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# The International Comparative Legal Guide to: Environment Law 2010

A practical cross-border insight  
into environment law

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# Ireland



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## 1 Environmental Policy and its Enforcement

### 1.1 What is the basis of environmental policy in Ireland and which agencies/bodies administer and enforce environmental law?

Irish environmental law and policy is influenced primarily by EU law. Much of the current environmental legislation caters for the transposing of EU Directives into Irish law.

The Environmental Protection Agency (EPA) together with local government authorities namely, the 29 County Councils and 5 City Councils, are the principal bodies responsible for the administering and enforcement of environmental legislation in Ireland.

The EPA has responsibility for a wide range of licensing, enforcement, monitoring and assessment activities associated with environmental protection. The EPA works with the various government agencies and departments involved in environmental protection.

The EPA is responsible for regulating activities that have significant polluting potential. EPA responsibilities encompass: Integration Pollution Prevention Control (IPPC); Licensing Waste; Licensing Waste Water Discharge Authorisation (Licences and Certificates of Authorisation); Emissions Trading; The contained use and deliberate release of Genetically Modified Organisms (GMOs); Volatile Organic Compounds (VOC) permits; and Dumping at Sea permits. The EPA is also the competent authority in respect of the Environmental Liability Director regime, which was transposed into Irish Law on 1 April 2009.

The EPA has a dedicated Office of Environmental Enforcement (OEE) which implements and enforces environmental legislation in Ireland. The OEE's published Environmental Policy sets out the general principles that it follows in relation to enforcement and prosecution.

The EPA works with local government authorities and other public sector bodies involved in enforcement activities, including the Fisheries Boards, the Health Services Executive, an Garda Síochána, the Criminal Assets Bureau, the Revenue Commissioners and the Office of Corporate Enforcement.

The local government authorities' primary responsibility in environmental law is in decision making, administration and enforcement of law in relation to land development as well as the management of air, water, waste and biodiversity. Decisions of the local authorities in relation to applications for planning permissions, water and air pollution licences can be appealed to An Bord Pleanála – the Planning Appeals Board.

The civil and criminal courts at all levels are also involved in the enforcement of environmental law. Other bodies involved in administering environmental law are:

- The Department of Communications, Energy and Natural Resources, the various Harbour Authorities and the Fisheries Boards in relation to marine pollution.
- The Department of the Environment Heritage and Local Government in relation to nature conservation law and heritage law.
- The Radiological Protection Institute of Ireland (RPII) in relation to protection of the environment from ionising radiation through regulation and licensing of all those who use radiation.

### 1.2 What approach do such agencies/bodies take to the enforcement of environmental law?

The Office of Environmental Enforcement (OEE) within the EPA is dedicated to the implementation and enforcement of environmental legislation in Ireland. It is directly responsible for enforcing EPA licences issued in relation to waste and IPPC activities. It also supervises the environmental protection activities of the local government authorities by auditing their performance, providing advice and guidance, and, in appropriate cases, giving binding directions.

The OEE's published enforcement and prosecution policy states that it is based on the principles of proportionality, consistency, transparency, targeting and implementation of the polluter pays principle.

The OEE and local government authorities at their discretion use various enforcement tools (not all of which have a statutory basis) such as warning letters, statutory notices requiring specific actions, threats to prosecute and court prosecution. The approach taken and the tools used generally depend on the nature of the event giving rise to the environmental concern although there can be inconsistency between local government authorities as to their approach which may be due to limited resources in some cases. Complaints made by private citizens to these bodies may result in the initiation of enforcement steps.

### 1.3 To what extent are public authorities required to provide environment-related information to interested persons (including members of the public)?

