

# POLICY AND LAW REFORM AGENDA

A PUBLIC INTEREST AGENDA FOR IRELAND

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## DIVORCE IN IRELAND: THE CASE FOR WIDER REFORM

Pictured at the launch of *Divorce in Ireland: The Case for Reform* were Patrick Dorgan, President of the Law Society of Ireland, Mary Keane, Deputy Director General of the Law Society of Ireland, Geoffrey Shannon, solicitor, and Josepha Madigan, Minister for Culture, Heritage and the Gaeltacht. Story inside.



## RECENT LAW SOCIETY SUBMISSIONS

- Response to the Department of Business, Enterprise and Innovation's Public Consultation on the Limited Partnerships Act 1907
- Budget 2020 – Law Society priorities on issues of taxation
- Submission to the Criminal Justice Strategic Committee on the Review of the investigation and prosecution of sexual offences
- Response to Department of Finance Capital Gains Tax Entrepreneur Relief Consultation

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## DIVORCE IN IRELAND: THE CASE FOR WIDER REFORM



The Law Society welcomes the result of the Divorce Referendum, which we had endorsed earlier in this year in our Report, *Divorce in Ireland: The Case for Reform*. The Report is the first piece of empirical research on divorce in Ireland in 20 years. In it, the Society makes 10 other recommendations for reform, some of which include:

1. The law be reviewed to allow for the development of pre-nuptial agreements that are valid and enforceable.
2. A specialised family courts structure be established without delay.
3. A set of principles for the determination of ancillary reliefs be

developed, to include all maintenance orders, lump sum payments, settlements, property adjustment orders, and pension adjustment orders.

4. A coherent legislative system for the recognition of foreign divorces be drafted.

The report also contains statistics and case reports from the busiest family law courts across the country. The report's principal author, Dr Geoffrey Shannon, is a member of the Law Society's Family and Child Law Committee.



For more information on the report, see: [www.lawsociety.ie/Press-Releases](http://www.lawsociety.ie/Press-Releases)



## INSURANCE

In April 2019 Law Society representatives met with Minister of State Michael D'Arcy to discuss various aspects of the cost of insurance and the personal injuries litigation system. The Society urged that the solicitors' profession should not be viewed falsely by Government as part of the insurance problem, but properly as part of the solution. Solicitors utterly condemn all fraudulent claims. Those who bring them should be detected, prosecuted, and imprisoned.

The Society is committed to the recommendations of the Personal Injuries Commission report published in November 2018. This includes the recommendation that the new Judicial Council should review the levels of awards for various types of injuries, in particular soft-tissue ('whiplash-type') injuries, ultimately leading to judicial guidelines on quantum for such injuries.

The Society remains available to discuss this position.

## CRISIS IN THE FAMILY LAW SYSTEM: TIME FOR ACTION



Keith Walsh and Helen Coughlan, Chair and Vice-Chair of the Family and Child Law Committee addressed the Oireachtas Justice Committee in February.

The Law Society Family and Child Law Committee came before the Oireachtas in February, along with other stakeholders to highlight the crisis currently facing users of the family law and courts system.

Some of the recommendations made include:

### Specialised Courts

A specialist division of family law courts and judges would help deal with family law cases more efficiently. It would be more likely that the same judges would be available to deal with cases that appear regularly before the courts and create more consistency.

It is not proposed to change the work undertaken by each court, but that

only family law cases would be heard in these courts and they would take the family law cases out of the more general courts.

### Alternatives to litigation

Very active intervention in family law cases by judges, with an emphasis on resolution and alternative dispute resolution approaches, could result in significant savings in time and resources for all parties.

There is an increased role for trained mediators, collaborative lawyers or arbitrators within the process.

Properly resourced legal aid supports are needed to ensure speedy access to the courts and to reflect the complexity in family and child law cases.





## EVERYONE CAN CODE

Pictured are the Class of Coders from Stanhope Street of 2019!

The 'Everyone Can Code' project is a voluntary initiative of the Law Society's Education Centre and aims to teach primary school students important skills like problem solving, cyber security and the basics of coding.

## BUDGET 2020 - PRIORITIES ON TAXATION

The Society's Pre-Budget 2020 submission lays out a series of reform proposals for the benefit of citizens and businesses across the State. We welcome the opportunity to engage with representatives on pragmatic proposals, based on the practical experience of our practitioners.

