



Irish Centre
for European Law

Abstracts from Environmental Law Enforcement: Emerging Challenges Conference 2019

Environmental Protection Agency
An Ghníomhaireacht um Chaomhnú Comhshaoil
P.O. Box 3000, Johnstown Castle Estate, County Wexford, Ireland, Y35 W821
Telephone: +353 53 916 0600
Email: info@epa.ie
Website: www.epa.ie
LoCall: 1890 33 55 99

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Introduction by the Conference Convenors

The enforcement of environmental law is fundamental to the protection of our environment. Enforcement strategies are influenced by how that law is interpreted in the courts. The purpose of this conference was to explore the role of law and its enforcement in shaping our approach to environmental protection. It provided a forum for engagement and informed debate on environmental law enforcement, including the impact of European Union (EU) law.

The conference was co-hosted by the Environmental Protection Agency (EPA) and the Irish Centre for European Law (ICEL). This collaboration reflects the significant impact that European Union (EU) law has had, and continues to have, on the development of Irish environmental law and policy.

The conference brought together practicing legal professionals, leading academics and researchers, policy makers, concerned stakeholders as well as professional regulators to explore emerging enforcement challenges in relation to the protection of nature, climate change and waste management.

Papers presented at the conference explored emerging case law in relation to protecting the natural environment including the case for tougher penalties for wildlife crime. Delegates also heard about the role of law in delivering on the Paris climate goals and in avoiding climate breakdown. The current legal and regulatory framework for waste management, as well as current waste law enforcement and policy was considered.

A unique feature of the conference was a session on emerging issues in environmental law research in Ireland, where three PhD candidates presented their cutting-edge work. Prior to the development of the conference programme, a call was circulated to Higher Education Institutions inviting PhD candidates who had completed at least one year of their doctoral studies to submit an expression of interest with a view to being selected to present their research at the conference. A selection panel comprising: Dr John Temple Lang (Chair); Dr Tom Ryan (EPA); and Margaret Gray SC convened to review the expressions of interest received. Three PhD candidates were selected to present their work following this selection process. This session provided an excellent and very well-received opportunity to explore emerging research in the area of environmental law enforcement. It generated a particularly rich discussion among delegates.

We look forward to future collaboration between the EPA and the ICEL and to the *Environmental Law Enforcement: Emerging Challenges* conference becoming an annual event. We hope to develop further opportunities for postgraduate candidates working in the field of environmental law to present their work at the conference.

Dr Tom Ryan, EPA

Dr Áine Ryall, ICEL

March 2020



Speakers at the Environmental Law Conference 2019: Dr Tom Ryan (EPA); Dr Áine Ryall (ICEL/UCC); The Hon Ms Justice Mary Laffoy; The Hon Mr Justice Frank Clarke, Chief Justice of Ireland; Ms Laura Burke, Director General EPA; Dr John Temple Lang.

Photograph: Fennell Photography

Environmental Protection Agency (EPA)
and the Irish Centre for European Law (ICEL)

Environmental Law Enforcement: Emerging Challenges 2019
Monday, 25 November 2019

Conference Programme

	Welcome & Opening
9.45 – 9.50	Laura Burke Director General, EPA
9.50 – 10.00	The Hon Mr Justice Frank Clarke Chief Justice of Ireland
Session 1	Protecting the Natural Environment
10.00 – 10.05	Chair: Dr John Temple Lang ICEL, Trinity College Dublin, Senior Visiting Research Fellow, Oxford University, and Solicitor
10.05 – 10.30	Margaret Gray SC, QC Law Library, Brick Court Chambers, and Bar of Northern Ireland Courts for EU Environmental Protection: Recent Irish Case Law
10.30 – 10.55	Professor Mark Poustie Dean of Law, University College Cork Tougher Penalties for Wildlife Crime: Experience from Scotland
10.55 – 11.15	Questions and Discussion
Session 2	The Role of Law in Climate Action
11.45 – 11.50	Chair: The Hon Ms. Justice Mary Laffoy Judge of the Supreme Court 2013-2017
11.50 – 12.15	Gillian Lobo ClientEarth Using the Law to Deliver the Paris Climate Goals
12.15 – 12.40	Dr Andrew Jackson UCD Sutherland School of Law Avoiding Climate Breakdown: The Vital and Evolving Role of Law in Ireland
12.40 – 13.00	Questions and Discussion