In addition to public registers such as the EPA's public register and local government authorities planning enforcement files, environment related information held by or for a public authority is required to be released to the public upon request under European Communities (Access to Information on the Environment) Regulations 2007 which implements EU Directive 2003/4/EC on public access to

environmental information. The Commissioner for Environmental Information (CEI) decides appeals taken by members of the public who are not satisfied with the outcome of their requests for environmental information. The Freedom of Information Acts 1997 to 2003 also caters for the making public, publically held environmental information on request by members of the public subject to certain exceptions. The two systems operate in parallel although a wider range of public authorities are covered by the AIE Regulations than by the FOI legislation. There are also material differences in the grounds under which access to information can be refused under the two legislative codes. Guidelines on the Regulations are available at [www.environ.ie/en/AboutUs/AccessstoInformationontheEnvironment/RHLegislation/FileDownload.2481.en.pdf](http://www.environ.ie/en/AboutUs/AccessstoInformationontheEnvironment/RHLegislation/FileDownload.2481.en.pdf).

## 2 Environmental Permits

### 2.1 When is an environmental permit required, and may environmental permits be transferred from one person to another?

Under current environmental legislation in general terms activities that may cause pollution or that pose significant risk to the environment such as activities which cause discharges to waters, sewers and to the atmosphere, any waste related activity and GMO's require environmental authorisations in the form of licences or permits. Both the EPA and the local government authorities are primarily responsible for the issuance of most forms of environmental authorisations.

Generally most types of environmental permits may be transferred from one person to another subject to the fulfilment of specific provisions of the regulating body concerned for the relevant licence type in accordance with the relevant legislation such as the meeting suitability, financial capacity and experience requirements.

The EPA must approve the transfer of IPPC licences and waste licences. The local government authorities must approve the transfer of waste permits. The transfer of waste collection permits, water and air licences are not specifically provided for under relevant legislation and opinions differ as to their transferability.

### 2.2 What rights are there to appeal against the decision of an environmental regulator not to grant an environmental permit or in respect of the conditions contained in an environmental permit?

Decisions of the EPA on licences may be appealed to a separate division within the EPA for further re-consideration.

Decisions of local government authorities relating to planning, water and air licences may be appealed to an Bord Pleanála - the Planning Appeals Board - subject to certain conditions such as the payment of a fee and also that in relation to a planning permission a person must have participated in the decision making on a planning permission at local authority level. In relation to decisions on waste collection permits, the appeal must be brought in the District Court. Similarly the forum for appeals on decisions on waste facility permits and certificates are the courts of competent jurisdiction.

### 2.3 Is it necessary to conduct environmental audits or environmental impact assessments for particularly polluting industries or other installations/projects?

An Environmental Impact Assessment is required to be carried out for projects that are likely to have a significant effect on the environment. An EIA is mandatory if the project is classified as

such in the legislation implementing Directive 85/337/EEC (as amended) (namely, the Planning and Development Acts, the Planning and Development Regulations 2001 to 2005 and the European Communities (Environmental Impact Assessment) Regulations, 1989-2006). In sectors such as sectors agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism and land use planning, Strategic Environmental Assessments must be applied to plans and programmes prepared by public sector bodies to assess their environmental effect before they are adopted. The legislation implementing the SEA Directive are the Planning and Development (Strategic Environmental Assessment) Regulations 2004 and the European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations 2004.

It is the obligation of all licence holders to ensure compliance with their relevant licence conditions which include sampling, analysis and reporting of via monthly/quarterly/annual reports made available to the relevant body in accordance with the conditions of their licences. As part of this self assessment, many organisations will conduct their own internal audits to ensure continued compliance and to assess possible improvement strategies. The EPA has the power to carry out audits of activities licensed by it which includes inspections and emission monitoring. The EPA also has the power to carry out audits of the local government authorities environmental management and enforcement activities. In addition the local government authorities have powers to carry audits of licensed activities.

### 2.4 What enforcement powers do environmental regulators have in connection with the violation of permits?

Substantial powers have been provided to regulatory authorities under environmental legislation. These include review of permits, revocation of the permit or suspension, issuing notices of non-compliance imposing mandatory remedial steps to be taken and bringing a criminal prosecution. Criminal prosecution may result in fines being imposed of up to €15,000,000 or imprisonment of up to 10 years. Wide powers are also available to regulators under environmental legislation to seek court orders requiring remedial action to be taken to prevent, limit or cease pollution.