Key submissions include:

- A reduced VAT rate for legal services or at least for legal services utilised by individuals should be considered in order to promote access to justice and to remove the inequality of treatment between individuals and economic traders who can recover VAT.

- The need for a formal technical consultation period in advance of publication of the Finance Bill which would allow practitioners an opportunity to assist the Oireachtas in achieving its legislative aims.
- Tax payers are caught up in the congested tax appeals system, and are not being afforded the principles of natural justice and fairness on account of the long delays in the system with accumulating interest. Triaging of the backlog, increased use of mediation, and halting of the statutory interest rate must be considered urgently.

We also advocate for changes in the tax treatment relating to the following areas

- Co-habiting and divorced couples
- Permanently disabled and qualifying medical expenses
- Treatment of pensions funds on divorce
- Changes to the Nursing Homes Support Scheme 2009



If you would like a briefing on our Budget 2020 submission, please contact [c.oculain@lawsociety.ie](mailto:c.oculain@lawsociety.ie)



## POLICY & LAW REFORM IN THE GAZETTE

- The cervical cancer scandal has raised significant public interest and political debate about open disclosure when things go wrong in a healthcare setting. The prognosis for mandatory disclosure is discussed ("Just what the doctor ordered", May).

- The 'mortgage-to-rent' scheme, introduced in 2012, has had a relatively low uptake. That may be set to change with the approval of 'Home for Life' – the only private-sector participant in the scheme ("Homeward bound", May).
- The European Commission has yet again fined Google for abusing its dominant position ("Oops, I did it again", May).
- The right of a company to be represented by someone other than a lawyer was most recently considered by the Supreme Court in October 2018 ("Let battle commence", April).
- The dangers posed by advances in cybercrime are growing. The recently enacted Criminal Justice (Offences Relating to Information Systems) Act 2017 are considered ("Away in a hack", April).
- The Employment (Miscellaneous Provisions) Act 2018 comes into force in March 2019. It provides far greater protections for 'casual workers' ("Down to zero", March).

- The CJEU has emphasised the importance of judicial independence – and that judicial review is intrinsic to the effective legal protection of individuals' rights ("Upholding judicial independence", March).

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

Gazette.ie will deliver the most important legal and public policy stories via morning news updates, a breaking news service throughout the day and, for subscribers, long-read articles.

Our award-winning journalist team would like to feature interviews with legislators and legal experts on issues including law reform, justice and public administration.



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



## EU ELECTIONS – NOMINATION TO JUSTICE AND LEGAL AFFAIRS COMMITTEES URGED

**Attention now turns to the role our MEPs will play in Brussels and at home.**

The 2019 elections coincide with an unprecedented time for the European project, and at a juncture where States – collectively and individually – are considering their response to some of the most challenging modern day issues.

Themes such as environment, media, technology, terrorism, rule of law, human rights in all its spheres, as well as an effective and harmonised trading environment for businesses, increasingly call for a legal and justice-orientated response. Brexit can, of course, be added to that list of challenges.

In the 2014 – 2019 parliamentary term, Ireland had representation at the following principal committees:

- **Legal Affairs (JURI)** – 1 member: Brian Crowley
- **Civil Liberties, Justice & Home Affairs (LIBE)** - None
- **Constitutional Affairs (AFCO)** 1 substitute: Mairead McGuinness

It is the Society's view that these Committees will play an increasingly vital and strategic role in Irish and European affairs in the forthcoming term, impacting on citizens and businesses. The possibility of two additional seats for the Irish delegation arising from the departure of the United Kingdom and Northern Ireland from the European Union also presents an opportunity for Ireland to pursue membership of the above Committees.

Elected MEPs and where relevant, their parties, are urged to seek membership of the above Committees.

## VIEWS FROM THE UNION...



Our European representative body, the Council for European Bars and Law Societies, engages with the European Commission on a range of policy matters. Recent policy papers include:

### Assessment of the U.S. CLOUD Act:

After examination of the formulation and legislative process leading to the CLOUD (Clarifying Lawful Overseas Use of Data) Act in the United States, the CCBE has identified deficiencies, in particular relating to fundamental human rights and a lack of clarity on scope of surveillance measures, that are in conflict with EU norms.

### Comments on the Commission proposal for a Directive on common standards and procedures in Member States for returning illegally staying third-country nationals

Under the proposal, judicial proceedings would be accelerated, with time limits below the standard set out by the CJEU, and the use of detention would be facilitated. The lack of an impact assessment is noted, as well as barriers to legal advice.