Session 3	Emerging Issues in Environmental Law Research in Ireland
14.00 -14.10	Chair: Dr Tom Ryan EPA, Director, Office of Environmental Enforcement
14.10 – 14.25	Laurie O’Keeffe PhD Candidate, School of Law, University College Cork A Critical Analysis of Enforcement of Sea-Fisheries Law in Ireland
14.25 – 14.40	Edwin Alblas PhD Candidate, UCD Sutherland School of Law Translating Nature Rules from the EU to the Individual Farmer’s Level: Dutch Environmental Cooperatives as Regulatory Intermediaries
14.40 – 14.55	Sarah Enright PhD candidate, School of Law and Centre for Marine and Renewable Energy (MaREI), University College Cork Effective Marine Governance: The Evolving Role of Marine Protected Areas as a Legal Tool for the Conservation and Sustainable Use of Marine Biodiversity
14.55 – 15.15	Questions and Discussion
Session 4	Waste Law Enforcement
15.30 – 15.35	Chair: Philip Nugent Assistant Secretary, Head of Natural Resources and Waste Policy, Department of Communications, Climate Action and Environment
15.35 – 16.00	Tom Flynn BL Law Library Irish Waste Management Law: Is the Current Legal and Regulatory Framework Fit For Purpose?
16.00 – 16.25	Alison Fanagan A&L Goodbody Solicitors Irish Waste Management: Enforcement and Policy
16.25 – 16.45	Questions and Discussion
	Synthesis of Conference Proceedings
16.45 – 17.00	Dr Áine Ryall Irish Centre for European Law & Centre for Law and Environment, University College Cork

Laura Burke Opening Address to Environmental Law Conference

Chief Justice Clarke, distinguished chairs and speakers, ladies and gentlemen. On behalf of the Environmental Protection Agency and our co-hosts the Irish Centre for European Law, it is a pleasure to welcome you to our conference on *Environmental Law Enforcement: Emerging Challenges 2019* and to re-establish this event on the environmental law calendar after a brief hiatus.

The enforcement of environmental law is fundamental to the protection of our environment and, as an enforcement agency, the EPA's enforcement strategies are influenced by how that law is interpreted in the courts. There are a number of current pertinent examples of this such as: the recent setting aside of the 2019 peat regulations; the decision by the Court of Appeal to uphold the Whitestown judgement on waste disposal as well as the numerous judicial reviews in relation to processes and procedures of the EPA and others. And of course, the EPA has over twenty prosecutions making their way through the courts at any one time in pursuit of environmental justice and to ensure that the polluter is made to pay.

I believe that the structure and content of the conference has struck the right balance of environmental law themes where we will explore emerging case law in relation to protecting the natural environment including the case for tougher penalties for wildlife crime. We will hear about the evolving role of law in pressing the climate change agenda to action in relation to the Paris Climate Goals and in avoiding climate breakdown. And, there will be an examination of the current legal and regulatory framework for waste management as well as current waste law enforcement and policy.

The regulatory framework for waste is a topic in which the EPA has a significant stake and we have some strong views on the current fragmented nature of waste enforcement responsibilities in the State - so we will be listening to the contributions in the waste law enforcement session with particular interest!

One of the core functions of the EPA is to support environmental research and creating new knowledge to protect and improve our natural environment and our health. Over the years the scope of this research has touched on areas of law including environmental governance, enforcement and regulatory effectiveness. In this context, I am particularly pleased that a unique feature of this conference will be a session on emerging issues in environmental law research in Ireland, where three PhD candidates will present their cutting-edge work.

On a final point, next year we in the EPA will publish our nationally significant four-year assessment of Ireland's Environment, the seventh such assessment since the formation of the EPA. The initial indications of the high-level findings suggest that challenges continue in the areas of water quality, air quality in urban zones, waste management, climate change, biodiversity, ecosystem loss and environmental sources of harms to human health. Law and its enforcement have an important role to play in addressing these issues.

This serves to underscore the importance of this conference in that it brings together practicing legal professionals, leading academics and researchers, policy makers, concerned stakeholders as well as professional regulators to explore those emerging enforcement challenges. It is an opportunity to learn from each other.

