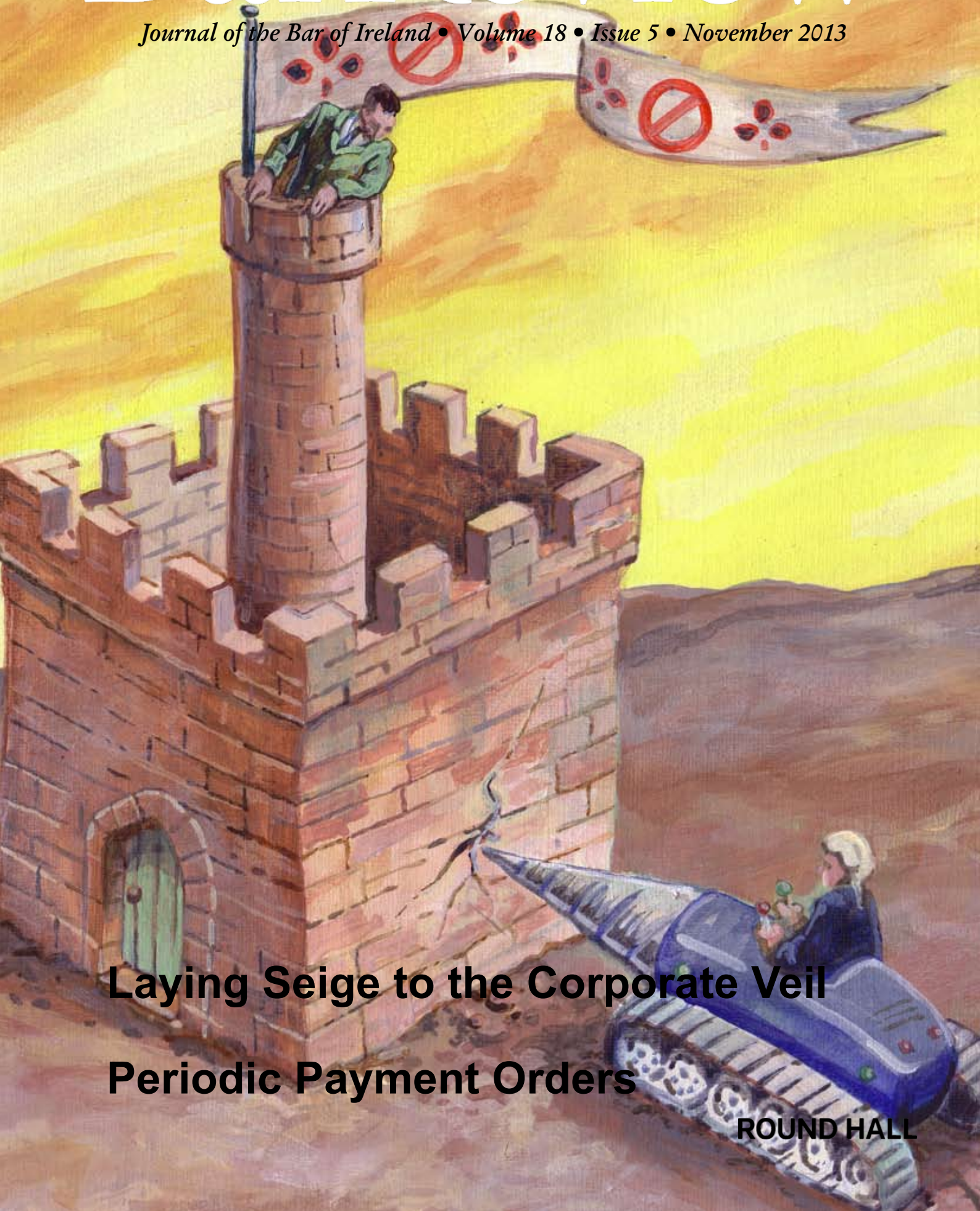


# The Bar Review

*Journal of the Bar of Ireland • Volume 18 • Issue 5 • November 2013*



**Laying Siege to the Corporate Veil**

**Periodic Payment Orders**

**ROUND HALL**

# The Arthur Cox Employment Law Yearbook 2012



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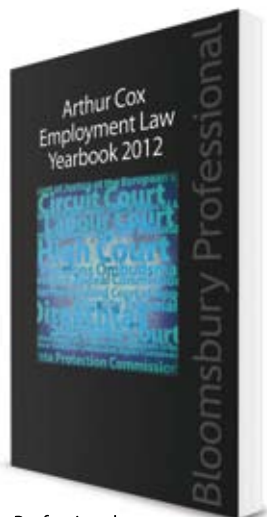
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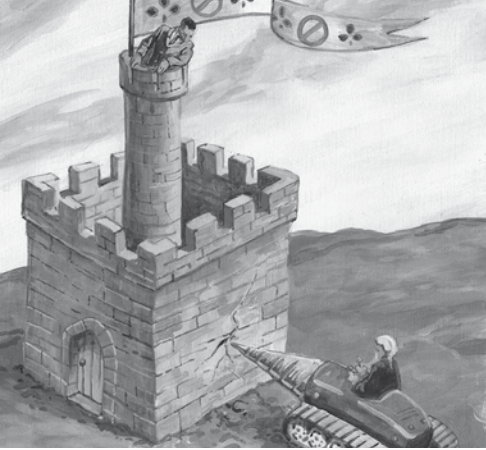
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The Bar Review November 2013

# Periodic Payment Orders and Structured Settlements

ALAN KEATING BL

## Introduction

On the 15<sup>th</sup> January 2013, the Minister for Justice, Equality and Defence, Mr. Alan Shatter T.D announced that the Government had approved his proposals to prepare legislation to give the courts new powers to make periodic payment orders for the benefit of persons catastrophically injured through the negligence of others.<sup>1</sup> The Department indicated that the drafting of the General Scheme of the Civil Liability (Amendment) Bill was to commence shortly after the 15<sup>th</sup> January 2013 and that it would take account of the recommendations of the Report of the High Court Working Group on Medical Negligence and Periodic payments, which report was published in October 2010.

Should the legislation be enacted, it would represent a significant change in the law governing compensation for personal injuries. Although the legal basis for the award of periodic payment orders (hereinafter “PPOs”) has been implemented in other common law jurisdictions for quite some time, little is known in this jurisdiction about the practicalities of such a regime.<sup>2</sup> This has not prevented plaintiffs and defendants, since the publication of the Working Group’s Paper, agreeing interim settlements involving interim payments with a view to revisiting the issue of a PPO at the end of the interim period. The expectation of plaintiffs, in coming to these interim settlements, was that the legislation referred to in the departmental press release would be in place at the end of the interim period.

Given the departmental soundings and the prospect of the establishment of a PPO regime in Ireland, it is an appropriate time to provide an overview of the experience in England and Wales, the recommendations of the Working Group and the ongoing vulnerability of plaintiffs in the absence of legislation.

## Structured Settlements and PPOs

A typical structured settlement involves a guaranteed income or pension in favour of a plaintiff generated by an annuity purchased by the defendant (more correctly the insurer) but held for the benefit of the plaintiff. As a result of the purchase of the financial product for the benefit of the

plaintiff, the annual payments can be varied or structured over the duration of the plaintiff’s life.<sup>3</sup> In order for a structured settlement to have efficacy, a concession is usually necessary from the powers that be that the yearly income will not be considered income for the purposes of income tax. Rather it is to be considered the payment of compensation for personal injuries, by instalment.

A PPO is an order made by the Court which makes provision for the periodic payment of compensation, to a Plaintiff, in respect of certain agreed items of future special damages to cover identifiable needs for the lifetime of the plaintiff. Typically, the items the subject of a PPO will be costs of future care and therapies and medical / therapeutic aids and appliances in catastrophic injury cases. The items are formulated at the date of the order as well as the amount of the first periodic payment, which will then be indexed linked thereafter. A crucial feature a PPO regime is the legislative measures aimed at guaranteeing continuity of payment. The objective is total cover for future costs covered by the order. The periodic payments will be granted in tandem with a lump sum payment incorporating general damages, past special damages and some future items of special damages not deemed suitable for periodic payments. Again, the periodic payments must be exempt from income tax if they are to be an alternative to a lump sum payment.

Both structured settlements and PPOs have been proposed as an alternative to lump sum payments in catastrophic injury cases, due to the difficulties inherent in predicting the Plaintiff’s life expectancy. Should the Plaintiff die before the life expectancy accepted by the Court, the plaintiff’s successors will inherit a windfall (insofar as that portion of the lump sum attributable to future care for the full term of life expectancy is concerned). Should the Plaintiff outlive the life expectancy accepted by the Court, the Plaintiff will be in the tragic scenario of having a shortfall of available funds to meet ongoing care costs and costs of aids and appliances etc.<sup>4</sup> Each contingency is contrary to the principle of *restitutio in integrum*.

## The Development of Structured Settlements

Ashcroft<sup>5</sup> has provided an interesting overview of the departure from lump sum payments to structured settlements and periodic payments. The first step in the new departure came by way of novel settlements in U.S. thalidomide cases.

1 Press Release from the Department of Justice, Equality and Defence dated the 15<sup>th</sup> January 2013 entitled “Government Approves New Powers for the Courts in Personal Injuries Cases”. The press release may be accessed online via <http://www.justice.ie/en/JELR/Pages/PR13000010>.

2 See McMahan and Binchy *Law of Torts* (4<sup>th</sup> Ed) Bloomsbury 2013 pp 1600 to 1603 and in particular paras 44.101 to 44.106. See also the useful article Hough, ‘Paying the Piper’ (2013) 107(2) L Soc Gazette

3 See McMahan and Binchy *Op Cit.*

4 See *Trusted Periodical Payments after the Court of Appeal Decision in Thompstone* (2008) JPI Law 2008 1 44 at p 45

5 Ashcroft *From Kelly to Courts Act – the development of periodical payments* (2009) JPI Law 2009 3 191 pp 191 to 192

The novelty involved a mixture of lump sum payments together with annuity payments, which would be made for as long as the sufferers were alive, but would cease on death. The U.S. Internal Revenue Service declared that the annual payments would be tax-free and, according to Ashcroft, the phrase “structured settlement” was coined. In the U.S., these settlements appealed to defendant insurers and claimants alike beyond thalidomide cases. The Association of British Insurers and the Inland Revenue in the United Kingdom held discussions, in 1987, that led to the publication of a “Model Agreement”. The model agreement provided that where the parties settled an action for personal injury on the basis that an annuity was purchased by the defendant (or the defendant’s insurer) for the benefit of the claimant, the monies received under the annuity would be tax-free. This concession from the Inland Revenue arose because the authorities accepted that, although the annual payments were funded from income generated by annuities purchased by the defendant’s insurer, they amounted to the payment of compensation by instalments, rather than income generated from compensation. At this juncture in the evolution of structured settlements, the way seemed to be clear for a departure in the United Kingdom.

