2006. S.I. 308/2006</p>
<p>2007</p>	<p>Acts of the Oireachtas National Oil Reserves Agency Act 2007</p> <p>Statutory Instruments Waste Management (Facility Permit and Registration) Regulations 2007 S.I. No. 821/2007 Waste Water Discharge (Authorisation) Regulations S.I. No. 684 of 2007 Waste Management (Environmental Levy) (Plastic Bag) (Amendment) (No. 2) Regulations 2007. S.I. 167/2007 Waste Management (Environmental Levy) (Plastic Bag) Order 2007. S.I. 62/2007 Waste Management (Collection Permit) Regulations 2007. S.I. 820/2007 Litter Pollution (Increased Notice Payment) Order 2007. S.I. 558/2007</p>
<p>2008</p>	<p>Statutory Instruments Waste Management (Landfill Levy) Regulations 2008 S.I. No. 199 of 2008 Waste Management (Registration of Brokers and Dealers) Regulations 2008 S.I. No. 113 of 2008 Waste Management (Facility Permit and Registration) (Amendment) Regulations 2008 S.I. No. 86 of 2008 Waste Management (Certification of Historic Unlicensed Waste Disposal and Recovery Activity) Regulations 2008 S.I. No. 524 of 2008 Waste Management (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment)(Amendment) Regulations 2008. S.I. 376/2008 Waste Management (Landfill Levy) Order 2008. S.I. 168/2008 Waste Management (Collection Permit) (Amendment) Regulations 2008. S.I. 87/2008</p>
<p>2009</p>	<p>Statutory Instruments European Communities (Supervision and Control of Certain Shipments of Radioactive Waste and Spent Fuel) Order 2009. S.I. 86/2009 Waste Management (Prohibition of Waste Disposal by Burning) Regulations 2009. S.I. 286/2009 Waste Management (Management of Waste from the Extractive Industries) Regulations 2009. S.I. 566/2009 Waste Management (Landfill Levy) (Amendment) Regulations 2009. S.I. 550/2009</p>

	<p>Waste Management (Landfill Levy) Order 2009. S.I. 496/2009</p> <p>Waste Management (Food Waste) Regulations 2009. S.I. 508/2009</p>
2010	<p>Statutory Instruments</p> <p>Waste Management (Licensing) (Amendment) Regulations 2010 S.I. No. 350/2010</p> <p>Waste Management (Landfill Levy) Regulations 2010 S.I. No. 31 of 2010</p> <p>Waste Water Discharge (Authorisation)(Amendment) Regulations 2010 231/2010</p> <p>Waste Management (Registration of Sewage Sludge Facility) Regulations 2010. S.I. 32/2010</p> <p>Waste Management (Landfill Levy) Order 2010. S.I. 13/2010</p> <p>Waste Management (End-of-Life Vehicles) (Amendment) Regulations 2010. S.I. 142/2010</p>
2011	<p>Statutory Instruments</p> <p>European Communities (Waste Directive) Regulations 2011 S.I No. 126/2011</p> <p>European Communities (Birds and Natural Habitats) Regulations 2011 S.I. No. 477/2011</p> <p>European Communities (Shipments of Hazardous Waste Exclusively Within Ireland) Regulations 2011. S.I. 324/2011</p> <p>European Communities (Waste Directive) Regulations 2011. S.I. 126/2011</p> <p>European Communities (Waste Directive) (No. 2) Regulations 2011. S.I. 323/2011</p> <p>European Communities (Waste Electrical and Electronic Equipment) (Amendment) Regulations 2011. S.I. 397/2011</p> <p>Pollutant Release and Transfer Register Regulations 2011. S.I. 649/2011</p>
2012	<p>Statutory Instruments</p> <p>Environmental Protection Agency Act (Registration of Coal Bagging Operators and Solid Fuel Suppliers) Regulations 2012. S.I. 454/2012</p> <p>European Union (Environmental Impact Assessment) (Waste) Regulations 2012, S.I. No. 283/2012</p> <p>European Union (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment) Regulations 2012. S.I. 513/2012</p> <p>European Union (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment) (Amendment) (No. 1) Regulations 2012. S.I. 514/2012</p> <p>European Union (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment) (Amendment) (No. 2) Regulations 2012. S.I. 515/2012</p> <p>Waste Management (Landfill Levy) (Amendment) Regulations 2012. S.I. 221/2012</p>

<p>2013</p>	<p>Statutory Instruments European Union (Environmental Impact Assessment) (Waste) Regulations 2013 S.I. No. 505/2013 Environmental Protection Agency (Industrial Emissions) (Licensing) Regulations 2013 S.I. No. 137/2013 Environmental Protection Agency (Integrated Pollution Control) (Licensing) Regulations 2013. S.I. 283/2013 European Communities (Metallic Mercury Waste) Regulations 2013. S.I. 72/2013 European Union (Household Food Waste and Bio-Waste) (Amendment) Regulations 2013. S.I. 251/2013 European Union (Industrial Emissions) Regulations 2013 S.I. No. 138/2013 European Union (Waste Electrical and Electronic Equipment) (Amendment) Regulations 2013. S.I. 32/2013 European Union (Waste Incineration Plants and Waste Co-Incineration Plants) Regulations 2013. S.I. 148/2013 Waste Management (Prohibition of Waste Disposal by Burning) (Amendment) Regulations 2013. S.I. 504/2013 Waste Management (Landfill Levy) (Amendment) Regulations 2013. S.I. 194/2013</p>
<p>2014</p>	<p>Statutory Instruments European Union (Waste Electrical and Electronic Equipment) Regulations 2014 S.I. No. 149/2014 European Union (Batteries and Accumulators) Regulations 2014 S.I. No. 283/2014 European Union (Batteries and Accumulators) (Amendment) Regulations 2014. S.I. 349/2014 European Union (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment) (Amendment) Regulations 2014. S.I. 348/2014 European Union (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment) (Amendment No. 2) Regulations 2014. S.I. 619/2014 European Union (Waste Electrical and Electronic Equipment) Regulations 2014. S.I. 149/2014 Waste Management (Facility Permit and Registration) (Amendment) Regulations 2014. S.I. 546/2014 Waste Management (Facility Permit and Registration) (Amendment) Regulations 2014. S.I. 320/2014</p>
<p>2015</p>	<p>Acts of the Oireachtas Petroleum (Exploration and Extraction) Safety Act 2015 Statutory Instruments</p>

	<p>European Union (Batteries and Accumulators) (Amendment) Regulations, 2015 S.I. No. 347/2015</p> <p>European Communities (Birds and Natural Habitats) (Amendment) Regulations 2015 S.I. No. 355/2015</p> <p>European Union (Household Food Waste and Bio-Waste) Regulations 2015. S.I. 430/2015</p> <p>European Union (Properties of Waste Which Render It Hazardous) Regulations 2015. S.I. 233/2015</p> <p>Waste Management (Prohibition of Waste Disposal by Burning) (Amendment) Regulations 2015. S.I. 538/2015</p> <p>Waste Management (Landfill Levy) Regulations 2015. S.I. 189/2015</p> <p>Waste Management (Food Waste) (Amendment) Regulations 2015. S.I. 190/2015</p> <p>Waste Management (Facility Permit and Registration) (Amendment) Regulations 2015. S.I. 198/2015</p> <p>Waste Management (Collection Permit) (Amendment) Regulations 2015. S.I. 197/2015</p>
<p>2016</p>	<p>Statutory Instruments</p> <p>European Union (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment) (Amendment) Regulations 2016. S.I. 42/2016</p> <p>European Union (Waste Directive) (Amendment) Regulations 2016. S.I. 315/2016</p> <p>European Union (Waste Directive) (Recovery Operations) Regulations 2016. S.I. 372/2016</p> <p>Waste Water Discharge (Authorisation) (Environmental Impact Assessment) Regulations 2016 S.I. No. 652/2016</p> <p>Waste Management (Fixed Payment Notice) (Producer Responsibility) Regulations 2016. S.I. 373/2016</p> <p>Waste Management (Collection Permit) (Amendment) Regulations 2016. S.I. 24/2016</p> <p>Waste Management (Collection Permit) (Amendment) (No.2) Regulations 2016. S.I. 346/2016</p>
<p>2017</p>	<p>Acts of the Oireachtas</p> <p>Minerals Development Act 2017</p> <p>Petroleum and Other Minerals Development (Prohibition of Onshore Hydraulic Fracturing) Act 2017</p>

	<p>Statutory Instruments European Union (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment) (Amendment) Regulations 2017. S.I. 44/2017</p> <p>Waste Management (Tyres and Waste Tyres) Regulations 2017. S.I. 400/2017</p> <p>Waste Management (Tyres and Waste Tyres) (Amendment) Regulations 2017. S.I. 598/2017</p> <p>Waste Management (Prohibition of Waste Disposal by Burning) (Amendment) Regulations 2017. S.I. 599/2017</p> <p>Waste Management (Farm Plastics) (Amendment) Regulations 2017. S.I. 396/2017</p>
2018	<p>Statutory Instruments European Union (Properties of Waste which Render it Hazardous) Regulations 2018. S.I. 383/2018</p> <p>European Union (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment) (Amendment) Regulations 2018. S.I. 184/2018</p> <p>Waste Management (Tyres and Waste Tyres) (Amendment) Regulations 2018. S.I. 96/2018</p>
2019	<p>Statutory Instruments European Union (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment) (Amendment) Regulations 2019. S.I. 246/2019</p> <p>European Union (Ship Recycling) (Waste) Regulations 2019. S.I. 13/2019</p> <p>Waste Management (Prohibition of Waste Disposal by Burning) Regulations 2019. S.I. 684/2019</p> <p>European Union (Waste Electrical And Electronic Equipment) (Amendment) Regulations 2019. S.I. 233/2019</p> <p>European Union (Waste Licensing) (Amendment) Regulations 2019. S.I. 618/2019</p> <p>Waste Management (Landfill Levy) (Amendment) Regulations 2019. S.I. 182/2019</p> <p>Waste Management (Facility Permit And Registration) (Amendment) Regulations 2019. S.I. 250/2019</p>
2020	<p>Acts of the Oireachtas National Oil Reserves Agency (Amendment) and Provision of Central Treasury Services Act 2020</p> <p>Statutory Instruments European Union (Waste Management) (Environmental Impact Assessment) Regulations 2020 S.I. 130/2020</p>

	<p>Environmental Protection Agency (Integrated Pollution Control) (Licensing) (Amendment) Regulations 2020 S.I. No. 189/2020 Environmental Protection Agency (Industrial Emissions) (Licensing) (Amendment) Regulations 2020. S.I. 190/2020</p> <p>European Union (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment) (Amendment) Regulations 2020. S.I. 23/2020</p> <p>European Union (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment) (Amendment) (No. 2) Regulations 2020. S.I. 264/2020</p> <p>European Union (Waste Directive) Regulations 2020. S.I. 323/2020</p> <p>European Union (Waste Water Discharge) Regulations 2020 S.I. No. 214 of 2020</p> <p>Waste Management (Prohibition of Waste Disposal by Burning) (Amendment) Regulations 2020. S.I. 738/2020</p>
<p>2021</p>	<p>Statutory Instruments</p> <p>European Union (Port Reception Facilities for the Delivery of Waste from Ships) Regulations 2021. S.I. 296/2021</p> <p>European Union (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment) (Amendment) Regulations 2021. S.I. 106/2021</p> <p>European Union (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment) (Amendment) (No. 2) Regulations 2021. S.I. 529/2021</p> <p>Separate Collection (Deposit Return Scheme) Regulations 2021. S.I. 599/2021</p>

4. Water Quality and Pollution / Uisce

Year	Title
	International Conventions and Agreements
1992	The Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention)
1999	Protocol on Water and Health
	European Union Law
	<p>Treaty (TFEU) Provision Article 192.2 (b) “ By way of derogation from the decision-making procedure provided for in paragraph 1 and without prejudice to Article 114, the Council acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, shall adopt: -measures affecting: -quantitative management of water resources or affecting, directly or indirectly, the availability of those resources. ”</p>
	Directives
1976	Directive 76/464/EEC (pollution caused by certain dangerous substances discharged into the aquatic environment)
1998	Directive 98/83/EC (quality of water intended for human consumption)
2013	Directive 2013/51/Euratom (lays down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption)
2006	Directive 2006/11/EC Dangerous Substances Directive

	National Law
	Bunreacht na hÉireann Unenumerated Rights
Pre 1960	<p>Acts of the Oireachtas Oil Pollution of the Sea Act 1956</p> <p>Statutory Instruments Oil Pollution of the Sea (Transfer Records) Regulations 1957. S.I. 207/1957 Oil Pollution of the Sea Act, 1956 (Application of Section 10) Regulations 1957. S.I. 204/1957</p>
1960- 1999	<p>Acts of the Oireachtas Health (Fluoridation of Water Supplies) Act 1960: <i>“an act to provide for the making by health authorities of arrangements for the fluoridation of water supplied to the public by sanitary authorities through pipes and to provide for certain other matters connected with the matter aforesaid.”</i></p> <p>Local Government (Water Pollution) Act 1977: <i>“an act to provide for the control of water pollution and for other matters connected with water pollution.”</i> (See Local Government (Water Pollution) Amendment Acts 1977 to 1990)</p> <p>Oil Pollution of the Sea (Amendment) Act 1965 Oil Pollution of the Sea (Amendment) Act 1977 Oil Pollution of the Sea (Civil Liability and Compensation) Act 1988 Sea Pollution Act 1991</p> <p>Statutory Instruments European Communities (Quality of Surface Water Intended for the Abstraction of Drinking Water) Regulations 1989 S.I. No. 294/1989 Water Quality Standards for Phosphorus) Regulations 1998 S.I. No. 258/1998</p> <p>Sea Pollution Act 1991 (Intervention Protocol) (Countries of Acceptance) Order 1995. S.I. 118/1995 Sea Pollution Act 1991 (Intervention Convention) (Countries of Acceptance) Order 1995. S.I. 117/1995</p>

Sea Pollution (Control of Pollution by Noxious Liquid Substances in Bulk) (Amendment) Regulations 1997. S.I. 515/1997

Sea Fishing (Enforcement of European Community Quotas) Order 1986. S.I. 57/1986

Sea Fishing (Enforcement of European Community Quotas) Order 1985. S.I. 172/1985

River Erne (Special Local Licence Duty) (Method of Payment) (Amendment) Order 1960. S.I. 138/1960

River Erne (Special Local Licence Duty) (Method of Payment) (Amendment) Order 1961. S.I. 165/1961

River Erne (Special Local Licence Duty) (Method of Payment) (Amendment) Order 1972. S.I. 194/1972

River Erne (Special Local Licenses) (Amendment) Order 1960. S.I. 137/1960

River Erne (Special Local Licenses) (Amendment) Order 1961. S.I. 166/1961

River Erne (Special Local Licenses) (Amendment) Order 1962. S.I. 111/1962

River Erne (Special Local Licenses) (Amendment) Order 1963. S.I. 147/1963

River Erne (Special Local Licenses) (Amendment) Order 1964. S.I. 163/1964

River Erne (Special Local Licenses) (Amendment) Order 1965. S.I. 131/1965

River Erne (Special Local Licenses) (Amendment) Order 1967. S.I. 88/1967

River Erne (Special Local Licenses) (Amendment) Order 1972. S.I. 193/1972

River Erne (Special Local Licenses) (Amendment) Order 1976. S.I. 99/1976

River Erne (Special Local Licenses) (Amendment) Order 1983. S.I. 219/1983

River Erne (Special Local Licenses) (Amendment) Order 1985. S.I. 177/1985

River Erne (Special Local Licences) (Amendment) Order 1986. S.I. 212/1986

River Erne (Special Local Licences) (Amendment) Order 1987. S.I. 180/1987

River Erne (Special Local Licences) (Amendment) Order 1988. S.I. 137/1988

Rivers Owenmore and Owenduff (Special Local Licenses) Order 1967. S.I. 34/1967

Rivers Owenmore and Owenduff (Tidal Waters) Order 1967. S.I. 33/1967

River Shannon Tidal Waters (Issue of Fishing Licences) Regulations 1935. S.I. 664/1935

<p>Oil Pollution of the Sea (Amendment) Act, 1977 (Application of Section 2) Order 1979. S.I. 318/1979</p> <p>Oil Pollution of the Sea (Civil Liability and Compensation) (Convention Countries) Order 1992. S.I. 404/1992</p> <p>Oil Pollution of the Sea (Civil Liability and Compensation) Act 1988 (Commencement) Order 1992. S.I. 381/1992</p> <p>Oil Pollution of the Sea (Convention Amendment Countries) Order 1967. S.I. 127/1967</p> <p>Oil Pollution of the Sea (Convention Countries) (Australia and The Netherlands Antilles) Order 1963. S.I. 8/1963</p> <p>Oil Pollution of the Sea (Convention Countries) (Finland and Poland) Order 1961. S.I. 154/1961</p> <p>Oil Pollution of the Sea (Convention Countries) (Ghana, Iceland, Kuwait and Liberia) Order 1962. S.I. 158/1962</p> <p>Oil Pollution of the Sea (Convention Countries) (Italy and Malagasy Republic) Order 1965. S.I. 126/1964</p> <p>Oil Pollution of the Sea (Convention Countries) (Miscellaneous) Order 1963. S.I. 240/1963</p> <p>Oil Pollution of the Sea (Convention Countries) (Miscellaneous) Order 1964. S.I. 119/1964</p> <p>Oil Pollution of the Sea (Convention Countries) (United States of America) Order 1961. S.I. 302/1961</p> <p>Oil Pollution of the Sea (Convention Countries and Convention Amendment Countries) Order 1967. S.I. 305/1967</p> <p>Oil Pollution of the Sea (Convention Countries and Convention Amendment Countries) Order 1968. S.I. 123/1968</p> <p>Oil Pollution of the Sea (Convention Countries and Convention Amendment Countries) Order 1969. S.I. 224/1969</p> <p>Oil Pollution of the Sea (Convention Countries and Convention Amendment Countries) Order 1971. S.I. 323/1971</p> <p>Oil Pollution of the Sea (Convention Countries and Convention Amendment Countries) Order 1981. S.I. 222/1981</p> <p>Oil Pollution of the Sea (Extension of Prohibited Zones) Order 1967. S.I. 123/1967</p> <p>Oil Pollution of the Sea (Intervention Convention Countries) Order 1981. S.I. 223/1981</p> <p>Oil Pollution of the Sea (Records) Regulations 1980. S.I. 119/1980</p>

	<p>Oil Pollution of the Sea (Ships' Equipment) Regulations 1980. S.I. 352/1980</p> <p>Oil Pollution of the Sea Act, 1956 (Application of Section 10) Regulations 1980. S.I. 353/1980</p> <p>Oil Pollution of the Sea Act, 1956 (Exceptions) Regulations 1980. S.I. 354/1980</p> <p>Oil Pollution of the Sea Act, 1956 (Extension of Prohibited Zones) Order 1961. S.I. 104/1961</p> <p>Local Government (Water Pollution) Acts 1977 and 1990 (Control of Carbon Tetrachloride, Ddt and Pentachlorophenol Discharges) Regulations 1994. S.I. 43/1994</p> <p>Local Government (Water Pollution) Acts 1977 and 1990 (Control of Edc, Tri, Per and Tcb Discharges) Regulations 1994. S.I. 245/1994</p> <p>Local Government (Water Pollution) Regulations 1978. S.I. 108/1978</p> <p>Local Government (Water Pollution) Regulations 1992. S.I. 271/1992</p> <p>Local Government (Water Pollution) (Amendment) Regulations 1996. S.I. 184/1996</p> <p>Local Government (Water Pollution) (Fees) Regulations 2001. S.I. 573/2001</p> <p>Local Government (Water Pollution) (Nutrient Management Planning Consultation) Regulations 1998. S.I. 257/1998</p> <p>Local Government (Water Pollution) Act 1977 (Control of Cadmium Discharges) Regulations 1985. S.I. 294/1985</p> <p>Local Government (Water Pollution) Act 1977 (Control of Hexachlorocyclohexane and Mercury Discharges) Regulations 1986. S.I. 55/1986</p> <p>Local Government (Water Pollution) Act 1977 (Section 4 and 16) (Fixing of Dates) Order 1978. S.I. 16/1978</p> <p>Local Government (Water Pollution) Act 1977 (Transfer of Appeals) Order 1978 (Amendment) Order 1983. S.I. 37/1983</p> <p>Local Government (Water Pollution) Acts 1977 and 1990 (Control of Aldrin, Dieldrin, Endrin, Isodrin, Hcb, Hcbd and Chc13 Discharges) Regulations 1993. S.I. 348/1993</p> <p>Water Pollution Advisory Council Order 1977. S.I. 172/1977</p>
2000	<p>Statutory Instruments</p> <p>European Communities (Drinking Water) Regulations 2000 S.I. No. 439/2000</p> <p>European Communities (Quality of Water Intended for Human Consumption) (Amendment) Regulations 2000. S.I. 177/2000</p>

	<p>Oil Pollution of the Sea (Civil Liability and Compensation) (Convention Countries) Order 2000. S.I. 403/2000</p> <p>Oil Pollution of the Sea (Civil Liability and Compensation) (Insurance of Ships) Regulations 2000</p>
2001	<p>Statutory Instruments Water Quality (Dangerous Substances) Regulations 2001 S.I. No. 12/2001</p> <p>Urban Waste Water Treatment Regulations 2001. S.I. 254/2001</p> <p>Quality of Bathing Waters (Amendment) Regulations 2001. S.I. 22/2001</p>
2002	<p>Statutory Instruments</p> <p>Sea Pollution (Control of Pollution by Noxious Liquid Substances in Bulk) (Amendment) Regulations 2002. S.I. 641/2002</p> <p>Sea Fisheries (Recovery of the Stock of Cod in The Irish Sea) Order 2002. S.I. 45/2002</p>
2003	<p>Acts of the Oireachtas Oil Pollution of the Sea (Civil Liability and Compensation) (Amendment) Act 2003</p> <p>Statutory Instruments European Communities (Quality of Water Intended for Human Consumption) (Amendment) Regulations 2003 S.I. No. 259/2003 European Communities (Water Policy) Regulations 2003. S.I. 722/2003</p>
2004	<p>Statutory Instruments Urban Waste Water Treatment (Amendment) Regulations 2004. S.I. 440/2004</p> <p>Sea-Fishing Boat Licensing Appeals (Fees) Regulations 2004. S.I. 501/2004</p>
2005	<p>Acts of the Oireachtas Sea Pollution (Hazardous Substances) (Compensation) Act 2005</p>

	<p>Statutory Instruments</p> <p>European Communities (Water Policy) (Amendment) Regulations 2005. S.I. 413/2005</p>
2006	<p>Acts of the Oireachtas</p> <p>Sea Pollution (Miscellaneous Provisions) Act 2006</p> <p>Statutory Instruments</p> <p>Sea Pollution (Prevention of Pollution by Sewage from Ships) Regulations 2006. S.I. 269/2006</p> <p>Sea Fisheries Protection Authority (Establishment Day) Order 2006. S.I. 376/2006</p>
2007	<p>Acts of the Oireachtas</p> <p>Water Services Act 2007</p> <p>Statutory Instruments</p> <p>Fluoridation of Water Supplies Regulations 2007 S.I. 42/2007</p> <p>European Communities (Drinking Water) (No. 2) Regulations 2007 S.I. No. 278/2007</p> <p>Waste Water Discharge (Authorisation) Regulations 2007. S.I. 684/2007</p> <p>Sea Pollution (Prevention of Oil Pollution) Regulations 2007. S.I. 788/2007</p>
2008	<p>Statutory Instruments</p> <p>Bathing Water Quality Regulations 2008 S.I. No. 79/2008</p> <p>European Communities (Water Policy) (Amendment) Regulations 2008. S.I. 219/2008</p> <p>National Rural Water Services Committee (Establishment Day) Order 2008. S.I. 522/2008</p> <p>Sea Pollution (Prevention of Pollution By Sewage from Ships) (Amendment) (No. 2) Regulations 2008. S.I. 372/2008</p> <p>Sea Pollution (Prevention of Pollution By Sewage from Ships) (Amendment) Regulations 2008. S.I. 281/2008</p>

	<p>Sea Pollution (Prevention of Oil Pollution) (Amendment) Regulations 2008. S.I. 282/2008</p> <p>Sea Pollution (Control of Pollution By Noxious Liquid Substances in Bulk) Regulations 2008. S.I. 217/2008</p> <p>Sea Pollution (Control of Anti-Fouling Systems on Ships) Regulations 2008. S.I. 82/2008</p> <p>Water Conservation Regulations 2008. S.I. 527/2008</p>
2009	<p>Statutory Instruments</p> <p>European Communities Environmental Objectives (Surface Waters) Regulations 2009. S.I. 272/2009</p> <p>Water Services Act 2007 (Waste Water Compliant Notice Form) Regulations 2009. S.I. 141/2009</p>
2010	<p>Statutory Instruments</p> <p>European Communities (Water Policy) (Amendment) Regulations 2010. S.I. 93/2010</p> <p>European Communities (Water Policy) (Amendment) (No. 2) Regulations 2010. S.I. 326/2010</p> <p>European Communities Environmental Objectives (Groundwater) Regulations 2010. S.I. 9/2010</p> <p>Waste Water Discharge (Authorisation) (Amendment) Regulations 2010. S.I. 231/2010</p> <p>Sea Pollution (Prevention of Oil Pollution) (Amendment) Regulations 2010. S.I. 664/2010</p> <p>Sea Pollution (Prevention of Air Pollution from Ships) Regulations 2010. S.I. 313/2010</p>
2011	<p>Statutory Instruments</p> <p>Bathing Water Quality (Amendment) Regulations 2011 S.I. No. 351/2011</p> <p>European Communities Environmental Objectives (Groundwater) (Amendment) Regulations 2011. S.I. 389/2011</p> <p>Sea Pollution (Prevention of Oil Pollution) (Amendment) Regulations 2011. S.I. 365/2011</p>

	<p>Sea Pollution (Prevention of Air Pollution from Ships) (Amendment) (No. 2) Regulations 2011. S.I. 596/2011</p> <p>Sea Pollution (Prevention of Air Pollution from Ships) (Amendment) Regulations 2011. S.I. 383/2011</p>
2012	<p>Acts of the Oireachtas Water Services (Amendment) Act 2012</p> <p>Statutory Instruments Domestic Waste Water Treatment Systems (Registration) Regulations 2012. S.I. 220/2012</p> <p>European Communities Environmental Objectives (Groundwater) (Amendment) Regulations 2012. S.I. 149/2012</p> <p>European Communities Environmental Objectives (Surface Waters) (Amendment) Regulations 2012. S.I. 327/2012</p> <p>Water Services Acts 2007 and 2012 (Domestic Waste Water Treatment Systems) Regulations 2012. S.I. 223/2012</p> <p>Sea Pollution (Prevention of Pollution by Sewage from Ships) (Amendment) Regulations 2012. S.I. 492/2012</p> <p>Sea Pollution (Prevention of Pollution by Garbage from Ships) Regulations 2012. S.I. 372/2012</p> <p>Water Services Act 2007 (Registration and Inspections) Regulations 2012. S.I. 384/2012</p>
2013	<p>Acts of the Oireachtas Water Services Act 2013</p> <p>Water Services (No. 2) Act 2013</p> <p>Statutory Instruments Domestic Waste Water Treatment Systems (Financial Assistance) Regulations 2013. S.I. 222/2013</p> <p>Domestic Waste Water Treatment Systems (Registration) (Amendment) Regulations 2013. S.I. 180/2013</p>

	<p>Sea Pollution (Prevention of Air Pollution from Ships) (Amendment) Regulations 2013. S.I. 35/2013</p> <p>Sea Pollution (Harmful Substances in Packaged Form) Regulations 2013. S.I. 510/2013</p> <p>Water Services (No. 2) Act 2013 (Transfer Day) Order 2013. S.I. 576/2013</p> <p>Water Services Act 2013 (Prescribed Persons) Order 2013. S.I. 269/2013</p> <p>Water Services Act 2007 (Appointment of Inspectors) Regulations 2013. S.I. 190/2013</p> <p>Water Services Act 2007 (Re-inspection) Regulations 2013. S.I. 189/2013</p>
2014	<p>Acts of the Oireachtas Water Services Act 2014</p> <p>Statutory Instruments European Union (Drinking Water) Regulations 2014 S.I. No. 122/2014 European Union (Water Policy) Regulations 2014. S.I. 350/2014</p> <p>Sea Pollution (Prevention of Oil Pollution) (Amendment) Regulations 2014. S.I. 275/2014</p> <p>Water Services (No. 2) Act 2013 (Transfer of Other Liabilities) Order 2014. S.I. 96/2014</p> <p>Water Services Act (No. 2) 2013 (Transfer of Other Liabilities) Order (No. 2) 2014. S.I. 188/2014</p>
2015	<p>Statutory Instruments Water Services Act 2014 (Irish Water Customer Registration) Order 2015. S.I. 34/2015</p> <p>Water Services Act 2014 (Water Conservation Grant) Regulations 2015. S.I. 275/2015</p> <p>Water Services Act 2014 (Water Conservation Grant) (Amendment) Regulations 2015. S.I. 434/2015</p> <p>Water Services Act 2013 (Prescribed Persons) Order 2015. S.I. 84/2015</p> <p>Water Services (No. 2) Act 2013 (Other Licences, Authorisations and Permits) Order 2015. S.I. 462/2015</p>

	<p>Water Services (No. 2) Act 2013 (Property Vesting Day) Order 2015. S.I. 13/2015</p> <p>Water Services (No. 2) Act 2013 (Property Vesting Day) (No. 2) Order 2015. S.I. 111/2015</p> <p>Water Services (No. 2) Act 2013 (Property Vesting Day) (No. 3) Order 2015. S.I. 112/2015</p> <p>Water Services (No. 2) Act 2013 (Property Vesting Day) (No. 4) Order 2015. S.I. 146/2015</p> <p>Water Services (No. 2) Act 2013 (Property Vesting Day) (No. 5) Order 2015. S.I. 181/2015</p> <p>Water Services (No. 2) Act 2013 (Property Vesting Day) (No. 6) Order 2015. S.I. 319/2015</p> <p>Water Services (No. 2) Act 2013 (Property Vesting Day) (No. 7) Order 2015. S.I. 461/2015</p> <p>Water Services (No. 2) Act 2013 (Property Vesting Day) (No. 8) Order 2015. S.I. 509/2015</p> <p>Water Services (No. 2) Act 2013 (Property Vesting Day) (No. 9) Order 2015. 632/2015</p> <p>Sea-Fisheries and Maritime Jurisdiction (Mussel Seed) (Opening of Fisheries) (Castlemaine) Regulations 2015. S.I. 589/2015</p> <p>Sea-Fisheries and Maritime Jurisdiction (Mussel Seed) (Opening of Fisheries) (Rusk Channel) Regulations 2015. S.I. 351/2015</p>
<p>2016</p>	<p>Acts of the Oireachtas Water Services (Amendment) Act 2016</p> <p>Statutory Instruments European Union (Radioactive Substances in Drinking Water) Regulations 2016 S.I. No. 160/2016</p> <p>Bathing Water Quality (Amendment) Regulations 2016 S.I. No. 163/2016</p> <p>Irish Water (Previous Service) Superannuation Scheme 2016. S.I. 57/2016</p> <p>Sea Pollution (Prevention of Oil Pollution) (Amendment) Regulations 2016. S.I. 461/2016</p> <p>Sea Pollution (Prevention of Oil Pollution) (Amendment) (No. 2) Regulations 2016. S.I. 578/2016</p>

	<p>Sea Pollution (Prevention of Oil Pollution) (Amendment) (No. 3) Regulations 2016. S.I. 582/2016</p> <p>Sea Pollution (Harmful Substances in Packaged Form) (Amendment) Regulations 2016. S.I. 459/2016</p> <p>Sea Fisheries Protection Authority Superannuation Scheme 2016. S.I. 353/2016</p> <p>Sea-Fisheries Protection Authority (Employees) Superannuation Scheme 2016. S.I. 358/2016</p> <p>Sea-Fisheries and Maritime Jurisdiction (Mussel Seed) (Opening of Fisheries) Regulations 2016. S.I. 469/2016</p> <p>Sea-Fisheries and Maritime Jurisdiction (Mussel Seed) (Opening of Fisheries) (Amendment) Regulations 2016. S.I. 551/2016</p> <p>Water Services (No. 2) Act 2013 (Property Vesting Day) Order 2016. S.I. 335/2016</p> <p>Waste Water Discharge (Authorisation) (Environmental Impact Assessment) Regulations 2016. S.I. 652/2016</p>
<p>2017</p>	<p>Acts of the Oireachtas Water Services Act 2017</p> <p>Statutory Instruments European Union (Drinking Water) (Amendment) Regulations 2017 S.I. No. 464/2017</p> <p>Sea-Fisheries and Maritime Jurisdiction (Mussel Seed)(Opening of Fisheries) Regulations 2017. S.I. 398/2017</p> <p>Sea Pollution (Prevention of Air Pollution From Ships) (Amendment) Regulations 2017. S.I. 48/2017</p> <p>Sea Pollution (Control of Pollution by Noxious Liquid Substances in Bulk) (Amendment) Regulations 2017. S.I. 393/2017</p> <p>Water Services Act 2014 (Extension of Suspension of Domestic Water Charges) Order 2017. S.I. 118/2017</p>

	<p>Water Services Act 2014 (Extension of Suspension of Domestic Water Charges) (Amendment) Order 2017. S.I. 330/2017</p> <p>Water Services (No. 2) Act 2013 (Property Vesting Day) (No. 2) Order 2017. S.I. 607/2017</p> <p>Water Services (No. 2) Act 2013 (Property Vesting Day) (No. 10) Order 2017. S.I. 329/2017</p> <p>Water Services Act 2007 (Threshold Amount and Allowance Amount) Order 2017. S.I. 597/2017</p>
2018	<p>Statutory Instruments</p> <p>European Union (Water Policy) (Abstractions Registration) Regulations 2018 S.I. No. 261/2018</p> <p>Sea Pollution (Prevention of Oil Pollution) (Amendment) Regulations 2018. S.I. 236/2018</p> <p>Sea-Fisheries and Maritime Jurisdiction (Mussel Seed) (Opening of Fisheries) Regulations 2018. S.I. 369/2018</p> <p>Water Services Act 2017 (Part 5) (Establishment Day) Order 2018. S.I. 193/2018</p> <p>Water Services Act 2017 (Part 7) (Establishment Day) Order 2018. S.I. 194/2018</p> <p>Water Services (No. 2) Act 2013 (Property Vesting Day) Order 2018. S.I. 297/2018</p> <p>Water Services (No. 2) Act 2013 (Property Vesting Day) (No.2) Order 2018. S.I. 573/2018</p>
2019	<p>Statutory Instruments</p> <p>Sea-Fisheries and Maritime Jurisdiction (Mussel Seed) (Opening of Fisheries) Regulations 2019. S.I. 464/2019</p> <p>Sea-Fisheries (Technical Measures) Regulations 2019. S.I. 520/2019</p> <p>Sea-Fisheries and Maritime Jurisdiction (Bluefin Tuna) Regulations 2019. S.I. 265/2019</p> <p>Water Services (No. 2) Act 2013 (Property Vesting Day) Order 2020. S.I. 166/2020</p>

	<p>Water Services (No. 2) Act 2013 (Property Vesting Day) (No.2) Order 2020. S.I. 384/2020</p> <p>Water Services (No. 2) Act 2013 (Property Vesting Day) (No.3) Order 2020. S.I. 681/2020</p> <p>Water Services (No. 2) Act 2019 (Property Vesting Day) Order 2019. S.I. 680/2019</p>
2020	<p>Statutory Instruments</p> <p>Sea-Fisheries and Maritime Jurisdiction (Mussel Seed) (Opening of Fisheries) Regulations 2020. S.I. 338/2020</p> <p>Sea Fisheries (Shark Fin) Regulations 2020. S.I. 172/2020</p> <p>Sea-Fisheries (Technical Measures) Regulations 2020. S.I. 440/2020</p> <p>Water Services Act 2017 (Membership of Water Forum) Regulations 2020. S.I. 526/2020</p>
2021	<p>Statutory Instruments</p> <p>European Communities Environmental Objectives (Surface Waters) (Amendment) Regulations 2021. S.I. 659/2021</p> <p>Sea-Fisheries and Maritime Jurisdiction (Mussel Seed) (Opening of Fisheries) Regulations 2021. S.I. 461/2021</p> <p>Water Services (No. 2) Act 2013 (Property Vesting Day) Order 2021. S.I. 319/2021</p> <p>Water Services (No. 2) Act 2013 (Property Vesting Day) (No. 2) Order 2021. S.I. 533/2021</p>

5. Flora and Fauna/ Plandaí agus Ainmhithe

Year	Title
	International Conventions and Agreements
1975	Convention on International Trade in Endangered Species (CITES)
1979	Convention on the Conservation of European Wildlife and Habitats (Berne Convention)
1983	Convention on Migratory Species (Bonn Convention)
1992	Convention on Biological Diversity Cartagena Protocol (Effective 2003) Nagoya Protocol (Effective 2014)
1999	Agreement on the conservation of African Eurasian Migratory Water birds (AEWA)
	European Union Law
	Treaty (TFEU) Provision N/A
	Directives
1985	EIA Directive (85/337/EEC)
1992	Habitats Directive (Directive 92/43/EEC)
2009	Birds Directive (Directive 2009/147/EC on the conservation of wild birds)

	National Law
	Bunreacht na hÉireann Unenumerated Rights
1933-1990	<p>Acts of the Oireachtas Agriculture Act 1931</p> <p>Noxious Weeds Act 1936 (Whale Fisheries Act 1937) see in “Fishing” Greyhound Industry Act 1958 (Re: Hares, Irish Coursing Club) Wildlife Act 1976</p> <p>Statutory Instruments</p> <p>Black Scab in Potatoes (Special Area) Order 1933 (Amendment) Order 1948. S.I. 375/1948</p> <p>Black Scab in Potatoes (Special Area) Order 1945. S.I. 36/1945</p> <p>The Colorado Beetle Order 1931</p> <p>Colorado Beetle Order 1945.S.I. 228/1945</p> <p>Control of Dogs Act, 1986 (Guard Dogs) Regulations 1988. S.I. 255/1988</p> <p>Control of Dogs Act, 1986 (Guard Dogs) (Amendment) Regulations 1989. S.I. 329/1989</p> <p>Diseases of Animals (Disinfection) Order of 1931. S.I. 59/1931</p> <p>Diseases of Animals Act 1894 (Extension to Horses Asses Mules Dogs and Cats) Order 1933. S.I. 17/1933</p> <p>Diseases of Animals Act 1894 (Extension to Poultry and Poultry Diseases) Order 1938. S.I. 23/1938</p> <p>Diseases of Animals Act 1894 (Extension to Poultry and Poultry Diseases) (No. 2) Order 1938. S.I. 125/1938</p> <p>Diseases of Animals Act 1894 (Extension to Rabies) Order 1933. S.I. 18/1933</p> <p>Diseases of Animals Act 1894 (Extension to Rodents and Insectivora) Order 1933. S.I. 11/1933</p> <p>Diseases of Animals Act 1894 (Extension to Warble Fly Infestation) Order 1936. S.I. 43/1936</p>

Dublin Swine Fever Orders 1903 To 1928. S.I. 104/1938

European Communities (Prohibition of Certain Active Substances in Plant Protection Products) Regulations 1981. S.I. 320/1981

European Communities (Prohibition of Certain Active Substances in Plant Protection Products) (Amendment) (No. 2) Regulations 1985. S.I. 237/1985

European Communities (Prohibition of Certain Active Substances in Plant Protection Products) (Amendment) (No. 2) Regulations 1987. S.I. 342/1987

European Communities (Conservation of Wild Birds) Regulations 1985 (S.I. No. 291 of 1985)

European Communities (Conservation of Wild Birds) (Amendment) Regulations 1986. S.I. 48/1986

Exportation of Animals Order 1931. S.I. 63/1931

Exportation of Animals Order 1938. S.I. 110/1938

Foot and Mouth Disease (Disposal of Swill) Order 1937. S.I. 337/1937

Foot and Mouth Disease (Importation of Rodents and Insectivora) Order 1933. S.I. 10/1933

Foot and Mouth Disease (Imported Carcases and Packing Materials) Order 1938. S.I. 273/1938

Foot and Mouth Disease (Imported Carcases and Packing Materials) (Amendment) Order 1938. S.I. 287/1938

Foot and Mouth Disease (Imported Packing) Order of 1923 Amendment Order of 1931. S.I. 39/1931

Foot and Mouth Disease (Imported Packing) Order 1932. S.I. 18/1932

Foot and Mouth Disease (Imported Packing) Order of 1923 Amendment Order of 1933. S.I. 13/1933

Foot and Mouth Disease Order 1950. S.I. 79/1950

Foot and Mouth Disease Order 1950 (Amendment) Order 1952. S.I. 147/1952

Foot and Mouth Disease and Swine Fever (Boiling of Animal Foodstuffs) Order 1933. S.I. 39/1933

The Foreign Animals Order of 1931 Amendment Order 1931. S.I. 38/1931

The Foreign Animals Order of 1931 Amendment Order of 1933. S.I. 12/1933

Foreign Animals Order of 1931 (Amendment) Order 1938. S.I. 66/1938
The Foreign Animals Order 1932. S.I. 17/1932

Foreign Hay and Straw (Ireland) Order of 1912 Amendment Order of 1931. S.I. 40/1931
Foreign Hay and Straw (Ireland) Order of 1912 Amendment Order of 1933. S.I. 14/1933
Foreign Hay and Straw Order 1932. S.I. 19/1932

Importation of Carcasses (Prohibition) Order of 1926 (Amendment) Order 1938. S.I. 65/1938
Importation of Strawberry Plants and Blackcurrant and Gooseberry Order 1946. S.I. 358/1946

Nature Reserve (Slieve Bloom Mountains) Establishment Order 1985. S.I. 382/1985
Nature Reserve (Tearaght Island) Establishment Order 1989. S.I. 108/1989
Nature Reserve (Tearaght Island) Recognition Order 1989. S.I. 109/1989
Nature Reserve (The Gearagh) Recognition Order 1987. S.I. 231/1987
Nature Reserve (The Raven) Establishment Order 1983. S.I. 200/1983
Nature Reserve (Timahoe Esker) Establishment Order 1985. S.I. 383/1985
Nature Reserve (Tralee Bay) Establishment Order 1989. S.I. 106/1989
Nature Reserve (Uragh Wood) Establishment Order 1982. S.I. 380/1982
Nature Reserve (Vale of Clara) Establishment Order 1983. S.I. 374/1983
Nature Reserve (Wexford Wildfowl Reserve) Establishment Order 1981. S.I. 205/1981
Nature Reserve (Richmond Esker) Establishment Order 1985. S.I. 380/1985
Nature Reserve (Rogerstown Estuary) Establishment Order 1988. S.I. 71/1988
Nature Reserve (Rosturra Wood) Establishment Order 1983. S.I. 375/1983
Nature Reserve (North Bull Island) Establishment Order 1988. S.I. 231/1988
Nature Reserve (North Bull Island) Recognition Order 1988. S.I. 232/1988
Nature Reserve (Oldhead Wood) Establishment Order 1984. S.I. 333/1984
Nature Reserve (Owenboy) Establishment Order 1986. S.I. 416/1986
Nature Reserve (Pettigo Plateau) Establishment Order 1984. S.I. 334/1984

Nature Reserve (Pollnacknockaun Wood) Establishment Order 1983. S.I. 377/1983
Nature Reserve (Puffin Island) Establishment Order 1987. S.I. 228/1987
Nature Reserve (Puffin Island) Recognition Order 1987. S.I. 229/1987
Nature Reserve (Raheenmore Bog) Establishment Order 1987. S.I. 280/1987
Nature Reserve (Rathmullan Wood) Establishment Order 1986. S.I. 343/1986
Nature Reserve (Mongan Bog) Recognition Order 1987. S.I. 230/1987
Nature Reserve (Mount Brandon) Establishment Order 1986. S.I. 420/1986
Nature Reserve (Kyleadohir) Establishment Order 1980. S.I. 388/1980
Nature Reserve (Little Skellig) Recognition Order 1988. S.I. 236/1988
Nature Reserve (Lough Barra Bog) Establishment Order 1987. S.I. 227/1987
Nature Reserve (Lough Hyne) Establishment Order 1981. S.I. 206/1981
Nature Reserve (Lough Hyne) Regulations 1981. S.I. 207/1981
Nature Reserve (Lough Nambrackdarrig) Establishment Order 1988. S.I. 73/1988
Nature Reserve (Lough Yganavan) Establishment Order 1988. S.I. 72/1988
Nature Reserve (Coolacurragh Wood) Establishment Order 1982. S.I. 379/1982
Nature Reserve (Coole-Garryland) Establishment Order 1983. S.I. 379/1983
Nature Reserve (Deputy's Pass) Establishment Order 1982. S.I. 381/1982
Nature Reserve (Derkmore Wood) Establishment Order 1988. S.I. 70/1988
Nature Reserve (Derryclare) Establishment Order 1980. S.I. 177/1980
Nature Reserve (Derrycrag Wood) Establishment Order 1983. S.I. 376/1983
Nature Reserve (Derrycunihy Wood) Recognition Order 1989. S.I. 111/1989
Nature Reserve (Derrymore Island) Recognition Order 1989. S.I. 110/1989
Nature Reserve (Dromore) Establishment Order 1985. S.I. 379/1985
Nature Reserve (Duntally Wood) Establishment Order 1986. S.I. 344/1986
Nature Reserve (Eirk Bog) Establishment Order 1986. S.I. 419/1986
Nature Reserve (Pollardstown Fen) Establishment Order 1986. S.I. 414/1986
Nature Reserve (Fiddown Island) Establishment Order 1988. S.I. 234/1988
Nature Reserve (Garryrickin) Establishment Order 1980. S.I. 389/1980
Nature Reserve (Glen of the Downs) Establishment Order 1980. S.I. 178/1980
Nature Reserve (Glendalough) Establishment Order 1988. S.I. 68/1988
Nature Reserve (Glenealo Valley) Establishment Order 1988. S.I. 69/1988

Nature Reserve (Grantstown Wood and Granston Lough) Establishment Order 1982. S.I. 378/1982

Nature Reserve (Great Skellig) Establishment Order 1988. S.I. 235/1988

Nature Reserve (Keelhilla, Slievecarran) Establishment Order 1986. S.I. 346/1986

Nature Reserve (Knockmoyle/Sheskin) Establishment Order 1986. S.I. 415/1986

Nature Reserve (Knockomagh Wood) Establishment Order 1989. S.I. 107/1989

Nature Reserve (Baldoyle Estuary) Establishment Order 1988. S.I. 233/1988

Nature Reserve (Ballyarr Wood) Establishment Order 1986. S.I. 345/1986

Nature Reserve Ballygilgan (Lissadel) Establishment Order 1986. S.I. 417/1986

Nature Reserve (Ballykeefe) Establishment Order 1980. S.I. 386/1980

Nature Reserve (Ballynastaig Wood) Establishment Order 1983. S.I. 378/1983

Nature Reserve (Ballyteigue) Establishment Order 1986. S.I. 418/1986

Nature Reserve (Ballyteigue Burrow) Establishment Order 1987. S.I. 279/1987

Nature Reserve (Caher (Murphy)) Establishment Order 1980. S.I. 387/1980

Nature Reserve (Capel Island and Knockadoon Head) Establishment Order 1985. S.I. 381/1985

Nature Reserve (Capel Island and Knockadoon Head) Recognition Order 1985. S.I. 384/1985

Nature Reserve (Clara Bog) Establishment Order 1987. S.I. 226/1987

Noxious Weeds (Common Barberry) Order 1958. S.I. 120/1958

Noxious Weeds (Male Wild Hop Plant) Order 1965. S.I. 189/1965

Noxious Weeds (Thistle, Ragwort, and Dock) Order 1937. S.I. 103/1937

Noxious Weeds (Wild Oat) Order 1973. S.I. 194/1973

Protection of Animals (Approved Spring Taps) Order 1968. S.I. 116/1968

Poultry and Poultry Eggs (Importation) Order 1938. S.I. 126/1938

Potato Root Eelworm Order 1951. S.I. 372/1951

Public Sales of Greyhounds Regulations 1963. S.I. 34/1963

Public Sales of Greyhounds Regulations 1966. S.I. 76/1966

Refuge For Fauna (Cliffs of Moher) Designation Order 1988. S.I. 98/1988

Refuge For Fauna (Horn Head) Designation Order 1988. S.I. 99/1988

Refuge for Fauna (Lady's Island) Designation Order 1988. S.I. 23/1988

Refuge for Fauna (Old Head of Kinsale) Designation Order 1989. S.I. 11/1989

Refuge For Fauna (Rockabill Island) Designation Order 1988. S.I. 100/1988

The Rabies Order 1933. S.I. 16/1933

Sale of Diseased Plants (Ireland) Order 1922 (Second Amendment) Order 1946. S.I. 359/1946

Sheep Dipping Order 1937. S.I. 169/1937

Sheep Dipping (Amendment) Order 1938. S.I. 232/1938

Sheep Scab (Leitrim and Cavan) Order 1938. S.I. 99/1938

Transit of Animals Order 1933. S.I. 42/1933

Warble Fly (Treatment of Cattle) Order 1936. S.I. 20/1936

Warble Fly (Treatment of Cattle) (Amendment) Order 1936. S.I. 371/1936

Wildlife Act 1976 (Acquisition of Land) Regulations 1978. S.I. 29/1978

Wildlife Act 1976 (Birds of Prey) Regulations 1984. S.I. 8/1984

Wildlife Act 1976 (Certificate of Peace Commissioner) Regulations 1977. S.I. 210/1977

Wildlife Act 1976 (Control of Export of Fauna) Regulations 1979. S.I. 235/1979

Wildlife Act 1976 (Control of Importation of Wild Animals and Wild Birds) Regulations 1989. S.I. 296/1989

Wildlife Act 1976 (Firearms and Ammunition) Regulations 1977. S.I. 239/1977

Wildlife Act 1976 (Protection of Bullfinches) Regulations 1980. S.I. 283/1980

Wildlife Act 1976 (Protection of Wild Animals) Regulations 1980. S.I. 282/1980

	<p>Wildlife Act 1976 (Section 44) (Recognised Bodies) Regulations 1977. S.I. 335/1977</p> <p>Wildlife Act 1976 (Section 44) (Recognised Bodies) Regulations 1980. S.I. 233/1980</p> <p>Wildlife Act 1976 (Wildlife Dealing) Regulations 1977. S.I. 253/1977</p> <p>Wildlife Advisory Council Order 1978. S.I. 79/1978</p> <p>Wildlife (Wild Mammals) (Open Seasons) (Amendment) Order 1986. S.I. 306/1986</p> <p>Wildlife (Wild Birds) (Open Seasons) Order 1979. S.I. 192/1979</p> <p>Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1980. S.I. 229/1980</p> <p>Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1982. S.I. 266/1982</p> <p>Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1984. S.I. 283/1984</p> <p>Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1985. S.I. 346/1985</p> <p>Wildlife (Wild Birds) (Open Seasons) (Amendment) (No. 2) Order 1985. S.I. 347/1985</p> <p>Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1986. S.I. 307/1986</p> <p>Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1989. S.I. 221/1989</p> <p>Wild Birds (Open Seasons) Order 1977. S.I. 243/1977</p> <p>Wild Birds (Open Seasons) Order 1978. S.I. 201/1978</p>
<p>1990</p>	<p>Statutory Instruments</p> <p>European Communities (Prohibition of Certain Active Substances in Plant Protection Products) (Amendment) Regulations 1990. S.I. 339/1990</p> <p>Nature Reserve (Sheheree Bog) Recognition Order 1990. S.I. 7/1990</p> <p>Nature Reserve (Meenachullion) Establishment Order 1990. S.I. 9/1990</p> <p>Nature Reserve (Knockmoyle/Sheskin) Establishment Order 1990. S.I. 6/1990</p> <p>Nature Reserve (Easkey Bog) Establishment Order 1990. S.I. 5/1990</p> <p>Nature Reserve (Castlemaine Harbour) Establishment Order 1990. S.I. 10/1990</p> <p>Nature Reserve (Ballyteigue Burrow) Establishment Order 1990. S.I. 8/1990</p> <p>Wildlife Act 1976 (Protection of Wild Animals) Regulations 1990. S.I. 112/1990</p>

<p>1991</p>	<p>Statutory Instruments Nature Reserve (Redwood Bog) Establishment Order 1991. S.I. 173/1991 Nature Reserve (Leam West) Establishment Order 1991. S.I. 171/1991 Nature Reserve (Glengarriff) Establishment Order 1991. S.I. 172/1991 Refuge for Fauna (Bull Rock) Designation Order 1991. S.I. 236/1991 Refuge for Fauna (Cow Rock) Designation Order 1991. S.I. 237/1991</p>
<p>1992</p>	<p>Statutory Instruments Nature Reserve (Scragh Bog) Establishment Order 1992. S.I. 350/1992 Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1992. S.I. 233/1992</p>
<p>1993</p>	<p>Acts of the Oireachtas Greyhound Industry (Amendment) Act 1993 Statutory Instruments Nature Reserve (Kilcolman Bog) Establishment Order 1993. S.I. 314/1993 Nature Reserve (Kilcolman Bog) Recognition Order 1993. S.I. 315/1993 Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1993. S.I. 255/1993</p>
<p>1994</p>	<p>Statutory Instruments European Communities (Conservation of Wild Birds) (Amendment) (No. 2) Regulations 1994. S.I. 349/1994 Nature Reserve (Knocksink Wood) Establishment Order 1994. S.I. 58/1994 Nature Reserve (Cummeragh River Bog) Establishment Order 1994. S.I. 116/1994 Protection of Animals Act 1911 (Section 1) (Variation of Fines) Regulations 1994. S.I. 148/1994 Welfare of Deer Regulations 1994. S.I. 267/1994</p>

1995	<p>Acts of the Oireachtas Heritage Act 1995</p> <p>Statutory Instruments</p> <p>European Communities (Conservation of Wild Birds) (Amendment) Regulations 1995. S.I. 31/1995</p> <p>European Communities (Conservation of Wild Birds) (Amendment) (No. 2) Regulations 1995. S.I. 284/1995</p> <p>European Communities (Conservation of Wild Birds) (Amendment) (No. 3) Regulations 1995. S.I. 285/1995</p> <p>European Communities (Conservation of Wild Birds) (Amendment) (No. 5) Regulations 1995. S.I. 287/1995</p> <p>Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1995. S.I. 249/1995</p> <p>Wildlife (Wild Birds) (Open Seasons) (Amendment) (No. 2) Order 1995. S.I. 304/1995</p>
1996	<p>Statutory Instruments</p> <p>European Communities (Conservation of Wild Birds) (Amendment) Regulations 1996. S.I. 269/1996</p> <p>European Communities (Conservation of Wild Birds) (Amendment) (No. 2) Regulations 1996. S.I. 298/1996</p> <p>Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1996. S.I. 219/1996</p>
1997	<p>Statutory Instruments</p> <p>European Communities (Conservation of Wild Birds) (Amendment) Regulations 1997. S.I. 210/1997</p> <p>Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1997. S.I. 363/1997</p>
1998	<p>Acts of the Oireachtas Firearms (Temporary Provisions) Act 1998 (32/1998)</p> <p>Statutory Instruments Control of Dogs Regulations 1998. S.I. 442/1998</p> <p>Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1998. S.I. 332/1998</p>

