Access to justice in environmental matters

Ireland

I. Constitutional Foundations

The Constitution and environmental rights

The Constitution of Ireland (*Bunreacht na hÉireann*), which dates from 1937, does not contain any reference to the environment or to environmental rights. Legislation provides that the European Convention on Human Rights (ECHR), to which Ireland is a Party, has effect in the domestic legal order at a sub-constitutional level: European Convention on Human Rights Act 2003. The European Court of Human Rights has determined that Article 8 ECHR (the right to respect for the home, private and family life) may be engaged in the case of severe environmental pollution that impacts on enjoyment of the home. Article 1 of the First Protocol to the ECHR (the right to property) and Article 6 (the right to a fair hearing) are also potentially relevant in the environmental protection context. Both of these rights also find expression in the Irish Constitution.

The Constitution and access to justice

Article 6 of the Constitution provides for the Separation of Powers between the legislative, executive and judicial branches of government. Article 34 provides for the administration of justice in courts established by law and by judges appointed in accordance with the Constitution.

Right of access to the courts and right to litigate

There is no express (or explicit) right of access to justice in the Irish Constitution, but the courts have recognised an unspecified (or "unenumerated") constitutional right of "access to the courts", and a constitutional right to litigate: *Macauley v Minister for Posts and Telegraphs* [1966] IR 345. The right to litigate is not absolute, however, and the State may place objectively justifiable and proportionate limitations on this right (e.g. by setting reasonable time limits within which proceedings must be brought). Parties to litigation are entitled to fair procedures, often described as "constitutional justice", which has also been recognised by the courts as an unspecified constitutional right. There is no express constitutional right to legal aid. However, the courts have recognised a constitutional right to legal aid where an accused is facing a serious criminal charge and is unable to fund legal representation from their own resources. As regards legal aid in civil cases, the courts have accepted that a constitutional right to civil legal aid may arise in limited circumstances as an aspect of the constitutional right of access to the courts and the right to fair procedures, where a plaintiff is not in a position to fund legal representation from their own resources. However, the precise parameters of any such rights have yet to be fully determined.

Irish law and international agreements

Article 29.6 of the Constitution provides that no international agreement forms part of the domestic law of the State except as may be determined by the National Parliament (*Oireachtas*). This provision means that legislation must be put in place in order to give effect to international agreements in the domestic legal system. Ireland ratified the Aarhus Convention on 20 June 2012 and the Convention entered into force on 18 September 2012. As Ireland has a dualist legal system, it was necessary to transpose all provisions of the Convention into national law prior to ratification.

II. Judiciary

Main features of the judicial system

Ireland is a common law jurisdiction with an adversarial legal system. Article 34 of the Constitution provides that justice must be administered in courts established by law and by judges appointed in the manner set down in the Constitution. Article 37 provides that "limited" functions and powers of a judicial nature (in matters other than criminal matters) may be exercised by persons or bodies authorised by law, notwithstanding that the person or body is not a judge or a court. Article 35.2 of the Constitution provides that the judges are independent in the exercise of their judicial functions, subject only to the Constitution and the law. Generally speaking, court proceedings are open to the public, but some exceptions to this rule are provided for by law, for example in family law cases. The structure of the courts system is set down in Article 34 of the Constitution. It provides for a Court of Final Appeal (the Supreme Court) and Courts of First Instance, which include a High Court (with full original jurisdiction in all civil and criminal matters) and courts of local and limited jurisdiction (the Circuit Court and the District Court) which are organised on a regional basis and deal with both criminal and civil matters. The High Court is known as the Central Criminal Court when it is exercising its criminal jurisdiction. Matters concerning the constitutionality of laws may only be determined by the High Court, with an appeal to the Supreme Court. The bulk of civil cases, with some limited exceptions, are determined by a judge sitting without a jury. In criminal cases, minor offences are tried in courts of summary jurisdiction without a jury, but more serious offences, which are tried on indictment, give rise to a jury trial. While there is a limited right of private prosecution, the Director of Public Prosecutions (DPP) institutes most prosecutions on behalf of the State.

Legislation may provide that specified offences may be prosecuted by the relevant public authority. Under the Planning and Development Act 2000, as amended, (PDA) summary proceedings for the bulk of the offences created under the PDA may be brought and prosecuted by a planning authority. Many environmental statutes expressly provide that certain offences may be prosecuted summarily by the competent authority, for example the Environmental Protection Agency Act 1992 (as amended) provides that an offence under that Act may be brought and prosecuted summarily by the Agency. Similarly, the Waste Management Act 1996 (as amended) provides that summary offences under that Act in respect of breach of a condition attached to a waste licence may be brought and prosecuted by the Agency. More serious offences are tried on indictment and prosecuted by the DPP.
The Courts Service of Ireland manages the courts, provides support services to the judiciary and provides information to the public on the courts system. More detailed information on the structure of the courts system and the jurisdiction of the different courts is available on the Courts Service website: http://www.courts.ie/Judgments.nsf/Webpages/HomePage?OpenDocument.

Courts, Tribunals, Boards and other public authorities with environmental decision-making responsibilities

No specialist administrative or environmental courts

There are no specialist administrative or environmental courts in Ireland. Criminal prosecutions are brought in the ordinary courts, in practice usually in the District Court for the area in which the offence was allegedly committed, with more serious offences being tried on indictment in the Circuit Court. The High Court exercising its criminal jurisdiction is known as the Central Criminal Court. It tries criminal cases which are outside the jurisdiction of the Circuit Court which mainly include murder and rape trials and criminal trials under the Competition Act 2002. All civil planning and environmental litigation is dealt with by the ordinary courts.

Public authorities /State agencies with environmental decision-making responsibilities

There are a number of public authorities and State agencies with specific environmental decision-making responsibilities and the following are the most significant in practice:

Local authorities

Local (planning) authorities determine the bulk of applications for planning permission, subject to a number of important exceptions, and are also charged with planning enforcement. Local authorities are also responsible for determining applications for water pollution and air pollution licences and for issuing waste permits for certain facilities.

An Bord Pleanála

An Bord Pleanála (The Planning Appeals Board) has a wide range of functions vested in it by legislation which include determining appeals from decisions taken at first instance by planning authorities. Further information at: http://www.pleanala.ie/. The Board is the consent authority for certain categories of development including, for example, strategic infrastructure development (involving applications for permission for development for energy, transport, environmental and health infrastructure) and State development which is subject to environmental impact assessment. It is also responsible for dealing with proposals for the compulsory acquisition of land by local authorities. The Board is charged with determining appeals under water pollution and air pollution legislation. However, legislation is currently being prepared that will transfer responsibility for licencing appeals under the Air Pollution Act 1987 to the EPA, given the Agency's particular expertise in this area.

Environmental Protection Agency

The Environmental Protection Agency (EPA) is the consent authority for a range of statutory licensing schemes including: Integrated Pollution Control (IPC) and Industrial Emissions; waste; waste water discharges; genetically modified organisms (both contained use and deliberate release); emissions trading, volatile organic compounds (VOCs); and dumping at sea. Further information on the EPA's licensing functions is available at: http://www.epa.ie/

Aquaculture Licences Appeals Board

The Aquaculture Licences Appeals Board (ALAB) determines appeals against decisions on applications for aquaculture licences taken by the Department of Agriculture, Food and the Marine (Aquaculture and Foreshore
Management Division). Further information at:
https://www.agriculture.gov.ie/seafood/aquacultureforeshoremanagement/aquaculturelicensing/ and http://alab.ie/.

Other consents in specific sectors

Beyond land-use planning, water pollution licences, air pollution licences and the licences and consents falling within the remit of the EPA, there is a wide range of consent systems across various sectors. Government Ministers have a role in certain areas, for example, the Minister for Environment, Community and Local Government is responsible for activities on the foreshore and the Minister for Communications, Energy and Natural Resources is responsible for certain permits under the Gas Act 1976 (as amended) and the Petroleum and Other Minerals Development Act 1960 (as amended).

Review of decisions

Apart from planning decisions taken by local planning authorities, which may, in most cases, be appealed to An Bord Pleanála, the general position is that challenges to decisions taken by public authorities may only be made by way of judicial review proceedings in the High Court.

Forum shopping

Forum shopping (i.e. where a litigant chooses the court that is most likely to give a favourable outcome) is not an issue in the Irish legal system because the options for redress in the planning and environmental law context are very specific. In most cases, the only mechanism by which to challenge the decision of a public authority is by way of judicial review proceedings in the High Court. The general position is that in order to be entitled to bring judicial review proceedings in the High Court, a plaintiff must first have pursued any appropriate administrative appeal that may be available in the particular circumstances.

Judicial Appeals and extraordinary remedies

Judicial appeals

The general position regarding appeals in the courts system is as follows: there is an appeal to the Circuit Court from decisions of the District Court in civil and criminal matters with some exceptions. There is an appeal to the High Court from decisions of the Circuit Court in civil law matters. The main function of the Supreme Court is to hear appeals from cases that are commenced in the High Court. On the criminal side, the Court of Criminal Appeal hears appeals from people convicted on indictment in the Circuit Court and the Central Criminal Court (i.e. the High Court when exercising its criminal jurisdiction). There is no automatic right to appeal to the Court of Criminal Appeal. A certificate is required from the trial judge or, if a certificate is refused, the Court of Criminal Appeal may give leave to appeal. The Director of Public Prosecutions may also appeal to the Court of Criminal Appeal on the grounds of an unduly lenient sentence. There is a limited possibility of appeal to the Supreme Court from decisions of the Court of Criminal Appeal and the Central Criminal Court.