However, this did not happen overnight. The following passage from Ashcroft may have some resonance for PPO and structured settlement advocates in Ireland, today:

“Following the publication of the Model Agreement, the framework was now in place for structured settlements in the United Kingdom, but, as always, things are never so simple. There were other obstacles to overcome. Who would provide the annuities which form the core of a structured settlement? The concept also relied on consent, but would defendant insurers agree to this novel approach? Also, which claimant would have the courage to become the “guinea pig” to convert theory into reality?”

In *Kelly v Daves*, *The Times*, September 27, 1990, the High Court of England and Wales gave the first judicial approval of a structured settlement in the United Kingdom. Instead of compensating the plaintiff wholly by way of a lump sum payment, the settlement included an annuity that provided a guaranteed tax free income for the lifetime of the Claimant.

*Kelly* appeared to be the right case at the right time.<sup>6</sup> The Plaintiff’s injuries were so catastrophic that she needed care for the rest of her life but there was a substantial difference of opinion concerning her life expectancy and, thus, the duration and capitalised cost of those care requirements. The Plaintiff’s experts predicted a life expectancy of 20 years, whereas the Defendant’s experts predicted a mere 10 years. This was the classic situation where the lump sum compensation regime was simply found to be inadequate.

The claim in *Kelly* settled for £410,000, of which £300,000 was used to purchase an annuity paying £25,562 per annum, increasing in line with the retail price index. The settlement was approved by Potter J and heralded a major departure in

this area in the jurisdiction of England and Wales. Ashcroft<sup>7</sup> has pointed out that the Plaintiff, in *Kelly*, outlived the defendant’s estimate of life expectancy and continued to receive inflation linked yearly payments. On the downside, nursing home fees increased over that period at a rate that outstripped the retail price index. The shortfall was met from the Plaintiff’s lump sum contingency fund.

In 1993, the UK Department of Health commenced self funding periodical payments, rather than purchasing annuities.<sup>8</sup> The way was clear for legislation.

## Legislation in England and Wales (and Northern Ireland)

Legislation was enacted to provide for periodical payment orders in 1996 and greatly expanded in 2003. This legislation did not displace structured settlements of the type approved in *Kelly*. The arrangements for the approval of structured settlements and the regime for the grant of PPOs are seen as complementary, although the majority of parties will opt for PPOs. Structured settlements tend to arise where the Defendant cannot offer the required level of security, or where a competitive quotation from a Life Office makes the structured settlement more appealing, or where a more flexible model, involving variable payments, is required (due to financial difficulty or the consequences of a finding of contributory negligence).<sup>9</sup>

A full appraisal of the 1996 and 2003 legislation governing England and Wales is beyond the scope of this article. Reference will be made to certain provisions only.

Section 2 of the Damages Act, 1996 conferred discretion on the Court, in awarding damages (including interim awards) to make a PPO with the consent of the parties. Section 2 of the 1996 Act was then amended by s. 100 of the Courts Act 2003.<sup>10</sup> Whereas the original s. 2 envisaged the making of PPOs on the consent of the parties only, the amended s. 2 conferred on the Courts a power to impose PPOs and required the Court to consider making such an order, where it was awarding damages for “future pecuniary loss in respect of personal injury”.<sup>11</sup> The Court retained the power to make a PPO, on consent of the parties, when “awarding other damages in respect of personal injuries”.<sup>12</sup>

The Court is not permitted to make a PPO unless it is “satisfied that the continuity of payment under the order is reasonably secure”<sup>13</sup>, a term that is defined by the Act with reference to a form of guarantee, protection from certain schemes under financial markets legislation or the source of the payment (provided it is a government or health service body).<sup>14</sup> Section 101 of the 2003 Act also introduced a new section 4 to

6 Ashcroft *Op Cit.* at p 193

7 Ashcroft *Op Cit.* at p 193

8 Ashcroft *Op Cit.* at p 194

9 Ashcroft *Op Cit.* at p 195

10 These amendments were influenced by the speeches of the House of Lords in *Wells v Wells* [1998] 3 All ER 481 and The Lord Chancellor published a Consultation Paper, *Damages for Future Loss, Giving the Courts the Power to order Periodical Payments for Future Loss and Care Costs in Personal Injury Cases* (2002).

11 S. 2 (1)(a) and 2(1)(b) of the 1996 Act as inserted by s. 100 of the 2003 Act.

12 S. 2(2) of the 1996 Act as inserted by s. 100 of the 2003 Act.

13 S. 2(3) of the 1996 Act as inserted by s 100 of the 2003 Act.

14 S. 2(4) of the 1996 Act as inserted by s 100 of the 2003 Act.

the 1996 Act, which provides for enhanced protection for periodical payments.

The right to periodical payments under an order of the court may not be charged or assigned without the heavily restricted approval of the court.<sup>15</sup> Where a PPO is made, an alteration of the method by which payments are made shall be treated as a breach of the order, unless the Court is satisfied that the alternative method contains features, listed in s. 2(7) relating to continuity of payment and security of payment.<sup>16</sup>

Under section 2(8) of the 1996 Act (as inserted),<sup>17</sup> a PPO shall be treated as providing for the amount of payments to vary, by reference to the retail prices index, at such times and in such a manner as may be determined in accordance with the Civil Procedure Rules. The RPI is defined with reference to s. 833(2) of the Income and Corporation Taxes Act, 1988.<sup>18</sup> Under section 2(9) of the 1996 Act (as inserted), it is possible for the court to disapply section 2(8) or modify the effect of section 2(8).<sup>19</sup> As can be seen from overview of the *Kelly* settlement, the reference to the RPI has proved to be problematic due to the fact that the year on year increase in care costs outstrips RPI.

Section 2B of the 1996 Act also confers on the Lord Chancellor the power, by order, to enable a court which has made a PPO, to vary a PPO in specified circumstances.<sup>20</sup> S.I. 841 of 2005 *The Damages (Variation of Periodical Payments) Order 2005* was enacted pursuant to s 2B(6)(b) of the 1996 Act, to empower the Court to vary the terms on which a claim or action for damages for personal injury is settled by agreement between the parties if: (a) the agreement provides for PPOs and expressly permits a party to apply to a court for variation in those circumstances and (b) there is a possibility of the Plaintiff developing some disease or suffering some serious deterioration, or enjoying some significant improvement, in his/her physical or mental condition.

Section 2B(2) of the 1996 Act also ensures that that the periodic payments shall not be considered as income for the purposes of income tax and consequential amendments are made to tax legislation.<sup>21</sup>

### **The Position in England and Wales (and Northern Ireland), following the Introduction of PPOs**

The statutory rules do not require that the entire compensation to which the plaintiff is entitled should be the subject of a PPO. Catastrophic injury cases will involve some element of past special damages and a significant award in general damages. There will also be immediate capital needs such as housing. As is the case in structured settlements, the Court Orders tend to be a mixture of a lump sum payment for those items plus a PPO in respect of future care, medical assistance, aids and appliances etc. The lump sum element may then be applied to immediate capital needs or ring fenced in a contingency fund should some shortfall later

arise regarding the amounts of the PPO on the one hand and the care costs on the other. Indeed, in the context of both structured settlements and PPOs, Ashcroft has pointed out the importance of maintaining an appropriate balance between the lump sum and periodical payments to ensure flexibility in the event of unforeseen circumstances which would require a plaintiff to draw upon the lump sum balance.<sup>22</sup> There have been some skirmishes around the edges, so to speak, concerning the precise balance between the contingency sum and the periodic payments in circumstances where a defendant argues for a lesser lump sum payment and higher PPO payments in respect of certain items.<sup>23</sup>

The issue of inflation became a major factor in PPOs in the UK. In a lump sum payment, the specified rate of return (used in calculating the lump sum), so the argument goes, takes account of the opportunity open to the claimant of avoiding the risk of future inflation eroding the value of the lump sum. However, the PPO is designed to meet the discerned needs of the Plaintiff and, so, inflation has extra significance. The key point is that section 2(8) of the 1996 Act sets the default criterion as RPI in circumstances where the evidence shows that the costs of care rise by an amount that is significantly in excess of RPI. If one links periodical payments for long term care needs to RPI, there is likely to be a shortfall.<sup>24</sup> This, in fact, appeared to be the case in the structured settlement in *Kelly* as the yearly payment in that settlement was also linked to RPI. As we have seen, section 2(9) of the 1996 Act leaves open the possibility of disapplying section 2(8) or modifying the effects of section 2(8).

In *Flora v Wakom (Heathrow) Limited* [2007] 1 WLR 482<sup>25</sup>, the Plaintiff suffered severe injuries and sought compensation. The Defendant admitted liability. The claimant pleaded, in the statement of case, that if the Court made a PPO, it should make an order under section 2(9) of the 1996 Act disapplying section 2(8) (setting RPI as the default index) or modifying the effect of it so as to allow for a wage related index. The claimant also sought permission to adduce expert evidence to support the plea that a wage related index would be more suitable. The Defendant sought to strike out those portions of the statement of case. The trial judge dismissed the application and the defendant appealed. The defendant argued that section 2(9) of the 1996 Act only allowed a departure from RPI in exceptional circumstances that did not apply to the Plaintiff's case. Brooke L.J. giving the leading decision of the Court of Appeal rejected the Defendant's argument. Brooke L.J. analysed the rules applying to the discount rate for calculating lump sum awards for future pecuniary loss and declared that the analysis simply served to demonstrate that the award of a lump sum was entirely different in character from an award of periodical payments as a mechanism for compensating for such loss.<sup>26</sup> The aim of

15 S. 2(6) of the 1996 as inserted by s. 100 of the 2003 Act.

16 S. 2(7) of the 1996 as inserted by s 100 of the 2003 Act.

17 S. 2(8) of the 1996 Act as inserted by s. 100 of the 2003 Act

18 S. 2(8) of the 1996 Act as inserted by s. 100 of the 2003 Act

19 S. 2(9) of the 1996 Act as inserted by s. 100 of the 2003 Act.

20 S. 2B(1) of the 1996 Act as inserted by s 100 of the 2003 Act.

21 As inserted by s. 100 of the 2003 Act.

22 Ashcroft From *Op Cit.* at pp 193 to 194.

23 See *Tameside and Glossop Acute Services NHS Trust v Thompson*; *South West London Strategic HA v De Haas*; *Corbett v South Yorkshire Strategic Health Authority*; *United Bristol Healthcare NHS Trust v RH* [2008] EWCA Civ 5.