<p>1999</p>	<p>Statutory Instruments Nature Reserve (Clochar na gCon) Establishment Order 1999. S.I. 310/1999</p>
<p>2000</p>	<p>Acts of the Oireachtas Wildlife (Amendment) Act 2000</p> <p>Statutory Instruments Conservation Area S.Is (420 separate S.Is Establishing Conservation Areas)</p> <p>European Communities (Natural Habitats) Regulations 1997 (S.I. No. 94 of 1997), other than part IV</p> <p>Natural Heritage Area S.Is (160 separate S.Is under 2011/1985 Regulations establishing natural heritage areas)</p> <p>Special Protection Area S.Is (143 separate S.Is establishing SPA's) Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 2000. S.I. 280/2000</p>
<p>2001</p>	<p>Acts of the Oireachtas Horse and Greyhound Racing Act 2001</p> <p>Wildlife (Fish and Aquatic Invertebrate Animals) (Exclusion) Regulations 2001. S.I. 372/2001</p> <p>Wildlife (Import and Export of Fauna and Flora) (Designation of Ports and Airports) Regulations 2001. S.I. 375/2001</p>
<p>2002</p>	<p>Statutory Instruments Teagasc (Conferral of Functions) Order 2002. S.I. 495/2002</p>
<p>2003</p>	<p>Statutory Instruments Natural Heritage Area (Wooddown Bog 000694) Order 2003. S.I. 583/2003</p> <p>Natural Heritage Area (Tullaghan Bog (Roscommon) NHA 001652) Order 2003. S.I. 603/2003</p> <p>Natural Heritage Area (Slieve Bog NHA 000247) Order 2003. S.I. 559/2003</p> <p>Natural Heritage Area (River Little Brosna Callows NHA 000564) Order 2003. S.I. 573/2003</p> <p>Natural Heritage Area (Raford River Bog NHA 000321) Order 2003. S.I. 570/2003</p>

Natural Heritage Area (Moorfield Bog NHA 001303) Order 2003. S.I. 593/2003

Natural Heritage Area (Moorfield Bog/Farm Cottage NHA 000221) Order 2003. S.I. 499/2003

Natural Heritage Area (Mount Jessop Bog NHA 001450) Order 2003. S.I. 599/2003

Natural Heritage Area (Nore Valley Bogs 001853) Order 2003. S.I. 606/2003

Natural Heritage Area (Lisnarrigh Bog NHA 002072) Order 2003. S.I. 607/2003

Natural Heritage Area (Lorrha Bog 001684) Order 2003. S.I. 604/2003

Natural Heritage Area (Lough Derravaragh 000684) Order 2003. S.I. 582/2003

Natural Heritage Area (Lough Garr 001812) Order 2003. S.I. 605/2003

Natural Heritage Area (Lough Namucka Bog NHA 000220) Order 2003. S.I. 555/2003

Natural Heritage Area (Lough Tee Bog NHA 000307) Order 2003. S.I. 568/2003

Natural Heritage Area (Loughanilloon Bog NHA 001020) Order 2003. S.I. 586/2003

Natural Heritage Area (Meneen Bog NHA 000310) Order 2003. S.I. 569/2003

Natural Heritage Area (Milltowpass Bog 002323) Order 2003. S.I. 609/2003

Natural Heritage Area (Molerick Bog NHA 001582) Order 2003. S.I. 601/2003

Natural Heritage Area (Eskerboy Bog NHA 001264) Order 2003. S.I. 590/2003

Natural Heritage Area (Forthill Bog NHA 001448) Order 2003. S.I. 598/2003

Natural Heritage Area (Funshin Bog NHA 000267) Order 2003. S.I. 562/2003

Natural Heritage Area (Girley Bog NHA 001580) Order 2003. S.I. 600/2003

Natural Heritage Area (Hawkswood Bog NHA 002355) Order 2003. S.I. 611/2003

Natural Heritage Area (Keeloges Bog NHA 000281) Order 2003. S.I. 564/2003

Natural Heritage Area (Killaclogher Bog NHA 001280) Order 2003. S.I. 591/2003

Natural Heritage Area (Killeen Bog 000648) Order 2003. S.I. 581/2003

Natural Heritage Area (Killure Bog NHA 001283) Order 2003. S.I. 592/2003

Natural Heritage Area (Kilmore Bog NHA 000283) Order 2003. S.I. 565/2003

Natural Heritage Area (Kilnaborris Bog 000284) Order 2003. S.I. 566/2003

Natural Heritage Area (Leaha Bog NHA 000292) Order 2003. S.I. 567/2003

Natural Heritage Area (Cloonageeher Bog NHA 001423) Order 2003. S.I. 597/2003

Natural Heritage Area (Clooncullaun Bog NHA 000245) Order 2003. S.I. 558/2003

Natural Heritage Area (Cloonloun More Bog NHA 002307) Order 2003. S.I. 608/2003

Natural Heritage Area (Cloonoolish Bog NHA 000249) Order 2003. S.I. 560/2003

Natural Heritage Area (Cornaveagh Bog NHA 000603) Order 2003. S.I. 577/2003
Natural Heritage Area (Corracramph Bog 001420) Order 2003. S.I. 596/2003
Natural Heritage Area (Crit Island West NHA 000254) Order 2003. S.I. 561/2003
Natural Heritage Area (Derrinlough Bog NHA 001254) Order 2003. S.I. 589/2003
Natural Heritage Area (Derrycanan Bog NHA 000605) Order 2003. S.I. 578/2003
Natural Heritage Area (Bella Bridge Bog NHA 000591) Order 2003. S.I. 576/2003
Natural Heritage Area (Black Castle Bog NHA 000570) Order 2003. S.I. 575/2003
Natural Heritage Area (Bracklagh Bog NHA 000235) Order 2003. S.I. 557/2003
Natural Heritage Area (Bunnaruddee Bog 001352) Order 2003. S.I. 594/2003
Natural Heritage Area (Cangort Bog NHA 000890) Order 2003. S.I. 584/2003
Natural Heritage Area (Carrickynaghtan Bog NHA 001623) Order 2003. S.I. 602/2003
Natural Heritage Area (Cashel Bog (Leitrim) 001405) Order 2003. S.I. 595/2003
Natural Heritage Area (Castle Ffrench East Bog NHA 001244) Order 2003. S.I. 588/2003
Natural Heritage Area (Castle Ffrench West Bog NHA 000280) Order 2003. S.I. 563/2003
Natural Heritage Area (Clonydonnin Bog NHA 000565) Order 2003. S.I. 574/2003
Natural Heritage Area (Aghnamona Bog NHA 000422) Order 2003. S.I. 572/2003
Natural Heritage Area (Anna More Bog NHA 000333) Order 2003. S.I. 571/2003
Natural Heritage Area (Annaghbeg Bog NHA 002344) Order 2003. S.I. 610/2003
Natural Heritage Area (Arragh More Bog NHA 000640) Order 2003. S.I. 579/2003
Natural Heritage Area (Aughrim Bog NHA 001227) Order 2003. S.I. 587/2003
Natural Heritage Area (Ayle Lower Bog NHA 000993) Order 2003. S.I. 585/2003
Natural Heritage Area (Ballygar Bog NHA 000229) Order 2003. S.I. 556/2003
Natural Heritage Area (Ballymacegan Bog 000642) Order 2003. S.I. 580/2003
Protection of Animals Kept for Farming Purposes Act 1984 (Bovine Animals) (Prohibition on Tail Docking) Regulations 2003. S.I. 263/2003

Wildlife Act 1976 (Approved Traps, Snares and Nets) Regulations 2003. S.I. 620/2003

2004	<p>Statutory Instruments Nature Reserve (Fenor Bog) Recognition Order 2004. S.I. 86/2004</p>
2005	<p>Statutory Instruments Artificial Insemination of Greyhounds Regulations, 2005. S.I. 561/2005</p> <p>European Communities (Natural Habitats) (Amendment) Regulations 2005 (S.I. No. 378 of 2005)</p> <p>Natural Heritage Area (Ummerantarry Bog NHA 001570) Order 2005. S.I. 480/2005</p> <p>Natural Heritage Area (Umrycam Bog NHA 002406) Order 2005. S.I. 583/2005</p> <p>Natural Heritage Area (Woodcock Hill Bog NHA 002402) Order 2005. S.I. 441/2005</p> <p>Natural Heritage Area (Suck River Callows NHA 000222) Order 2005. S.I. 574/2005</p> <p>Natural Heritage Area (Tawnymackan Bog NHA 000548) Order 2005. S.I. 491/2005</p> <p>Natural Heritage Area (Tooreen Bog NHA 002436) Order 2005. S.I. 465/2005</p> <p>Natural Heritage Area (Trafrask Bog NHA 002371) Order 2005. S.I. 443/2005</p> <p>Natural Heritage Area (Tullaghan Bay and Bog NHA 001567) Order 2005. S.I. 580/2005</p> <p>Natural Heritage Area (Pulleen Harbour Bog NHA 002416) Order 2005. S.I. 448/2005</p> <p>Natural Heritage Area (Rinn River NHA 000691) Order 2005. S.I. 14/2005</p> <p>Natural Heritage Area (Schoaboy Bog NHA 000937) Order 2005. S.I. 4/2005</p> <p>Natural Heritage Area (Screggan Bog NHA 000921) Order 2005. S.I. 581/2005</p> <p>Natural Heritage Area (Sillahertane Bog NHA 001882) Order 2005. S.I. 469/2005</p> <p>Natural Heritage Area (Slaheny River Bog NHA 000383) Order 2005. S.I. 466/2005</p> <p>Natural Heritage Area (Slieve Aughty Bog NHA 001229) Order 2005. S.I. 574/2005</p> <p>Natural Heritage Area (Slieve Rushen Bog NHA 000009) Order 2005. S.I. 432/2005</p> <p>Natural Heritage Area (Slieve Snaght Bogs NHA 002322) Order 2005. S.I. 459/2005</p> <p>Natural Heritage Area (Slievecallan Mountain Bog NHA 002397) Order 2005. S.I. 440/2005</p> <p>Natural Heritage Area (Slievenamon Bog NHA 002388) Order 2005. S.I. 499/2005</p>

Natural Heritage Area (Slieveward Bog NHA 001902) Order 2005. S.I. 496/2005

Natural Heritage Area (Mount Eagles Bogs NHA 002449) Order 2005. S.I. 449/2005

Natural Heritage Area (Moycullen Bogs NHA 002364) Order 2005. S.I. 584/2005

Natural Heritage Area (Moyreen Bog NHA 002361) Order 2005. S.I. 478/2005

Natural Heritage Area (Nure Bog NHA 001725) Order 2005. S.I. 589/2005

Natural Heritage Area (Oysterman's Marsh NHA 002439) Order 2005. S.I. 439/2005

Natural Heritage Area (Pulleen Harbour Bog NHA 002416) Order 2005. S.I. 448/2005

Natural Heritage Area (Leahill Bog NHA 002417) Order 2005. S.I. 444/2005

Natural Heritage Area (Lough Acrow Bogs NHA 002421) Order 2005. S.I. 435/2005

Natural Heritage Area (Lough Atorick District Bogs NHA 002377) Order 2005. S.I. 437/2005

Natural Heritage Area (Lough Fad Bog NHA 001159) Order 2005. S.I. 572/2005

Natural Heritage Area (Lough Gay Bog NHA 002454) Order 2005. S.I. 579/2005

Natural Heritage Area (Lough Greney Bog NHA 002455) Order 2005. S.I. 488/2005

Natural Heritage Area (Lough Hill Bog NHA 002452) Order 2005. S.I. 457/2005

Natural Heritage Area (Lough Kinale and Derragh Lough NHA 000985) Order 2005. S.I. 582/2005

Natural Heritage Area (Lough Naminna District Bog NHA 002367) Order 2005. S.I. 436/2005

Natural Heritage Area (Maghera Mountain Bogs NHA 002442) Order 2005. S.I. 438/2005

Natural Heritage Area (Mauherslieve Bog NHA 002385) Order 2005. S.I. 498/2005

Natural Heritage Area (Meenagarranroe Bog NHA 002437) Order 2005. S.I. 456/2005

Natural Heritage Area (Monaincha Bog/Ballaghmore Bog NHA 000652) Order 2005. S.I. 577/2005

Natural Heritage Area (Dough/Thur Mountains NHA 002384) Order 2005. S.I. 578/2005

Natural Heritage Area (Doughill Bog NHA 001948) Order 2005. S.I. 470/2005

Natural Heritage Area (Eshbrack Bog NHA 001603) Order 2005. S.I. 493/2005

Natural Heritage Area (Forrew Bog NHA 002432) Order 2005. S.I. 485/2005

Natural Heritage Area (Gortacullin Bog NHA 002401) Order 2005. S.I. 434/2005

Natural Heritage Area (Grageen Fen And Bog NHA 002186) Order 2005. S.I. 477/2005

Natural Heritage Area (Hodgestown Bog NHA 001393) Order 2005. S.I. 586/2005

Natural Heritage Area (Hungry Hill Bog NHA 001059) Order 2005. S.I. 442/2005

Natural Heritage Area (Illies Hill Bog NHA 001127) Order 2005. S.I. 455/2005

Natural Heritage Area (Inagh Bog NHA 002391) Order 2005. S.I. 487/2005

Natural Heritage Area (Jamestown Bog NHA 001324) Order 2005. S.I. 587/2005

Natural Heritage Area (Kilronan Mountain NHA 000617) Order 2005. S.I. 494/2005

Natural Heritage Area (Knockatarrivv/Knockariddera Bogs NHA 002448) Order 2005. S.I. 467/2005

Natural Heritage Area (Cloon And Laghtanabba NHA 002374) Order 2005. S.I. 461/2005

Natural Heritage Area (Coan Bogs NHA 002382) Order 2005. S.I. 471/2005

Natural Heritage Area (Conigar Bog NHA 002386) Order 2005. S.I. 446/2005

Natural Heritage Area (Corry Mountain Bog NHA 002321) Order 2005. S.I. 473/2005

Natural Heritage Area (Cragnashingaun Bogs NHA 002400) Order 2005. S.I. 433/2005

Natural Heritage Area (Croaghmoyle Mountain NHA 002383) Order 2005. S.I. 481/2005

Natural Heritage Area (Crockauns/Keelogyboy Bogs NHA 002435) Order 2005. S.I. 475/2005

Natural Heritage Area (Cunnagher More Bog NHA 002420) Order 2005. S.I. 482/2005

Natural Heritage Area (Daingean Bog NHA 002033) Order 2005. S.I. 6/2005

Natural Heritage Area (Derreenatra Bog NHA 002105) Order 2005. S.I. 447/2005

Natural Heritage Area (Derrynagran Bog and Esker NHA 001255) Order 2005. S.I. 573/2005

Natural Heritage Area (Derryoover Bog NHA 002379) Order 2005. S.I. 462/2005

Natural Heritage Area (Doon Lough NHA 000337) Order 2005. S.I. 571/2005

Natural Heritage Area (Ballynagrenia and Ballinderry Bog NHA 000674) Order 2005. S.I. 588/2005

Natural Heritage Area (Bangor Erris Bog NHA 001473) Order 2005. S.I. 479/2005

Natural Heritage Area (Barnesmore Bog NHA 002375) Order 2005. S.I. 450/2005

Natural Heritage Area (Bleanbeg Bog NHA 002450) Order 2005. S.I. 497/2005

	<p>Natural Heritage Area (Boggeragh Mountains NHA 002447) Order 2005. S.I. 445/2005</p> <p>Natural Heritage Area (Camowen River Bog NHA 002405) Order 2005. S.I. 451/2005</p> <p>Natural Heritage Area (Capira/Derrew Bog NHA 001240) Order 2005. S.I. 5/2005</p> <p>Natural Heritage Area (Carbury Bog NHA 001388) Order 2005. S.I. 585/2005</p> <p>Natural Heritage Area (Carrane Hill Bog NHA 002415) Order 2005. S.I. 495/2005</p> <p>Natural Heritage Area (Carrigkerry Bogs NHA 002399) Order 2005. S.I. 476/2005</p> <p>Natural Heritage Area (Cashelnavean Bog NHA 000122) Order 2005. S.I. 452/2005</p> <p>Natural Heritage Area (Cloncrow Bog (New Forest) NHA 000677) Order 2005. S.I. 3/2005</p> <p>Natural Heritage Area (Clonreher Bog NHA 002357) Order 2005. S.I. 576/2005</p> <p>Natural Heritage Area (Aghavogil Bog NHA 002430) Order 2005. S.I. 472/2005</p> <p>Wildlife (Wild Mammals) (Open Seasons) Order 2005. S.I. 550/2005</p>
<p>2007</p>	<p>Statutory Instruments</p> <p>European Communities (Prohibition of certain active substances in plant protection products) (Amendment) Regulations 2007 S.I. 594/2007</p> <p>Protection of Animals Kept for Farming Purposes (Electro-Immobilisation) Regulations 2007. S.I. 197/2007</p> <p>Natural Heritage Area (Tristia Bog NHA 001566) Order 2007. S.I. 514/2007</p> <p>Natural Heritage Area (Sraheens Bog NHA 002403) Order 2007. S.I. 517/2007</p> <p>Natural Heritage Area (Oughterard District Bog NHA 002431) Order 2007. S.I. 519/2007</p> <p>Natural Heritage Area (Pollatomish Bog NHA 001548) Order 2007. S.I. 513/2007</p> <p>Natural Heritage Area (Meenmore West Bog NHA 002453) Order 2007. S.I. 521/2007</p> <p>Natural Heritage Area (Knockroe Bog NHA 000366) Order 2007. S.I. 508/2007</p> <p>Natural Heritage Area (Glenturk More Bog NHA 002419) Order 2007. S.I. 518/2007</p> <p>Natural Heritage Area (Ederglen Bog NHA 002446) Order 2007. S.I. 520/2007</p>

	<p>Natural Heritage Area (Doogort East Bog NHA 002381) Order 2007. S.I. 516/2007</p> <p>Natural Heritage Area (Crocknamurrin Mountain Bog NHA 001878) Order 2007. S.I. 515/2007</p> <p>Natural Heritage Area (Corveen Bog NHA 001108) Order 2007. S.I. 511/2007</p> <p>Natural Heritage Area (Carna Heath and Bog NHA 001241) Order 2007. S.I. 512/2007</p>
2008	<p>Statutory Instruments</p> <p>Wildlife (Wild Mammals) (Open Seasons) (Amendment) Order 2008. S.I. 27/2008</p> <p>Wildlife (Wild Mammals) (Open Seasons) (Amendment) (No. 2) Order 2008. S.I. 346/2008</p>
2010	<p>Acts of the Oireachtas Wildlife (Amendment) Act 2010</p> <p>Statutory Instruments</p> <p>European Communities (Birds and Natural Habitats) (Restrictions on use of Poisoned Bait) Regulations 2010(S.I. 481 of 2010)</p> <p>European Communities (Birds and Natural Habitats) (Control of Recreational Activities) Regulations 2010 (S.I. No. 293 of 2010)</p> <p>Wildlife Act 1976 (Temporary Suspension of Open Season) (No. 2) (Amendment) Order 2010. S.I. 613/2010</p> <p>Wildlife Act 1976 (Temporary Suspension of Open Season) (No. 2) Order 2010. S.I. 582/2010</p> <p>Wildlife Act 1976 (Temporary Suspension of Open Season) (Amendment) Order 2010. S.I. 6/2010</p> <p>Wildlife Act 1976 (Temporary Suspension of Open Season) (No. 2) (Amendment) Order 2010. S.I. 598/2010</p>
2011	<p>Statutory Instruments</p> <p>Control of Dogs (Amendment) Regulations 2011. S.I. 700/2011</p> <p>European Communities (Birds and Natural Habitats) Regulations 2011. S.I. No. 477 of 2011</p> <p>Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 2011. S.I. 39/2011</p> <p>Wildlife (Import and Export of Fauna and Flora) (Designation of Ports and Airports) (Amendment) Regulations 2011. S.I. 377/2011</p>

2012	<p>Acts of the Oireachtas Wildlife (Amendment) Act 2012</p> <p>Statutory Instruments: S.I. No. 398/2012 - Wildlife (Wild Mammals) (Open Seasons) (Amendment) Order 2012 Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 2012. S.I. 402/2012</p>
2013	<p>Statutory Instruments Control of Dogs (Amendment) Regulations 2013. S.I. 156/2013 European Communities (Birds and Natural Habitats) (Amendment) Regulations 2013 (S.I. 499/2013)</p>
2014	<p>Statutory Instruments Artificial Insemination of Greyhounds (Amendment) Regulations 2014. S.I. 494/2014</p>
2015	<p>Statutory Instruments European Communities (Birds and Natural Habitats) (Amendment) Regulations 2015 (S.I. No. 355 of 2015) Flora (Protection) Order 2015. S.I. 365/2015</p>
2018	<p>Acts of the Oireachtas Heritage Act 2018 (15/2018), Part 3 (ss. 6-10)</p> <p>Statutory Instruments Public Sales of Greyhounds (Amendment) Regulations 2018. S.I. 223/2018 Nature Reserve (Newcastle Lough) Recognition Order 2018. S.I. 602/2018</p>
2019	<p>Acts of the Oireachtas Greyhound Racing Act 2019</p> <p>Statutory Instruments Control of Dogs (Dog Licensing Database) Regulations 2019. S.I. 683/2019</p>

	European Union (Nagoya Protocol on Access to Genetic Resources and Benefit-Sharing) Regulations 2019. S.I. 253/2019
2021	<p>Statutory Instruments</p> <p>European Union (Birds and Natural Habitats) (Amendment) Regulations 2021. S.I. 293/2021</p>

6. Fisheries / Iascach

Year	Title
	International Conventions and Agreements
1975	Convention on International Trade in Endangered Species (CITES)
1983	The Convention for the Conservation of Salmon in the North Atlantic Ocean ('NASCO Convention')
1994	United Nations Convention on the Law of the Sea (UNCLOS) Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas
	European Union Law
	<p>Treaty (TFEU) Provision</p> <p>Article 3.1 (d): <i>“The Union shall have exclusive competence in the following areas:(d) the conservation of marine biological resources under the common fisheries policy”</i></p> <p>Article 4.2 (d): <i>“Shared competence between the Union and the Member States applies in the following principal areas: (d) agriculture and fisheries, excluding the conservation of marine biological resources”</i></p> <p>Article 13: <i>In formulating and implementing the Union's agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.</i></p> <p>Article 38: <i>“The Union shall define and implement a common agriculture and fisheries policy. The internal market shall extend to agriculture, fisheries and trade in agricultural products. ‘Agricultural products’ means the products of the soil, of stock farming and of fisheries and products of first-stage processing directly related to these products. References to the common agricultural policy or to agriculture, and the use of the term ‘agricultural’, shall be understood as also referring to fisheries, having regard to the specific characteristics of this sector.”</i></p>
1984-2020	<p>Regulations 100 + Regulations from 1984-2020 on Control, Conservation, Equipment, Species, Enforcement</p> <p>First Regulation: Commission Regulation (EEC) No 3440/84 on the attachment of devices to trawls, Danish seines and similar nets.</p> <p>List of 100 EC Regulations on Control, Conservation, Equipment, Species, Enforcement over the years 1984-2020 at https://www.sfpa.ie/What-We-</p>

	<p><u>Do/Compliance-Enforcement/Legislation/EU-Regulations#963262-2020-eu-regulations</u></p> <p>Most Recent Regulation- Council Decision (EU) 2020/1517 of 19 October 2020 on the position to be taken on behalf of the European Union in the Council of the North Atlantic Salmon Conservation Organisation established by the Convention for the Conservation of Salmon in the North Atlantic Ocean as regards the application for accession to that Convention submitted by the United Kingdom and repealing Decision (EU) 2019/937</p>
	<p>National Law</p>
	<p>Bunreacht na hÉireann Unenumerated Rights</p>
<p>Pre 1990</p>	<p>Acts of the Oireachtas</p> <p>Fisheries Act, 1845 (S 7 and 8) Whale Fisheries Act, 1937 Shannon Fisheries Act 1935 Shannon Fisheries Act, 1938 Fisheries (Consolidation) Act 1959 Fisheries (Amendment) Act 1962 Fisheries (Amendment) Act 1964 Fisheries (Amendment) Act 1976 Fisheries Act 1980 Fisheries (Amendment) Act 1987 Fisheries (Amendment) (No. 2) Act 1987 Fishery Harbour Centres Act 1968 Fishery Harbour Centres Act 1980 Fishery Harbour Centres (Amendment) Act 1982 Foyle Fisheries Act 1952 Foyle Fisheries (Amendment) Act 1961 Foyle Fisheries (Amendment) Act 1976 Foyle Fisheries (Amendment) Act 1983 Sea Fisheries Act 1952 Sea Fisheries (Amendment) Act 1955 Sea Fisheries (Amendment) Act 1956 Sea Fisheries (Amendment) Act 1959 Sea Fisheries (Amendment) Act 1963 Sea Fisheries (Amendment) Act 1970 Sea Fisheries (Amendment) Act 1974 Sea Fisheries (Amendment) Act 1982</p> <p>Statutory Instruments</p> <p>Aquaculture (Achill Sound) Order 1985. S.I. 116/1985 Aquaculture (Ballynakill) Order 1986. S.I. 400/1986</p>

Aquaculture (Bantry Bay) Order 1988. S.I. 276/1988

Aquaculture (Bertraghboy Bay) Order 1986. S.I. 395/1986

Aquaculture (Blacksod and Broadhaven Bays) Order 1985. S.I. 117/1985

Aquaculture (Carlingford Lough) Order 1986. S.I. 398/1986

Aquaculture (Clare Island) Order 1987. S.I. 32/1987

Aquaculture (Clew Bay) Order 1986. S.I. 401/1986

Aquaculture (Clifden Bay) Order 1986. S.I. 402/1986

Aquaculture (Inver Bay, McSwyne's Bay) Order 1987. S.I. 41/1987

Aquaculture (Kenmare River) Order 1987. S.I. 31/1987

Aquaculture (Kilkieran Bay) Order 1986. S.I. 396/1986

Aquaculture (Killary Harbour) Order 1986. S.I. 87/1986

Aquaculture (Mulroy Bay) Order 1986. S.I. 397/1986

Aquaculture (Smerwick Harbour) Order 1987. S.I. 345/1987

Aquaculture (Ventry Harbour and Trabeg Bay) Order 1986. S.I. 399/1986

Castletownbere Fishery Harbour Centre (Fish Auction Charges) Order 1985. S.I. 56/1985

Celtic Sea (Restriction on Herring Fishing) Order 1989. S.I. 13/1989

Celtic Sea (Restriction on Herring Fishing) (Amendment) Order 1989. S.I. 17/1989

Celtic Sea Herring Fishing (Licensing) Order 1983. S.I. 280/1983

Celtic Sea Herring Fishing (Licensing) Order 1984. S.I. 240/1984

Common Sole (Prohibition on Fishing) (No. 3) Order 1988. S.I. 281/1988

Common Sole (Restriction on Fishing) Order 1989. S.I. 80/1989

Control of Fishing For Mackerel Order 1983. S.I. 97/1983

Control of Fishing for Mackerel Order 1984. S.I. 52/1984

Control of Fishing for Salmon Order 1975. S.I. 310/1975

Control of Fishing for Salmon (Amendment) Order 1979. S.I. 346/1979

Control of Fishing For Salmon At Sea (Amendment) Order 1971. S.I. 331/1971

Cork Board of Conservators (Dissolution) Order 1973. S.I. 281/1973

Drogheda Board of Conservators (Dissolution) Order 1975. S.I. 14/1975

Elections of Conservators (Postponement) Order 1977. S.I. 331/1977

Elections of Conservators (Postponement) Order 1978. S.I. 302/1978

Elections of Conservators (Postponement) Order 1979. S.I. 363/1979

Elections of Conservators of Fisheries Regulations 1964. S.I. 190/1964

Elections To Regional Fisheries Boards Regulations 1981. S.I. 361/1981

Elections to Regional Fisheries Boards (Amendment) Regulations 1986. S.I. 352/1986

Elections of Members of Regional Fisheries Boards (First Election Year) Order 1981. S.I. 360/1981

European Communities (Sea Fisheries) Regulations 1973. S.I. 1/1973

Fisheries (Alteration of Fishery Year) Order 1982. S.I. 328/1982

Fisheries (Control of Fish Processing Vessels) Order 1986. S.I. 253/1986

Fisheries (Control of Fish Processing Vessels) (Amendment) Order 1987. S.I. 66/1987

Fisheries Act 1980 (Appointed Day) Order 1980. S.I. 323/1980

Fisheries Regions Order 1980. S.I. 324/1980

Fisheries Regions (Amendment) Order 1981. S.I. 373/1981

Fishery Districts (Alteration of Boundaries) Regulations 1982. S.I. 329/1982

Fishery Harbour Centre (Castletownbere) Order 1970. S.I. 57/1970

Fishery Harbour Centre (Dunmore East) Order 1989. S.I. 337/1989

Fishery Harbour Centre (Howth) Order 1989. S.I. 336/1989

Fishery Harbour Centre (Killybegs) Order 1969. S.I. 210/1969

Fishery Harbour Centre (Killybegs) (Amendment) Order 1987. S.I. 235/1987

Fishery Harbour Centre (Rossaveel) Order 1981. S.I. 208/1981

Fishery Harbour Centres Act, 1968 (Commencement) Order 1969. S.I. 123/1969

Fishery Limits (European Communities) Regulations 1984. S.I. 74/1984

Fishing Nets (Regulation of Mesh) (Amendment) Order 1961. S.I. 76/1961

Fishing Nets (Regulation of Mesh) (Amendment) Order 1963. S.I. 47/1963

Fishing Nets (Regulation of Mesh) (Amendment) Order 1965. S.I. 231/1965

Fishing Nets (Regulation of Mesh) (Amendment) Order 1968. S.I. 254/1968

Fishing Nets (Regulation of Mesh) (Amendment) Order 1971. S.I. 337/1971

Fishing Nets (Regulation of Mesh) (Amendment) Order 1973. S.I. 338/1973

Fishing Weir Operation (No. 4) Order 1960. S.I. 164/1960

Foyle Fisheries (Amendment) Act, 1961 (Commencement) Order 1962. S.I. 24/1962

Freshwater Rod Ordinary Licence (Alteration of Licence Duties) Order 1988. S.I. 364/1988

Whale Fisheries Act 1937 (Extension To Mammals of the Order Cetacea) Order 1982. S.I. 240/1982

Whale Fisheries Act 1937 (Extension To Sperm Whales) Order 1937. S.I. 158/1937

Whale Measurement Regulations 1937. S.I. 157/1937

Whale Measurement Regulations (No. 2) 1937. S.I. 240/1937

Shannon Fisheries (Closing of Free Gap) (No. 9) Order 1947. S.I. 4/1947

Shannon Fisheries (Closing of Free Gap) (No. 10) Order 1947. S.I. 387/1947

Shannon Fisheries (Closing of Free Gap) (No. 11) Order 1948. S.I. 364/1948

Shannon Fisheries (Closing of Free Gap) (No. 12) Order 1949. S.I. 336/1949

Shannon Fisheries (Closing of Free Gap) (No. 13) Order 1951. S.I. 37/1951

Shannon Fisheries (Closing of Free Gap) (No. 14) Order 1951. S.I. 383/1951

Shannon Fisheries (Closing of Free Gap) (No. 15) Order 1953. S.I. 41/1953

Shannon Fisheries (Closing of Free Gap) (No. 16) Order 1953. S.I. 408/1953

Shannon Fisheries (Closing of Free Gap) (No. 17) Order 1954. S.I. 249/1954
Shannon Fisheries (Closing of Free Gap) (No. 18) Order 1955. S.I. 262/1955
Shannon Fisheries (Transfer by Minister For Industry and Commerce) No. 1 Order 1936. S.I. 264/1936
Shannon Fisheries (Weekly Close Season) (Variation) Order 1940. S.I. 3/1940
Shannon Fisheries Act 1938 (Appointed Day) Order 1938. S.I. 91/1938

Special Control Area (Ballyfermot) Order 1988 (Confirmation) Order 1988. S.I. 282/1988
Special Control Area (Ballyfermot Area B) Order 1988 (Confirmation) Order 1989. S.I. 291/1989
Special Control Area (Ballyfermot Area C) Order 1989 (Confirmation) Order 1989. S.I. 292/1989
Special Control Area (Ballyfermot Area D) Order 1989 (Confirmation) Order 1990. S.I. 26/1990

Special Tidal Waters (Special Local Licences) Order 1977. S.I. 109/1977
Special Tidal Waters (Special Local Licences) Order 1983. S.I. 41/1983
Special Tidal Waters (Special Local Licences) Order 1985. S.I. 26/1985

Special Tidal Waters (Special Local Licences) Order 1988. S.I. 40/1988
Sea Fisheries (Rational Exploitation of Fisheries) Order 1969. S.I. 259/1969
Sea Fisheries (Rational Exploitation of Fisheries) Order 1976. S.I. 168/1976

Sea Fisheries (Inspection of Fishing Vessels) Order 1987. S.I. 252/1987
Sea Fisheries (Marking and Documentation of Sea-Fishing Boats) Order 1987. S.I. 253/1987

Sea Fisheries (Control of Catches) Order 1985. S.I. 163/1985
Sea Fisheries (Control of Catches) Order 1985 (Amendment) Order 1986. S.I. 56/1986
Sea Fisheries (Control of Catches) Order 1985 (Amendment) Order 1987. S.I. 102/1987
Sea Fisheries (Control of Catches) Order 1985 (Amendment) (No. 2) Order 1987. S.I. 246/1987

<p>Sea Fisheries (Conservation and Management of Fishery Resources) Order 1985. S.I. 364/1985</p> <p>Sea Fisheries (Conservation and Management of Fishery Resources) Order 1986. S.I. 52/1986</p> <p>Sea Fisheries (Conservation and Management of Fishery Resources) (No. 2) Order 1986. S.I. 53/1986</p> <p>Sea Fisheries (Conservation and Management of Fishery Resources) (Amendment) Order 1986. S.I. 456/1986</p> <p>Sea Fisheries (Conservation and Rational Exploitation) (No. 3) Order 1977. S.I. 232/1977</p> <p>Sea Fisheries (Conservation and Rational Exploitation) (No. 4) Order 1977. S.I. 233/1977</p> <p>Sea Fisheries (Conservation and Rational Exploitation) (No. 5) Order 1977. S.I. 259/1977</p> <p>Sea Fisheries (Conservation and Rational Exploitation) (No. 6) Order 1977. S.I. 260/1977</p> <p>Sea Fisheries (Conservation and Rational Exploitation) (No. 7) Order 1977. S.I. 312/1977</p> <p>Sea Fisheries (Conservation and Rational Exploitation) (No. 8) Order 1977. S.I. 402/1977</p> <p>Sea Fisheries (Conservation and Rational Exploitation) (No. 9) Order 1977. S.I. 403/1977</p> <p>Sea Fisheries (Conservation and Rational Exploitation) (No. 3) Order 1978. S.I. 187/1978</p> <p>Sea Fisheries (Conservation and Rational Exploitation) (No. 4) Order 1978. S.I. 218/1978</p> <p>Sea Fisheries (Conservation and Rational Exploitation) (No. 6) Order 1978. S.I. 280/1978</p> <p>Sea Fisheries (Conservation and Rational Exploitation) (No. 7) Order 1978. S.I. 330/1978</p> <p>Sea Fisheries (Conservation and Rational Exploitation) Order 1979. S.I. 212/1979</p> <p>Sea Fisheries (Conservation and Rational Exploitation) (No. 2) Order 1979. S.I. 420/1979</p> <p>Sea Fisheries (Conservation and Rational Exploitation) (No. 3) Order 1979. S.I. 421/1979</p> <p>Sea Fisheries (Conservation and Rational Exploitation) Order 1980. S.I. 404/1980</p> <p>Sea Fisheries (Conservation and Rational Exploitation) Order 1981. S.I. 285/1981</p>

Sea Fisheries (Conservation and Rational Exploitation) (No. 2) Order 1981. S.I. 328/1981

Sea Fisheries (Conservation and Rational Exploitation) (Amendment) Order 1985. S.I. 162/1985

Sea Fisheries (Conservation and Rational Exploitation) (No. 8) Order 1978. S.I. 372/1978

Sea Fisheries (Conservation and Rational Exploitation) Order 1987. S.I. 2/1987

Sea Fisheries (Conservation and Rational Exploitation) (Amendment) Order 1987. S.I. 50/1987

Salmon, Eel and Oyster (Miscellaneous Licences) (Alteration of Duties) Order 1982. S.I. 386/1982

Salmon, Eel and Oyster Fishing Licences (Alteration of Licence Duties) Order 1976. S.I. 305/1976

Salmon, Eel and Oyster Fishing Licences (Alteration of Licence Duties) Order 1984. S.I. 343/1984

Salmon Export Levy (Amendment) Regulations 1964. S.I. 292/1964

Salmon (Restriction of Fishing At Sea) Order 1984. S.I. 117/1984

Register of Trout, Coarse Fish and Sea Anglers (Fixed Day) Regulations 1982. S.I. 121/1982

Plaice (Restriction on Fishing) Order 1989. S.I. 215/1989

Plaice (Prohibition on Fishing) Order 1988. S.I. 203/1988

Oyster Fishing Licences (Alteration of Licence Duty) Order 1975. S.I. 247/1975

Molluscan Shellfish (Conservation of Stocks) Order 1987. S.I. 118/1987

Mackerel Fishing (Licensing) Order 1981. S.I. 339/1981

Mackerel Fishing (Licensing) Order 1980. S.I. 326/1980

	<p>Mackerel (Restriction on Fishing) (No. 2) (Amendment) Order 1989. S.I. 357/1989</p> <p>Mackerel (Restriction on Fishing) Order 1989. S.I. 87/1989</p> <p>Mackerel (Prohibition of Fishing) Order 1987. S.I. 45/1987</p> <p>Mackerel (Prohibition on Fishing) (Amendment) Order 1987. S.I. 87/1987</p> <p>Mackerel (Prohibition of Fishing) (No. 2) Order 1987. S.I. 294/1987</p> <p>Live Fish (Restriction on Import) Order 1972. S.I. 4/1972</p> <p>Licensing of Sea-Fishing Vessels Regulations 1960. S.I. 4/1960</p> <p>Killybegs Pier and Harbour (Amendment) Order 1970. S.I. 90/1970</p> <p>Killybegs Pier and Harbour (Amendment) Order 1974. S.I. 376/1974</p> <p>Industrial Fishing for Herring (Prohibition) Order 1976. S.I. 211/1976</p> <p>Herring (Restriction of Fishing in the Celtic Sea) Order 1983. S.I. 281/1983</p> <p>Herring (Prohibition on Fishing in the Irish Sea) Order 1985. S.I. 328/1985</p> <p>Herring (Restriction on Fishing) (Amendment) Order 1986. S.I. 407/1986</p> <p>Undersized Sea-Fish (Lobsters) Order 1963. S.I. 52/1963</p> <p>Undersized Sea-Fish Order 1976. S.I. 109/1976</p> <p>Undersized Sea-Fish Order 1978. S.I. 175/1978</p>
1990	<p>Statutory Instruments</p> <p>Bass (Conservation of Stocks) Order 1990. S.I. 128/1990</p> <p>Common Sole (Control of Fishing in Ices Divisions VIIIf and VIIg) Order 1990. S.I. 325/1990</p> <p>Common Sole (Control of Fishing in the Irish Sea) (Amendment) Order 1990. S.I. 55/1990</p> <p>Fisheries (Environmental Impact Assessment) Regulations 1990. S.I. 40/1990</p>

	<p>Fisheries (Environmental Impact Assessment) (No. 2) Regulations 1990. S.I. 41/1990</p> <p>Mackerel (Restriction on Fishing) Order 1990. S.I. 96/1990</p>
1991	<p>Acts of the Oireachtas Fisheries (Amendment) Act 1991</p> <p>Statutory Instruments Bass (Conservation of Stocks) (Amendment) Order 1991. S.I. 189/1991</p> <p>Salmon Licence Duty (Refund) Regulations 1991. S.I. 346/1991</p> <p>Regional Fisheries Boards (Postponement of Elections) Order 1991. S.I. 339/1991</p> <p>Plaice (Prohibition on Fishing in Ices Divisions Viib) and Viic)) Order 1991. S.I. 287/1991</p> <p>Plaice (Restriction on Fishing in Ices Divisions VII (B) and VII(C)) (Amendment) Order 1991. S.I. 213/1991</p> <p>Northern and Western Herring (Restriction on Fishing) Order 1991. S.I. 143/1991</p>
1992	<p>Statutory Instruments Bass (Restriction on Sale) Order 1992. S.I. 158/1992</p> <p>Common Sole (Prohibition on Fishing in Ices Divisions VIIIf) and VIIg)) Order 1992. S.I. 61/1992</p> <p>Common Sole (Restriction on Fishing in The Irish Sea) (No. 3) Order 1992. S.I. 411/1992</p> <p>Elections to Regional Fisheries Boards (Amendment) Regulations 1992. S.I. 352/1992</p> <p>Fisheries (Amendment) Act 1991 (Fisheries Co-Operative Societies) Order 1992. S.I. 126/1992</p>

	<p>Fisheries (Amendment) Act 1991 (Fisheries Co-Operative Societies) Rules 1992. S.I. 127/1992</p> <p>Fisheries Regions (Amendment) Order 1992. S.I. 353/1992</p> <p>Fishery Harbour Centre (Castletownbere) (Amendment) Order 1992. S.I. 243/1992</p> <p>Plaice (Control of Fishing in ICES Divisions VIIf) and VIIg) Order 1992. S.I. 410/1992</p> <p>Northern and Western Herring (Restriction on Fishing) Order 1992. S.I. 192/1992</p>
1993	<p>Statutory Instruments</p> <p>Bass (Restriction on Sale) Order 1993. S.I. 194/1993</p> <p>Northern and Western Herring (Restriction on Fishing) Order 1993. S.I. 210/1993</p> <p>Herring (Restriction on Fishing) (No. 2) Order 1993. S.I. 336/1993</p>
1994	<p>Acts of the Oireachtas</p> <p>Fisheries (Amendment) Act 1994</p> <p>Statutory Instruments</p> <p>Bass (Restriction on Sale) Order 1994. S.I. 174/1994</p> <p>Cod (Restriction on Fishing) (No. 3) Order 1994. S.I. 299/1994</p> <p>Fisheries (Salmon, Eel and Molluscan Shellfish Dealers' Licences) Regulations 1994. S.I. 462/1994</p> <p>Fisheries Regions (Alteration of Boundaries) Order 1994. S.I. 208/1994</p> <p>Transfer of Fisheries (Moy Fishery) Order 1994. S.I. 431/1994</p> <p>Northern and Western Herring (Restriction on Fishing) Order 1994. S.I. 202/1994</p> <p>Fisheries (Amendment) Act 1991 (Fisheries Co-Operative Societies) (Amendment) Rules 1994. S.I. 54/1994</p> <p>Lobster (Conservation of Stocks) Order 1994. S.I. 304/1994</p>

	<p>Licensed Salmon, Eel and Molluscan Shellfish Dealers' Register Regulations 1994. S.I. 461/1994</p> <p>Herring (Restriction on Fishing) (No. 2) Order 1994. S.I. 429/1994</p>
1995	<p>Acts of the Oireachtas Fisheries (Amendment) Act 1995</p> <p>Statutory Instruments</p> <p>Bass (Restriction on Sale) Order 1995. S.I. 161/1995</p> <p>Celtic Sea (Prohibition on Herring Fishing) (No. 4) Order 1995. S.I. 374/1995</p> <p>Cod (Restriction on Fishing) (No. 3) Order 1995. S.I. 341/1995</p> <p>Sea Fisheries (Minimum Size of Lobster) Order 1995. S.I. 162/1995</p> <p>Northern and Western Herring (Restriction on Fishing) Order 1995. S.I. 95/1995</p> <p>Northern and Western Herring (Restriction on Fishing) (No. 2) Order 1995. S.I. 205/1995</p> <p>Megrim (Restriction on Fishing) Order 1995. S.I. 336/1995</p> <p>Mackerel (Restriction on Fishing) (No. 2) Order 1995. S.I. 342/1995</p>
1996	<p>Statutory Instruments</p> <p>Celtic Sea (Prohibition on Herring Fishing) (No. 2) Order 1996. S.I. 414/1996</p> <p>Cod (Restriction on Fishing) Order 1996. S.I. 154/1996</p> <p>Cod (Restriction on Fishing) (No. 2) Order 1996. S.I. 238/1996</p> <p>Cod (Restriction on Fishing) (No. 3) Order 1996. S.I. 279/1996</p> <p>Cod (Restriction on Fishing) (No. 5) Order 1996. S.I. 423/1996</p> <p>Control of Fishing for Salmon (Amendment) Order 1996. S.I. 327/1996</p>

Fisheries (Amendment) Act 1995 (Southern Regional Fisheries Commission)
Order 1996. S.I. 51/1996

Haddock (Restriction on Fishing) Order 1996. S.I. 158/1996

Haddock (Restriction on Fishing) (No. 2) Order 1996. S.I. 235/1996

Haddock (Restriction on Fishing) (No. 3) Order 1996. S.I. 281/1996

Haddock (Restriction on Fishing) (No. 5) Order 1996. S.I. 367/1996

Haddock (Restriction on Fishing) (Revocation) (No. 2) Order 1996. S.I. 420/1996

Hake (Restriction on Fishing) (No. 3) Order 1996. S.I. 156/1996

Hake (Restriction on Fishing) (No. 4) Order 1996. S.I. 237/1996

Hake (Restriction on Fishing) (No. 5) Order 1996. S.I. 282/1996

Hake (Restriction on Fishing) (Revocation) Order 1996. S.I. 365/1996

Hake (Restriction on Fishing) (Revocation) (No. 2) Order 1996. S.I. 421/1996

Monk (Restriction on Fishing) (Revocation) Order 1996. S.I. 364/1996

Monkfish (Restriction on Fishing) (No. 2) Order 1996. S.I. 419/1996

Monkfish (Restriction on Fishing) (No. 3) Order 1996. S.I. 157/1996

Monkfish (Restriction on Fishing) (No. 4) Order 1996. S.I. 155/1996

Monkfish (Restriction on Fishing) (No. 5) Order 1996. S.I. 234/1996

Monkfish (Restriction on Fishing) (No. 6) Order 1996. S.I. 236/1996

Monkfish (Restriction on Fishing) (No. 7) Order 1996. S.I. 283/1996

Monkfish (Restriction on Fishing) (No. 7) Order 1996. S.I. 366/1996

Monkfish (Restriction on Fishing) (No. 8) Order 1996. S.I. 284/1996

Monkfish (Restriction on Fishing) (No. 10) Order 1996. S.I. 424/1996

Northern and Western Herring (Restriction on Fishing) Order 1996. S.I. 209/1996

Sea Fisheries (Control of Catches) Order 1985 (Amendment) Order 1996. S.I.
6/1996

<p>1997</p>	<p>Acts of the Oireachtas Fisheries (Amendment) Act 1997 Fisheries (Commissions) Act 1997</p> <p>Statutory Instruments Control of Fishing For Salmon (Amendment) Order 1997. S.I. 259/1997 Salmon (Restriction of Fishing at Sea) (Amendment) Order 1997. S.I. 30/1997 Regional Fisheries Boards (Postponement of Elections) Order 1997. S.I. 505/1997 Northern and Western Herring (Restriction on Fishing) Order 1997. S.I. 226/1997</p>
<p>1998</p>	<p>Acts of the Oireachtas Fisheries and Foreshore (Amendment) Act 1998</p> <p>Statutory Instruments Aquaculture (Licence Application) Regulations 1998. S.I. 236/1998 Aquaculture (Licence Application and Licence Fees) Regulations 1998. S.I. 270/1998 Aquaculture (Licence Application and Licence Fees) (No. 2) Regulations 1998. S.I. 324/1998 Aquaculture Licensing Appeals (Fees) Regulations 1998. S.I. 449/1998 Aquaculture Licenses Appeals Board (Establishment) Order 1998. S.I. 204/1998 Bass (Restriction on Sale) Order 1998. S.I. 231/1998 Celtic Sea (Prohibition on Herring Fishing) (No. 2) Order 1998. S.I. 423/1998 Celtic Sea (Prohibition on Herring Fishing) (No. 3) Order 1998. S.I. 560/1998 Cod (Restriction on Fishing) (No. 6) Order 1998. S.I. 418/1998 Cod (Restriction on Fishing) (No. 7) Order 1998. S.I. 453/1998 Cod (Restriction on Fishing) (No. 8) Order 1998. S.I. 532/1998</p>

	<p>Fisheries (Amendment) Act 1997 (Section 33) Regulations 1998. S.I. 269/1998</p> <p>Fisheries (Amendment) Act 1995 (Southern Regional Fisheries Commission) Order 1998. S.I. 32/1998</p> <p>Fisheries (Amendment) Act 1995 (Southern Regional Fisheries Commission) (No. 2) Order 1998. S.I. 458/1998</p> <p>Hake (Restriction on Fishing) (No. 3) Order 1998. S.I. 134/1998</p> <p>Hake (Restriction on Fishing) (No. 4) Order 1998. S.I. 218/1998</p> <p>Hake (Restriction on Fishing) (No. 6) Order 1998. S.I. 533/1998</p> <p>Monkfish (Restriction on Fishing) (No. 3) Order 1998. S.I. 135/1998</p> <p>Monkfish (Restriction on Fishing) (No. 4) Order 1998. S.I. 219/1998</p> <p>Monkfish (Restriction on Fishing) (No. 5) Order 1998. S.I. 217/1998</p> <p>Monkfish (Restriction on Fishing) (No. 6) Order 1998. S.I. 306/1998</p> <p>Monkfish (Restriction on Fishing) (No. 7) Order 1998. S.I. 307/1998</p> <p>Monkfish (Restriction on Fishing) (No. 8) Order 1998. S.I. 363/1998</p> <p>Monkfish (Restriction on Fishing) (No. 9) Order 1998. S.I. 364/1998</p> <p>Monkfish (Restriction on Fishing) (No. 10) Order 1998. S.I. 420/1998</p> <p>Monkfish (Restriction on Fishing) (No. 11) Order 1998. S.I. 421/1998</p> <p>Monkfish (Restriction on Fishing) (No. 14) Order 1998. S.I. 534/1998</p> <p>Monkfish (Restriction on Fishing) (No. 15) Order 1998. S.I. 535/1998</p> <p>Herring (Prohibition on Fishing in Ices Divisions Vias and Viibc) Order 1998. S.I. 431/1998</p> <p>Regional Fisheries Boards (Postponement of Elections) Order 1998. S.I. 559/1998</p>
<p>1999</p>	<p>Acts of the Oireachtas</p> <p>Fisheries (Amendment) Act 1999</p> <p>Statutory Instruments</p> <p>Eastern Fisheries Region (Alteration of Boundaries) Order 1999. S.I. 379/1999</p>

	<p>Fishery Harbour Centre (Rossaveel) Bye-laws 1999. S.I. 250/1999</p> <p>Monkfish (Restriction on Fishing) (No. 5) Order 1999. S.I. 149/1999</p> <p>Monkfish (Prohibition on Fishing) Order 1999. S.I. 410/1999</p> <p>Norwegian Cod (Licensing) Order 1999. S.I. 397/1999</p>
<p>2000</p>	<p>Statutory Instruments</p> <p>Aquaculture (Licence Fees) Regulations 2000. S.I. 282/2000</p> <p>Bass (Restriction on Sale) Order 2000. S.I. 128/2000</p> <p>Celtic Sea (Prohibition on Herring Fishing) (No. 2) Order 2000. S.I. 467/2000</p> <p>Cod (Prohibition on Fishing) Order 2000. S.I. 482/2000</p> <p>Cod (Restriction on Fishing) Order 2000. S.I. 15/2000</p> <p>Cod (Restriction on Fishing) (No. 2) Order 2000. S.I. 89/2000</p> <p>Cod (Restriction on Fishing) (No. 3) Order 2000. S.I. 111/2000</p> <p>Cod (Restriction on Fishing) (No. 4) Order 2000. S.I. 155/2000</p> <p>Cod (Restriction on Fishing) (No. 5) Order 2000. S.I. 212/2000</p> <p>Cod (Restriction on Fishing) (No. 6) Order 2000. S.I. 242/2000</p> <p>Cod (Restriction on Fishing) (No. 7) Order 2000. S.I. 269/2000</p> <p>Cod (Restriction on Fishing) (No. 8) Order 2000. S.I. 302/2000</p> <p>Cod (Restriction on Fishing) (No. 9) Order 2000. S.I. 359/2000</p> <p>Cod (Restriction on Fishing) (No. 11) Order 2000. S.I. 481/2000</p> <p>Common Sole (Restriction on Fishing in The Irish Sea) (No. 3) Order 2000. S.I. 485/2000</p> <p>Fisheries (Amendment) Act 1991 (Fisheries Co-Operative Societies 2000 Election and Ballot) Rules 2000. S.I. 31/2000</p>