## 3 Waste

### 3.1 How is waste defined and do certain categories of waste involve additional duties or controls?

Waste is defined in Ireland in accordance with Directive 2006/12/EC on waste and case law of the European Court of Justice. The new Waste Framework Directive, 2008/98/EC may bring some change in how waste is defined. It will explicitly exclude from the scope of the waste regime unexcavated contaminated soil and clarifies how to determine when waste ceases to be waste. The 2008 Directive must be transposed into Irish law by 12 December 2010. It is proposed to transpose this new Directive by way of statutory instrument by this date. The draft legislation is not yet publically available.

Certain categories of waste such as hazardous waste, end of life vehicles, sewage etc. involve additional duties and controls.

### 3.2 To what extent is a producer of waste allowed to store and/or dispose of it on the site where it was produced?

The storage and disposal of waste requires authorisation. The licence or permit applicable to the site in question regulates the

storage and/or disposal of waste on the site where it is produced.

Pursuant to the Waste Management (Facility Permit and Registration) Regulations 2007 (as amended), specified wastes may be temporarily stored at the location where they were produced or elsewhere, provided they have been registered under the Regulations with the relevant local authority or where produced by the local authority, by the EPA unless exempted from registration.

### 3.3 Do producers of waste retain any residual liability in respect of the waste where they have transferred it to another person for disposal/treatment off-site (e.g. if the transferee/ultimate disposer goes bankrupt/disappears)?

Where producers of waste dispose/transfer waste to a licensed entity and in accordance with their licence conditions, then they do not retain any residual liability under the waste management regime. Where this procedure is not followed, then they are in breach of their licence obligations and may as a consequence be found liable along with the transferee for any residual liability accruing. If waste is transferred to an unauthorised person (as defined in the Waste Management Acts (WMA)) title to the waste does not pass and the transferor of the waste will remain a holder of the waste for the purposes of liability under the WMA.

### 3.4 To what extent do waste producers have obligations regarding the take-back and recovery of their waste?

Waste producers have take-back obligations in relation to certain waste streams such as waste electrical and electronic equipment, end of life vehicles, batteries, packaging waste, farm plastics etc. Compliance with these obligations can be achieved by participation in specific approved waste recovery schemes such as REPAK.

## 4 Liabilities

### 4.1 What types of liabilities can arise where there is a breach of environmental laws and/or permits, and what defences are typically available?

Breaches of environmental law can result in liabilities of either a civil or criminal nature or in certain instances both, under common law or under statute. For example, it is a criminal offence to breach the conditions of a licence or permit or fail to comply with a statutory notice issued by the regulators in respect of a polluting activity. Conviction for a summary criminal offence will result in fines of between €1,000 and €3,000 and/or 6 months imprisonment. Conviction on indictment will result in fines of up to €15,000,000 and/or imprisonment of up to 10 years. Civil liability for pollution arises from negligence, nuisance or trespass and will result in an award of damages and possibly remedial action.

At common law it is a defence to a prosecution to demonstrate that the act complained of was caused by either an act of God or by an intervening third party.

A defence of reasonable care, or that the act was authorised by an environmental permit may be pleaded in cases of some statutory environmental offences however strict liability may attach to specific statutory environmental breaches.

### 4.2 Can an operator be liable for environmental damage notwithstanding that the polluting activity is operated within permit limits?

Generally where discharges from a facility are within their

permitted limits, no liability for environmental damage will arise under the relevant statute although liability for breaches of other provisions of the statute may be found. However liability may still arise under common law to third parties if negligence, nuisance or trespass is proved.

### 4.3 Can directors and officers of corporations attract personal liabilities for environmental wrongdoing, and to what extent may they get insurance or rely on other indemnity protection in respect of such liabilities?

