

# POLICY AND LAW REFORM AGENDA

A PUBLIC INTEREST AGENDA FOR IRELAND

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## GENERAL SCHEME OF THE JUDICIAL APPOINTMENTS COMMISSION BILL 2020

In May, the President of the Law Society, James Cahill and Director General, Mary Keane, met with the Joint Oireachtas Committee on Justice to provide input to its pre-legislative scrutiny of the General Scheme of the Judicial Appointments Commission Bill 2020.

Issues raised during the meeting included the crucial need to ingrain both diversity (in every meaning of the word) and inclusion into the system of judicial appointments in the State, the inadvisability of creating a dual role for the Attorney General in the process of judicial selection and the need to include a representative of each branch of the practising legal profession on the Commission.

The Society's submission to the Committee on the General Scheme can be viewed [here](#).



## RESTRICTIVE EASEMENTS

In May, the Society made a submission to the Department of Justice on the urgent need to review the 1 December 2021 deadline in respect of the registration of restrictive easements.

The Land and Conveyancing Law Reform Act 2009, which reformed and modernised land and conveyancing law in the State, was widely welcomed and well-received by practitioners and academics, other than insofar as it aimed to reform the law relating to easements and *profits à prendre*, which efforts have been widely criticised.

The procedure introduced by the Property Registration Authority to implement a 2011 amendment to the Act has given rise to significant difficulties in practice. In addition, the amendment itself did not address the primary difficulty created by the Act which is that an easement can only be 'acquired at law' on registration of a court order or in accordance with the Registration of Title Act 1964 (whereby an easement is registered in the Land Registry). As such,

the only way of acquiring an easement at law continues to be in one of these two ways.

In order to alleviate matters, the Society submitted that:

- i. Section 38 of the Civil Law (Miscellaneous Provisions) Act 2011 should be extended for six years to allow for a comprehensive review of easements and the registration of same;
- ii. The question of mental capacity, and the extent to which it should form part of considerations in establishing prescriptive easements, should be considered as part of the review; and
- iii. The legislative provisions which result in distinctions between how foreshore and State lands are dealt with should also be reviewed.

The Society also confirmed that its Conveyancing Committee members, together with other practitioners, will be glad to describe the significant difficulties which have arisen in practice as part of such a review.

## FEATURED ARTICLES



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## RECENT SUBMISSIONS



### REFORMING AND ENHANCING PIAB



The Society's Litigation Committee provided recommendations in respect of the role and remit of PIAB which aim to reform and enhance the Agency in line with the Programme for Government commitment to do so.

The submission noted that the defining purpose of PIAB is to provide for the assessment of compensation for injured claimants in an expeditious, cost-efficient and fair manner. It also cautioned that measures that lengthen and slow the process run

contrary to PIAB's stated purpose and add additional delay to what can already be a lengthy process of litigation.

The submission further emphasised the essential requirement that PIAB allows claimants their constitutional right of access to the court in the most expedient manner possible, while attempting to resolve as many claims as possible without incurring unnecessary costs.

### GENERAL SCHEME OF THE ONLINE SAFETY AND MEDIA REGULATION BILL



The Society's Human Rights & Equality Committee provided views to the Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht. Areas of particular interest were the integration of human rights and equality standards and the definitions of 'harmful online content', 'individual remedies' and 'take downs' in the General Scheme.

The Society considers that the General Scheme presents a welcome and ambitious

framework for legislative reform and, while it aims to implement the EU Audio-visual Media Services Directive, it is broader in its scope.

The fact that the General Scheme reflects many of the elements of the Law Reform Commission's 2016 *Report on Harmful Communications and Digital Safety* as well as incorporating some of its recommendations, is welcome.

### REVIEW OF THE MENTAL HEALTH ACT 2001



The Society's Mental Health Law & Capacity Task Force provided submissions to the Department of Health in a range of areas which had been highlighted for comment by the Department.

They included changes to definitions, time limits and the criteria for detention under the Act, the inclusion of guiding principles, enhancing safeguards for individuals, consent to treatment and provisions related to children.