Fisheries Regions (Amendment) Order 2000. S.I. 77/2000

Haddock (Prohibition on Fishing) Order 2000. S.I. 483/2000

Haddock (Restriction on Fishing) Order 2000. S.I. 87/2000

Haddock (Restriction on Fishing) (No. 2) Order 2000. S.I. 112/2000

Haddock (Restriction on Fishing) (No. 3) Order 2000. S.I. 154/2000

Hake (Prohibition on Fishing) Order 2000. S.I. 479/2000

Hake (Restriction on Fishing) Order 2000. S.I. 19/2000

Hake (Restriction on Fishing) (No. 2) Order 2000. S.I. 91/2000

Hake (Restriction on Fishing) (No. 3) Order 2000. S.I. 156/2000

Hake (Restriction on Fishing) (No. 4) Order 2000. S.I. 241/2000

Hake (Restriction on Fishing) (No. 5) Order 2000. S.I. 267/2000

Hake (Restriction on Fishing) (No. 6) Order 2000. S.I. 303/2000

Hake (Restriction on Fishing) (No. 7) Order 2000. S.I. 358/2000

Hake (Restriction on Fishing) (No. 9) Order 2000. S.I. 478/2000

Horse Mackerel (Prohibition on Fishing) Order 2000. S.I. 412/2000

Monkfish (Restriction on Fishing) Order 2000. S.I. 14/2000

Monkfish (Restriction on Fishing) (No. 2) Order 2000. S.I. 16/2000

Monkfish (Restriction on Fishing) (No. 3) Order 2000. S.I. 90/2000

Monkfish (Restriction on Fishing) (No. 4) Order 2000. S.I. 88/2000

Monkfish (Restriction on Fishing) (No. 6) Order 2000. S.I. 158/2000

Monkfish (Restriction on Fishing) (No. 7) Order 2000. S.I. 243/2000

Monkfish (Restriction on Fishing) (No. 8) Order 2000. S.I. 268/2000

Monkfish (Restriction on Fishing) (No. 9) Order 2000. S.I. 304/2000

Monkfish (Restriction on Fishing) (No. 10) Order 2000. S.I. 360/2000

Monkfish (Restriction on Fishing) (No. 11) Order 2000. S.I. 381/2000

Monkfish (Restriction on Fishing) (No. 12) Order 2000. S.I. 477/2000

	<p>National Salmon Commission (Establishment) Order 2000. S.I. 80/2000</p> <p>Prohibition on Fishing by Means of Beam Trawls in Parts of the Irish Sea Order 2000. S.I. 65/2000</p> <p>Regional Fisheries Boards (Date for Holding of First Elections after Commencement of Section 7 of Fisheries (Amendment) Act, 1999) Order 2000. S.I. 30/2000</p>
<p>2001</p>	<p>Acts of the Oireachtas Fisheries (Amendment) Act 2001</p> <p>Statutory Instruments Bass (Restriction on Sale) Order 2001. S.I. 200/2001</p> <p>Celtic Sea (Prohibition on Herring Fishing) (Revocation) Order 2001. S.I. 236/2001 Celtic Sea (Prohibition on Herring Fishing (No. 3) Order 2001. S.I. 563/2001</p> <p>Cod (Fisheries Management and Conservation) Order 2001. S.I. 114/2001 Cod (Fisheries Management and Conservation) (No. 2) Order 2001. S.I. 183/2001 Cod (Fisheries Management and Conservation) (No. 3) Order 2001. S.I. 296/2001 Cod (Fisheries Management and Conservation) (No. 4) Order 2001. S.I. 410/2001 Cod (Fisheries Management and Conservation) (No. 5) Order 2001. S.I. 452/2001 Cod (Fisheries Management and Conservation) (No. 7) Order 2001. S.I. 499/2001 Cod (Fisheries Management and Conservation) (No. 8) Order 2001. S.I. 644/2001 Cod (Restriction on Fishing) Order 2001. S.I. 20/2001</p> <p>Crawfish (Conservation of Stocks) Order 2001. S.I. 322/2001</p> <p>Haddock (Fisheries Management and Conservation) (No. 1) Order 2001. S.I. 271/2001 Haddock (Fisheries Management and Conservation) (No. 3) Order 2001. S.I. 354/2001</p>

Haddock (Fisheries Management and Conservation) (No. 4) Order 2001. S.I. 404/2001
Haddock (Fisheries Management and Conservation) (No. 5) Order 2001. S.I. 545/2001
Haddock (Fisheries Management and Conservation) (No. 6) Order 2001. S.I. 479/2001
Haddock (Fisheries Management and Conservation) (No. 8) Order 2001. S.I. 515/2001
Haddock (Fisheries Management and Conservation) (No. 9) Order 2001. S.I. 527/2001
Haddock (Fisheries Management and Conservation) (No. 10) Order 2001. S.I. 646/2001
Hake (Fisheries Management and Conservation) Order 2001. S.I. 115/2001
Hake (Fisheries Management and Conservation) (No. 1) Order 2001. S.I. 223/2001
Hake (Fisheries Management and Conservation) (No. 3) Order 2001. S.I. 355/2001
Hake (Fisheries Management and Conservation) (No. 4) 2001. S.I. 455/2001
Hake (Fisheries Management and Conservation) (No. 5) Order 2001. S.I. 528/2001
Hake (Fisheries Management and Conservation) (No. 6) Order 2001. S.I. 645/2001
Hake (Restriction on Fishing) Order 2001. S.I. 19/2001
Herring (Prohibition on Fishing in Ices Divisions Vb, Vian, and Vib) (No. 2) Order 2001. S.I. 577/2001
Horse Mackerel (Prohibition on Fishing) (No. 2) Order 2001. S.I. 564/2001
Mackerel (Prohibition on Fishing) (No. 2) Order 2001. S.I. 641/2001
Monk (Fisheries Management and Conservation) Order 2001. S.I. 116/2001
Monk (Fisheries Management and Conservation) (No. 1) Order 2001. S.I. 224/2001
Monk (Fisheries Management and Conservation) (No. 3) Order 2001. S.I. 356/2001
Monk (Fisheries Management and Conservation) (No. 4) Order 2001. S.I. 456/2001
Monk (Fisheries Management and Conservation) (No. 5) Order 2001. S.I. 529/2001

Monk (Fisheries Management and Conservation) (No. 6) Order 2001. S.I. 642/2001

Monkfish (Restriction on Fishing) Order 2001. S.I. 21/2001

Spider Crab (Conservation of Stocks) Order 2001. S.I. 321/2001

Sea Fisheries (Conservation and Rational Exploitation) Order 2001. S.I. 557/2001

Salmon and Sea Trout Caught by Rod and Line (Prohibition on Sale) Order 2001. S.I. 353/2001

Saithe (Fisheries Management and Conservation) (No. 2) Order 2001. S.I. 647/2001

Whiting (Fisheries Management and Conservation) Order 2001. S.I. 180/2001

Whiting (Fisheries Management and Conservation) (No. 1) Order 2001. S.I. 222/2001

Whiting (Fisheries Management and Conservation) (No. 3) Order 2001. S.I. 293/2001

Whiting (Fisheries Management and Conservation) (No. 4) Order 2001. S.I. 357/2001

Whiting (Fisheries Management and Conservation) (No. 5) Order 2001. S.I. 403/2001

Whiting (Fisheries Management and Conservation) (No. 6) Order 2001. S.I. 453/2001

Whiting (Fisheries Management and Conservation) (No. 7) Order 2001. S.I. 478/2001

Whiting (Fisheries Management and Conservation) (No. 8) Order 2001. S.I. 530/2001

Whiting (Fisheries Management and Conservation) (No. 9) Order 2001. S.I. 643/2001

Whelk (Conservation of Stocks) Order 2001. S.I. 294/2001

2002	Statutory Instruments
	Celtic Sea (Fisheries Management and Conservation) (No. 3) Order 2002. S.I. 433/2002
	Cod (Fisheries Management and Conservation) Order 2002. S.I. 21/2002
	Cod (Fisheries Management and Conservation) (No. 2) Order 2002. S.I. 61/2002
	Cod (Fisheries Management and Conservation) (No. 3) Order 2002. S.I. 107/2002
	Cod (Fisheries Management and Conservation) (No. 4) Order 2002. S.I. 167/2002
	Cod (Fisheries Management and Conservation) (No. 5) Order 2002. S.I. 259/2002
	Cod (Fisheries Management and Conservation) (No. 6) Order 2002. S.I. 316/2002
	Cod (Fisheries Management and Conservation) (No. 7) Order 2002. S.I. 370/2002
	Cod (Fisheries Management and Conservation) (No. 8) Order 2002. S.I. 429/2002
	Cod (Fisheries Management and Conservation) (No. 9) Order 2002. S.I. 452/2002
	Cod (Fisheries Management and Conservation) (No. 10) Order 2002. S.I. 487/2002
	Cod (Fisheries Management and Conservation) (No. 11) Order 2002. S.I. 536/2002
	Crawfish (Fisheries Management and Conservation) Order 2002. S.I. 179/2002
	Deep Sea Fish Stocks (Licensing) Order 2002. S.I. 593/2002
Fisheries Acts 1959 To 2001 (Payment in Lieu of Prosecution) Regulations 2002. S.I. 414/2002	
Haddock (Fisheries Management and Conservation) Order 2002. S.I. 23/2002	
Haddock (Fisheries Management and Conservation) (No. 3) Order 2002. S.I. 112/2002	
Haddock (Fisheries Management and Conservation) (No. 4) Order 2002. S.I. 258/2002	
Haddock (Fisheries Management and Conservation) (No. 5) Order 2002. S.I. 369/2002	
Haddock (Fisheries Management and Conservation) (No. 7) Order 2002. S.I. 453/2002	

Haddock (Fisheries Management and Conservation) (No. 8) Order 2002. S.I. 489/2002

Haddock (Fisheries Management and Conservation) (No. 9) Order 2002. S.I. 537/2002

Hake (Fisheries Management and Conservation) Order 2002. S.I. 22/2002

Hake (Fisheries Management and Conservation) (No. 2) Order 2002. S.I. 110/2002

Hake (Fisheries Management and Conservation) (No. 3) Order 2002. S.I. 172/2002

Hake (Fisheries Management and Conservation) (No. 4) Order 2002. S.I. 257/2002

Hake (Fisheries Management and Conservation) (No. 5) Order 2002. S.I. 373/2002

Hake (Fisheries Management and Conservation) (No. 7) Order 2002. S.I. 490/2002

Hake (Fisheries Management and Conservation) (No. 8) Order 2002. S.I. 586/2002

Herring (Fisheries Management and Conservation) (No. 4) Order 2002. S.I. 587/2002

Herring (Fisheries Management and Conservation) (No. 5) Order 2002. S.I. 602/2002

Horse Mackerel (Fisheries Management and Conservation) (No. 2) Order 2002. S.I. 25/2002

Horse Mackerel (Fisheries Management and Conservation) (No. 4) Order 2002. S.I. 432/2002

Mackerel (Fisheries Management and Conservation) (No. 2) Order 2002. S.I. 469/2002

Megrim (Fisheries Management and Conservation) (No. 3) Order 2002. S.I. 577/2002

Monk (Fisheries Management and Conservation) Order 2002. S.I. 20/2002

Monk (Fisheries Management and Conservation) (No. 2) Order 2002. S.I. 19/2002

Monk (Fisheries Management and Conservation) (No. 3) Order 2002. S.I. 108/2002

Monk (Fisheries Management and Conservation) (No. 4) Order 2002. S.I. 109/2002

Monk (Fisheries Management and Conservation) (No. 5) Order 2002. S.I. 168/2002

<p>Monk (Fisheries Management and Conservation) (No. 6) Order 2002. S.I. 169/2002</p> <p>Monk (Fisheries Management and Conservation) (No. 7) Order 2002. S.I. 255/2002</p> <p>Monk (Fisheries Management and Conservation) (No. 8) Order 2002. S.I. 256/2002</p> <p>Monk (Fisheries Management and Conservation) (No. 9) Order 2002. S.I. 320/2002</p> <p>Monk (Fisheries Management and Conservation) (No. 10) Order 2002. S.I. 315/2002</p> <p>Monk (Fisheries Management and Conservation) (No. 11) Order 2002. S.I. 371/2002</p> <p>Monk (Fisheries Management and Conservation) (No. 12) Order 2002. S.I. 372/2002</p> <p>Monk (Fisheries Management and Conservation) (No. 13) Order 2002. S.I. 427/2002</p> <p>Monk (Fisheries Management and Conservation) (No. 14) Order 2002. S.I. 428/2002</p> <p>Monk (Fisheries Management and Conservation) (No. 15) Order 2002. S.I. 454/2002</p> <p>Monk (Fisheries Management and Conservation) (No. 16) Order 2002. S.I. 488/2002</p> <p>Monk (Fisheries Management and Conservation) (No. 20) Order 2002. S.I. 589/2002</p> <p>Salmon Rod Ordinary Licences (Alteration of Licence Duties) Order 2002. S.I. 625/2002</p> <p>Sea Fisheries (Conservation and Rational Exploitation of Hake) Order 2002. S.I. 124/2002</p> <p>Sea Fisheries (Conservation and Rational Exploitation of Cod in The North Sea and To The West of Scotland) Order 2002. S.I. 47/2002</p> <p>Sea Fisheries (Conservation and Rational Exploitation of Cod in The Irish Sea) Order 2002. S.I. 58/2002</p> <p>Whiting (Fisheries Management and Conservation) Order 2002. S.I. 24/2002</p> <p>Whiting (Fisheries Management and Conservation) (No. 2) Order 2002. S.I. 60/2002</p> <p>Whiting (Fisheries Management and Conservation) (No. 3) Order 2002. S.I. 111/2002</p>

	Whiting (Fisheries Management and Conservation) (No. 4) Order 2002. S.I. 171/2002
2003	<p>Acts of the Oireachtas Sea-Fisheries Act 2003 Fisheries (Amendment) Act 2003</p> <p>Statutory Instruments</p> <p>Blue Ling (Fisheries Management and Conservation) (No. 2) Order 2003. S.I. 438/2003</p> <p>Blue Whiting (Fisheries Management and Conservation) Order 2003. S.I. 337/2003</p> <p>Celtic Sea (Fisheries Management and Conservation) (No. 2) Order 2003. S.I. 496/2003</p> <p>Cod (Fisheries Management and Conservation) Order 2003. S.I. 14/2003</p> <p>Cod (Fisheries Management and Conservation) (No. 2) Order 2003. S.I. 15/2003</p> <p>Cod (Fisheries Management and Conservation) (No. 3) Order 2003. S.I. 54/2003</p> <p>Cod (Fisheries Management and Conservation) (No. 4) Order 2003. S.I. 55/2003</p> <p>Cod (Fisheries Management and Conservation) (No. 5) Order 2003. S.I. 103/2003</p> <p>Cod (Fisheries Management and Conservation) (No. 6) Order 2003. S.I. 104/2003</p> <p>Cod (Fisheries Management and Conservation) (No. 7) Order 2003. S.I. 144/2003</p> <p>Cod (Fisheries Management and Conservation) (No. 8) Order 2003. S.I. 145/2003</p> <p>Cod (Fisheries Management and Conservation) (No. 9) Order 2003. S.I. 198/2003</p> <p>Cod (Fisheries Management and Conservation) (No. 10) Order 2003. S.I. 251/2003</p> <p>Cod (Fisheries Management and Conservation) (No. 11) Order 2003. S.I. 310/2003</p> <p>Cod (Fisheries Management and Conservation) (No. 12) Order 2003. S.I. 383/2003</p> <p>Cod (Fisheries Management and Conservation) (No. 13) Order 2003. S.I. 430/2003</p> <p>Cod (Fisheries Management and Conservation) (No. 14) Order 2003. S.I. 489/2003</p> <p>Cod (Fisheries Management and Conservation) (No. 16) Order 2003. S.I. 624/2003</p> <p>Cod (Fisheries Management and Conservation) (No. 17) Order 2003. S.I. 664/2003</p> <p>Cod (Fisheries Management and Conservation) (No. 18) Order 2003. S.I. 671/2003</p>

<p>Fishing Effort and Additional Conditions For Monitoring, Inspection and Surveillance in The Context of Recovery of Certain Cod Stocks (No. 2) Order 2003. S.I. 166/2003</p> <p>Fishing Effort and Additional Conditions For Monitoring, Inspection and Surveillance in The Context of Recovery of Certain Cod Stocks Regulations 2003. S.I. 330/2003</p> <p>Haddock (Fisheries Management and Conservation) Order 2003. S.I. 16/2003</p> <p>Haddock (Fisheries Management and Conservation) (No. 2) Order 2003. S.I. 57/2003</p> <p>Haddock (Fisheries Management and Conservation) (No. 3) Order 2003. S.I. 105/2003</p> <p>Haddock (Fisheries Management and Conservation) (No. 4) Order 2003. S.I. 146/2003</p> <p>Haddock (Fisheries Management and Conservation) (No. 6) Order 2003. S.I. 252/2003</p> <p>Haddock (Fisheries Management and Conservation) (No. 8) Order 2003. S.I. 311/2003</p> <p>Haddock (Fisheries Management and Conservation) (No. 9) Order 2003. S.I. 376/2003</p> <p>Haddock (Fisheries Management and Conservation) (No. 10) Order 2003. S.I. 433/2003</p> <p>Haddock (Fisheries Management and Conservation) (No. 11) Order 2003. S.I. 493/2003</p> <p>Haddock (Fisheries Management and Conservation) (No. 12) Order 2003. S.I. 627/2003</p> <p>Hake (Fisheries Management and Conservation) Order 2003. S.I. 17/2003</p> <p>Hake (Fisheries Management and Conservation) (No. 2) Order 2003. S.I. 107/2003</p> <p>Hake (Fisheries Management and Conservation) (No. 3) Order 2003. S.I. 148/2003</p> <p>Hake (Fisheries Management and Conservation) (No. 4) Order 2003. S.I. 201/2003</p> <p>Hake (Fisheries Management and Conservation) (No. 5) Order 2003. S.I. 254/2003</p> <p>Hake (Fisheries Management and Conservation) (No. 6) Order 2003. S.I. 313/2003</p> <p>Hake (Fisheries Management and Conservation) (No. 7) Order 2003. S.I. 378/2003</p> <p>Hake (Fisheries Management and Conservation) (No. 8) Order 2003. S.I. 432/2003</p> <p>Hake (Fisheries Management and Conservation) (No. 9) Order 2003. S.I. 491/2003</p>

Hake (Fisheries Management and Conservation) (No. 10) Order 2003. S.I. 626/2003

Hake (Fisheries Management and Conservation) (No. 11) Order 2003. S.I. 667/2003

Herring (Fisheries Management and Conservation) (No. 2) Order 2003. S.I. 467/2003

Horse Mackerel (Fisheries Management and Conservation) (No. 2) Order 2003. S.I. 382/2003

Inland Fisheries (Payment in Lieu of Prosecution) Regulations 2003. S.I. 197/2003

Ling (Fisheries Management and Conservation) Order 2003. S.I. 652/2003

Mackerel (Fisheries Management and Conservation) (No. 2) Order 2003. S.I. 468/2003

Mackerel (Fisheries Management and Conservation) (No. 3) Order 2003. S.I. 662/2003

Megrim (Fisheries Management and Conservation) Order 2003. S.I. 18/2003

Megrim (Fisheries Management and Conservation) (No. 2) Order 2003. S.I. 108/2003

Megrim (Fisheries Management and Conservation) (No. 3) Order 2003. S.I. 149/2003

Monk (Fisheries Management and Conservation) Order 2003. S.I. 19/2003

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Monk (Fisheries Management and Conservation) (Amendment) Order 2003. S.I. 58/2003

Monk (Fisheries Management and Conservation) (No. 3) Order 2003. S.I. 109/2003

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Monk (Fisheries Management and Conservation) (No. 7) Order 2003. S.I. 202/2003

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<p>Monk (Fisheries Management and Conservation) (No. 10) Order 2003. S.I. 256/2003</p> <p>Monk (Fisheries Management and Conservation) (No. 11) Order 2003. S.I. 314/2003</p> <p>Monk (Fisheries Management and Conservation) (No. 12) Order 2003. S.I. 315/2003</p> <p>Monk (Fisheries Management and Conservation) (No. 13) Order 2003. S.I. 379/2003</p> <p>Monk (Fisheries Management and Conservation) (No. 14) Order 2003. S.I. 380/2003</p> <p>Monk (Fisheries Management and Conservation) (No. 15) Order 2003. S.I. 435/2003</p> <p>Monk (Fisheries Management and Conservation) (No. 16) Order 2003. S.I. 436/2003</p> <p>Monk (Fisheries Management and Conservation) (No. 17) Order 2003. S.I. 494/2003</p> <p>Monk (Fisheries Management and Conservation) (No. 18) Order 2003. S.I. 495/2003</p> <p>Monk (Fisheries Management and Conservation) (No. 19) Order 2003. S.I. 628/2003</p> <p>Monk (Fisheries Management and Conservation) (No. 20) Order 2003. S.I. 665/2003</p> <p>Monk (Fisheries Management and Conservation) (No. 21) Order 2003. S.I. 666/2003</p> <p>Mussel Seed (Conservation and Rational Exploitation) Order 2003. S.I. 241/2003</p> <p>Norway Lobster (Fisheries Management and Conservation) Order 2003. S.I. 381/2003</p> <p>Norway Lobster (Fisheries Management and Conservation) (No. 2) Order 2003. S.I. 437/2003</p> <p>Norway Lobster (Fisheries Management and Conservation) (No. 3) Order 2003. S.I. 492/2003</p> <p>Pollock (Fisheries Management and Conservation) Order 2003. S.I. 21/2003</p> <p>Shrimp (Fisheries Management and Conservation) Order 2003. S.I. 232/2003</p>

Sea Fisheries (Marking and Documentation of Sea-Fishing Boats) Regulations 2003. S.I. 336/2003

Sea Fisheries (Inspection of Fishing Boats) Regulations 2003. S.I. 335/2003

Sea Fisheries (Control of Catches) Regulations 2003. S.I. 345/2003

Sea Fisheries (Conservation and Rational Exploitation of Hake) Regulations 2003. S.I. 333/2003

Sea Fisheries (Conservation and Rational Exploitation of Deep-Sea Species) Order 2003. S.I. 10/2003

Sea Fisheries (Conservation and Rational Exploitation of Deep-Sea Species) Regulations 2003. S.I. 334/2003

Sea Fisheries (Conservation and Rational Exploitation of Cod in The North Sea and To The West of Scotland) Regulations 2003. S.I. 329/2003

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Special Tidal Waters (Special Local Licences Alteration of Duties) Order 2003. S.I. 688/2003

Whiting (Fisheries Management and Conservation) Order 2003. S.I. 1/2003

Whiting (Fisheries Management and Conservation) (No. 2) Order 2003. S.I. 22/2003

Whiting (Fisheries Management and Conservation) (No. 3) Order 2003. S.I. 56/2003

Whiting (Fisheries Management and Conservation) (No. 4) Order 2003. S.I. 106/2003

Whiting (Fisheries Management and Conservation) (No. 5) Order 2003. S.I. 147/2003

Whiting (Fisheries Management and Conservation) (No. 6) Order 2003. S.I. 200/2003

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	<p>Whiting (Fisheries Management and Conservation) (No. 10) Order 2003. S.I. 434/2003</p> <p>Whiting (Fisheries Management and Conservation) (No. 11) Order 2003. S.I. 490/2003</p> <p>Whiting (Fisheries Management and Conservation) (No. 12) Order 2003. S.I. 625/2003</p> <p>Whiting (Fisheries Management and Conservation) (No. 13) Order 2003. S.I. 672/2003</p>
<p>2004</p>	<p>Statutory Instruments</p> <p>Blue Whiting (Fisheries Management and Conservation) (No. 2) Order 2004. S.I. 142/2004</p> <p>Celtic Sea (Fisheries Management and Conservation) (No. 2) Order 2004. S.I. 480/2004</p> <p>Celtic Sea Herring Fishing (Licensing) Regulations 2004. S.I. 821/2004</p> <p>Cod (Fisheries Management and Conservation) Order 2004. S.I. 21/2004</p> <p>Cod (Fisheries Management and Conservation) (No. 2) Order 2004. S.I. 70/2004</p> <p>Cod (Fisheries Management and Conservation) (No. 3) Order 2004. S.I. 103/2004</p> <p>Cod (Fisheries Management and Conservation) (No. 4) Order 2004. S.I. 163/2004</p> <p>Cod (Fisheries Management and Conservation) (No. 5) Order 2004. S.I. 224/2004</p> <p>Cod (Fisheries Management and Conservation) (No. 6) Order 2004. S.I. 383/2004</p> <p>Cod (Fisheries Management and Conservation) (No. 7) Order 2004. S.I. 477/2004</p> <p>Cod (Fisheries Management and Conservation) (No. 8) Order 2004. S.I. 516/2004</p> <p>Cod (Fisheries Management and Conservation) (No. 9) Order 2004. S.I. 557/2004</p> <p>Cod (Fisheries Management and Conservation) Regulations 2004. S.I. 669/2004</p> <p>Cod (Fisheries Management and Conservation) (No. 2) Regulations 2004. S.I. 670/2004</p> <p>Cod (Fisheries Management and Conservation) (No. 3) Regulations 2004. S.I. 736/2004</p> <p>Cod (Fisheries Management and Conservation) (No. 4) Regulations 2004. S.I. 780/2004</p> <p>Common Sole (Fisheries Management and Conservation) (No. 2) Regulations 2004. S.I. 737/2004</p>

Common Sole (Fisheries Management and Conservation) (No. 4) Regulations 2004. S.I. 787/2004

Control of Fishing For Salmon (Amendment) Order 2004. S.I. 719/2004

Control of Fishing For Salmon by Drift Net (Kerry Fishery District) (Amendment) Order 2004. S.I. 718/2004

Fisheries (Amendment) Act 2003 (Section 23) Order 2004. S.I. 46/2004

Greater Silver Smelt (Fisheries Management and Conservation) Regulations 2004. S.I. 678/2004

Greater Silver Smelt (Fisheries Management and Conservation) (No. 3) Regulations 2004. S.I. 746/2004

Haddock (Fisheries Management and Conservation) Order 2004. S.I. 14/2004

Haddock (Fisheries Management and Conservation) (No. 2) Order 2004. S.I. 22/2004

Haddock (Fisheries Management and Conservation) (No. 3) Order 2004. S.I. 23/2004

Haddock (Fisheries Management and Conservation) (No. 4) Order 2004. S.I. 66/2004

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Haddock (Fisheries Management and Conservation) (No. 6) Order 2004. S.I. 104/2004

Haddock (Fisheries Management and Conservation) (No. 7) Order 2004. S.I. 105/2004

Haddock (Fisheries Management and Conservation) (No. 8) Order 2004. S.I. 164/2004

Haddock (Fisheries Management and Conservation) (No. 9) Order 2004. S.I. 165/2004

Haddock (Fisheries Management and Conservation) (No. 10) Order 2004. S.I. 226/2004

Haddock (Fisheries Management and Conservation) (No. 11) Order 2004. S.I. 227/2004

Haddock (Fisheries Management and Conservation) (No. 12) Order 2004. S.I. 384/2004

Haddock (Fisheries Management and Conservation) (No. 13) Order 2004. S.I. 385/2004
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Haddock (Fisheries Management and Conservation) Regulations 2004. S.I. 671/2004
Haddock (Fisheries Management and Conservation) (No. 2) Regulations 2004. S.I. 739/2004
Haddock (Fisheries Management and Conservation) (No. 3) Regulations 2004. S.I. 781/2004
Haddock (Fisheries Management and Conservation) (No. 4) Regulations 2004. S.I. 782/2004
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Hake (Fisheries Management and Conservation) (No. 2) Order 2004. S.I. 64/2004
Hake (Fisheries Management and Conservation) (No. 3) Order 2004. S.I. 109/2004
Hake (Fisheries Management and Conservation) (No. 4) Order 2004. S.I. 169/2004
Hake (Fisheries Management and Conservation) (No. 5) Order 2004. S.I. 230/2004
Hake (Fisheries Management and Conservation) (No. 6) Order 2004. S.I. 386/2004
Hake (Fisheries Management and Conservation) (No. 7) Order 2004. S.I. 476/2004
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Hake (Fisheries Management and Conservation) (No. 9) Order 2004. S.I. 560/2004
Hake (Fisheries Management and Conservation) Regulations 2004. S.I. 672/2004
Hake (Fisheries Management and Conservation) (No. 2) Regulations 2004. S.I. 740/2004

Hake (Fisheries Management and Conservation) (No. 3) Regulations 2004. S.I. 783/2004

Horse Mackerel (Fisheries Management and Conservation) (No. 2) Order 2004. S.I. 481/2004

Ling (Fisheries Management and Conservation) Order 2004. S.I. 485/2004

Ling (Fisheries Management and Conservation) (No. 2) Order 2004. S.I. 489/2004

Ling (Fisheries Management and Conservation) (No. 3) Order 2004. S.I. 561/2004

Mackerel (Licensing) Regulations 2004. S.I. 823/2004

Mackerel (Fisheries Management and Conservation) (No. 2) Regulations 2004. S.I. 704/2004

Monk (Fisheries Management and Conservation) Order 2004. S.I. 25/2004

Monk (Fisheries Management and Conservation) (No. 2) Order 2004. S.I. 26/2004

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Monk (Fisheries Management and Conservation) (No. 5) Order 2004. S.I. 107/2004

Monk (Fisheries Management and Conservation) (No. 6) Order 2004. S.I. 108/2004

Monk (Fisheries Management and Conservation) (No. 7) Order 2004. S.I. 167/2004

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<p>Monk (Fisheries Management and Conservation) (No. 15) Order 2004. S.I. 520/2004</p> <p>Monk (Fisheries Management and Conservation) (No. 16) Order 2004. S.I. 521/2004</p> <p>Monk (Fisheries Management and Conservation) (No. 17) Order 2004. S.I. 562/2004</p> <p>Monk (Fisheries Management and Conservation) (No. 18) Order 2004. S.I. 563/2004</p> <p>Monk (Fisheries Management and Conservation) Regulations 2004. S.I. 673/2004</p> <p>Monk (Fisheries Management and Conservation) (No. 2) Regulations 2004. S.I. 674/2004</p> <p>Monkfish (Control of Landings) (No. 2) Regulations 2013 (Amendment) Regulations 2021. S.I. 416/2021</p> <p>Monkfish (Fisheries Management and Conservation) (No. 3) Regulations 2004. S.I. 741/2004</p> <p>Monkfish (Fisheries Management and Conservation) (No. 4) Regulations 2004. S.I. 742/2004</p> <p>Monkfish (Fisheries Management and Conservation) (No. 5) Regulations 2004. S.I. 784/2004</p> <p>Monkfish (Fisheries Management and Conservation) (No. 6) Regulations 2004. S.I. 785/2004</p> <p>Monkfish (Fisheries Management and Conservation) (No. 7) Regulations 2004. S.I. 786/2004</p> <p>Norway Lobster (Fisheries Management and Conservation) Order 2004. S.I. 388/2004</p> <p>Norway Lobster (Fisheries Management and Conservation) (No. 2) Order 2004. S.I. 474/2004</p> <p>Norway Lobster (Fisheries Management and Conservation) (No. 3) Order 2004. S.I. 475/2004</p> <p>Norway Lobster (Fisheries Management and Conservation) (No. 4) Order 2004. S.I. 510/2004</p> <p>Norway Lobster (Fisheries Management and Conservation) (No. 5) Order 2004. S.I. 511/2004</p> <p>Norway Lobster (Fisheries Management and Conservation) (No. 6) Order 2004. S.I. 564/2004</p> <p>Norway Lobster (Fisheries Management and Conservation) (No. 7) Order 2004. S.I. 565/2004</p>
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Norway Lobster (Fisheries Management and Conservation) Regulations 2004. S.I. 675/2004

North West Herring Fishing (Licensing) Regulations 2004. S.I. 822/2004

Orange Roughy (Fisheries Management and Conservation) Regulations 2004. S.I. 793/2004

Plaice (Fisheries Management and Conservation) Order 2004. S.I. 27/2004

Plaice (Fisheries Management and Conservation) Order 2004. S.I. 228/2004

Plaice (Fisheries Management and Conservation) (No. 2) Order 2004. S.I. 387/2004

Plaice (Fisheries Management and Conservation) (No. 3) Order 2004. S.I. 473/2004

Plaice (Fisheries Management and Conservation) (No. 4) Order 2004. S.I. 512/2004

Plaice (Fisheries Management and Conservation) (No. 5) Order 2004. S.I. 566/2004

Plaice (Fisheries Management and Conservation) Regulations 2004. S.I. 676/2004

Salmon Rod Ordinary Licences (Alteration of Licence Duties) Order 2004. S.I. 861/2004

Sea Fisheries (Conservation and Rational Exploitation of Hake) Regulations 2004. S.I. 762/2004

Sole (Fisheries Management and Conservation) Regulations 2004. S.I. 677/2004

Special Tidal Waters (Special Local Licences Alteration of Duties) Order 2004. S.I. 862/2004

Tusk (Fisheries Management and Conservation) Order 2004. S.I. 486/2004

Tusk (Fisheries Management and Conservation) Regulations 2004. S.I. 748/2004

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	<p>Whiting (Fisheries Management and Conservation) (No. 3) Order 2004. S.I. 106/2004</p> <p>Whiting (Fisheries Management and Conservation) (No. 9) Order 2004. S.I. 166/2004</p> <p>Whiting (Fisheries Management and Conservation) Regulations 2004. S.I. 789/2004</p> <p>Wild Salmon and Sea Trout Tagging Scheme Regulations 2004. S.I. 136/2004.</p>
2005	<p>Statutory Instruments</p> <p>Alfonsinos (Fisheries Management and Conservation) (No. 2) Regulations 2005. S.I. 654/2005</p> <p>Alfonsinos (Fisheries Management and Conservation) (No. 3) Regulations 2005. S.I. 738/2005</p> <p>Bass Fishing Conservation Bye-Law No. 800 of 2005. S.I. 373/2005</p> <p>Black Scabbardfish (Fisheries Management and Conservation) Regulations 2005. S.I. 29/2005</p> <p>Black Scabbardfish (Fisheries Management and Conservation) (No. 2) Regulations 2005. S.I. 88/2005</p> <p>Black Scabbardfish (Fisheries Management and Conservation) (No. 3) Regulations 2005. S.I. 139/2005</p> <p>Black Scabbardfish (Fisheries Management and Conservation) (No. 4) Regulations 2005. S.I. 205/2005</p> <p>Black Scabbardfish (Fisheries Management and Conservation) (No. 5) Regulations 2005. S.I. 263/2005</p> <p>Black Scabbardfish (Fisheries Management and Conservation) (No. 6) Regulations 2005. S.I. 299/2005</p> <p>Black Scabbardfish (Fisheries Management and Conservation) (No. 7) Regulations 2005. S.I. 393/2005</p> <p>Black Scabbardfish (Fisheries Management and Conservation) (No. 8) Regulations 2005. S.I. 529/2005</p> <p>Black Scabbardfish (Fisheries Management and Conservation) (No. 9) Regulations 2005. S.I. 614/2005</p> <p>Black Scabbardfish (Fisheries Management and Conservation) (No. 10) Regulations 2005. S.I. 655/2005</p> <p>Black Scabbardfish (Fisheries Management and Conservation) (No. 11) Regulations 2005. S.I. 739/2005</p>

Black Scabbardfish (Fisheries Management and Conservation) (No. 12) Regulations 2005. S.I. 851/2005

Blue Ling (Fisheries Management and Conservation) Regulations 2005. S.I. 89/2005

Blue Ling (Fisheries Management and Conservation) (No. 2) Regulations 2005. S.I. 656/2005

Blue Ling (Fisheries Management and Conservation) (No. 4) Regulations 2005. S.I. 740/2005

Celtic Sea Herring (Fisheries Management and Conservation) (No. 2) Regulations 2005. S.I. 408/2005

Celtic Sea Herring (Fisheries Management and Conservation) (No. 4) Regulations 2005. S.I. 680/2005

Celtic Sea Herring (Fisheries Management and Conservation) (No. 5) Regulations 2005. S.I. 784/2005

Cod (Fisheries Management and Conservation) Regulations 2005. S.I. 30/2005

Cod (Fisheries Management and Conservation) (No. 2) Regulations 2005. S.I. 90/2005

Cod (Fisheries Management and Conservation) (No. 3) Regulations 2005. S.I. 144/2005

Cod (Fisheries Management and Conservation) (No. 4) Regulations 2005. S.I. 206/2005

Cod (Fisheries Management and Conservation) (No. 5) Regulations 2005. S.I. 265/2005

Cod (Fisheries Management and Conservation) (No. 6) Regulations 2005. S.I. 301/2005

Cod (Fisheries Management and Conservation) (No. 7) Regulations 2005. S.I. 394/2005

Cod (Fisheries Management and Conservation) (No. 8) Regulations 2005. S.I. 530/2005

Cod (Fisheries Management and Conservation) (No. 9) Regulations 2005. S.I. 615/2005

Cod (Fisheries Management and Conservation) (No. 10) Regulations 2005. S.I. 657/2005

Cod (Fisheries Management and Conservation) (No. 10) Regulations 2005. S.I. 700/2005

Cod (Fisheries Management and Conservation) (No. 11) Regulations 2005. S.I. 741/2005

Cod (Fisheries Management and Conservation) (No. 12) Regulations 2005. S.I. 854/2005

Common Sole (Fisheries Management and Conservation) Regulations 2005. S.I. 31/2005

Common Sole (Fisheries Management and Conservation) (No. 8) Regulations 2005. S.I. 870/2005

Crab (Fisheries Management and Conservation) Regulations 2005. S.I. 676/2005

Crab (Fisheries Management and Conservation) (No. 5) Regulations 2005. S.I. 789/2005

Crab (Fisheries Management and Conservation) (No. 6) Regulations 2005. S.I. 790/2005

Deep Sea Fishing Allocations and Orange Roughy Protection Areas (No. 2) Regulations 2005. S.I. 92/2005

Greenland Halibut (Fisheries Management and Conservation) Regulations 2005. S.I. 94/2005

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Haddock (Fisheries Management and Conservation) (No. 10) Regulations 2005. S.I. 208/2005

Haddock (Fisheries Management and Conservation) (No. 11) Regulations 2005. S.I. 266/2005

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Haddock (Fisheries Management and Conservation) (No. 16) Regulations 2005. S.I. 395/2005

Haddock (Fisheries Management and Conservation) (No. 17) Regulations 2005. S.I. 396/2005

Haddock (Fisheries Management and Conservation) (No. 18) Regulations 2005. S.I. 531/2005

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Haddock (Fisheries Management and Conservation) (No. 20) Regulations 2005. S.I. 616/2005

Haddock (Fisheries Management and Conservation) (No. 21) Regulations 2005. S.I. 617/2005

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Haddock (Fisheries Management and Conservation) (No. 24) Regulations 2005. S.I. 742/2005

Haddock (Fisheries Management and Conservation) (No. 25) Regulations 2005. S.I. 743/2005

Haddock (Fisheries Management and Conservation) (No. 26) Regulations 2005. S.I. 859/2005

Haddock (Fisheries Management and Conservation) (No. 27) Regulations 2005. S.I. 860/2005

Hake (Fisheries Management and Conservation) Regulations 2005. S.I. 37/2005

Hake (Fisheries Management and Conservation) (No. 2) Regulations 2005. S.I. 97/2005

Hake (Fisheries Management and Conservation) (No. 3) Regulations 2005. S.I. 143/2005

Hake (Fisheries Management and Conservation) (No. 4) Regulations 2005. S.I. 209/2005

Hake (Fisheries Management and Conservation) (No. 5) Regulations 2005. S.I. 268/2005

Hake (Fisheries Management and Conservation) (No. 6) Regulations 2005. S.I. 305/2005

Hake (Fisheries Management and Conservation) (No. 7) Regulations 2005. S.I. 397/2005

Hake (Fisheries Management and Conservation) (No. 8) Regulations 2005. S.I. 533/2005

Hake (Fisheries Management and Conservation) (No. 9) Regulations 2005. S.I. 618/2005

Hake (Fisheries Management and Conservation) (No. 10) Regulations 2005. S.I. 660/2005

Hake (Fisheries Management and Conservation) (No. 11) Regulations 2005. S.I. 861/2005

Herring (Fisheries Management and Conservation) (No. 2) Regulations 2005. S.I. 729/2005

Herring (Fisheries Management and Conservation) (No. 2) Regulations 2005. S.I. 785/2005

Horse Mackerel (Licensing) Regulations 2005. S.I. 876/2005

Horse Mackerel (Fisheries Management and Conservation) (No. 2) Regulations 2005. S.I. 115/2005

Ling (Fisheries Management and Conservation) Regulations 2005. S.I. 306/2005

Ling (Fisheries Management and Conservation) (No. 2) Regulations 2005. S.I. 398/2005

Ling (Fisheries Management and Conservation) (No. 3) Regulations 2005. S.I. 534/2005

Ling (Fisheries Management and Conservation) (No. 4) Regulations 2005. S.I. 619/2005

Ling (Fisheries Management and Conservation) (No. 5) Regulations 2005. S.I. 662/2005

Ling (Fisheries Management and Conservation) (No. 6) Regulations 2005. S.I. 744/2005

Mackerel (Fisheries Management and Conservation) (No. 8) Regulations 2005. S.I. 887/2005

Monkfish Licensing Regulations 2005. S.I. 239/2005

Monkfish Order 2005. S.I. 241/2005

Monkfish (Fisheries Management and Conservation) Regulations 2005. S.I. 38/2005

Monkfish (Fisheries Management and Conservation) (No. 2) Regulations 2005. S.I. 39/2005

Monkfish (Fisheries Management and Conservation) (No. 4) Regulations 2005. S.I. 101/2005

Monkfish (Fisheries Management and Conservation) (No. 5) Regulations 2005. S.I. 141/2005

Monkfish (Fisheries Management and Conservation) (No. 6) Regulations 2005. S.I. 142/2005

Monkfish (Fisheries Management and Conservation) (No. 7) Regulations 2005. S.I. 210/2005

Monkfish (Fisheries Management and Conservation) (No. 8) Regulations 2005. S.I. 211/2005

Monkfish (Fisheries Management and Conservation) (No. 9) Regulations 2005. S.I. 269/2005

Monkfish (Fisheries Management and Conservation) (No. 10) Regulations 2005. S.I. 270/2005

Monkfish (Fisheries Management and Conservation) (No. 11) Regulations 2005. S.I. 307/2005

Monkfish (Fisheries Management and Conservation) (No. 12) Regulations 2005. S.I. 308/2005

Monkfish (Fisheries Management and Conservation) (No. 13) Regulations 2005. S.I. 399/2005

Monkfish (Fisheries Management and Conservation) (No. 14) Regulations 2005. S.I. 400/2005

Monkfish (Fisheries Management and Conservation) (No. 15) Regulations 2005. S.I. 535/2005

Monkfish (Fisheries Management and Conservation) (No. 16) Regulations 2005. S.I. 536/2005

Monkfish (Fisheries Management and Conservation) (No. 17) Regulations 2005. S.I. 620/2005

Monkfish (Fisheries Management and Conservation) (No. 18) Regulations 2005. S.I. 621/2005

Monkfish (Fisheries Management and Conservation) (No. 3) Regulations 2005. S.I. 100/2005

Monkfish (Fisheries Management and Conservation) (No. 19) Regulations 2005. S.I. 661/2005

Monkfish (Fisheries Management and Conservation) (No. 20) Regulations 2005. S.I. 663/2005

Monkfish (Fisheries Management and Conservation) (No. 21) Regulations 2005. S.I. 745/2005

Monkfish (Fisheries Management and Conservation) (No. 22) Regulations 2005. S.I. 746/2005

Monkfish (Fisheries Management and Conservation) (No. 23) Regulations 2005. S.I. 862/2005

Monkfish (Fisheries Management and Conservation) (No. 24) Regulations 2005. S.I. 863/2005

Merchant Shipping (Registry, Lettering and Numbering of Fishing Boats) Regulations 2005. S.I. 261/2005

Norway Lobster (Fisheries Management and Conservation) (No. 2) Regulations 2005. S.I. 361/2005

Norway Lobster (Fisheries Management and Conservation) (No. 3) Regulations 2005. S.I. 401/2005

Norway Lobster (Fisheries Management and Conservation) (No. 4) Regulations 2005. S.I. 402/2005

Norway Lobster (Fisheries Management and Conservation) (No. 5) Regulations 2005. S.I. 537/2005

Norway Lobster (Fisheries Management and Conservation) (No. 6) Regulations 2005. S.I. 538/2005

Norway Lobster (Fisheries Management and Conservation) (No. 7) Regulations 2005. S.I. 622/2005

Norway Lobster (Fisheries Management and Conservation) (No. 8) Regulations 2005. S.I. 623/2005

Norway Lobster (Fisheries Management and Conservation) (No. 9) Regulations 2005. S.I. 664/2005

Norway Lobster (Fisheries Management and Conservation) (No. 10) Regulations 2005. S.I. 665/2005

Norway Lobster (Fisheries Management and Conservation) (No. 11) Regulations 2005. S.I. 747/2005

Norway Lobster (Fisheries Management and Conservation) (No. 12) Regulations 2005. S.I. 748/2005

Norway Lobster (Fisheries Management and Conservation) (No. 13) Regulations 2005. S.I. 864/2005

Norway Lobster (Fisheries Management and Conservation) Regulations 2005. S.I. 309/2005

National Salmon Commission (Prescribed Bodies and Organisations) Order 2005. S.I. 626/2005

Orange Roughy (Fisheries Management and Conservation) Regulations 2005. S.I. 40/2005

Orange Roughy (Fisheries Management and Conservation) (No. 2) Regulations 2005. S.I. 212/2005

Orange Roughy (Fisheries Management and Conservation) (No. 3) Regulations 2005. S.I. 213/2005

Orange Roughy (Fisheries Management and Conservation) (No. 4) Regulations 2005. S.I. 271/2005

Orange Roughy (Fisheries Management and Conservation) (No. 5) Regulations 2005. S.I. 272/2005

Orange Roughy (Fisheries Management and Conservation) (No. 6) Regulations 2005. S.I. 310/2005

Orange Roughy (Fisheries Management and Conservation) (No. 7) Regulations 2005. S.I. 311/2005

Orange Roughy (Fisheries Management and Conservation) (No. 8) Regulations 2005. S.I. 403/2005

Orange Roughy (Fisheries Management and Conservation) (No. 9) Regulations 2005. S.I. 404/2005

Orange Roughy (Fisheries Management and Conservation) (No. 10) Regulations 2005. S.I. 539/2005

Orange Roughy (Fisheries Management and Conservation) (No. 11) Regulations 2005. S.I. 540/2005

Orange Roughy (Fisheries Management and Conservation) (No. 12) Regulations 2005. S.I. 624/2005

Orange Roughy (Fisheries Management and Conservation) (No. 13) Regulations 2005. S.I. 625/2005

Orange Roughy (Fisheries Management and Conservation) (No. 13) Regulations 2005. S.I. 666/2005

Orange Roughy (Fisheries Management and Conservation) (No. 14) Regulations 2005. S.I. 667/2005

Orange Roughy (Fisheries Management and Conservation) (No. 15) Regulations 2005. S.I. 749/2005

Orange Roughy (Fisheries Management and Conservation) (No. 16) Regulations 2005. S.I. 750/2005

Orange Roughy (Fisheries Management and Conservation) (No. 18) Regulations 2005. S.I. 866/2005

Pollack (Fisheries Management and Conservation) Regulations 2005. S.I. 312/2005

Pollack (Fisheries Management and Conservation) (No. 2) Regulations 2005. S.I. 405/2005

Roundnose Grenadier (Fisheries Management and Conservation) (No. 2) Regulations 2005. S.I. 668/2005

Roundnose Grenadier (Fisheries Management and Conservation) (No. 3) Regulations 2005. S.I. 751/2005

Regional Fisheries Boards (Postponement of Elections) Order 2005. S.I. 794/2005

Redfish (Fisheries Management and Conservation) Regulations 2005. S.I. 103/2005

Red Seabream (Fisheries Management and Conservation) Regulations 2005. S.I. 104/2005

Red Seabream (Fisheries Management and Conservation) (No. 2) Regulations 2005. S.I. 868/2005

Salmon Rod Ordinary Licences (Alteration of Licence Duties) Order 2005. S.I. 838/2005

Sea- Fisheries (Tuna and Certain Other Species Fishing) Regulations 2005 S.I. No. 353 of 2005

	<p>Tusk (Fisheries Management and Conservation) (No. 2) Regulations 2005. S.I. 871/2005</p> <p>Whiting (Fisheries Management and Conservation) Regulations 2005. S.I. 43/2005</p> <p>Whiting (Fisheries Management and Conservation) (No. 2) Regulations 2005. S.I. 105/2005</p> <p>Whiting (Fisheries Management and Conservation) (No. 3) Regulations 2005. S.I. 138/2005</p> <p>Whiting (Fisheries Management and Conservation) (No. 4) Regulations 2005. S.I. 407/2005</p> <p>Whiting (Fisheries Management and Conservation) (No. 6) Regulations 2005. S.I. 755/2005</p>
<p>2006</p>	<p>Acts of the Oireachtas Fisheries (Amendment) Act 2006 Sea-Fisheries and Maritime Jurisdiction Act 2006</p> <p>Statutory Instruments Alfonsinos (Fisheries Management and Conservation) Regulations 2006. S.I. 27/2006</p> <p>Bass (Conservation of Stocks) Regulations, 2006 S.I. 230/2006</p> <p>Black Scabbardfish (Fisheries Management and Conservation) Regulations 2006. S.I. 28/2006</p> <p>Black Scabbardfish (Fisheries Management and Conservation) (No. 2) Regulations 2006. S.I. 90/2006</p> <p>Blue Ling (Fisheries Management and Conservation) Regulations 2006. S.I. 29/2006</p> <p>Blue Ling (Fisheries Management and Conservation) (No. 2) Regulations 2006. S.I. 30/2006</p> <p>Blue Whiting (Fisheries Management and Conservation) Regulations 2006. S.I. 104/2006</p>

Castletownbere Fishery Harbour Centre (Explosives) Bye - Laws 2006 S.I.
375/2006

Celtic Sea Herring (Fisheries Management and Conservation) Regulations 2006. S.I.
15/2006

Cod (Fisheries Management and Conservation) Regulations 2006. S.I. 31/2006

Cod (Fisheries Management and Conservation) (No. 2) Regulations 2006. S.I.
91/2006

Common Sole (Fisheries Management and Conservation) Regulations 2006. S.I.
101/2006

Crawfish (Conservation of Stocks) Regulations 2006 S.I. 232/2006

Crawfish (Fisheries Management and Conservation) Regulations, 2006 S.I.
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Deep Sea Fishing Opportunities and Orange Roughy Protection Areas Regulations
2006 S.I. 174/2006

Deep Sea Sharks (Fisheries Management and Conservation) Regulations 2006. S.I.
32/2006

European Communities (Good Agricultural Practice for Protection of Waters)
Regulations 2006 S.I. 378 /2006

European Communities (Quality of Shellfish Waters) Regulations 2006 S.I.
268/2006

Fishery Harbour Centres (Fixed Payment Notice) Bye-laws 2006. S.I. 607/2006

Fishing Opportunities and Associated Conditions Regulations 2006. S.I. 22/2006

Fishing Opportunities and Associated Conditions (No. 2) Regulations 2006 S.I.
173/2006

Fishing Effort for Vessels in the Context of the Recovery of Certain Stocks
Regulations 2006. S.I. 176/2006

Greater Silver Smelt (Fisheries Management and Conservation) Regulations 2006.
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Greater Silver Smelt (Fisheries Management and Conservation) (No. 2) Regulations
2006. S.I. 34/2006

Haddock (Fisheries Management and Conservation) Regulations 2006. S.I. 35/2006

Haddock (Fisheries Management and Conservation) (No. 2) Regulations 2006. S.I.
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Haddock (Fisheries Management and Conservation) (No. 3) Regulations 2006. S.I.
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Haddock (Fisheries Management and Conservation) (No. 4) Regulations 2006. S.I.
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Haddock (Fisheries Management and Conservation) (No. 5) Regulations 2006. S.I.
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Haddock (Fisheries Management and Conservation) (No. 6) Regulations 2006. S.I.
94/2006

Hake (Fisheries Management and Conservation) Regulations 2006. S.I. 38/2006

Hake (Fisheries Management and Conservation) (No. 2) Regulations 2006. S.I.
95/2006

Herring (Fisheries Management and Conservation) Regulations 2006. S.I. 84/2006

Horse Mackerel (Fisheries Management and Conservation) Regulations 2006. S.I.
6/2006

Horse Mackerel (Fisheries Management and Conservation) (No. 2) Regulations
2006. S.I. 7/2006

Ling (Fisheries Management and Conservation) Regulations 2006. S.I. 39/2006

Ling (Fisheries Management and Conservation) (No. 2) Regulations 2006. S.I.
96/2006

Lobster (Conservation of Stocks) Regulations 2006 S.I. 234/2006

Mackerel (Fisheries Management and Conservation) Regulations 2006. S.I. 19/2006

Mackerel (Fisheries Management and Conservation) (No. 3) Regulations 2006. S.I. 85/2006

Monkfish (Fisheries Management and Conservation) Regulations 2006. S.I. 40/2006

Monkfish (Fisheries Management and Conservation) (No. 2) Regulations 2006. S.I. 41/2006

Monkfish (Fisheries Management and Conservation) (No. 3) Regulations 2006. S.I. 97/2006

Monkfish (Fisheries Management and Conservation) (No. 4) Regulations 2006. S.I. 98/2006

Monkfish (Control of Landings) Regulations 2006 S.I. 496/2006

Molluscan Shellfish (Conservation of Stocks) Regulations 2006 S.I. 345/2006

Mussel Seed (Conservation) Regulations 2006 S.I. 310/2006

Mussel Seed (Conservation) (No. 2) Regulations 2006 S.I. 344/2006

Mussel Seed (Conservation) (No. 3) Regulations 2006 S.I. 367/2006

Mussel Seed (Conservation) (No. 4) Regulations 2006 S.I. 368/2006

Mussel Seed (Conservation) (No. 5) Regulations 2006 S.I. 403/2006

Mussel Seed (Conservation) (No. 6) Regulations 2006 S.I. 415/2006

Mussel Seed (Conservation) (No. 7) Regulations 2006 S.I. 416/2006

Mussel Seed (Conservation) (No. 8) Regulations 2006 S.I. 465/2006

Mussel Seed (Conservation) (No. 9) Regulations 2006 S.I. 466/2006

Mussel Seed (Conservation) (No. 10) Regulations 2006 S.I. 495/2006

Mussel Seed (Conservation) (No. 11) Regulations 2006 S.I. 603/2006

Mussel Seed (Fishing) Regulations 2006 S.I. 311/2006

Mussel Seed (Fishing) Regulations 2006. S.I. 311/2006

National Salmon Commission and Standing Scientific Committee (Terms Of Reference and Procedure) Order 2006. S.I. 483/2006

Norway Lobster (Fisheries Management and Conservation) Regulations 2006. S.I. 42/2006

Norway Lobster (Fisheries Management and Conservation) (No. 2) Regulations 2006. S.I. 99/2006

Orange Roughy (Fisheries Management and Conservation) Regulations 2006. S.I. 43/2006

Orange Roughy (Fisheries Management and Conservation) (No. 2) Regulations 2006. S.I. 44/2006

Orange Roughy (Fisheries Management and Conservation) (No. 3) Regulations 2006. S.I. 100/2006

Passive Fishing Gear and Beam Trawls Marking and Identification Regulations 2006. S.I. 21/2006

Plaice (Fisheries Management and Conservation) Regulations 2006. S.I. 45/2006

Polyvalent Mackerel Licensing Regulations 2006. S.I. 20/2006

Roundnose Grenadier (Fisheries Management and Conservation) Regulations 2006. S.I. 46/2006

Regional Fisheries Boards (Postponement of Elections) Order 2006. S.I. 629/2006

Satellite-Based Vessel Monitoring Systems Regulations 2006 S.I. 183/2006

Sea Fisheries (Control of Catches) Regulations 2006 S.I. 170/2006

Sea Fisheries (Technical Conservation Measures) S.I. 171//2006

Sea Fisheries (Weighing Procedures for Herring, Mackerel and Horse Mackerel) Regulations 2006 S.I. 172 /2006