Case Stated

Legislation provides for the District Court to obtain the opinion of the High Court on a question of law that arises in the course of proceedings: Summary Jurisdiction Act 1857, section 2, as extended by Courts (Supplemental Provisions) Act 1961, section 51(1) (appeal by way of case stated) and Courts Supplemental Provisions Act 1961, section 52 (consultative case stated). The Circuit Court may state a case to the Supreme Court: Courts of Justice Act 1947, section 16. When hearing an appeal from the Circuit Court, the High Court has power to refer any question of law arising in the appeal to the Supreme Court by way of case stated: Courts of Justice Act 1936, section 38.

Judicial review

Judicial review proceedings in planning and environmental matters must be brought in the High Court. The High Court's decision is final. However, decisions may be appealed to the Supreme Court where the High Court certifies that its decision "involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court": Planning and Development Act 2000 (as amended), section 50A(7). The statutory restriction on an appeal to the Supreme Court does not apply where the High Court's decision involves a question as to the constitutionality of any law.

"Extraordinary remedies"

The general position is that an order of the Supreme Court is final and conclusive. However, where exceptional circumstances are established, the Supreme Court has jurisdiction to intervene and to interfere with its own order: *Re Greendale Developments (No 3)* [2000] 2 IR 514 and *Abbeydrive Developments Ltd v An Bord Pleanála* [2010] IESC 8.

Judicial review and remedies

Judicial review is a discretionary remedy and it is for the High Court (or the Supreme Court in the event of an appeal) to determine what remedy is appropriate in the particular circumstances of each case. A wide range of remedies are potentially available in judicial review proceedings including:

a declaration;

an order quashing or annulling an unlawful decision (an order of "certiorari");

an order directing a public authority to take specified steps (an order of "mandamus");

an order prohibiting a public authority from taking specified steps (an order of "prohibition");

an injunction;

and damages.

In practice, if judicial review proceedings are successful, the court will usually make a declaration that the planning or environmental decision in question is unlawful/invalid and will make an order quashing (annulling) that decision and directing that the matter be sent back (remitted) to the public authority in question for a fresh decision to be taken.

Judicial review procedure

Judicial review proceedings are brought in the High Court and a two-stage process applies. The first stage is an application for leave (or permission) from the High Court to bring judicial review proceedings. The second stage involves the substantive hearing of the application for judicial review.

Judicial review of planning decisions

Special statutory rules apply in the specific case of judicial review of planning decisions. These rules are found in the Planning and Development Act 2000 (as amended) (PDA) sections 50, 50A and 50B. The validity of most planning decisions taken by planning authorities and An Bord Pleanála may only be challenged by way of an application for judicial review in the High Court under Order 84 of the Rules of the Superior Courts 1986 to 2011 (RSC) (SI No 15 of 1986 as amended): PDA, sections 50(2) and (3). A person or organisation seeking to challenge a planning decision must first obtain permission (leave) from the High Court to bring judicial review proceedings. This is described in the PDA as "section 50 leave". The court must not grant permission (leave) unless it is satisfied that the applicant seeking judicial review has a "sufficient interest" in the matter the subject of the application and that there are "substantial grounds" for alleging that the decision is invalid and ought to be quashed (annulled).

Time limits

The application for section 50 leave must be made within a period of eight weeks beginning on the date of the decision in question: PDA, section 50(6). The High Court has a discretion to extend time where it is satisfied: (i) that there is "good and sufficient reason" for extending time; and (ii) that the circumstances that led to the failure to make the application for leave within the statutory time period were outside the control of the person seeking the extension.

Application for leave to be made *ex parte*

The general position is that an application for section 50 leave is to be made *ex parte* (i.e. without a requirement for notice to be given to the respondent). However, the High Court has a discretion to direct that the application should proceed on an *inter partes* basis (i.e. on notice to the respondent and potentially also to other persons (e.g. the developer): PDA, section 50A(2)(b). Where the High Court directs that the matter proceed *inter partes*, the application for leave must be made by way of motion on notice to the relevant respondent public authority and to any other person specified by the court for that purpose: PDA, section 50A(2)(c). The High Court has a discretion to treat the application for section 50 leave as if it were the application for judicial review, in other words, to "telescope" the two stages of the judicial review application into one hearing: PDA section 50A(2)(d). The High Court may adopt this approach: (i) with the consent of all of the parties; or (ii) where there is "good and sufficient reason" for taking this approach and "it is just and equitable in all the circumstances".

"Substantial grounds" and "sufficient interest"

The High Court must not grant section 50 leave unless it is satisfied that there are **"substantial grounds"** for contending that the decision being challenged is invalid or ought to be quashed (annulled): PDA, section 50A(3)(a). The courts have interpreted this requirement to mean that in order to be considered "substantial" a ground of challenge must be "reasonable", "arguable" or "weighty" and must not be "trivial or tenuous". As regards standing (*locus standi*), the court must be satisfied that the applicant has a **"sufficient interest"** in the matter which is the subject of the application for judicial review: PDA, section 50A(3)(b). There is no definition of what constitutes a "sufficient interest" in the text of the PDA, but section 50A(4) explains that this concept "is not limited to an interest in land or other financial interest". In the specific case of proposed development that is subject to Environmental Impact Assessment (EIA), special standing rules apply to environmental non-governmental organisations (NGOs) that meet certain conditions: PDA, section 50A(3)(b)(ii).

Undertaking as to damages

As a condition of granting section 50 leave, the High Court may require the applicant to give an undertaking as to damages: PDA, section 50A(6). An undertaking as to damages means that if the applicant is not successful in the judicial review proceedings, there is an obligation to compensate the respondent (or any other party in whose favour the court grants an undertaking, for example, the potential developer) for any loss incurred as a result of being restrained from acting on the planning permission.

Expeditious hearing of planning judicial review

In determining an application for section 50 leave, or an application for judicial review on foot of such leave, the court must "act as expeditiously as possible consistent with the administration of justice": PDA, section 50A(10).

Challenges to certain decisions of the Environmental Protection Agency

Special statutory rules apply where a challenge is mounted to certain decisions taken by the EPA. An application for judicial review challenging the validity of a decision of the EPA to grant, or refuse to grant, an Integrated Pollution Control (IPC) or Industrial Emissions Directive (IED) licence, must be instituted within the period of eight weeks from the date on which the licence is granted or the date on which the decision to refuse to grant the licence is made: section

87(10) of the Environmental Protection Agency Act 1992. The High Court may, on application to it, extend the eight week period where it considers, in the particular circumstances, that there is “good and sufficient reason” for doing so. A similar provision is found in section 43(5) of the Waste Management Act 1996 which governs challenges by way of judicial review to a decision of the EPA to grant, or to refuse to grant, a waste licence.

Judicial discretion to raise points of law *ex officio*

The general position in Irish law is that the scope of the proceedings is defined or limited by the arguments put forward to the court by the parties to the litigation. The courts have a discretion to raise points of law of their own motion (usually described as raising a point of law *ex officio*), but this rarely occurs in practice. In cases where a court decides to raise a point *ex officio*, the parties will be invited to make submissions on the point.

III. Access to Information Cases

Procedures governing requests for access and remedies where access is denied

The European Communities (Access to Information on the Environment) Regulations 2007 (SI No 133 of 2007) as amended by the European Communities (Access to Information on the Environment) (Amendment) Regulations 2011 (SI No 662 of 2011) (the AIE regulations) transpose Directive 2003/4/EC on public access to environmental information.

Procedural rules governing requests for access to environmental information

Article 6(1) of the AIE regulations provides that a request for environmental information must:

(i) be made in writing or in electronic form (e.g. email);

(ii) state that the request is made under the AIE regulations; [1]

(iii) state the name, address (and any other relevant contact details) of the applicant;

(iv) state the environmental information that is the subject of the request as specifically as possible; and

(v) specify the form or manner in which the applicant requires access to the information requested (if relevant).

Article 7(7) provides that where a request is made to a public authority which could reasonably be regarded as a request for environmental information, but which does not expressly state that it is made under the AIE regulations (or under the Freedom of Information regime), the public authority is required to inform the applicant of their rights under the AIE regulations and offer assistance in exercising those rights.

An applicant is not required to state their interest in making the request: AIE regulations, Article 6(2). Where a public authority refuses a request for access to environmental information, either in whole or in part, it must comply with certain obligations under Article 7(4) of the AIE regulations, including an obligation to specify the reasons for the refusal and to inform the applicant of their rights of internal review and appeal, including the time limits within which such rights may be exercised.