Directors and officers of corporations may be found personally liable for acts of environmental wrongdoing where as a result of their own acts or omissions, they have caused or allowed the creation of circumstances giving rise to the commission of the offence through their act or omissions.

It is possible for directors to get insurance cover against civil liabilities but not against criminal liabilities.

### 4.4 What are the different implications from an environmental liability perspective of a share sale on the one hand and an asset purchase on the other?

Environmental liability will pass to the purchaser in a share sale as the liability remains with the company. Generally, liability will not pass to the purchaser in an asset purchase sale where the vendor has failed to comply with its environmental obligations unless the asset itself continues to be in breach of environmental laws. If the asset transfer involves the transfer of contaminated land the purchaser may become liable as occupier or owner. In relation to an IPPC licensed activity, a transfer of the IPPC licence results in a transfer of all liabilities in relation to this licensed activity.

### 4.5 To what extent may lenders be liable for environmental wrongdoing and/or remediation costs?

The extent of a lender's liability will depend on the extent of control that the lender has over the operation of the asset. Potential liability will depend on the nature of security taken over the asset. If the lender steps in under the security arrangement and takes over control or operation of the asset for example, it may become liable for remediation costs imposed by a regulator.

## 5 Contaminated Land

### 5.1 What is the approach to liability for contamination (including historic contamination) of soil or groundwater?

Ireland does not have in place a dedicated regulatory regime to specifically regulate identification and remediation of historic contaminated land. The approach taken will depend on the nature and extent of the contamination and the intended use of the land. In relation to land contamination, in general, liability will lie with the owner or occupier of the land and in relation to groundwater liability will lie with the person who caused or permitted contamination. Liability for contaminated land or groundwater can be dealt with under an array of regulatory regimes, such as the Environmental Liability Directive regime (as transposed into Irish law by the Environmental Liability Regulations 2008), water pollution law, waste management regime, IPPC regime, and planning law (in respect of contaminated land at least). As regards liability for historic contamination this may be dealt with under the water pollution regime where the contaminated land gives rise to

continuing water pollution. Where development is planned, the planning control regime can play a central role in ensuring contaminated land is identified, assessed and remediated regardless of when the activities giving rise to the contamination occurred.

The regulatory approach to contamination of soil may change when and if the contaminated land provision of the Soil Framework Directive Proposal is required to be transposed into Irish law.

### 5.2 How is liability allocated where more than one person is responsible for the contamination?

With the exception of the Environmental Liability Regulations 2008, environmental legislation in Ireland does not explicitly allocate liabilities. In the Environmental Liability Regulations liability for land damage makes all operators who contribute to the contamination jointly and severally liable. Joint and several liability is generally the approach adopted in civil law when apportioning liability in Ireland.

Private contract arrangements such as contracts for sale and leases will usually allocate liability as between the property owner or purchaser and tenant. Generally a lease will provide that the cost of repair or reinstatement of a property is the responsibility of the tenant however it is of note that the repair clause usually does not make explicit reference to 'reinstatement' or 'repair' as regards land contamination.

### 5.3 If a programme of environmental remediation is 'agreed' with an environmental regulator can the regulator come back and require additional works or can a third party challenge the agreement?

The regulator will usually be able to require additional works where this is necessary or appropriate taking account of the circumstances. Regulatory authority decisions are capable of being judicially reviewed usually on procedural grounds subject to satisfying *locus standi* requirements.

### 5.4 Does a person have a private right of action to seek contribution from a previous owner or occupier of contaminated land when that owner caused, in whole or in part, contamination; and to what extent is it possible for a polluter to transfer the risk of contaminated land liability to a purchaser?

The principle of *caveat emptor* still applies to land transactions in Ireland. Therefore unless the contract terms or circumstances provide otherwise the current owner may not be able to seek contribution from the previous owner who caused or contributed to the contamination. Under contract law the purchaser can assume liability for future risk of contamination. Therefore it is important that a purchaser investigates the condition of the property and raises pre-contract enquiries. Depending on the circumstance of the case, liability (criminal or civil) could still attach to the previous owner.