Sea Fisheries (Gill Net Tuna and Certain Other Species Fishing) Regulations, 2006 S.I. 343/2006

	<p>Sea Fisheries (Conservation and Rational Exploitation of Deep-Sea Species) Regulations 2006 S.I. 175/2006</p> <p>Sea Fisheries (Conservation and Rational Exploitation of Cod in the North Sea and to The West of Scotland) S.I. 177/2006</p> <p>Sea Fisheries (Conservation and Rational Exploitation of Cod in the Irish Sea) Regulations 2006 S.I. 178/3006</p> <p>Sea Fisheries (Conservation and Rational Exploitation of Hake) Regulations 2006 S.I. 179/2006</p> <p>Sea Fisheries (Conservation and Rational Exploitation of Hake) (No. 2) Regulations 2006 S.I. 180/2006</p> <p>Sea Fisheries (Inspection of Fishing Boats) Regulations 2006 S.I. 181/2006</p> <p>Sea Fisheries (Marking and Documentation of Sea-Fishing Boats) Regulations 2006 S.I. 182/2006</p> <p>Sea Fisheries (Weighing Procedures for Herring, Mackerel and Horse Mackerel) (No. 2) Regulations 2006 S.I. 575/2006</p> <p>Shrimp (Fisheries Management and Conservation), Regulations 2006 S.I. 235/2006</p> <p>Spider Crab (Conservation of Stocks) Regulations, 2006 S.I. 236/2006</p> <p>Whelk (Conservation of Stocks) Regulations, 2006 S.I. 237/2006</p>
<p>2007</p>	<p>Acts of the Oireachtas Criminal Justice Act 2007 Foyle and Carlingford Fisheries Act 2007</p> <p>Statutory Instruments</p> <p>Bass (Restriction on Sale) Regulations 2007 S.I. 367/2007</p> <p>Bass Fishing Conservation Bye-Law No. 826 Of 2007 S.I. 368/2007</p> <p>Blue Whiting (Catch Reporting) Regulations 2007 S.I. 58/2007</p> <p>Cockle (Fisheries Management and Conservation) Regulations, 2007 S.I. 269/2007</p> <p>Cockle (Fisheries Management and Conservation) Regulations, 2007 S.I. 270/2007</p>

Cockle (Fisheries Management and Conservation) (Waterford Estuary) Regulations 2007 S.I. 531/2007

Cockle (Fisheries Management and Conservation) (Tramore Bay) Regulations 2007 S.I. 533/2007

Cockle (Fisheries Management and Conservation) (Waterford Estuary) Regulations 2007 S.I. 753/2007

Cockle (Fisheries Management and Conservation) Regulations, 2007 S.I. 2/2007

Cockle (Fisheries Management and Conservation) (No. 2) Regulations, 2007 S.I. 3//2007

Fishery Harbour Centre (An Daingean) Order 2007. S.I. 233/2007

Fishing Opportunities and Associated Conditions Regulations 2007 S.I. 33/2007

Fishing Effort for Vessels in the Context of the Recovery of Certain Stocks Regulations 2007. S.I. 14/2007

Fishing Opportunities and Associated Conditions (No. 2) Regulations 2007 S.I. 70/2007

Fishing Effort for Vessels in the Context of the Recovery of Certain Stocks (No. 2) Regulations 2007 S.I. 72/2007

Mussel Seed (Conservation) (No. 2) Regulations 2007 S.I. 213/2007

Mussel Seed (Conservation) (NO. 3) Regulations 2007 S.I. 415/2007

Mussel Seed (Conservation) (No. 4) Regulations 2007 S.I. 589/2007

European Communities (Prohibition of certain active substances in plant protection products) (Amendment) Regulations 2007 S.I. 594/2007

Mussel Seed (Conservation) (No. 5) Regulations 2007 S.I. 595/2007

Mussel Seed (Conservation) (No. 6) Regulations 2007 S.I. 641/2007

Mussel Seed (Conservation) (No. 7) Regulations 2007 S.I. 693/2007

River Shannon Tidal Waters (Issue of Fishing Licences) Regulations 2007. S.I. 207/2007

Regional Fisheries Boards (Postponement of Elections) Order 2007. S.I. 811/2007

Sea Fisheries (Weighing Procedures for Herring, Mackerel and Horse Mackerel) Regulations 2007 S.I. 35/2007

	<p>Sea Fisheries (Weighing Procedures for Herring, Mackerel and Horse Mackerel) (No. 2) Regulations 2007 S.I. 69/2007</p> <p>Sea Fisheries (First Marketing of Fish) regulations 2007 S.I. 260/2007</p> <p>Sea Fisheries (Conservation and Rational Exploitation of Hake) Regulations 2007 S.I. 619/2007</p> <p>Sea-Fisheries (Incidental Catches of Cetaceans in Fisheries) Regulations 2007. S.I. 274/2007</p> <p>Wild Salmon and Sea Trout Tagging Scheme (Brown Tags) Regulations 2007. S.I. 209/2007</p> <p>Wild Salmon and Sea Trout Tagging Scheme Regulations 2007. S.I. 849/200</p>
<p>2008</p>	<p>Statutory Instruments</p> <p>European Communities (Control of Dangerous Substances in Aquaculture) Regulations 2008. S.I. 466/2008</p> <p>European Communities (Control on Mussel Fishing) Regulations 2008. S.I. 347/2008</p> <p>European Communities (Health of Aquaculture Animals and Products) Regulations 2008. S.I. 261/2008</p> <p>European Communities (Control of Dangerous Substances in Aquaculture) Regulations 2008 S.I. 466/2008</p> <p>European Communities (Control on Mussel Fishing) Regulations 2008 S.I. 347/2008</p> <p>European Communities (Control of Mussel Seed Fishing) (Amendment) Regulations 2008 S.I. 395/2008</p> <p>Monkfish (Control of Landings) Regulations 2008 S.I. 203/2008</p> <p>Mussel Seed (Prohibition on Fishing) Regulations 2008 S.I. 176/2008</p> <p>Mussel Seed (Prohibition on Fishing) (No. 2) Regulations 2008 S.I. 194/2008</p> <p>Sea-Fisheries (Control on Fishing for Hake) Regulations 2008 S.I. 418/2008</p> <p>Monkfish (Control of Landings) Regulations 2008 S.I. 486/2008</p> <p>Mussel Seed (Prohibition on Fishing) (NO. 3) Regulations 2008 S.I. 605/2008</p> <p>Regional Fisheries Boards (Postponement of Elections) Order 2008. S.I. 548/2008</p>

	<p>Sea-Fisheries (Landing and Weighing of Pelagic Fish) Regulations 2008 S.I. 15/2008 Sea-Fisheries (Control of Catches) Regulations 2008 S.I. 22/2008 Sea-Fisheries (Fishing for Cod) Regulations 2008 S.I. 45/2008 Sea-Fisheries (Control of Catches) (Deep-Sea Stocks) Regulations 2008 S.I. 137/2008</p> <p>Wild Salmon and Sea Trout Tagging Scheme Regulations 2008. S.I. 586/2008</p>
2009	<p>Statutory Instruments European Communities (Quality of Shellfish Waters) (Amendment) Regulations 2009. S.I. 55/2009</p> <p>European Communities (Quality of Shellfish Waters) (Amendment) (No. 2) Regulations 2009. S.I. 464/2009</p> <p>European Communities (Habitats and Birds) (Sea-Fisheries) Regulations 2009 S.I. 346/2009 European Communities (Foreshore) Regulations 2009 S.I. 404/2009 Sea-Fisheries (Control on Fishing for Clams in Waterford Estuary) Regulations 2009 S.I. 412/2009</p> <p>Monkfish (Control of Landings) Regulations 2009 S.I. 33/2009</p> <p>Mussel Seed (Prohibition on Fishing) (No. 3) Regulations 2009 S.I. 554/2009</p> <p>Regional Fisheries Boards (Postponement of Elections) Order 2009. S.I. 495/2009</p> <p>Sea Fisheries (Control of Catches) Regulation 2009 S.I. 31/2009 Sea-Fisheries (Control of Catches) (Deep-Sea Stocks) Regulations 2009 S.I. 38/2009 Sea-Fisheries (Fishing for Herring) (West of Scotland) Regulations 2009 S.I. 39/2009 Sea-Fisheries (Technical Conservation Measures) Regulations 2009 S.I. 252/2009 Sea-Fisheries (Recording of Catches) Regulations 2009 S.I. 253/2009 Monkfish (Control of Landings) Regulations 2009 S.I. 417/2009 Sea-Fisheries (Control on fishing for claims in Waterford Estuary)(No. 2) Regulations 2009 S.I. 418/2009 Sea-Fisheries (Prosecution of Offences) Order 2009. S.I. 314/2009</p>
2010	<p>Acts of the Oireachtas Inland Fisheries Act 2010</p> <p>Statutory Instruments</p>

<p>Aquaculture (Licence Application) (Amendment) Regulations 2010. S.I. 280/2010</p> <p>Aquaculture (Licence Application) (Amendment) (No. 2) Regulations 2010. S.I. 369/2010</p> <p>Control of Fishing for Salmon (Amendment) Order 2010. S.I. 327/2010</p> <p>European Communities (Health of Aquaculture Animals and Products) (Amendment) Regulations 2010. S.I. 398/2010</p> <p>European Communities (Habitats and Birds) (Sea-Fisheries) (Amendment) Regulations 2010 S.I. 397/2010</p> <p>European Communities (Control on Mussel Fishing) Regulations 2008 (Amendment) Regulations 2010 S.I. 412/2010</p> <p>Fisheries (Commercial Fishing Licences) (Alteration of Duties and Fees) Order 2010. S.I. 40/2010</p> <p>Inland Fisheries Act (Establishment Day) Order 2010. S.I. 262/2010</p> <p>Inland Fisheries Act 2010 (Form of Instrument of Appointment) Regulations 2010. S.I. 316/2010</p> <p>Mussel Seed (Opening of Fisheries) Regulations 2010 S.I. 174/2010</p> <p>Mussel Seed (Closing of Fisheries) Regulations 2010 S.I. 228/2010</p> <p>Mussel Seed (Closing of Fisheries) (No. 2) Regulations 2010 S.I. 572/2010</p> <p>European Communities (Control on Mussel Fishing) Regulations (Amendment) (No. 2) Regulations 2010 S.I. 592/2010</p> <p>Sea-Fisheries (Technical Measures) Regulations 2010 S.I. 51/2010</p> <p>Sea-Fisheries (Control of Catches) Regulations 2010 S.I. 52/2010</p> <p>Sea-Fisheries (Control of Catches)(No. 2) Regulations 2010 S.I. 95/2010</p> <p>Sea-Fisheries (Quotas) Regulations 2010 S.I. 167/2010</p> <p>Sea-Fisheries (Control on Fishing for Clams in Waterford Estuary) Regulations 2010 S.I. 180/2010</p> <p>Sea-Fisheries (Prohibition on Fishing for Clams in Waterford Estuary) Regulations 2010 S.I. 378/2010</p> <p>Sea-Fisheries (Landing and Weighing of Pelagic Fish) Regulations 2010 S.I. 453/2010</p> <p>Sea-Fisheries (Illegal, Unreported and Unregulated Fishing) Regulations 2010 S.I. 554/2010</p>

<p>2011</p>	<p>Statutory Instruments</p> <p>European Communities (Health of Aquaculture Animals and Products) (Amendment) Regulations 2011. S.I. 430/2011</p> <p>Fisheries (Amendment) Act 1997 (Prescribed Organisations for Aquaculture Licences Appeals Board) Regulations S.I. 621/2011</p> <p>Mussel Seed (Opening of Fisheries) Regulations S.I. 204/2011</p> <p>Salmon Rod Ordinary Licences (Alteration of Licence Duties) Order 2011. S.I. 613/2011</p> <p>Sea-Fisheries (Recording of Fish) (Amendment) Regulations S.I. 91/2011</p> <p>Sea-Fisheries (Quotas) Regulations S.I. 68/2011</p> <p>Sea-Fisheries (Recording of Fish) Regulations S.I. 8/2011</p> <p>Sea-Fisheries (Control on Fishing for Clams in Waterford Estuary) Regulations S.I. 221/2011</p> <p>Sea-Fisheries (Common Fisheries Policy Community Control System) Regulations S.I. 490/2011</p> <p>Sea-Fisheries (Control of Catches) (Deep-Sea Stocks) Regulations S.I. 482/2011</p> <p>Sea-Fisheries (Technical Measures) Regulations / S.I. 481/2011</p> <p>Special Tidal Waters (Special Local Licenses) (Alteration of Duties) Order 2011. S.I. 614/2011</p>
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	<p>Fishery Harbour Centres (Rates and Charges) Order 2012. S.I. 214/2012</p> <p>Mussel Seed (Closing of Fisheries) Regulations S.I. 29/2012</p> <p>Sea-Fisheries (Technical Measures) (Amendment) Regulations S.I. 78/2012</p> <p>Sea-Fisheries (Quotas) Regulations S.I. 134/2012</p> <p>Sea-Fisheries and Maritime Jurisdiction (Mussel Seed) (Opening of Fisheries) Regulations S.I. 154/2012</p> <p>Sea-Fisheries (Community Control System) Regulations S.I. 320/2012</p> <p>Sea-Fisheries (Technical Measures) (Amendment) (No. 2) Regulations S.I. 337/2012</p> <p>Sea-Fisheries (Illegal, Unreported and Unregulated fishing)(Amendment) Regulations S.I. 367/2012</p> <p>Sea-Fisheries (Celtic Sea Technical Measures) Regulations S.I. 412/2012</p> <p>Sea-Fisheries (Community Control System) (Amendment) Regulations S.I. 453/2012</p>
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2014	<p>European Union(Common Fisheries Policy) Point Regulations S.I. 03/2014</p> <p>Sea -Fisheries (Quotas) Regulations S.I. 161/2014</p>

	<p>European Union (Birds and Natural Habitats)(Sea-Fisheries)(Amendment) Regulations S.I. 565/2014</p> <p>Lobster (Conservation of Stocks) Regulations S.I. 591/2014</p> <p>Sea-fisheries and Maritime Jurisdiction (Mussel Seed) (Opening of Fisheries) Regulations S.I. 386/2014</p> <p>Sea-fisheries (Celtic Sea Discard Reduction Dividend Scheme) Regulations S.I. 387/2014</p> <p>Shrimp (Conservation of Stocks) Regulations S.I. 592/201</p>
<p>2015</p>	<p>Statutory Instruments</p> <p>European Communities (Health of Aquaculture Animals and Products) (Amendment) Regulations 2015. S.I. 23/2015</p> <p>European Union (Common Fisheries Policy)(Landing Obligation) Regulations 2015. S.I. 83/2015</p> <p>Razor Clam - National Measures Regulations S.I. 206/2015</p> <p>Razor Clam - North Irish Sea Measures Regulations S.I. 207/2015</p> <p>Razor Clam (Conservation of Stocks)(North Irish Sea Spawning Season) Regulations S.I. 244/2015</p> <p>Razor Clam (Conservation of Stocks)(North Irish Sea)(Amendment) Regulations S.I. 588/2015</p> <p>Sea and to the West of Scotland)(Amendment) Regulations S.I. 565/2015</p> <p>Sea-Fisheries (Quotas)(Deep-Sea Stocks) Regulations S.I. 80/2015</p> <p>Sea-Fisheries (Common Fisheries Policy)(Bluefin Tuna) Regulations S.I. 135/2015</p> <p>Sea-Fisheries (Alleviation Measures) (Sea Bass Stocks) Regulations S.I. 115/2015</p> <p>Sea-Fisheries (Quotas) Regulations S.I. 116/2015</p> <p>Sea-Fisheries (Celtic Sea Technical Measures) Regulations S.I. 231/2015</p> <p>Sea-Fisheries and Maritime Jurisdiction (Mussel Seed)(Opening of Fisheries)(Rusk Channel) Regulations S.I. 351/2015</p> <p>Sea-Fisheries (Technical Measures)(Amendment) Regulations S.I. 531/2015</p> <p>Sea-fisheries (Conservation and Rational Exploitation of Cod in the North Sea-Fisheries (Multi-Rigged Fishing Gear) Regulations S.I. 518/2015</p> <p>Sea-Fisheries (Conservation and Rational Exploitation of Deep-Sea Species)(Amendment) Regulations S.I. 511/2015</p> <p>Sea-Fisheries and Maritime Jurisdiction (Mussel Seed) (Opening of Fisheries) Regulations S.I. 370/2015</p> <p>Sea-fisheries (Quotas) No 2 Regulations S.I. 478/2015</p> <p>European Union (Common Fisheries Policy)(Landing Obligation)(Amendment) Regulations S.I. 510/2015</p>

	Sea-fisheries and maritime Jurisdiction (Mussel Seed)(Opening of Fisheries)(Castlemaine)Regulations S.I. 589/2015
2016	<p>Statutory Instruments</p> <p>Aquaculture (Licence Application) (Amendment) Regulations 2016. S.I. 464/2016</p> <p>Aquaculture (License Application) (Amendment) Regulations S.I. 464/2016</p> <p>Bass (Conservation of Stocks) Regulations S.I. 341/2016</p> <p>European Communities (Pesticide Residues) (Amendment) Regulations S.I. 67/2016</p> <p>European Communities (Direct Support Schemes) Offences and Control (Amendment) Regulations S.I. 483/2016</p> <p>European Union (Labelling of Fishery And Aquaculture Products) Regulations 2016. S.I. 121/2016</p> <p>European Union (Common Fisheries Policy) (Point System) Regulations S.I. 125/2016</p> <p>Lobster (Conservation of Stocks) (Amendment) Regulations S.I. 679/2016</p> <p>Mussel Seed (Opening of Fisheries) Regulations S.I. 469/2016</p> <p>Non-Commercial Pot Fishing (Lobster and Crab) Regulations S.I. 31/2016</p> <p>Sea-Fisheries (Quotas) Regulations S.I. 112/2016</p> <p>Sea-Fisheries (Community Control System) Regulations S.I. 54/2016</p> <p>Sea-Fisheries (North Western Waters Landing Obligation) Regulations S.I. 08/2016</p> <p>Sea-Fisheries (Conservation and Rational Exploitation of Hake)(Amendment) Regulations S.I. 07/2016</p> <p>Sea Fisheries Protection Authority Superannuation Scheme S.I. 353/2016</p>

	<p>Sea-Fisheries and Maritime Jurisdiction (Mussel Seed) (Opening of Fisheries) (Amendment) Regulations S.I. 551/2016</p> <p>Sea-Fisheries (Codend Mesh Size) Regulations S.I. 510/2016</p> <p>Sea-Fisheries (Common Fisheries Policy) (Bluefin Tuna) Regulations S.I. 680/2016</p>
2017	<p>Acts of the Oireachtas</p> <p>Inland Fisheries (Amendment) Act 2017</p> <p>Statutory Instruments</p> <p>Fisheries (Amendment) Act 1997 (Prescribed Organisations For Aquaculture Licenses Appeals Board) Regulations 2017. S.I. 588/2017</p> <p>Lobster (Conservation of Stocks) (Amendment) Regulations S.I. 640 /2017</p> <p>Sea-Fisheries (Quotas) Regulations S.I. 136/2017</p> <p>Sea-Fisheries and Maritime Jurisdiction (Mussel Seed)(Opening of Fisheries) Regulations S.I. 398/2017</p> <p>Sea-Fisheries (Community Control System)(Amendment)Regulations S.I. 78/2017</p> <p>Sea-Fisheries (Quotas) Regulations S.I. 52/2017</p> <p>Sea-Fisheries (North Western Waters Landing Obligation) Regulations S.I. 51/2017</p> <p>Sea-Fisheries (Conservation and Rational Exploitation of Deep-Sea Species) Regulations S.I. 50/2017</p> <p>Sea-Fisheries (Quotas)(Deep-Sea Stocks) Regulations S.I. 09/2017</p> <p>Velvet Crab (Conservation of Stocks) Regulations S.I. 431/2017</p>
2018	<p>Statutory Instruments</p> <p>Aquaculture (Licence Application) (Amendment) Regulations 2018. S.I. 240/2018</p> <p>Aquaculture (Licence Application) (Amendment) Regulations S.I. 240/2018</p>

	<p>European Union (Common Fisheries Policy) (Landing Obligation) (Amendment) Regulations S.I. 137/2018</p> <p>European Union (Common Fisheries Policy) (Point System) Regulations S.I. 89/2018</p> <p>Inland Fisheries Ireland Superannuation Scheme 2018. S.I. 112/2018</p> <p>Inland Fisheries (Fixed Charge Notice) Regulations 2018. S.I. 643/2018</p> <p>Razor Clam (Conservation of Stocks) (North Irish Sea) Regulations S.I. 160/2018</p> <p>Sea-Fisheries and Maritime Jurisdiction (Mussel Seed) (Opening of Fisheries) Regulations S.I. 369/2018</p> <p>Sea-Fisheries (Community Control System) (Amendment) Regulations S.I. 155/2018</p> <p>Sea-Fisheries (Quotas) Regulations S.I. 99/2018</p> <p>Sea-Fisheries (North Western Waters Landing Obligation) Regulations S.I. 88/2018</p> <p>Sea-Fisheries (Common Fisheries Policy) (Bluefin Tuna) (Amendment) Regulations S.I. 447/2018</p> <p>Sea-Fisheries (Community Control System) (Amendment) (No 2) Regulations S.I. 446/2018</p> <p>Wild Salmon and Sea Trout Tagging Scheme Regulations 2018. S.I. 585/2018</p>
<p>2019</p>	<p>Acts of the Oireachtas 2019 Amendments to the Sea-Fisheries Acts 2006 Sea Fisheries (Amendment) Act 2019</p> <p>Statutory Instruments</p> <p>Aquaculture Appeals (Environmental Impact Assessment) (Amendment) Regulations 2019 S.I. 276</p> <p>Brown Crab (Conservation of Stocks) Regulations 2019 S.I. 26/2019</p> <p>Sea-Fisheries (North Western Waters Landing Obligation) Regulations S.I. 43</p>

	<p>Sea-Fisheries and Maritime Jurisdiction (Bluefin Tuna) Regulations 2019 S.I. 265</p> <p>Sea-Fisheries and Maritime Jurisdiction (Mussel Seed) (Opening of Fisheries) Regulations 2019 S.I. 464/2019</p> <p>Sea Fisheries (Community Control System) (Amendment) Regulations 2019. S.I. 365/2019</p> <p>Sea-Fisheries (Community Control System) (Amendment) (No. 2) Regulations 2019. S.I. 596/2019</p> <p>Sea-Fisheries (Common Fisheries Policy) (Bluefin Tuna) (Amendment) Regulations 2019. S.I. 360/2019</p> <p>Wild Salmon and Sea Trout Tagging Scheme (Amendment) Regulations 2019. S.I. 669/2019</p>
<p>2020</p>	<p>Statutory Instruments</p> <p>Crawfish (Conservation of Stocks) Regulations 2019 S.I. 289/2020</p> <p>European Union (Aquaculture Appeals) (Environmental Impact Assessment) Regulations 2019 S.I. 341/2020</p> <p>Sea-Fisheries (North Western Waters Landing Obligation) Regulations 2020 S.I. 54/2020</p> <p>Sea-Fisheries (Quotas) Regulations 2020 S.I. 57/2020</p> <p>Sea Fisheries (Shark Fin) Regulations 2020 S.I. 172/2020</p> <p>Sea-Fisheries (Common Fisheries Policy) (Bluefin Tuna) (Amendment) Regulations 2019 S.I. 360/2020</p> <p>Sea Fisheries (Community Control System) (Amendment) Regulations 2019 S.I. 365/2020</p> <p>Sea-Fisheries (Technical Measures) Regulations 2019 S.I. 520/2020</p> <p>Sea-Fisheries (Community Control System) (Amendment) (No. 2) Regulations 2019 S.I. 596/2020</p> <p>Sea-Fisheries (Amendment) Act 2019 (Commencement) Order 2019 S.I. 165/2020</p> <p>Sea-Fisheries (Quotas) Regulations 2019 S.I. 71/2020</p> <p>Sea-Fisheries (Quotas) (Deep-Sea Stocks) Regulations 2019 S.I. 70/2020</p>

	Wild Salmon and Sea Trout Tagging Scheme (Amendment) Regulations 2020. S.I. 667/2020
2021	<p>Statutory Instruments</p> <p>Control of Fishing for Salmon Order 2021. S.I. 102/2021</p> <p>Control of Fishing for Salmon (Amendment) Order 2021. S.I. 333/2021</p> <p>Sea-Fisheries (Quotas) Regulations 2021. S.I. 69/2021</p> <p>Sea-Fisheries (Quotas) (Deep-Sea Stocks) Regulations 2021. S.I. 70/2021</p> <p>Sea-Fisheries (North Western Waters Landing Obligation) Regulations 2021. S.I. 101/2021</p> <p>Sea-Fisheries (Illegal, Unreported and Unregulated Fishing) (Amendment) Regulations 2021. S.I. 37/2021</p> <p>Sea-Fisheries (Common Fisheries Policy) (Bluefin Tuna) (Amendment) Regulations 2021. S.I. 497/2021</p>

7. Air / Emissions Trading / Solvents / RoHS / Noise Pollution/Truaillíú

Year	Title
	International Conventions and Agreements
1988	Convention on the Protection of the Ozone Layer
2009	The Protocol on Pollutant Release and Transfer Registers (PRTR)
2017	Minamata Mercury Convention
	European Union Law
	Treaty (TFEU) Provision <i>Article 191: “1. Union policy on the environment shall contribute to pursuit of the following objectives: — preserving, protecting and improving the quality of the environment, — protecting human health, — prudent and rational utilisation of natural resources, — promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.” [See all of Article 191]</i>
1996	IPPC Directive 96/61/EC
2000	European Regulation on Substances that Deplete the Ozone Layer (Regulation (EC) No. 2037/2000) European measures to control substances that damage the ozone layer, to comply with the Montreal Protocol
2002	Directive 2002/30/EC (aircraft noise) Directive 2002/49/EC Directive relating to the assessment and management of environmental noise
2003	Directive 2003/87/EC EU Emissions Trading Directive as amended by Regulation (EU) 421/2014
2004	Directive 2004/107/EC (Fourth Daughter) Air quality European Communities (Greenhouse Gas Emissions Trading) Regulations 2004 Regulations covering Ireland’s role for trading greenhouse gas emissions to comply with the Kyoto Protocol. VOC Solvents Emissions Directive 2004 amending 1999 EU directive 1999/13/EC Designed to limit emissions of pollutants from certain solvents. Directive 2004/101/EC (Linking Directive) Links the Kyoto Protocol project-based mechanisms with the EU ETS.
2006	EU Commission decisions on the RoHS directive during 2006
2007	Decision 2007/589/EC MRG 2007

	Commission Decision establishing guidelines for the monitoring and reporting of greenhouse gas emissions.
2008	CAFE Directive (2008/50/EC) Directive 2008/101/EC Aviation. Inclusion of aviation activities in the scheme for greenhouse gas emission trading.
2009	Decision 2009/339/EC MRG 2009 Commission Decision amending MRG 2007 to include aviation emissions.
2010	EC (Greenhouse Gas Emissions Trading) (Aviation) Regulations 2010
2011	RoHS Directive 2011/65/EU

	National Law
	Bunreacht na hÉireann Unenumerated Rights
Pre 1990	<p>Acts of the Oireachtas Control of Dogs Act 1986 Air Pollution Act 1987</p> <p>Statutory Instruments Air Pollution Act, 1987 (Authorised Fuel) Regulations 1988. S.I. 298/1988 Air Pollution Act, 1987 (Licensing of Industrial Plant) Regulations 1988. S.I. 266/1988 Road Traffic (Construction, Equipment and Use of Vehicles) Regulations 1963</p>
1990s	<p>Acts of the Oireachtas Control of Dogs (Amendment) Act 1992 Energy (Miscellaneous Provisions) Act 1995 EPA Act 1992</p> <p>Statutory Instruments Air Pollution Act, 1987 (Emission Limit Value For Use of Asbestos) Regulations 1990. S.I. 28/1990 Air Pollution Act, 1987 (Petroleum Vapour Emissions) Regulations, 1997. S.I. 375/1997 Energy (Miscellaneous Provisions) Act 1995 (Section 14) Order 1996. S.I. 274/1996 Energy (Miscellaneous Provisions) Act 1995 (Section 14) (No. 2) Order 1996. S.I. 329/1996 Energy (Miscellaneous Provisions) Act 1995 (Section 14) Order 1997. S.I. 71/1997 Environmental Protection Agency Act 1992 (Noise) Regulations 1994 S.I. 179/1994 European Protection Agency Act 1992 (Control of VOC Emissions from Petrol Storage & Distribution) Regulations (SI 374 of 1997)</p>

2001	<p>Statutory Instruments Air Pollution Act, 1987 (Licensing of Industrial Plant) (Fees Amendment) Regulations, 2001. S.I. 575/2001</p>
2002	<p>Acts of the Oireachtas Sustainable Energy Act 2002</p>
2003	<p>Statutory Instruments European Communities (Air Navigation and Transport Rules and Procedures for Noise Related Operating Restrictions at Airports) Regulations 2003</p>
2005	<p>Statutory Instruments RoHS Regulations S.I. 341 of 2005</p>
2006	<p>Acts of the Oireachtas Energy (Miscellaneous Provisions) Act 2006</p> <p>Statutory Instruments Control of Substances That Deplete the Ozone Layer Regulations 2006 (S.I. No. 281 of 2006)</p> <p>Energy (Miscellaneous Provisions) Act 2006 (Section 28(4)) Regulations 2013. S.I. 155/2013</p> <p>Environmental Noise Regulations 2006</p>
2007	<p>Acts of the Oireachtas Carbon Fund Act 2007</p>

<p>2008</p>	<p>Acts of the Oireachtas Chemicals Act 2008</p>
<p>2009</p>	<p>Acts of the Oireachtas Housing (Miscellaneous Provisions) Act 2009</p> <p>Statutory Instruments Air Quality Arsenic, Cadmium, Mercury, Nickel and Polycyclic Aromatic Hydrocarbons in Ambient Air Regulations. S.I. 58 of 2009</p>
<p>2010</p>	<p>Acts of the Oireachtas Chemicals (Amendment) Act 2010</p> <p>Energy (Biofuels and Miscellaneous Provisions) Act 2010</p> <p>Statutory Instruments Control of Substances that Deplete the Ozone Layer Regulations 2011. S.I. 465/2011</p> <p>European Communities (Greenhouse Gas Emissions Trading) (Aviation) Regulations 2010. S.I. 261/2010</p>
<p>2011</p>	<p>Statutory Instruments Air Quality Standards Regulations 2011. S.I. 180/2011</p> <p>Chemicals (Asbestos Articles) Regulations 2011. S.I. 248/2011</p> <p>Chemicals Act (CLP Regulation) Regulations 2011. S.I. 102/2011</p>
<p>2012</p>	<p>Acts of the Oireachtas Energy (Miscellaneous Provisions) Act 2012</p> <p>Statutory Instruments Air Pollution Act (Marketing, Sale, Distribution and Burning of Specified Fuels) Regulations 2012. S.I. 326/2012</p> <p>European Communities (Greenhouse Gas Emissions Trading) Regulations 2012. S.I. 490/2012</p> <p>European Communities (Greenhouse Gas Emissions Trading) (Aviation) (Amendment) Regulations 2012. S.I. 502/2012</p>

	<p>European Union (Paints, Varnishes, Vehicle Refinishing Products and Activities) Regulations 2012. S.I. 564/2012</p> <p>European Union (Installations and Activities using Organic Solvents) Regulations 2012</p> <p>RoHS Regulations S.I No. 513 of 2012</p> <p>Paints Regulations, S.I No. 564 of 2012</p>
2014	<p>Statutory Instruments European Communities (Greenhouse Gas Emissions Trading) (Aviation) (Amendment) Regulations 2014. S.I. 553/2014</p> <p>European Union (Installations and Activities Using Organic Solvents) (Amendment) Regulations 2014. S.I. 399/2014</p> <p>European Union (Paints, Varnishes, Vehicle Refinishing Products and Activities) (Amendment) Regulations 2014. S.I. 398/2014</p> <p>Regulation (EU) No. 517 of 2014 on fluorinated greenhouse gases</p>
2015	<p>Acts of the Oireachtas Climate Action and Low Carbon Development Act 2015</p> <p>Statutory Instruments Air Pollution (Fixed Payment Notice) Regulations 2015. S.I. 633/2015</p> <p>Air Pollution Act (Marketing, Sale, Distribution and Burning of Specified Fuels) (Amendment) Regulations 2015. S.I. 30/2015</p> <p>Chemicals Act (Control of Major Accident Hazards Involving Dangerous Substances) Regulations 2015. S.I. 209/2015</p> <p>European Communities (Control of Major Accident Hazards Involving Dangerous Substances) Regulations 2015.</p> <p>European Communities Act, 1972 (Environmental Specifications for Petrol, Diesel Fuels and Gas Oils for Use By Non-Road Mobile Machinery, Including Inland Waterway Vessels, Agricultural and Forestry Tractors, and Recreational Craft) (Amendment) Regulations 2015. S.I. 236/2015</p>

<p>2016</p>	<p>Acts of the Oireachtas Air Pollution Act (Fixed Payment Notice)(Paints) Regulations 2016 Energy Act 2016</p> <p>Statutory Instruments</p> <p>Air Pollution Act (Fixed Payment Notice) (Paints) Regulations 2016. S.I. 348/2016 Air Pollution Act (Fixed Payment Notice) (Solvents) Regulations 2016. S.I. 347/2016</p> <p>Air Pollution Act (Marketing, Sale, Distribution and Burning of Specified Fuels) (Amendment) Regulations 2016. S.I. 128/2016</p> <p>Air Pollution Act, 1987 (Registration of Fuel Bagging Operators and Suppliers, and Marketing, Sale, Distribution and Burning of Specified Fuels) (Amendment) Regulations 2016. S.I. 571/2016</p> <p>Air Quality Standards (Amendment) and Arsenic, Cadmium, Mercury, Nickel and Polycyclic Aromatic Hydrocarbons in Ambient Air (Amendment) Regulations 2016. S.I. 659/2016</p> <p>Climate Action and Low Carbon Development Act 2015 (Establishment Day) Order 2016. S.I. 25/2016</p> <p>European Union (Fluorinated Greenhouse Gas) Regulations 2016. S.I. 658/2016</p>
<p>2017</p>	<p>Statutory Instruments European Union (Greenhouse Gas Emission Reductions, Calculation Methods and Reporting Requirements) Regulations 2017. S.I. 160/2017</p>
<p>2019</p>	<p>Statutory Instruments Aircraft Noise (Dublin Airport) Regulation Act 2019 Levy No. 1 Regulations 2019. S.I. 590/2019</p> <p>Chemicals Act 2008 (Rotterdam Regulation) Regulations 2019. S.I. 213/2019</p> <p>European Union (Fluorinated Greenhouse Gas) (Amendment) Regulations 2019. S.I. 367/2019</p>

	<p>European Union (Fluorinated Greenhouse Gas) (Amendment) (No. 2) Regulations 2019. S.I. 534/2019</p> <p>European Union (Greenhouse Gas Emission Reductions, Calculation Methods And Reporting Requirements) (Amendment) Regulations 2019. S.I. 249/2019</p>
2020	<p>Statutory Instruments</p> <p>Aircraft Noise (Dublin Airport) Regulation Act 2019 Levy No. 2 Regulations 2020. S.I. 537/2020</p> <p>Air Pollution Act (Marketing, Sale, Distribution and Burning of Specified Fuels) (Amendment) Regulations 2020. S.I. 260/2020</p> <p>European Union (Fluorinated Greenhouse Gas) (Amendment) Regulations 2020. S.I. 32/2020</p> <p>European Union (Greenhouse Gas Emission Reductions, Calculation Methods and Reporting Requirements) (Amendment) Regulations 2020. S.I. 670/2020</p> <p>European Union (Greenhouse Gas Emissions Trading) (Amendment) Regulations 2020. S.I. 755/2020</p>
2021	<p>Acts of the Oireachtas</p> <p>Climate Action and Low Carbon Development (Amendment) Act 2021</p> <p>Statutory Instruments</p> <p>Aircraft Noise (Dublin Airport) Regulation Act 2019 Levy No. 3 Regulations 2021. S.I. 604/2021</p> <p>Climate Action and Low Carbon Development Act 2015 (Greenhouse Gas Emissions) Regulations 2021. S.I. 531/2021</p>

8. GMO Regulation/Rialú ar OGM

Year	Title
	International Conventions and Agreements
2014	Nagoya Protocol on Access to Genetic Resources and Benefit-Sharing
	European Union Law
	Directive and Regulations
1990	Directive 90/219/EEC, as amended by Directive 98/81/EC (regulates research) Directive 2009/41/EC (on the contained use of Genetically Modified Microorganisms (GMMs))
2001	Directive 2001/18/EC on the deliberate release into the environment of GMO
2003	Regulation (EC) No 1829/2003 (genetically modified food and feed) Regulation (EC) No 1830/2003 Concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms and amending Directive 2001/18/EC Regulation (EC) No 1946/2003 (on the transboundary movement of GMOs)
2004	Regulation (EC) 65/2004

	National Law
	Bunreacht na hÉireann Unenumerated Rights
1997	Statutory Instruments Genetically Modified Organisms (Amendment) Regulations 1997. S.I. 332/1997
2001	Statutory Instrument Genetically Modified Organisms (Contained Use) Regulations 2001. S.I. 73/2001
2003	Statutory Instrument Genetically Modified Organisms (Deliberate Release) Regulations 2003 (SI 500 of 2003)
2004	Statutory Instruments Genetically Modified Organisms (Transboundary Movement) Regulations 2004. S.I. 54/2004
2010	Statutory Instruments Genetically Modified Organisms (Contained Use) (Amendment) Regulations 2010. S.I. 442/2010
2011	Statutory Instruments Genetically Modified Organisms (Deliberate Release) (Amendment) Regulations 2011. S.I. 308/2011
2019	Statutory Instrument European Union (Nagoya Protocol on Access to Genetic Resources and Benefit-Sharing) Regulations 2019 S.I. No. 253/2019 Genetically Modified Organisms (Deliberate Release) (Amendment) Regulations 2019. S.I. 56/2019

9. Dumping at Sea and Maritime Law/ Cosaint Mara agus Dí Muirí

Year	Title
	International Conventions and Agreements
1973	International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 (MARPOL 73/78)
1992	The Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR)
1994	United Nations Convention for the Law of the Sea (UNCLOS)
	European Union Law
	Directive and Regulations
1991	Directive 91/271/EEC of 21 May 1991 concerning urban wastewater treatment
1992	Directive 92/112/EEC Article 4 on procedures for harmonizing the programmes for the reduction and eventual elimination of pollution caused by waste from the titanium dioxide industry.
2008	Directive 2008/56/EC (Marine Strategy Framework Directive)

	National Law
	Bunreacht na hÉireann Unenumerated Rights
1959	Statutory Instrument Maritime Jurisdiction Act, 1959 (Charts) Order 1959. S.I. 174/1959
1996	Acts of the Oireachtas Dumping at Sea Act 1996
2004	Acts of the Oireachtas Dumping at Sea (Amendment) Act 2004
2007	Statutory Instruments Sea Fisheries, Foreshore and Dumping at Sea Order 2007 S.I. 707/2007
2009	Acts of the Oireachtas Foreshore and Dumping at Sea (Amendment) Act 2009
2010	Statutory Instruments European Communities (Public Participation) Regulations 2010. S.I. 352/2010
2011	Statutory Instruments European Communities (Birds and Natural Habitats) Regulations 2011
2012	Statutory Instruments Dumping at Sea (Fees) Regulations 2012

<p>2014</p>	<p>Statutory Instruments Maritime Jurisdiction (Boundaries of Exclusive Economic Zone) Order 2014. S.I. 86/2014</p>
<p>2015</p>	<p>Statutory Instruments European Communities (Birds and Natural Habitats)(Amendment) Regulations 2015</p>
<p>2016</p>	<p>Statutory Instruments Maritime Jurisdiction (Straight Baselines) Order 2016. S.I. 22/2016</p>
<p>2019</p>	<p>Statutory Instruments Maritime Jurisdiction (Bay Closing Lines) Order 2019. S.I. 155/2019</p>

10. Radiation/Radaíocht

Year	Title
	International Conventions and Agreements
1980	Convention on the Physical Protection of Nuclear Materials (CPPNM) (As amended) Amendment to the CPPNM 2005)
1980	Convention on Assistance in the Case of a Nuclear Accident or Nuclear Emergency
1992	The Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR)
1994	United Nations Convention for the Law of the Sea (UNCLOS) Convention on Nuclear Safety 1994
2001	Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management
2004	Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland on the early notification of a nuclear accident or incident of radiological significance and the exchange of information concerning the operation and management of nuclear facilities or activities
	European Union Law
	<p>Treaty (TFEU) Provision Article 192.2 (c): <i>“By way of derogation from the decision-making procedure provided for in paragraph 1 and without prejudice to Article 114, the Council acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, shall adopt:</i> (c) <i>measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply.”</i></p> <p>Article 4.2 (f): <i>“Shared competence between the Union and the Member States applies in the following principal areas:</i> (f) <i>energy”</i></p>
1987	87/600/EURATOM (on Community arrangements for the early exchange of information in the event of a radiological emergency)

2000	1609/2000/EC Commission Regulation establishing a list of products excluded from the application of Council Regulation (EEC) No 737/90 on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power station
2001	2001/928/EURATOM (Radon in drinking water)
2005	2005/844/EURATOM (accession of the European Atomic Energy Community to the Convention on Early Notification of a Nuclear Accident)
2006	1635/2006/EC Commission Regulation laying down detailed rules for the application of Council Regulation (EEC) No 737/90 on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power-station
2008	733/2008/EC Council Regulation on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power station
2009	1048/2009/EC amending Regulation (EC) No 733/2008 (Above)
2016	2016/52/EURATOM Council Regulation laying down maximum permitted levels of radioactive contamination of food and feed following a nuclear accident or any other case of radiological emergency
2013	2013/59/EURATOM (basic safety standards for protection against the dangers arising from exposure to ionising radiation, and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom) 2013/51/EURATOM (drinking water)
National Law	
Bunreacht na hÉireann Unenumerated Rights	
1988-1994	Acts of the Oireachtas Radiological Protection Act 1991
	Statutory Instruments European Communities (Medical Ionizing Radiation) Regulations, 1988. S.I. No. 189/1988

	<p>Radiological Protection Act 1991 (Establishment Day) Order 1992. S.I. 48/1992</p> <p>Radiological Protection Act 1991 (Designation of Convention Countries) Order 1991. S.I. 373/1991</p>
2000	<p>Statutory Instruments European Communities (Foodstuffs Treated with Ionising Radiation) Regulations, 2000. S.I. No. 297/2000</p>
2002	<p>Acts of the Oireachtas Radiological Protection (Amendment) Act 2002</p> <p>Statutory Instruments European Communities (Medical Ionising Radiation Protection) Regulations. 2002 S.I. No. 478/2002</p>
2005	<p>Statutory Instruments Radiological Protection Act 1991 (Designation of Convention Countries) Order 2005. S.I. 326/2005</p>
2007	<p>Statutory Instruments European Communities (Medical Ionising Radiation Protection) (Amendment) Regulations 2007. S.I. No. 303/2007</p>
2010	<p>Statutory Instruments European Communities (Medical Ionising Radiation Protection) (Amendment) Regulations 2010. S.I. No. 459/2010</p>
2011	<p>Statutory Instruments Radiological Protection Act 1991 (Licensing Application and Fees) (Amendment) Regulations 2011. S.I. 391/2011</p>
2012	<p>Statutory Instruments European Communities (Ionising Radiation) (Amendment) Regulations 2012. S.I. No. 152/2012</p>
2014	<p>Acts of the Oireachtas Radiological Protection (Miscellaneous Provisions) Act 2014</p>

	<p>Statutory Instruments Radiological Protection (Miscellaneous Provisions) Act 2014 (Dissolution Day) Order 2014. S.I. 360/2014</p>
2018	<p>Acts of the Oireachtas Radiological Protection (Amendment) Act 2018</p> <p>Statutory Instruments European Union (Basic Safety Standards for Protection Against Dangers Arising from Medical Exposure to Ionising Radiation) Regulations 2018. S.I. No. 256/2018</p>
2019	<p>Statutory Instruments European Union (Basic Safety Standards for Protection Against Dangers Arising from Medical Exposure to Ionising Radiation) (Amendment) Regulations 2019. S.I. 332/2019 European Union (Basic Safety Standards for Protection Against Dangers Arising from Medical Exposure to Ionising Radiation) (Amendment) (No. 2) Regulations 2019. S.I. 413/2019</p> <p>Radiological Protection Act 1991 (Ionising Radiation) Regulations 2019. S.I. No. 30/2019 Radiological Protection Act 1991 (Non-Ionising Radiation) Order 2019. S.I. 190/2019</p> <p>Radiological Protection (Amendment) Act 2018 (Vesting Day) (Part 3) Order 2019. S.I. 14/2019 Radiological Protection (Amendment) Act 2018 (Vesting Day) (Part 4) Order 2019. S.I. 15/2019</p> <p>Radiological Protection Act 1991 (Authorisation Application and Fees) Regulations 2019. S.I. 34/2019</p>

11. Forestry/Foraosieacht

Year	Title
	International Conventions and Agreements
1967	OECD Scheme for the Control of Forest Reproductive Material moving in International Trade 1967
1971	Ramsar Convention on Wetlands 1971
1972	World Heritage Convention Protection of the World Cultural and Natural Heritage United Nations Convention on Biological Diversity
1975	Convention on International Trade in Endangered Species (CITES) 1975
1983	International Tropical Timber Agreement (ITTA)
1985	The Vienna Convention for the Protection of the Ozone Layer 1985 with Montreal Protocol on Substances that Deplete the Ozone Layer 1985 (Universal Ratification 2009)
1989	Indigenous and Tribal Peoples Convention, 1989 (ILO No. 169)
1992	United Nations Framework Convention on Climate Change (Rio Convention) Kyoto Protocol (1997) Convention on Biological Diversity 1992
1994	Desertification Convention 1994
	European Union Law
	Directives and other instruments
1966	Council Directive 66/404/EEC on the marketing of forest reproductive material

1971	Council Directive 71/161/EEC on external quality standards for forest reproductive material marketed within the Community
1977	Council Directive 77/93/EEC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community Council Directive 77/409/EEC on the conservation of wild birds.
1992	Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora. Directive 2006/11/EC on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community. Community Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment.
1999	Council Directive 1999/105/EC on the marketing of forest reproductive material
2000	Directive 2000/60/EC establishing a framework for Community action in the field of water policy
2001	Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment.
2015	Resolutions arising from the Ministerial Conferences on the Protection of Forests in Europe (MCPFE) 2015
	National Law
	Bunreacht na hÉireann Unenumerated Rights
Pre 1990	Acts of the Oireachtas Agriculture Act 1931 Agriculture (Research, Training and Advice) Act 1988 Forestry Act 1946 Forestry Act 1988 Local Government (Water Pollution) Act 1977 National Monuments Act 1930 National Monuments (Amendment) Act 1954 National Monuments (Amendment) Act 1987

	<p>Wildlife Acts 1976 and 2000</p> <p>Statutory Instruments Agriculture (Research, Training and Advice) Act, 1988 (Establishment Day) Order 1988. S.I. 183/1988</p> <p>Forestry Act 1946 (Appeal Tribunal) Regulations 1949. S.I. 214/1959</p> <p>Forestry Act 1946 (Appeal Tribunal) Regulations 1959. S.I. 61/1959</p> <p>Forestry Act 1946 (Part III) Regulations 1959. S.I. 62/1959</p> <p>Forestry Act 1946 (Part III) (Lay Commissioners) Regulations 1949. S.I. 215/1949</p> <p>Forestry Act 1946 (Part III) (Lay Commissioners) Regulations 1959. S.I. 60/1959</p> <p>Forestry Act 1946 (Part IV) Regulations 1949. S.I. 67/1949</p> <p>Forestry Act 1988 (Coillte Teoranta) (Vesting Day) Order 1988. S.I. 367/1988</p> <p>Importation of Forest Trees (Prohibition) Order 1949. S.I. 292/1949</p> <p>Importation of Forest Trees (Prohibition) Order 1949 (Amendment) Order 1952. S.I. 371/1952</p>
<p>1990-2000</p>	<p>Acts of the Oireachtas Environmental Protection Agency Act 1992</p> <p>Forestry Act 1988 (26/1988)</p> <p>Forestry (Amendment) Act 2009 (40/2009)</p> <p>Litter Pollution Acts 1997 to 2009</p> <p>Local Government (Water Pollution) (Amendment) Act 1990</p> <p>Roads Act 1993 to 2007</p> <p>National Monuments (Amendment) Act 1994</p> <p>Occupiers Liability Act 1995</p> <p>Planning and Development Acts 2000 to 2011</p> <p>Waste Management Acts 1996 to 2011</p> <p>Wildlife Act 1976 (39/1976), ss. 55 and 63</p>

<p>2001</p>	<p>Acts of the Oireachtas Agriculture Appeals Act 2001</p> <p>Statutory Instruments Planning and Development Regulations 2001 (S.I. No. 600 of 2001)</p>
<p>2002</p>	<p>Statutory Instruments Agriculture Appeals Regulations 2002. S.I. 193/2002</p>
<p>2004</p>	<p>Acts of the Oireachtas National Monuments Act 2004</p>
<p>2006</p>	<p>Statutory Regulations Agriculture (Research, Training and Advice) Act, 1988 (Transfer of Property) Order 2006. S.I. 392/2006</p> <p>European Communities (Environmental Impact Assessment) (Forestry Consent System) (Amendment) Regulations 2006 S.I. 168/2006</p> <p>European Communities (Aerial Fertilisation) (Forestry) Regulations 2006 S.I. 592/2006</p> <p>Safety, Health and Welfare at Work (Construction) Regulations 2006 S.I. No. 504/2006</p>
<p>2007</p>	<p>Statutory Regulations Safety, Health and Welfare at Work (General Application) Regulations 2007 (S.I. No. 299 of 2007)</p>
<p>2009</p>	<p>Acts of the Oireachtas Forestry (Amendment) Act 2009</p> <p>Statutory Regulations Agriculture (Research, Training and Advice) Act, 1988 (Transfer of Property) Order 2009. S.I. 16/2009</p> <p>European Communities Environmental Objectives (Surface Waters) Regulations 2009 (S.I. No. 272 of 2009)</p> <p>Forestry Act 1988 (Section 37) (Coillte Teoranta) Byelaws 2009 S.I. 151/2009</p>

<p>2010</p>	<p>Statutory Regulations European Communities (Forest Consent and Assessment) Regulations 2010 (S.I. No 558 of 2010)</p>
<p>2012</p>	<p>Statutory Regulations European Communities (Aerial Fertilisation) (Forestry) Regulations 2012 (S.I. No 125 of 2012)</p>
<p>2014</p>	<p>Acts of the Oireachtas Forest Act 2014</p>
<p>2017</p>	<p>Statutory Regulations Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2017. S.I. 219/2017</p> <p>Forestry Regulations 2017. S.I. 191/2017</p> <p>Forestry (Amendment) Regulations 2017. S.I. 498/2017</p>
<p>2018</p>	<p>Statutory Instruments Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2018. S.I. 164/2018</p>
<p>2019</p>	<p>Statutory Instruments Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2019. S.I. 556/2019</p>
<p>2020</p>	<p>Acts of the Oireachtas Forestry (Miscellaneous Provisions) Act 2020</p> <p>Statutory Instruments Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2020. S.I. 415/2020</p> <p>Forestry (Amendment) Regulations 2020. S.I. 31/2020</p>

	<p>Forestry (Amendment) (No. 2) Regulations 2020. S.I. 39/2020</p> <p>Forestry (Amendment) (No. 3) Regulations 2020. S.I. 416/2020</p> <p>Forestry (Licence Application and Submission Fees) Regulations 2020. S.I. 417/2020</p> <p>Forestry Appeals Committee Regulations 2020. S.I. 418/2020</p>
2021	<p>Statutory Instruments</p> <p>Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2021. S.I. 368/2021</p> <p>Agriculture Appeals Act 2001 (Section 14A) Regulations 2021. S.I. 353/2021</p>

12. Compliance and Enforcement/ Comhlíonadh

Year	Title
	International Conventions and Agreements
	Each International Convention has its own enforcement mechanism
	EU
	<p>Treaty (TFEU) Provision Article 258 TFEU <i>“If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union.”</i> Commission and/or CJEU decisions against Member States Regulations and Directive Directive 2014/95/EU</p>
	National
	<p>1. Criminal Sanctions Contained in many pieces of legislation, for example: The Litter Pollution Act 1997 (as amended in 2017) Protection of the Environment Act 2003 European Communities (Environmental Liability) Regulations (2008 to 2011) (Environmental Liability Regulations) European Communities (Environmental Liability) (Amendment) Regulations 2015. S.I. 293/2015</p> <p>EPA Acts, Licensing - prosecutions, National Priority Sites (Naming lists) Criminal Justice Act 2007</p> <p>State bodies authorised to bring criminal prosecutions enforce environmental protection legislation – including EPA, NPWS. Local Authorities</p> <p>Statutory Instruments</p> <p>Bord Gáis Éirann Subsidiary Companies (Dissolution) Order 2014. S.I. 82/2014</p> <p>Environmental Protection Agency (Advisory Committee) Regulations 2015. S.I. 613/2015</p> <p>Environmental Protection Agency (Establishment) Order 1993. S.I. 213/1993</p>

Environmental Protection Agency (Extension of Powers) Order 1994. S.I. 206/1994

Environmental Protection Agency (Extension of Powers) Order 1996. S.I. 126/1996

Environmental Protection Agency (Licensing Fees) Regulations 1994. S.I. 130/1994

Environmental Protection Agency (Licensing Fees) (Amendment) Regulations 1995. S.I. 60/1995

Environmental Protection Agency (Licensing Fees) (Amendment) Regulations 1996. S.I. 239/1996

Environmental Protection Agency (Licensing Fees) (Amendment) Regulations 2004. S.I.410/2004

Environmental Protection Agency (Licensing Fees) (Amendment) Regulations 2006. S.I. 278/2006

Environmental Protection Agency (Licensing Fees) Regulations 2013. S.I. 284/2013

Environmental Protection Agency (Selection Procedures) Regulations 2004. S.I. 127/2004

Environmental Protection Agency Act 1992 (Commencement) Order 1993. S.I. 235/1993

Environmental Protection Agency Act 1992 (Commencement) Order 1994. S.I. 82/1994

Environmental Protection Agency Act 1992 (Commencement) (No. 2) Order 1994. S.I. 178/1994

Environmental Protection Agency Act 1992 (Commencement) Order 1995. S.I. 57/1995

Environmental Protection Agency Act 1992 (Commencement) (No. 2) Order 1995. S.I. 337/1995

Environmental Protection Agency Act, 1992 (Commencement) Order 1996. S.I. 13/1996

Environmental Protection Agency Act, 1992 (Commencement) (No. 2) Order 1996. S.I. 77/1996

Environmental Protection Agency Act 1992 (Declaration of Interests) Regulations 1994. S.I. 205/1994

Environmental Protection Agency Act 1992 (Dissolution of an Foras Forbartha Teoranta) Order 1993. S.I. 215/1993

Environmental Protection Agency Act 1992 (Established Activities) Order 1994. S.I. 83/1994

Environmental Protection Agency Act 1992 (Established Activities) Order 1995. S.I. 58/1995

<p>Environmental Protection Agency Act 1992 (Established Activities) (No. 2) Order 1995. S.I. 204/1995</p> <p>Environmental Protection Agency Act 1992 (Established Activities) Order 1996. S.I. 78/1996</p> <p>Environmental Protection Agency Act 1992 (Established Activities) Order 1997. S.I. 140/1997</p> <p>Environmental Protection Agency Act 1992 (Established Activities) Order 1998. S.I. 460/1998</p> <p>Environmental Protection Agency Act 1992 (Established Activities) Order 2006. S.I. 279/2006</p> <p>Environmental Protection Agency Act 1992 (Established Activities) (Amendment) Order 2006. S.I. 321/2006</p> <p>Environmental Protection Agency Act 1992 (First Schedule) (Amendment) Regulations 2011. S.I. 308/2011</p> <p>Environmental Protection Agency Act 1992 (Section 36(4)) Order 1994. S.I. 204/1994</p> <p>European Union (Access to Review of Decisions for Certain Bodies or Organisations Promoting Environmental Protection) Regulations 2014. S.I. 352/2014</p>
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National
<p>1. Civil Actions and Administrative Fines</p> <p>Each piece of legislation contains its own enforcement procedure, or scheme of administrative fine:</p> <p>Actions for damages or for injunctive relief by private landowners</p> <p>Judicial review of actions of public bodies, including government bodies and local authorities, if those actions are contrary to existing law</p> <p>Actions by state bodies authorised to enforce environmental protection legislation – EPA, NPWS, Local Authorities,</p> <p>Actions against the state for failure to implement EU law.</p> <p>Appeals to An Bord Pleanála against grants of planning permission</p> <p>Appeals to EPA against grants of emissions licences.</p>



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Standing Issues in Environmental Rights Litigation

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Section 5 – Conclusions

Standing Issues in Environmental Rights Litigation

Aoife Sheehan BL

with additional research by Léana Gambert Jouan, Lauren Walsh and Peter Lyon

SECTION 1 – Introduction

Background

Though environmental litigation is nothing new, the emergence of so-called “*climate cases*”⁵⁶⁶ around the world reflects an increasing public demand that the courts engage with the issue of widespread environmental degradation, and its consequences for citizens and the natural environment in which they live.