Remedies where a request for access is delayed or denied

Under the AIE regulations, where a request is refused, or where an applicant believes that their request has been wrongfully/inadequately answered, two administrative remedies are available in the first instance: internal review and an appeal to the Commissioner for Environmental Information. Thereafter, there is the possibility of an appeal on a point of law to the High Court from a decision of the Commissioner. Judicial review of the Commissioner’s decision is also an option.

Administrative remedies

Internal review

An applicant may request an internal review of the public authority’s decision on a request for access to environmental information within one month of the decision on the request for access: AIE regulations, Article 11.

There is no charge for requesting an internal review. An internal review must be carried out by a person designated by the public authority who is not connected with the original decision, and whose rank is the same as, or higher than, that of the original decision maker. On internal review, the decision-maker may affirm, vary or annul the original decision and, where appropriate, may direct the public authority to make the environmental information available. Public authorities are required to notify the applicant of its decision within one month of the date of receipt of the request for internal review. Where the decision on internal review affirms the original decision, or varies it in a way that results in the request being refused, either in whole or in part, the public authority must specify the reasons for the decision and must inform the applicant of the right to appeal to the Commissioner for Environmental Information and the time limit within which this right may be exercised.

Appeal to Commissioner for Environmental Information

The Office of Commissioner for Environmental Information (“the Commissioner”) was established under Article 12(1) of the AIE regulations: http://www.ocei.ie/en/. The holder of this office is the person who currently holds the office of Information Commissioner under the Freedom of Information Acts 1997 and 2003. Article 12(3) of the AIE regulations provides that where a public authority affirms its decision, in whole or in part, following an internal review, the applicant may appeal to the Commissioner. An appeal must be initiated not later than one month after receipt of the internal review decision or, where a public authority fails to notify any decision following a request for internal review, not later than one month from the time when a decision was required to be notified to the applicant: AIE regulations, Article 12(4)(a). The Commissioner has a discretion to extend the time for lodging an appeal where it is reasonable to do so in the circumstances of a particular case: AIE regulations, Article 12(4)(b).

The normal appeal fee is €150, but a reduced fee of €50 applies in the case of an appeal by:

(i) a medical card holder;

(ii) a dependent of a medical card holder;

(iii) or a person other than the applicant who would be affected by the disclosure of the environmental information concerned.

The Commissioner may waive all or part of the appeal fee in certain limited circumstances:

(i) where the Commissioner deems an appeal to have been withdrawn if the public authority releases the requested information prior to a formal appeal decision;

(ii) where an appeal is made in circumstances where the public authority failed to notify any decision on the original request for access to the applicant within the time period prescribed in the AIE regulations, and a decision refusing the request is deemed to have been made on the date of expiry of that period; and

(iii) where an appeal is withdrawn by an appellant.

Under Article 12(6) of the AIE regulations, the Commissioner may require a public authority to make environmental information available and to examine and take copies of any environmental information held by a public authority and retain it for a reasonable period of time. Following an appeal, a public authority is obliged to comply with a decision of the Commissioner within three weeks after its receipt: AIE regulations, Article 12(7). In cases where a public authority fails to comply, the Commissioner may apply to the High Court for an order directing compliance: AIE regulations, Article 12(8). The Commissioner also has jurisdiction to refer any question of law arising in an appeal to the High Court for determination: AIE regulations, Article 12(9)(a).

Judicial remedies

Appeal to High Court on point of law

A party to an appeal to the Commissioner, or any other person affected by the Commissioner's decision, may appeal that decision to the High Court on a point of law: AIE regulations, Article 13. Any such appeal must be brought not later than two months after the notice of the Commissioner's decision was given to the party to the appeal. The High Court's decision on any such appeal may be appealed to the Supreme Court.

Judicial review

The full original jurisdiction of the High Court may be invoked in judicial review proceedings to ensure that the hearing and determination of the appeal by the Commissioner is in accordance with the law.

Court may order release of information

The High Court, and the Supreme Court in the event of any appeal, may order that environmental information must be released.

IV. Access to Justice in Public Participation

Administrative procedures and appeals

The legislative schemes governing applications for planning permission, Integrated Pollution Control (IPC) and Industrial Emissions Directive (IED) licences, waste licences and other statutory consents, generally provide for public participation. This provision generally involves a statutory right for any person or organisation to make written submissions and observations on the application for permission/consent to the relevant decision-maker within a prescribed time period. In certain cases, a fee is payable as a precondition to making a submission, observation or objection (as the case may be). A fee is also payable to lodge an appeal with An Bord Pleanála. An Bord Pleanála or the Environmental Protection Agency (EPA) may decide to hold an oral hearing of objections as part of the decision-making process.

Planning decisions

The majority of planning decisions are taken at first instance at local level by planning authorities, with the possibility of an appeal to An Bord Pleanála. The relevant legislation provides that the applicant for planning permission (the developer), and any third party who made a submission or observation on the planning application (usually described as an "objector"), may lodge an appeal with the Board. Additionally, a neighbouring landowner who did not make a submission or observation on the planning application may seek permission from the Board to lodge an appeal. In the case of a decision that is subject to EIA, environmental NGOs that meet certain conditions may appeal even if they did not participate during the procedure before the planning authority. An appeal involves a full rehearing of the planning application on its merits. In the case of strategic infrastructure development, which involves applications for permission for certain types of energy, transport, environmental and health infrastructure, An Bord Pleanála is the consent authority. The Board is also the consent authority for State development which is subject to EIA. Planning legislation does not provide for an administrative appeal in the case of decisions taken by the Board on applications for strategic infrastructure development or for State development that is subject to EIA. Such decisions may be challenged by way of judicial review proceedings in the High Court.

Water and air pollution licences

Decisions taken in the first instance by local authorities on applications for water pollution and air pollution licences may be the subject of an appeal to An Bord Pleanála. It is expected that the function of determining appeals relating to air pollution licences will transfer from An Bord Pleanála to the EPA in the near future.

Integrated Pollution Control (IPC), Industrial Emissions Directive (IED) Licences and Waste Licences

Decisions on applications for Integrated Pollution Control (IPC) and Industrial Emissions Directive (IED) licences and waste licences are made by the Environmental Protection Agency (EPA). No provision is made in the relevant legislation for an administrative appeal in the case of EPA decisions on such licence applications. However, a person may make an objection to the EPA on its proposed determination of the licence application and may request an oral hearing of the objection. Decisions of the EPA on IPC and IED licences and waste licences may be challenged by way of judicial review.

Aquaculture Licences

The Aquaculture Licences Appeals Board (ALAB) determines appeals against decisions on applications for aquaculture licences taken at first instance by the Department of Agriculture, Food and the Marine (Aquaculture and Foreshore Management Division).

Exhaustion of administrative remedies prior to judicial review

Generally, where legislation provides specifically for an administrative appeal against a planning or environmental decision, any such administrative remedy must usually be exhausted before proceeding to invoke the High Court's judicial review jurisdiction. So, for example, any right of appeal to An Bord Pleanála must normally be exhausted before proceeding to initiate judicial review proceedings.

Standard of review

In judicial review proceedings, the High Court reviews the legality of the contested decision. Such review will, therefore, involve a consideration of whether all statutory requirements were met and fair procedures observed. Under Irish law, there is limited judicial review of the substance or merits of planning and environmental decisions. The Irish courts recognise the technical expertise of decision-makers such as planning authorities, An Bord Pleanála and the Environmental Protection Agency (EPA), as the courts are not experts on planning and environmental matters. Under legislation, Parliament (*Oireachtas*) has vested the task of making planning and environmental decisions in these expert administrative bodies. Where the substance (merits) of a planning or environmental decision is challenged in judicial review proceedings, the High Court may quash (annul) such a decision where the decision in question is found to be "unreasonable" or "irrational".

Judicial review of land use plans and zoning plans

Land use plans and zoning plans (for example Development Plans and Local Area Plans made by planning authorities) may be challenged by way of judicial review proceedings in the High Court. A special statutory scheme governs challenges to planning decisions. The relevant rules are found in sections 50, 50A and 50B of the Planning and Development Act 2000 (as amended) (PDA). A person or organisation seeking to challenge such a decision, including a decision to make a Development Plan or a Local Area Plan, must first obtain permission - "section 50 leave" - from the High Court to bring judicial review proceedings. The court must be satisfied that the applicant seeking judicial review has a "sufficient interest" in the matter the subject of the application and that there are "substantial grounds" for alleging that the decision is invalid and ought to be quashed (annulled) prior to granting leave. The availability of the leave stage is to act as a filtering process to identify unmeritorious claims at an early stage, thereby reducing costs and delay when a judicial review does not proceed. Where leave is granted, the High Court will review the legality of the contested decision.