Laura Burke

Director General

Environmental Protection Agency

Session 1: Protecting the Natural Environment

Chair: Dr John Temple Lang

Courts for EU Environmental Protection: Recent Irish Case law

Margaret Gray SC QC

In recent years, the Irish Courts have been at the forefront of EU environmental protection. The paper looks at how court procedures and judicial tools are used in the context of EU law to provide effective enforcement.

First, given the particular EU context, the paper considers the role and use of Article 267 TFEU References by the Irish Courts in the past year. Three sets of proceedings raising contrasting issues including nature law are considered, the first two of which resulted in questions of interpretation of EU law being referred to the Court of Justice of the EU (CJEU).

The first case, *Friends of Irish Environment v Commissioner for Environmental Information* [2019] IEHC 597 (O'Regan J) puts court proceedings in the frame in the context of access to environmental information. In the second case, *FOIE v An Bord Pleanála (Shannon LNG)* [2019] IEHC 80, the High Court (Simons J) raises the issue of whether an extension of planning permission may need to be subject to assessment under the Habitats Directive. It also seeks the CJEU's view of the effect of such a finding on national procedural rules such as the doctrine of collateral attack and the scope of obligations on national courts to provide effective remedies. In the third case, *Fitzpatrick v An Bord Pleanála (Apple)* [2018] IESC 60; [2019] IESC 23 (Clarke CJ; Finlay Geoghegan J), no Article 267 TFEU Reference was made because it was (rightly) not deemed necessary. The Supreme Court's assessment of the notion of "project" and of the scope of obligation to undertake a lawful EIA, together with its reasoning as to why no Reference was required, indicate a very sure-footed, and increasingly EU-grounded, approach by the Superior Courts.

Second, certain particular judicial tools to accommodate EU law requirements, are identified, as evidenced in these cases, including: the requirement to have regard to EU law when interpreting planning legislation; a court raising issues of its own motion; a more flexible approach to pleadings; a broader approach to arguments raised on appeal; the obligation to reinterpret national procedural rules; and the setting aside of inconsistent legislation.

Margaret Gray SC QC

Margaret Gray SC QC practises at the Bars of Ireland and Northern Ireland, and is a tenant of Brick Court Chambers, London. She has argued over 80 cases at the EU Court of Justice (where she previously worked as a *référéndaire*), appearing for a wide range of clients including Ireland, the Northern Irish and UK Governments and the European Commission. Margaret is consistently ranked in the Legal Directories as a leading practitioner in EU, Competition and Public Law. Margaret is a member of the Board of the Irish Centre for European Law.

Tougher Penalties for Wildlife Crime: Experience from Scotland

Professor Mark Poustie

The presenter chaired the Scottish Government's Review Group on Penalties for Wildlife Crime and authored its Report in 2015. This paper explains the background to the Scottish Government's Review of Penalties for Wildlife Crime, essentially that these were not acting as a deterrent and that wildlife crime was tarnishing Scotland's image and value as a destination for eco-tourism. The paper will explain the methods adopted in developing the report and will explore the report's recommendations in terms of increasing penalties for wildlife crime in the context of much increased penalties in Scotland for environmental crime in the area of pollution control offences and their impact and further developing appropriate alternative penalties for wildlife crime. The paper will also consider that while the Scottish Government largely accepted the report's recommendations, nonetheless implementation has been slow.

Professor Mark Poustie

Professor Mark Poustie was appointed as a Thousand Talents Scholar at Shanghai University of Finance and Economics Law School from 1 September 2016. He previously worked at the University of Strathclyde Law School, Glasgow, Scotland, UK from 1992, serving as Head of School from 2007-2013 and thereafter as Vice-Dean (Internationalisation) for the Faculty of Humanities and Social Sciences from 2013-2015. He remains an Honorary Scholar at Strathclyde.

Professor Poustie has extensive experience teaching and researching in the environmental and land use planning law fields. He has published many books and articles in the area. He has supervised six PhDs successfully to completion.

Professor Poustie has also conducted funded research for and served in an advisory capacity to government bodies. He was invited by the Scottish Government to convene a Working Group reviewing the penalties imposed for wildlife crime and he authored the Group's report (November 2015).