Noting that, in 2015, the then Government accepted the broad thrust of 165 recommendations made by the *Expert Group Review of the Mental Health Act, 2001* and called for a General Scheme to be drafted at that time to reflect same, the Society very much looks forward to early publication of a General Scheme to bring about crucial reforms to this most pressing area of law.

### FAMILY LAW



The Society's Family & Child Law Committee appreciated the opportunity to provide responses to issues which had been raised by the **Family Justice Oversight Group** during its first phase of work and, in doing so, made detailed submissions on:

- i. Optimising the delivery of family justice via the use of modern technology;
- ii. The place of mediation in family justice;

- iii. Reimagining the structure of civil legal aid in family justice;
- iv. the operation of the Family Courts; and
- v. The Voice of the Child.

Views were also provided to the **Child Maintenance Review Group** as part of its public consultation on potential changes to the child maintenance system in the State. The Group will now consider and make recommendations in the following areas:

## FAMILY LAW (Continued)



1. Current treatment within the Department of Social Protection of child maintenance payments;
2. Current provisions relating to 'liable relatives'; and

3. Establishment of a State Child Maintenance Agency.

Representatives of the Family & Child Law Committee will meet with the Review Group in August to discuss the Society's submission.

## IRELAND'S THIRD NATIONAL REPORT TO THE UNITED NATIONS UNIVERSAL PERIODIC REVIEW



As part of its preparations for Cycle 3 of the United Nations UPR, the Department of Children, Equality, Disability, Integration and Youth called for written submissions on Ireland's Third National Report.

As the Report will focus on progress made

on recommendations from previous cycles, the Society's submission provided input on new and emerging themes in human rights and made 19 recommendations in respect of the State's compliance with key international human rights instruments.

## REPRESENTATIVE ACTIONS



In its submission to the public consultation on the transposition of the Directive on Representative Actions for the Protection of the Collective Interests of Consumers, the Society noted a number of ways in which Irish courts can deal with multi-party actions under the Rules of the Superior Courts and/or through statutory provisions e.g. representative actions, joinder/consolidation of actions and test cases. The Society further

emphasised the absence of any current provision for the recovery of damages by affected parties in collective redress actions.

Although the Society would support broader reforms in the area, that the transposed Directive (which will apply from 25 June 2023) will ameliorate that situation in certain respects and under certain circumstances, is welcome.

## NEW GENDER EQUALITY, DIVERSITY AND INCLUSION POLICY

The Society has worked with the Irish Centre for Diversity to develop a new gender equality, diversity and inclusion (GEDI) policy for the solicitors' profession.

The Society is committed to improving gender equality, diversity and inclusion within the profession and the policy is one of many initiatives which have been put in place to deliver that goal. The policy was launched in June 2021 and is available for solicitors to review and download at [www.lawsociety.ie/gedi](http://www.lawsociety.ie/gedi)

### NEW CHARTER INSIGNIA

The Society has launched its new GEDI Charter and Professional Wellbeing Charter insignia. Solicitors' workplaces which have signed the GEDI Charter or the Professional Wellbeing Charter can use the exclusive insignia on their website, stationery, business cards and other marketing materials.

These insignia are indicative of workplaces which have committed to promoting gender equality, diversity and inclusion and supporting professional wellbeing.

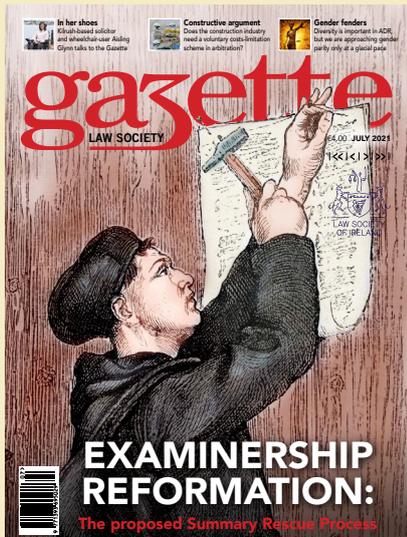
GENDER EQUALITY, DIVERSITY AND INCLUSION POLICY

LAW SOCIETY OF IRELAND

IRISH CENTRE FOR DIVERSITY

[www.lawsociety.ie](http://www.lawsociety.ie)