These are, in reality, public interest cases which seek to vindicate not just the rights of an individual claimant, but the collective environmental rights (however described or derived) of entire communities and populations. Courts are grappling with the unique procedural and substantive issues which arise in such litigation, including how to balance access to justice requirements within the limits of national laws governing court process.

The nature of such claims can present a significant difficulty for plaintiffs seeking to mount the first hurdle of satisfying *locus standi* requirements; where the harm alleged is widespread and dispersed, or where the rights invoked are more readily perceived as collective, rather than individual, it may be difficult, if not impossible, to demonstrate the personal nexus generally necessary to establish standing⁵⁶⁷.

This is more than just a procedural conundrum; the implications are significant where, if no standing is established, the courts are deprived of a valuable opportunity to even *consider* the merits of claims which ought to be determined in the public interest.

This paper argues that *locus standi* rules and principles in this jurisdiction are insufficient to take account of the peculiarities which invariably arise in this type of environmental litigation. It advocates for a broader legislative basis to accommodate more comprehensive participation in environmental proceedings by environmental NGOs, as the entities often best placed to make collective rights-based arguments – not just the rights of current Irish citizens, but also the rights and interests of future generations, or of the natural environment itself.

Structure

After considering some of the general ways in which standing rules can hinder access to justice on environmental matters, the paper will examine, by reference to models in other jurisdictions, three areas in which *locus standi* principles could and should be developed to accommodate the peculiarities of constitutional or rights-based environmental litigation, namely:

⁵⁶⁶ See, for instance, database of climate change case law maintained by Sabin Centre for Climate Change Law, available at <http://climatecasechart.com/climate-change-litigation/>

⁵⁶⁷ Setzer J and Higham C (2021), *Global Trends in Climate Change Litigation: 2021 Snapshot*. London: Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science.

1. General standing of eNGOs in rights-based claims;
2. Standing to vindicate the rights of so-called Future Generations;
3. Standing to vindicate rights or interests on behalf of the natural environment.

The consideration given to models in other jurisdictions is not intended to be a comprehensive assessment of all the ways in which standing is addressed in environmental rights claims globally –the issue is approached in a variety of ways across all jurisdictions⁵⁶⁸ – but rather to illustrate the relative feasibility of reformulating traditional *locus standi* rules in this jurisdiction and to suggest, by way of examples, the potential mechanisms and parameters through which to do so.

General Obstacles in Establishing Standing

It is worth recalling, as a preliminary point, that there is no “*environmental action*” *per se* through which the issue of standing can be neatly examined; whether a plaintiff has standing to bring an action relating to an environmental issue will be determined by the cause of action pleaded and the reliefs sought, and by reference to any relevant statutory provision or established jurisprudence.

That said, much of the environmental litigation in Ireland, as elsewhere, has developed through judicial review challenges to planning and development decisions on environmental grounds. To establish standing in such cases, an applicant need only show “*sufficient interest*”⁵⁶⁹; crucially, this test generally permits organisations such as environmental NGOs to challenge, on lawfulness or procedural grounds, administrative decisions impacting on the environment.

More generally, there are a myriad of ways in which standing can present a first (and often fatal) hurdle to the progress of environmental litigation.

(i) Inaccessible Legislation

The complexity of Irish environmental and planning legislation, much of which derives from EU law, is frequently cited⁵⁷⁰. Quite apart from the particular complexities of the statutory regime for planning, citizens with ordinary or local environmental concern might struggle to identify whether there exists a specific procedure to ventilate that concern in a court or other forum; this is because there is no obvious “*one-stop-shop*” statutory regime to which they can refer and, in many instances, remedy or enforcement mechanisms are reserved for specified authorities.

The table below sets out just small sample of provisions (summarised, with emphasis added) illustrating the widely varied provisions on standing as they relate to different types of environmental concern. So, for instance, while complainants with water or air pollution concerns benefit from relatively broad standing provisions, issues relating to forestry or litter are generally exclusively a matter for local authorities; these distinctions only become apparent

⁵⁶⁸ See for instance, Pring & Pring, *Greening Justice: Creating and Improving Environmental Courts and Tribunals, the Access Initiative* (2009), at Section 3.6.

⁵⁶⁹ S.50A(3)(b)(i) of the Planning and Development Act 2000 (as amended), as amended by section 20 of the Environment (Miscellaneous Provisions) Act 2011

⁵⁷⁰ See, for instance, introductory remarks of Clarke CJ., Launch of the Planning, Environmental and Local Government Bar Association (PELGBA), July 2018, wherein he noted the “*particularly complex and sometimes highly opaque*” nature of Irish environmental law, at p.5

through a relatively comprehensive review of numerous acts a large body of (frequently amended and reamended) provisions.

Sample Table of Standing Provisions in Environmental Legislation

Act	Sections	Provision
Waste Management Acts 1996 - 2011	s.57 (1)	<u>Any person</u> may apply to the High Court where waste is being held, recovered or disposed of in a manner that causes or is likely to cause environmental pollution.
Waste Management Acts 1996 - 2011	s.58	<u>Any person may apply</u> to the appropriate court for remedies where another person is holding, recovering or disposing of, or has held, recovered or disposed of, waste, in a manner that is causing, or has caused, environmental pollution.
Local Government (Water Pollution) Acts 1977 – 1990	s.10 (1)(a)	Where, on application <u>by any person</u> to the appropriate court, <u>whether or not the person has an interest in the waters concerned</u> , the court is satisfied that another person has caused or permitted water pollution, it may make orders directing that person terminate, mitigate, remedy and/or compensate for same
Air Pollution Act 1987	s.28 (1)	The High Court may, <u>on the application of a local authority or any other person</u> , by order, prohibit or restrict an emission from any premises.
Environmental Protection Agency Act 1992	s.108(2)	Where any noise...as to give reasonable cause for annoyance <u>to a person in any premises in the neighbourhood or to a person lawfully using any public place, a local authority, the Agency or any such person may complain</u> to the District Court (after serving a notice) and the Court may order the person or body making, causing or responsible for the noise to take the

		measures necessary to reduce the noise ...
Forestry Act 2014	s.28	Summary proceedings in relation to an offence under the relevant statutory provisions may be <u>brought and prosecuted by the Minister</u> .
Litter Pollution Acts 1997 – 2009	s.25	An offence under this Act may be <u>prosecuted by the local authority</u> in whose functional area the offence was committed.

(ii) *Establishing Harm, Causation and Justiciability*

Other disputes which centre on environmental matters can, in theory at least, be determined within the well-established parameters of various torts. There is nothing new, for example, in plaintiffs being granted damages or injunctive relief in respect of alleged air, noise or water pollution in nuisance or negligence actions where that plaintiff can demonstrate a personal injury or impact resulting from such pollution.

Peculiar harm is not so easy to establish however, in cases concerned with less localised issues, such as widespread biodiversity loss or harm said to arise from climate change. Even if established, the issue of justiciability (e.g., in cases where harm or rights infringements can only be remedied through government policy) may restrict, partially or otherwise, the ability of a court to provide an effective legal remedy.

Negligence principles have been invoked to progress litigation with climate change at its centre, though this has generated mixed results. In the Australian case of *Sharma v Minister for the Environment*⁵⁷¹, for instance, a young plaintiff was granted a declaration that the defendant owed Australian children a duty of care in respect of risk of injury from climate change when considering permissions relating to coal mine extraction.⁵⁷²

This decision can be contrasted with that of *Juliana v United States*⁵⁷³, where, although the court was satisfied that the young plaintiffs could establish sufficiently particularised injuries relating to federal fossil fuel policies, it also determined that those injuries, if established, would require remedy by way of “*a host of complex policy decisions*”. Thus, they were not amenable to redress which the court had jurisdiction to give⁵⁷⁴.

Though not directly comparable with the standing regime in the United States, Ireland’s own rules suggest a similar cause of action is more likely to generate findings on standing along the lines of the *Juliana* decision, more so than that of *Sharma*.

⁵⁷¹ [2021] FCA 560, delivered Bromberg J, 27 May 2021

⁵⁷² An appeal of the decision was heard by the Federal Court of Australia 18 – 20 October 2021 and judgment stands reserved at the time of writing.

⁵⁷³ 947 F. 3d 1159 (9th Cir. 2020)

⁵⁷⁴ *Ibid.* at 1165

(iii) *Narrow locus standi rules on rights-based claims*

The primary focus of this paper is the rules on standing as they apply to rights-based or constitutional claims (which, as will be seen, is linked to the issue identified at (ii)). Ireland's own climate case has highlighted how existing rules on standing present a particular problem for those seeking to vindicate so-called environmental rights (however derived), in this jurisdiction, and for environmental non-profit organisations (“eNGOs”) in particular.

SECTION 2 - Standing for Environmental NGOS in Rights-Based Claims

Introduction

The central role eNGOs in environmental litigation can be gleaned from even the most perfunctory review of court lists in which these disputes appear. They have played a particularly active role in the emergence, globally, of climate cases⁵⁷⁵, as sole plaintiffs, co-plaintiffs, or in representative capacities in class action suits.

This is entirely unsurprising; the issues in such cases tend to be complex, requiring extensive resources and access to scientific evidence and expertise that may only be easily available to established organisations. More importantly, the issues involved potentially impact entire communities, or national and even international populations; as such, the true scope of the claim is really only examinable by reference to collective impact, rather than individual circumstances.

In this sense, the role of the eNGO should be regarded as particularly vital in Ireland, where we have no class action model which might otherwise offer a mechanism through which to vindicate collective environmental rights.

The importance of eNGOs securing access to justice in environmental matters is already recognized in Aarhus Convention, which confers specific (and sometimes more favourable) access provisions for eNGOs when compared to ordinary citizens⁵⁷⁶. This is also recognized in the jurisprudence of the EU (itself a party to the Aarhus Convention); in *Slovak Brown Bear*⁵⁷⁷, the Grand Chamber of the CJEU made clear that even though Article 9(3) of the Aarhus Convention is not directly applicable in EU law, the courts of Member States were still obliged to interpret, to the fullest extent possible, the national procedure in order facilitate standing for eNGOs in environmental cases.⁵⁷⁸

Ultimately however, each jurisdiction may determine the standing of an eNGO in accordance with national law. The *Friends of the Irish Environment* decision, considered next, is

⁵⁷⁵ Again, see, database of climate change case law maintained by Sabin Centre for Climate Change Law, available at <http://climatecasechart.com/climate-change-litigation/>

⁵⁷⁶ Convention On Access To Information, Public Participation In Decision-Making And Access To Justice In Environmental Matters Done At Aarhus, Denmark, On 25 June 1998, at Articles 2.5, 5, 6 and 9.6.

⁵⁷⁷ (2011), C-115/09. For further discussion, see *Can Nature Get It Right? A Study of Rights of Nature in the European Context*, Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies PE 689.328- March 2021 at p.32

⁵⁷⁸ Ibid. at para. 51

particularly relevant in this context, as it illustrates how national rules on standing can severely curtail the range of arguments an eNGO is permitted to be make in such cases.

Friends of the Irish Environment v Ireland – Decision on Standing

In *Friends of the Environment v Ireland v Ireland*⁵⁷⁹ (“*FIE*”) the Supreme Court considered whether the plaintiff eNGO had standing to argue, *inter alia*, that the adoption by the Irish government of its National Mitigation Plan failed to vindicate the constitutional rights to life and to bodily integrity (as the rights most likely to be impacted by climate change)⁵⁸⁰.

FIE was successful in arguing that the plan as adopted was *ultra vires*, where the State had produced a plan which lacked the requisite specificity of measures required by statute. The Supreme Court also held however that FIE had no standing in relation to the rights element of the claim.

In reaffirming *Cahill v Sutton*⁵⁸¹ as the key authority on standing in constitutional cases; the Supreme Court held that the general rule, subject to relaxation only where the justice of the case so requires, is that an applicant must be able to adduce evidence of some impact on, or imminent threat to, his or her own rights, in respect of the impugned provision.

Where there was no dispute between the parties that FIE, as a corporate entity, did not enjoy the personal rights invoked, the issue was whether a relaxation to the general rule, entitling the plaintiff to seek to vindicate those rights on behalf of others, was justified. To this end, the plaintiff relied upon authorities including *SPUC Ltd v Coogan (No.1)*⁵⁸² and *Irish Penal Reform Trust v Governor of Mountjoy Prison and Minister for Justice*⁵⁸³.

The Supreme Court distinguished these authorities on the basis that the plaintiff organisations in *Coogan* and *Irish Penal Reform Trust* were seeking to vindicate, respectively, the rights of the unborn and the rights of prisoners with psychiatric illnesses. In the case of the unborn, it was inevitable that the rights sought to be protected must be invoked by a third party in order to avail of court protection⁵⁸⁴. Unlike the case made by the plaintiff organisation in *Irish Penal Reform Trust*, there was no suggestion by FIE that the many individuals who could have initiated the claim suffered from any disability or vulnerability that prevented them from so doing, nor was it suggested “*that the claim would be in any way limited if brought by individuals*”⁵⁸⁵.

That individuals might be insufficiently resourced to discharge legal costs, the main argument advanced by FIE in this regard, was not enough to demonstrate that such individuals were incapable of mounting a similar challenge to vindicate their personal rights⁵⁸⁶. In the

⁵⁷⁹ [2020] 2 ILRM 233; [2020] IESC 49

⁵⁸⁰ *Ibid.* at para 5.3. The plaintiff also sought to rely on corresponding ECHR rights. The Supreme Court declined to recognize a right to a healthy environment contended for by the plaintiff, where such a right was superfluous and was, in any event, too vague in terms (see para.9.5).

⁵⁸¹ [1980] IR 269

⁵⁸² [1989] I.R. 734; [1990] I.L.R.M. 70

⁵⁸³ [2005] IEHC 305

⁵⁸⁴ *Ibid.* at para. 7.13

⁵⁸⁵ *Ibid.* at para. 7.18

⁵⁸⁶ *Ibid.* at para. 7.22

circumstances, FIE had failed to establish that there were grounds to relax the general rule on standing as set out in *Cahill*.

Analysis

The decision has not closed the door on the general question of eNGOs raising rights-based arguments in environmental and climate change litigation. Relaxation of the general rule may be permitted where it can be established, for instance, that those prejudicially affected by the impugned statute may not be in a position to assert adequately, or in time, their constitutional rights⁵⁸⁷; it is conceivable that such evidence could be adduced in a future case if, for instance, a court accepted the premise that those likely to directly suffer from the operation of current legislation could not be aware of the true potential impact on their rights in time to avail of an effective remedy.

Nevertheless, the case illustrates the need for a broadening on the rules of standing as they apply to eNGOs.

In *Irish Penal Reform Trust*, considered at some length by Clarke CJ. in *FIE*⁵⁸⁸, the plaintiff organisation, IPRT, was joined by two individual prisoners as co-plaintiffs. The essence of the claim was that the rights of prisoners with psychiatric illnesses were infringed by the prison conditions they endured. IPRT argued, successfully, that their claim of *systemic* deficiencies in services for such prisoners could not be adequately addressed by reference to the experience of the individual co-plaintiffs alone. On that basis, it was granted standing to make those claims on behalf of all such prisoners.

Though the Supreme Court in *FIE* queried why individual plaintiffs could not have been joined to make the rights-based arguments advanced, it is difficult to see how the claim so constituted would have assisted FIE to make the similar argument of systemic rights infringements, impacting the general public, caused by inadequate climate change provisions. Climate change presents a harm that is, by its nature, indeterminate in scope and severity, yet it is also widely acknowledged as a genuine and serious threat to lives and livelihoods; the true nature of that harm cannot be examined adequately by reference to individualised claims.

This anomaly has already been identified already in our own jurisprudence. In a dissenting judgment in *Lancefort Ltd v An Bord Pleanála, Ireland and Attorney General (No 2)*⁵⁸⁹, Denham J (as she then was) cited the *Cahill* and *Coogan* as demonstrating, on the test for constitutional validity of statutes, a “*development from the concept of locus standi as victim related to a jurisprudence where public interest parties have been adjudged to have standing*”⁵⁹⁰.

This was, she noted, of particular relevance to environmental issues where an approach is needed which is “*just, aids the administration of justice, would not permit the crank, meddlesome or vexatious litigant thrive, and yet enables the bona fide litigant for the public interest establish the necessary locus standi in the particular area of environmental law where*

⁵⁸⁷ [1980] IR 269 at 285

⁵⁸⁸ [2020] 2 ILRM 233 at paras. 7.15 – 7.17

⁵⁸⁹ [1999] 2 IR 270

⁵⁹⁰ *Ibid.* at 286-287

the issues are often community rather than individual related. The administration of justice should not exclude such parties from the courts.⁵⁹¹ [emphasis added]

Though this assessment was made prior to the amendments to planning legislation which broadened the rules on standing for eNGOs, the observation remains relevant for more recent rights-based claims such as those advanced in climate cases; requiring evidence of personal harm risks distorting the true nature and scope of the claim which, however couched, is really one of public interest.

Approach in Other Jurisdictions

General

It is difficult to draw a clear comparison on standing rules with other jurisdictions; many, for instance, permit representative and class actions through which through which eNGOs have established standing to invoke the personal rights of their members to bring substantive merits-based actions as distinct from administrative review proceedings. Others, including the civil law jurisdictions of France and the Netherlands, have codified laws which contain specific provisions governing the standing of eNGOs.

All jurisdictions, however, are now dealing with similarly broad themes of widespread environmental harm and climate change, and eNGOs in these jurisdictions are battling, to greater or lesser extents, standing rules which threaten to restrict the scope of the examination undertaken by courts.

United States

Public interest environmental litigation in the U.S. has a lengthy history. Article III of the U.S. Constitution, which established the Supreme Court and also gave Congress the authority to create additional courts, conferred the Judicial Branch of the federal government with authority over certain types of cases. While the Art.III “*Case or Controversy*” clause of the U.S. Constitution⁵⁹², does not specifically mention standing, the Supreme Court has, over a long period, developed a system for determining when a person has standing to bring a claim in federal court based on the authority granted by Article III and federal statutes.

Over twenty years ago, in the leading case of *Friends of the Earth Inc. V Laidlaw Environmental Services*⁵⁹³, the U.S. Supreme Court confirmed that to satisfy general standing requirements of Article III, a plaintiff must show “(1) *it has suffered an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision*⁵⁹⁴.”

Associations, such as the three eNGOs who had issued the petition in the case before the court, were additionally required to demonstrate that “*its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted, nor the relief requested requires the participation of individual*

⁵⁹¹ Ibid. at 297

⁵⁹² Art. III, Section 2, Clause 1

⁵⁹³ 528 U.S. 167 (2000)

⁵⁹⁴ Ibid. at 180 - 181

*members in the lawsuit*⁵⁹⁵. Sworn statements from individual members of the plaintiff eNGOs, detailing, for instance, how their interests and hobbies were curtailed by apparent pollution on specific stretches of water were sufficient to grant the eNGOs standing where they “adequately documented injury as to fact”⁵⁹⁶.

The same test was recently applied in favour of the petitioner eNGO in *Natural Resources Defense Council v. Wheeler*⁵⁹⁷, where evidence from its members that their coastal properties was vulnerable to climate change was sufficient to establish the standing of NRDC to challenge a permit regime affecting emissions.⁵⁹⁸

Though these cases appear to grant broad standing in environmental suits, they ultimately still relied on evidence of individualised harm; yet, in many ways is difficult to imagine that the same cases would have been made and/or succeeded if only those individual claims (and not a broader eNGO-supported claim, or a class action) had issued in the first instance.

Canada

In *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*⁵⁹⁹, at issue was the standing of a rights group, as co-plaintiff with one directly impacted individual, to mount a constitutional challenge to legislation criminalizing prostitution.

In recognizing the standing of the rights group, the Supreme Court of Canada affirmed that to establish the public interest standing asserted, the court must consider whether the case raised a serious justiciable issue, whether the plaintiff had a real stake in the proceedings or was engaged with the issues it raised; and whether the proposed suit was, in all the circumstances, a reasonable and effective means to bring the case to court⁶⁰⁰.

Given that this test for public interest standing appears reasonably broad, it is interesting and somewhat surprising that this model of representative action does not appear to have found favour in environmental litigation in Canada. The Supreme Court of Canada has not yet had to determine public interest standing in the context of a constitutional environmental dispute and, as such, the extent to which eNGOs might be permitted to invoke personal environmental rights is still an unknown⁶⁰¹.

Instead, so-called climate litigation has largely been instituted by named individuals (often young people) as plaintiffs, an approach reduces the risk of needing to meet *acto popularis/jus tertii* arguments such as those raised in FIE, but which have tended to fail, in large part, on justiciability or procedural grounds.⁶⁰²

⁵⁹⁵ Ibid. at 181

⁵⁹⁶ Ibid. at 182

⁵⁹⁷ No. 18-1172 (D.C. Cir. 2020)

⁵⁹⁸ Ibid. at 77

⁵⁹⁹ [2012] 2 S.C.R. 524

⁶⁰⁰ Ibid. at para. 2

⁶⁰¹ For further discussion, see *Standing in Environmental Matters*, The Environmental Law Centre (Alberta) Society, December 2014 at p.19

⁶⁰² See, for instance *La Rose v. Her Majesty the Queen* (2020) FC 1008 and *Environnement Jeunesse v Procureur General Du Canada*, District of Montreal, Superior Court, 11 July 2019

The Netherlands

Standing of eNGOs in civil law jurisdictions such as the Netherlands is still the subject of judicial consideration but has tended to be a less controversial issue. This is because the relevant provisions of the Dutch Code contain specific standing requirements for eNGOs to bring certain claims which, if met, bypass many of the typical standing arguments raised in the common law jurisdictions considered thus far.

In *Urgenda*⁶⁰³ the Hoge Raad (Supreme Court of the Netherlands) held that the Dutch Government had violated ECHR rights by failing to meet more ambitious targets of GHG emissions. The court accepted that the plaintiff, as an eNGO said to be acting on behalf of the current generation of Dutch nationals, was entitled to make rights-based arguments pursuant to Article 3:305A of the Dutch Civil Code, which permitted class actions by interest groups.

Article 3:305A(1) of the Dutch Civil Code⁶⁰⁴ provides as follows:

“A foundation or association with full legal capacity may institute legal proceedings aimed at protecting similar interests of other persons, insofar as it promotes these interests pursuant to its articles of association and these interests are sufficiently safeguarded.”

The provision goes on to provide that the interests of such other persons are deemed to be sufficiently safeguarded if the legal person is sufficiently representative and meets a number of other criteria, including, *inter-alia*, appropriate and effective mechanisms for participation in or representation in the decision-making of the persons whose interests are pursued by the legal action; sufficient resources to ensure control over the claim, and sufficient experience and expertise with regard to instituting and conducting legal proceedings. Similarly, the organisation must have a non-profit motive and the claim must be one with a sufficient nexus to the Netherlands.

Article 3:305A was also invoked by the plaintiff foundations in *Milieudefensie et al. v Royal Dutch Shell*⁶⁰⁵, in an action seeking to compel Royal Dutch Shell to reduce its emissions in accordance with the Paris Agreement targets. Here, the court noted that claim, as a public interest action, was seeking to “*protect public interests, which cannot be individualized because they accrue to a much larger group of persons, which is undefined and unspecified*”⁶⁰⁶.

Although the court made these comments in the context of the class action before it, this statement captures the essence of the problem of this type of environmental action; where claims cannot be individualised – or, more accurately, must be individualised in order to satisfy the *locus standi* rules in jurisdictions such as Ireland – there is a real risk that the public interest aspect of the claim is side-lined.

⁶⁰³ *State of the Netherlands v Stichting Urgenda* (ECLI:NL:HR: 2019:2007). English translation available at http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2020/20200113_2015-HAZA-C0900456689_judgment.pdf

⁶⁰⁴ Unofficial English translation available at <http://www.dutchcivillaw.com/legislation/dcctitle331111.htm>

⁶⁰⁵ [ECLI:NL:RBDHA:2021:5337](https://eclique.nl/ECLI:NL:RBDHA:2021:5337) (Dutch version) and C/09/571932 / HA ZA 19-379 (English version)

⁶⁰⁶ *Ibid.* at 4.2.2

The Dutch approach to standing for eNGOs in rights-based claims is, in this sense, far more pragmatic, in recognizing that certain environmental claims cannot be individualised and that eNGOs are the best placed plaintiffs to progress such claims on a representative basis.

France

Similarly, France does not appear to restrict the scope of the arguments that might be made by an eNGO once that organisation is appropriately certified and otherwise complies with the relevant provisions of the *Code de l'environnement*⁶⁰⁷.

In *Notre Affaire à Tous and Others v. France*⁶⁰⁸, four eNGOs sought to hold the State responsible for its failure to meet commitments on emissions. They relied in part on human rights arguments, including that the State's action (and inaction) constituted a violation of Articles 2 and 8 of the ECHR.

Standing was established on the basis of Article L.142-1 of the Code, which provides that a lawfully declared association, with a primary objective being the protection of the environment (either generally or in a specific domain), and which has been working towards that aim for three or more years, can benefit from so-called administrative certification.

The four eNGOs had demonstrated that their primary objectives lay in the protection of the environment and there appeared to be no controversy that the eNGO was permitted to make human rights arguments where those bodies otherwise met the criteria set out in the Code.

Article 142-1 of the Code provides that certified associations benefit from a presumption of legitimate interest (*'intérêt pour agir'*) in administrative proceedings where they can demonstrate that the challenged decision (i) directly and certainly harms the association's interests due to a fault committed by the administration (ii) has a direct link with the association's purpose (iii) impacts the environment within the territory in which the association acts and (iv) was made after the certification (of the association) was granted.

Article 1248 of the French Civil Code now also specifically provides for ecological prejudice (*"préjudice écologique"*) as a category of damage, and further provides:

*"An action for compensation for ecological damage may be brought by any person that has the capacity and interest to act, such as the State, the French Agency for Biodiversity, local authorities and their associations in which their territories are impacted, public institutions, and associations approved or created for more than five years before the institution of proceedings and whose purpose is the protection of nature and defence of the environment."*⁶⁰⁹.

⁶⁰⁷ Available at :

https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006074220/LEGISCTA000006143735/#LEGISCTA000019280521

⁶⁰⁸ <http://climatecasechart.com/non-us-case/notre-affaire-a-tous-and-others-v-france/>. English translation available at: http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2021/20210203_NA_decision-1.pdf

⁶⁰⁹ Biodiversity Law n°2016-1087 of August 8, 2016.

https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000038846675/. Unofficial English translation available at https://ec.europa.eu/environment/legal/liability/pdf/Annex-I_France.pdf at p.10

In France, like the Netherlands, establishing standing for an eNGO first and foremost requires close scrutiny of on the objects and nature of that organisation. If an eNGO satisfies all requirements of the relevant provisions for certification, it enjoys broad standing to make whatever arguments are relevant to those objects as appropriate to the proceedings in which they participate.

The Case for Broadening eNGO Standing

Risk of Distortion of Claim

It can readily be gleaned from the emergence of climate cases. i.e., claims which in effect seek to prevent or to remedy widespread environmental harm such as largescale biodiversity loss or other adverse impacts of climate change, that at issue are collective environmental rights and interests, however described or derived, rather than personal rights in the traditional sense.

These decisions have garnered significant attention precisely because of their impact on wider populations; that these claims sometimes involve named individuals who have sought to challenge national climate policies can seem somewhat incidental when the claim is, in reality, concerned more so with public rather than private interest. To restrict plaintiffs in such claims to making rights-based arguments by reference to the individual is to lose the essence of the claim and the genuine (and public) interest matters it seeks to ventilate.

It also presents the real risk that the appropriate plaintiffs (i.e. those in a position to demonstrate real or imminent risk to themselves) will only be in a position to vindicate those rights when it is too late; in other words, by the time plaintiffs can easily point to the adverse impacts peculiar to them, the prospect of a court being in a position to provide an effective remedy, for instance, by striking down inadequate climate policy legislation, is remote.

Though there is a possibility of a hybrid model of an eNGO joined by individual co-plaintiffs such as that adopted in *IPRT*, an approach which appeared to find some favour with the Supreme Court in *FIE*, the same problem arises; without granting standing to the eNGO to make claims of *systemic* harm, the scope of the rights-based arguments risks being severely curtailed by reference to the experiences of the individual plaintiffs.

Prohibitive Costs

The Supreme Court in *FIE* was not satisfied that a fear of costs orders rendered individual plaintiffs incapable of bringing the same type of environmental claim in their own name. It has been acknowledged however that “[l]itigation costs are one of the main reasons why the public concerned in Europe rarely take direct action in court against operators of activities hazardous to the environment⁶¹⁰.”

In Ireland, where high litigation costs are the subject of frequent public and political discourse, it might be particularly difficult to persuade individual plaintiffs to assume a costs risk, particularly in cases likely to be defended by the well-resourced State or semi-State agencies.

Increased Efficiency in Litigation

⁶¹⁰ EU Report at p.54

In holding that the plaintiff association had standing to invoke the rights of psychiatrically ill prisoners in *Irish Penal Reform Trust*, Gilligan J. stated:

*[I]f the I.P.R.T. were to be denied standing, those it represents may not have an effective way to bring the issues before the court. A potential plaintiff would not be in a position to command the expertise and financial backing at the disposal of the I.P.R.T., a less well-informed challenge might ensue, and justice may not be done*⁶¹¹.

In purely practical terms, plaintiff eNGOs are likely to have available to them significant resources and expertise. Those with even a modest history of participating in litigation are also more likely to mount a focused challenge, compared with those which might be issued by individual citizens, that seeks to engage the court on the most substantive issues of public environmental concern.

Further, there is a certain inevitability about an increase of climate and environmental litigation in the coming years. At least from the perspective of court time and resources, facilitating eNGO-led litigation might have the net effect of decreasing the number of claims which come before the courts seeking determination on the same general environmental rights-based issues; if the eNGO is entitled to raise all relevant arguments including those which are, at present, generally reserved to the individual, individual claims based on similar grounds, which might otherwise issue, could fall away.

Conclusions

It may be that existing *locus standi* principles will, one day, be applied to eNGOs more broadly than they are today. Until then, a legislative amendment granting broad standing for eNGOs in environmental disputes with a public interest element provides the best guarantee that rights-based environmental litigation develops in a resource-conscious and well-managed way, focusing on the real (public) issues for determination.

The broad parameters for this standing are already set out in our existing jurisprudence and would require little legislative creativity. Thus, an organisation seeking to vindicate the rights of others may do so only having established a *bona fide* concern and interest for the protection of the rights invoked⁶¹².

The provisions of the Dutch Civil Code and the French *Code de l'environnement* could be looked to for the more precise requirements for an eNGO to establish standing; so, statutory provisions might specify that only eNGOs with objects or a constitution with a sufficient nexus to the issues raised (whether geographical or in terms of specialist experience or expertise) are permitted to litigate.

Membership requirements, incorporating a specific geographical nexus, could also be considered. In *R. v. Pollution Inspectorate, ex p Greenpeace (No. 2)*⁶¹³, in a passage cited in *Irish Penal Reform Trust*, the High Court of England and Wales identified the following factors

⁶¹¹ [2005] IEHC 305 at para. 46

⁶¹² *SPUC v Coogan (No.1)*, [1989] I.R. 734 at 742

⁶¹³ 1994 4 AER 239

as relevant in granting standing to the plaintiff eNGO seeking to challenge an authorisation to discharge nuclear waste in Cumbria:

The fact that there are 400,000 supporters [of Greenpeace] in the United Kingdom carries less weight than the fact that 2,500 of them come from the Cumbria region. I would be ignoring the blindingly obvious if I were to disregard the fact that those persons are inevitably concerned about (and have a genuine perception that there is) a danger to their health and safety from any additional discharge of radioactive waste even from testing. I have no doubt that the issues raised by this application are serious and worthy of determination by the court.

In short, there are a number of parameters which the legislature might set to meet the concerns that a broadening of standing provisions might result in “floodgate” or frivolous environmental litigation. Such an approach, if adopted, would improve access to justice on environmental matters and strike an appropriate balance with the need to manage court procedure.

SECTION 3 - Standing for “Future Generations”

Introduction

Part of the widely recognised problem of climate change is that the most severe impacts will be felt by younger and future generations. This recognition is reflected in the composition of plaintiff groups in recent climate cases, and in increasing references in international litigation to the concept of intergenerational equity.

With this recognition should come an acknowledgement that the rights of those future generations merit consideration and some basic protection in current environmental disputes which are likely to have a direct impact on those generations (and possibly *only* on those generations) in time to come.

That consideration can only be given where a party is entitled to invoke those rights on behalf of future generations who, as persons not yet born, are unable to do so themselves. Again, the eNGO is likely to, and should, play a significant role in any such development.

Young Plaintiffs in Future Generations Litigation

The proliferation of climate change litigation instituted by young people, with or without an eNGO as co-plaintiff, can be seen throughout common law and civil law jurisdictions; *Sharma* in Australia, and *Juliana* in the United States, considered above, are two such examples.

Theoretically at least, there is no reason why similar claims could not be instituted in this jurisdiction; procedurally, children may sue to remedy or to prevent harm to them and/or to vindicate their personal rights through their next friend⁶¹⁴.

In *Environnement Jeunesse v Procureur General Du Canada*⁶¹⁵, the applicant failed to secure authorisation to bring a class action suit on behalf of Quebec citizens aged 35 and under, alleging that inadequate action on global warming disproportionately affected this class. In

⁶¹⁴ See for example, Order 15 Rule 16 of Superior Court Rules (as amended)

⁶¹⁵ District of Montreal, Superior Court, 11 July 2019. Unofficial English translation of decision available https://enjeu.qc.ca/wp-content/uploads/2018/11/Application_for_authorization_UNOFFICIAL.pdf

addition to finding was “*no factual or rational explanation*” for the decision to determine the class by reference to a maximum age of 35⁶¹⁶, the court also noted that “*if some of the alleged infringements have not yet occurred but could someday, there is a risk that the debate be only theoretical*”⁶¹⁷.

This statement illustrates the difficulties that young people as plaintiffs will invariably meet, if standing is determined by reference to an existing or imminent threat to rights, rather than a potential breach of rights in the future.

Standing for Persons Not Yet Born

For present purposes, the more significant issue is the standing of future generations, being persons not yet born *or conceived*. The body jurisprudence on the right to life of the unborn is nevertheless of some assistance in considering the *locus standi* principles applicable to interested parties seeking to protecting the rights of those who cannot (yet) vindicate their own.

In *Society for the Protection of Unborn Children (Ireland) Ltd v Coogan (No.1)*⁶¹⁸ the plaintiff (“SPUC”) was a body incorporated with the objective protecting the right to life of the unborn.

In recognizing that SPUC had standing to seek to protect the (then) constitutional right to life of the unborn, the Supreme Court determined that it had “*a bona fide concern and interest, interest being used in the sense of proximity or an objective interest*” and that there was “*no question of the plaintiff being an officious or meddlesome intervenient in this matter*”⁶¹⁹.

At the time of the proceedings, the right to life of the unborn was expressly protected in the enshrined in the Constitution⁶²⁰ and was, as such, “*part of the fundamental law of the State*”⁶²¹. Where it was the parents or guardians of the unborn who might be the party seeking the “*destruction*” of that right, it was appropriate that other citizens seeking to defend those rights be entitled to do so “*if the public interest requires that such breaches or attempted breaches should be restrained*”⁶²².

Climate change litigation arguably constitutes the very essence of public interest litigation. There is no reason why the same considerations which afforded standing to SPUC could not be applied to eNGOs in this context where:

- i. future generations of persons yet to be born are clearly incapable of challenging current climate policies or inaction which will directly impact on the suite of rights which they *will* become entitled to exercise (but not in time to an effective remedy);
- ii. An established eNGO, meeting the requisite criteria set out in legislation (see Section 2) or otherwise, is unlikely to be *an officious or meddlesome intervenient*; and

⁶¹⁶ Ibid. at para. 117

⁶¹⁷ Ibid. at para. 122

⁶¹⁸ [1988] IR 734

⁶¹⁹ Ibid. at 742.

⁶²⁰ Article 40.3.3, as inserted by the Eighth Amendment to the Irish Constitution, 1983.

⁶²¹ Ibid. at 743.

⁶²² Ibid. at 744

- iii. the public interest would be served by ensuring that future generations could be “*heard*” on how existing laws would detrimentally impact their environmental rights – particularly where it is only (or disproportionately) those generations who will suffer the consequences associated with the inadequacies of those laws.

Approach in Other Jurisdictions

While this may seem like a radical concept in the common law world, precedent from other jurisdictions demonstrates its feasibility in practice. Two examples, from the Philippines and Colombia, are considered below.

The Philippines

In *Oposa v Factoran*⁶²³, plaintiff minors and an eNGO issued a class action suit challenging the granting by government of timber licensing agreements which had led to significant destruction of the country’s natural rainforests.

The Supreme Court had:

“...no difficulty in ruling that they can, for themselves, for others of their generation and for the succeeding generations, file a class suit. Their personality to sue in [sic] behalf of the succeeding generations can only be based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned...every generation has a responsibility to the next to preserve that rhythm and harmony [of nature] for the full enjoyment of a balanced and healthful ecology. Put a little differently, the minors' assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come⁶²⁴.”

This now infamous decision was delivered in 1993; it was and remains remarkable for its progressive stance, in particular its acknowledgement of intergenerational equity, and the need to give effect to that legal principle in practice.

The country’s liberalised attitude to standing in this regard was later enshrined in its Rules of Procedure for Environmental Cases (“**the Filipino Rules**”) with Rule 2, Section 5 now providing that any “*Filipino citizen in representation of others, including minors or generations yet unborn, may file an action to enforce rights or obligations under environmental laws*”.⁶²⁵

⁶²³ G.R. No. 101083, David, JR, J. Supreme Court, July 30, 1993, unofficial copy decision available at https://www.lawphil.net/judjuris/juri1993/jul1993/gr_101083_1993.html

⁶²⁴ Ibid., per David JR.

⁶²⁵ Annotation to the Rules of Procedure for Environmental Cases, Rule 2, Section 5, https://philja.judiciary.gov.ph/files/learning_materials/A.m.No.09-6-8-SC_annotation.pdf

Colombia

The plaintiff youth in *Future Generations v Ministry for Environment & Ors*⁶²⁶ relied on a principle of intergenerational inequity to challenge the inadequacies of environmental policies, citing their disproportionate impact on younger and future generations.

The Court expressly acknowledged that the protection of fundamental rights involved the individual and all others *including* the unborn, who also deserved “*to enjoy the same environmental conditions that we have... [t]he environmental rights of future generations are based on the (i) ethical duty of the solidarity of the species and (ii) on the intrinsic value of nature*”⁶²⁷.

The court explained its reasoning by pointing out that earth’s resources were shared among “*descendants or future generations who do not yet have a physical hold of them*”, and that without adopting an equitable approach now which took into account the shared nature of the resources, the future of humanity could be jeopardised. This in turn gave rise to a binding legal relationship, whereby consideration must be given to the needs of future generations, in terms of resources, which necessarily translated into some limitation to the freedom of action of present generations and demanding new burdens of environmental commitments⁶²⁸.

Conclusions

Neither courts or scientists can be precise about the damage that current policies and human activity might have on the environment or on the trajectory of climate change. There seems little scientific dispute however that the worst of the impact will be felt by future generations. In that sense, the harm to those persons is arguably not hypothetical, but rather inevitable (albeit not capable of precise definition at this remove), without action being taken in the present.

The apparent inevitability of that harm arguably provides adequate grounds for a constitutional amendment (or legislative provision) to recognize the rights of future generations as regards environmental matters and, consequentially, the entitlement of the appropriate party, such as an eNGO meeting relevant legislative criteria to invoke those rights and give a voice to those most affected.

SECTION 4 - Standing for or on behalf of Nature

Introduction

As discussed in Section 2, a key issue with standing rules as they apply to environmental harm cases is that in some cases, by necessity, the harm or damage will be presented in a distorted way. This is because, in common law jurisdictions such as Ireland and the United States,

⁶²⁶*Dejusticia y otros v Presidencia de la República y otros*, Colombian Supreme Court, ruling STC4360 of 4 May 2018. http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2018/20180405_11001-22-03-000-2018-00319-00_decision.pdf. Unofficial English translation of key experts at http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2018/20180405_11001-22-03-000-2018-00319-00_decision-1.pdf

⁶²⁷ *Ibid.* at 18

⁶²⁸ *Ibid.* at 20

constitutional claims for infringement of environmental rights will only succeed where plaintiffs can show harm peculiar to themselves.

It is impossible to assess or to compartmentalise the various motives of plaintiffs in climate litigation, for instance, but the reality must be that many potential claims do not regard as their primary object the vindication of a personal right. Rather, many claims are concerned widespread environmental harm associated with climate change and biodiversity loss; prospective plaintiffs in such claims are not just (or even necessarily) concerned with the protection of personal rights as they might be impacted by that harm but seek to invoke those rights with the ultimate end of protecting the natural environment, recognizing its standalone value (or, perhaps, its value to future generations).

This artificiality could be avoided where the true object of the legal protection, the natural environment said to be threatened by the harm, was capable of representation in its own right.

Legal academic commentary on the recognition of rights of nature (as distinct from humanity's rights associated with, or *to* nature) is not new; the feasibility and benefits of embracing the concept have been considered since the seminal work of Christopher Stone, "*Should Trees Have Standing?*"⁶²⁹.

These considerations are no longer confined to academic commentary; rights of nature are now recognized in some constitutions and, more significantly, are legally exercisable, including through litigation, by the appropriate "guardian" or trustee of the environment. Such an approach in this jurisdiction would have significant implications for standing in environmental litigation.

At this juncture it might well be pointed out that Ireland, yet to formally recognize any standalone environment rights such as the right of citizens to a healthy environment, appears to be a long way from embracing the far more radical concept of rights of nature in its own right. Still, political and social discourse on environmental and climate issues has been notable for its rapid evolution in recent years; the law may, in turn, develop both rapidly and radically to reflect this.

Academic and Constitutional Recognition

Stone suggests that to recognize rights or interests of nature is not as radical a legal concept as might first appear, when we trace the development of rights-based and constitutional jurisprudence; acknowledging legal rights of any new groups or entity, first to children, woman and minority groups, and later the legal personhood of non-natural persons such as companies, institutions and religious orders, was invariably "*jarring to early jurists*":

"Throughout legal history, each successive extension of rights to some new entity has been, theretofore, a bit unthinkable. We are inclined to suppose the rightlessness of rightless "things" to be a decree of Nature, not a legal convention acting in support of some status quo. It is thus

⁶²⁹ Stone, *Should Trees Have Standing?* – *Towards Legal Rights for Natural Objects*, California Law Review 45 (1972): 450-501

*that we defer considering the choices involved in all their moral, social, and economic dimensions.*⁶³⁰

In 2021, the European Parliament commissioned a study to explore the concept of rights of nature. In its published report⁶³¹ (“**the EU Report**”), the author noted that this concept already enjoys some recognition in international law, with instruments such as the 1992 Rio Declaration recognizing “*the integral and interdependent nature of the Earth, our home*”⁶³², and in South American constitutions.

The Preamble to the 2009 Ecuadorian Constitution celebrates “*nature, the Pacha Mama (Mother Earth), of which we are a part, and which is vital to our existence*”. Article 71 proclaims the right of “*Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes. All persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature*”⁶³³.

Similarly, in Bolivia, the 2009 Constitution has stated the aim of protecting and defending an adequate environment for the development of living beings. The 2010 *Law on the Rights of Mother Earth (Madre Tierra)* goes further, providing, at Article 2, that the State and any individual or collective person must respect, protect and guarantee “*the rights of Mother Earth*” for the well-being of current and future generations⁶³⁴.

The rationale for developing a concept of environmental rights which encompasses rights of nature has been succinctly set out by Lord Carnwarth, former judge of the UK Supreme Court, in the following terms:

*“Environmental rights are not “human rights” in the ordinary sense. They are much more than that. They involve rights and duties. The rights are those of not just humans, but of all living things. The duties are ours, as the species which has the unique ability to influence the environment for good or ill”*⁶³⁵.

The development has implications for the ways in which claims seeking to vindicate “*environmental rights*”, in this broader sense. For present purposes, the issue is how this concept, if adopted in some fashion, might impact general rules on standing.

Approach in Other Jurisdictions in *Sierra Club v. Rogers C.B. Morton*⁶³⁶, the much-cited dissenting opinion of Douglas J. acknowledged the inadequacies of a conventional approach to standing in environmental disputes:

“The critical question of “standing” would be simplified and also put neatly in focus if we fashioned a federal rule that allowed environmental issues to be litigated before federal

⁶³⁰ Ibid. at 453

⁶³¹ *Can Nature Get It Right? A Study of Rights of Nature in the European Context*, Policy Department for Citizens’ Rights and Constitutional Affairs Directorate-General for Internal Policies PE 689.328- March 2021.

⁶³² Rio Declaration on Environment and Development. UN General Assembly 12 August 1992, available at <https://www.un.org/en/conferences/environment/rio1992>

⁶³³ Unofficial English translation available at <https://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>

⁶³⁴ EU Report at p.18

⁶³⁵ Human Rights and the Environment Justice Human Rights Law Conference 2018 London, Lord Carnwarth, 10 October 2018, p.6, available at <https://www.supremecourt.uk/docs/speech-181010.pdf>

⁶³⁶ [1972] 405 US 727

agencies or federal courts in the name of the inanimate object about to be despoiled, defaced, or invaded by roads and bulldozers and where injury is the subject of public outrage...Inanimate objects are sometimes parties in litigation. A ship has a legal personality, a fiction found useful for maritime purposes. The corporation sole - a creature of ecclesiastical law - is an acceptable adversary and large fortunes ride on its cases. The ordinary corporation is a "person" for purposes of the adjudicatory processes, whether it represents proprietary, spiritual, aesthetic, or charitable causes.

So, it should be as respects valleys, alpine meadows, rivers, lakes, estuaries, beaches, ridges, groves of trees, swampland, or even air that feels the destructive pressures of modern technology and modern life. The river, for example, is the living symbol of all the life it sustains or nourishes-fish, aquatic insects, water ouzels, otter, fisher, deer, elk, bear, and all other animals, including man, who are dependent on it or who enjoy it for its sight, its sound, or its life. The river as plaintiff speaks for the ecological unit of life that is part of it. Those people who have a meaningful relation to that body of water-whether it be a fisherman, a canoeist, a zoologist, or a logger-must be able to speak for the values which the river represents and which are threatened with destruction”⁶³⁷.

This judgement remains one of the strongest judicial calls for the protection of the rights of nature from the United States. While the courts of Colombia and the Philippines, considered below, again appear to represent the most liberal stance on the concept of rights of nature, other parts of the common law world have also demonstrated a limited willingness to recognize the standing of appropriate parties to vindicate and protect the rights and interests of the environment; Canada and New Zealand are two such examples.

Canada

In Canada, local municipalities have been held to be trustees for the environment. In *Scarborough v. R.E.F. Homes Ltd*⁶³⁸, the plaintiff borough was held to be entitled to seek damages for destruction of trees on the basis that “*the municipality is, in a broad general sense, a trustee of the environment for the benefit of the residents in the area of the road allowance and, indeed, for the citizens of the community at large.*”

This aspect of the decision has been cited subsequently, including in *Canada Ltée (Spraytech, Société d’arrosage) v Hudson (Town)*⁶³⁹ where the Supreme Court of Canada was satisfied that the trial judge had “*correctly found...that the Town Council, “faced with a situation involving health and the environment”, “was addressing a need of their community...In this manner, the municipality is attempting to fulfill its role as what the Ontario Court of Appeal has called a “trustee of the environment”*”⁶⁴⁰.

⁶³⁷ Ibid. at 742

⁶³⁸ (1979), 9 M.P.L.R. 255, at 257

⁶³⁹ 2001 SCC 40

⁶⁴⁰ Ibid. at para. 27

New Zealand

New Zealand appears to be the first common law jurisdiction to acknowledge the legal personality of some ecosystems and habitats, notably the Te Urewera National Park and Whanganui River⁶⁴¹.

Following extensive negotiations between government and indigenous Maori tribes, New Zealand passed the Te Awa Tupua (Whanganui River Claims Settlement) Act in 2017 (“**the Te Awa Tupua Act**”)⁶⁴². The Te Awa Tupua Act established a board, Te Pou Tupua⁶⁴³, comprised of representatives from the Crown and the tribes along the Whanganui river, as the “*human face*” of the river ecosystem, known as *Te Awa Tupua*.

Section 14 confers wide standing on the board to vindicate the rights and interests of Te Awa Tupua as appropriate:

(1) Te Awa Tupua is a legal person and has all the rights, powers, duties, and liabilities of a legal person.

(2) The rights, powers, and duties of Te Awa Tupua must be exercised or performed, and responsibility for its liabilities must be taken, by Te Pou Tupua on behalf of, and in the name of, Te Awa Tupua, in the manner provided for in this Part... ”.

S. 19(2)(e) also expressly provides for Te Pou Tupua to participate, in a representative capacity “*in any statutory process affecting Te Awa Tupua in which Te Pou Tupua would be entitled to participate under any legislation*”.

Colombia

In Colombia, the *Future Generations* decision considered the concept of solidarity with nature and recognised that the Amazon itself had rights capable of vindication through human legal action.

The Court held that it was the responsibility of the State to adopt immediate mitigation measures in respect of greenhouse gas emissions “*to protect the right to environmental welfare, both of the plaintiffs, and to the other people who inhabit and share the Amazonian territory, not only nationals, but foreigners, together with all inhabitants of the globe, including ecosystems and living beings...*”⁶⁴⁴ [emphasis added]. The Colombian Amazon was recognized as a subject of rights, entitled to protection, conservation, maintenance and restoration led by the State and the territorial agencies⁶⁴⁵.

In addition to its own jurisprudence, Colombia has made another valuable contribution to the international discussion on environmental rights through its 2016 request for an advisory opinion from the Intra-American Court of Human Rights⁶⁴⁶. The request arose from concerns

⁶⁴¹ EU Report at p.18

⁶⁴² Available at <https://www.legislation.govt.nz/act/public/2017/0007/latest/whole.html#DLM6831452>

⁶⁴³ Section 18

⁶⁴⁴ Ibid. at para. 11.3

⁶⁴⁵ Ibid. at para. 14

⁶⁴⁶ Also known as the American Convention on Human Rights, 22 November 1969

that largescale infrastructure projects being proposed for the Wilder Caribbean Region may cause severe degradation to the human and marine environment.

Though the Court was being asked to consider the issue of environmental harm vis-à-vis potential implications for breaches of *human* rights, its Advisory Opinion⁶⁴⁷ engaged in an analysis of the inextricable links between the environment and human rights,⁶⁴⁸ and expressly recognized the right to a healthy environment as:

*“an autonomous right [which] unlike other rights, protects the components of the environment, such as forests, rivers and seas, as legal interests in themselves, even in the absence of the certainty or evidence of a risk to individuals. This means that it protects nature and the environment, not only because of the benefits they provide to humanity ... but because of their importance to the other living organisms with which we share the planet that also merit protection in their own right. In this regard, the Court notes a tendency, not only in court judgments, but also in Constitutions, to recognize legal personality and, consequently, rights to nature.”*⁶⁴⁹. [emphasis added]

Where a court recognizes the legal personality of a natural environment or entity and where it is deemed to enjoy protection in its own right, it follows that, within the jurisdiction of that court, *locus standi* principles must be flexible enough to accommodate representation seeking to ensure that protection.

The Philippines

The Philippines has been progressive in setting legal precedent for recognizing the rights of animals and nature. *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*⁶⁵⁰, saw representative standing granted to the people of Manila Bay on behalf of cetacean species such as dolphins.

This was followed by *Resident Marine Mammals v. Reyes*⁶⁵¹, in which the court described the petitioners as *“the toothed whales, dolphins, porpoises, and other cetacean species, which inhabit the waters in and around the Tañon Strait. They are joined by Gloria Estenzo Ramos (Ramos) and Rose-Liza Eisma-Osorio (Eisma-Osorio) as their legal guardians and as friends (to be collectively known as “the Stewards”) who allegedly empathize with, and seek the protection of, the aforementioned marine species.”*⁶⁵²

The court had no difficulty in recognizing the standing of the petitioners, as legal guardians of the species named, to challenge permissions for the exploration, development, and exploitation of petroleum resources within in waters between the islands of Negros and Cebu.