Session 2: The Role of Law in Climate Action

Chair: The Hon Ms. Justice Mary Laffoy

Using the Law to Deliver the Paris Climate Goals

Gillian Lobo

The Parties to the Paris Agreement committed to three long term goals, the third being to make financial flows consistent with a pathway towards low greenhouse gas emissions, Article 2(1)(c). Achieving this particular goal is key to being able to deliver on the other two goals of holding the increase in temperature to well below 2°C (ideally 1.5°C) above pre-industrial levels, Article 2(1)(a) and increasing the ability to adapt to the adverse impacts of climate change, Article 2(1)(b).

The presentation firstly considers legal levers that require private actors to take action to drive financial flows in a way that is consistent with the Paris Agreement climate goals. It will outline the physical, transition and liability risks posed by climate change and then review some interventions that can be employed to enforce existing transparency and risk-management laws governing companies, directors and financial institutions (i.e. pension funds and insurers) to ensure that climate-related risks are fully and effectively reported, analysed, mitigated and managed. With greater transparency on the material financial risks climate change poses to the profitability and future success of carbon intensive companies, shareholders and financial institutions will be able to make informed investment decisions that will encourage finances to flow to renewable energy or carbon neutral projects.

There then follows a high-level review of examples of legal / regulatory complaints and submissions to the EU and Member States on State aid provided by the UK, Greece, Germany, Romania and Bulgaria to support fossil fuel energy suppliers.

The presentation then concludes with an invitation to consider other forms of legal interventions that can be used to help achieve the Paris Agreement climate goals.

Gillian Lobo

Gillian Lobo is an English solicitor employed by ClientEarth, an environmental legal charity

Avoiding Climate Breakdown: The Vital and Evolving Role of Law in Ireland

Dr Andrew Jackson

As the climate emergency deepens, civil society is increasingly turning to the law for help. In Ireland this has manifested itself in two main ways to date: first, by way of project-based challenges seeking to block fossil fuel infrastructure; and secondly, by way of 'systemic' litigation seeking to challenge the State's overall response to the problem (see Climate Case Ireland).

Traditionally, project-based challenges have been hampered: (a) by the perception that planning authorities do not take adequate account of climate (or biodiversity) considerations in deciding whether a proposed project represents "proper planning and sustainable development"; and (b) in the case of certain permitting regimes, by the absence of any requirement to determine the substantive environmental merits of proposals. Later, before the courts, the traditionally narrow scope/intensity of judicial review presents problems, meaning such challenges tend to be purely procedural in nature, allowing developers to remedy procedural defects and ultimately proceed.

Recent developments suggest we may be in the midst of fundamental changes in some of the above regards. However, the changes afoot are pulling in opposite directions when it comes to accessing environmental justice. On the one hand, recent decisions of An Bord Pleanála (ABP) suggest that climate considerations are now of very high salience on appeal, providing strong incentive for civil society to devote time and resources to the administrative stages of the planning process: e.g. see ABP's refusal to allow West Offaly peat power station to continue operating beyond the end of 2020, citing climate considerations (PL19.303108) and its refusal to allow the State to relocate turf cutters to an undesignated bog in Co Kildare, for similar reasons (PL09.303503). Equally, ongoing cases at international level (ACCC/C/2017/156 UK) and before the Irish courts (Climate Case Ireland) will require the Aarhus Compliance Committee and the Irish courts, respectively, to engage anew with the need to provide for a review of substantive legality in environmental cases. On the other hand, the government's recent general scheme of a Housing and Planning and Development Bill 2019 contains a raft of retrograde proposals aimed at restricting access to justice in environmental matters in Ireland. Just as young people are out on the streets demanding climate justice, the government is proposing to make obtaining such justice more difficult.

Dr Andrew Jackson

Dr Andrew Jackson is an Assistant Professor of Environmental and Planning Law at University College Dublin. He previously worked for Slaughter and May in London and Paris; for the UK government's legal service, in the Department for Environment, Food and Rural Affairs (Defra); and with NGOs Friends of the Irish Environment and An Taisce, the National Trust for Ireland, where he was Natural Environment Officer and In-house Solicitor. Andrew is a consultant solicitor with O'Connell & Clarke Solicitors and has been involved in public interest environmental and planning cases for many years, including before the Irish, English and EU courts. He is a graduate of Oxford University (BA, Law) and Cambridge University (LLM). He also holds an MSc in Biodiversity and Conservation from Trinity College Dublin (TCD) and a PhD from TCD on EU environmental policy and law.