Judicial Review of EIA decision-making

Challenging EIA screening decision

In planning law, where a planning authority decides at first instance that a proposed development is not likely to have significant effects on the environment, and therefore an Environmental Impact Assessment (EIA) is not required, the planning decision may be appealed to An Bord Pleanála. Where the Board takes the view, on appeal, that the proposed development does require an EIA, then the Board must require the developer to submit an Environmental Impact Statement (EIS) and the Board must carry out an EIA. Therefore a planning authority's screening decision may be appealed to the Board. EIA screening decisions may be challenged by way of an application for judicial review in the High Court (if an appeal to the Board is available in a particular

case, then that potential avenue of redress should usually be exhausted in the first instance before bringing judicial review proceedings). In practice, the High Court tends to recognise the expertise of planning authorities and An Bord Pleanála and their conclusion as to whether or not a proposed development is likely to have significant effects on the environment. However, where an applicant for judicial review can demonstrate that the decision-maker failed to comply with obligations arising under the EIA directive and/or national legislation transposing the requirements of the EIA directive, then the High Court may intervene and quash the contested decision and remit the matter to the relevant public authority for a fresh decision to be taken.

Challenging EIA scoping decision or challenging the adequacy of the EIS

Irish law currently does not provide for public participation in scoping decisions. However, it is possible to challenge the adequacy of the Environmental Impact Statement (EIS). The EIS is the document prepared by the developer and submitted to the decision-maker as part of the application for planning permission/consent. The adequacy of the EIS may be raised in the course of any appeal to An Bord Pleanála. A challenge (by way of judicial review) may be mounted to the legality of a planning decision on the basis that the EIS does not comply with the requirements set down in the Environmental Impact Assessment Directive (Directive 2011/92/EU) and/or the national legislative measures transposing this directive.

Review of final EIA decisions or authorisations

The bulk of planning applications determined at local level by planning authorities, including those involving EIA, may be the subject of an appeal to An Bord Pleanála. Where available, this administrative remedy should usually be exhausted in the first instance. Planning decisions may also be challenged by way of judicial review proceedings on the ground that the EIA conducted by the decision-maker was inadequate. The High Court will review the procedural legality of the contested decision.

Standing in EIA challenges

The usual standing requirement is that an applicant seeking leave to bring judicial review proceedings must demonstrate a “sufficient interest” in the matter which is the subject of the application for judicial review.

Standing and environmental NGOs in EIA challenges

Planning legislation makes special provision for certain environmental non-governmental organisations (NGOs) in the case of judicial review of planning decisions that are subject to EIA. NGOs that meet certain conditions do not have to demonstrate a “sufficient interest”: PDA section 50A(3)(b)(ii). The conditions are that the applicant seeking leave to bring judicial review proceedings:

(i) is a body or organisation whose aims or objectives relate to the promotion of environmental protection;

(ii) has pursued those aims or objectives during the period of 12 months preceding the date of the application; and

(iii) meets any other conditions prescribed by the Minister for Environment, Community and Local Government. (Note: As of January 2014, no such additional conditions have been prescribed).

Injunctive relief in EIA challenges

An applicant seeking leave to bring judicial review proceedings to challenge a planning decision that is subject to EIA may seek interim or interlocutory relief from the High Court. The Rules of the Superior Courts 1986 (RSC) (as amended) provide that where leave is granted, the court, where it considers it just and convenient to do so, may grant interim relief on such terms as it thinks fit: RSC Order 84, rule 20(8). The High Court has discretion under PDA section 50A(6) to require an applicant to give an undertaking as to damages as a condition for granting leave.

Judicial Review of Integrated Pollution Control (IPC) and Industrial Emissions Directive (IED) decision-making

A decision of the EPA to grant, or to refuse to grant, an Integrated Pollution Control (IPC) or an Industrial Emissions Directive (IED) licence may be challenged by way of judicial review proceedings in the High Court. Special statutory rules apply to such challenges. An application for judicial review challenging the validity of a decision of the EPA to grant, or to refuse to grant, an IPC or IED licence, must be instituted within the period of eight weeks from the date on which the licence is granted or the date on which the decision to refuse to grant the licence is made: Environmental Protection Agency Act 1992 (as amended) section 87(10). The High Court may, on application to it, extend the eight week period where it considers, in the particular circumstances, that there is “good and sufficient reason” for extending the time limit.

Standing

As regards standing, the High Court must not grant leave to bring judicial review proceedings unless it is satisfied that the applicant has a “sufficient interest” in the matter to which the application relates: RSC, Order 84, rule 20(5).

Standard of review

The High Court will review the legality of the contested decision.

Injunctive relief in Integrated Pollution Control/Industrial Emissions Directive challenges

An applicant seeking leave to bring judicial review proceedings to challenge a decision of the EPA to grant, or to refuse to grant, an Integrated Pollution Control (IPC) or Industrial Emissions Directive (IED) licence, may seek interim or interlocutory relief from the High Court. The RSC provide that where leave is granted, the court, where it considers it just and convenient to do so, may grant interim relief on such terms as it thinks fit: RSC, Order 84, rule 20(8). RSC Order 84, rule 20(7) provides that if the court grants leave, it may require an undertaking as to damages.

V. Access to Justice against Acts or Omissions

Claims against individuals, legal entities and State bodies in environmental matters

A wide range of statutory remedies and common law (tort) remedies are available and may be invoked against private individuals, legal entities and public authorities.

Statutory remedies

The most significant statutory remedies are noted here. Generally speaking, these remedies may be invoked by “any person”, so there is no formal standing requirement. In each case, there is express provision in the relevant legislation for the court to make orders as to the costs of the proceedings and to make any interim or interlocutory orders it considers appropriate.

Unauthorised development

Planning permission is required for any development of land that is not exempted development and is carried out after 1 October 1964.

Administrative remedy

PDA section 152(1) provides a right for “any person” to complain in writing to a planning authority concerning unauthorised development. Once it is satisfied that the complaint is not frivolous, vexatious or without substance, the authority **must** issue a warning letter to the person carrying out the development (unless the development is of a trivial or minor nature). The warning letter must be issued, “as soon as may be”, but not later than six weeks after receipt of a complaint. Section 153 provides that “as soon as may be” after issuing a warning letter, the planning authority **must** undertake an investigation to enable it to decide whether or not to issue an enforcement notice or to apply for an order under PDA section 160 (a planning injunction). This decision is to be taken “as expeditiously as possible”, and there is a statutory objective to ensure that it is taken within 12 weeks of the issue of a warning letter. Where, following its investigation, a planning authority determines that unauthorised development has been or is being carried out, it

must

issue an enforcement notice and/or make an application under section 160, unless there are “compelling reasons” for not doing so.

Judicial remedy

PDA section 160 provides that where an unauthorised development has been, or is being carried out or continued, a planning authority, or "any other person" (whether or not the person has an interest in the land), may make an application to the High Court or the Circuit Court (as appropriate), for an order in relation to the unauthorised development. An application may be made at the Circuit Court level where the market value of the land in question does not exceed €3 million. An order under section 160 may require any person to do anything that the court considers necessary to ensure that:

(i) the unauthorised development is not carried out or continued;

(ii) any land is restored to the condition it was in prior to the commencement of any unauthorised development (in so far as this is practicable); and

(iii) any development is carried out in accordance with the planning permission relating to that development, or any condition attached to that permission.

To this end, the court may require the carrying out of any works, including the restoration, reconstruction, removal, demolition or alteration of any structure or feature. The remedy available under PDA section 160 is often described in practice as a **"planning injunction"**.

Integrated Pollution Control (IPC) and Industrial Emissions Directive (IED) Licensing

Part IV of the Environmental Protection Agency Act 1992 (as amended) provides for a system of integrated licensing of Integrated Pollution Control (IPC) and Industrial Emissions Directive (IED) activities included in the First Schedule to the Act of 1992. A person is prohibited from carrying on an activity specified in the First Schedule to the 1992 Act unless an IPC or IED licence is in force in relation to that activity. Section 99H of the Environmental Protection Agency Act 1992 (as amended), provides that "any person" may apply to the High Court, or to the Circuit Court (as appropriate), for an order in relation to activities subject to the provisions of the 1992 Act. Where the court is satisfied that an activity is being carried on that contravenes the requirements of the 1992 Act, it may make an order requiring the person in charge of the activity concerned to refrain from, or stop, any specified act (including stopping any specified emission). Failure to comply with an order made under section 99H is an offence under the 1992 Act.

Waste

Section 57 of the Waste Management Act 1996 (as amended) (WMA), provides that where, on the application by "any person" to the High Court, the court is satisfied that waste is being held, recovered or disposed of in a manner that causes, or is likely to cause, environmental pollution, or waste collection or waste licensing legislation is being contravened, it may require the person holding, recovering or disposing of the waste to take certain action, or to refrain from acting in a specified way. A person who fails to comply with an order made by the High Court under section 57 is guilty of an offence. Section 58 of the WMA set out remedies for unauthorised holding, recovery or disposal of waste or the contravention of waste collection or waste licensing legislation and provides that "any person" may apply to the appropriate court for an order in this regard. Where the court is satisfied that 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 or is contravening waste collection or waste licensing legislation, it may make an order requiring that person to take specified action. The types of action that may be required of a person include: to discontinue the holding, recovery or disposal of waste within a specified period; or to mitigate or remedy any effects of the unauthorised waste activity in question within a specified time. Failure to comply with an order made under section 58 is an offence.