## POLICY & LAW REFORM IN THE GAZETTE

Gazette.ie

If you would like to be interviewed in respect of your policy and legislative priorities – get in touch: [gazette@lawsociety.ie](mailto:gazette@lawsociety.ie)

- **Scales of Justice:** We are no longer debating whether diversity is good for the legal profession and for ADR: we know this to be true from many studies. The Gazette analyses the numbers of women arbitrators and mediators appointed in recent years. (July 2021).
- **Stress Test:** Dealing with complex family-law situations without adequate support puts family law practitioners at a higher risk of poor emotional, psychological and physical wellbeing. (June 2021).
- **Remote controls:** The new Rules of the Superior Courts allow affidavits to be executed remotely for the first time. (May 2021).
- **Family deal:** Family law is set to undergo a seismic change as the Cabinet approved the Family Court Bill 2020, with the aim of putting families and children front and centre in the family courts system. (May 2021).
- **Parallel bars:** Brexit is likely to have significant implications for EU companies doing business in the UK, including buying UK-based companies and/or competing for contracts from UK public bodies/utilities. (April 2021).
- **There may be trouble ahead:** The Judicial Council's Personal Injuries Guidelines are likely to see a huge influx of cases into the already overloaded lower courts. (April 2021).
- **Lines in the sand:** With 'Brexit done', the Withdrawal Agreement and the Trade and Cooperation Agreement now govern the 'divorce settlement' between the EU and the UK. (March 2021).



For the latest articles from The Gazette see: [www.gazette.ie](http://www.gazette.ie)

## ENVIRONMENTAL LAW AND CLIMATE CHANGE



The Society has welcomed over 4,000 participants to its seventh Massive Open Online Course (MOOC) on 'Environmental Law and Climate Change – Shaping a Greener Future'.

Launched in May, the free five-week course hosted expert speakers, including Dr Mary Robinson,

former President of Ireland, and the Adjunct Professor of Climate Justice, Trinity College Dublin and Lord Mayor of Dublin, Hazel Chu. The course which can be accessed from anywhere in the world, at any time, discussed issues such as the Climate Bill 2021, Climate Justice, environmental law enforcement, ecocide and green crime, the circular economy and sustainable planning for the environment.

This MOOC is delivered as part of the Society's Public Legal Education initiative, which aims to increase awareness of the law by providing teachings on our legal system and how the law impacts every part of society.

## CYBERSECURITY TRAINING



The Society's Professional Training team have updated and relaunched their suite of free cybersecurity training sessions as part of our Cybersecurity Education Campaign for 2021 to help solicitors protect themselves against cybercrime.

In 2020, 2540 solicitors participated in our LegalEd Talks cybersecurity sessions where they gained an understanding of common cyber threats and scams and how to carry out a cybersecurity audit.



These courses are accessible at [www.lawsociety.ie/legalettalks](http://www.lawsociety.ie/legalettalks)

## COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE (CCBE)



### A. DIGITALISATION OF JUSTICE WITHIN THE EU

The Portuguese Secretary of State for Justice, Anabela Pedroso, gave a keynote speech on the digitalisation of Justice in the EU to a recent meeting of the CCBE's Standing Committee.

Noting the importance and challenges of digitalisation, particularly in the context of the pandemic, Ms Pedroso recalled that the joint work of all justice actors is fundamental to democratic systems.

She presented the programme of the Portuguese Presidency of the Council of the European Union in the field of justice and digitalisation and emphasised the objective of promoting resilience, efficiency and innovation in the judicial system, as well as the requirement to place people at its centre.

She confirmed that the Portuguese Presidency would continue to promote technological cohesion and the strengthening of the interoperability of national systems, particularly through negotiations on the e-CODEX system, in order to achieve the objective of access to justice for all.

### B. E-CODEX PROPOSAL

In March, the CCBE adopted its [position paper](#) on the e-CODEX Proposal.