Session 3: Emerging Issues in Environmental Law Research in Ireland

Chair: Dr Tom Ryan



Dr. Tom Ryan, EPA, with PhD candidates Sarah Enright, Laurie O’Keeffe and Edwin Alblas

A Critical Analysis of Enforcement of Sea-Fisheries Law in Ireland

Laurie O’Keeffe

The Irish government has stated its intention to significantly grow the “blue economy” in Ireland, including sea-fisheries, over the next number of years. However, it is estimated that a large proportion of fish stocks are already overfished. If the marine economy is to grow successfully into the future, then conservation and sustainable exploitation must be prioritised. Effective regulation of the sea-fishing industry goes hand in hand with a normatively effective enforcement regime to ensure conservation. There is little to no academic literature in the area of enforcement of sea-fisheries law in Ireland. It is crucial that sea-fisheries law is fit for purpose and that it is enforced effectively if the sea-fisheries economy is to be successfully expanded long-term. To the author’s knowledge this research is the first root and branch analysis of sea-fisheries law and its enforcement in Ireland.

Enforcement of sea-fisheries law is currently based on criminal law. There is a consensus among the legal community in Ireland that sea-fisheries law and its enforcement lack coherence. Sea-fisheries cases are often delayed indefinitely due not only to the delays inherent in the Irish criminal system, but also to the lack of priority assigned to sea-fisheries cases. When cases finally make it to court, penalties imposed are often not in proportion to the seriousness of the harm caused or to the value of the infringement despite the requirement under EU law to ensure that penalties are “effective, proportionate and dissuasive”. There are also no alternatives to criminal prosecution for minor offences where criminal prosecution is generally inappropriate.

The objective of this research is to critically assess whether sea-fisheries law and its enforcement in Ireland is fit for purpose. The research has been conducted by means of the doctrinal method through the lens of legal realism in combination with a practitioner perspective derived from the socio-legal method. Some comparative research has also been undertaken in analysing the Scottish enforcement regime. The research examines the effectiveness of the myriad of EU and national legislation applying to enforcement of sea-fisheries law and identifies any deficiencies in terms of enforcement. The problems unique to criminal enforcement of sea-fisheries law are considered based on the author's personal experience gained working in the national enforcement body for sea-fisheries, the Sea-Fisheries Protection Authority.

The research has concluded that a system based primarily on criminal law is inappropriate for dealing with breaches of sea-fisheries law. It recommends the introduction of a system of administrative sanctions for the majority of sea-fisheries offences. More specifically, the reintroduction of warning letters and the introduction of a fixed penalty notice scheme and variable monetary penalty scheme. The courts should retain an oversight role in the application of administrative sanctions with criminal prosecution reserved for more serious cases. Licence revocation is possible under the legislation but is never invoked in practice. This should be available as a top tier sanction for repeat serious offenders. This would align with other EU Member States and would more easily satisfy the obligation under EU law that penalties should be "effective, proportionate and dissuasive".

Laurie O'Keefe, PhD candidate, School of Law, University College Cork

Translating Nature Rules from the EU to the Individual Farmer's Level: Dutch Environmental Cooperatives as Regulatory Intermediaries

Edwin Alblas

The present research project tests the potential of collective approaches in enhancing the effectiveness of agri-environmental policies aimed at integrating biodiversity and landscape values into agricultural production processes. Within the EU context, the regulatory framework governing such policies flows most prominently from the EU Birds & Habitats Directive as well as the Common Agricultural Policy.

The study takes the Netherlands as a case study, where, in 2016, regulatory competences such as the issuing and distribution of agri-environmental subsidies, as well as monitoring and enforcement duties, were shifted from the national level to so-called 'environmental cooperatives'. There are currently forty region-based environmental cooperatives in place, composed of groups of farmers and other stakeholders, such as environmental organizations and members of civil society. Overarching policy goals are set at the state level, but the individual cooperatives enjoy great flexibility in deciding the most effective way to realize these goals locally, based on the preferences and capabilities of the group.

While the potential merits of the cooperative approach for combating biodiversity loss and landscape deterioration in agricultural contexts has been recognized in the literature, little attention has been given to the benefits and risks of the move towards self-regulation from a law and governance perspective.

Applying the Regulator-Intermediary-Target (RIT) model grounded in regulatory theory, this research project frames the Dutch environmental cooperatives as regulatory intermediaries, operating in the space between the overarching state regulators and individual farmers. Employing a mixed method approach that involves both qualitative and quantitative empirical research methods, this research examines and critically evaluates the role and functioning of environmental cooperatives in translating agri-environmental rules and policy goals from the EU to the individual farmer level.