Air

Section 28 of the Air Pollution Act 1987 (as amended) provides that the High Court, on the application of a local authority or "any other person" may make an order to prohibit or restrict an emission from any premises where the court is satisfied that:

(i) the continuance of the emission (which is not an emission in compliance with an air pollution licence) would give rise to a serious risk of air pollution; or

(ii) the emission is an emission from industrial plant in contravention of an air pollution licence; or

(iii) the emission is an emission from industrial plant for which an air pollution licence is required but in relation to which no such licence has been granted.

In practice very few air pollution licences are now issued under the Air Pollution Act 1987. The licencing function was largely taken over by the EPA following its establishment in 1992. Most industrial plant emissions are now the subject of IPC/IED licencing. However, a small number of activities remain licensable by local authorities under the Air Pollution Act.

An order under section 28 may include such provisions as the court considers appropriate, and may include provisions requiring specific measures to be taken to eliminate or reduce the risk of air pollution. Section 28A of the Air Pollution Act 1987 (inserted by section 18 of the Environmental Protection Agency Act 1992) provides for remedies in the case of unauthorised emissions. "Any person" may make an application to the appropriate court and the court may make an order requiring the occupier of the premises concerned to take specified action, for example, to terminate the emission within a specified period or to mitigate or remedy any effects of the emission concerned within a specified period.

Civil liability for air pollution

Section 28B of the Air Pollution Act 1987 (inserted by section 18 of the Environmental Protection Agency Act 1992) provides for civil liability for air pollution where an unauthorised emission causes injury, loss or damage to a person or to a person's property. Under section 28B, a person may recover damages in any court of competent jurisdiction from the occupier of the premises from which the emission originated in respect of such injury, loss or damage. Section 28B does not apply to an emission under, and in compliance with, an air pollution licence or an IPC/IED licence issued by the EPA. Furthermore, liability under section 28B will not arise where the emission was caused by "an act of God" or was caused by the act or omission of a third party that the occupier could not reasonably have foreseen and guarded against.

Water

Section 10 of the Local Government (Water Pollution) Act 1977 (as amended) provides that "any person" (whether or not they have an interest in the waters concerned) may apply to the appropriate court for an order to mitigate or remedy the effects of water pollution. The court may make a wide range of orders under section 10, including an order:

(i) to terminate the entry or discharge in question within the period specified in the order, or

(ii) to mitigate or remedy any effects of the entry or discharge within the period specified in the order, or

(iii) to pay to the applicant, or such other person as may be specified in the order, a specified amount to cover all or part of any costs incurred in investigating, mitigating or remedying the effects of the entry or discharge in question.

In addition to these general powers, section 10(8) sets out a detailed and extensive range of matters that the court may require in any order it makes under section 10(1). Any breach of an order made under section 10 is an offence. Section 11 of the Local Government (Water Pollution) Act 1977 (as amended) provides that "any person" (whether or not that person has an interest in the waters concerned) may apply to the High Court for an order prohibiting any person from causing or permitting, or continuing to cause or permit, water pollution.

Civil liability for water pollution

Section 20 of the Local Government (Water Pollution) Act 1990 provides for civil liability for water pollution where trade effluent, sewage effluent or other polluting matter enters waters and causes injury, loss or damage to a person or to a person's property. Under section 20, a person may recover damages in any court of competent jurisdiction from the occupier of the premises from which the effluent or matter originated in respect of such injury, loss or damage. Liability will not arise in this particular context if the entry to waters was caused by "an act of God" or was caused by the act or omission of a third party that the occupier could not reasonably have foreseen and guarded against. Section 20 also provides for civil liability to be imposed on any person where the entry

into waters was occasioned by an act or omission of that person which, in the opinion of the court, constitutes a contravention of a provision of the water pollution legislation. Section 20 does not apply to an entry to waters under and in compliance with a water pollution licence or an IPC/IED licence or waste licence issued by the EPA.

Common law (Tort) remedies

The torts that may be of potential relevance in the case of alleged environmental damage caused by an individual or a legal entity are: public and private nuisance; the rule in *Rylands v Fletcher* (i.e. strict liability for the escape of an exceptionally dangerous thing/substance from the defendant's property which results in damage to the plaintiff's property); trespass to land; and negligence. The remedies available are an injunction and/or damages depending on the particular circumstances of the case. An occupier of land affected by the alleged tort has standing to sue in tort: *Hanrahan v Merck Sharp and Dohme* [1988] ILRM 629.

Claims against public authorities

Generally speaking, the State is not immune from suit and may be sued in tort and for alleged breach of constitutional rights. The State may also be potentially liable for loss or damage arising as a result of a breach of EU law (so-called *Francovich* liability). In the specific context of an invalid administrative decision, there is, in principle, a limited possibility to sue a public authority for damages. This situation would only arise in certain specific circumstances, however, for example:

(i) where the administrative act in question also amounted to a tort (e.g. negligence);
(ii) where the public authority acted out of malice, or exercised a power it knew it did not have (tort of misfeasance in public office);
(iii) where the public authority acted in breach of statutory duty;
(iv) or where the public authority acted in breach of constitutional rights.

The usual remedy where an administrative decision is found to be unlawful, is for the court to quash (or annul) the invalid decision in judicial review proceedings.

As regards environmental matters specifically, legislation provides an absolute statutory immunity for the Environmental Protection Agency in respect of the failure to discharge its statutory functions under the Environmental Protection Agency Act 1992: Environmental Protection Agency Act 1992, section 15. The EPA and local authorities enjoy a similar immunity when carrying out their functions under the WMA: Waste Management Act 1996, section 67(1).

Environmental Liability Directive

The Environmental Protection Agency (EPA) is the designated competent authority in Ireland for the Environmental Liability Directive (Directive 2004/35/EC). The Directive is transposed in Ireland by the European Communities (Environmental Liability) Regulations 2008 (SI No 547 of 2008) ("ELR") (as amended).

Procedure to make a request for action

Operators who are responsible for environmental damage or imminent threat of environmental damage are obliged to report this to the EPA. Additionally, requests for action may be submitted to the EPA's Environmental Liability Unit by persons who are affected or likely to be affected by the instance of environmental damage, or by members of organisations that promote protection of the environment.

An online submission form is available, for this purpose, on the EPA's website:
http://www.epa.ie/enforcement/liab/submission/.

VI. Other Means of Access to Justice

The Ombudsman

The Office of the Ombudsman may investigate any action taken by specified public bodies "in the performance of administrative functions" where some person is "adversely affected" by the action: Ombudsman Act 1980, as amended by Ombudsman (Amendment) Act 1984. A person may lodge a complaint with the Ombudsman free of charge. There is no formal standing requirement, as such, but the Ombudsman may decide not to investigate if s/he is of the view that the complainant has an "insufficient interest" in the matter or has not taken reasonable steps to seek redress. Local authorities fall under the Ombudsman's remit, but An Bord Pleanála and the Environmental Protection Agency do not. The Ombudsman does not have jurisdiction to examine a decision to grant or refuse planning permission (the remedies here are an appeal to An Bord Pleanála and judicial review). The Ombudsman's jurisdiction relates to the administrative processes applied by local authorities. For example, a person may complain about how a planning authority responded to a complaint about unauthorised development. The Ombudsman is vested with considerable powers of investigation, including the power to require that documents be furnished to his/her office and/or that a person with relevant information attend before him/her. The Ombudsman may make non-binding recommendations. In practice, however, public bodies usually comply with the Ombudsman's recommendations. The Ombudsman has discretion to recommend a wide range of remedies. Where a person suffers an adverse effect as a result of a local authority's failure to take appropriate action in relation to unauthorised development, the Ombudsman may, for example, recommend payment of compensation and/or may make recommendations for improvements in an authority's administrative procedures relating to enforcement. See, by way of example: Office of the Ombudsman, *Investigation Report on a complaint made against Meath County Council* (July 2010).

Private prosecutions in environmental matters

There is a limited right of private prosecution, but this course of action is very rare in practice. Examples of a right of private prosecution include the Fisheries (Consolidation) Act 1959 (as amended), section 309(1) and the Local Government (Water Pollution) Act 1977 (as amended), section 3(4). Summary prosecutions in planning and environmental matters are usually brought in the District Court by the relevant public authority for example local authorities or the Environmental Protection Agency. Prosecutions on indictment are brought by the Director of Public Prosecutions.