24 Trusted *Op Cit.* at p 46

25 Neutral citation *Flora v Wakom (Heathrow) Ltd* [2006] EWCA Civ 1103;

26 *Flora v Wakom (Heathrow) Ltd* [2008] 1 WLR 2207; [2006] EWCA Civ 1103 paras 27 to 29 per Brooke LJ.

the legislation was to ensure 100% cover (the 100% principle) for the future cost of care and there was no justification in the language used by Parliament to support the Defendant's contention that the modification or disapplication referred to in section 2(9) only arose in exceptional circumstances.

The issue arose for resolution in *Tameside & Glossop Acute Services NHS Trust v Tompstone* [2008] 1 WLR 2207<sup>27</sup>. The Court, at first instance, held that the providers of care would require wages that increased at a rate that outstripped the retail price index (RPI is the default position under s. 2 of the 1996 Act). The criterion used by the Court was the 75<sup>th</sup> percentile of AHSE.<sup>28</sup>

The question was whether the Court had correctly exercised its power under s. 2(9) of the 1996 Act. The Defendants had argued that to adopt a position other than the default position of RPI would render the order inconsistent with the discount rate applying to lump sum payments.<sup>29</sup> However, the Court of Appeal held that PPOs had to be approached on the basis that they were completely different to lump sum payments. The Court recognised its duty to strive for full pecuniary compensation. If claimants were restricted to RPI where there was evidence that inflation for future care costs would exceed RPI, then claimants would not opt for PPOs, thereby rendering the new regime a dead letter. In this regard, Waller L.J., expressly adopted the reasoning of Brooke L.J. in *Flora*.<sup>30</sup>

The Court of Appeal endorsed ASHE as an appropriate index<sup>31</sup>. The Defendant's argument that the use of AHSE amounted to substitution rather than the modification referred to in s. 2(9) was rejected - the wording of section 2(9) did not connote a modification of the RPI, rather it connoted a modification to section 2(8) which set RPI as the default measure.<sup>32</sup> Finally, the Court of Appeal rejected the argument that a PPO that burdened a defendant with a more expensive PPO was against public policy and the concept of distributive justice, Waller L.J. stating that "*once liability is established and once financial loss is being assessed, it is 'corrective justice' and not distributive justice with which the court should be concerned*".<sup>33</sup>

### The Tompstone "Model Schedules"

Following the decision of the Court of Appeal, in *Tompstone*, the matter came before Holland J, in the High Court<sup>34</sup>, arising from the "*urgent requirement for a 'model' Order to serve as a foundation for the final orders necessary to give effect to the many cases held in abeyance pending the conclusion of the appellate process – and*

*to serve as a like foundation for similar orders to be made in future cases*".<sup>35</sup> Holland J identified a dual function in formulating the model schedules *viz*: "*first, potential incorporation in the order for approval in each of the five cases now before me; and second, potential incorporation in the orders that await approval in current and prospective cases*".<sup>36</sup>

By the author's own admission, the Tompstone model schedules represent a precedent to be adapted to the circumstances of an individual case. On the other hand, given that the terms of the model schedules represented the best current expertise, a departure from those terms will have to be justified in order to secure approval from the Court.<sup>37</sup>

The schedules are quite detailed and complex. In the event that legislation is enacted in this jurisdiction, the task of formulating the terms of an order or a settlement would add significantly to the skills required of practitioners and would require the input of appropriate experts. It may be the case that the Superior Court Rules Committee, or the High Court in litigation, will seek to provide a similar template order for practitioners, in this jurisdiction.

### The Working Group on Medical Negligence and Periodic Payments (Module 1)

In Ireland, the Working Group (which, incidentally, prefers the term "*Periodic Payment Orders*") produced a Report, published on the 29<sup>th</sup> October 2010.<sup>38</sup> The central recommendation of the Working Group is that legislation be enacted to empower the Courts to make consensual and non-consensual PPOs in catastrophic injury cases where long term future care will be required, for the costs of (a) future treatment (b) future care and (c) the future provision of medical and assistive aids and appliances.<sup>39</sup> The regime is to be restricted to catastrophic injury cases and proposed legislation ensures that all relevant parties will be heard before the decision to make a PPO is made. Assurance as to the continuity of payment is a prerequisite.

Other recommendations touch upon issues such as prohibiting assignment or charging of the entitlement to a PPO without court approval, the duration of the entitlement as co-terminus with the life of the plaintiff, the role of tactical monetary settlement offers, the effect of bankruptcy, the need for a legislative basis for interim and provisional awards, the need to avoid double recovery through the social welfare and benefit code, the need for provisions allowing for variation of PPOs and predetermined stepped payments. It is not intended to set out all of the recommendations contained in the Report, in this article. Suffice it to state that the recommendations constitute a sensible incorporation of developments in other jurisdictions, particularly that of England and Wales.

The recommendations concerning indexation do require further consideration however. It is recommended that provision be made, in legislation, for adequate and

27 The full title to the conjoined action is *Tameside and Glossop Acute Services NHS Trust v Tompstone; South West London Strategic HA v De Haas; Corbett v South Yorkshire Strategic Health Authority; United Bristol Healthcare NHS Trust v RH* neutral citation [2008] EWCA Civ 5.

28 The Report of Module 1 of the *Working Group on Medical Negligence and Periodic Payments* Oct 2010 concluded there was no Irish equivalent to ASHE and recommended the creation and maintenance of an earnings related index covering the nursing and care sectors by the CSO (see p 32).

29 Citing *Warren v Northern General Hospital* [2000] 1 WLR 1404 and *Warriner v Warriner* [2002] 1 WLR 1703

30 [2008] 1 WLR 2207 paras 34 and 35.

31 [2008] 1 WLR 2207 paras 59 to 108

32 [2008] 1 WLR 2207 paras 40 to 43

33 [2008] 1 WLR 2207 para 47.

34 *Tompstone v Tameside Hospital NHS Foundation Trust* [2008] EWHC 2948 (QB)

35 [2008] EWHC 2948 (QB), paragraph 4.

36 [2008] EWHC 2948 (QB) at paragraphs 7-8.

37 [2008] EWHC 2948 (QB) at paragraphs 7-8.

38 See also Law Reform Commission report *Periodic payments and Structured Settlements* (LRC 54-1996)

39 Recommendation (i), page 7 and item 4 p 27.

appropriate indexation of payments.<sup>40</sup> This is seen as an essential prerequisite to their introduction as a form of compensation. The Group recommends the introduction of “*earnings and costs-related indices which will allow periodic payments to be index-linked to the levels of earnings or treatment and care personnel and to changes in costs of medical and assistive aids and appliances.*” The Central Statistics Office is regarded, by the Group, as the body with the competence and independence to carry out the task of compiling and maintaining the indices required. The stated purpose of this is to ensure that Plaintiffs can afford the cost of treatment and care into the future.<sup>41</sup> In its submissions to the Group, the C.S.O. indicated that its Earnings Hours and Employment Costs Survey would be appropriate as the basis for such an index.<sup>42</sup> The Group, having analysed the legislation and jurisprudence in England and Wales, does not support the general governmental measure of inflation as the primary basis for the recalculation of periodic payments under Irish Legislation. The evidence before the Group was that the C.S.O. may also be able to introduce costs related indices of medical treatment and mechanical and other aids and appliances.<sup>43</sup>

The Report of the Working Group is commendable and the work that went into it is impressive. The Group took account of developments elsewhere (in both civil law and common law jurisdictions). It has attempted to incorporate the advancements made in other jurisdictions, legislative and jurisprudential, into its recommendations. In particular, the Group took account of the issue of indexation resolved by *Thompson*, in England and Wales. The Group even went so far as to append draft legislation.

### The Minister's Position

In the Press Release of the 15<sup>th</sup> January 2013, the statement attributed to the Minister gave the impression of approval not only for a PPO regime but also the 100% principle. It will be recalled that, notwithstanding the comprehensive Working Group Report and the fact that the Working Group appended draft legislation to that Report, the departmental press release asserted an intention to commence the drafting of a Bill intended to incorporate the Group's recommendations. At the time of writing, no discernible steps have been taken.

It may well be the case that the Government is considering whether or not the regime would be of financial benefit to the State, given the prevalence of the State as a defendant in catastrophic injury cases in the area of medical malpractice. This is a reasonable position to adopt. However, it is not reasonable to give the impression that the legislation will be enacted, in circumstances where no firm decision has been made. The Press Release indicated that the Government had approved proposals to draft the legislation but it is not clear whether those proposals were subject to an audit process of some kind. There is no certainty that all of the recommendations of the Working Group would be adopted.

40 See s. 7 of the draft legislation appended to the Report.

41 Recommendation (v)

42 Chapter 4, pp 31-32 under the heading “*Indexation of Periodic Payments*”.

43 This was not included in the recommendations but is included in Chapter 4, pp 31-32 under the heading “*Indexation of Periodic Payments*”.

For instance, it could cause significant problems for a Plaintiff, if the Bill does not incorporate the Group's recommendations relating to indexation and, instead, stipulates only C.P.I. (without any possibility to disapply or modify this default index). One could very well have a situation where the PPO system would unduly favour Defendants. This is a concern when one considers that the State hardly has a history of making profound changes to the legal landscape so as to benefit claimants.

### The Position Since the Working Group's Report in 2010

Since the publication of the Report, a number of settlements have occurred whereby Plaintiffs have obtained interim payments suspending the determination of the award concerning the residue of the compensable period for a date in the future. The interim award usually covers past and future general damages as well as covering special damages for the period running from the injury and ending on a date, usually, two years following settlement.

The purpose of such interim settlements was to ensure that Plaintiffs would be in a position to avail of any future legislation on PPO's for the remainder of their lives. A specific list within the Dublin High Court Personal Injuries List was created to supervise these cases, many of them involving minors with catastrophic birth related injuries. The presiding Judges, on occasion, have expressed frustration at the failure to enact legislation. Two years on from the first raft of interim settlements, it appears that many of the Plaintiffs involved have been advised to proceed to a lump sum payment, by way of an assessment hearing, due to the failure of the Executive and the Legislature to act. Without the guarantees that legislation could offer, there is only so much the Courts can do and, as a result, many Plaintiffs have lost out on the possibility of benefitting from the 100% principle a PPO regime is designed to implement.