⁶⁴⁷ Inter-American Court of Human Rights Advisory Opinion OC-23/17 of November 15, 2017, requested by the Republic of Colombia. Official Summary issued by Court (English): http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2017/20171115_OC-2317_opinion-3.pdf. See also Milnes and Feria-Tinta, *The Rise of Environmental Law in International Dispute Resolution: The Inter-American Court of Human Rights Issues a Landmark Advisory Opinion on the Environment and Human Rights*, *Yearbook of International Environmental Law*, Vol. 27 (2016) 64–81, with English translations of key excerpts

⁶⁴⁸ *Ibid.* at paras. 47 – 70

⁶⁴⁹ *Ibid.* at para. 62

⁶⁵⁰ G.R. Nos. 171947-48

⁶⁵¹ G.R. No. 180771 April 21, 2015

⁶⁵² *Ibid.*

Citing the dissenting decision of Douglas J. in *Sierra Club v Morton*, the court noted that although the Philippines had not gone so far as to grant standing to inanimate objects, “*the current trend moves towards simplification of procedures and facilitating court access in environmental cases...*”

the need to give the Resident Marine Mammals legal standing has been eliminated by our Rules, which allow any Filipino citizen, as a steward of nature, to bring a suit to enforce our environmental laws. It is worth noting here that the Stewards are joined as real parties in the Petition and not just in representation of the named cetacean species. The Stewards, Ramos and Eisma-Osorio, having shown in their petition that there may be possible violations of laws concerning the habitat of the Resident Marine Mammals, are therefore declared to possess the legal standing to file this petition.”⁶⁵³

The decision must be seen in the context of the liberalized rules on standing as set out in the Filipino Rules, cited above⁶⁵⁴. The petitioners had invoked the “*citizen suit*” mechanism for representative actions under Rule 2, Section 5, permitting any Filipino citizen in representation of others, including minors or generations yet unborn, to file and action to enforce rights or obligations under environmental laws.

The merit of the Filipino Rules is that they recognize and seek to accommodate the procedural challenges which are peculiar to environmental cases; the rule for citizen suits such as this “*collapses the traditional rule on personal and direct interest, on the principle that humans are stewards of nature*”⁶⁵⁵.

Analysis of Approach in Other Jurisdictions

There are a number of issues which would (or arguably should) limit, to a greater or lesser extent, the ability of Ireland to adopt approaches to those considered above.

Constitutional Differences

Insofar as it refers to the natural environment at all, the Irish Constitution is somewhat different in emphasis when compared, for example, with its South American counterparts.

Article 10.1 of the Constitution provides that “[all] *natural resources, including the air and all forms of potential energy...belong to the State subject to all estates and interests therein for the time being lawfully vested in any person or body*”.

This more anthropocentric view of the natural environment is rather stark, contemplating, as it does, interests associated with the natural environment in terms of the resources available for exploitation and profit, rather than something with intrinsic value worthy of protection in its own right.

In its 2020 Status Review of its Global Litigation Report, the UN Environment Programme noted that, as of 2012, at least 92 countries had “*granted constitutional status to the right to a*

⁶⁵³ Ibid.

⁶⁵⁴ Annotation to the Rules of Procedure for Environmental Cases, Rule 2, Section 5, https://philja.judiciary.gov.ph/files/learning_materials/A.m.No.09-6-8-SC_annotation.pdf

⁶⁵⁵ Annotation to the Rules, *ibid.* at 11

clean or healthy environment”⁶⁵⁶. It is interesting that Ireland, which has been progressive in the development of its constitutional regime in recent years, appears to be behind other countries on this express acknowledgment.

Distinct Social and Cultural Contexts

Many of the jurisdictions which appear to have embraced the concept of “*rights of nature*” have done so in the context of highly specific and sensitive cultural considerations.

Commentators have noted that in New Zealand, the legal personality ascribed to the natural habitats had its origins in a complex and sensitive settlement process between the Crown and indigenous tribes as part of a wider mediation and reconciliation process in recognition of past wrongs committed against the tribes and their culture⁶⁵⁷.

Similarly, where a proliferation of provisions enshrining, in some form, a broad right to a healthy environment can be found across South America⁶⁵⁸, the genesis of “*rights of nature*” may be the acknowledgement of the particular significance of the natural environment for the region’s indigenous tribes; the Intra-American Court on Human Rights noted the “*special vulnerability*” of indigenous tribes in widely interpreting their right to a dignified life as encompassing their unique relationship to their land and natural environment⁶⁵⁹.

Against this background, it is perhaps unsurprising that these are jurisdictions for which rights of nature do not seem a particularly radical development. Further, in reality, the so-called rights being ascribed to nature in the examples cited above (in the Colombian *Future Generations* case, for instance) might more properly be regarded as human rights to a healthy environment and/or balanced ecology which necessarily encompass a corresponding duty to protect the environment, which has value in its own right, for the benefit of others.

Other Considerations

Actio Popularis Concerns

To acknowledge standalone rights or interests of nature, which cannot litigate on its own behalf, presents the obvious problem of who might be entitled to vindicate those interests in court.

The EU Report notes that those advocating for rights of nature seem unperturbed by an *actio popularis* model of litigation, notwithstanding that this is expressly prohibited by most legal systems, including our own⁶⁶⁰; so, any party who believed the interests of nature required protection of the courts would have *locus standi* to represent those interests. To ascribe rights to the natural environment or to its features, without adopting corresponding rules on standing which set reasonable and practicable parameters for who might represent that interest is, in that sense, unthinkable.

⁶⁵⁶ Global Climate Litigation Report, 2020 Status Review United Nations Environment Programme, ISBN No: 978-92-807-3835-3 at p.42

⁶⁵⁷ EU Report at p.18

⁶⁵⁸ See Intra American Court decision at para. 58

⁶⁵⁹ Ibid. at para. 48

⁶⁶⁰ EU Report at p.53

Statutory Environmental Protection

To consider “*rights of nature*” is, in reality, to use another human construct the true purpose of which is to strengthen legal protections for the natural environment.

The questions arises therefore whether the concept is necessary or adds value to our existing legal framework, when we have available both national laws⁶⁶¹ and EU laws, notably the Birds and Habitats Directives⁶⁶² that have been implemented for the specific and express purpose of environmental protection.

The Preamble to the Habitats Directive⁶⁶³, for instance, notes that:

the preservation, protection and improvement of the quality of the environment, including the conservation of natural habitats and of wild fauna and flora, are an essential objective of general interest pursued by the Community... the main aim of this Directive being to promote the maintenance of biodiversity, taking account of economic, social, cultural and regional requirements... ”.

Article 2(1) states that the aim of the Directive is “*to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild flora and fauna...*” of Member States, taking into account “*economic, social and cultural requirements and regional and local characteristics*”.

These regimes are not without limitation. First, they are directed at Member States in terms of their obligations to protect natural habitats in the *Community* interest; their provisions may not be invoked against private enterprises involved in activities which do not require oversight by the State or State bodies that might be caught by the Directive.

Further, the protections afforded through the Birds and Habitats Directive tend to be deployed in the context of planning and development, i.e. where human development and expansion (and, in turn, encroachment on the natural environment) is already contemplated; when one considers that until recently, the bulk of Ireland’s environmental jurisprudence had developed almost exclusively in the realm of judicial review of planning decisions, the complaint that modern environmental law “*focuses on endless growth, extraction, and development*”⁶⁶⁴ appears apposite.

Finally, some have questioned whether the protections afforded by the Directives can suffice when they extend only to specified species or habitat, where “*national priorities or political compromises*” may be at play when categorising certain species, and where ecological considerations should, arguably, be decisive⁶⁶⁵.

⁶⁶¹ See for instance, the Environmental Protection Agency Act 1992 (as amended) and the Wildlife Act 1976 (as amended)

⁶⁶² Council Directives 2009/147/EC and 92/43/EEC, transposed in Ireland pursuant to the *European Communities (Birds and Natural Habitats Regulations 2011 (S. I. No. 477 of 2011))*

⁶⁶³ Council Directive 92/43/EEC

⁶⁶⁴ EU Report at p.14

⁶⁶⁵ EU Report at p.52

Conclusions

Ascribing legal rights to nature, separate and distinct from the environmental rights of natural persons, presents a host of conceptual and legal difficulties; this is unsurprising, where the notion and language of legally enforceable rights were designed to support and facilitate human and societal interactions.

Nevertheless, recognizing the entitlement of certain parties to vindicate the rights interests of the natural environment as “stewards” or “guardians” of the environment merits further consideration. We have existing legal mechanisms which could be deployed in similar fashion, such as the process for appointing guardians *ad litem*, committees in wardship, and trustees in bankruptcy, all of which could be looked to in devising a mechanism for representation of “natural environment” interests.

With a constitutional amendment to recognize collective environmental rights, which incorporate a duty to protect the natural environment, the *locus standi* principles as set out in decisions such as *Irish Penal Reform Trust* and *SPUC v Coogan* could be extended to appropriate eNGOs to vindicate a broader range of “environmental” rights.

Again, only organisations which could demonstrate, for instance (i) a *bona fide* interest in and (ii) satisfactory expertise relating to the subject matter of the dispute, would be permitted to ventilate issues “*on behalf of*” the natural environment said to be harmed.

Rather than requiring the eNGO to make any radical assumptions about what is best for that natural entity, this approach would simply permit the eNGO to rely on scientific expert evidence as to the ecological harm at issue and oblige the court to consider that evidence as *standalone* evidence of harm, without reference to any impact on a particular adverse impact on any natural person.

This model envisages that the same type of argument and evidence that eNGOs are currently permitted to rely upon in the context of planning judicial reviews would simply be expanded to other types of claim. Thus, the real benefit of granting such standing is that it would “*secure an effective voice for the environment even where federal administrative action and public-lands and waters were not involved...*”⁶⁶⁶.

SECTION 5 - Conclusions

It has been suggested that common law jurisdictions have been slower than others to tackle this. As one commentator notes, “*climate change is the kind of complex, multistakeholder issue that Anglo-American common law has historically left for politicians rather than judges to solve*”⁶⁶⁷. An analysis of various jurisdictions’ approaches to the role of the courts in environmental litigation, including those in our jurisdiction, suggests that there is some truth to this statement.

⁶⁶⁶ Ibid. at 471

⁶⁶⁷ *Juliana v United States*, 134 Harv. L. Rev. 1929, 10 March 2021

Our current rules on standing are arguably inadequate for the purposes of environmental protection where they cannot accommodate standing to vindicate (i) collective rights, as they relate to the environment (ii) rights of future generations and (iii) rights or interests of nature.

The language of “*rights*”, particularly “*rights of nature*” is problematic, but it is perhaps best considered as an attempt to meet the particular complication of individuals wishing to use their voice to protect interests separate and distinct from their own (at least partially) in environmental litigation. Instead of having to engage in a contortion exercise to demonstrate personal harm, permitting standing to invoke these classes of rights permits a court to examine evidence of the true harm alleged and to attribute appropriate weight to that evidence in its decision-making.

Even a perfunctory review of the case law cited from across jurisdictions in this paper illustrates the undoubted and vast contribution that eNGOs have made to modern environmental litigation. The importance of eNGOs as litigants will only increase as citizens continue to seek out all tools at their disposal, including litigation, to prevent or mitigate the impacts of environmental degradation and climate change; practical considerations alone suggest that legal systems might benefit from doing more, rather than less, to accommodate their participation on a broader basis.

Though the only proposal which might be immediately available to the legislature (in the absence of constitutional amendment) is to expressly permit an expanded basis for standing for eNGOs, the same statutory regime could be invoked if rights of future generations or (perhaps less likely in the short-term) rights of nature were capable of judicial scrutiny. Notwithstanding obvious differences in cultural, social and legal contexts, some of the legislative and procedural mechanisms utilised in other jurisdictions could be adapted relatively easily to suit Ireland’s constitutional and legislative framework.

To adopt the most liberal approach to standing in environmental rights litigation, as contended for by some commentators, would first require a seismic shift in thinking towards a more eco-centric view of human life, existing, not in a vacuum, but as part of a wider system of biodiversity, all of which is entitled to some degree of legal protection.

Given our increasing awareness of the harm we as a species are capable of causing, and conversely, our unique ability to prevent or reverse that harm, not just for our benefit but for that the natural environment, the advent of serious consideration of the liberal approach may already be on the horizon.



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Enhancing Access to Environmental Justice: A New Class Action Procedure for Environmental Law in Ireland

Orla Heatley LLB

with additional research by Léana Gambert Jouan, Lauren Walsh and Peter Lyons

Introduction

1. Under Article 9(3) of the Aarhus Convention, Parties must ensure that ‘members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities’⁶⁶⁸ which contravene environmental law. This paper suggests that the lack of a class action procedure in Ireland hampers such access to the public, and that failure to introduce such a procedure will be a lost opportunity to enhance access to justice in environmental law as well as other areas. As will be discussed below, class actions facilitate the aggregation of small claims that would be too insignificant or costly to initiate individually, enhancing procedural economy, fairness and access to justice. This is of particular importance for environmental law, in which effective enforcement has been identified as an issue by stakeholders in the sector. Class actions would empower large groups of litigants to have their cases heard and their injuries compensated in private actions, as well as creating a new avenue for public-interest litigation.
2. Class actions (sometimes called ‘multi-party actions’, ‘collective actions’, ‘representative proceedings’ or a range of other related terms) were available in the Courts of Chancery in England for many hundreds of years but dwindled in the mid-19th Century and went into a hibernation from which they have never awakened.⁶⁶⁹ Ireland inherited this wariness of multi-party litigation and the English Court’s restrictive understanding of the ‘same interest’ requirement⁶⁷⁰ which permits such actions only where the interest, injury and remedy are *exactly the same* as opposed to being merely common. Ireland is among the last of the major common law countries without a procedure for multi-party litigation, and indeed 21 of the biggest 25 economies in the world have some form of the procedure available.⁶⁷¹
3. Calls for reform in this area have already been well made, including by a 2005 Report by Irish Law Reform Commission which provides a comprehensive description of the main issues and offers a recommendation on introducing a multi-party action (MPA) procedure.⁶⁷² A report by the EU Bar Association and Irish Society for European Law joined this call in 2020.⁶⁷³ An EU Directive on ‘Collective Redress’ endorsed by the European Parliament in November 2020 compels all member states to create procedural mechanisms for allowing qualified entities to bring representative actions, and must be enforced domestically by 2023.⁶⁷⁴ Although its purposes are quite divorced from this paper’s, this demonstrates the rising tide in favour of collective (‘class’) procedures across Europe.

⁶⁶⁸ United Nations Economic Commission for Europe Convention on, ‘Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters’ (1998), art 9(3) [hereinafter Aarhus Convention (1998)].

⁶⁶⁹ Stephen Yeazell *From Medieval Group Litigation to the Modern Class Action*, (Yale University Press 1987) 211.

⁶⁷⁰ *Duke of Bedford v Ellis* [1901] AC 1.

⁶⁷¹ Deborah R. Hensler et. Al, *Class Actions in Context* (Edward Edgar Publishing 2013), 3.

⁶⁷² Law Reform Commission, *Report on Multi-Party Litigation* (LRC 76-2005).

⁶⁷³ EU Bar Association and Irish Society for European Law, *Report relating to Litigation Funding and Class Actions* (2020).

⁶⁷⁴ Council Directive 9223/20 of the European Parliament and of the Council on Representative Actions for the Protection of the Collective Interests of Consumers, and Repealing Directive 2009/22/EC, 2020 O.J. [hereinafter Council Directive 9223/20].

4. This paper makes the case for a class action procedure in Ireland that will be effective for all claimants but in particular those seeking to enforce environmental law and be compensated for injuries and violations related to environmental matters. Section 2 provides an overview of the procedures available in Ireland and their shortcomings. Section 3 outlines the benefits of a class action procedure in light of the above. Section 4 examines the approach of other regimes, and Section 5 details how these comparisons can help build towards a comprehensive procedure for the Irish context.
5. Ahead of this, note the working definition of class actions for the purposes of this paper:

‘A class action is a legal procedure which enables the claims (or part of the claims) of a number of persons against the same defendant to be determined in the one suit. In a class action, one or more persons (‘representative plaintiff’) may sue on his or her own behalf and on behalf of a number of other persons (‘the class’) who have a claim to a remedy for the same or a similar alleged wrong to that alleged by the representative plaintiff, and who have claims that share questions of law or fact in common with those of the representative plaintiff (‘common issues’). Only the representative plaintiff is a party to the action. The class members are not usually identified as individual parties but are merely described. The class members are bound by the outcome of the litigation on the common issues, whether favourable or adverse to the class, although they do not, for the most part, take any active part in that litigation.’⁶⁷⁵

The Irish Situation: Current Limitations

6. While there are currently no court procedures that directly facilitate class-action style lawsuits, there are a limited number of existing ways in which Irish courts allow multiple-parties to become involved with a single action.
7. Firstly, it is worth mentioning the ‘test case’ model, which circumvents the general prohibition on class actions in Ireland, with limitations. A case is taken by one individual as a generic case to ‘test’ whether liability can be established, and further cases can follow. Significant test cases in Irish legal history include the ‘army-deafness’ claims, and the procedure continues to be routinely used, most notably in recent times by pub owners challenging FBD’s refusal to indemnify them for losses related to the Covid-19 pandemic.⁶⁷⁶ Joanne Blennerhassett conceptualises test cases as one approach within a ‘confusing array of alternative methods’ used by the Courts to avoid using multi-party actions.⁶⁷⁷ Inefficiency is a key problem with the method; in the famous *Social Welfare Equality Cases*, two cases were taken by women who had been denied equal treatment as a result of the government’s failure to implement the 1978 Directive on Equal Treatment in Social Welfare. The state settled with the two respective plaintiffs, and made settlements with 2,700 out of the total 69,000 women who were affected. 8,500 other claims were initiated, and 70 women took yet another case and it was found that they too were entitled to relief. Eventually, the government resolved to make payments to the entire group of 69,000 women. A class action procedure would have made the process more efficient and straightforward, saving judicial and government resources and ensuring speedier relief for the persons affected. Other shortcomings of the procedure relate to ‘suitability’ and ‘typicality’ concepts; there is no way of knowing that a ‘lead case’ will be the most appropriate

⁶⁷⁵ Rachael Mulheron, , *The Class Action in Common Law Legal Systems : A Comparative Perspective*, (Carl Baudenbacher, et al ed, Bloomsbury Publishing Plc, 2004) 3.

⁶⁷⁶ Aodhan O’Faolain, ‘Pubs win landmark test cases against FBD over Covid-19 coverage’ *Irish Legal News* (Dublin, 5 February 2021) <<https://www.irishlegal.com/articles/pubs-win-landmark-test-cases-against-fbd-over-covid-19-coverage>> [accessed 10th December 2021].

⁶⁷⁷ Joanne Blennerhassett, *A comparative examination of multi-party actions : The case of environmental mass harm* (Bloomsbury Publishing, 2006) 256.

one to further the interests of all those that follow. A more formalised class action process which reflects these considerations, as with Rule 23 in the United States, would overcome this issue.

8. That said, the Irish judicial system is not totally silent on class ('multi-party'/'representative') actions. Order 15 of the Rules of the Superior Courts, Rule 9 states that '*Where there are numerous persons having the same interest in one cause or matter*', one or more such persons may sue.⁶⁷⁸ The procedure originated as a form of equitable redress in the Court of Chancery in England.⁶⁷⁹ However, as described in the Law Reform Commission's 2005 Report on Multi-Party Actions, the limitations are so restrictive that they substantially limit the availability of a meaningful multi-party procedure.⁶⁸⁰ As a result, Rule 9 has been invoked by Irish litigants on a limited number of occasions and with limited success.
9. One significant limitation within the Irish context is the requirement that the putative class authorise the plaintiffs to take the suit. In *Madigan v Attorney General*, the plaintiff sought to challenge the constitutionality of a residential property tax on her own behalf and on behalf of all 'assessable' persons within the meaning of the relevant legislative act.⁶⁸¹ She was refused on the basis that none of these persons had authorised the plaintiff to do so. A case of this nature is precisely the kind that would arise in environmental claims, in which a single or a few plaintiffs would take a case on behalf of a wider unnotified but affected group. In a later case, the Courts conceded that written authorisation is not strictly necessary, finding that a list of 1,392 farmers could be represented by five farmer plaintiffs leading a suit challenging certain government schemes.⁶⁸² This was because extensive debate between these farmers had taken place throughout the country and the same 1,392 farmers had contributed to a fund with the understanding that it would be used to bring proceedings on their behalf. Despite this flexibility, the requirement for authorisation in practice means that a plaintiff needs a close and pre-existing relationship with putative class members in order to be permitted to take a case in their name.⁶⁸³ Such a rigid requirement could be made more flexible by borrowing features from class action regimes abroad.
10. Another key limitation is the strict interpretation the Courts have applied to the 'same interest' requirement. In the 1905 *Duke of Bedford v Ellis* case, Lord McNaghten famously articulated this element as requiring 'a common interest, a common grievance and relief in its nature beneficial to all.'⁶⁸⁴ As can be seen in other jurisdictions, the question of defining 'the same interest' for the purposes of a class action is a difficult one and the certification stage during which the Court determines whether or not the class has sufficiently similar interests is often just as important (if not more so) as the substantive phase of the litigation.⁶⁸⁵ In order for a class action procedure to be successful and effective, Courts must ensure that, *inter alia*, the class have the same or sufficiently 'common' interests, that the same relief will benefit every member of the class in the same way, and that no class members will be subject to individualised defences by the defendants. The Irish Courts' concern with these issues has meant that only very clear cases have been permitted, such as where a union sues on behalf of employees.⁶⁸⁶

⁶⁷⁸ The Courts Service of Ireland, 'Superior Courts Rules', <<https://courts.ie/rules/parties>> accessed 20 December 2021.

⁶⁷⁹ Law Reform Commission, Consultation Paper on Multi-Party Action, (LRC CP 25-2003) Section 1(1)(3).

⁶⁸⁰ Law Reform Commission (n 5) 10.

⁶⁸¹ *Madigan v Attorney General* [1986] ILRM 136, 148

⁶⁸²⁶⁸² *Greene v Minister for Agriculture* [1990] 2 IR 17.

⁶⁸³ LRC (n 12) Section 1(1)(7).

⁶⁸⁴ [1901] AC 1, 8.

⁶⁸⁵ Benjamin Spencer, *CLASS ACTIONS, HEIGHTENED COMMONALITY, AND DECLINING ACCESS TO JUSTICE*, 93 (44) Boston University Law Review, 441-491, at 441 (noting that "The class certification decision is one of the most hard-fought battles in civil litigation").

⁶⁸⁶ *Rafferty v Bus Éireann* [1997] 2 IR 424

This paper contends that the Irish courts could and should develop a more sophisticated system for determining sufficient ‘sameness’ of interest, as their counterparts in other jurisdictions have done.

11. Another reason that Rule 9 is little-used is the fact that damages are not available under a representative action procedure. While injunctive and declaratory relief are appealing remedies in some environmental cases, it cannot be denied that pursuit of damages is a key motivating factor for both litigants and their lawyers. Following the consensus of the judiciary in England, the Irish Supreme Court has held since 1930 that representative actions under Rule 9 cannot apply to actions in tort.⁶⁸⁷ In 2001, representative actions in tort suits were expressly forbidden under Order 6 Rule 10 of the Circuit Court Rules.⁶⁸⁸ In addition, civil aid is not available to plaintiffs of class members in a representative action under the Civil Legal Aid Act 1995.⁶⁸⁹
12. As a result of the above, representative actions in Ireland are ‘underused and largely overlooked’.⁶⁹⁰ The Rule 9 procedure could certainly be utilised in some limited number of environmental actions where plaintiffs seek non-monetary relief for a group of persons with very similar interests. The usefulness of the procedure as it currently exists therefore warrants further exploration and experimentation by environmentally-concerned litigants and lawyers alike. However, this paper suggests that developing a more sophisticated procedure would yield great benefits for the Irish legal system as a whole, and proposals for same are discussed in sections that follow.

Reasons to Introduce a Class Actions Procedure

13. This section seeks to briefly submit some of the key reasons why existing procedures should be reformed or totally overhauled by specifically relating them to the emergent trend of environmental litigation.
14. The objectives discussed below might be thought of as proxies for the ultimate goal of deterring environmental wrongdoing, modifying behaviour of both private actors and government, and achieving enhanced environmental protection and conservation. Of course, reliance on private tortious liability in lieu of effective public regulation is an approach that has not taken hold this side of the Atlantic and this paper does not propose that it should. Nonetheless, there is no reason that civil liability cannot play a regulatory role in our scheme of environmental protection, and indeed there are already statutory provisions that provide for such liability.⁶⁹¹

A Procedure for Current Context

15. Firstly, and to borrow from the Law Reform Commission’s Consultation Paper on the same issue; ‘the phenomenon of multiple suits involving the same or similar claims against one or more defendants is no longer rare or exceptional in modern society’.⁶⁹² To name a few, consumer protection and data protection are ever-expanding areas of law which demand common-sense and consistent procedures through which large groups of litigants can make claims. The Canadian Supreme Court has held that the growth of the class action procedure reflects ‘the rise of mass production, the diversification of corporate ownership, the advent of

⁶⁸⁷ *Moore v Attorney General (No 2)* [1930] IR 471.

⁶⁸⁸ Circuit Court Rules, 2001, S.I. No. 510/2001.

⁶⁸⁹ Civil Legal Aid Act 1995, Art. 28(9)(a)(ix).

⁶⁹⁰ Law Reform Commission (n 5), 10.

⁶⁹¹ See eg Waste Management Act 1996 (as amended), ss 57 and 58; Local Government (Water Pollution) Act 1977, s. 12; Air Pollution Act 1987, s 4. (quoted in Joanne Blennerhassett, 2016 (n 10)).

⁶⁹² Consultation Paper (n 12) Section 3(1)(1).

the mega-corporation, and the recognition of environmental wrongs⁶⁹³. The EU Directive on collective actions notes the threat of ‘globalisation and digitalisation’ putting large numbers of consumers at risk from unlawful practices.⁶⁹⁴ A strict requirement for mere individual representation precludes effective litigation in modern conditions, and an effective class action procedure is necessary to fairly resolve many complex contemporary disputes.

16. As regards environmental litigation, the global ‘explosion’ of climate litigation⁶⁹⁵ cases will be mirrored in Ireland and is of course manifested in the recent *FIE* case.⁶⁹⁶ The first and most compelling reason for introducing class action reform is to facilitate this rising tide of litigation and to ensure that it occurs under the most fair and efficient conditions. This trend is of concern to both litigants, private actors and government alike, as all benefit from increased procedural efficiency and fairness, judicial economy, and certainty. For this reason, this paper proposes drafting comprehensive and textually grounded rules for class actions, as is described in Section 5, such that certainty prevails and further confusion and inefficiency are bypassed.

Procedural Fairness

17. It is of crucial importance for any legal system that people with similar injuries and grievances are treated fairly and equally and offered equal remedies. A key advantage of the class action procedure is that it provides a procedure with which both plaintiffs and defendants can become familiar and upon which they can rely, and provide a textual basis for fair and consistent judicial decisions. The existence of a formalised procedure enables all parties to deal with an issue on a principled basis, as opposed to through ad-hoc procedures, a fact that has been recognised by courts in other jurisdictions.⁶⁹⁷ Because conducting multi-party litigation can be financially burdensome and intimidating, an element of predictability puts both potential litigants and their counsel at relative ease.⁶⁹⁸
18. From a defendants’ perspective, it is important for fairness that one can defend themselves in a proceeding in which rules are known.⁶⁹⁹ Existing possibilities for representative action do not provide this certainty and predictability; for example, test cases do not bind all parties and other cases and while courts usually continue to apply their findings, there is no legal framework governing same.⁷⁰⁰ Both plaintiffs and defendants benefit from what U.S. complex litigation expert Samuel Issacharoff calls ‘global peace’ for all parties once litigation is aggregated and an issue is fully concluded in a single or very few cases.⁷⁰¹
19. Of course, critics of class actions will argue that there is an inherent unfairness to representing class members who do not enjoy their day in Court. This analysis ignores the unfairness of such persons’ rights and claims never being heard in Court at all, and the fact that other jurisdictions have been successful balancing between individual rights and the rights of groups of parties to litigate claims in an effective manner.⁷⁰² As will be discussed, provisions relating to choice of lead plaintiff, notice and opt-ing out, and wide discretion afforded to judges in assessing

⁶⁹³ *Western Canadian Shopping Centres Inc v Dutton* [2001] SCC 46 (SCC) 26.

⁶⁹⁴ Council Directive (n 7).

⁶⁹⁵ Peel, J., and H.M. Osofsky. 2018. *A Rights Turn in Climate Change Litigation? Transnational Environmental Law* 7 (1): 37–67.

⁶⁹⁶ César Rodríguez-Garavito, ed. *Litigating the Climate Emergency:*

How Human Rights, Courts, and Legal Mobilization can Bolster Climate Action. (Forthcoming, Cambridge University Press 2021).

⁶⁹⁷ *Hollick v. Toronto (City)* [2001] SCC 68.

⁶⁹⁸ *Blennerhassett* (n 10) 85.

⁶⁹⁹ *Mulheron* (n 8) 48.

⁷⁰⁰ Jillaine Seymour, *Representative Procedures and the Future of Multi-Party Actions* (1999) 62(4) *The Modern Law Review*, 565.

⁷⁰¹ Samuel Issacharoff, *Rule 23 and the Triumph of Experience* (2020) 84 *Law and Contemporary Problems* 161, 181.

⁷⁰² *Blennerhassett* (n 10) 81.

fairness for all parties and for absent class members are sufficient safeguards to allay these concerns.

Procedural Efficiency

20. A desire for procedural efficiency, sometimes also referred to as ‘judicial economy’, is a leading motivation for class action reform across jurisdictions studied. It is easy to understand why a single case capturing the claims thousands of absent claimants is a more efficient means of litigating meritorious claims than thousands of individual cases flowing through the courts. This applies even where all claimants might share legal representation, as the Law Reform Commission explained in its 2005 Report: ‘Whether there are numerous legal representatives acting on behalf of a single litigant or whether a single legal representative has many cases to cover, the cost will naturally be much greater than if a single representative is acting on behalf of the group.’⁷⁰³
21. While the ‘test case’ procedure addresses this issue somewhat, the LRC’s Consultation Paper on Multi-Party Action conceded that the test case ‘may be less of a boon in terms of judicial economy than popularly imagined’.⁷⁰⁴ For one, it is necessary in the ‘test case’ paradigm that each claimant jump through the various procedural hoops of launching a separate action, even though the main legal issues are settled. Judges and their staff must spend time dealing with claims that are effectively already decided. Further, as the *Social Welfare Cases* discussed in Section 2 exemplify, the reality of the test case approach is often more complex than its theory would reveal. In that example, (executive) government resources were also expended determining payments to be made to the affected women welfare claimants and following a complex piece of litigation that occurred over many different stages. A single class action would have saved resources and time, not to mention minimise the costs and efforts required of the claimants whose rights had been violated.
22. What is of course crucial is that the class action process does not become so procedurally burdensome as to become inefficient itself, and that courts can be sure that resolution on a group basis is more appropriate than individual litigation. Efficiency is offended if unviable claims are made and resources are wasted, and defendants should be protected from unmeritorious claims.⁷⁰⁵ Thoughtful rules will assure this, such as the use of subgroups where claims differ in a meaningful way, and of course by creating a robust certification process such that no class actions are initiated for which individual actions would have sufficed or for which individual issues predominate.

Access to Justice

23. Access to justice is a key justification for introducing class actions which is well articulated in various reports and analysis both in other jurisdictions and at home in Ireland. The Irish Society for European Law’s 2020 report on the issue opens with the following words of The Hon. Ms Justice Susan Denham:

*“It is probable that the less well off, those disadvantaged in our society, would be the main beneficiaries of a new procedure enabling multi-party action....”*⁷⁰⁶

⁷⁰³ LRC (n 5) 1.52.

⁷⁰⁴ LRC Consultation Paper (n 12) at 34.

⁷⁰⁵ Mulheron (n 8) 56-7.

⁷⁰⁶ ISEL (n 6) quoting: ‘Court Service record of The Hon. Ms Justice Susan Denham’ *Launch of the Report on Multi -Party Litigation by The Law Reform Commission* (27 September 2005)

<<https://www.lawreform.ie/fileupload/Speeches/Denham%20ClassActionsReport.pdf>> accessed 21 December 2021.

24. Class actions provide access to justice for those unable to afford the legal costs of individual actions or whose claims are too small to justify such costs, or indeed those who do not know that they have claims at all. In addition, and in conjunction with amended rules on standing, class actions empower groups of litigants to pool together resources to hold government or public bodies accountable for contraventions of environmental law (including international environmental law) and violations of ‘diffuse’ or ‘collective’ rights which affect every person in a society or those within a certain demographic. Evidence has pointed to low-income and minority communities bearing a disproportionate burden of pollution,⁷⁰⁷ and examples of class actions empowering these groups to obtain some compensation are abound (see the famous toxic torts class action taken in Hinkley, California depicted in the *Erin Brockovich* movie for one famous example.⁷⁰⁸)
25. Experts abroad have long pointed to this factor as a crucially important one in the class actions debate. In the UK, Lord Woolf MR’s *Final Report on Access to Justice* outlined that a key feature of multi-party actions was the provision of ‘access to justice where large numbers of people have been affected by another’s conduct, but individual loss is so small that it makes an individual action economically unviable’.⁷⁰⁹ The U.S. Supreme Court has spoken many times on the important role class actions play in facilitating small claims.⁷¹⁰ When class action reforms were introduced in Australia, the Federal Attorney General spoke of the same issue of small losses and providing a ‘real remedy’ in spite of high costs.⁷¹¹ The goal is one of three (cited alongside judicial economy and behaviour modification) that have consistently guided courts in Canada in implementing their relatively new procedure.⁷¹² Further, the term ‘access to justice’ also featured heavily in the EU Commission Recommendation on Collective Redress.⁷¹³
26. Rachael Mulheron outlines four aspects of access to justice addressed by a class action procedure. Firstly, it creates a venue for litigating rights where one might previously not exist. Rights are illusory unless they can be litigated effectively, and so empowering group claimants by providing them with the facility gives substantive law ‘teeth’ that it otherwise would lack.⁷¹⁴ Secondly, the procedure facilitates overcoming cost-related barriers and vindicate meritorious claims for low amounts of damages. The U.S. Supreme Court has described vindicating the rights of people who individually ‘would be without effective strength’ as the ‘policy at the very core of the class action mechanism’.⁷¹⁵ A third element is that claimants who group together adopt a more powerful posture in adversarial proceedings against large defendants with extensive economic means.⁷¹⁶ This point is of interest in relation to public law actions; the size of the class might not strictly matter because in these cases because it only takes one person

⁷⁰⁷ Blennerhassett (n 10) 116.

⁷⁰⁸ Steven Soderbergh, ‘Erin Brockovich’ (Universal Pictures 2000). For overview see: Venturi, ‘PG&E Hit With Class Action Lawsuit Over Lingering Hinkley Contamination’, *San Bernardo County Sentinel* (23 September 2013) <<https://sbcsentinel.com/2013/09/pge-hit-with-class-action-lawsuit-over-lingering-hinkley-contamination/>> accessed 31 December 2021.

⁷⁰⁹ Lord Woolf, ‘Access to Justice, Final Report’ (London, HSMO, 1996) at Ch 17(2).

⁷¹⁰ *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 186, 94 S. Ct. 2140, 2156 (1974) (Douglas, dissenting in part) (“The class action is one of the few legal remedies the small claimant has against those who command the status quo.”); Phillips *Petroleum v. Shutts*, 472 U.S. 797 (1985); *Deposit Guaranty National Bank v. Roper*, 445 U.S. 326, (1980).

⁷¹¹ Commonwealth, Parliamentary Debates, House of Representatives, 14 November 1991, 3174 (Mr Duffy— Federal Attorney General).

⁷¹² For example, see *Carom v Bre-X Minerals* (1999) 44 OR (3d) 173 (Gen Div).

⁷¹³ The European Commission, ‘COMMISSION RECOMMENDATION of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law’ (2013/396/EU).

⁷¹⁴ Mulheron (n 8) 53.

⁷¹⁵ *Amchem Products Inc v Windsor* 521 US 591, 617.

⁷¹⁶ Mulheron (n 8) 54.

to make a general civil rights claim, but there is a certain persuasive power to having many hundreds or thousands of group members involved in a case holding government to account. Finally, class actions enhance timeliness in accessing justice, and their association with judicial economy means that justice is done, and seen to be done, quickly.⁷¹⁷

27. For our purposes, access to justice is a particularly important factor weighing in favour of class actions. Under Article 9(3) of the Aarhus Convention, Parties must ensure that ‘members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities’⁷¹⁸ which contravene environmental law. It is crucially important that violations of environmental rules and failures to meet relevant obligations are punished. While other avenues for environmental activism exist, this paper submits that class actions are one important option ‘in a suite’⁷¹⁹ of others available to environmentalists, and indeed to ordinary people who suffer environment-related injuries.
28. Recall also that under current ‘representative action’ rules in Ireland, civil legal aid is not available.⁷²⁰ More in-depth discussion on provisions for legal aid and for funding class actions more generally is outside the scope of this paper, but it should be noted that this compounds issues surrounding access to justice, and the LRC’s Consultation Paper recommended removing this bar to representative actions or at least not extending it to any new multi-party action procedure.⁷²¹

Comparatives: Class Actions Abroad

29. This section offers useful overviews of class action procedures available in other jurisdictions with reference to some of the issues outlined above. This paper will recommend lifting specific elements from a few of these with a view to forming a regime that is comprehensive, robust, and achieves the aims outlined earlier in the paper in relation to environmental justice.
30. The jurisdictions of the United States of America, Canada, and Australia are particularly important for our purposes. Like Ireland, these legal systems have derived from the English common law regime and inherited its suspicion of actions in which absent persons are purportedly represented, a concept which offends the adversarial-individualist legal tradition. The section also briefly discusses how the United Kingdom has dealt with the issue of collective claims, both historically and with the more recent innovation of ‘Group Litigation Orders (GLOs)’, but this paper submits that these developments are not sufficient in dealing with the wave of environmental litigation that is anticipated in the near future. The U.S.A has used class actions in some form since the 19th Century and Canada and Australia have only introduced the procedure in more recent memory. These experiences have much to offer in terms of inspiration for Irish drafters.
31. Lessons from European civil law jurisdictions including France, the Netherlands, Spain and Belgium are also examined, alongside some interesting approaches from Latin America. While the latter do not contribute to this paper’s ultimate proposal, they raise some pertinent issues to which drafters should pay attention.

⁷¹⁷ Mulheron (n 8) 54-55.

⁷¹⁸ Aarhus Convention (1998), Art 9(3).

⁷¹⁹ Blencow, Hardwick and Lewis (2018) ‘Carving Out The Role for Environmental Class Actions in Australia’ *Australian Environment Review* (Jan 2018) 237-242, 240.

⁷²⁰ Civil Legal Aid Act 1995, s 28(9)(a)(ix).

⁷²¹ LRC (n 12) – (section on Civil Legal Aid).

UK

32. As previously mentioned, the United Kingdom has been wary of class actions and, unlike many of the common law countries which inherited its legal system, it has not legislated for a procedure to manage multi-party proceedings within the definition of ‘class actions’ used in this paper. Since the aforementioned *Dukes v Bedford*⁷²² case in 1901, the ‘same interest’ requirement has been strictly construed and the courts have refused to develop any leniency on this point. In the recently decided consumer rights case *Lloyd v Google*, the UK Supreme Court refused to allow a collective suit of around 4 million UK consumers affected by Google’s alleged workaround of iPhone privacy settings.⁷²³
33. Group Litigation Orders (GLOs) are possible under Rule 19.11 of the Civil Procedure Rules.⁷²⁴ These empower courts to manage claims giving rise to common or related issues of fact or law. Claimants who have been found to have similar claims can ‘opt-in’ to the GLO register and will be bound by the agreement. Where, for example, 90,000 Volkswagen vehicle owners took claims over cars’ engines being able to cheat emissions compliance tests, the High Court dealt with many of these claims in a GLO.⁷²⁵ While this is a useful innovation by the UK courts, it lacks the procedural efficiencies of the pure class action as it only deals with already-pending cases and does not permit one or a few litigant(s) to represent a class.

USA

34. Collective litigation lost favour in English common law, fading away as an individualized justice system took hold,⁷²⁶ and it is an irony that the United States of America, a jurisdiction known for its ideological devotion to individualism, went the other way and developed a comprehensive procedure. Class actions have long been available in the U.S. system, first acknowledged textually in 1833 but taking its modern form following the oft-discussed reforms of 1966, during which Rule 23 of the Federal Rules of Civil Procedure was born.⁷²⁷ In alignment with other jurisdictions studied, a key motivation behind this development seems to have been facilitating the spread of litigation costs between large groups, according to the U.S. Supreme Court’s conception.⁷²⁸ The class action procedure is also designed to create ‘private attorney general litigation’ that assists the government in enforcing laws⁷²⁹ which somewhat replaces, or at least enhances, regulatory efforts by the state.⁷³⁰ While this paper does not suggest that class actions should replace other government regulation or enforcement of environmental law, it would certainly create an avenue for those private actors wishing to place a role and similarly ‘enhance’ these efforts.
35. It is also worth noting the historical context for the reforms of Rule 23 in the 1960’s. Advisory Committee members have cited the ‘echo of race relations’⁷³¹ on the minds of reformers during this period of intense social upheaval in the U.S. Looking to empower a new generation of litigants fighting discrimination in employment, education and elsewhere, the Advisory

⁷²² *Duke of Bedford v Ellis* [1901] AC 1.

⁷²³ *Lloyd v George*; see for overview: Natasha Lomas, ‘Google wins appeal against UK class action-style suit seeking damages for Safari tracking’ (*TechCrunch*, 10 November 2021) <https://techcrunch.com/2021/11/10/google-wins-appeal-against-uk-class-action-style-suit-seeking-damages-for-safari-tracking/> accessed 13 December 2021.

⁷²⁴ UK Justice Department, ‘PART 19 - PARTIES AND GROUP LITIGATION’

<<https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part19#III>> accessed 20 December 2021.

⁷²⁵ *The VW NOx Emissions Group Litigation* [2019] EWHC 783.

⁷²⁶ Deborah Hensler, et al., ‘Class Action Dilemmas: Pursuing Public Goals for Private Gain’ (RAND 2000), 10.

⁷²⁷ *Ibid.*, 12.

⁷²⁸ *US Parole Comm v Geraghty*, 445 US 388, 402.

⁷²⁹ Mulheron (n 8) 64.

⁷³⁰ Samuel Issacharoff, ‘Governance and Legitimacy in the Law of Class Actions’ (1999) *The Supreme Court Review* 337, 338.

⁷³¹ Hensler et. Al (n 59), 12.

Committee sought to develop a procedure that would resolve uncertainties in the previous procedure⁷³² and create a tool for fighting injustice.⁷³³ It is this paper's contention that, in conjunction with amended rules on standing and the introduction of key environmental principles into Irish law, a class action procedure could facilitate transformative change in the field of environmental law.

36. With a view to drafting a class action procedure for Ireland, Rule 23 of the Federal Rules of Civil Procedure⁷³⁴ is herein examined, with the hope of extracting its most effective provisions. Firstly, Rule 23(a) outlines the 'prerequisites' for certification of a class before a case can even begin. This contrasts with the more lenient approach in Australia, where courts do not require pre-trial certification for fear of extra costs and delays (see IV below). This paper will submit that, although pre-trial certification adds some extra steps, it produces both the certainty and procedural fairness that should be central to a class action procedure. The prerequisites are as follows:

- a. the class is so numerous that joinder of all members is impracticable; [**'numerosity'**]
- b. there are questions of law or fact common to the class; [**'commonality'**]
- c. the claims or defenses of the representative parties are typical of the claims or defenses of the class; [**'typicality'**] and
- d. the representative parties will fairly and adequately protect the interests of the class.⁷³⁵ [**'adequacy'**]

37. A challenge inherent in the class action procedure is the sacrifices that it entails as regards individual party autonomy and the rights of absent class members. The general presumption is that an action will be taken by individual parties (or small groups in joinders) and certain criteria should be satisfied before transforming it into a *class* action. The numerosity requirement is the most basic – for obvious reasons, a class should be so numerous as to justify a class action. In the U.S., courts usually require 40 class members or more, and groups of between 21 and 40 will receive 'varying treatment'.⁷³⁶

38. Perhaps the most contested criterion is 'commonality'. Courts are looking for common issues of law or fact amongst the class members, and the requirement that all have suffered the same injury. In *Wal-Mart v Dukes*⁷³⁷, the leading case on this matter, the Supreme Court refused to order certification of a group of 1.5million women working for Wal-Mart on the basis of alleged company-wide practices of gender discrimination. Because the class members' specific injuries and their causes varied within this large group, the Court would not accept that they suffered the 'same injury'.⁷³⁸ Such a restrictive understanding of commonality creates a significant barrier for plaintiffs and putative classes, but is necessary to prevent class actions that are unwieldy and which deal with many different issues at once (an inefficiency that flies in the face of the procedural economy justification for having them at all). For our purposes, this stringency might cause issues in public-interest environment claims (e.g. claims relating to 'the right to a healthy environment') as the claims will be so diffuse that they might not satisfy strict commonality. In the proposals in Section 5 below, it is suggested that this criterion is included

⁷³² Michael Murphy and Edwin Butterfoss 'Need Requirement: A Barrier to Class Actions under Rule 23(b)(2)' 1979) 67 (5) Georgetown Law Journal 1211, 1214.

⁷³³ *Amchem* (n 48), 614.

⁷³⁴ Federal Rules of Civil Procedure, Rule 23(a) (USA).

⁷³⁵ *Ibid.*

⁷³⁶ *In re Modafinil Antitrust Litig.*, 837 F.3d 238 (2016), 250.

⁷³⁷ *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, (2011) .

⁷³⁸ *Walmart (ibid.)*, 348.

in the Irish procedure but relaxed where the claim is in the public interest. Also worth noting is the possibility for U.S., judges to order the creation of subclasses to deal with different parts of issues or small variations in the situation of class members.⁷³⁹

39. The third and fourth requirements, typicality and adequacy, are designed with absent class members in mind. ‘Typicality’ refers to the need for the lead plaintiff’s claims to be ‘typical’ of the claims of all other members of the class, and relatedly, ‘adequacy’ refers to the lead plaintiff’s ability to fairly represent them. This ensures that the lead plaintiff’s case will be fairly representative of the cases of the other members of the class, and that their interests will be represented to the best extent possible. This would not be satisfied where, for example, a lead plaintiff is subject to particular unique defences to which other class members would not be subject.⁷⁴⁰ These safeguards are a robust means of protecting the class and mitigating the impact on the autonomy by class members by virtue of not being present for the suit, and provide a good model for a new class action regime in Ireland.
40. The second part of Rule 23 important for our purposes is 23(b), which details the types of class actions that may be initiated:
41. ‘A class action may be maintained if Rule 23(a) is satisfied and if:
- (1) prosecuting separate actions by or against individual class members would create a risk of:
 - (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or
 - (B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;
 - (2) the party opposing the class 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
 - (3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.’⁷⁴¹
42. In short, (b)(1) classes are to prevent a risk of inconsistent or dispositive adjudications, for example where different actions would create a risk of incompatible standards of conduct to different litigants, or where there is a ‘limited fund’ to pay damages so that later claims would be prejudiced by earlier ones as the fund becomes diminished.
43. The other two forms are more common: (b)(2) is for injunctive or declaratory relief and (b)(3) are cases for damages. Because (b)(3) actions implicate the monetary entitlements of absent class members, they have extra requirements of ‘predominance’ (common issues predominating over individual ones) and ‘superiority’ (that a class action is superior to individual actions). For the same reason, (b)(3) actions require notice to all class members and

⁷³⁹ Federal Rules of Civil Procedure, Rule 23(c)(5) (USA).

⁷⁴⁰ See, for example, *Spann v. AOL Time Warner, Inc.* 219 F.R.D. 307 (S.D.N.Y. 2003).

⁷⁴¹ Rule 23(b).

that they are given the option to ‘opt-out’.⁷⁴² An Irish procedure might be mapped along similar lines.

Canada

44. Canadian courts have interpreted the jurisdiction’s relatively new class actions procedure’s objectives as achieving three key goals: judicial economy, access to justice and behaviour modification.⁷⁴³ As the class action procedure differs between various provinces and the federal government, there are common requirements that must satisfy the court, including the presence of an identifiable class of two or more persons, a suitable representative plaintiff, and that class proceeding is a preferable procedure for the resolution of the issues common to the issues.⁷⁴⁴ As Canadian class actions do have to be certified but that certification procedure is relatively less onerous than the U.S.’s Rule 23, it might be considered a suitable middle-ground between these two jurisdictions. There is some variation in the rules’ application among the various provinces of Canada; Quebec, for example, does not require ‘preferability’ i.e. that the class action is preferable to individual actions.⁷⁴⁵
45. In general, the requirements of the Canadian system are not stringent in comparison with its common-law counterparts. For example, a class being ‘identifiable’ means that a person can be identified as being a class member or not, but it does not require that a total quantity of class members can be determined, or that all of their identities be known.⁷⁴⁶ A class must just not be ‘unnecessarily broad’ and there is no need to show that all class members share the same interest in the resolution of a common issue.⁷⁴⁷ A lead plaintiff does not have to be ‘typical’ of all class members as is required by Rule 23(a) in the U.S., and participants do not have to affirmatively opt-in, but may opt-out.
46. Also of note is that Federal Rules in Canada specific grounds upon which a court *may not* rely in order to refuse to certify a class proceeding under Rule 334.18. It is submitted that any similar Irish procedure should similarly preclude such justifications for refusal. Some echo the approach in other jurisdictions; for example, certification cannot be denied where claims require individual assessment for damages (the U.S. has applied the same rule in practice, albeit while more wary that this weighs against ‘predominance’ of commonalities⁷⁴⁸). Canada’s Federal Rules also specifically permit certification even where different remedies are sought by different class members or where the relief claimed relates to separate contracts involving different class members.⁷⁴⁹ This more flexible approach strengthens and brings more immediate clarity to a class action procedure, and the text from Rule 334.18 is included in the proposed text in the Section that follows.

⁷⁴² Rule 23(c)(2).

⁷⁴³ Christopher Naudie and Éric Préfontaine, ‘Class/collective actions in Canada: overview’ (2016) (*Thompson Reuters Practical Law*, 1 December 2016) [https://content.next.westlaw.com/2-618-0466?_lrTS=20200920131404993&transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://content.next.westlaw.com/2-618-0466?_lrTS=20200920131404993&transitionType=Default&contextData=(sc.Default)&firstPage=true) accessed 20 December 2021.

⁷⁴⁴ Yves Martineau and Adrian Lang, in Paul G. Karlsgodt (ed.) *World Class Actions : A Guide to Group and Representative Actions Around the Globe* (Oxford University Press USA, 2012).

Canada essay in Karlsgodt book: *World Class Actions* (2012), 65

⁷⁴⁵ Gouvernement du Québec, Code of Civil Procedure, Art. 1003(a).

⁷⁴⁶ Blennerhassett (n 10) 162.

⁷⁴⁷ David I. W. Hamer & Elizabeth Stewart, *Defending Class Actions in Canada*, 2d ed. (Toronto: CCH Canadian Limited, 2007), 157.

⁷⁴⁸ *McLAUGHLIN v. AMERICAN TOBACCO CO.* 522 F.3d 215 (2nd Cir. 2008), quoting Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 18:27 (4th ed. 2002).

⁷⁴⁹ Canada Rules of Civil Procedure, ‘Class Proceedings’ (section 334.18) < <https://laws.justice.gc.ca/eng/regulations/SOR-98-106/page-17.html?wbdisable=true> accessed 19 December 2021.

47. Outside the constraints above, the courts in Canada enjoy wide discretion, for example in determining the preferability of the class action, which should be done in consideration of the goal of procedural efficiency and judicial economy.⁷⁵⁰

Australia

48. An effective procedure for multi-party actions was not available in Australia until 1992, save for a ‘representative action’ flowing from old English rules which faced similar constraints to those experienced in Ireland (specifically the ‘same interest’ requirement).⁷⁵¹ A 1988 report by the Australian Law Reform Commission (ALRC) on the issue recommended introducing a ‘representative proceedings’ procedure.⁷⁵² The Report found that introducing such a procedure ‘enhances respect for the law by enabling access to a remedy and thus enforcing the law’ and that benefits sufficiently outweigh costs insofar as procedural safeguards are in place.⁷⁵³

49. Under the 1992 reform, which applies only in federal courts, ‘a person may bring an action as representing a group of seven or more persons where all have claims against the same person. The claims must give rise to a substantial common issue of law or fact requiring determination and arise out of the same, similar or related circumstances’.⁷⁵⁴ The consent of absent class members is not required, but they may opt-out and must be given notice of their right to do so.⁷⁵⁵ Assuming these criteria are met, any lead applicant can commence a class action. Representative proceedings in Australia are ‘opt-out’ in nature such that absent class members do not have to offer consent prior to proceedings commencing. While the innovation received some critical response initially, a report on *Managing Justice* in 1999 reviewed the new procedure in a positive light⁷⁵⁶ and it continues to be used today, albeit with some difficulties for which reforms have been proposed.⁷⁵⁷

50. In contrast to the U.S., Australia adopted a less stringent approach to class action certification and the barriers to certification are not as burdensome as those found in Rule 23. Indeed, Australia’s regime is one of the most liberal in the world and as a result performs well against others in terms of enhancing access to justice.⁷⁵⁸ The ALRC recommended against a certification procedure similar to the U.S.’s Rule 23 because of concerns surrounding costs and delay,⁷⁵⁹ which are admittedly not unfounded as the class certification phase has arguably become a more important and onerous stage of the U.S. class action than the main phase of the litigation examining merits. The lack of a formal certification process at the pre-trial stage means that there has been a rise in competing class actions (i.e. multiple parallel class actions arising out of the same event) which is a management challenge for the Australian judiciary and a threat to the judicial-efficiency rationale for introducing the representative proceedings in the first place. In the recent case *Wigmans v. AMP Limited & Ors*⁷⁶⁰, the High Court of Australia offered some limited clarification on how courts should decide which in a slew of

⁷⁵⁰ *Hollick v. Toronto (city)*, [2001] 3 S.C.R. 158, 2001 SCC 68.

⁷⁵¹ *Blennerhassett* (n 10) 175.

⁷⁵² Australian Law Reform Commission, ‘Report on Grouped Proceedings in the Federal Court’ (1988) ALRC 46.