VII. Legal Standing

Planning

Legal Standing	Administrative Procedure	Judicial Procedure
Individuals	Planning application Any person may make submissions or observations on an application for planning permission Appeal to An Bord Pleanála The following individuals may appeal: Applicant for planning permission; Any person who made submissions or observations to planning authority in relation to the application for permission;	Judicial Review A "sufficient interest"

	A neighbouring landowner who did not make submissions or observations may seek leave to appeal.	
NGOs	As for “Individuals” above – plus , in the case of development subject to EIA, NGOs whose aims and objectives relate to the promotion of environmental protection **and** who have pursued those objectives during the period of 12 months preceding the date of the appeal	As for ‘Individuals’ above – **plus**, in the case of development subject to EIA, NGOs whose aims and objectives relate to the promotion of environmental protection **and** who have pursued those objectives during the period of 12 months preceding the date of the appeal
Other legal entities	As for “Individuals” above	As for “Individuals” above
Ad hoc groups	As for “Individuals” above	As for “Individuals” above
foreign NGOs	As for “Individuals” above	As for “Individuals” above
Any other	As for “Individuals” above – **plus** a “prescribed body” under planning legislation that was not properly notified of the planning application by the planning authority	As for “Individuals” above

Integrated Pollution Control (IPC), Industrial Emissions Directive (IED) Licences and Waste Licences

Legal Standing	Administrative Procedure	Judicial Procedure
Individuals	Any person may make submissions to EPA on an application for an IPC or IED licence or a waste licence Any person may object to the proposed determination/decision on the licence application issued by EPA **Note: there is no administrative appeal in respect of IPC, IED and waste licences**	**Judicial Review** A “sufficient interest”
NGOs	As for “Individuals” above	As for “Individuals” above
Other legal entities	As for “Individuals” above	As for “Individuals” above
Ad hoc groups	As for “Individuals” above	As for “Individuals” above
foreign NGOs	As for “Individuals” above	As for “Individuals” above
Any other	As for “Individuals” above	As for “Individuals” above

Planning and environmental law provides for a range of statutory remedies with a view to enforcement by third parties. Generally speaking, these remedies may be invoked by “any person” with the result that standing in this particular context is very generous. “Person” in the context of any enactment is to be read as including a body corporate (e.g. a company) and an unincorporated body of persons, as well as an individual: Interpretation Act 2005, section 18(c). The most significant remedy in practice is the planning injunction under PDA section 160 where “any person” may apply for a court order in the context of unauthorised development. Similarly, the Environmental Protection Agency Act 1992 (as amended) and the Waste Management Act 1996 (as amended), both provide that “any person” may seek judicial enforcement of IPC, IED and waste licences. Water pollution legislation and air pollution legislation contain similar enforcement provisions which may also be invoked by “any person”.

Actio popularis

There is, in effect, *actio popularis* in the case of judicial enforcement by third parties because the relevant statutory remedies may be invoked by any person.

Standing of State institutions or public bodies

State institutions and public bodies have standing in a wide variety of situations. For example, any public body that can demonstrate a “sufficient interest” may challenge a planning decision or a decision of the EPA by way of judicial review proceedings. As explained previously, “any person”, including a public body, may invoke the various statutory remedies available in the case of alleged breach of environmental law. On the criminal side, planning and environmental legislation empowers planning authorities and the EPA to prosecute certain offences summarily in the District Court. More serious offences are prosecuted on indictment by the DPP.

Attorney General

The Attorney General is a necessary notice party where a challenge is mounted to the constitutional validity of any law: RSC Order 60, rule 1. Where a point of constitutional interpretation arises in proceedings, the court may direct that the Attorney is notified: RSC Order 60, rule 2. In both these situations, the Attorney is entitled to become a party to the proceedings as regards the point which arises. Moreover, the Supreme Court has confirmed that the Attorney may apply to intervene in litigation where proceedings raise issues affecting the public interest: *TDI Metro Ltd v District Judge Delap (No 1)* [2000] 4 IR 337.

Human Rights Commission

Under section 6 of the European Convention on Human Rights Act 2003, before a court decides whether to make a declaration of incompatibility, the Attorney General and the Human Rights Commission must be given notice of the proceedings. The Attorney is then entitled to appear in the proceedings and to become a party as regards the issue of the declaration of incompatibility.

Applicability of standing rules governing EIA and IPC/IED procedures

The standing test for leave to bring judicial review proceedings in the case of planning and environmental matters requires that the applicant seeking leave must demonstrate a “sufficient interest”. However, in the specific case of development that is subject to EIA, environmental NGOs that meet certain conditions do not have to satisfy the “sufficient interest” test.

VIII. Legal Representation

Role of lawyers

In Ireland, the legal profession is made up of solicitors and barristers (comprising junior and senior counsel). Barristers mainly undertake specialist advisory work and appear as advocates in the higher courts. Barristers are usually “briefed” by solicitors on behalf of a client. The two professional bodies are the Law

Society of Ireland (solicitors): http://www.lawsociety.ie/ and the Bar Council of Ireland (barristers): https://www.lawlibrary.ie. Lawyers provide advice to their clients in relation to legal matters and represent their clients in court proceedings. It is not compulsory to have legal representation in environmental matters either at the administrative stage or at the judicial stage. In practice, given the complex legal and technical nature of many planning and environmental matters, a party who is not legally represented may be at a considerable disadvantage, particularly when they are involved in proceedings in which the other side is legally represented. At the administrative stage, certain parties such as developers, NGOs and residents associations/community groups will usually engage legal representation for more complex and controversial planning applications (e.g. Strategic Infrastructure Development) and appeals before An Bord Pleanála. Parties will usually engage legal representation for judicial review proceedings, although it is becoming more common for individuals who cannot fund legal representation from their own resources to attempt to represent themselves. Most of the larger solicitors’ firms in Dublin and Cork have specialist planning and environmental law departments. There are a number of solicitors’ firms around the country who specialise in planning and environmental matters. People usually make contact with planning and environmental solicitors through personal recommendations or word of mouth. A number of junior and senior counsel specialise in planning and environmental matters out of the Law Library. The database on the Bar Council website includes a search facility to identify barristers by reference to their areas of specialisation. There are a number of planning and environmental NGOs operating in Ireland, but none of these organisations provide formal legal advice to members of the public.

IX. Evidence

The Irish legal system is adversarial rather than inquisitorial. The onus lies on the parties to present evidence to the court in support of their case. The standard of proof in civil cases is “on the balance of probabilities”. A higher standard of “beyond reasonable doubt” applies in criminal cases. Evidence is provided to the court in accordance with the relevant court rules. The manner in which evidence is provided will vary depending on the nature of the proceedings at issue. In criminal proceedings, the general position is that witnesses present their evidence orally and are subject to cross examination. In the case of the various statutory remedies for alleged breach of planning and environmental law, evidence is usually provided on affidavit (i.e. a sworn written statement) and a deponent (i.e. the person who swore an affidavit) may be cross-examined on their affidavit if there is any dispute as to the facts. In civil claims, e.g. a tort claim in private nuisance, the general position is that the parties present sworn oral evidence to the court and witnesses are subject to cross examination. In judicial review proceedings, evidence is usually provided by way of affidavit, but if the justice of a particular case so requires, the court may order that a deponent attend for cross examination. If there is a conflict of evidence on the affidavits which needs to be resolved, the court will usually direct an oral hearing.

In criminal cases, evidence is evaluated by the judge or by the jury in cases where there is a jury trial. In civil proceedings, evidence is evaluated by the judge, except for cases where there is a jury (jury trials do not arise in civil planning and environmental matters). Parties may present relevant expert evidence. Any expert evidence is not binding on the court. It falls to the judge (or the jury where there is a jury trial) to take account of all the evidence presented by the parties, to determine what weight to assign to the evidence and to adjudicate on the matter as they see fit.

X. Injunctive Relief

Administrative appeal and Judicial Review

The general position is that an administrative appeal (e.g. an appeal to An Bord Pleanála from a decision to grant planning permission), and an application for judicial review, do not have automatic “suspensive effect”; in other words, there is no automatic stay on the implementation of the contested decision. In practice, however, it would be unusual (at least in most cases) for a developer to proceed with the project pending the determination of a planning appeal and /or judicial review proceedings. Opting to proceed with a development in circumstances where leave to bring judicial review proceedings has been granted was described by the High Court as “commercial folly”: *Seery v An Bord Pleanála* [2001] 2 ILRM 151. It is open to the applicant seeking leave to bring judicial review proceedings to apply to the High Court for an order directing a stay on the contested decision: RSC Order 84, rule 20(8)(b).

Undertaking in damages

In *Seery v An Bord Pleanála* [2001] 2 ILRM 151, the High Court took the view that the grant of leave had the equivalent impact on the developer as the grant of an interlocutory injunction and the court therefore required the applicant to give an undertaking in damages on the basis of RSC Order 84, rule 20(6). The High Court now has express power to require an applicant seeking leave to give an undertaking in damages as a condition for granting leave to challenge a planning decision: PDA section 50A(6). A court may exercise discretion to dispense with the requirement for an undertaking as to damages: *Minister for Justice v Devine* [2012] IESC 2. It may also refuse to require such an undertaking where proceedings are of a sufficient public interest nature.

Criteria for interlocutory relief

Where no application for a stay has been made, and it appears that a developer intends to proceed notwithstanding a live judicial challenge, the applicant for judicial review may seek interlocutory relief from the High Court. The criteria governing the grant of interlocutory relief were set down definitively by the Supreme Court in *Campus Oil Limited v Minister for Industry and Energy (No 2)* [1983] IR 88. First, the applicant must demonstrate that there is a serious issue to be tried; secondly, damages must be an inadequate remedy; and, thirdly, the “balance of convenience” must lie in favour of the grant of an injunction. The Supreme Court has clarified that the criteria governing the grant of a stay and the grant of an interlocutory injunction are the same: *Okunade v Minister for Justice, Equality and Law Reform* [2012] IESC 49. A decision on an application for a stay, or for interlocutory relief, may be the subject of an appeal to the Supreme Court.