The occurrence of the interim lump sum settlements, pending the enactment of legislation is perilous. Practitioners must consider a number of factors, including, but not limited to the following:

- (1) What is the categorization of the interim payment? It is best described as an interim lump sum payment.<sup>44</sup>
- (2) The importance of conferring upon the Plaintiff the entitlement to elect for a lump sum payment or a further interim payment, on the adjournment date, even if PPO legislation has been enacted. One cannot assume that the draft legislation attached to the Working Group Report is the one that would be enacted;
- (3) Whether there is security for the payment of compensation (of any sort) at the date of the adjourned hearing. This kind of settlement should not be contemplated if it involves an indemnified private defendant, rather than a State defendant;
- (4) Whether further legislation or jurisprudence

44 See *Eeles v Cobham Hire Services Limited* [2010] 1 WLR 409 in the context of interim payments, prior to full assessment of damages in cases where liability is admitted, under the Civil Procedure Rules.



alters the Plaintiff's entitlements in terms of compensation, in the meantime. If the Plaintiff eventually ends up proceeding, on the adjourned date, by way of a lump sum, which date is the applicable date for the purposes of defining the Plaintiff's entitlements concerning the remaining lump sum? Is it the date of the original interim settlement or the date of the adjourned date?

- (5) Whether the Plaintiff can claim new items/heads of loss that only surfaced in the interim period. A clause could be included in the interim settlement allowing the plaintiff to make such further claims and to amend the pleadings or furnish updated particulars of personal injuries and an updated schedule of special damages, in advance of the adjourned date;
- (6) Whether the interim settlement stipulates that the compensation is an interim sum only (made up of general damages, past special damages, certain non-PPO type future special damages and certain PPO-type special damages), without itemizing the portion of the lump sum attributable to each heading of future interim needs/special damages.
- (7) Whether, at the adjourned date, the Defendant can seek to inquire as to the manner in which the interim lump sum was spent (including an application for discovery of the Plaintiff's bank records); whether this could have a determination upon the award of compensation for care costs etc into the future, at the adjourned hearing; and whether the Defendant could argue, at the adjourned hearing, for a reduction on certain items into the future due to the fact that the Plaintiff did not spend the full amount awarded in the interim settlement.

There is anecdotal evidence of such a stance being adopted by Defendants. The Plaintiff should insist upon the payment of a round sum, without any itemization, should attempt some mechanism to prevent a claw back, and should reserve the right to assess future need only, at the adjourned date. Even without these safeguards, there are often reasons why money is not spent for certain care items within the interim period, which do not lessen the need for full awards into the future. This kind of inquisition by a Defendant is surely an unintended consequence of the interim settlement phenomenon.

- (8) That the Defendant's obligation to actually pay the PPO payments (in the event of legislation) or the lump sum or another interim payment, in addition to the first interim sum, and the legal costs of both the original hearing and the subsequent adjourned assessment hearing, are stated, agreed, ruled and/or ordered at the time of the interim settlement.

## Conclusion

The Working Group's Report of October 2010 would appear to have resulted in some form of commitment from the Government to propose legislation incorporating its recommendations. The recommendations of the Working Group have been formulated in the knowledge of the developments of other jurisdictions in relation to PPOs and structured settlements. The proposal in relation to a dedicated index for the indexation of care costs as well as aids and appliances is essential.

However, the lack of legislation has created uncertainty. On the one hand, Plaintiffs in catastrophic injury cases did not want to miss out on the possibility of a PPO, by taking a traditional lump sum payment, in circumstances where the PPO legislative regime appeared to be imminent. On the other hand, an interim settlement brought with it an element of risk and lacked the adjudicative finality of either a lump sum or a PPO. The interim settlements have left Plaintiffs in a vulnerable position and the sooner legislation can be enacted the better. If further interim settlements are to be entertained, practitioners should proceed with caution with considerable focus on what is likely to occur on the adjourned date of the assessment hearing.

Should the legislation be enacted, it may become necessary for the Superior Courts Rules Committee, or indeed the Courts, to make a ruling concerning a model or template PPO. Practitioners will have to acquire new skills concerning the drafting of PPOs and determining the correct balance between the lump sum payments on the one hand and the PPO items on the other. The 100% principle seems to have been accepted by the Government. However, it remains to be seen whether this principle is properly implemented in the proposed Civil Liability (Amendment) Bill and, indeed, whether all of the recommendations of the Working Group are implemented. Otherwise, the legislation purporting to implement those recommendations could be a wolf in sheep's clothing. ■

# Laying Siege to the Corporate Veil

ALEC FLOOD BL

## Introduction

Since the decision of the House of Lords in *Salomon v. A Salomon and Co. Limited* [1897] AC 22, it has been a fundamental principle of corporate law that a company is a legal entity distinct from its shareholders. Over the past century this 'separate legal personality' principle has simply been referred to as the 'corporate veil'. However, this previously unassailable corporate fortification has come under attack from the most unlikely part of the common law battlefield.

The recent UK Supreme Court decision of *Prest v. Petrodel Resources Limited & Others* [2013] UKSC 34 (the *Petrodel* case) arose out of divorce proceedings and, although decided in the context of a matrimonial dispute, *Petrodel* seems destined to rank among the most important company law judgments in over a century, as it sets out a definitive strategy 'for piercing the corporate veil'.

## Case Overview

*Petrodel* considered whether there was a legal basis on which the assets of the *Petrodel* companies might be available to satisfy the lump sum order against the husband following a divorce. At the court of first instance, J. Moylan concluded that there was no general principle of law which entitled him to reach the companies' assets by piercing the corporate veil. He nevertheless concluded that in applications for financial relief ancillary to divorce, a wider jurisdiction to pierce the corporate veil was available under s.24 of the Matrimonial Causes Act, 1973<sup>1</sup>. The Court of Appeal held that there was no wider jurisdiction to pierce the corporate veil in family law cases than in any other legal context. Subsequently, a seven-member panel of the UK Supreme Court unanimously overturned the Court of Appeal's judgment, agreeing that the corporate veil should not be pierced at common law but ultimately finding that the *Petrodel* companies could be ordered to transfer the properties to the ex-wife, since they held them on a resulting trust for the ex-husband. In the course of the judgment, the Court devoted considerable attention to the issue of piercing the corporate veil. The majority endorsed, albeit *obiter*, the existence of the principle of piercing the corporate veil and formulated a general test regarding when such a piercing could take place.

## Re-Assessment of the "Corporate Veil" Principle

In the course of the leading judgment, Lord Sumption began by observing that "[s]ubject to very limited exceptions, most of which are statutory, a company is a legal entity distinct from its shareholders... [and this] fiction is the whole

foundation of English company and insolvency law"<sup>2</sup>. Lord Sumption, highlighted that "[p]iercing the corporate veil" is an expression rather indiscriminately used to describe a number of different things. Properly speaking, it means disregarding the separate personality of the company"<sup>3</sup>. By way of analysis, the judge set out to identify instances, other than statutory, where "the law attributes the acts or property of a company to those who control it, without disregarding its separate legal personality"<sup>4</sup>. Such instances included agency, beneficial trusts, single economic entities and characterisation. Lord Sumption concluded, "when we speak of piercing the corporate veil, we are not (or should not be) speaking of any of these situations, but only of those cases which are true exceptions to the rule in *Solomon*... i.e. where a person who owns and controls a company is said in certain circumstances to be identified with it in law by virtue of that ownership and control"<sup>5</sup>.

In recognising the specific instances where the corporate veil can truly be said to have been pierced, Lord Sumption founded this jurisdiction to pierce the corporate veil upon the general judicial principle that "law defines the incidents of most legal relationships between persons (natural or artificial) on the fundamental assumption that their dealings are honest"<sup>6</sup>. Furthermore, Lord Sumption determined that "the authorities show that there are limited circumstances in which the law treats the use of a company as a means of evading the law as dishonest for this purpose"<sup>7</sup>. He then reviewed the English corporate veil jurisprudence<sup>8</sup> and concluded that the ability to pierce the veil is "well established" even though most the cases which recognised this power did so *obiter*, and those which applied it could have decided so on other grounds. Lord Sumption concluded that "the recognition of a limited power to pierce the corporate veil in carefully defined circumstances is necessary if the law is not to be disarmed in the face of abuse"<sup>9</sup>.

Most noteworthy, is Lord Sumption's clarification of what is relevant wrongdoing and the identification of two sub-divisions conveniently referred to as the 'concealment' principle and the 'evasion' principle. In differentiating between the two principles, Lord Sumption describes the

1 Reflective of s.14, Family Law (Divorce) Act, 1996 in Ireland

2 [2013] UK SC 34, at para 8.

3 [2013] UK SC 34, at para. 16.

4 *Ibid.*

5 *Ibid.*

6 [2013] Sc UK 34, 17.

7 [2013] UK SC 34, at para. 18.

8 *Woolfson v. Strathclyde Regional Council* (1978) SC(HL) 90; *Adams v. Cape Industries plc* [1990] Ch 433; *Trustor AB v. Smallbone (No. 2)* [2001] 1 WLR 1177; *Nicholas v. Nicholas* [1984] FLR 285; *Green v. Green* [1993] 1 FLR 326; *Mubarak v. Mubarak* [2001] 1 FLR 673; *Kremen v. Agrest (No. 2)* [2011] 2 FLR 490; *A v. A* [2007] 2 FLR 467; *Ben Hashem v. Al Shayif* [2009] 1 FLR 115; *VTB Capital plc Nutritek International Corpn* [2012] 2 Lloyd's Rep 313.

9 [2013] UK SC 34, at para. 27.

concealment principle “as legally banal and does not involve piercing the corporate veil at all. It is that the interposition of a company or perhaps several companies so as to conceal the identity of the real actors”. Alternatively, the evasion principle in that “the court may disregard the corporate veil if there is a legal right against the person in control of it which exists independently of the company’s involvement, and a company is interposed so that the separate legal personality of the company will defeat the right or frustrate its enforcement”.

In support of Lord Sumption’s analysis, Courtney<sup>10</sup> succinctly identifies the instances where the separate legal personality of a company can be disregarded:

- A. Contract, Tort, Agency and Trusts;
- B. Misuse of the Corporate Form;
- C. Single Economic Entities;
- D. Injunctions and Orders;
- E. Characterisation;
- F. Statute.