Edwin Alblas

Edwin Alblas is a PhD student at the Sutherland School of Law, University College Dublin (UCD) and conducts his research in the context of the interdisciplinary Effective Nature Laws project led by professor Suzanne Kingston (ERC funded). He is a graduate from Tilburg University (BA, LL.M) and KU Leuven (LL.M). Prior to starting his PhD, Edwin worked in the EU department of the Dutch Ministry of Interior and Kingdom Relations. In UCD, Edwin has lectured on environmental law & policy, environmental politics, and regulatory governance. He has published in several international peer-reviewed journals, both in the fields of (environmental) law and political science, including *European Union Politics*, *Review of European, Comparative and International Environmental Law* and *Theory and Practice of Legislation*.

Effective Marine Governance: The Evolving Role of Marine Protected Areas as a Legal Tool for the Conservation and Sustainable Use of Marine Biodiversity

Sarah Enright

This research examines the evolving role of Marine Protected Areas (MPAs) as a legal tool to conserve marine biodiversity in Ireland, within its broader regional and global context. The rapid decline of biological diversity worldwide (IPBES, 2019) in conjunction with the threats faced by the oceans due to human pressures (IPCC, 2019) has led to calls for more legally protected areas. The Irish government has recognized the need to enact legislation enabling the establishment of a network of MPAs in Ireland. The National Biodiversity Action Plan (2017-2021) has a dedicated action on 'extending the Marine Protected Area Network'. The Government is looking at current spatial protection measures, the need for new types of measures, the kinds and levels of protection and the over-arching governance framework for MPAs in an Irish context.

Ireland has commitments under the Convention on Biological Diversity (1992) and the Marine Strategy Framework Directive (2008), the first EU legislative instrument specifically concerned with the protection of marine biodiversity, to protect 10% of its waters by 2020. In a regional context, Ireland is a party to the Convention for the Protection of the Marine Environment of the northeast Atlantic (OSPAR, 1992), under which it has committed to establishing an ecologically coherent network of MPAs. Furthermore, with the second largest maritime area in the EU, and bordering the High Seas, Ireland could have a key future role in biodiversity beyond national jurisdiction (BBNJ) and associated protected areas, which is currently the subject of a new global treaty being negotiated at UN level.

Currently, Ireland continues to rely on the spatial protection measures provided for under the EU Habitats and Birds Directives, which are limited by their focus on vulnerable marine species and habitats and have a biased distribution in coastal waters. Informed by an analysis of selected legal frameworks for MPAs at the global and regional levels, this research investigates the most appropriate legal and governance principles to guide the creation of a network of effective MPAs in dynamic environments where various human activities may be taking place (e.g. fishing, tourism, shipping, aquaculture, energy extraction). In particular, the study will examine to what extent MPAs can facilitate or limit human activity in the marine environment (e.g. through the use of no take zones, temporary closures, etc.). The questions of implementation and enforcement will also be addressed in this context.

Sarah Enright, PhD candidate, School of Law and Centre for Marine and Renewable Energy (MaREI), University College Cork.

Session 4: Waste Law Enforcement

Chair: Philip Nugent

Irish Waste Management Law: Is the current Legal and Regulatory Framework Fit for Purpose?

Tom Flynn BL

EU Law imposes significant obligations on Ireland across all aspects of the waste management cycle. The Waste Management Act 1996 which established the current legal and regulatory framework governing Irish waste management in light of Ireland's obligations under EU law is now over twenty-three years old. The secondary legislation establishing the current waste collection and permitting regimes which form a key element of the waste management system have been in existence for over a decade. In addition, a significant body of case law pertaining to waste management has now emerged from the Irish courts.

Accordingly, it is submitted that it is now timely to assess the effectiveness of the existing legal and regulatory framework governing waste management in Ireland. The objective of this paper is to review in broad terms whether the current legal and regulatory framework governing waste management law in Ireland can be considered fit for purpose and in particular whether it gives proper effect to Ireland's obligations under EU law.

The paper commences with a brief consideration of what in the author's opinion is required of a legal and regulatory framework governing waste management if it is to be considered fit for purpose. This is followed by a brief outline of the key elements of the current legal and regulatory framework governing waste management in Ireland highlighting some of its limitations.