Statutory remedies for alleged breach of planning and environmental law

The court has jurisdiction to grant interim or interlocutory relief in the context of the various statutory remedies available for alleged breach of planning and environmental law.

Actions in tort

A court may grant interlocutory relief pending the determination of a tort claim. Once a plaintiff has proved private nuisance, a permanent injunction will usually follow, but the court may award damages instead of an injunction in certain limited cases: *Patterson v Murphy* [1978] ILRM 85.

XI. Costs

The different types of costs that may arise for an applicant will vary depending on the nature of the proceedings and include: court fees, witness fees and expenses (including any expert witnesses), lawyers’ fees and the costs involved in preparing and copying documentation, postage etc.

Court fees

In Ireland, court fees are relatively modest. The level of fee varies depending on the nature of the proceedings and the court in which the proceedings are brought. For example, the court fee payable to lodge the originating *ex parte* application to bring judicial review proceedings is €138, in addition to a fee of €19 on filing the grounding affidavit in support of the application. Details of current court fees are available on the Courts Service website: http://www.courts.ie/Judgments.nsf/Webpages/HomePage?OpenDocument.

Experts’ fees, lawyers’ fees etc.

It is difficult to provide any general indication of experts' fees and lawyers' fees. These fees will vary considerably depending on a range of factors including the nature of the proceedings, the complexity of the case and the expertise of the expert(s)/lawyer(s) involved in the case. Special costs rules apply in certain categories of environmental litigation. In cases where the special costs rules apply, the general position is that a litigant will only be liable for their own costs. There is also the possibility of a litigant recovering their costs (or a portion of their costs) from the other side where they are successful in the litigation or if they are unsuccessful and the matter is one of exceptional public importance. The special costs rules are explained below.

Injunctive relief

As explained above, court fees vary depending on the nature of the proceedings and the level of court in which the proceedings are brought. The court may require an undertaking in damages as a condition to the grant of injunctive relief.

The 'loser pays principle'

The general position in Irish law is that liability for legal costs lies in the court's discretion and the usual rule is that costs follow the event, or, in other words, the 'loser pays principle' applies: RSC Order 99, rule 1. The court may depart from the loser pays principle and make no order as to costs, or may award costs in favour of a losing party, where, for example, proceedings involve public interest litigation. A special costs rule applies in the case of judicial review proceedings involving the EIA, IPPC or SEA directives (PDA, section 50B) and in certain proceedings to enforce planning and environmental law (Environment (Miscellaneous Provisions) Act 2011, Part 2). The court may also depart from the loser pays principle in "test cases", as noted in *Cork County Council v Shackleton* [2007] IEHC 334.

Costs in judicial review proceedings involving EIA, IPPC or SEA directives

The default position under PDA section 50B is that each party to the judicial review proceedings (including any notice party) must bear its own costs, subject to certain exceptions. The main thrust of the section 50B costs rule is to remove the risk of an unsuccessful challenger being held liable for the costs of the winning party (or parties).

The court has discretion to allow a successful challenger to recover their costs (or an element of their costs) from the other side: PDA, section 50B(2A). The court also has discretion to make an award of costs in favour of a party "in a matter of exceptional public importance and where in the special circumstances of the case it is in the interests of justice to do so": PDA, section 50B(4). The court has discretion to award costs against a party in certain specified circumstances, including: where it considers that the claim is "frivolous or vexatious"; or because of the manner in which the party has conducted the proceedings; or where the party is in contempt of the court: PDA, section 50B(3).

Costs in certain proceedings to enforce planning and environmental law

Part 2 of the Environment (Miscellaneous Provisions) Act 2011 establishes a special costs rule for certain proceedings to enforce planning and environmental law. Section 3(1) of the 2011 Act provides that, in certain environmental cases, the general rule is that each party must bear its own costs. Section 4(1) specifies the type of proceedings which fall within the scope of the special costs rule. It applies to "civil proceedings" instituted by a person:

(a) for the purpose of ensuring compliance with, or the enforcement of, a statutory requirement or condition or other requirement attached to a licence, permit, permission, lease or consent specified in [s4(4)], or

(b) in respect of the contravention of, or the failure to comply with such licence, permit, permission, lease or consent,

and where the failure to ensure such compliance with, or enforcement of, such statutory requirement, condition or other requirement referred to in *paragraph (a)*, or such contravention or failure to comply referred to in *paragraph (b)*, has caused, is causing, or is likely to cause, damage to the environment. The special costs rule does not apply to proceedings (or any part of proceedings) for which damages, arising from damage to persons or property, are sought. Section 4(4) provides a list of the licences, permits and other consents referred to in section 4(1), and this list includes the most significant types of licences and consents in practice for example: an IPC licence, an air pollution licence, a water pollution licence, a water services licence, a waste permit or licence, a dumping at sea permit, a foreshore lease/licence; and a permission or approval granted under the PDA. Section 7 provides that a party to proceedings falling within the scope of section 3 may apply to the court at any time before, or during, the proceedings, for a determination that section 3 applies to the proceedings. It is also open to the parties to agree that section 3 applies. The special costs rule also applies where court proceedings are brought to ensure compliance with environmental or planning law in a situation where no licence or planning permission (or other relevant consent) has been obtained (e.g. in the case of wholly unauthorised development or unlicensed activity: *Hunter v Nurendale Ltd t/a Panda Waste* [2013] IEHC 430.

XII. Financial Assistance Mechanisms

Payment of court fees is mandatory and there is no provision for any exemptions for members of the public or NGOs in planning and environmental matters. **There is very limited provision for financial assistance mechanisms. One notable exception is the provision in the PDA which allows for the recovery of reasonable costs associated with participating in the planning process before An Bord Pleanála in the case of specified categories of development, including strategic infrastructure development. In these specific cases, the Board has an "absolute discretion" to award a contribution to the reasonable costs incurred by a person during the course of consideration of the planning application by the Board: PDA section 37H(2)(c).**

Legal Aid

Access to civil legal aid and advice is governed by the Civil Legal Aid Act 1995 (as amended) and is administered by the Legal Aid Board. In principle, legal aid may be granted in respect of judicial review proceedings. However, certain "designated matters", are excluded, for example representative actions. Legal aid is not available to a group or to an individual member of a group, where the individual is acting on behalf of the group. Legal aid is not available in respect of proceedings before an administrative tribunal (e.g. An Bord Pleanála). The Legal Aid Board's resources are limited and an individual who has been granted civil legal aid or advice may be required to wait for a considerable period of time before actually getting access to legal services. Procedures have been put in place to enable the Board to deal with priority cases. Individual applicants for civil legal aid and advice must satisfy the specified criteria governing financial eligibility. As regards legal aid, the legislative framework also prescribes a detailed merits test. Essentially, the applicant must have reasonable grounds for bringing the proceedings and must be reasonably likely to succeed. Furthermore, the proceedings must be the most satisfactory means of achieving the result sought by the applicant. The Board is empowered to employ a form of cost-benefit analysis in determining whether or not it is reasonable to grant legal aid in a particular case. In practice and due to their nature, the majority of the cases in which the Board provides legal aid and advice involve family law matters.

Pro bono legal assistance

It is open to individuals and environmental NGOs to approach lawyers with a view to securing legal representation on a *pro bono* basis, a reduced fee basis, or a contingency fee basis. A number of pro bono legal advice schemes exist in Ireland. Ultimately, legal fees are a matter for agreement between lawyers and their potential clients. In practice, depending on the strength of a case, lawyers with an interest in planning and environmental law may consider taking on a case on a contingency fee basis. Special costs rules apply in certain categories of planning and environmental litigation. There are no legal clinics that deal with environmental cases. There are a significant number of planning and environmental NGOs operating in Ireland, but none of these organisations provide formal legal advice to members of the public. There are lawyers with environmental and planning law expertise who provide services on such bases.

XIII. Timeliness

Times limits within which public authorities must deliver decisions

Planning and environmental legislation sets down various time limits within which decisions should be taken, but there is a provision for extension of time in certain cases, for example, where the public authority requires further information from the applicant. An Bord Pleanála is obliged "to ensure that appeals are disposed of "as expeditiously as may be" and, to that end, to take all the steps open to it to ensure that, in so far as is practicable, there are no avoidable delays at any stage in the determination of appeals: PDA section 126(1)). The Board has a general statutory objective to determine appeals within a period of 18 weeks beginning on the date on which the appeal was received: PDA section 126(2).

Sanctions in the event of delayed decision-making

Planning authorities are required to make decisions on planning applications within the prescribed period (normally 8 weeks from the date the application is lodged with the authority). Where a planning authority fails to make a decision on an application for permission within the prescribed period, the authority will proceed to make the decision and pay the applicant a sum which is equal to the lesser amount of three times the prescribed planning application fee or €10,000. Where the planning authority fails to make the decision within 12 weeks after the expiry of the prescribed period, the permission is considered to have been granted by default: PDA, section 34(8)(f).