In keeping with the *Petrol* judgment, Courtney correctly advises in many of these instances “the legal existence of the company is not ignored, but the separateness of its existence is compromised to the extent that the characteristics of its controllers are attributed to it”.<sup>11</sup> This author suggests that this gives rise to a third sub-division of wrongdoing which can be referred to as the ‘separateness’ principle. Under this separateness principle, Courtney posits that “the legal existence of the company is not forgotten, but the separateness of its existence is compromised to the extent that its responsibilities are shared, whether jointly or severally, with other persons”.<sup>12</sup> As a result, greater clarification of this area of corporate law would be achieved by reorganising the instances where the separate legal personality requires scrutiny as follows:

- A. Separateness Principle
  - i. Contract, Tort, Agency and Trusts;
  - ii. Single Economic Entities;
  - iii. Injunctions and Orders;
  - iv. Characterisation;
  - v. Statute.
- B. Concealment Principle
  - i. Legitimate Use of the Corporate Form
- C. Evasion Principle
  - i. Misuse of the Corporate Form

The separateness and concealment principles do not lead to the piercing of the corporate veil. Correctly speaking, the appropriate metaphor to be employed when referring to the concealment principle is “peaking behind the veil” rather than disregarding or piercing.

In his exploration of the evasion principle, Lord Sumption undertook a review of the leading English authorities.<sup>13</sup> In order to further develop an understanding of the evasion

principle, this author suggests that it would be a useful exercise to review relevant Irish authorities also.

The evasion principle was utilised as far back as *Cummings v. Stewart* [1911] 1 IR 236 which was a dispute over a patent licensing agreement where Meredith J. remarked that “it would be strange indeed if that [corporate] code could be turned into an engine for the destruction of legal obligations and the overthrow of legitimate and enforceable claims”.

*The State v. District Justice Donnelly* (1977) Irish Times, 5 November dealt with an application and renewal of a wine license by a newly registered company. The application was refused based on the judge’s suspicions regarding the motivation for adopting incorporation. On appeal to the Supreme Court, the order to refuse was upheld as the company was incorporated solely to maintain a wine license that had been previously endorsed.

The leading Irish authority which can be said to adhere to the evasion principle, *albeit* decided on alternative grounds, was *Power Supermarkets Ltd v. Crumlin Investments Ltd and Dunnes Stores (Crumlin) Ltd* [1981] WJSC-HC 2038. Decided on an instance of single economic entity, the judgment demonstrates that a court may, “where the justice of the case so requires”,<sup>14</sup> pierce the corporate veil as to do otherwise would lead to the evasion of the existing legal obligation to respect the terms of a commercial lease.

### General Test for ‘Piercing the Corporate Veil’

In concluding his review, Lord Sumption determined that “the corporate veil may be pierced only to prevent the abuse of corporate legal personality”. However, it is not an abuse to allow a company to incur legal liability from the outset, “[o]n the contrary, that is what incorporation is all about”. Lord Sumption made the central thesis of his judgment a new general test under English law:

“there is a limited principle... which applies when a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control. The court may then pierce the corporate veil for the purpose, and only for the purpose, of depriving the company or its controller of the advantage that they would otherwise have obtained by the company’s separate legal personality”<sup>15</sup>.

It is a strong endorsement of the Irish legal system that 25 years earlier, Barron J pre-empted the sentiments of Lord Sumption when he recorded the following *obiter* comments:

“The whole concept of limited liability is to enable some part of a person’s affairs to be placed in a separate compartment. What is important is that having decided to carry out a business transaction by way of a particular legal entity, such transactions

<sup>10</sup> Courtney, *The Law of Companies*, Chapter 5, Disregarding Separate Legal Personality (significant contribution by G Brian Hutchinson).

<sup>11</sup> Courtney, para.5.008.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Gilford Motor Co. Ltd. v. Horne* [1933] Ch 935; *Jones v. Lipman* [1962]

<sup>14</sup> 1 WLR 832; *Gencor ACP Ltd v. Dalby* [2000] 2 BCLC 734; *Trustor AB v. Smallbone (No. 2)* [2001] 1 WLR 1177.

<sup>15</sup> [1981] WJSC-HC 2038, 8.

<sup>15</sup> [2013] UK SC 34, at para. 35.

remains solely the legal and financial concern of that entity. There must, for example, be no suggestion that the benefit of a transaction will be taken by one company and the liabilities under the same transaction borne by another. It is legitimate for individual transactions to be carried out through the medium of a limited liability company. What is not legitimate is for the person in charge to pick and choose which companies shall obtain the benefit of a transaction, only when that transaction has been completed or is under way".<sup>16</sup>

The remaining six members of the UK Supreme Court were broadly in agreement with Lord Sumption's analysis. However, four judges suggested that, in future, the jurisdiction of the

<sup>16</sup> *Allied Irish Coal Supplies Limited v. Powell Duffryn International Fuels Limited* [1998] 2 IR 519, 539.

courts to pierce the corporate veil may not be limited to instances of evasion only but that such additional instances would "likely to be very rare".

## Conclusion

*Petrodel* is significant because it is the first time that the matter of disregarding the corporate veil was dealt with by the UK Supreme Court. Furthermore, it sets out a general test in law for determining instances when it is appropriate to pierce the corporate veil. Also, it provides a thorough examination of intentional wrongdoing in company incorporation. Finally, it gives invaluable clarification for corporate law practitioners, when drafting pleadings, by providing clarity as to the appropriateness of seeking the relief of 'piercing the corporate veil' and, alternatively, when it may not be appropriate to do so. The battle lines are drawn, let the siege commence! ■

# Charity Cycle



The Forgiven Irish Support Team, including four Solicitors and one Barrister took on the challenge of cycling from Land's End to John O'Groats in Britain, over a route of c 1050 miles, to raise badly needed funds for "The Forgiven Irish Campaign" (see: [www.irelandfund.org/content/forgotten-irish-campaign](http://www.irelandfund.org/content/forgotten-irish-campaign)). To date, the group has raised over Stg£20,000 but aims to raise more. The Ireland Fund of Great Britain has congratulated the enterprising cyclists, comprising Bernard McEvoy, Neill Shrimpton, Gerald Byrne and Ben Williams (all from Brown Rudnick LLP), Ercus Stewart SC (Dublin), Kenny Dalby (Glasgow) and Matt Hoyle (Australia), with Michael O'Driscoll (Cork) in the support van. If you'd like to contribute, please send sterling drafts to The Ireland Fund of Great Britain, Wigglesworth House, 69 Southwark Bridge Road, London, SE1 9HH . You can read all about the trials of cycling from Land's End to John O'Groats on the team's blog at: <http://1039miles.wordpress.com/>

# First Joint Meeting of the Bar Councils of Ireland and Northern Ireland

DAVID NOLAN SC AND YVONNE MULLEN BL

*“May I add to my farewell my hope and prayer that the Bar of Ireland whatever may befall, hitherto united as one body, inspired with fraternal loyalty to their fellows will continue to transmit their fine traditions, and that Bar and Bench together will never fail to preserve and uphold the lofty standard of their predecessors, so honoured by us all for learning, independence and courage.”<sup>1</sup>*

So wrote the retiring Mr Justice Gibson upon the occasion of his election of Honorary Bencher in 1921. He had just witnessed the partition of both the island and the legal profession. Although s. 8 of the Government of Ireland Act 1920 provided for the continuation of the rights of audience in both jurisdictions for those barristers that were called prior to 1920, a consequence of the Act was to compel the establishment of a Bar of Northern Ireland in 1921. The last meeting of an “all-island” Bar Council was on the 21<sup>st</sup> December 1921 and although relations over the decades

have been cordial, there have been no joint sessions. It had seemed that Judge Gibson’s dearest wish that the profession would somehow hold together through the vicissitudes of the time were not fully realised.

This unhappy state of affairs was remedied on the 21<sup>st</sup> June 2013 when the First Joint Meeting of the General Council of the Bar of Ireland and the Bar of Northern Ireland was held in the Benchers’ Rooms of the King’s Inns. The meeting, which was a working one, was co-chaired by David Nolan SC and Mark Mulholland QC. Full membership of both Bar Councils were in attendance. The most pressing matters facing the Bars in both jurisdictions were outlined and discussed. Topics included the Legal Services Regulation Bill, the Access to Justice Review in Northern Ireland, recent cuts in legal aid budgets in both jurisdictions, the promotion of the Bar and the education of barristers. A huge insight was gleaned by the members in the approach taken in dealing with these challenging issues, with a number of practical suggestions emerging. The meeting agreed to set out two working groups: one to look at the feasibility of setting up

<sup>1</sup> Bencher’s Minute Book 1917 – 1928 p 135. 13<sup>th</sup> April 1921



a cross-border pupil exchange and the other to examine the feasibility of encouraging cross-border bar membership.

The meeting was followed by two hugely entertaining and pertinent lectures. Sir Anthony Hart delivered an address entitled “Some Aspects of the Irish Bar before 1921, and the origins of the Bar Councils in Ireland and Northern Ireland”, which dealt with the origins of our profession. It also provided a fascinating account of the very early days of the Bar of Northern Ireland, transmitting to the listener a real flavour of the drama of the time. Interestingly, it appeared from Sir Anthony’s lecture that the principles of collegiality, which we still hold so dear, were clearly evident at the time. In early 1922, the Benchers lent 450 books to the Bar Library in Belfast, where they were desperately needed. On the 21<sup>st</sup> December 1921, the Library Committee in Dublin agreed

to provide more, but their gesture of goodwill was sadly thwarted by the seizure of the Four Courts in 1922.

His Hon. Mr Justice Gerard Hogan was not to be outdone in holding his audience rapt. He provided the audience with a lecture entitled “Childers’ Ghost and the Trials of Sir Charles O’Connor M.R.”. This account culminated in a description of the application for Habeas Corpus of Erskine Childers – a case that had been heard in the very room where we sat. Both papers are now available on Barrister’s Desktop.