In particular, the legislation governing waste collection and waste permitting is examined, focusing on a number of problems which have emerged arising from the operation of this legislation and which, it is suggested, call into question the effectiveness of these regimes. The difficulties posed by regulating corporate entities engaged in waste management activities particularly in the context of insolvency are also considered. The problems posed by the absence of any specific legislation in Ireland on contaminated land are also briefly explored.

The paper concludes with several suggestions as to how the current legal and regulatory framework governing waste management in Ireland could be reformed so as to better ensure it is fit for purpose and gives proper effect to Ireland's obligations under EU law.

Tom Flynn, BA, LLB, M.Sc, Dip.EIA, Mgmt. Barrister-at-Law

Tom Flynn is a practising barrister specialising in local government, planning and environmental law. He is assistant editor of the *Irish Planning and Environmental Law Journal* a contributor to the *Irish Planning Law Factbook* and has lectured and written widely on the topics of planning and environmental law. He is an Adjunct Associate Professor in the School of Architecture, Planning and Environmental Policy, University College, Dublin.

Irish Waste Management: Enforcement and Policy

Alison Fanagan

Ireland has had a series of waste policy documents dating back to 1998 with the most recent “*A Resource Opportunity – Waste Management Policy Ireland*” dated July 2012. The Climate Action Plan published in July 2019 by the Government commits to review waste policy and enforcement. In particular a draft review of waste enforcement legislation and publication of resource efficiency plans are both due Q4 2019.

In that context, it is appropriate to look at the EU waste targets set for the coming years, the role of policy in seeking to ensure Ireland delivers on those targets, and the optionality for Government in revisiting policy. The structure of the household waste collection market will inevitably form part of that policy review. Calls by Elected Councillors in a number of local authorities for the “remunicipalisation” of household waste collection, or competitive tendering, in at least some markets, coupled with the views expressed by the Competition and Consumer Protection Commission in its report of 28 September 2018, will all feed into this debate.

Waste enforcement continues to be regarded as inconsistent and often ineffective, particularly relative to waste businesses operating outside the regulatory regime. Such illegal activity negatively impacts on environmental standards as well as on fair competition, and particularly the unequal regulatory burden borne by those complying with applicable waste laws and those that do not. The paper will look at the extent to which current waste enforcement legislation is fit for purpose and compliant with EU Law.

Alison Fanagan BCL, LL.M., Solicitor, Consultant A&L Goodbody

Alison Fanagan is a Consultant and former Partner with A&L Goodbody solicitors, jointly heading up their eight strong specialist Environmental and Planning Group. She acts for a variety of private and public sector clients, providing advice on the full spectrum of planning and environmental matters. She has had a particular interest in waste law throughout her 28-year career. She is in the Hall of Fame for Environmental & Planning Law, Legal 500 2019 and is regarded as a “respected expert” by Chambers Europe 2019.

Closing Remarks: Synthesis of Conference Proceedings

Synthesis of Conference Proceedings

The conference provided a series of excellent presentations covering a wide range of topics across nature, climate and waste law, as well as fisheries and marine law, and the role of environmental cooperatives in nature protection in The Netherlands. The session on *Emerging Issues in Environmental Law Research in Ireland* provided three PhD candidates with the opportunity to present their work in progress and to discuss their initial findings with an informed and engaged audience. This session worked very well and was very well-received. It is vital to the development of environmental law and policy that early career researchers are given the opportunity to bring fresh perspectives to inform our understanding of environmental law and the particular challenges that arise in specific enforcement contexts, whether it be fisheries, marine or nature protection.

It is difficult to provide an overall synthesis of conference proceedings involving specialist presentations and a range of themes. And it is impossible to do justice to the rich material covered by the individual contributors.

This brief synthesis will therefore consider the principle of effectiveness in the context of European Union (EU) environmental law enforcement. This particular theme emerged at an early stage in the opening remarks delivered by the Chief Justice, the Hon Mr. Justice Frank Clarke. The importance of effective enforcement also surfaced regularly as an overarching theme throughout the conference proceedings.

Given the Government's current proposals to amend the rules governing judicial review of planning decisions,¹ it seems appropriate and timely to focus specifically on the requirement that national procedures governing judicial review must provide an effective means of enforcement of EU law. Effective implementation and enforcement of environmental law, including EU law, takes on particular significance at a time of climate and biodiversity crisis.