⁷⁵³ *Ibid.*, 147.

⁷⁵⁴ Federal Court of Australia Amendment Bill 1992.

⁷⁵⁵ *Ibid.*

⁷⁵⁶ Australian Law Reform Commission, ‘Managing Justice: A Review of the Federal Civil Justice System’ (1999) ALRC 89, at 7.93.

⁷⁵⁷ For critical view of Australian representative proceedings regime, see: U.S. Chamber Institute for Legal Reform, ‘Ripe For Reform: Improving the Australian Class Action Regime’ (2014) <https://instituteforlegalreform.com/wp-content/uploads/media/RipeForReformUS_web1.pdf> accessed 18 December 2021.

⁷⁵⁸ *Blennerhassett* (n 10) 187.

⁷⁵⁹ ALRC Report (n 85) at 147.

⁷⁶⁰ [2021] HCA 7.

parallel cases best represents class members' interests in an attempt to quell confusion and related inefficiencies on same.

51. Australian courts have also been more flexible than the U.S. on other matters such as whether to permit claims against several respondents even if not all class members have claims against every respondent.⁷⁶¹ It is also not required that a lead plaintiff be 'typical' of the class, nor that common issues 'predominate' over individual ones. The trade-off proposed by the ALRC in light of this flexibility was that Australian judges have extensive case management powers that it was believed would suffice in the absent of formal pre-trial certification, such that the interests of unidentified parties are taken into account.⁷⁶² In the Federal Court of Australia, judges enjoy:
- a. broad powers to discontinue representative proceedings;
 - b. the power to substitute a lead applicant who is not adequately representing the interests of group members;
 - c. the power to order that notice of 'any matter' be given to group members;
 - d. the ability to decline or approve settlements; and
 - e. the power to make any order it thinks appropriate or necessary to ensure that justice is done in the proceeding.⁷⁶³
52. These capabilities empower Australian courts to manage multi-party actions and to ensure fairness and efficiency in all proceedings. This paper proposes that similar powers should be explicitly afforded to judges as part of the development of a new multi-party action regime in Ireland.
53. One unique feature of Australia's regime worth addressing is the dominant role of commercial litigation funding in the Australian class action landscape.⁷⁶⁴ This is a controversial feature of the regime and raised concern about abuse of process and entrepreneurialism in the litigation process, but the High Court has explicitly permitted it⁷⁶⁵ and a large market of third-party funders has proliferated.⁷⁶⁶ A critical issue in relation to this model is how it precludes a true 'opt-out' approach, as all group members enter into contracts with third-party funders in a manner that looks more like opting-in.⁷⁶⁷ Further consideration of this funding model is outside the scope of this particular research, but it is an option that Irish policymakers might consider in increasing access to justice and ensuring that claims are heard even where class members lack sufficient funding and are wary of our 'loser pays' costs system.

Civil Law Jurisdictions

54. There are a range of other approaches available across Europe and Latin America which will be briefly discussed.
55. In France, only accredited associations, of which there are a limited number, can take representative actions. This procedure was introduced in 2013⁷⁶⁸ and is very narrow in scope: it can only remedy losses related to consumer and competition law breaches, and requires an

⁷⁶¹ *Cash Converters International Limited v. Gray* (2014) 223 FCR 139.

⁷⁶² ALRC Report (n 85) at 157.

⁷⁶³ Robert Johnston, Nicholas Briggs and Sara Gaertner, 'The Class Actions Law Review: Australia' (2021) 5 *The Class Actions Law Review* <<https://thelawreviews.co.uk/title/the-class-actions-law-review/australia#footnote-037-backlink>> accessed 18 December 2021.

⁷⁶⁴ Hensler et. al (n 4), 189-190.

⁷⁶⁵ *Campbells Cash and Carry Pty Ltd* [2006] HCA 41.

⁷⁶⁶ Hensler et. al (n 4), 210

⁷⁶⁷ Blennerhassett (n 10) 186.

⁷⁶⁸ Law No. 2014-344 of 17 March 2014 (France).

‘opt-in’ by class members as the retention of the right to determine how one’s interests should be represented is very important in France.⁷⁶⁹ No environmental actions have been taken using this procedure, and indeed only around 20 cases overall by November 2020.⁷⁷⁰

56. Across Europe, class actions are limited to associations and groups of private individuals cannot initiate the procedure. This is true in France, as noted, as well as in Belgium, the Netherlands and Spain.⁷⁷¹ This can be implemented in a more lenient fashion, however, such as in the Netherlands. Prior to reforms in 2020, Article 3:305a of the Dutch Civil Code permitted anyone to establish a foundation with a mandate to protect the public interest and to institute proceedings in that interest in pursuit of declaratory or injunctive relief⁷⁷² and it is on this basis that the Dutch regime has been lauded as an exemplar for facilitating climate litigation.⁷⁷³ The Dutch Supreme Court in the landmark *Urgenda* climate case noted that ‘especially in cases involving environmental interests...legal protection through the pooling of interests is highly efficient and effective’.⁷⁷⁴ This relatively open approach makes it very easy for plaintiffs interested in instituting proceedings in the public interest, and for eNGO’s to obtain standing to make claims against government for injunctive and declaratory relief. Group members can contribute towards an association or fund and sign on as co-plaintiffs to the litigation. In terms of a traditional class action according to our definition from Section 1, however, the Dutch and European approach is lacking. This paper submits that reformed rules on standing would empower public-interest groups and NGOs to take claims in European-style class actions, but these reforms are outside the scope of this contribution. Notably, the EU Collective Redress Directive obliges all member states to introduce such procedures for consumer law by 2023, and policymakers might consider making this procedure trans-substantive to include, among other areas, environmental law.⁷⁷⁵
57. Brazil and some Latin American jurisdictions have features worth noting. Class actions were introduced to Brazil in 1985 with the purpose of facilitating actions ‘to protect the environment, the consumer and properties of artistic, aesthetic, historic, touristic and landscape value’.⁷⁷⁶ In 1990, this was followed by the Consumer Code, which provided for procedures for class actions seeking individual damages in consumer law.⁷⁷⁷ Notably, the Brazilian regime differentiated between ‘diffuse’ or ‘collective rights’ enjoyed by all of society and ‘homogenous individual rights’ i.e. violations for which individuals could seek redress and damages.⁷⁷⁸ This paper bases its recommendations on the rules of common law jurisdictions and cannot outline the Brazilian rules in detail, but it is submitted that these two types of rights should be kept in mind in thinking about the types of claims a class action facility should accommodate, and this will be reflected in the proposals in the Section that follows.

⁷⁶⁹ Jed Rakoff et. al ‘Class Actions in France: Lessons Learned From Securities Class Actions in the U.S. and Other Jurisdictions’ (2013) 1 *Revue Trimestrielle de Droit Financier*, 11.

⁷⁷⁰ Fages et. al, ‘How Will the EU Representative Action Directive Affect France’s Class Action Regime?’ (2020) Latham & Watkins Client Alert (9 December 2020).

⁷⁷¹ Alexander Stöhr, ‘The Implementation of Collective Redress – A Comparative Approach’ (2020) 21 *German Law Journal* 1606.

⁷⁷² Burgerlijk Wetboek Boek 3, Artikel 305a (Netherlands).

⁷⁷³ Otto Spijkers, ‘Public Interest Litigation Before Domestic Courts in The Netherlands on the Basis of International Law: Article 3:305a Dutch Civil Code’ (*Blog of the European Journal of International Law*, 6 March 2020)

<<https://www.ejiltalk.org/public-interest-litigation-before-domestic-courts-in-the-netherlands-on-the-basis-of-international-law-article-3305a-dutch-civil-code/>> accessed 15 December 2021.

⁷⁷⁴ *Urgenda Foundation v. State of the Netherlands*, [2015] HAZA C/09/00456689, at 5.9.2.

⁷⁷⁵ The European Commission (n 46).

⁷⁷⁶ LEI N. 7.347, DE 24 DE JULHO DE 1985 (Brazil).

⁷⁷⁷ LEI N.º 8.078, DE 11 DE SETEMBRO DE 1990 (Brazil).

⁷⁷⁸ Antonio Gidi, ‘Class Actions in Brazil: A Model for Civil Law Countries’ (2006) 51 *American Journal of Comparative Law*, 311, 328.

Towards Reform: Issues and How to Resolve Them

58. This section identifies two key issues to consider in drafting a class action procedure and provides solutions drawing from the experience of the jurisdictions studied. Proposed text for an class action procedure follows in the Annex, with reference to the origin of each piece of text.

Issue 1: Party Autonomy and Protecting Absent Class Members

59. Objectors to the development of a class/ representative action procedure commonly refer to the important principle of party autonomy which underlies our adversarial legal system.⁷⁷⁹ Flowing from this is the understanding that parties who are not present in a set of proceedings should not be bound by a decision, and that every person is entitled to ‘have their day in Court’. However, excluding application to class members who are not present would offend the principle of *res judicata*; defendants should be confident that a settlement or decision is final and be able to enjoy a ‘global peace’ as regards a certain legal issue once it is resolved.⁷⁸⁰

60. It is true that class actions complicate this otherwise settled and widely accepted premise of modern litigation, but it would be foolish to accept this as an unmovable barrier to the development of such a procedure in Ireland when so many other jurisdictions with similar structures have successfully adopted it. The drafters of the transformative amendments to the United States’ class action procedures in 1966 were aware of the dangers of eroding party autonomy, and were made to ‘think outside the box’ to minimise negative impacts.⁷⁸¹ In the context of wanting to facilitate aggregated claims for civil rights of African-Americans during this transformative era, American lawmakers allowed some loss of party autonomy as the cost of ‘class cohesiveness’, especially where only injunctive or declaratory relief is sought.⁷⁸² This paper suggests that a similar transformation of judicial thinking is necessary to facilitate the unique nature of environmental claims.

61. This paper submits that having a **(1) robust class certification procedure** following the U.S. Rule 23(a) prerequisites approach and **(2) wide discretion for judges to manage cases** as in Australia will combine to overcome losses in individual autonomy and ensure fair outcomes.

Proposal 1.1: Class Certification

62. As discussed in Section 4 of this paper, Rule 23 of the U.S. Rules of Federal Civil Procedure require numerosity, commonality, typicality and adequacy in order to certify a class. All of these, but in particular the third and fourth prerequisites, act as protections for absent class members and ensure that the class action procedure (with its compromise of party autonomy as acknowledged above) is necessary and is conducted in a manner that does not prejudice the entitlements of those parties who are not present.

63. While this paper does not seek to impose burdensome procedural constraints on class certification, it should also be noted that a lack of such comprehensive certification requirements in counterpart jurisdictions Canada and Australia has caused some confusion for litigants that formal class actions proceedings are intended to allay. Imposing these four prerequisites brings necessary clarity to a new class action procedure in Ireland. However, it is proposed that the ‘numerosity’ requirement is amended to require 7 class members, as is the

⁷⁷⁹ LRC (n 12), at 4(2)(1).

⁷⁸⁰ Samuel Issacharoff, ‘Rule 23 and the Triumph of Experience’ (2020) 84 *Law and Contemporary Problems* 161-182, 181.

⁷⁸¹ Suzette M. Malveaux, ‘The Modern Class Action Rule: Its Civil Rights Roots and Relevance Today’ (2017) 66 *University of Kansas Law Review*, 325, 347.

⁷⁸² *Ibid.*, 348.

requirement in the more lenient jurisdiction in Australia. *See (1) below*. Federal courts in the U.S. have slowly developed the terms of concepts such as commonality, and this paper further suggests providing an explicit lists of reasons that *cannot* be invoked by judges to preclude a class action certification, drawing from a similar list in the Canadian rules. *See (2) below*. Typicality and adequacy are useful protections for absent class members in ensuring that they are adequately represented by plaintiffs who are ‘typical’ to them i.e. are similar in terms of law and fact. Class certification precludes abuse in the class action regime and mitigates its negative impacts on party autonomy.

Proposal 1.2: Case Management

64. As discussed elsewhere in this paper, jurisdictions such as Australia offer wide discretion to judges in class actions, who undertake a duty to protect class members who are not present for the litigation. As discussed below, the specific level of care required should depend on the type of right being addressed, but as a baseline protection, judges should be explicitly afforded adequate case management powers to safeguard the interest of absent class members and ensure that the suit as a whole is fair and well-managed. *See (5) below*.

Issue 2: Types of Class Actions

65. In jurisdictions where a class action procedure is available, rules usually permit it being used for any type of action.⁷⁸³ The key requirement in most jurisdictions is that class members shared some common interest and that the class action will be superior to separate individual actions, which of course *de facto* excludes certain types of claims.⁷⁸⁴ As noted elsewhere in this paper, some civil law jurisdictions in Latin America make distinctions between different ‘classes’ of rights or interests; collective rights, homogenous rights and diffuse rights. Depending on the type of right asserted, different procedural requirements apply and different remedies are available.⁷⁸⁵ While this paper’s proposal does not include explicit mention of these distinctions, it is useful to think about the different sorts of claims that might flow through a class action procedure, the remedy that should be made available for each, and the procedural requirements that are most appropriate in each case.

66. The first type of litigation of interest to this paper is the ‘traditional paradigm’⁷⁸⁶ of class actions: group actions for damages against corporate or business defendants. These types of class actions are most common in the U.S., and are usually initiated under Rule 23(b)(3). (b)(3) classes can pursue monetary damages but face the extra procedural hurdle of proving that a collective action will be ‘superior’ to parallel individual actions, and that common issues ‘predominate’ over individual ones. An action with this scope demands more robust procedural protections for absent class members, whose individual claims for damages are being litigated without them and who will not be permitted to pursue their own claims once the class action is finished. This paper proposes that notice to all class members be obligatory for this form of action, and that such notice includes information on how class members may express a choice to ‘opt-out’ of proceedings. Courts may wish to follow jurisprudential guidance from the U.S. on the concepts of ‘predominance’ and ‘superiority’.

67. The second type is so-called ‘public-interest’ class actions, in which government bodies are defendants. For these claims, a so-called ‘diffuse’ right or claim of general applicability to all

⁷⁸³ Kaplan et al, (n.d.) ‘Class Action Developments Overseas’ in *Product Liability Litigation: Current Law, Strategies and Best Practices*, 7-1.

⁷⁸⁴ *Ibid.*, 7-5.

⁷⁸⁵ *Ibid.*, 7-5.

⁷⁸⁶ Hensler et. Al (n 59), 68.

of society is made with the aim of compelling government action or condemning government inaction. This has been more common in Europe, where NGOs or public-interest bodies either fund or act as lead plaintiff in proceedings. In the U.S., individual litigants have struggled to establish standing for public-interest environmental claims, finding that ‘generalized harms’ do not create cognizable individual injuries for the purposes of standing and that ‘citizen suits’ cannot have the purpose of ensuring proper administration of laws.⁷⁸⁷ The paper on standing accompanying this one will address how standing rules might be relaxed for environmental claims in the public interest, including how NGOs could be explicitly empowered to take such claims, and the question is outside the scope of this paper.

68. Presuming that either NGOs or individuals will be able to establish standing to challenge government action, a specific procedure will need to be created in the Irish class action regime for when the relief claimed is injunctive and/or declaratory. Since this action does not prejudice the monetary entitlements of class members, safeguards need not be as onerous as in damages actions above. In the U.S., (b)(2) classes do not require notice or allow for opting-out, and this paper proposed the same for an Irish regime.
69. With a view to drafting appropriate and effective procedures for different circumstances, paper suggests **(1) creating two separate types of action** for non-monetary and monetary relief respectively and **(2) providing mandatory notice and opt-out options in damages claims.**

Proposal 2.1: Two types of class action procedures

70. The proposed provision below refers to two different types of procedures: *see (3) below.*
71. The first refers to claims for injunctive or declaratory relief, and will usually apply where the defendant is a public body or government. This procedure is reflected in (3)(1) below which borrows the text of (b)(2) classes in Rule 23 of the U.S. Federal Rules of Civil Procedure. Paired with standing reform, this would empower public-interest defendants. To enhance access to justice and remove a barrier that exists to public-interest litigation in the U.S., *section (4)* requires that the ‘commonality’ requirement be relaxed such that claims relating to diffuse rights, such as that to a healthy environment, can be heard via this facility (an approach inspired by the Brazilian rules).
72. The second provision, in (3)(2), follows the approach of the Rule 23 (b)(3) damages class action from the U.S. Rules. Unlike the above, the remedy is not restricted to injunctive or declaratory relief and plaintiffs can seek damages on behalf of the entire class. Because this type of action implicates the resources of both the defendant and the entitlements of plaintiffs and class members, more robust procedural safeguards are imposed.

Proposal 2.2: Opt-Out and Notice

73. This paper diverges from the view of the 2005 Law Reform Commission Report by suggesting an ‘opt-out’ procedure instead of ‘opt-in’. Because comprehensive certification procedures have been proposed, absent class members will be sufficiently protected and should not need to explicitly authorise their involvement in the suit. The procedure is more effective when large classes are ‘behind’ proceedings and in the age of cheap and instantaneous technological communication, contacting class members is logistically easier than ever before and ‘absent’ class members will be able to organize and oversee proceedings.⁷⁸⁸

⁷⁸⁷*Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).

⁷⁸⁸ For discussion, see Elizabeth J. Cabraser and Samuel Issacharoff, ‘The Participatory Class Action’ (2017) 92 (4) *New York University Law Review* 846, 849.

74. For (3)(2) damages classes, invoking ‘homogenous individual rights’ (in the Brazilian conception) it is proposed that notice to class members be mandatory and that the notice includes an opportunity to opt-out of proceedings. In the proposed provision below, language is borrowed from U.S. rules obliging courts to provide notice to (3)(2) classes. *See (5) below.* Judges may still order notice for (3)(1) classes on a discretionary basis using their powers under (6)(3) *below.*

Annex: Proposed Text

This text comprises Part 4 of the Environment Code/Cóir Dlí proposed by the Climate Bar Association.

Part 4: Class Actions/Cásanna Grúpaí

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:

- (f) the claim relates to the protection of the environment, this Act or the environmental legislation contained in the Schedule;
- (g) the class in question has 7 or more members;
- (h) there are questions of law or fact common to the class;
- (i) the claims of the representative parties are typical of the claims of the class; and
- (j) the representative parties will fairly and adequately protect the interests of the class.

(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:

- (f) 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;
- (g) the relief claimed relates to separate contracts involving different class members;
- (h) different remedies are sought for different class members;
- (i) the precise number of class members or the identity of each class member is not known; or
- (j) the class includes a sub-class, whose members have claims that raise common questions of law or fact not shared by all of the class members.

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

- (c) 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
- (d) 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 class proceeding is the preferable procedure for the just and efficient resolution of the common questions of law or fact.

(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:

- (h) the nature of the action;
- (i) the definition of the class certified;
- (j) the class claims or issues;
- (k) that a class member may enter an appearance through a firm of solicitors if the member so desires;
- (l) that the court will exclude from the class any member who requests exclusion;
- (m) the time and manner for requesting exclusion; and
- (n) the binding effect of a class judgment on members.

(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:

- (f) 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;
- (g) 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);
- (h) the power to order that notice of 'any matter' be given to class members;
- (i) the ability to decline or approve settlements; and
- (j) the power to make any order it considers appropriate or necessary to ensure that justice is done in the proceeding.

Explanation of Text

Section	Origin	Content	Purpose	Note
(1)	U.S. Federal Rules of Civil Procedure, Rule 23(a)	Certification Prerequisites	Ensure class coherency, protect absent members	Amended to minimum of 7 class members in (b) (Australian approach)
(2)	Canada 334.18	Prohibited grounds for refusal	Remove uncertainty, ensure liberal procedure	
(3)	U.S. Rule 23 (b)(2) and (b)(3)	Types of classes and remedies available	Different procedures with different remedies, protections, etc	
(4)	N/A	Relax commonality for public interest classes under (c)(1)	Remove barriers from U.S.	
(5)	U.S. Rule 23 (c)(2)	Notice and Opt-Out for damages classes under (c)(2)	Extra protections for monetary claims	
(6)	Summary from Class Actions Law Review Article on Australia ⁷⁸⁹	Court powers of management	Court as fiduciary of absent class members/ ensuring fair proceedings	From summary list, not from existing text

⁷⁸⁹ Robert Johnston, Nicholas Briggs and Sara Gaertner (n 89).



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Sanctions and Enforcement of Environmental Law: Current Sanctions and New Remedies

Athsmaoineamh ar Cúiteamh, Smachtbhanna agus Leigheasanna Malartacha

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Enforcing environmental laws is a challenge to most states. It can be costly to fund Environmental Protection agencies, and to ensure that they have sufficient staff and resources to regulate polluters and entities which breach environmental standards. Therefore, enforcement of the environmental laws is often inadequate. This is not only a matter of funding – although resources are limited – but also result of structural barriers to enforcement, diverse enforcers and a lack of clarity as to which body has responsibility to act to achieve a resolution.

Empowering citizens to act and enforce environmental laws would exponentially increase the power for enforcing. Increasing the citizen's involvement in enforcing environmental law would go to improving and protecting the environment and biodiversity, thereby achieving the environmental goals that the Irish people have set out for themselves and for their children.

There are currently strong sanctions in Irish law for environmental offences. Sanctions exist in:

- Wildlife Act 1976
- Waste Management Act 1996
- Forestry Act 2014
- Forestry Regulations 2017
- European Communities (Birds and Natural Habitats) Regulations 2011
- Planning and Development Act 2000
- Dumping At Sea Act 1996
- Sea Pollution Act 1991

These sanctions which currently should broadly remain in place on adoption of the model law.

The concern, however, is the degree to which they are enforced and who has standing to take the case. In addition, it is now recognised that successful sanctions go beyond simply criminal penalties for offences, and should include administrative penalties, and a wider range of orders, mediated solutions and agreement to take courses of action in the future

This paper provides detail on the sanctions which exist, with context on their enforcement. It makes suggestions for improvement. The suggestions and conclusions links in with the draft Environmental Code which is part of the Symposium, as many of the conclusions reached have been enshrined in the Model Environmental Code.

We now turn to a review of the central sectors of environmental legislation in force at present.

I. Waste Management

The Waste Management Act 1996 (“the 1996 Act”) prohibits the collection, transport, disposal or recovery of waste in the course of business without either a waste collection permit or waste license.⁷⁹⁰ Holders of Waste are also under a general duty not to conduct such activities in a manner likely to cause environmental pollution.⁷⁹¹

The Act makes it a criminal offence to fail to comply with any provision under the Act constitutes an offence. The penalties for an offence under the 1996 Act are set out in s. 10:

- Summary conviction – Where convicted a person may be liable for a Class A fine, no more than 12 months’ imprisonment or both.
- Conviction on Indictment – Person may be liable for a fine not exceeding €15,000,000, no more than 10 years’ imprisonment or both.

A person guilty of an offence under ss. 16(5), 32(6) (where the offence consists of a contravention of regulations under subs. (4) of that section), 33(8), 34(1)(c), (in so far as the offence consists of contravention of a condition attached), under section 34(7)(d), to a waste collection permit, 34(10A), 34A(13), 38 (7) or under 40(13) shall be liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 12 months, or to both such fine and such imprisonment.

If the contravention in respect of which a person is convicted of an offence under this Act is continued after the conviction, the person shall be guilty of a further offence on every day on which the contravention continues and for each such offence the person shall be liable, on summary conviction, to a fine not exceeding € 1,000 or on conviction on indictment, to a fine not exceeding € 130,000. The Act also provides for the payment of fixed payment notices for certain offences.⁷⁹²

Summary proceedings may be brought by the Local Authority, the Environmental Protection Agency (“the EPA”) or any person specified in regulations passed by the Minister, including the minister themselves. The DPP will prosecute for proceedings brought on indictment. The EPA provide updates on prosecutions and penalties that it is involved in.⁷⁹³

The Court must have regard for the risk or extent of environmental pollution when making its decision (s. 10(4)).

Civil Cases

Any person may bring a claim before the court that waste is being held, recovered or disposed of in a manner causing or likely to cause pollution or in contravention of ss. 34 or 39 of the Act (i.e., without a license or in breach of a license).⁷⁹⁴ Cases can be heard by the Circuit, District and High Courts. Claims before the District Court must not exceed €15,000, €75,000 in cases before the Circuit Court and may be heard by the High Court in any case.⁷⁹⁵ Where the court

⁷⁹⁰ Waste Management Act 1996, ss. 34 and 39.

⁷⁹¹ Waste Management Act 1996, s. 32.

⁷⁹² Fixed payment notice for certain offences relating to producer responsibility, s. 10A, fixed payment notice for certain offences relating to waste collection permit, s. 10B and fixed payment notice for certain offences relating to single use plastic, s. 10C.

⁷⁹³ <https://www.epa.ie/our-services/compliance--enforcement/whats-happening/prosecutions-and-penalties/>

⁷⁹⁴ Waste Management Act 1996, s. 57.

⁷⁹⁵ Waste Management Act 1996, s. 58.

is satisfied that pollution has occurred, is occurring or is likely to occur or that there has been a contravention of ss. 34 or 39, it may issue an order,

- Requiring the holder to carry out specified measures to prevent, limit or prevent a recurrence of pollution.
- Requiring the holder to cease or refrain from any specified act or omission
- Making such other provision as it considers appropriate, such as the payment of costs.

The court may also order the holder to:

- Discontinue the holding, recovery or disposal of waste.
- To mitigate or remedy any effects of that activity in a specified manner.

To succeed in a claim, the applicant must first demonstrate that there is waste, as defined in the Act and with reference to the EU Waste Catalogue, that said waste is being held, recovered, or disposed of and that the activity is likely to cause environmental pollution.⁷⁹⁶

Pollution is defined as holding, recovery, transport or disposal of waste in a manner endangering human health or risking environmental harm. Once a risk of pollution is established that risk will itself constitute “pollution.”⁷⁹⁷

Any order made is required to be proportionate to the good likely to be achieved in securing compliance. The court must choose the least burdensome option that is still equally effective at achieving the legislative objective.⁷⁹⁸ It is a good defence in relation to both a prosecution and civil claim to show that the act complained of was carried out in accordance with a waste or Integrated Pollution Prevention & Control (“IPPC”) licence.⁷⁹⁹

Corporate liability

Where a criminal offence is committed by a corporation with the consent of or is attributable to any director, manager, secretary or other similar officer of the body corporate, or a person who was purporting to act in any such capacity, that individual will also be guilty of an offence and punished accordingly.⁸⁰⁰

Civil liability of individual directors under s. 57 and 58 is less clear. Initially the courts deemed it necessary to suspend the law of limited liability to ensure the full application of the polluter pays principle and the achievement of objective of strong environmental protection.⁸⁰¹

More recently however the High Court ruled that such a fundamental principle cannot be suspended without express statutory authorisation, such as that found in relation to offences under the act.⁸⁰² The High Court has since held directors directly involved in the management of a polluting waste activity independently liable for any environmental damage. Such persons can be deemed managers of an activity and thus “waste holders” for the purposes of the act. However, the amendment of the definition of “holder” to now only include producers or

⁷⁹⁶ *Cork County Council v. O'Regan* [2005] IEHC 208, at paras. 19–25.

⁷⁹⁷ *Wicklow County Council v. Fenton (No. 2)* [2002] 4 I.R. 44.

⁷⁹⁸ *Laois County Council v. Scully* [2006] IEHC 2, at para. 11.

⁷⁹⁹ Waste Management Act 1996, s. 32(6)(b).

⁸⁰⁰ Waste Management Act 1996, s. 9.

⁸⁰¹ *Wicklow County Council v. Fenton (No. 2)* [2002] 4 I.R. 44.

⁸⁰² *Environmental Protection Agency v. Neiphin* [2011] IEHC 67, at paras 39-42.

possessors may require a more personal connection to impose liability.⁸⁰³ Either way, those directors not directly involved in but who profit from polluting activities are placed beyond the reach of the law. This leaves the community with the cost of pollution, violating the polluter pays principle.

Local Authorities

In general, local authorities are responsible for the supervision and enforcement of the Act within their functional area. They may issue notices requiring specific action to prevent or limit pollution or take such action themselves. Such powers are also granted to the EPA. Local authorities are also responsible for the granting of waste collection permits while the EPA is responsible for the granting of Waste Licenses.

EU Waste Framework Directive

Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (“the EU Waste Directive”) defines waste producer and holder, which are repeated in the Irish Legislation. It also sets out a clear waste hierarchy for waste management with prevention and re-use at the top and disposal at the bottom.

Something not contained in the 1996 Act is the definition of “end of waste criteria.” EU law requires that the material, having been treated, meet certain criteria,

- Substance used for specific purposes
- Demand exists for the substance, or it responds to some market
- Fulfils the technical requirements for some specific purpose and complies with relevant legislation
- Substance’s use will not have an overall harmful effect on health/environment.

It is the responsibility of the person who uses the substance for the first time, before it is put on the market, or the person who places the substance on the market, to ensure the criteria are met.

Waste Management must be carried out in accordance with the polluter pays principle. This means all costs including infrastructure must be borne by the original producer or waste holder.⁸⁰⁴ All management must also be carried out without endangering public health or the environment, causing any nuisance or adversely affecting the countryside or places of special interest.⁸⁰⁵

Specific recycling targets are set out with the aim being to transition to a circular economy. Member States are required to ensure that 50% of all municipal waste is being recycled by 2020, with goal being to hit 65% by 2035.

The directive also sets out an optional Extended Producer Responsibility (“EPR”).⁸⁰⁶ This allows Member States to take steps to ensure anyone professionally involved in waste management is held responsible for their actions. Examples of measures include those designed to encourage designing products so as to reduce the amount of waste generated by each unit. EPR measures must ensure that producers cover the cost of:

⁸⁰³ *South Dublin County Council v. Ken Fennell (Liquidator)* [2011] IEHC 350.

⁸⁰⁴ The EU Waste Directive, Article 14.

⁸⁰⁵ The EU Waste Directive, Article 15.

⁸⁰⁶ The EU Waste Directive, Article 8.

- Separate collection, transport and treatment and other costs necessary to meet management targets or other targets and objectives
- Providing adequate information to waste holders
- Data gathering and reporting⁸⁰⁷

II. Habitat, Wildlife and Hedge Cutting & Vegetation

The protection of wildlife in Ireland is governed by the Wildlife Act 1976. This Act creates a number of offences. It is an offence under the Wildlife Act to:

- Contravene any provision of the Act by act or omission
- To attempt, aid, abet, counsel or procure the commission of any contravention
- To provide false information knowingly or recklessly, when requested by Gardaí/Authorised persons and when seeking a license or renewal
- To contravene any condition of a license
- To allow the use of a vehicle to aid in the commission of an offence.⁸⁰⁸

Offences can be prosecuted summarily by the Minister, a member of the Gardaí or any other person who prosecutes with the consent of the minister or has been nominated for that purpose. Proceedings must be brought within 1 year of the offence.⁸⁰⁹ The prosecution are not required to negate the existence of a hunting license or prove that the offence was consequent upon some lawful act.⁸¹⁰

Penalties/Enforcement:

There are 5 main categories of penalty/offence,⁸¹¹

- General, non-specified offences which will be subject to a Class A fine on summary conviction
- Offences relating to hunting with firearms without a license, use of specified weapons on certain animals, the use of traps on protected animals without a license and the use of lamps/dazzling devices without a license
 - Summary conviction carries a potential penalty of a class A fine, up to 6 months' imprisonment or both.
 - Conviction on indictment carries a potential penalty of up to €100,000 fine, up to 2 years' imprisonment or both

⁸⁰⁷ The EU Waste Directive, Article 8a.

⁸⁰⁸ Wildlife Act 1976, s. 69

⁸⁰⁹ Wildlife Act 1976, s. 70

⁸¹⁰ Wildlife Act 1976, s. 71

⁸¹¹ Wildlife Act 1976, s. 74

- “Part II Offences”⁸¹², the carrying on of a wildlife dealing business without or in contravention of a license and certain other requirements, hunting fauna on the territorial sea without the Minister’s permission
 - Such offences must relate to 4th Schedule Fauna, CITES Species or other species specified by the Minister
 - Summary Conviction carries a potential penalty of a class A fine, up to 6 months’ imprisonment or both.
 - Conviction on indictment carries a potential penalty of up to €100,000 fine, up to 2 years’ imprisonment or both.
- Carrying out of works damaging a natural heritage area without the consent of the minister, failure to comply with a restoration order in relation to such damaging works and acting as a commercial shoot operator without a license, breaching said license or making false statements to procure such a license.
 - Summary Conviction carries the penalty of a class A fine
 - Conviction on indictment carries a penalty of €100,000
- Anyone who assaults an authorised person
 - Summary Conviction – Class A Fine, 6 months’ imprisonment or both
 - Indictment – Fine (unspecified), no more than 5 years’ imprisonment or both.

Powers of Gardai/Authorised persons:

Where there are reasonable grounds for believing a person has committed an offence the Garda/Authorised person may,

- Stop and search the person
- Require them to give their name and address or any other information necessary to carry out their function
- Require the suspected person to desist from the activity
- Arrest without warrant or cause the arrest of a person who
 - Continues or recommences the offence
 - Fails to provide their name, address or any information or any other relevant information
 - Gives false/misleading information, including a false name or address.

Such persons may also seek a search warrant from the District Court. Where granted any thing or document relevant to the prosecution of an offence may be seized. Authorised persons must be accompanied by a Garda.⁸¹³

Gardaí and authorised persons are also empowered to issue fixed payment notices in relation to fixed payment offences. Fines must not be more than €500 and must be paid within 21 days.

⁸¹² Specified below

⁸¹³ Wildlife Act 1976, s. 73

Where the penalty is paid a prosecution in respect of the alleged offence will not be instituted.⁸¹⁴

Powers of the courts

As stated above they may issue search warrants where satisfied that there are reasonable grounds for suspecting that an offence is being committed. The courts may also revoke a firearm certificate where the holder is convicted of a “Part II Offence” and disqualify them from holding such a license for as long as the court deems appropriate. This is additional to any other punishment handed down for the offence.⁸¹⁵ The court may at its discretion, and on application of the minister or person instituting criminal proceedings order the forfeiture of:

- Any fauna, flora, fossil or any part or derivative of such a specimen
- Any firearm, trap, snare, net, etc.
- Any mechanically propelled vehicle
- Seized by the Gardai or Authorised person under reasonable suspicion of having been used in the commission of an offence.

The court may order forfeiture once satisfied an offence has been committed but this does not require that anyone be convicted of an offence.

Forfeiture orders may be made by:

- The District Court where the value of the item does not exceed €15,000
- The Circuit Court where the value does not exceed €75,000
- The High Court in any case.

Forfeiture applications are to be brought in a summary manner.

Part II Offences

Part II of the Act deals with the protection of wild birds, flora and fauna and their habitats. The Act prohibits any damage to Wild Birds, other than those listed in the Third Schedule, and animals referred to in s. 23. It shall be an offence to:

- Hunt a protected species other than in accordance with a license and the time period specified in that permission⁸¹⁶
- To injure outside of hunting⁸¹⁷
- To remove eggs or nests without permission⁸¹⁸
- To wilfully destroy or disturb nests, breeding or resting places⁸¹⁹

There are exceptions:

- Unintentional damage done while engaged in agriculture

⁸¹⁴ Wildlife Act 1976, s. 74A.

⁸¹⁵ Wildlife Act 1976, s. 75.

⁸¹⁶ Wildlife Act 1976, s. 22(4)(a)(i) and 23(5)(a-b).

⁸¹⁷ Wildlife Act 1976, s. 22(4)(b) and 23(5)(c).

⁸¹⁸ Wildlife Act 1976, s. 22(4)(c).

⁸¹⁹ Wildlife Act 1976, s. 22(4)(d-e) and 23(5)(d).

- Unintentional damage done during road construction, archaeology or other work as may be prescribed.
- Capture of an injured specimen for the purposes of tending to it or humane killing
- Taking and killing of hares at regulated coursing matches or hunting hares with packs of beagles with permission
- Disturbing a bird while engaged in ornithology

However, it is not for the prosecution to prove that such exceptions do not apply but for the defendant to demonstrate that they were engaged in an exempted activity.⁸²⁰ Prosecution proceedings may be brought before any District Court.⁸²¹

In relation to flora the Minister may declare species protected throughout the state or a particular area of the state, where he considers that a species should be protected making it an offence to

- Cut, pick or otherwise damage any specimen or part of such a specimen or any species listed in the Habitats Directive Annex IV(B)
- Purchase, sell, transport, keep for sale, offer for sale or be in possession of
- Wilfully alter, damage or interfere with the habitat of that species.

Licenses may be granted by the Minister for hunting, educational or other specified purposes.

Hedge Cutting

Under the Wildlife Act 1976 it is an offence to cut, grub, burn or otherwise destroy any vegetation on uncultivated land between 1 March and 31 August.⁸²² Exceptions are listed under section 40 and include:

- Destruction in the ordinary course of agriculture
- Cutting of isolated bushes in the ordinary course of agriculture
- Clearance in the course of Public Health and Safety Works carried out by the minister or another regulated body
- Clearance in the course of road or other construction works.

On summary conviction, a potential penalty may be imposed of a class A fine, no more than 6 months' imprisonment or both. In the case of conviction on indictment, there is a potential €100,000 fine, no more than 2 years' imprisonment or both.⁸²³

European Communities (Birds and Natural Habitats) Regulations 2011

The European Communities (Birds and Natural Habitats) Regulations 2011 creates a number of offences which protect birds and their natural habitats. They are set out under Regulation 67 with offences are split into 2 categories. Only the second category may lead to an indictment. The potential penalties are similar to those provided for under the Wildlife Act. On summary conviction, there is a potential penalty of a class A fine, up to 6 months' imprisonment, or both.

⁸²⁰ Wildlife Act 1976, s. 22(7) and 23(8).

⁸²¹ Wildlife Act 1976, s. 22(8) and s. 28(9).

⁸²² Wildlife Act 1976, s. 40

⁸²³ Wildlife Act 1976, s. 74(3)

In the case of conviction on indictment, there is a potential penalty of €100,000 fine, 3 years' imprisonment or both. The indictable offences under the Regulations include:

- Failure to comply with a ministerial direction not to carry out a damaging activity
- Failure to comply with a direction to carry out restorative work on a damaged site
- Carrying out an activity without ministerial consent or in breach of its conditions
- Removal or placing in a vehicle for removal, any resources obtained via an unlawful activity
- Offences relating to protected species
- Introduction/dispersal of species not normally resident in an area save in accordance with a license
- Breaching a license⁸²⁴

Anyone who incites, directs, procures, permits or assists in the carrying out of an offence is themselves guilty of an offence.⁸²⁵ Similarly, where a corporation commits an offence with the consent of/which is attributable to any director, manager etc. that individual may be held liable and prosecuted and punished accordingly.⁸²⁶

Summary offences under the Regulations may be prosecuted by a number of different bodies. These are:

- The Minister or other Minister of Government
- Minister's officer or other person nominated for the purpose
- Member of an Garda Síochána
- Any public authority. The Regulations lists 27 potential authorities.⁸²⁷

The Minister is given a number of powers under the Regulations. The Minister can order either both the cessation of activities likely to cause damage to a European Site and to order that any site damaged by some activity be restored.⁸²⁸ As stated, failure to comply in both cases constitutes an indictable offence. The Minister also has the power to seek injunctions where they believe an activity, alone or in combination with others, may damage a European Site. Requirements can range from cessation of an activity to elimination or reduction of any adverse effects. Injunctions may be sought from the Circuit or High Court who may make interim orders as they deem necessary to uphold the directives/coherence of Natura 2000.⁸²⁹

In relation to injunctions the courts have gone as far to say that the minister is obliged to seek injunctive relief where:

- The site concerned has been designated as an SCI/SPA/SAC

⁸²⁴ European Communities (Birds and Natural Habitats) Regulations 2011, reg. 67(2).

⁸²⁵ European Communities (Birds and Natural Habitats) Regulations 2011, reg. 65.

⁸²⁶ European Communities (Birds and Natural Habitats) Regulations 2011, reg. 66.

⁸²⁷ European Communities (Birds and Natural Habitats) Regulations 2011, reg. 69.

⁸²⁸ European Communities (Birds and Natural Habitats) Regulations 2011, regs. 28, 29 & 36.

⁸²⁹ European Communities (Birds and Natural Habitats) Regulations 2011, reg. 38.

- And the activity has the potential to adversely affect the sight.⁸³⁰

These powers can be delegated to any public authority or other person to ensure the Directives are effectively implemented.

Potential Issues

The first potential issue, particularly with the wildlife protection measures and hedge cutting provisions, is the exception for any damage caused in the ordinary course of agriculture. These exceptions appear to grant farmers a “get out of jail free card” without placing any obligation on them to avoid damage to the greatest extent possible.

The second issue that has been highlighted in Dáil Debates and the media is the lack of prosecutions under the Wildlife Act in recent years. Between 1977 and 1987 there were 75 prosecutions per year.⁸³¹ That has since dropped with only 164 prosecutions being brought in the last 8 years.⁸³² This is despite wildlife crime being one of the largest criminal activities in the world and instances of deliberate interference, particularly poisoning of birds of prey and capture of badgers, being on the rise.⁸³³ In one incident 23 buzzards were found poisoned in West Cork despite the bird being protected under the Wildlife Act. Prosecutions are difficult to take due to lack of evidence.

The need for an overhaul of sanctions for environmental crime has been seen in Scotland, which has recently completed an in-depth study on sentencing for environmental wildlife crime. As a result a specialist Wildlife and Environmental Crime Unit was established by the *Animals and Wildlife (Penalties, Protection and Powers) (Scotland) Act* in July 2020. The Scottish Parliament explained the need for the new legislation as follows;

“Why the Bill was created

In recent years there have been some extreme animal cruelty cases which have caused public upset. The public support the courts having more options to make the punishment fit the crime.

Fixed penalty notices can deal with minor animal welfare offences. These are quicker and less costly to administer than going to court. This could also be a deterrent against committing these crimes.

Sometimes animal inspectors/constables need to remove an animal to protect their welfare. They will not need court permission to remove an animal. This avoids delays which could affect the welfare of these animals.

⁸³⁰ *Minister for Arts, Heritage, the Gaeltacht and the Islands v. Kennedy, Kennedy and Kennedy* [2002] 2 ILRM 94;

⁸³¹ Dáil Debate – 6 October 2020 https://www.oireachtas.ie/en/debates/question/2020-10-06/77/#pq-answers-77_378

⁸³² Ray Ryan, “Wildlife crime unit being examined as record number of protected birds of prey killed last year,” *Irish Examiner* 19th Oct 2020, <https://www.irishexaminer.com/farming/arid-40066109.html>

⁸³³ Mark Hilliard, “Gardai to train park rangers in effort to tackle wildlife crime,” *Irish Times* Jan 19th 2021, <https://www.irishtimes.com/news/environment/garda%C3%AD-to-train-park-rangers-in-effort-to-tackle-wildlife-crime-1.4461554>

Anyone who injures a service animal will be accountable for their actions. This follows a campaign called Finn's Law."⁸³⁴

Scottish Natural Heritage has also developed impact statement guidance for staff and there has been systematic training for SNH officers in giving expert evidence. The Scottish Sentencing Council has begun work on an Environmental and Wildlife Crime Sentencing Guidelines.

Section 19(9) of the Wildlife Act allows for potentially damaging works to be carried out on Natural Heritage sites where ministerial consent has been sought but not replied to within 6 months. It seems strange not to require express consent in all cases to ensure the potential impact of every project is subject to some form of scrutiny.

Connected to that, section 74(4) offences carry no potential prison sentence. This is despite the fact that such offences could cause significant damage to habitats and animal populations, potentially more so than more direct offences such as hunting without a license, or direct damage to a plant species, which can lead to imprisonment. It is notable that similar offences relating to European Sites are indictable offences under the Regulations, but Natural Heritage sites are not so protected under the Act.

Finally, there is the issue of the ability of concerned groups to challenge licenses whose conditions appear contrary to the aims of the Directives. In *Hosey v. Minister for the Environment, Heritage and Local*, where the granting of the Minister of a licence to hunt wild birds was challenged by way of judicial review by the applicants, an unincorporated association, the Minister argued that the association did not have locus standii. The Court ruled that any applicant not directly affected must show,

- It is unlikely that a responsible challenger would emerge if standing was denied
- The allegations establish a clear breach of an important duty or a significant default by a public body.

The Court was of the view that the challenge to the granting of the licence should to be brought by a more directly interested individual owning property rights/sporting rights etc. stating that there was 'every likelihood' that such a challenger would come forward if it apprehended that the Minister was acting ultra vires. The court did however also point to doubts surrounding the *bona fide* nature of the action which undoubtedly influenced the refusal to grant standing.⁸³⁵ This case demonstrates the barrier caused by restrictive locus standii rules.

III. Forestry and Tree Preservation

Statistics

It is estimated that forests once covered 80% of Ireland's land surface. Forest coverage in 2017 stood at 11%.⁸³⁶

- This is however a marked improvement from 1973, when coverage stood at 5.9%
- The statistic applies to both state- and privately-owned forests

⁸³⁴ <https://beta.parliament.scot/bills/animals-and-wildlife-penalties-protections-and-powers-Scotland-bill>, accessed 26th October 2020

⁸³⁵ *Hosey v. Minister for the Environment, Heritage and Local Government* [2010] IEHC 61.

⁸³⁶ Department of Agriculture Food and the Marine, Forest Statistics Ireland 2020, July 2020, p. 6

- State – 81,958 ha to 378,663 ha between 1973 and 2017
- Private – 242,056 ha to 391,357 ha

The majority of forests (50.8%) are owned by the state. Private grant aided forests make up 34.8% with the remainder being privately owned but not grant aided.⁸³⁷ Non-forest hedgerows, scrub and woodlands coverage has differing estimates.⁸³⁸

- Teagasc’s 2011 estimate placed coverage at 6.4%
- The third National Forest Inventory in 2017 estimated 4.9%

Agri-Environmental Schemes have had a definite impact since their introduction in 1994.⁸³⁹

- 6,605 km of new hedgerows
- 3,785,398 newly planted trees

It is worth mentioning however that Sikta Spruce, makes up 51.1% of the total forest area,⁸⁴⁰ and made up 77% of the grant aided afforestation in 2019.⁸⁴¹

Ireland is however, still far below the both the EU, 33.5%, and global, 30.6%, rates of forest coverage. Ireland has the 2nd lowest rate of coverage in the EU, higher only than Malta, and closely followed by the Netherlands. We do however have one of the highest forest expansion rates in the EU, though given our extremely low rate of coverage that may not mean much.⁸⁴²

Forestry Act 2014

The Forestry Act 2014 governs forestry in Ireland. The Act makes it an offence to fell/remove trees without a license issued by the minister or in contravention of the conditions set out in such a license. Those found guilty of an offence are liable for:

- Summary Conviction – Fine not exceeding €200 per tree, up to a max of €5,000, no more than 6 months’ imprisonment or both
- Indictment – Fine not exceeding €1,000,000, no more than 5 years’ imprisonment or both.⁸⁴³

Licenses are self-contained documents. In determining their remit, only the terms and conditions of the license are relevant. They do not need to be read in conjunction with any application or harvesting plan. The conditions of a license, such as the permitted area, are also strict and apply to the interpretation of any other conditions set out by the minister.⁸⁴⁴

Ministerial Powers/Orders

The Act gives the Minister for Agriculture, Food and the Marine (“the Minister”) a number of powers. The Minister may issue a preservation order prohibiting the felling/removal of any tree or trees. Any person who contravenes such an order is liable on summary conviction to a Class

⁸³⁷ *ibid* p. 9

⁸³⁸ *Ibid* p. 11

⁸³⁹ *ibid* p. 12

⁸⁴⁰ *ibid* 10

⁸⁴¹ *ibid* 20

⁸⁴² *ibid* 80-83

⁸⁴³ Forestry Act 2014, s. 7

⁸⁴⁴ *Minister for Agriculture, Food and the Marine v. Kehoe* [2017] IEDC 29, at paras. 38-40.

A fine, up to 6 months' imprisonment or both.⁸⁴⁵ Such orders can apply to any tree, including exempted trees which include:

- Any tree
 - In an urban area
 - Within 30 m of a building, excluding buildings built after the tree was planted
 - Any tree required to be moved in the opinion of the minister
 - Purely decorative trees, in the opinion of the minister
 - Removed by a public authority in the performance of a statutory function
 - Considered by the planning authority to be dangerous due to age, condition or location, etc.⁸⁴⁶

Where trees have been:

- Felled without a license
- Felled under a license which was contravened either at the time or subsequently
- Seriously damaged, in the opinion of the minister

The Minister may issue a **Replanting Order** to the landowner requiring replanting of the damaged trees or fulfilment of any conditions attached to a license. Failure to comply is an offence leaving the landowner liable to a fine for every 30 days that the failure continues.⁸⁴⁷

- Summary – Class D Fine (€1,000 at the time of writing)
- Indictment – Fine not exceeding €5000

Continued failure to comply following a conviction can lead to a daily fine:

- Summary – Class E fine (€500 at the time of writing)
- Indictment – Fine not exceeding €2500

Once a replanting order has been issued the minister may register that order as a burden on the land, or as a deed in the case of unregistered land.⁸⁴⁸ The Minister may also order the removal of any vegetation, presenting a risk of fire, or vermin where they are satisfied that the trees are at significant risk of being damaged. The landowner may be served with a notice of the danger and directed that it be removed or destroyed.⁸⁴⁹ Vermin need only be destroyed as far as is reasonably possible.⁸⁵⁰

Vermin is defined as including:

- Squirrels, other than red squirrels
- Wild or feral animals not protected by the Wildlife Act.

⁸⁴⁵ Forestry Act 2014, s. 20

⁸⁴⁶ Forestry Act 2014, s. 19.

⁸⁴⁷ Forestry Act 2014, s. 26.

⁸⁴⁸ Forestry Act 2014, s. 21.

⁸⁴⁹ Forestry Act 2014, ss. 14 and 15.

⁸⁵⁰ Forestry Act 2014, s. 15.

- Must take the list of protected species under the Wildlife Act and Habitats Regulations into account.⁸⁵¹

Other licenses are also required for:

- Afforestation
- Forest road works
- Aerial fertilisation⁸⁵²

These licenses are granted by the Minister who may vary/add any conditions as they see fit as well as having the power to suspend or revoke any license.⁸⁵³ Engaging in or permitting any of these activities without a license is also an offence, though the sanctions are not as tough.

- Summary conviction – Class A fine, up to 6 months’ imprisonment or both
- Conviction on indictment – Fine not exceeding €500,000, up to 5 years’ imprisonment or both

Authorised Officers

The Minister may appoint those they think appropriate to be Authorised Officers. Gardai are also considered authorised officers for the purposes of the Act.⁸⁵⁴ Officers are granted a broad range of powers to enable them to combat illegal deforestation and other harmful activities. They are entitled to enter the premises for the purposes of inspection and can conduct inquiries relating to,

- Any tree or thing related to trees
- Any timber or timber products
- Any activity at that property
- Any records relating to the above.

They may also seize property and seek access to records, computers or any information reasonably required for the purposes of the investigation. A warrant from the District Court or the consent of the landowner are required in order to enter the premises.⁸⁵⁵

Other offences and penalties

The Act also creates a number of other miscellaneous offences. These include:

- Providing false information/misleading statements when applying for a license
- Failure to comply with a notice/direction
- Contravention of regulations passed under the act
- Obstruction of an authorised person
- Forgery of a license

⁸⁵¹ Forestry Act 2014, s. 15(5).

⁸⁵² Forestry Act 2014, s. 6.

⁸⁵³ Forestry Act 2014, s. 7.

⁸⁵⁴ Forestry Act 2014, s. 23.

⁸⁵⁵ Forestry Act 2014, s. 24.

Where convicted a person can be liable for:

- Summary – Class A fine, max of 6 months’ imprisonment or both.
- Indictment – €25,000 fine, 2 years’ imprisonment or both⁸⁵⁶

More serious punishments exist for those found guilty of

- Causing/permitting any act calculated to cause irreparable damage, death or decay to a tree without the permission of the minister
- Intentionally/recklessly setting fire to a tree

A person convicted may be liable for:

- On summary conviction – €200 fine per tree not exceeding a max of €5000, up to 6 months’ imprisonment or both
- On conviction on indictment – €1,000,000 fine, up to 5 years’ imprisonment or both.⁸⁵⁷

Where a person is convicted of any of the above offences the court may also order the forfeiture of any equipment used in the offence and any timber or trees resulting from it. Summary prosecutions may be brought by the Minister.⁸⁵⁸ Where a corporation commits an offence with the consent of/attribution to a director, manager or other officer that individual can be punished as if they had committed the offence themselves.⁸⁵⁹

Forestry Regulations 2017

The purpose of these Regulations is to provide detailed rules for the control of forestry activities in the areas of felling, afforestation, forest road works and aerial fertilisation of forests as provided for in the Forestry Act 2014. The Regulations also give further effect to the European Directives relating to Environmental Impact Assessment. The Regulations creates two new penal provisions.⁸⁶⁰ The carrying out of aerial fertilisation is prohibited between 1 September and 31 March, though the minister may grant a license to do so in exceptional circumstances. The regulations also prohibit:

- The carrying out of aerial fertilisation, (unless the landowner consents in writing)
 - 100 meters from a water source intended for human consumption
 - 50 meters of an aquatic zone
 - 60 meters of a dwelling house
 - 30 meters of non-forested land
- Prohibited in all cases within
 - 60 meters of a European site, (can be authorised with the written permission of the Minister for arts, heritage, regional, rural and Gaeltacht affairs)
 - 15 meters of a road

⁸⁵⁶ Forestry Act 2014, s. 27.

⁸⁵⁷ Forestry Act 2014, s. 27(13).

⁸⁵⁸ Forestry Act 2014, s. 28.

⁸⁵⁹ Forestry Act 2014, s. 29

⁸⁶⁰ Forestry Regulations 2017, S.I. No. 191 of 2017, reg. 22.

- 20 meters of a monument recorded under the National Monuments act⁸⁶¹

Those carrying out licensed felling must put up notices of the activity. This Notice must,

- Be legible and durable
- Be maintained for as long as work continues or as long as specified by the minister
- Contain the license number and where further information on the license can be obtained
- Be removed and replaced if it becomes illegible.

The Minister may also require that changes be made or more notices be put up where they consider notice to be inadequate.⁸⁶²

Another noteworthy addition is the requirement placed on the Minister to carry out Environmental Impact Assessments (“EIAs”) wherever an afforestation or forest road works project is likely to have a significant effect on the environment by virtue of their nature, size or location.⁸⁶³ EIAs must be carried out before a license is issued.

The decision on licensing can also then be challenged in the High Court by anyone who:

- Has sufficient interest in the matter -sufficient interest is not limited to interest in land or a financial interest.
- Is a consultation body
- Is a body or organisation, other than a govt body, whose aims and objectives related to the promotion of environmental protection, that has pursued those objectives in the last 12 months.⁸⁶⁴

Appropriate Assessments are also required where there is a risk that an activity could significantly affect the integrity of an SAC or SPA, as set out in the Habitats and Birds Directives. The license cannot be issued unless it is demonstrated that the activity will not have such an affect.