### Recommendations on the protection of fundamental rights in the context of 'national security'

This paper outlines how and if the notion of 'national security' as a justification for surveillance measures and other intrusions upon the fundamental rights of citizens can be embedded in national democratic systems, where a key element of constitutionality remains the effective judicial control and supervision of government action.



Read more: [www.ccbe.eu](http://www.ccbe.eu)

## A RESEARCH RESOURCE – FUNDAMENTAL RIGHTS AGENCY

The European Union Agency for Fundamental Rights (FRA) is the EU's centre of fundamental rights expertise. Its



website is a valuable research and policy resource for elected officials, their staff and others on themes such as

- Racism and related intolerances
- Hate Crime
- Asylum, Migration and Borders
- Gender
- Rights of the child

The FRA, headed by Irish man, Michael O'Flaherty, cooperates continuously with EU Institutions and Member States to provide them with independent expert advice and fundamental rights analysis. It has set up networks and established links with partners at all levels, so that its advice and research can reach decision makers in national governments and the EU.



See more: [www.fra.europa.eu](http://www.fra.europa.eu)



## AARHUS CONVENTION



As the issue of climate change and environmental awareness rightfully gathers pace, so too does the matter of climate justice and the use of the courts to bring national and European actors to account.

The Aarhus Convention provides a framework to access justice in respect of environmental matters. The Convention, which came into effect in 2001, is currently subject to a European Commission consultation.

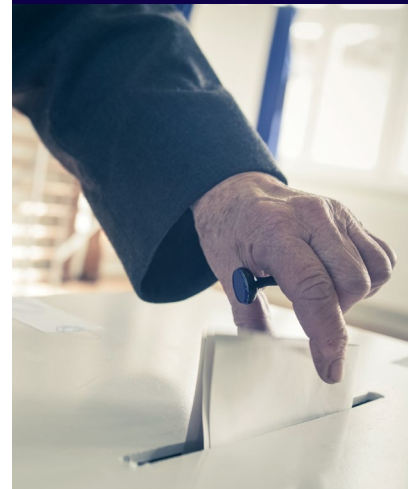
This arises from The Aarhus Convention Compliance Committee finding that the EU does not comply with the access to justice provisions of the Convention because of insufficient mechanisms to ensure review of EU acts. This initiative will evaluate the current situation and assess options to address compliance to underpin possible decision-making. The Society, as an active member of the CCBE, has recently endorsed the CCBE response to the EU-wide consultation.

The CCBE response highlights:

- the inadequacy of direct access to the EU Courts (Article 263(4) TFEU) and how Article 263(4) TFEU – as currently read and applied by the Court of Justice of the EU – provides insufficient access to justice for private parties, both generally, and more specifically in environmental matters.
- the inadequacy of indirect access to the EU Courts (Article 267 TFEU).
- the reluctance of national courts to refer a question for a preliminary ruling.
- the inadequacy of the internal review process as an alternative to access to the EU Courts.

The Society has shared the CCBE insights with the Oireachtas Justice & Equality Committee and the Committee on Communications, Climate Action and Environment, together with an invitation to consider a hearing on access to justice issues relating to environmental matters.

## INFORMATION DISORDER: ELECTIONS, LAW, TECH, POLICY



The Society hosted a discussion on the integrity of elections in Ireland, the use of technology in spreading misinformation and the policy responses by institutions at home and in Europe.

Attendees heard from Dr. Jennifer Kavanagh (WIT), Ciarán O'Connor (Storyful) and Liz Carolan (Transparent Referendum Initiative).



Keep in touch with future Law Society courses and events by visiting [www.lawsociety.ie/Courses-Events](http://www.lawsociety.ie/Courses-Events)

## WASHINGTON LAUNCH OF BREXIT LEGAL SERVICES STRATEGY



The visiting speakers to the specially invited audience of American lawyers in the Irish Embassy in Washington DC on 15 March 2019 were (l to r): Seamus Woulfe SC (Attorney General), Mr Justice Frank Clarke (Chief Justice), Micheál P O'Higgins SC (Chair of The Bar of Ireland), Gemma Allen (IDA) and Patrick Dorgan (President of the Law Society)

Last year the Law Society of Ireland and the Bar of Ireland, in partnership with the IDA and leading law firms, published a joint paper promoting Ireland as a leading centre globally for international legal services. In January 2019 the paper was adopted by Cabinet as Government policy.