A private right of action may arise if the polluter has misrepresented information on the property or has failed to make disclosure in accordance with the requirements of the contract.

Where the purchaser is also taking a transfer of an IPPC licence, the purchaser is deemed to have assumed and accepted all liabilities, requirements and obligations provided for in or arising under the licence, regardless of how and in respect of what period, including a period before the transfer of the licence that may arise. This cannot be contracted out of.

### 5.5 Does the government have authority to obtain from a polluter, monetary damages for aesthetic harms to public assets, e.g., rivers?

Statutory remedies for environmental damage usually include general damages, fines and or imprisonment and clean up costs.

## 6 Powers of Regulators

### 6.1 What powers do environmental regulators have to require production of documents, take samples, conduct site inspections, interview employees, etc.?

Most environmental statutory regimes give the regulators express powers to require production of documents, take samples, conduct site inspections, carry out interviews, take statements, preserve evidence, take copies and remove records in order to investigate environmental damage. It is a statutory offence to obstruct or fail to cooperate with the inspectors.

## 7 Reporting / Disclosure Obligations

### 7.1 If pollution is found on a site, or discovered to be migrating off-site, must it be disclosed to an environmental regulator or potentially affected third parties?

Most of the environmental statutory regimes provide for this. For instance:

- Water Pollution Acts: requires the responsible party to notify the local authority of any accidental discharge, spillage or deposit of any polluting matter which enters or is likely to enter the waters.
- Integrated Pollution Prevention and Control regime: the reporting/disclosure requirement is a typical IPPC licence condition.
- Waste Management Acts: there is a general duty to notify accidents or incidents concerning waste which causes or is likely to cause environmental pollution. Reporting and disclosure requirement is also a typical waste licence condition.
- Environmental Liability Directive Regime: there is a positive obligation on an operator of certain activities to notify the EPA immediately of its activities giving rise to environmental damage.

### 7.2 When and under what circumstances does a person have an affirmative obligation to investigate land for contamination?

There is no general positive obligation on a person to investigate land for contamination. A person may be required to do so pursuant to an environmental authorisation, by way of an administrative notice under the water pollution regime, waste regime or IPPC regime. Local authorities have powers under the water pollution regime and waste management regime to require investigations to be carried out. Moreover, when making an application for an IPPC licence, the applicant must furnish as part of the application details on the condition of the subject site. An operator under the ELD regime is implicitly required to investigate land for contamination, in that the operator has a positive obligation to take preventive measures where there is an imminent threat of land damage and where there is actual land damage to take immediate interim measures to remediate. These measures would first and foremost necessitate some sort of investigation of the extent of contamination or risk of same.

**7.3 To what extent is it necessary to disclose environmental problems, e.g. by a seller to a prospective purchaser in the context of merger and/or takeover transactions?**

There is no statutory obligation to disclose environmental problems. Commercial transactions are usually subject to extensive pre contract enquiries, due diligence and disclosure against warranties, which may alert to issues.

## 8 General

**8.1 Is it possible to use an environmental indemnity to limit exposure for actual or potential environment-related liabilities, and does making a payment to another person under an indemnity in respect of a matter (e.g. remediation) discharge the indemnifier's potential liability for that matter?**

It is possible to rely on an indemnity for losses arising because of the occurrence of an environmental problem covered by the indemnity. The indemnity may only be relied on by the parties to the contract and therefore does not preclude civil or criminal liability under statute.

**8.2 Is it possible to shelter environmental liabilities off balance sheet, and can a company be dissolved in order to escape environmental liabilities?**

There is no express statutory provision prohibiting environmental liabilities from being sheltered off balance sheet. Companies that are subject to the International Accounting Standards are required to disclose risks that remain with the company. Failure to disclose environmental liabilities in its accounts would not affect the company's liability and obligations for the breach of environmental law.