In the course of the conference proceedings, a number of contributors and delegates attending the conference mentioned the Government's proposals to make very significant changes to the rules governing judicial review of planning decisions.

The proposed changes include amending the rules governing standing and a complete overhaul of the special costs rules that apply to particular categories of environmental litigation. The proposed new standing requirements envisage a restrictive 'substantial interest' test for individuals and the introduction of a range of criteria that environmental non-governmental organisations (NGOs) must meet, including having a minimum number of members.

It is clear that the intention behind the Government's proposals to amend the rules governing judicial review is to reduce the number of challenges to planning decisions.

It is important to recall here that international law and EU law set limits on the Government's discretion to restrict access to judicial review in environmental matters. Member States certainly do not have complete freedom to set conditions governing access to judicial review. There must be effective access to justice.

Beyond the principle of effectiveness, the Aarhus Convention and EU law demand 'wide access to justice' in environmental matters. International law and EU law also place NGOs in a privileged position in order to support their particular role as enforcers of environmental law in the public interest.

¹ Department of Housing, Planning and Local Government, *Public Consultation on the General Scheme of the Housing and Planning and Development Bill 2019* (9 December 2019) <https://www.housing.gov.ie/housing/public-consultation-general-scheme-housing-and-planning-and-development-bill-2019> (accessed 6 January 2020).

It is vital that any Government initiative to restrict access to judicial review is based on solid evidence of a particular problem in the judicial review process that needs to be addressed through legislative change. The practical implications of any proposals must also be identified and teased out carefully in the course of the legislative process.

There is always a danger that amending the law governing judicial review will simply fuel more litigation. New rules take time to bed down. Access to justice in environmental matters raises important issues of international and EU law. Any attempts to restrict access to the courts in this area will likely be met with the challenge that the restrictions go too far and are not compatible with international and EU law obligations. These issues will take time to resolve, thereby generating new legal uncertainty over a significant period of time.

If the Government is determined to revisit the rules governing judicial review in environmental matters, it is imperative that it consults widely and engages directly with interested parties, including the Irish Environmental Law Association, the Planning, Environmental and Local Government Bar Association and NGOs, to ensure that any proposals will have the desired impact in terms of improving the efficiency and effectiveness of the planning process rather than simply generating further litigation, cost and delay.

While the Government has a measure of discretion to restrict access to judicial review, there are important limits here prescribed by international law and EU law, as well as the constitutional right of access to the courts.

Access to justice is fundamental to the rule of (environmental) law.

Drawing an appropriate balance between effective access to justice, on the one hand, and an efficient planning process that delivers critical infrastructure in a timely manner, on the other, is not a straightforward task. Engagement with interested parties should facilitate more informed debate and underpin the delivery of effective law and policy in the public interest.

Dr Áine Ryall

ICEL and Centre for Law and the Environment, UCC

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Environmental Protection Agency
An Ghníomhaireacht um Chaomhna Comhshaol

Headquarters

**PO Box 3000,
Johnstown Castle Estate
County Wexford, Ireland**

**T: +353 53 916 0600
F: +353 53 916 0699
E: info@epa.ie
W: www.epa.ie
LoCall: 1890 33 55 99**

Regional Inspectorate

McCumiskey House,
Richview, Clonskeagh Road,
Dublin 14, Ireland

T: +353 1 268 0100
F: +353 1 268 0199

Regional Inspectorate

Inniscarra, County Cork,
Ireland

T: +353 21 487 5540
F: +353 21 487 5545

Regional Inspectorate

Seville Lodge, Callan Road,
Kilkenny, Ireland

**T +353 56 779 6700
F +353 56 779 6798**

Regional Inspectorate

John Moore Road, Castlebar
County Mayo, Ireland

T +353 94 904 8400
F +353 94 902 1934

Regional Inspectorate

The Glen, Monaghan, Ireland

T +353 47 77600
F +353 47 84987

Regional Offices

The Civic Centre
Church St., Athlone
Co. Westmeath, Ireland
T +353 906 475722

Room 3, Raheen Conference Centre,
Pearse House, Pearse Road
Raheen Business Park, Limerick,
Ireland
T +353 61 224764





Irish Centre
for European Law



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