A large delegation was received from Belfast for this historic event. The evening concluded with dinner in the King’s Inns, where new ties of collegiality were formed. Without doubt, the evening was a great success. It is hoped that the second Joint Meeting will be held in Belfast next year and annually thereafter. ■

## Round Hall CPD Conferences 2013

### Annual Planning and Environmental Law Conference 2013

#### 10th Anniversary

*in association with Arthur Cox*

**CHAIR:** The Hon Mr Justice Colm MacEochaidh, the High Court

#### Speakers and Topics

- Compulsory Purchase Compensation: Dermot Flanagan SC
- Irish Water – Up and Running: Deborah Spence, Arthur Cox
- Judicial Review/Development Plans/Planning Permission/EIA: Eamon Galligan SC
- Recent Developments in Environmental Law: Tom Flynn BL
- Five Urgent Reforms to the Planning Legislation: Garrett Simons SC

**DATE:** Saturday the 9th of November 2013 **VENUE:** Law Library Distillery Building, Church Street, Dublin 7

### Criminal Law Conference 2013

**CHAIR:** The Hon Mr Justice Nicolas Kearns, President of the High Court

#### Speakers and Topics

##### Introductory Keynote Speech: The DPP, Claire Loftus

- Inquests: Dr Brian Farrell, Dublin City Coroner
- Recent Developments in Charging the Jury: Genevieve Coonan BL
- Rape, Sexual Assault and Child Sexual Abuse: Some Reform-Oriented Considerations: Tom O’Malley BL
- High time to reconsider the Exclusionary Rule? Micheal P. O’Higgins SC

**DATE:** Saturday the 30th of November 2013 **VENUE:** Number Six Kildare Street, Dublin 2

### Solicitors’ CPD Event 2013

#### Speakers and Topics

- Avoiding the Pitfalls of Probate Practice/The Assisted Decision Making (Capacity) Bill 2013: Karl Dowling BL
- Key Aspects of The Companies Bill 2012: Deirdre Ahern, Trinity College Dublin
- Update on the New Personal Insolvency Regime: Bill Holohan, Solicitor
- The Legal Services Regulation Bill 2011: Mary Keane, Deputy Director General, Law Society

**DATE:** Thursday the 5th of December 2013 **VENUE:** Number Six Kildare Street, Dublin 2

**For more information contact:** [mary.kelly@thomsonreuters.com](mailto:mary.kelly@thomsonreuters.com) or [aideen.oregan@thomsonreuters.com](mailto:aideen.oregan@thomsonreuters.com)

ROUND HALL



THOMSON REUTERS

A directory of legislation, articles and acquisitions received in the Law Library from the  
21st June 2013 up to 17th October 2013  
Judgment Information Supplied by The Incorporated Council of Law Reporting

Edited by Deirdre Lambe and Renate Ni Uigín, Law Library, Four Courts.

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## ADVOCACY

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### Library Acquisition

Scalia, Antonin  
Garner, Bryan A  
Making your case: the art of persuading judges  
USA : Thomson West, 2008  
L93.U48

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## AGRICULTURE

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### Library Acquisition

Hartig Danielsen, Jens  
EU agricultural law  
The Netherlands : Kluwer Law International, 2013  
W113

### Statutory Instruments

European Communities (minimum conditions for examining agriculture plant species) (amendment) regulations 2013 (DIR/2012-44)  
SI 145/2013

European Communities (minimum conditions for examining vegetable species) (amendment) regulations 2013 (DIR/2012-44)  
SI 146/2013

European Communities (notification of small hive beetle and tropilaelaps mite) (amendment) regulations 2013 (DIR/82-894 [DIR/1982-894], DIR/2008-650, DIR/2012-737, DIR/92-65 [DIR/1992-65], DEC/2010-270  
SI 308/2013

European Communities (pesticide residues) (amendment) regulations 2013 (REG/899-2012, REG/34-2013, REG/35-2013, REG/2012-2013, REG/241-2013, REG/251-2013, REG/293-2013)  
SI 179/2013

European Union (cereal seed) regulations 2013 (DIR/66-402 [DIR/1966-402], DIR/69-60 [DIR/1969-60], DIR/71-162 [DIR/1971-162], DIR/72-274 [DIR/1972-274], DIR/72-418 [DIR/1972-418], DIR/73-438 [DIR/1973-438], DIR/75-444 [DIR/1975-444], DIR/78-55 [DIR/1978-55], DIR/78-387 [DIR/1978-387], DIR/78-692 [DIR/1978-692],

DIR/78-1020 [DIR/1978-1020], DIR/79-641 [DIR/1979-641], DIR/79-692 [DIR/1979-692], DIR/81-126 [DIR/1981-126], DIR/81-561 [DIR/1981-561], REG/3768-85 [REG/3768-1985], DIR/86-155 [DIR/1986-155], DIR/86-320 [DIR/1986-320], DIR/87-120 [DIR/1987-120], DIR/88-332 [DIR/1988-332], DIR/88-380 [DIR/1988-320], DIR/88-506 [DIR/1988-506], DIR/89-2 [DIR/1989-2], DIR/90-623 [DIR/1990-623], DIR/90-654 [DIR/1990-654], DIR/93-2 [DIR/1993-2], DIR/95-6 [DIR/1995-6], DIR/96-72 [DIR/1996-72], DIR/98-95 [DIR/1998-95], DIR/98-96 [DIR/1998-96], DIR/99/8 [DIR/1999-8], DIR/99-54 [DIR/1999-54], DIR/2001-64, DIR/2002-54, DIR/2003-61, DIR/2004-117, DIR/2006-55, DIR/2009-74, DIR/2012-1, DIR/2012-37)  
SI 217/2013

---

## ALTERNATIVE DISPUTE RESOLUTION

---

### Library Acquisition

Allen, Tony  
Mediation law and civil practice  
Haywards Heath : Bloomsbury Professional, 2013  
N398.4

---

## ANIMALS

---

### Statutory Instruments

Diseases of animals act 1966 (foot and mouth disease orders) (revocation) order 2013  
SI 195/2013

European Union (protection of animals at the time of killing) regulations 2013 (REG/1099-2009)  
SI 292/2013

---

## ARBITRATION

---

### Library Acquisition

Lew, Julian D. M.  
Bor, Harris  
Fullelove, Gregory  
Arbitration in England with chapters on Scotland and Ireland

The Netherlands : Kluwer Law International, 2013  
N398

---

## ASYLUM

---

### Articles

Curtis, Mary Elizabeth  
Ireland's asylum system - a case of "the emperor has no clothes"  
2013 (31) (16) Irish law times 239

Arnold, Samantha K  
The right to family life in asylum support accommodation  
2013 (2) Irish family law journal 49

---

## BANKING

---

### Library Acquisitions

Hewetson, Charles  
Elliott Nicholas  
Banking litigation  
London : Sweet & Maxwell, 2011  
N303

Brindle, Michael  
Cox, Raymond  
Law of bank payments  
4th ed  
London : Sweet & Maxwell, 2010  
N303

Vinter, Graham  
Price, Gareth  
Lee, David  
Project finance: a legal guide  
4th ed  
London : Sweet & Maxwell, 2013  
N305.22

### Articles

Murphy, Trevor  
A shield or a sword or just soft law?  
An analysis of the banking regulatory codes of conduct on the bank/customer relationship  
2013 (20) 8 Commercial law practitioner 163

Bergin-Cross, Caroline  
Single Euro payments area initiative (SEPA)  
18(3) 2013 Bar review 61

## Act

Central Bank (Supervision and Enforcement) Act 2013  
Act No. 26 of 2013  
Signed on 11<sup>th</sup> July 2013

## Statutory Instruments

Central Bank act 1942 (service of notices and other documents) regulations 2013  
SI 300/2013

Central Bank reform act 2010 (commencement of certain provisions) order 2013  
SI 360/2013

Central Bank reform act 2010 (sections 20 and 22 - credit unions) regulations 2013  
SI 171/2013

Central Bank (supervision and enforcement) act 2013 (commencement) order 2013  
SI 287/2013

Central Bank (supervision and enforcement) act 2013 (section 72) (commencement) order 2013  
SI 321/2013

## BUILDING AND CONSTRUCTION

### Act

Construction Contracts Act 2013  
Act No. 34 of 2013  
Signed on 29<sup>th</sup> July 2013

### Statutory Instruments

Building regulations (part D amendment) regulations 2013  
SI 224/2013

European Union (construction products) regulations 2013  
(REG/305-2011, REG/765-2008)  
SI 225/2013

## CARRIAGE OF GOODS

### Library Acquisitions

Soyer, Baris  
Tettenborn, Andrew  
Carriage of goods by sea, land and air: unimodal and multimodal transport in the 21st century  
London : Informa Law, 2013  
N328

## CENSORSHIP

### Statutory Instrument

Censorship of Publications Board and Censorship of Publications Appeal Board (transfer of ministerial functions) order 2013  
SI 255/2013

## CHILDREN

### Library Acquisition

Hershman, David  
McFarlane, Andrew

Hershman and McFarlane children act handbook 2013/14  
2013/14 ed  
Bristol : Jordan Publishing Limited, 2013  
N176

## Articles

Ryle, Etlin  
Duration of secure care placements - the "S.C." case  
2013 (2) Irish family law journal 41

Wallace, Rebecca M M  
Martin-Ortega, Olga  
Ross, Hamish  
CRC general comments on children's health, impact of the business sector and the right to rest, leisure and play  
2013 (2) Irish family law journal 35

Murphy, Hugh  
National Vetting Bureau (children and vulnerable persons) act 2012: a religious perspective  
2013 (31) (17) Irish law times 249

## COMMERCIAL LAW

### Article

Carey, Gearóid  
Accord and satisfaction  
2013 (20) 7 Commercial law practitioner 139

## COMMUNICATIONS

### Statutory Instruments

Communications (mobile telephone roaming) regulations 2013  
SI 228/2013

Wireless telegraphy (broadband wireless access local area licence) regulations 2013  
SI 214/2013

Wireless telegraphy (GMS for railway licence) regulations 2013  
SI 213/2013

## COMPANY LAW

### Library Acquisitions

McConville, Catherine  
Company law  
3rd ed  
Dublin : Round Hall, 2013  
N261.C5

Thuillier, Anthony  
Company law in Ireland  
Dublin : Clarus Press, 2013  
N261.C5

French, Derek  
Mayson, Stephen W.  
Ryan, Christopher L.  
Mayson, French and Ryan on company law 2013-2014 edition  
30th ed  
Oxford : Oxford University Press, 2013  
N261

Keay, Andrew R  
McPherson, The Hon. Mr Justice, Bruce Harvey  
McPherson's law of company liquidation  
3rd ed  
London : Sweet & Maxwell, 2013  
N262.5

Reynolds, Michael  
Partnership disputes  
London : Sweet & Maxwell, 2013  
Davies, James  
N267

Bruce, Martha  
Rights and duties of directors  
13th ed  
Haywards Heath : Bloomsbury Professional Ltd, 2013  
N264

## Article

Bergin-Cross, Caroline  
The influx of section 205 applications and the quasi-partnership  
2013 (31) (16) Irish law times 234

## Statutory Instruments

Companies act 1963 and Irish bank resolution corporation act, 2013 (statement of affairs) order 2013  
SI 304/2013

Companies act 1963 and Irish bank resolution corporation act, 2013 (statement of affairs) (amendment) order 2013  
SI 358/2013

European Communities (statutory audits) (directive 2006/43/EC) (amendment) (no. 2) regulations 2013  
(DIR/2006-43)  
SI 174/2013