If the company is insolvent due to its environmental liabilities the company could enter into voluntary liquidation however the directors would be exposed to an application by the liquidator restricting them from acting as a director for 5 years. The creditors in respect of any environmental liabilities arising will, along with all other creditors of the company, share in whatever dividend may ultimately be available. The company will not be dissolved until completion of the liquidation process. See also answer to question 4.3.

**8.3 Can a person who holds shares in a company be held liable for breaches of environmental law and/or pollution caused by the company, and can a parent company be sued in its national court for pollution caused by a foreign subsidiary/affiliate?**

Generally, the shareholder of a limited liability company is not liable for breach of environmental law and/or pollution caused by the company. Most environmental statutes enable enforcement action to be taken against officers of the company. It is of note that under the waste management regime, shareholders can be criminally liable where they are involved in managing the affairs of the company. Shareholders may also be liable if they act as shadow directors.

The separate legal personality principle is well established in Irish law. Generally, in the absence of a parent company guarantee a parent company will not be held liable for pollution caused by a subsidiary.

**8.4 Are there any laws to protect "whistle-blowers" who report environmental violations/matters?**

There are currently no laws on whistle-blowers in relation to environmental matters although a general Whistleblowers Protection Bill has recently commenced consideration in the Dail.

**8.5 Are group or "class" actions available for pursuing environmental claims, and are penal or exemplary damages available?**

Class action is not provided for under statute. However, the courts give sufficient latitude under its locus standi rules to representative actions. In fact in many cases these groups establish a corporate structure, largely to limit their personal liability. See for example *Sandyford Environmental Planning and Road Safety Group Ltd v Dun Laoghaire Rathdown County Council* [2004] IEHC 133; *Usk Residents Association v The E.P.A.* [2006] IESC 1.

The courts have the power to award penal or exemplary damages however these are not provided for in environmental legislation generally.

## 9 Emissions Trading and Climate Change

**9.1 What emissions trading schemes are in operation in Ireland and how is the emissions trading market developing there?**

Directive 2003/87/EC (as amended) was implemented into Irish law by EC (Greenhouse Gas Emissions Trading) Regulations 2004 (S.I. No. 437) and S.I. No. 706 of 2005. The EPA is in charge of granting emission trading permits to operators in various economic sectors, to monitor, report and verify emissions from participating operators and to establish and maintain the national emission-trading registry. A five-year trading phase was entered in 2008, to this effect the EPA issued a National Allocation Plan for 2008-2012.

In line with Ireland's reporting obligation to the Commission, the EPA in December 2009 a draft estimate of Ireland's GHG emission in 2008, which indicate a 4.4% drop in CO2 emissions from the industry and commercial sector which is largely the due to the recent economic downturn. Given the relative small economy in Ireland and the recent downturn, demand for units is limited thus far.

It is of note that aviation activities will be included in the GHG trading scheme in Ireland in 2010 pursuant to the EC (Greenhouse Gas Emissions Trading) (Aviation) Regulations 2009 (S.I. No. 274) which largely transposes the EC Aviation Directive 2008/101/EC into Irish law. As and from 1 January this year, aircraft operators have certain obligations to include monitoring emission from their aircrafts in accordance with a monitoring plan and submit a report to the EPA in respect of same not later than the 31st March 2011.

## 10 Asbestos

**10.1 Is Ireland likely to follow the experience of the US in terms of asbestos litigation?**

No, not so far. Asbestos was commonly used in buildings in the past and therefore exposure to asbestos in the past is likely to have arisen. Of the few reported cases that have come before the courts, the indications are that the courts are taking a restrictive approach to the extent of damages that can be recovered. In the case of *Stephen Fletcher v Commissioners of Public Works in Ireland*, 2003

the court held there no right to damages in negligence for nervous anxiety suffered by a plaintiff as a result of negligent exposure to asbestos during the course of his employment and his irrational fear of contracting lung cancer in future years. In the case of *Christopher Pakenham v. Irish Ferries Ltd, 2004*, the court reiterated that to successfully bring a asbestos case the plaintiff must be able to show actual physical injury or a recognised psychiatric illness as a result of exposure to asbestos.