Recommendations are focussed on:

- assisting the Irish Government to minimise the impact of Brexit on trade and the economy,
- increasing awareness within the international business and legal community of the value of Irish law or the Irish courts as the forum to resolve disputes or undertake legal transactions, and
- supporting businesses which relocate to Ireland, by ensuring that a world class legal infrastructure, is available in Ireland.

The strategy was launched in Washington DC over the St. Patrick's weekend at an event attended by the Ambassador to the US, Daniel Mulhall, the Irish Attorney General and delegations of the Society and the Bar of Ireland. Both the Society and the Bar Council look forward to engaging with the government on the matter in the future. Read the document at [www.lawsociety.ie/brexit#submissions](http://www.lawsociety.ie/brexit#submissions)

POLICIES FRUSTRATING THE SALE AND PURCHASE OF PROPERTY

The Society continues to place a focus on the inefficiencies (delay and cost) caused by legislation on the sale and purchase of property. Recent representations to Government since our April edition include the following:

**IBRC charging €2,000 + VAT for letter of non-crystallisation/discharge.** The Society has highlighted the wholly disproportionate fee being charged by IBRC, for a release letter, where former and other institutions charge €35-100 + VAT. This fee is being borne by the home owner who had no responsibility for the transfer of original loans to IBRC.

**Local Government Rates Bill 2018:** The Society conveyed its concerns about this Government Bill insofar as it places a statutory charge on property for unpaid rates, thereby frustrating future sales. It also holds property owners liable for any failure of occupiers / tenants to discharge the rates during the period of the tenancy, placing an increased risk burden on them which may impact on economic growth.

**Help to Buy Scheme Contractors' deposit- clawback falls to homeowners:** Currently, the legislation provides that a clawback of deposit paid to the initial

contractor falls to the subsequent occupant of the home. This arises even where the home owner has no knowledge of the relationship between the contractor and Revenue. The Society wrote once more (March 2019) to the Minister for Finance, Public Expenditure and Reform, Minister for Justice & Equality and the Revenue Commissioners on this matter.



**For an overview of legislation that could be easily amended by the Oireachtas, see the April 2019 newsletter at [www.lawsociety.ie](http://www.lawsociety.ie)**

PUBLIC LEGAL RESOURCES



The Law Society has developed a number of accessible legal guides on a range of legal areas including Business law, Consumer rights, Employment law, Property, Dispute resolution and more. These may

be of interest to your constituents and colleagues. The free guides are intended as a guide only and are not a substitute for legal advice.



**They are available to the public at: [www.lawsociety.ie/Public/Legal-guides](http://www.lawsociety.ie/Public/Legal-guides)**

OUR LATEST LOBBYING RETURN

The Society seeks, on an ongoing basis, to articulate to decision makers how the legal and justice system can be reformed and improved to serve citizens and businesses better.



We take our statutory obligations arising under the Regulation of Lobbying Act most seriously, as well as promoting its existence to our members.



**See our latest return for January – April 2019, and all returns at: [www.lobbying.ie](http://www.lobbying.ie)**

OUR POLICY COMMITTEES

Expert opinion informing policy and law reform.

We invite early engagement with representatives and officials as a means of identifying key legal policy and public interest concerns.

The Society's dedicated policy committees comprise volunteer solicitors who help to shape the Society's law reform agenda by providing submissions to Government relating to the following areas:

- Alternative Dispute Resolution
- Business Law
- Conveyancing
- Criminal Law
- Employment & Equality Law
- EU & International Affairs
- Family & Child Law
- Human Rights
- Intellectual Property & Data Protection Law
- Litigation
- Probate, Administration & Trusts
- Taxation



JUSTICE MEDIA AWARDS

The 28th annual Justice Media Awards take place on Thursday 27 June 2019 at the Law Society of Ireland, Blackhall Place. The awards recognise outstanding print and broadcast journalism that contribute to the public's understanding of justice, the legal system and legal issues. See more at [www.jmawards.ie](http://www.jmawards.ie)

CONTACT US

The Law Society welcomes the opportunity to meet with public representatives and their staff to discuss options for law reform, and provide views on the operation and implementation of existing initiatives.

Our main contacts for Policy and Public Affairs initiatives are:

- MARY KEANE, Director of Policy and Public Affairs, [m.keane@lawsociety.ie](mailto:m.keane@lawsociety.ie)
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