While welcoming the general direction adopted in the Proposal, the CCBE provided recommendations in respect of the operating conditions of e-CODEX access points and the financing conditions of entities operating same, the need to clarify the involvement of stakeholders in the management of the system and how the proposed governance structure would effectively ensure the independence of the judiciary in practice.

In order to ensure the necessary protections, the CCBE further recommended that explicit reference be made to the applicability of the Charter of Fundamental Rights of the EU.

### C. RULE OF LAW REPORT 2021

The CCBE's contribution to the Report was adopted in response to the European Commission's public consultation on the issue. The submission highlights critical rule of law developments and concerns involving the profession of the lawyer (as identified by the members of the CCBE) and calls for the recognition of the independence of lawyers and Law Societies/Bars as indispensable components of the independence of justice systems and the rule of law.

The Society's Human Rights & Equality Committee met with the EU Commission's Representation in Ireland to discuss a variety of rule of law related issues as part of the in-depth consultation process undertaken by the Commission.

## SOLICITORS OF THE FUTURE

The Society welcomed 40 transition year students from across the country to its annual Solicitors of the Future programme.



The programme, which is part of the Society's Public Legal Education initiative, received applications from 284 schools. The programme shows how the law can be relevant to the daily lives of participants and promotes awareness of the legal processes, constitutional principles, and values which underpin the rule of law in Ireland. The students were introduced to the legal system, the routes to law in Ireland, participated in interactive sessions and mock courts, and discussed areas of law which included human rights, employment and social media.

## LEGAL AMBITIONS



The Society will also welcome over 500 transition year students to its Legal Ambitions Summer School this year. The free online course, which will run for a week in July provides students with insight into how the law can be relevant to their daily lives. It also promotes awareness of constitutional principles and values which underpin the rule of law in Ireland. For more, see: [www.lawsociety.ie/Public/Public-Legal-Education/legal-ambitions-summer-school](http://www.lawsociety.ie/Public/Public-Legal-Education/legal-ambitions-summer-school)

## IN THE FIGURES

4,000+



Participants took part in the Society's MOOC on Environmental Law and Climate Change

5



Grants available from the Society's Small Practice Traineeship Grant

12



Solicitors were granted the Patents of Precedence in June 2021

40



Transition Year students took part in the *Solicitors of the Future* programme

3



Law firms took out more than 300 PCs in 2020

118



Women have benefited from the Society's Women in Leadership mentoring programme since 2016

## NEW SENIOR COUNSEL

The Society congratulated 12 solicitors who were granted Patents of Precedence in June. These solicitors include in their number, former Presidents of the Law Society, Stuart Gilhooly and Geraldine Clarke, and the Society's Deputy Director of Education, Dr Geoffrey Shannon. They join 17 other solicitors who were granted Patents of Precedence in 2020.

The President of the Law Society, James Cahill, said "We are particularly encouraged to see a greater number of female solicitors being granted the designation of Senior Counsel this year and we look forward to this trend continuing in the coming years. The Law Society hopes that these appointments and examples of leadership will pave the way for a more inclusive and balanced legal profession, which reflects modern Irish society."

## OUR POLICY COMMITTEES - AT A GLANCE

The Society operates more than 30 committees, task forces and working groups at any given time which include dedicated policy committees. These committees are comprised of solicitors who volunteer their time and expertise to help shape our law reform agenda by providing submissions to Government in a wide range of areas such as:



1. Alternative Dispute Resolution
2. Business Law
3. Conveyancing
4. Criminal Law
5. Employment & Equality Law
6. EU & International Affairs
7. Family & Child Law
8. Human Rights & Equality
9. Intellectual Property & Data Protection Law
10. Litigation
11. Probate, Administration & Trusts
12. Taxation



## CONTACT US

We will be glad to engage on any of the matters raised in this Newsletter and invite you to contact the following members of the Law Society's Executive in that regard:

MARY KEANE  
Director General  
m.keane@lawsociety.ie

FIONA CULLEN  
Public and Government Affairs Manager  
f.cullen@lawsociety.ie