## COMPETITION LAW

### Library Acquisitions

Scordamaglia-Tousis, Andreas  
EU cartel enforcement: reconciling effective public enforcement with fundamental rights  
London : Kluwer Law International, 2013  
W110

Blanco, Luis Ortiz  
EU competition procedure  
3rd ed  
Oxford : Oxford University Press, 2013  
W110

## Article

Wade, Gordon  
The arbitrability of EU competition law disputes  
2013 (20) 6 Commercial law practitioner 127

## CONSUMER LAW

### Library Acquisitions

Rosenthal, Dennis  
Consumer credit law and practice - a guide



4th ed  
Haywards Heath : Bloomsbury Professional,  
2013  
N305.4

Woodroffe, Geoffrey  
Woodroffe & Lowe's consumer law and  
practice  
9th ed  
London : Sweet & Maxwell, 2013  
Lowe, Robert  
N284

### Statutory Instrument

European Communities (cooperation  
between national authorities responsible for  
the enforcement of consumer protection  
laws) (amendment) (no. 2) regulations  
2013  
(REG/2006-2004, REG/181-2011)  
SI 200/2013

---

## CONTRACT

### Articles

Heslin, Mark J  
Non est factum - when the contact I signed  
"is not my deed"  
2013 (20) 6 Commercial law practitioner  
119

Corcoran, Elizabeth  
The effectiveness of negative pledge  
clauses  
2013 (20) 7 Commercial law practitioner  
147

---

## COPYRIGHT

### Library Acquisitions

Rahmatian, Andreas  
Copyright and creativity: the making of  
property rights in creative works  
Cheltenham : Edward Elgar Publishing  
Ltd, 2012  
N112

D'Agostino, Guiseppina  
Copyright, contracts, creators: new media,  
new rules  
Cheltenham : Edward Elgar Publishing  
Ltd, 2011  
N114

### Statutory Instrument

Copyright and related rights (public lending  
remuneration scheme) (amendment)  
regulations 2013  
SI 221/2013

---

## COSTS

### Library Acquisition

Cook, Michael J  
Cook on costs: Jackson review supplement  
2013  
London : LexisNexis Butterworths, 2013  
L89

---

## COURTS

### Article

Khan, Sana Farooq  
Justice delayed, justice denied - the case for  
a court of civil appeal  
Connolly, Barry  
2013 (31) (12) Irish law times 178

### Act

Courts and Civil Law (Miscellaneous  
Provisions) Act 2013  
Act No. 32 of 2013  
Signed on 24<sup>th</sup> July 2013

### Statutory Instruments

Circuit Court (fees) order 2013  
SI 240/2013

Circuit Court rules (taking of evidence for  
EU courts) 2013  
SI 302/2013

Courts and civil law (miscellaneous provisions)  
act 2013 (part 8) (commencement) order  
2013  
SI 286/2013

District Court (days and hours) (August  
sittings) order 2013  
SI 263/2013

District Court districts and areas (amendment)  
(Limerick, Mallow, Listowel and Newcastle  
west) order 2013  
SI 173/2013

District Court (districts) order 2013  
SI 172/2013

District Court (enforcement of maintenance  
orders) rules 2013

SI 306/2013  
District Court (fees) order 2013  
SI 241/2013

District Court (maintenance and Lugano  
Convention) rules 2013  
SI 311/2013

Rules of the Superior Courts (Lugano  
Convention, maintenance and service)  
2013  
SI 307/2013

Supreme Court and High Court (fees) order  
2013  
SI 239/2013

---

## CRIMINAL LAW

### Library Acquisitions

Ní Choileáin, Cecilia  
Criminal law  
3rd ed  
Dublin : Round Hall, 2013  
M500.C5

Millington, Trevor  
Sutherland Williams, Mark  
Hopmeier, Michael  
Millington and Sutherland Williams on the  
proceeds of crime  
4th ed

Oxford : Oxford University Press, 2013  
M594.7

### Articles

Cassidy, Niamh  
An tAcht um Fháiltas ó Choirecht agus Árasa  
an Teaghlaigh (the proceeds of crime act and  
the family home)  
18(3) 2013 Bar review 53

Smyth, Claire-Michelle  
Kelly, Siobhan  
Drug consumption rooms: a step towards  
the right to health for addicts?  
2013 (31) (13) Irish law times 197 [part I]  
2013 (31) (14) Irish law times 205 [part II]

Kennedy, Denis S  
Has Packer's "crime control model"  
become the dominant force in Irish criminal  
justice?  
2013 (23) (3) Irish criminal law journal 76

Barnes, Ronan  
Joint enterprise, section 15(A) of the misuse  
of drugs act 1977 and the  
meaning of "possession"  
2013 (23) (3) Irish criminal law journal 70

Mortimer, Joyce  
Supreme Court dismisses assisted suicide  
appeal  
2013 (Aug/Sept) Law Society Gazette 14

Allen, Catherine  
The duty to report under the Criminal justice  
act 2011  
2013 (20) 6 Commercial law practitioner  
123

Kane, Sinead  
O'Moore, Mona  
The EU directive for victims of crime: how  
it applies to victims of bullying?  
2013 (23) (3) Irish criminal law journal 83

Kilcommins, Shane  
Edwards, Claire  
Harold, Gill  
Victims of crime with disabilities in Ireland:  
invisible citizens within  
an adversarial paradigm of justice  
2013 Irish criminal law journal 45

### Act

Criminal Law (Human Trafficking)  
(Amendment) Act 2013  
Act No. 24 of 2013  
Signed on 9th July 2013

### Statutory Instrument

Criminal justice act 2013 (commencement)  
order 2013  
SI 196/2013

---

## DAMAGES

### Library Acquisition

Judicial College  
Guidelines for the assessment of general  
damages in personal injury cases  
12th ed  
Oxford : Oxford University Press, 2013  
N38.Z9

---

## DATA PROTECTION

---

### Article

Kilroy, Deirdre  
NSA data scandal pushes cyber-security to the fore  
2013 (July) Law Society Gazette 18

---

## DEFAMATION

---

### Article

Nagle, Eve  
The faceless few  
2013 (Aug/Sept) Law Society Gazette 21

---

## DRAFTING

---

### Library Acquisition

Xanthaki, Helen  
Thornton's legislative drafting  
5th ed  
Haywards Heath : Bloomsbury Professional, 2013  
L34

---

## EDUCATION

---

### Act

Further Education and Training Act 2013  
Act No. 25 of 2013  
Signed on 10<sup>th</sup> July 2013

### Statutory Instruments

Education and Training Board act 2013  
(establishment day) order 2013  
SI 212/2013

Education and Training Boards act 2013  
(commencement) order 2013  
SI 211/2013

Education (miscellaneous provisions) act  
2007 (commencement) order 2013  
SI 166/2013

Student grant scheme 2013  
SI 159/2013

Student support (amendment of second  
schedule) regulations 2013  
SI 157/2013

Student support regulations 2013  
SI 158/2013

---

## ELECTORAL

---

### Article

Gogarty, Brendan  
Democratization and the rule of law  
18(4) 2013 Bar review 83

### Act

Electoral, Local Government and Planning  
and Development Act 2013  
Act No. 27 of 2013  
Signed on 22<sup>nd</sup> July 2013

### Statutory Instruments

Electoral, local government and planning  
and development act 2013 (commencement)  
order 2013

SI 272/2013

European Parliament Constituencies  
Committee (establishment) order 2013  
SI 282/2013

---

## EMPLOYMENT LAW

---

### Library Acquisitions

Kerr, Anthony  
Employment rights legislation  
3rd ed  
Dublin : Thomson Round Hall, 2013  
N192.C5

Faulkner, Mary  
Essentials of Irish labour law  
2nd ed  
Dublin : Gill & Macmillan : 2013  
N192.C5

Thomson Round Hall  
Bolger, Marguerite  
Casserly, Dermot  
Kimber, Cliona  
Mallon, Tom  
The 10th annual Round Hall employment  
law conference 2013 : papers  
Dublin : Thomson Round Hall, 2013  
N192.C5

### Articles

Bolger, Marguerite  
High Court appeals on points of law  
2013 (3) Irish employment law journal 81

Dewhurst, Elaine  
Is the irregularity of an immigrant a defence  
for employers charged with employment-  
related offences?  
2013 Irish criminal law journal 38

Kelleher, Mary  
Lest you be judged intern  
2013 (July) Law Society Gazette 26

Duggan, Gráinne  
The taxation of termination payments  
2013 (3) Irish employment law journal 76

Connolly, Serena  
Callanan, Claire  
When I'm 64  
2013 (Oct) Law Society Gazette 26

### Statutory Instruments

Employment equality acts 1998 to 2011  
(section 12) (Church of Ireland College of  
Education) order 2013  
SI 288/2013

Protection of employment (exceptional  
collective redundancies and related matters)  
act 2007 (duration of part 2) order 2013  
SI 153/2013

Trade Union act 1941 (revocation of  
negotiation licence) (no. 1) order 2013  
SI 294/2013

Trade union act 1941 (revocation of  
negotiation licence) (no. 2) order 2013  
SI 295/2013

Trade union act 1941 (revocation of

negotiation licence) (no. 3) order 2013  
SI 296/2013

Trade union act 1941 (revocation of  
negotiation licence) (no. 4) order 2013  
SI 297/2013

Trade Union act 1941 (revocation of  
negotiation licence) (no. 5) order 2013  
SI 298/2013

Trade union act 1941 (revocation of  
negotiation licence) (no. 6) order 2013  
SI 299/2013

Worker participation (state enterprises) act  
1988 (section 9) order 2013  
SI 218/2013

---

## ENERGY

---

### Statutory Instruments

Electricity regulation act 1999 (restricted  
electrical works) regulations 2013  
SI 264/2013

European Union (energy labelling)  
(amendment) regulations 2013  
(DIR/2010-30)  
SI 261/2013

European Union (security of natural gas  
supply) regulations 2013  
(REG/994-2010)  
SI 336/2013

---

## EUROPEAN UNION

---

### Library Acquisitions

Hartley, Trevor C.  
Choice-of-court agreements under the  
European and international instruments:  
the revised Brussels I regulation, the Lugano  
convention, and the Hague convention  
Oxford : Oxford University Press, 2013  
W73

Rossi dal Pozzo, Francesco  
Citizenship rights and freedom of movement  
in the European Union  
London : Kluwer Law International, 2013  
W130.2

Ellis, Evelyn  
Watson, Phillipa  
EU anti-discrimination law  
2nd ed  
Oxford : Oxford University Press, 2012  
W130.3