#### 10.2 What are the duties of owners/occupiers of premises in relation to asbestos on site?

Asbestos waste on site is considered hazardous waste, therefore in order to handle this material an appropriate licence is required and the asbestos must be disposed of in an appropriate facility.

The Health and Safety Authority also has powers to inspect and issue notices in respect of health hazards, such as asbestos, at a work place or hazardous work practices. The Safety, Health and Welfare at Work (Exposure to Asbestos) Regulations 2006 (S.I. No. 386) apply to all work activity which exposes persons to risks from asbestos.

## 11 Environmental Insurance Liabilities

#### 11.1 What types of environmental insurance are available in the market, and how big a role does environmental risks insurance play in Ireland?

It is still common for Irish companies to seek to rely on their standard public liability or property insurance for environmental risks although this insurance is inadequate for certain risks. Awareness of the implications of the Environmental Liability Regulations is increasing and with that the need for specialist environmental liability insurance. Products such as contractors pollution liability, environmental impairment liability insurance are currently available. IPPC licence holders are required to have a financial provision in place to cover the cost of potential remediation.

#### 11.2 What is the environmental insurance claims experience in Ireland?

There does not appear to have been any reported cases relating to environmental insurance claims.

## 12 Updates

#### 12.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Environment Law in Ireland.

*Waste:* Ireland's waste management policy remains uncertain and looks set to change over the coming year following a consultation process which the Green Minister for the Environment has just launched. The stated aim of the consultation is to refocus emphasis on prevention, minimisation and recycling. It is also envisaged that a cap on the volume of material that can be sent to incineration will be imposed. Draft legislation is being prepared which proposes to impose substantial levies on landfills and on large incinerators in particular.

*Enforcement:* The EPA has published the study that it commissioned on the use of administrative sanctions relevant specifically to environmental protection and the control of pollution legislation used by the EPA and local authorities. The study identified that the implementation of any new civil and administrative sanctions regime must consider and address a number of potential issues under the Irish constitution and the European Convention of Human Rights Act 2003.

*ELD:* Implementation of the discretionary provisions of the ELD such as the permit and state of the art defence to liability remains a work in progress. A redraft of the Environmental Liability Bill addressing these provisions is due to be published shortly.

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Finola McCarthy is partner in the firm specialising in the areas of environment, planning law and construction law. She has extensive experience in all aspects of environmental and energy infrastructural projects from traditional structured projects to public private partnerships, advising on contracts, public procurement, environmental issues, health and safety and alternative dispute resolutions. Finola is involved in advising on several commercial, pharmaceutical, health sector and railway projects. She acts for a number of clients in different sectors in relation to environmental matters. Finola qualified as a solicitor in 1993. She is a graduate of University College Cork. She holds a Diploma in Petroleum and Mineral Law Studies from the University of Dundee and a Diploma in European Studies from University College Dublin. She is a member of the Irish Environmental Law Association. Finola frequently presents on environmental and planning law, on construction and other related subjects.

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Aoife Shields specialises in Environmental and Planning law, advising businesses across a range of industry sectors, statutory bodies and private clients. Aoife provides ongoing support to clients on contentious issues such as the defence of prosecutions by local authorities and the EPA. Aoife holds an LLB from Trinity College Dublin, an LLM in environmental law from University College London and qualified as a solicitor in 2007. She has authored a number of environmental law articles and contributed to Environmental and Land Use Law. Aoife was awarded an EPA Scholarship in 2006 and is currently conducting an EPA/UCC project on the identification of an appropriate legal regime for managing contaminated land in Ireland. She is a frequent speaker at conferences in Ireland and abroad and lectures at the Faculty of Engineering, University College Cork. She is on the Council of the Irish Environmental Law Association, is a member of the UK Environmental Law Association, EU Network for Contaminated Land (NICOLE) and member of Soil Working Group of the IUCN.



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