Default permission is not, however, available in the case of development that is subject to EIA or Appropriate Assessment. Where the authority fails to make the decision within 12 weeks after the expiry of the prescribed period, in relation to an application which requires an EIA, a determination of whether an EIA is required, or an Appropriate Assessment, it will pay the applicant a sum which is equal to the lesser amount of three times the prescribed planning application fee or €10,000. Where the authority fails to make the decision after subsequent 12-week periods, it will again pay the appropriate sum at the end of each period; however, no more than five payments of the appropriate sum may be paid to the applicant in respect of failure to make the decision.

Time limits for judicial procedures in environmental matters

The applicable time limits vary considerably depending on the nature of the proceedings, the level of court and, in the case of the Circuit Court and the District Court, the part of the country in which the proceedings are brought.

When deciding on an application for section 50 leave (permission), or the substantive application for judicial review on foot of such leave, the High Court must "act as expeditiously as possible consistent with the administration of justice": PDA, section 50A(10). Significant changes to RSC Order 84, rules 18 to 29 inclusive, have recently been introduced: Rules of the Superior Courts (Judicial Review) 2011 (SI No 691 of 2011). These new rules aim to streamline the judicial review procedure and eliminate unnecessary delay. For example, Order 84, rule 24(3) provides that the High Court may give various directions, and make a range of orders, for the conduct of the proceedings "as appear convenient for the determination of the proceedings in a manner which is just, expeditious and likely to minimise the costs of those proceedings."

Typical duration of an environmental court case in different types of procedures

The duration of proceedings may vary considerably depending on the nature of the proceedings and the court in which the proceedings are brought and so it is difficult to estimate the likely duration of proceedings in general terms. In the case of judicial review proceedings which are entered in the High Court Commercial List, for example, the duration of the proceedings could be within 6 months. It is more difficult to estimate the likely time frame in the case of judicial review proceedings in the regular judicial review list.

Deadlines for the court to deliver judgment and sanctions against delay

Section 46 of the Courts and Court Officers Act 2002 (as amended) provides for the establishment and maintenance of a Register of Reserved Judgments with a view to encouraging timely delivery of judgments and keeping the parties informed of the state of play: Courts and Court Officers Act 2002 (Register of Reserved Judgments) Regulations 2005 (SI No 171 of 2005). The general rule is that if a judgment is not delivered within two months of the date on which it was reserved, the President of the relevant court must list the proceedings before the judge who reserved judgment and must give the parties notice of the date on which the proceedings are listed. Where proceedings are listed in this manner, the judge who reserved judgment must specify the new date on which s/he proposes to deliver judgment in the proceedings. This procedure must be followed on the expiration of each subsequent two month period until judgment is delivered. The date(s) specified by the judge must be entered in the register.

XIV. Other Issues

In practice, planning decisions are usually challenged by way of an administrative appeal to An Bord Pleanála in the first instance (in cases where such an appeal is available). The Board's decision may be challenged in judicial review proceedings. Decisions of the Environmental Protection Agency may only be challenged by way of judicial review. In practice, judicial challenges are usually brought after the public authority in question has taken its final decision on the application for permission/consent/licence. Information is available to the public on access to justice in environmental matters on the Citizens Information Board website

http://www.citizensinformation.ie/en/environment/environmental_protection/judicial_review_in_planning_and_environmental_matters.html and on websites of individual relevant bodies (e.g. An Bord Pleanála *Judicial Review Notice*: http://www.pleanala.ie/

Alternative Dispute Resolution in environmental matters

Alternative Dispute Resolution (ADR) is reasonably well developed in specific areas, for example family law (family mediation) and in certain categories of high value commercial disputes. ADR is rarely deployed in practice in the context of planning and environmental litigation.

XV. Being a Foreigner

There are no express anti-discrimination clauses regarding language or country of origin in the Rules of the Superior Courts or the Circuit Court and District Court rules. Under the Constitution, *An Ghaeilge* (Irish), as the national language, is the first official language and English is recognised as a second official language. In practice, the vast majority of court proceedings are in English – except in *Gaeltacht* areas or where parties opt for proceedings to be conducted in Irish. Where a person requires an interpreter in order to understand criminal proceedings, an interpreter is provided and the costs are borne by the Courts Service.

In respect of the Circuit and District Courts, interpreters are provided in some civil or family law cases. It is a matter for the judge to make a decision as to whether an interpreter should be provided in such cases. If a judge directs that an interpreter be provided in a civil case, then the cost is borne by the Courts Service. However, in respect of the High Court, it is a matter for the parties to the case to engage and bear the cost of an interpreter. The only exception is in respect of extradition cases heard in the High Court, in which case the Court Service is obliged under legislation to bear the cost of interpreters if they are required.

XVI. Transboundary Cases

Ireland is a Party to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and is also obliged to give effect to Article 7 of the EIA directive concerning transboundary effects.

The procedures that apply where a project is likely to have significant transboundary effects in another EU Member State and/or a State that is a Party to the Espoo Convention are found in section 174 of the Planning and Development Acts 2000 to 2011 and Part 10, Chapter 5 of the Planning and Development Regulations 2001 to 2013. In outline, a planning authority, or An Bord Pleanála (the Board),as appropriate, must notify the Minister for Environment, Community and Local Government of any planning application/appeal or application for strategic infrastructure which, in its opinion, would be likely to have significant effects on the environment in a transboundary State. The notification must provide certain information regarding the application/appeal including the nature and extent of the proposed development and must be accompanied by any Environmental Impact Statement (EIS).

The Minister has a separate power to require a planning authority/Board to provide him/her with information where s/he is of the opinion that an application is likely to have significant transboundary effects, or where a request has been made by a transboundary State that it be provided with information on a proposed development. The planning authority/the Board must provide specified information to the transboundary State and must enter into consultations with it in relation to the potential transboundary effects of the proposed development. Where the transboundary State wishes to participate in the decision-making procedure, it must be provided with the EIS and other relevant information. The planning authority/the Board must have regard to the views of the transboundary State as regards the potential environmental impact of the proposed development. Notice of the decision must be sent to the transboundary State.

Under Irish planning law, no distinction is drawn between the public concerned in Ireland or in another EU Member State and/or transboundary State. The usual standing rules apply to the public or NGOs in a transboundary State. Any person may make a submission or observation on a planning application. The applicant for permission and any person who made a submission or observation on the application is entitled to lodge an appeal to the Board (in cases where there is a right of appeal). In the case of EIA development, environmental NGOs that meet certain requirements may appeal to the Board even though they did not participate in the process before the planning authority.

The standing test for judicial review is a “sufficient interest” in the matter to which the application relates. In the case of EIA development, environmental NGOs that meet certain requirements are exempt from the “sufficient interest” test. The requirements specified in the PDA do not distinguish between NGOs based in Ireland and non-resident NGOs and there is no formal requirement that an NGO must be active in Ireland in order to qualify for this exemption from the standing test.

A challenge by way of judicial review to any planning decision taken by the Irish competent authorities must be brought in the Irish courts. The Irish Supreme Court has ruled that the Irish courts do not have jurisdiction to determine the lawfulness and validity of administrative procedures and decisions of another Member State authorising development projects to be carried out within the boundaries of that State: *Short v Ireland* [2006] IESC.

Related links

Legislation

Text of primary legislation (Acts of the *Oireachtas*) and secondary legislation available via the Irish Statute Book: http://www.irishstatutebook.ie/

Amendments to legislation may be tracked via the Legislation Directory: http://www.irishstatutebook.ie/

Bills (i.e. draft legislation) are available via the Oireachtas website:

https://www.oireachtas.ie/

Court Judgments

Judgments of the Superior Courts are generally published on the Courts Service of Ireland website:

http://www.courts.ie/Judgments.nsf/Webpages/HomePage?OpenDocument

Judgments are also available via the Irish Legal Information Institute (IRLII) website hosted by the Faculty of Law, University College Cork: http://www.irlii.org/

Legal Profession

Law Society of Ireland

http://www.lawsociety.ie/

Bar Council of Ireland

http://www.lawlibrary.ie/

Environmental NGOs

Irish Environmental Network (IEN) – Network of National Environmental Organisations

http://ien.ie/

Environmental Pillar

http://environmentalpillar.ie/

An Taisce (National Trust for Ireland)

http://www.antaisce.org/

Friends of the Irish Environment

http://www.friendsoftheirishenvironment.org/

Selected State Bodies and Public Authorities

Department of Environment, Community and Local Government

http://www.environ.ie/en/

Department of Agriculture, Food and the Marine

https://www.agriculture.gov.ie/

Department of Arts, Heritage and the Gaeltacht

http://www.ahg.gov.ie/

Department of Communications, Energy and Natural Resources

http://www.dcenr.gov.ie/

An Bord Pleanála

http://www.pleanala.ie/

Environmental Protection Agency

http://epa.ie/

Office of the Ombudsman

https://www.ombudsman.ie/

Office of Commissioner for Environmental Information

https://www.ocei.ie/

Information on access to justice in environmental matters provided to the public

Citizens Information Board – Environment pages

http://www.citizensinformation.ie/en/environment/environmental_protection/judicial_review_in_planning_and_environmental_matters.html

An Bord Pleanála: Judicial Review Notice

Text available at: http://www.pleanala.ie/

[1] Subject to Article 7(7).

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