Tree Protection Orders

The Planning and Development Act 2000 also has a significant role in the protection of trees. The Planning Authority is given the power to, where it deems it expedient in the interest of some amenity or the environment, make provision for the protection of a tree/group of trees/woodland. Such an order may prohibit the cutting, topping or wilful destruction of the tree(s). The landowner may also be required to enter into an agreement with the authority to ensure proper management with the authority’s assistance. Again, orders can include replanting.⁸⁶⁵ It is an offence to violate such a protection order and any person found guilty of such an offence shall be liable to:

- Summary Conviction – Fine not exceeding €5000, no more than 6 months’ imprisonment or both.

⁸⁶¹ Forestry Regulations 2017, S.I. No. 191 of 2017, reg. 8.

⁸⁶² Forestry Regulations 2017, S.I. No. 191 of 2017, reg. 4.

⁸⁶³ Forestry Regulations 2017, S.I. No. 191 of 2017, reg. 13.

⁸⁶⁴ Forestry Regulations 2017, S.I. No. 191 of 2017, reg. 17.

⁸⁶⁵ Planning and Development Act 2000, s. 205.

- Indictment – Fine not exceeding £10,000,000, up to 2 years’ imprisonment or both. ⁸⁶⁶

Summary proceedings may be brought by any planning authority whether or not the offence took place within its functional area. Proceedings must either be brought within 6 months of the date of the offence or within 6 months of the date on which the prosecutor believed they had sufficient evidence to justify bringing proceedings. ⁸⁶⁷

Local authorities are required to set out conservation objectives relating to amenities in their local development plans. This includes, according to guidelines issued in 1986, the mapping and listing of trees of interest. Landowners should be informed and Tree Preservation Orders (“TPO”) made in appropriate cases, based on the trees’ amenity importance and the risk of damage. ⁸⁶⁸ Where a TPO is issued prior to a felling license under the 2014 Act, the felling cannot take place without the local authority’s consent. Likewise, where planning permission is issued, a felling license is still required. ⁸⁶⁹

IV. Planning And Unauthorised Development

The Planning and Development Act 2000 governs planning law in Ireland. Section 160 of the Planning and Development Act 2000 gives the court jurisdiction to order a person “to do or not to do, or to cease to do” anything they feel is necessary to prevent an unauthorised development taking place. ⁸⁷⁰ The provision is found in Part VIII of the Act and is part of a group of enforcement measures enacted to ensure that the “environmental and ecological” rights of the public are preserved, and the “integrity” of the planning system is maintained. ⁸⁷¹

Upon receiving an application under s. 160, the Court is given a wide discretion to do what is required to ensure that the unlawful development is prevented, and the land is restored to the state it was in prior. ⁸⁷² In certain instances, this includes demolishing the unauthorised structure where there has been gross infraction of planning laws ⁸⁷³ or where the rights of a neighbouring party are dramatically impacted ⁸⁷⁴, for example.

Planning Injunctions - What are the sanctions?

A person who is subject to planning injunction will be required to do whatever is necessary to (a) ensure the unauthorised development is not carried out or continued and (b) that the land is restored to its condition prior to the commencement of any unauthorised development. Subject to new amendments, the Court can order whatever is necessary to ensure that the development is carried out in conformity with the permission pertaining to that development or conditions to which the permission is subject. Per s. 160(2), this can include an order for the carrying out of any works, including the restoration, reconstruction, removal, demolition or alteration of any structure or other feature. The nature of the Court’s order will depend on a range of discretionary factors.

⁸⁶⁶ Planning and Development Act 2000, s. 156.

⁸⁶⁷ Planning and Development Act 2000, s. 157

⁸⁶⁸ Department of Agriculture, Food and the Marine, “Felling and Reforestation Policy,” p. 42

⁸⁶⁹ *Ibid.*

⁸⁷⁰ Planning and Development Act 2000, s. 160(1).

⁸⁷¹ *Meath County Council v. Murray* [2017] IESC 25, at para. 75.

⁸⁷² P & D Act 2000 (n1), s.160(1)

⁸⁷³ *Meath County Council v. Murray* [2010] IEHC 254, at para. 44.

⁸⁷⁴ *Morris v. Garvey* [1983] I.R. 319, at p. 313

Who can enforce?

Per s. 160(1) of the Act, anyone can seek an injunction against an unauthorised development regardless of their interest in the land.⁸⁷⁵ There is no standing requirement. However, that being said, the Court are naturally aware of the potential for vexatious litigants and as such, they retain a discretion that may take into account the circumstances in which the application is made.⁸⁷⁶ Moreover, the Court will attach more weight to the conduct of the local planning authority as they are seen as the “watchdogs” of planning law. Thus, their attitude toward the development may be given more weight in certain instances.

Required proofs

In applications for an injunction under s. 160, it is the applicant that must show that the “use of the land by the Respondent is unauthorised”⁸⁷⁷ given the potential impact on the property rights of the respondent. An application for an injunction under s. 160 must first satisfy the “formal requirements”,⁸⁷⁸ namely that the application is within the appropriate timeframe for bringing such an application and the development is unauthorised.

An unauthorised development is one which involves the “carrying out of any unauthorised works (including the construction, erection or making of any unauthorised structure) or the making of any unauthorised use.”⁸⁷⁹ An “unauthorised use” means, ‘in relation to land, use commenced on or after 1 October 1964, being a use which is a material change in use of any structure or other land and being development other than’ exempted development or a use that is subject to planning permission.⁸⁸⁰ As Simons notes, establishing an unauthorised use is more difficult than establishing an unauthorised development. The person bringing the application must be able to demonstrate a contrast between how the land had been used, and how it is being used currently. In some cases, this may be obvious like an increase in noise. However, in other situations the change may be to the character of the development. However, this change may nonetheless be material. It is on the applicant to demonstrate this change.

As for the timeframe, an application cannot be made after 7 years from the date that the development commenced where no planning permission had been granted, or in the case of developments that are the subject of a permission, up to 7 years after the expiration of the relevant planning permission.⁸⁸¹ In respect of unauthorised quarry and peat extraction developments, the *Environment (Miscellaneous Provisions) Act 2011* amended s. 160 so that no time limit applies where the applicant is seeking only to halt this unauthorised developments.

While in general, the burden of proving that the development is unauthorised falls on the plaintiff, exceptions do arise. For example, where the respondent seeks to rely on section 4 of the PDA (exempted development provision) or the exempted development provisions in the 2001 Regulations in order to defend the existence of their unauthorised development the onus of proof falls upon the defendant to show that the development is exempt.⁸⁸² Similarly, per Hogan J in *Wicklow County Council v. Fortune (No 1)* [2012] IEHC 406, it falls upon the

⁸⁷⁵ PDA 2000, s. 160(1)

⁸⁷⁶ Simons, “Planning Injunctions: Section 160” (2004), 2 Irish Judicial Studies Journal 199, at p. 203.

⁸⁷⁷ *Pierson and Others v. Keegan Quarries Ltd* [2010] IEHC 404 at 25

⁸⁷⁸ *Meath County Council v. Murray* [2018] 1 I.R. 189 at [85]

⁸⁷⁹ PDA 2000, s. 2(1).

⁸⁸⁰ PDA 2000, s. 2(1).

⁸⁸¹ PDA 2000, s. 160(6)(a)

⁸⁸² *South Dublin County Council v. Fallowvale Ltd* [2005] IEHC 408, at para. 70

respondent to establish that the development is outside of the time limits for bringing an injunction under section 160.⁸⁸³

Once the applicant discharges the onus of proof, it will then fall to the court's discretion what order should be made.⁸⁸⁴ This is a statutory discretion, not an equitable one. The court must exercise their discretion in a manner that is consistent with the State's view of unauthorised development as one that is a criminal offence in Irish law. In *Meath County Council v. Murray* [2018] 1 I.R. 189, McKechnie J. listed the factors that fell to be considered when the Court was exercising their discretion:

- (i) the nature of the breach: ranging from minor, technical, and inconsequential up to material, significant and gross;
- (ii) the conduct of the infringer: his attitude to planning control and his engagement or lack thereof with that process:
 - acting in good faith, whilst important, will not necessarily excuse him from a s. 160 order;
 - acting mala fides may presumptively subject him to such an order;
- (iii) the reason for the infringement: this may range from general mistake, through to indifference, and up to culpable disregard;
- (iv) the attitude of the planning authority: whilst important, this factor will not necessarily be decisive;
- (v) the public interest in upholding the integrity of the planning and development system;
- (vi) the public interest, such as:
 - employment for those beyond the individual transgressors; or
 - the importance of the underlying structure/activity, for example, infrastructural facilities or services;
- (vii) the conduct and, if appropriate, personal circumstances of the applicant;
- (viii) the issue of delay, even within the statutory period, and of acquiescence;
- (ix) the personal circumstances of the respondent; and
- (x) the consequences of any such order, including the hardship and financial impact on the respondent and third parties.⁸⁸⁵

Where the development in question is subject to environmental considerations, the Court will be careful as to how they exercise their discretion. In *Krikke v. Barrannafaddock Sustainability Electricity Limited* [2019] IEHC 825, Simons J., addressing the discretionary factors outlined in *Murray*, noted that the fact that the impugned windmills were subject to the EIA Directive was a relevant consideration. Article 10a of the EIA Directive states:

⁸⁸³ *Wicklow County Council v. Fortune (No 1)* [2012] IEHC 406.

⁸⁸⁴ *Meath County Council v. Murray* [2018] 1 I.R. 189 at para. [85]

⁸⁸⁵ *Meath County Council v. Murray* [2017] IESC 25, [2018] 1 I.R. 189, at para 90.

“Member States shall lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive. The penalties thus provided for shall be effective, proportionate and dissuasive.”

As noted by Simons J in his judgement, any “changes or extension” to a project that had been subject to an environmental impact assessment must be screened again in order to determine whether another EIA must be carried out in respect of those proposed changes. Failure on the part of the developer to carry out such a screening will be given weight by the Court when exercising their discretion.

Who imposes the sanction?

Per s. 160(5), the Circuit Court has jurisdiction to hear an application where the market value of the land does not exceed €3,000,000. Anything over that shall be transferred to the High Court. “Market value” is defined in s 160(5)(e) of PDA 2000 as “*in relation to land, the price that would have been obtained in respect of the encumbered fee simple were the lands to have been sold on the open market, in the year immediately preceding the bringing of the proceedings concerned, in such manner and subject to such conditions as might reasonably be calculated to have resulted in the vendor obtaining the best price for the land.*”

Enforcement notices

The local authorities have the ability to issue enforcement notices requiring such steps as may be necessary in order to restore the land to the condition it was in prior to the unauthorised development taking place. (s. 154(5)(B))

Penalties

If an individual who is served with an enforcement notice fails to comply with the conditions they will suffer a penalty. Under s. 156(1)(a), they may be subject to a fine up to €10,000,000, or a period of imprisonment up to 2 years, if they are convicted on indictment. The penalty for a summary conviction is a fine not exceeding €5000 or a period of imprisonment up to 6 months. If a person is convicted of an offence and they proceed to continue with the offence they will be subject to a further offence for every day that they fail to comply. Thus, if they are convicted on indictment, they will be subject to a fine of €10,000 or a prison term not exceeding 2 years. On summary conviction, the fine will be €1500 for each day.⁸⁸⁶

Who can enforce?

It is the local authorities who have the power to issue enforcement notices. However, members of the public can make representations to their local authority informing them of unauthorised development. The local authority has the power to require whatever steps are necessary, within a certain timeframe, in order to restore the land to its condition prior to the unauthorised development taking place. If, at the expiration of the specified time, the enforcement notice has not been complied with, the local authority has the ability to enter onto the land and perform the necessary works. In cases of urgency, the Local Authority may issue an enforcement notice without the prerequisite warning letter and investigation.

What are the proofs?

When an unauthorised development comes to the attention of the Local Authority, they must issue a Warning Letter⁸⁸⁷ to the owner or occupier. The warning letter must specify what the unauthorised development is, that they may be subject to an enforcement notice, and outline the penalties that they may face if the unauthorised development continues. Upon issuing the warning letter, the Local Authority must begin investigating the alleged unauthorised

⁸⁸⁶ PDA 2000, s. 156(2)(a)

⁸⁸⁷ S. 152

development. Where it is established that unauthorised development has been taking place, they can proceed with an enforcement notice, or make a s. 160 injunction.

Who actually imposes the sanction?

The Local Authority issues the enforcement notice, and ensures it is complied with. Where the enforcement notice is not complied with, the Courts are responsible for issuing the penalties.

V. Air Quality

The main legislation governing this area of law in Ireland is the Air Pollution Act 1987. Its provisions govern a range of different areas from licences for industrial plants to household pollution. Under s. 4 of the Act, “air pollution” is defined as “a condition of the atmosphere in which a pollutant is present in such a quantity as to be liable to: (i) be injurious to public health, or; (ii) have deleterious effect on flora or fauna or damage property; (iii) impair or interfere with amenities or with the environment”. Under s. 5 of the Act, “best practicable means” is defined as the provision and proper maintenance, use, operation and supervision of facilities which are the BPM of preventing or limiting an emission. Under the APA, it is an offence to contravene any provision or regulation of the Act.

Sanctions

Section 24 of the Act places a general obligation on the occupier of premises (not a dwelling home) to use the best practicable means to limit emissions from the premises.⁸⁸⁸ ‘Best Practicable means’ is defined as using as the ‘best practicable means’ to prevent or limit an emission through the provision and proper maintenance, use, operation and supervision of facilities which, having regard to all the circumstances, are most suitable for such prevention or limitation.⁸⁸⁹ It is a further offence under s. 24(2) of the Air Pollution Act 1987 for the occupier of a premises (and premises in this context includes a private dwelling) to cause or permit an emission from such premises in such quantity or in such a manner as to be a nuisance.

A person who is found guilty of an offence under this Act shall be liable

- (a) On summary conviction: to a Class A fine (=€5000) and a Class E fine (=€500) or to a term of imprisonment not exceeding 6 months.
- (b) On conviction on indictment: To a fine up to €500,000 with an additional fine of €5000 for each day in which the offence continues or to a term of imprisonment up to 2 years.

Where the relevant authority believes that a person has committed an offence and is liable for summary prosecution, they may serve a fixed payment notice. This allows the person who has committed the offence to make a payment that will result in them avoiding summary prosecution.⁸⁹⁰

Fixed Payment Notice: Instead of instituting summary prosecution, the local authority can issue a ‘fixed payment notice’ which allows the accused to pay a fine in lieu of summary prosecution. The fixed payment notices are used in situations where accused has breached the Air Pollution Act, 1987 (Marketing, Sale and Distribution of Fuels) Regulations 1998 to 2011, relating to the sale, marketing and distribution of certain fuels. The penalties range from €500 to €1000.

⁸⁸⁸ Air Pollution Act 1987, s. 24(1)

⁸⁸⁹ Air Pollution Act 1987, s. 5

⁸⁹⁰ Air Pollution Act 1987, s.12A as inserted by the Environment (Miscellaneous Provisions) Act 2011

Who can enforce?

The local authority is responsible for enforcing the provisions of the APA. Under s. 26, the Local Authority can issue a notice on the occupier of a premises ordering them to prevent emissions coming from their premises. Under subs. 2 of s. 26, there are a range of considerations which the Local Authority must consider before issuing such a notice.

- (a) any air quality management plan in relation to the area in which the premises are situate,
- (b) any special control area order in operation in relation to the area in which the premises are situate,
- (c) any relevant emission limit value,
- (d) any relevant air quality standard,
- (e) the availability of the means necessary for compliance with the notice, and
- (f) the expense which would be incurred in complying with the notice.

Where the person upon whom the notice is served fails to comply with the notice, the Local Authority can take such steps as they believe are ‘reasonable and necessary’ to ensure that the notice is complied with. Under s. 28, the local authority can apply to the High Court for an order compelling the occupier of the premises to eliminate or reduce the risk of air pollution.

Required proofs

It will not be an offence under s. 24 if the emissions are released in accordance with a licence under the APA; if it is in accordance with an Emission limit value under the Act; or, if it is in accordance with a Special Control Area Order.

Civil liability

Under s. 28B of the Act, where an emission causes injury, loss or damage to a person or to the property of a person, the person may, without prejudice to any other cause of action that he may have in respect of the injury, loss or damage, recover damages in any court of competent jurisdiction in respect of such injury, loss or damage from the occupier of a premises or from the act or omission of any person.

The Air Pollution Act 1987 (Marketing, Sale, Distribution and Burning of Specified Fuels) Regulations 2012 restricts the marketing, sale and distribution of specified “smoky fuels” within specified areas. More generally, solid fuels cannot be sold in a bag unless the bag is sealed and there is a record that the bag does not contain a specified fuel. Occupiers of any private dwelling are now also banned from burning specified fuels.⁸⁹¹

Distributors of bituminous coal for residential use must register with the EPA each year.

The regulations are enforced by the local authority who can appoint an “authorised person”. Under the 2012 Regulations, this “authorised person” has the ability to inspect any premises/vehicle which they believe is being used in connection with the sale of solid fuel.

It is an offence to contravene any provision of these regulations. Authorised persons have the ability to issue ‘fixed payment notices’ with fines ranging from €200 to €1000 for breaches of the regulations.⁸⁹²

⁸⁹¹ S. 5

⁸⁹² s. 11 of the Environment (Miscellaneous Provisions) Act 2011

VI. Industrial Sites

IPPC Licenses

The Environmental Protection Agency Act 1992 prohibits the carrying on of activities to which the act applies without a license issued by the EPA.⁸⁹³ This is known as an Integrated Pollution Prevention & Control (IPPC) licence - a single integrated licence which covers all emissions from the facility and its environmental management. All related operations that the licence holder carries in connection with the activity are controlled by this licence. An Activity is defined as any operation/process/ development specified in the First Schedule to the Act and carried out in an installation.⁸⁹⁴ This prohibition does not apply to “established activities” which were being carried on before the 29th of October 1999, unless a specific order is made by the Minister.⁸⁹⁵

Criminal penalties and prosecution:

Anyone who breaches of a provision of, or regulation passed under the act is guilty of an offence and liable for:⁸⁹⁶

- Summary Conviction – A fine of up to €3000, no more than 12 months’ imprisonment or both.
- On Indictment – A fine of up to €15,000,000, 10 years’ imprisonment or both.
- Should the offence continue after conviction
 - Summary Conviction – Fine of up to €1000 per day
 - On Indictment – Fine of up to €130,000 per day⁸⁹⁷

Summary prosecutions can be brought by the EPA, or any other person specified by the minister including the minister themselves. The Court must take into account the risk or extent of environmental damage arising from the offence.⁸⁹⁸

Civil proceedings

Any person may bring a claim before the court alleging that a relevant activity is being carried out in contravention of the requirements of the Act.⁸⁹⁹ The Circuit Court has jurisdiction where it is satisfied that it is appropriate for the Circuit Court to hear a given claim otherwise, the case must be passed on to the High Court. In determining appropriateness, the court must consider,

- The nature and extent of the alleged pollution
- The estimated cost of compliance.

Upon a successful claim the court may require that the person responsible refrain from or cease any specified act or omission or make such other orders as it deems appropriate. Failure to comply with such orders constitutes an offence under the act. To succeed in a claim under the Act the applicant must show that an IPPC license was required, and that the activity occurred

⁸⁹³ Environmental Protection Agency Act 1992 s. 82

⁸⁹⁴ Environmental Protection Agency Act 1992 s. 3

⁸⁹⁵ Environmental Protection Agency Act 1992, s. 82(4)

⁸⁹⁶ Environmental Protection Agency Act 1992. s. 8

⁸⁹⁷ Environmental Protection Agency Act 1992. s 9

⁸⁹⁸ Environmental Protection Agency Act 1992. s 11

⁸⁹⁹ Environmental Protection Agency Act 1992. s.99H

without or in contravention of that license. In *Environmental Protection Agency v. Deegan* the High Court held that in doing so two factors must be demonstrated.

- Whether the business operation is a specified activity under the First Schedule.
- Whether the Area Involved meets the threshold requirement set out in the First Schedule.⁹⁰⁰

Thus, the applicant must show that there is an “activity” as defined above, being carried on in an “installation”. The courts have determined that the interpretation of such terms must give effect to the clear legislative intent to provide meaningful environmental protection.

- “Installation” includes any technical unit or plant where the activity or any directly associated activity with a technical connection is carried out on the site of the primary activity.
- “Plant” refers to any land or part of any land used for the purpose of or incidental to the activity.

The inclusion of “plant” has been found to greatly broaden the meaning of “installation” and thus what can be included in determining whether a threshold requirement is met.⁹⁰¹ Terms such as “technical connection” must also be given a broad definition to ensure the intended level of environmental protection is achieved.⁹⁰²

In *Environmental Protection Agency v. Harte Peat Extraction*, the High Court provided a detailed account of how the court may approach such a case. While it was overturned by the Court of Appeal with the consent of the parties, the language used is very similar to that of *Deegan*. The court ruled that:

- Sites can and should be aggregated with the court finding that differentiation between contiguous and non-contiguous sites would produce an absurdity.
- Installation must be given the widest possible meaning and include any land incidental to the activity
 - Ancillary activities with a technical connection must also be included.
 - Where they are carried out in the course of business.
- Technical connection must be interpreted broadly, focusing more on a practical rather than physical nexus.
- The identity of the business owner(s) is highly relevant.
 - Ostensibly separate businesses run on different sites that are in truth common businesses with a common business or owner,
 - Must be aggregated when determining if a threshold requirement is met.⁹⁰³

Granting of licenses

IPPC Licences are granted by the Environmental Protection Agency under part IV of the Act. The EPA may only do so where 11 criteria have been satisfied. Aside from those criteria the

⁹⁰⁰ *Environmental Protection Agency v. Deegan* [2019] IEHC 755 at para 69.

⁹⁰¹ *Environmental Protection Agency v. Deegan* [2019] IEHC 755 at para 67.

⁹⁰² *Environmental Protection Agency v. Deegan* [2019] IEHC 755 at para 68

⁹⁰³ *Environmental Protection Agency v. Harte Peat Extraction* [2014] IEHC 308

EPA is also entitled to attach any further conditions to the license as they deem appropriate.⁹⁰⁴ Licenses may be suspended where the licensee can no longer be considered a “fit person” or someone technically and financially capable of fulfilling the license’s conditions.⁹⁰⁵ Extra requirements are added to those sites which give rise to a risk of pollution of aquifers. The licensee must be capable of complying with the added requirements of the Groundwater Directive and the license must be reviewed at least every 4 years.⁹⁰⁶

The Agency is also required to set out an Environmental Inspection Plan which shall examine the relevant environmental effects of every relevant installation. The frequency of inspections will depend on the environmental risk.

- High risk installations must be subject to inspection at least every year.
- Low risk installations must be inspected at least every 3 years
- Where a significant lack of compliance is discovered a follow-up inspection must occur within 6 months.

The environmental risk must be based on,

- The potential or actual impact on health and the environment based on the type of emissions, the sensitivity of the local environment and risk of accidents.
- The record of compliance.
- Participation in the EU Eco-Management audit scheme.

The Agency is also required to conduct irregular inspections of serious complaints, accidents or contraventions.⁹⁰⁷

VII Marine Life

Habitats:

The marine habitats protected by the Habitats Directive (as implemented by European Communities (Birds and Natural Habitats) Regulations 2011) include:

- Estuaries
- Large shallow inlets and bays
- Mudflats and sandflats not covered by sea water at high tide
- Reefs
- Sandbanks that are slightly covered by seawater at all times
- Submerged or partly submerged sea caves.⁹⁰⁸

Under the 2011 Regulations, any person who without lawful authority:

⁹⁰⁴ Environmental Protection Agency Act 1992 s. 83(5)

⁹⁰⁵ Environmental Protection Agency Act 1992 s. 97 and 84(4)

⁹⁰⁶ Environmental Protection Agency Act 1992, s. 99I

⁹⁰⁷ Environmental Protection Agency Act 1992, s. 99J.

⁹⁰⁸ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora OJ L 206/7, Annex I

(a) carries out any plan or activity that may have a significant effect on, adversely affect the integrity of, a European Site, or

(b) enters or occupies any European Site, or brings onto or places or uses or releases in any European Site any animal or object where such action or the use or presence on the European Site of such an animal or object is likely to have a significant effect on, or adversely affect the integrity of, a European Site,

shall be guilty of an offence. The penalty for summary conviction is a Class A fine and/or a prison term up to six months. The penalty for a conviction on indictment is a fine not exceeding €500,000 and/or a prison sentence up to three years.⁹⁰⁹

Wildlife

Under the Wildlife Act, dolphin species, porpoise species, seal species and whale species⁹¹⁰ are ‘protected wild animals.’⁹¹¹ It is an offence to hunt (without a permission or licence), injure them otherwise than hunting⁹¹² or to wilfully interfere with or destroy the breeding place of any protected wild animal.⁹¹³ However, it is not an offence to ‘unintentionally to injure or kill a protected wild animal’ while engaged in fishing⁹¹⁴ or aquaculture⁹¹⁵.

The penalty for an offence is a Class A fine. When prosecuting under this section, it is not necessary to illustrate how the offence occurred otherwise than while the defendant was engaged in fishing or aquaculture.⁹¹⁶ The Wildlife Act only has regulatory force as far out as the foreshore i.e., 12 nautical miles from Ireland’s shore. Proceedings under the Act may take place in any District Court.⁹¹⁷

Annex IV Wildlife – Dolphins and Whales

Annex IV of the Habitats Directive requires that certain species are given ‘strict protection’.⁹¹⁸ Included in this are cetaceans i.e., whales and dolphins, which occur in Irish marine environments. Under the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477), a person who does any of the following in relation to these creatures is guilty of an offence.⁹¹⁹

- (a) deliberately captures or kills any specimen of these species in the wild,
- (b) deliberately disturbs these species particularly during the period of breeding, rearing, hibernation and migration,
- (c) deliberately takes or destroys eggs of those species from the wild,
- (d) damages or destroys a breeding site or resting place of such an animal, or

⁹⁰⁹ S.I. No. 477/2011 - European Communities (Birds and Natural Habitats) Regulations 2011, Reg. 67(2)

⁹¹⁰ Wildlife Act 1976, Fifth Schedule.

⁹¹¹ Wildlife Act 1976, s. 23(5)(a)

⁹¹² Wildlife Act 1976, s. 23(5)(c)

⁹¹³ Wildlife Act 1976, s. 23(5)(d)

⁹¹⁴ Wildlife Act 1976, s. 23(7)(a)

⁹¹⁵ Wildlife Act 1976, s. 23(7)(a) (as substituted (31.07.2001) by Wildlife (Amendment) Act 2000 (38/2000), s. 31(c)(i), S.I. No. 371 of 2001)

⁹¹⁶ Wildlife Act 1976, s. 23(9)

⁹¹⁷ Wildlife Act 1976, s. 23(10)

⁹¹⁸ Ibid, Annex IV

⁹¹⁹ *European Communities (Birds and Natural Habitats) Regulations 2011*, reg. 51(2)

(e) keeps, transports, sells, exchanges, offers for sale or offers for exchange any specimen of these species taken in the wild, other than those taken legally as referred to in Article 12(2) of the Habitats Directive.

The only exception to this rule is where the minister grants a derogation licence. This will only be granted where an overriding interest is concerned and there will be harm to the cetaceans.⁹²⁰ The penalties for a summary conviction is a Class A fine and/or up to 6 months' imprisonment. The penalties for a conviction on indictment is a fine not exceeding €500,000 and/or imprisonment for a term not exceeding three years.⁹²¹ When the Court is deciding what sentence to impose, the regulations state that particular regard should be had for 'the risk or extent of injury to the environment arising from the act or omission constituting the offence, and to the polluter pays principle.'⁹²²

Pollution in The Marine Environment

The Dumping At Sea Act 1996 makes it an offence to dump any substances or materials in the maritime area. Where dumping occurs, it is the master of the vessel and the owner that is liable.⁹²³ Similarly, it is an offence to burn any substance or material in the maritime area.⁹²⁴ The penalty for a summary conviction is a fine not exceeding €3000 and/or imprisonment for a period of up to 12 months.⁹²⁵ A person convicted on indictment is liable to a fine 'of such amount as the court considers appropriate' or to a term of imprisonment not exceeding five years.⁹²⁶ It is a defence to demonstrate that the dumping took place due to a mistake or default of another person or to an accident or some other factor outside the person's control.⁹²⁷

Per s. 5 of the Act, the EPA can grant permits 'authorising the dumping of a specified vessel, aircraft or offshore installation, or a specified quantity of a specified substance or material in a specified place within a specified period of time or the loading onto the vessel or aircraft, of a specified quantity of a specified substance or material at a specified place within a specified period of time, which is intended to be dumped from the vessel or aircraft concerned.'⁹²⁸

Enforcement

'Authorised officers' have extensive powers to enter onto premises, open containers and carry out examinations/inspections/analyses that they believe to be necessary to enforce the provisions of the Act.⁹²⁹ 'Authorised persons' have the ability to detain vessels and aircraft where they believe them to be guilty of illegal dumping.⁹³⁰

'Authorised officers' include a range of persons including:

- A member of the EPA;⁹³¹
- A member of Inland Fisheries Ireland;⁹³²

⁹²⁰ Ibid, reg. 54

⁹²¹ Ibid, reg.67(2)

⁹²² Ibid, reg.67(3)

⁹²³ Dumping at Sea Act 1996 s. 2

⁹²⁴ *ibid*, s. 3

⁹²⁵ Ibid, s.10(4)

⁹²⁶ Ibid, s.10(1)

⁹²⁷ Ibid, s. 2(2)

⁹²⁸ Ibid, s. 5(1)

⁹²⁹ Ibid, s. 6(2)

⁹³⁰ Ibid, s. 6(5)

⁹³¹ Ibid, s. 6(1)(a)

⁹³² Ibid, s. 6(1)(b)

- A member of An Garda Siochana;⁹³³
- A member of the Permanent Defence Forces⁹³⁴

Summary Proceedings for offences can be brought and prosecuted by the EPA.⁹³⁵

Imposition of sanctions

Under the Act, District Court judges have the jurisdiction to try summarily an offence if they believe the offence to be sufficiently minor and both the prosecution and defendant consent.⁹³⁶

Sea Pollution Act 1991

The Sea Pollution Act 1991 allowed Ireland to ratify the MARPOL Convention - The International Convention for the Prevention of Marine Pollution from Ships. The Sea Pollution Act 1991 gives the Minister the ability to make regulations:

- (a) prohibiting or regulating the discharge anywhere at sea from a ship registered in the State or the discharge in the State from any ship of any oil, oily mixture, noxious liquid substance, harmful substance, sewage, garbage, substances subject to control by Annex VI to the MARPOL Convention, anti-fouling systems or ships' ballast water and sediments ;
- (b) governing prescribed operations on board ship relating to any such substance carried on the ship.⁹³⁷

The owner and the master of the ship will be held liable where there is a contravention of one of these regulations.⁹³⁸ Where there has been a discharge of a polluting substance specified in Annex I or Annex II to the Marpol Convention, the person responsible will be held liable even if they are not the master/owner of the ship.⁹³⁹ Where a person is convicted on indictment for such an offence, the fine shall not exceed €500,000 and or imprisonment of up to 3 years.

These regulations will not apply where the discharge or pollution was for the purpose of

- (i) securing the safety of a ship, or
- (ii) saving life at sea

or where the discharge was due to damage to the ship, or to its equipment provided that all reasonable steps have been taken after the damage to minimise the discharge.⁹⁴⁰

Wherever there is an incident, whether on board or outside a ship, resulting in discharge of hazardous and noxious substances or a pollutant the Master of the ship shall report the matter to the Minister or, where the incident or discharge occurs in or is observed from a harbour, to the Harbour master. Failure to do so is an offence.

The Minister can prescribe regulations requiring the owner or master of a ship to comply with requirements so as to prevent, control or reduce the discharge into the sea of pollutants. Any person being the owner or master of a ship who contravenes any regulation under this section shall be guilty of an offence. The Minister can appoint an inspector to ensure that the provisions

⁹³³ Ibid, s. 6(1)(e)

⁹³⁴ Ibid, s. 6(1)(f)

⁹³⁵ Ibid, s. 7 (as substituted by s. 36 of the Foreshore and Dumping at Sea (Amendment) Act 2009)

⁹³⁶ Ibid, s.10(2)

⁹³⁷ Sea Pollution Act 1991, s.10(1)

⁹³⁸ Sea Pollution Act 1991, s.10(2)

⁹³⁹ Sea Pollution Act 1991, s.10(2A)

⁹⁴⁰ Sea Pollution Act 1991, s.11

of the Act are being upheld i.e. that ships are complying with conditions and requirements regarding equipment standards etc. Inspectors have the power to go on board any ship while the ship is in the State. They may also inspect any documents on board the ship.

An inspector has the power to direct the master of the ship to do everything necessary to ensure that the ship or its equipment corresponds with the particulars of a certificate under s. 17 or an equivalent certificate issued by another party to the MARPOL Convention or is so defective that the ship is not fit to put to sea without presenting a serious threat of damage to the marine environment.⁹⁴¹ The inspector can take all steps necessary to ensure that a ship in relation to which he has given directions under this section does not go out to sea or leave harbour for the purpose of proceeding to the nearest repair yard.

Inspectors have the power, where they have reasonable cause to believe that a ship has caused or may cause pollution and the ship is in the State, he may stop and detain the ship, or take it to such a place in the State as he considers appropriate.⁹⁴²

A person who commits an offence under this Act is liable:

- (a) on summary conviction to a fine not exceeding £1500 or to imprisonment for any term not exceeding twelve months, or, at the discretion of the Court, to both such fine and such imprisonment or
- (b) on conviction on indictment, to a fine not exceeding £10,000,000 and/or imprisonment for any term not exceeding 5 years.

Oil Pollution of the Sea (Civil Liability and Compensation) Acts 1988 to 2003

The Oil Pollution of the Sea (Civil Liability and Compensation) Acts 1988 to 2003 gives effect to international conventions concerning civil liability and compensation for oil spills in our seas.⁹⁴³ Per s. 7, the owner of the ship will be liable where a ship carrying oil in bulk causes pollution within our seas.⁹⁴⁴ The agent of the owner of a ship will not be held liable for pollution caused by the ship. Per s. 8, the owner of the ship can avoid liability if they show that the discharge of oil was a result of:

- (a) An act of war or a 'natural phenomenon of an exceptional, inevitable and irresistible character.
- (b) Was wholly due to anything done, or left undone, by any other person other than servant or agent of such owner) with intent to do damage.
- (c) Was due wholly to the negligence or wrongful act of any government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

Per s. 10, the owner of the ship may limit his liability in situations where the discharge of oil which occurred without his 'actual fault or privity'.

'(c) where the owner concerned limits his liability in accordance with this Act, his liability for any one discharge shall not exceed fourteen million units of account, or one hundred and thirty-three units of account per ton for each ton of the ship's tonnage, whichever is the lesser.'

⁹⁴¹ Sea Pollution Act 1991, s. 22

⁹⁴² Sea Pollution Act 1991, s. 24

⁹⁴³ < <https://www.gov.ie/en/publication/864256-marine-environment-legislation/> >

⁹⁴⁴ Oil Pollution of the Sea (Civil Liability and Compensation) Act 1988, s. 7

Per s. 12, the Court decides the amount payable on a finding of liability for the owner. On top of this, the Court must also determine the additional payments that may need to be made to other people making a claim against the owner. Section 13 gives inspectors the power to stop and detain any ship in the State where they believe the owner of that ship to be liable for pollution damage. If they leave without having detained the paid the liability owed, they are guilty of an offence.

The International Oil Pollution Compensation Fund

Section 19 states that prescribed persons must file returns detailing what volume of crude oil and fuel oil carried in each ship owned by them and received at terminals within the state.⁹⁴⁵ On top of filing these returns to the Minister, they must pay a prescribed amount into the International Oil Pollution Compensation Fund established under the Fund Convention.⁹⁴⁶ Failure to do so is an offence. The Fund is liable for pollution damage in the State for a ship carrying oil in bulk as cargo. The fund is liable in any case where section 7 (owner of the ship liable) or where a person has been unable to obtain ‘full satisfaction of the amount of compensation due to him under s.7.’⁹⁴⁷ The fund will not be liable for pollution damage where the discharge ‘resulted from an act of war, hostilities, civil war or insurrection or was caused by oil which has escaped or been discharged from a warship’ The Act provides for the appointment of inspectors. Inspectors have the ability to stop, detain or board any ships they deem necessary for the purposes of enforcing provisions of the Act.⁹⁴⁸ It is an offence to wilfully disobey the directions of an inspector.⁹⁴⁹

Conclusions

Ireland’s marine environment is regulated various acts and regulations. The legislative instruments appear largely to be introduced in order to implement international conventions which Ireland is party to. Ireland’s marine environment regulations can be separated into those that protect marine wildlife and habitats and those that enforce against marine pollution.

In terms of protecting against pollution, there is legislation that protects against pollution emanating from ships and illegal dumping from ships and aircraft vessels. However, while these enforcement measures are necessary it is unlikely that they make a large contribution to the quality of Ireland’s marine environment. Rather, they seem to be measures implemented on a precautionary basis. The real threat to the quality of our marine environment, at least in coastal areas, is high nitrogen levels due to agricultural activities. The EPA’s *Water Quality in 2020: An Indicators Report* found that 21% of Ireland’s estuarine and coastal waters had nitrogen levels that were too high.⁹⁵⁰

The more important legislative provisions pertaining to our marine environment are the Wildlife Acts and the 2011 Habits Regulations. These seek to provide protection for our marine wildlife and habitats. There is a real need to ensure that our marine ecosystems are protected from degradation. As noted by the Marine Protected Area Advisory Group, a thriving marine ecosystem brings “many benefits to society through “ecosystem services”, such as providing

⁹⁴⁵ Sea Pollution Act 1991, s.19(1)

⁹⁴⁶ Sea Pollution Act 1991, s.19(2)

⁹⁴⁷ Sea Pollution Act 1991, s. 20(2)

⁹⁴⁸ Ibid, s. 32

⁹⁴⁹ ibid

⁹⁵⁰ < <https://www.epa.ie/news-releases/news-releases-2021/urgent-action-needed-to-curb-nitrogen-pollution-in-irelands-waters-says-epa.php>>

food and raw materials, and maintaining climate and water quality and the rich environments we rely on for recreation, tourism, and cultural well-being.”⁹⁵¹

The current enforcement measures we have in place for protecting our marine ecosystem are not adequate. The Wildlife Act, for example, protects our marine mammals such as dolphins and whales from being killed, yet no liability arises where these mammals are killed in the process of fishing. While this is designed to protect the economic activity of fishing, it is unlikely that these species would be killed or harmed via any other activity. On a wider note, the combination of the Wildlife Acts and the Habitat Directives still leave a lot of marine habitats and species unprotected. The Wildlife Acts only cover Ireland’s foreshore i.e. 12 nautical miles from Ireland’s coast.⁹⁵² Outside of this, marine habitats and species are protected if they are identified as a habitat or species for which an SAC must be created under the Habitats Directive. The issue that arises here is that where the habitat does not qualify as an Annex I habitat under the Directive, there is currently no legislation in Ireland to protect these habitats, even though they may be in decline.⁹⁵³

Marine Protected Areas (MPAs) are marine areas that are protected and managed over the long term, with a primary objective of conserving habitats and/or species.⁹⁵⁴ The Irish Government are currently seeking to expand our network of MPAs, to greater protect marine biodiversity and ecosystems. Currently Ireland’s MPAs account for just 2.13% of Ireland’s maritime area was MPA network.⁹⁵⁵ By 2030, the Irish Government wish to increase that to 30%.⁹⁵⁶ In order to do so, it is likely that new legislation will need to be introduced as there is currently no legal definition for MPA in Ireland, so to create an MPA, it must be done through the Habitats Directive. Giving MPAs a statutory underpinning would enhance the protection we could afford to marine habitats and species as we would not be reliant on the designation requirements of the Habitats Directive. Offences and penalties could be established for harming marine biodiversity, similar to provisions of the 2011 Regulations.

VIII Water

The law governing water standards in Ireland is set out in the Local Government (Water Pollution) Act 1977–2007. Definitions in section 1 provide:

- “Polluting matter” includes any poisonous or noxious matter, and any substance (including any explosive, liquid or gas) the entry or discharge of which into any waters is liable to render those or any other waters poisonous or injurious to fish, spawning grounds or the food of any fish, or to injure fish in their value as human food, or to impair the usefulness of the bed and soil of any waters as spawning grounds or their capacity to produce the food of fish or to render such waters harmful or detrimental to public health or to domestic, commercial, industrial, agricultural or recreational uses.

⁹⁵¹ Marine Protected Area Advisory Group, *Expanding Ireland’s Marine Protected Area Network* (A report by the Marine Protected Area Advisory Group for the Department of Housing, Local Government and Heritage, October 2020)

⁹⁵² Foreshore Act 1933, s.1A (as inserted (29.06.2005) by Maritime Safety Act 2005 (11/2005), s. 60(b), commenced on enactment)

⁹⁵³ Marine Protected Area Advisory Group, *Expanding Ireland’s Marine Protected Area Network* (A report by the Marine Protected Area Advisory Group for the Department of Housing, Local Government and Heritage, October 2020)

⁹⁵⁴ *ibid*

⁹⁵⁵ *ibid*

⁹⁵⁶ *ibid*

- “Water” means
 - any (or any part of any) river, stream, lake, canal, reservoir, aquifer, pond, watercourse or other inland waters, whether natural or artificial,
 - any tidal waters, and
 - where the context permits, any beach, river bank and salt marsh or other area which is contiguous to anything mentioned in paragraph (a) or (b), and the channel or bed of anything mentioned in paragraph (a) which is for the time being dry.
 - There is a general prohibition on ‘causing or permitting’ polluting matter to enter water – Section 3 of the Act:

A person found guilty of ‘causing or permitting’ polluting matter to enter waters will be liable on summary conviction to a Class A fine or up to 3 months’ imprisonment (or both). A person found guilty on indictment could be liable to a fine of up to €15,000,000 or imprisonment for a term not exceeding 5 years (or both). In this context, ‘permitting’ can mean either allowing the pollution to occur or failing to ‘take reasonable steps to prevent it.’

It is not necessary to establish any intention on the part of the polluter when prosecuting this offence. This is based on the Supreme Court’s decision in *Shannon Regional Fishing Board v. Cavan County Council* [1996] 3 I.R. 267, Blayney J approved of the idea that in cases such as these it was “unnecessary and undesirable” to introduce the concept of *mens rea*. Thus, where the facts establish that the defendant was indeed responsible for the polluting material entering the water, this will be enough to establish liability. Whether they intended to or not is irrelevant.

The defendant can avoid liability, however, where they can show that “they took all reasonable care to prevent the entry to waters to which the charge relates by providing, maintaining, using, operating and supervising facilities, or by employing practices or methods of operation, that were suitable for the purpose of such prevention”.

Thus, an offence under s. 3 is a halfway house between a conventional *mens rea* offence and a strict liability offence. The defendant can avoid liability only if they can show that they took all reasonable steps to prevent the pollution from occurring.

Per s.3(4), a prosecution for an offence under this section may be taken by a local authority, a board of conservators, the Minister for Fisheries or any other person.

Prohibition on the discharge of effluent without the benefit of a licence – Section 4:

Per section 4, it is an offence to discharge trade effluent or sewage effluent into any waters ‘except under and in accordance with a licence’. ‘Trade effluent’ is effluent discharged from premises used for carrying on any trade or industry.

Licences can be granted by the local authority if the discharge is to waters within their functional area or if the premises where the discharge originates is in their functional area. When granting a licence, the Local Authority can apply conditions to that licence. These conditions cover a wide range of things including the nature and composition of the waste, the time when it can be discharged etc.

A person who contravenes s. 4 of the Act i.e. discharges trade or sewage effluent without a licence or outside the conditions attached to the licence commits an offence. The penalties are a Class A fine and/or up 3 months in prison on summary conviction and a €15m fine and/or imprisonment for a term not exceeding 5 years.

Per s. 4(9), a prosecution for an offence under this section may be taken by a local authority, a board of conservators, the Minister for Agriculture, Food and the Marine, or any other person.

Application to Court for an order remedying water pollution – Section 10

Per s. 10 of the Act, “any person” regardless of their interest in the waters concerned, can apply to the appropriate court where they believe that another person is “causing or permitting” polluting matter to enter waters or is discharging trade effluent or sewage effluent to waters without the benefit of a licence for a court order. The court order may direct the other person to do one or more of the following:

- Terminate the pollution within a specified time;
- Mitigate or remedy any effects of the pollution;
- Pay the applicant or such other person as may be specified to pay the costs incurred by the applicant or the specified person in ‘investigating, mitigating or remedying the effects’ of the pollution.

The application is made summarily. It is an offence not to comply with such directions from the Court with the sanctions being a Class A fine and/or imprisonment for a period up to 3 months. The “Appropriate Court” depends on the estimated cost of complying with the Court Order. Thus,

- Where the estimated cost is any sum up to €15,000 the application is heard before the district court;
- Where the estimated cost is any sum up to €75,000 the application is heard before the Circuit Court;
- And the High Court has the ability to hear any application.

Local Authority notices

Per s. 10(5), a local authority has the power to serve a notice upon a person they believe to be causing or permitting polluting matter to enter waters or to be causing or permitting trade and/or sewage effluent to be discharged to waters without a licence. A notice directs the person responsible to halt the discharge. Where the party fails to comply with the notice, the Local Authority can proceed to stop the pollution themselves and recover the costs from the polluter.

Local Authority power to take pre-emptive action – Section 12

Per s. 12 of the Act, if the L.A believes that a premises in its functional area is keeping substances that could pollute waters, it can issue a notice specifying certain measures that need to be followed to prevent the matter from entering waters. It can even order that certain activities taking place on the premises be halted for a period of time or that the facilities for holding such substances be relocated. Where the person upon whom such a notice is served fails to comply, they are liable on summary conviction to a Class A fine and/or imprisonment for a term not exceeding 3 months.

Duty to notify the LA of any incidents of accidental pollution – Section 14

In situations where there has been an accidental discharge, spillage or deposit of any polluting matter which is likely to enter waters, the responsible party must notify the L.A ‘as soon as practicable.’ Failure to do so is an offence.

Licensing of discharges to sewers – Section 16

It is an offence for anyone other than a sanitary authority to ‘cause or permit’ the discharge any trade effluent to a sewer without the benefit of a licence granted by the sanitary authority who

control those sewers. Like s. 4, the sanitary authority may attach any conditions to the licence which are binding on the licensee. The penalties for an offence under this section are:

- (a) On summary conviction, a Class A fine and/or imprisonment for a term up to 3 months.
- (b) On conviction on indictment, to a fine not exceeding €15,000,000 and/or imprisonment for a term not exceeding 5 years.

Agricultural Pollution of Water

European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017 (S.I. No. 605).

The Nitrates Directive (91/676/EEC) is an EU Directive which seeks to protect water sources from pollution by agriculture and to encourage good farming practices. The implementing legislation in Ireland is the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017. The regulations prescribe a range of measures which must be followed in order to protect water sources from agricultural pollution. These include the capacity of storage facilities on the farm; the distances from water upon which different types of fertilisers can be applied; periods when fertilisers can be applied.

It is an offence to contravene any of the measures set out in the regulations designed to protect waters from agricultural pollution. A person found guilty of an offence is liable on summary conviction to a Class A fine and/or imprisonment for a term up to 3 months. A person found guilty shall be liable on conviction on indictment to a up to €500,000 and/or a prison sentence up to 1 year in length. Under the Regulations, the Local Authority are responsible for monitoring waters in its functional area in order to determine the extent of pollution from agricultural sources. It must also carry out inspections of farm holdings.

Conclusions

According to the EPA, the “most prevalent human activities that impact on water quality are agriculture, hydromorphology, forestry and urban wastewater discharges”. In terms of enforcement, there are measures that allow each of these human activities to be curtailed to an extent. The 1977 Water Pollution Act gives a general power to enforce unlicensed water pollution. There is also a particular section of the Act dedicated to preventing unlicensed discharge of trade and sewage effluent, which anyone can enforce. Similarly, agriculture is controlled by the Nitrates Regulations, under which there are relatively extensive powers to try and ensure that the agricultural run-off does not affect our waters. Despite this, the latest EPA data shows that wastewater discharge and agricultural pollution still have a major effect on our waters.

Regarding wastewater treatment, it appears that Ireland’s problem is not an enforcement issue but an infrastructure/funding issue. In 2020, treatment at 12 of Ireland’s 174 large urban areas failed to meet EU standards under the Urban Waste Water Treatment Directive. The problem is that 54% of the wastewater collected in Ireland is treated in these 12 areas. In particular, the Ringsend treatment plant, one of the areas that failed to meet these standards, treats wastewater for over 2 million people. It appears from the EPA’s ‘Urban Waste Water Treatment in 2019’ report, it appears that everyone is aware of this situation, including Irish Water, and it is an issue of not having facilities capable of treating the country’s waste water.

Similarly, when it comes to agricultural pollution, it appears that the enforcement measures are extensive, yet the EPA report on water quality in Ireland notes that over 20% of our estuarine and coastal water have too much nitrogen in them. The highest concentration of nitrogen is in the south and southeast, of which 85% is attributable to agriculture. While not addressing it

directly, the report states that ‘there needs to be full implementation of existing regulations by the Local Authorities ...’ which suggests that the extensive enforcement powers set out in the Nitrate regulations are not being used to their fullest extent.

IX. Proposals for Reform

In this section we summarise the findings and make some proposals for reform. Some of the proposals have been drafted into the Model Code presented to this Symposium.

First, as we said at the outset of this paper, while the sanctions for criminal offences that exist are strong the problem is the lack of prosecutions. The example we give in the paper is that under the Wildlife Act there were only 164 prosecutions being brought in the 8 years to 2020.⁹⁵⁷ This is despite wildlife crime being one of the largest criminal activities in the world and instances of deliberate interference, particularly poisoning of birds of prey and capture of badgers, being on the rise.⁹⁵⁸

We have highlighted how Scotland has sought to add fixed penalty notices to the sanctions toolkit, on the basis that they are quicker and less costly to administer than going to court. and could also be a deterrent against committing these crimes. Some of these approaches should be considered in Ireland.

Second, as can be seen from the review above, there is an overfocus in Ireland on the criminal law as a sanction for breaches of environmental law. The criminal law a number of limitations as follows; the burden of proof is high, some offences have to prove mens rea, stakeholder research shows that the public are reluctant to see neighbours subjected to criminal law; prosecutions are costly and time consuming for underfunded gardai and local authorities to bring. The stakeholder paper presented to this symposium discusses the views of the public on their attitude to criminal enforcement..

For this reason, other sanctions should be added to the enforcement of environmental law. The following sanctions used in other countries can be considered: administrative fines,⁹⁵⁹ environmental compensation and bio-diversity offsetting,⁹⁶⁰ risk management orders, the writ of continuing mandamus,⁹⁶¹ restorative justice and mandatory environmental education. For example, offenders in New Zealand have been ordered to make reparations to the community

⁹⁵⁷ Ray Ryan, “Wildlife crime unit being examined as record number of protected birds of prey killed last year,” *Irish Examiner* 19th Oct 2020, <https://www.irishexaminer.com/farming/arid-40066109.html>

⁹⁵⁸ Mark Hilliard, “Gardai to train park rangers in effort to tackle wildlife crime,” *Irish Times* Jan 19th 2021, <https://www.irishtimes.com/news/environment/garda%C3%AD-to-train-park-rangers-in-effort-to-tackle-wildlife-crime-1.4461554>

⁹⁵⁹ These have been adopted in UK law.

⁹⁶⁰ *JF Investments Ltd v Queenstown Lakes District Council* (unrep) (NZenvC) The mitigation/offset proposals included pest control measures at specified locations, annual funding for the life of the consent into specified bird conservation and breeding programs, covenanting and fencing of the Punga wetland, riparian fencing of specified areas, the translocation of native bats, funding for beach accessways and cultural mitigation, including training local iwi in water quality monitoring; *Royal Forest and Bird Protection Society v Gisborne District Council* W26/2009 (unrep) (NZenvC) cited in Warnock, C *Environmental Courts and Tribunals* (Hart Publishing: 2020) at p 33.

⁹⁶¹ *Metropolitan Manila Development Authority v Concerned Residents of Manila Bay* GR Nos 171947-48 (SC 18 Dec 2008) (Philippines) cited in Warnock, C *Environmental Courts and Tribunals* (Hart Publishing: 2020) at p 33.

by planting trees, funding environmental projects and making public apologies at local meetings.⁹⁶² Similar approaches have been taken in Australia.⁹⁶³

The third potential issue is the exception in the criminal law for any damage caused in the ordinary course of agriculture. These exceptions appear to grant farmers a “get out of jail free card” without placing any obligation on them to avoid damage to the greatest extent possible.

Fourth, in enforcement, the burden of proof is an issue. Where there is inequality of knowledge between those in breach of, for example, an IPPC licence, and those seeking to enforce restrictions on discharge to river courses, sanctions can be difficult to impose. In other areas of law where there is inequality of knowledge, such as the differing positions of employer and employees in employment equality, the EU has adopted a shifting burden of proof. The employee is required to prove a prima facie case, and the employer then adduces the evidence to defend. The New South Wales Land and Environment Court has recognised that the application of the precautionary principle may require a shifting burden of proof.⁹⁶⁴

We hope that this paper generates a rethinking of environmental sanction.

⁹⁶² See *Auckland City Council v Shaw* [2006] DCR 425 (NZ), cited in Warnock, C *Environmental Courts and Tribunals* (Hart Publishing: 2020) at p 33.

⁹⁶³ *Chief Executive of the Office of Environment and Heritage v Rinaldo (Nino Lani)* [2012] NSWLEC 115, cited in Warnock, C *Environmental Courts and Tribunals* (Hart Publishing: 2020) at p 33.

⁹⁶⁴ *Gray v Minister for Planning and Others* [2006] NSWLEC 720. In an case on the adequacy of an environmental impact assessment of a new mine for coal, Pain J noted that the precautionary principle may result in a shifting burden of proof “*The applicant also raised the precautionary principle as one of the ESD principles not taken into account by the Director-General. As stated in Telstra v Hornsby at [150], the function of the precautionary principle is to require the decision-maker to assume that there is, or will be, a serious or irreversible threat of environmental damage and to take this into account, notwithstanding that there is a degree of scientific uncertainty about whether the threat really exists or its extent. As identified in Telstra v Hornsby at [150], if the two conditions precedent or thresholds are satisfied so that there is a threat of serious or irreversible environmental damage and there is the requisite degree of scientific uncertainty the principle will apply so that the shift in an evidentiary burden will occur meaning that the proponent for the development has to demonstrate that the threat does not exist or is negligible.*”



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