

LAW SOCIETY SUBMISSION



**DRAFT GENERAL SCHEME OF THE AGRICULTURE APPEALS (AMENDMENT)
BILL 2020**

DEPARTMENT OF AGRICULTURE, FOOD AND THE MARINE

AUGUST 2020

ABOUT THE LAW SOCIETY OF IRELAND

The Law Society of Ireland is the educational, representative and regulatory body of the solicitors' profession in Ireland.

The Law Society exercises statutory functions under the Solicitors Acts 1954 to 2011 in relation to the education, admission, enrolment, discipline and regulation of the solicitors' profession. It is the professional body for its solicitor members, to whom it also provides services and support.

The headquarters of the organisation are in Blackhall Place, Dublin 7.

Contents

1.	Introduction	4
2.	Executive Summary	5
3.	Standing Rights	6

1. Introduction

- 1.1. The Law Society (“the **Society**”) is the educational, representative and regulatory body for the solicitors' profession in Ireland. This submission is based on the views of members of the Law Society’s Human Rights and Equality Committee which is comprised of solicitors with experience and expertise in national and international human rights, as well as environmental law.
- 1.2. The Society welcomes the opportunity to contribute to the public consultation on the draft General Scheme of the Agriculture Appeals (Amendment) Bill 2020 (“the **draft General Scheme**”) which includes proposals to amend standing rights to introduce the concept of a ‘relevant person’ in order to be eligible to appeal forestry licence decisions. This submission reflects the Society’s recommendations following its examination of the draft General Scheme of the Bill. We regret the short timeframe afforded to respond to the consultation and the lack of notification and visibility of the consultation itself in light of the public importance of the subject matter.
- 1.3. The Society is concerned that, at a time when the Dáil has recognised that Ireland is facing a ‘climate and biodiversity emergency’, the introduction of the legislative proposals outlined in the Bill would endanger progress made in enabling citizens to participate meaningfully and seek access to justice when environmental rights are under threat.

2. Executive Summary

- 2.1 The Society is concerned that the cumulative effect of the outlined changes will be to severely restrict access to justice, a right which is recognised as a fundamental personal right guaranteed under Article 40.3 of the Constitution as well as Articles 6 and 13 of the European Convention on Human Rights. This also raises significant concern around equality of arms between the State (and all the resources at its disposal) as against members of the public.
- 2.2 The Society believes that the Department should review these proposals to ensure that they are compatible with the protections around access to justice and meaningful public participation afforded under relevant European Conventions and the Irish Constitution.
- 2.3 In doing so, the Department should consider, in particular, the impact this would have on citizens' rights of access to justice which are protected under the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters ("the **Aarhus Convention**") as well as guaranteeing equality of arms between the State and its citizens which is a fundamental component to any robust democracy.
- 2.4 It should also consider how the proposed ambiguity around the level of fees involved in appeals would act as a deterrent. Such consideration should be taken, particularly in light of the findings in the CJEU North East Pylon case and the EU Commission's 2019 Report, both of which have called upon the State to take steps to ensure that challenges can be taken without individuals or environmental NGOs facing prohibitive costs.

3. Standing Rights

- 3.1 Head 4 of the draft General Scheme deals with the amendment of s.14A of the Principal Act, including the substitution of subsection 4 which provides that a relevant person who is dissatisfied with a decision may appeal that decision to the Forestry Appeals Committee. The categories of relevant persons include those who have made an application already, those who have had an application granted, someone who has already made submissions/observations to the Minister or a person who has an interest in adjoining land in respect of which a decision has been made (subject to certain criteria).
- 3.2 It is submitted that this would hugely restrict the ability of citizens and environmental NGOs to appeal forestry licence decisions in comparison to the current process where, we believe correctly, any member of the public may appeal such a decision. The Head 4 proposal, which raises significant concerns around the standing rights of Irish citizens, would seriously limit the existing rights of appeal around forestry applications. This is particularly so where the only notice required to be given to the public (of an application for a licence under the Principal Act) may be a physical site notice which is likely to only be observed by those who live in close proximity to the land in question.
- 3.3 There is also reference to a relevant person making an appeal to 'pay any fee prescribed under section 14B'. This may also act as a barrier for ordinary citizens who do fall within the classification of a relevant person but would not be in a position to pay any substantial fee. In C-470/16 - North East Pylon Pressure Campaign and Sheehy, the Court of Justice ruled that the requirement that costs not be prohibitively expensive, applied to environmental litigation in general. However, as observed in the EU Commission's Environmental Implementation Review Report 2019, "*Ireland has yet to create a system that ensures that environmental litigants are not exposed to unreasonable costs*". Further, the Commission's 2019 Priority Actions for Ireland included the need to "*ensure that individuals and environmental NGOs can bring environmental challenges without facing prohibitive costs, including in nature and air quality cases*".

- 3.4 Head 5 proposes further changes to standing rights in order to make an appeal to the Forestry Appeals Committee. Significantly, it introduces a largely unfettered Ministerial power to prescribe the fees that may be charged for such appeals, with different fees charged for different classes of appeal. This results in a real lack of clarity for those who wish to lodge an appeal as to how much exposure they may face in bringing the appeal. It will create an unpredictable process for the public and environmental NGOs to take legal cases and may act as a significant deterrent in bringing such challenges.
- 3.5 Head 5 also proposes to give the Minister power to make general directives as to policy in relation to forestry appeals as the Minister considers necessary and to which the Forestry Appeals Committee must have regard. This raises concerns around transparency and independence which are crucial in safeguarding the public's good faith that the Government has no involvement or influence in determining appeals against decisions made by the Minister's Department. The principles and policies underlying this power and establishing the scope of any such directives should be clearly discernible from the primary legislation, so that the intention of the Oireachtas is evident, which is not the case under the draft General Scheme.
- 3.6 It also proposes to give the Minister power (under the general directives) to impose additional requirements which an environmental body must satisfy in order to make an appeal including membership, possession of a specific legal personality and subject relevance. Depending on how such additional requirements are framed, they could seriously fetter the ability of environmental NGOs to appeal forestry licence decisions.
- 3.7 The Society is concerned that the proposed reforms would add restrictive requirements for citizen participation which risk breaching the Aarhus Convention and its implementing Directives. It is also in danger of breaching rights under the [EU Charter of Fundamental Rights](#) and the European Convention on Human Rights. It could further be seen to breach the EU principles of effectiveness and equivalence, through the creation of a more onerous procedure for the appeal of forestry decisions as against other planning decisions which engage EU environmental law.
- 3.8 The cumulative effect of the above outlined changes would be to severely restrict access to justice, a right which is recognised as a fundamental personal right and guaranteed under Article 40.3 of the Constitution as well as Articles 6 and 13 of the European Convention on Human Rights.

Law Society Recommendation: For the reasons outlined above, the Society asks that the Department would review the draft General Scheme to ensure that it is compatible with the protections around access to justice and meaningful public participation which are protected by the relevant European Conventions and the Irish Constitution.

For further information please contact:

Fiona Cullen
Public and Government Affairs Manager
Law Society of Ireland
Blackhall Place
Dublin 7
DX 79
Tel: 353 1 6724800
Email: f.cullen@lawsociety.ie