Scordamaglia-Tousis, Andreas  
EU cartel enforcement: reconciling effective  
public enforcement with fundamental  
rights  
London : Kluwer Law International, 2013  
W110

Blanco, Luis Ortiz  
EU competition procedure  
3rd ed  
Oxford : Oxford University Press, 2013  
W110

Hartig Danielsen, Jens  
EU agricultural law

The Netherlands : Kluwer Law International, 2013  
W113

Collinson, Matthew  
Procurement of utilities: law and practice  
Oxford : Oxford University Press, 2013  
W109.6

Benyon, Frank S  
Services and the EU citizen  
Oxford : Hart Publishing, 2013  
W112

Bergkamp, Lucas  
Goldsmith, Barbara  
The EU environmental liability directive: a commentary  
Oxford : Oxford University Press, 2013  
W125

### Articles

Kelly, Lisa  
Fleck, Kieran  
European motor insurance directives: recent caselaw  
18(4) 2013 Bar review 66

Simons, Garrett  
Recent case law on habitats directive  
2013 (20) 2 Irish planning and environmental law journal 72

Bergin-Cross, Caroline  
Single Euro payments area initiative (SEPA)  
18(3) 2013 Bar review 61

Kane, Sinead  
O'Moore, Mona  
The EU directive for victims of crime: how it applies to victims of bullying?  
2013 (23) (3) Irish criminal law journal 83

### Act

European Union (Accession of the Republic of Croatia) (Access to the Labour Market) Act 2013  
Act No. 21 of 2013  
Signed on 1<sup>st</sup> July 2013

### Statutory Instruments

European Communities (amendment) act 2012 (commencement) (no. 2) order 2013  
SI 226/2013

European Union (restrictive measures in respect of Myanmar/Burma) regulations 2013  
(REG/401-2013)  
SI 351/2013

## EVIDENCE

### Library Acquisition

Murphy, Peter  
Glover, Richard  
Murphy on evidence  
13th ed  
Oxford : Oxford University Press, 2013  
M600

## EXPORTS

### Statutory Instrument

Control of exports (dual use items) (amendment) order 2013  
(REG/428-2009, REG/1232-2011, REG/388-2012)  
SI 242/2013

## FAMILY LAW

### Library Acquisitions

Harper, Mark  
Goodman, Dawn  
Hamlin, Patrick  
International trust and divorce litigation  
2nd ed  
Bristol : Jordan Publishing, 2013  
N173.1

Cahill, Laura  
Pensions: a handbook for the family law practitioner  
Dublin : Bloomsbury Professional, 2013  
Dixon, Sonya  
N170.C5

Hodson, David  
Bennett, Edward  
Blackburn, Helen  
The international family law practice 2013-2014  
3rd ed  
Bristol : Jordan Publishing Limited, 2013  
N170

### Articles

O'Brien, Jennifer  
Behind the veil  
2013 (Oct) Law Society Gazette 38

Walsh, Keith  
Family law: a different view  
2013 (Aug/Sept) Law Society Gazette 12

Clissmann, Inge  
McMenamin, Ciara  
We can work it out  
2013 (Oct) Law Society Gazette 30

## FINANCE

### Library Acquisition

Hudson, Alastair  
The law of finance  
2nd ed  
London : Sweet & Maxwell, 2013  
N300

### Articles

McCarthy, Jonathan  
A review of the credit guarantee scheme  
2013 (20) 8 Commercial law practitioner 170

Bergin-Cross, Caroline  
The Irish clearing system  
2013 (20) 8 Commercial law practitioner 179

## Statutory Instrument

Return of values (investment undertakings) regulations 2013  
SI 245/2013

## FINANCIAL SERVICES

### Article

Bullman, Thomas  
Funds update - MiFID II/MiFIR  
2013 (20) 6 Commercial law practitioner 132

### Statutory Instruments

Credit union and co-operation with overseas regulators act 2012 (commencement of certain provisions) order 2013  
SI 280/2013

European Union (alternative investment fund managers) regulations 2013  
(DIR/2011-61, DIR/2003-41, REG/1060-2009, REG/1095-2010)  
SI 257/2013

Financial transfers (Burma/Myanmar) (prohibition) order 2012 (revocation) order 2013  
SI 350/2013

## FOOD

### Statutory Instruments

European Communities (official controls on the import of food of non-animal origin for pesticide residues) (amendment) (no. 2) regulations 2013  
(REG/91-2003, REG/270-2013)  
SI 170/2013

European Communities (official controls on the import of food of non-animal origin for pesticide residues) (amendment) (no. 3) regulations 2013  
(DIR/618-2013)  
SI 256/2013

European Communities (official controls on the import of food of non-animal origin) (amendment) (no. 3) regulations 2013  
(REG/618-2013)  
SI 266/2013

European Union (genetically modified foodstuffs) regulations 2013  
(REG/1829-2003, REG/1830-2003)  
SI 268/2013

European Union (microbiological criteria for foodstuffs) (amendment) regulations 2013  
(REG/209-2013)  
SI 301/2013

Food hygiene (revocation of various orders) order 2013  
SI 267/2013

## GARDA SÍOCHÁNA

### Statutory Instrument

Garda Síochána (retirement) regulations 2013  
SI 260/2013

---

## GOVERNMENT

---

### Articles

Lawlor, Martin  
'Anachronistic' Seanad should be abolished  
2013 (Aug/Sept) Law Society Gazette 18

Bergin-Cross, Caroline  
Can we fix it? Yes, we can!  
2013 (July) Law Gazette Society 20

Ruane, Blathna  
Proposed abolition of the Seanad and the  
implications for judicial independence  
18(3) 2013 Bar review 46

### Acts

Ministers and Secretaries (Amendment)  
Act 2013  
Act No. 29 of 2013  
Signed on 23<sup>rd</sup> July 2013

Houses of the Oireachtas (Inquiries,  
Privileges and Procedures) Act 2013  
Act No. 33 of 2013  
Signed on 24<sup>th</sup> July 2013

### Statutory Instruments

Houses of the Oireachtas Commission  
(amendment) act 2013 (commencement)  
order 2013  
SI 198/2013

Houses of the Oireachtas (inquiries, privileges  
and procedures) act 2013 (commencement)  
order 2013  
SI 362/2013

Ombudsman act 1980 (section 4(10)) order  
2013  
SI 341/2013

Referendum Commission (establishment)  
(no. 2) order 2013  
SI 250/2013

Referendum Commission (establishment)  
order 2013  
SI 185/2013

Trust or company service provider  
authorisation (appeal tribunal) (establishment)  
order 2013  
SI 167/2013

---

## HEALTH

---

### Acts

Health Service Executive (Governance)  
Act 2012  
Act No. 23 of 2013  
Signed on 3<sup>rd</sup> July 2013

Health (Amendment) Act 2013  
Act No. 31 of 2013  
Signed on 24<sup>th</sup> July 2013

### Statutory Instruments

Health insurance act 1994 (section 11E(2))  
(no. 2) regulations 2012  
SI 203/2013

Health insurance act 1994 (section 11E(3))  
(no. 2) regulations 2013  
SI 204/2013

Health insurance act 1994 (section 11E(3))  
(no. 3) regulations 2013  
SI 364/2013

Health (pricing and supply of medical  
goods) act 2013 (commencement) order  
2013  
SI 202/2013

Health professionals (reduction of payments  
to community pharmacy contractors)  
regulations 2013  
SI 279/2013

Health professionals (reduction of payments  
to consultant psychiatrists) regulations  
2013  
SI 276/2013

Health professionals (reduction of payments  
to general practitioners) regulations 2013  
SI 277/2013

Health professionals (reduction of  
payments to general practitioners) (national  
immunisation programmes) regulations  
2013  
SI 278/2013

Health professionals (reduction of payments  
to ophthalmologists, optometrists and  
dispensing opticians) regulations 2013  
SI 274/2013

Health Service Executive (governance) act  
2013 (commencement) order 2013  
SI 275/2013

---

## HOUSING

---

### Act

Housing (Amendment) Act 2013  
Act No. 22 of 2013  
Signed on 2<sup>nd</sup> July 2013

---

## HUMAN RIGHTS

---

### Library Acquisitions

Parkes, Aisling  
Children and international human rights law:  
the right of the child to be heard  
Abingdon : Routledge Cavendish, 2013  
C200

Murphy, Therese  
Health and human rights  
Oxford : Hart Publishing Ltd, 2013  
C200

Joseph, Sarah  
Castan, Melissa  
The international covenant on civil and  
political rights : cases, materials and  
commentary  
3rd ed  
Oxford : Oxford University Press, 2013  
C200

Schabas, William A.  
The universal declaration of human rights:  
the travaux préparatoires  
Cambridge : Cambridge University Press,  
2013  
C200

---

## IMMIGRATION

---

### Statutory Instrument

Immigration act 2004 (atypical working  
scheme) (application for permission) (fee)  
regulations 2013  
SI 324/2013

---

## INDUSTRIAL DEVELOPMENT

---

### Act

Industrial Development (Science Foundation  
Ireland) (Amendment) Act 2013  
Act No. 36 of 2013  
Signed on 9<sup>th</sup> October 2013

---

## INFORMATION TECHNOLOGY

---

### Library Acquisition

Klinger, Paul  
Burnett, Rachel  
Drafting and negotiating IT contracts  
3rd ed  
Haywards Heath : Bloomsbury Professional,  
2013  
L157

---

## INQUEST

---

### Article

Keeling, Christian  
The right to legal aid at a coroner's inquest  
18(3) 2013 Bar review 55

---

## INSOLVENCY

---

### Library Acquisition

Holohan, Bill  
O'Mahoney, Ger  
Harding, Ted  
Buying and selling insolvent companies and  
businesses in Ireland  
Dublin : Bloomsbury Professional, 2013  
N312.C5

### Articles

Flood, Alec  
Biting the bullet  
2013 (Oct) Law Society Gazette 34

Glynn, Brendan  
The personal insolvency act 2012  
2013 (31) (11) Irish law times 163 (part I)  
2013 (31) (12) Irish law times 174 (part II)

### Statutory Instruments

Personal insolvency act 2012 (accounts and  
related matters) regulations 2012  
SI 247/2013

Personal insolvency act 2012 (authorisation  
and supervision of personal insolvency  
practitioners) regulations 2013  
SI 209/2013

Personal insolvency act 2012 (authorisation  
of approved intermediaries) regulations  
2013  
SI 216/2013

Personalinsolvencyact2012(commencement)  
(no. 3) order 2013  
SI 285/2013

Personal insolvency act 2012 (personal  
insolvency practitioner authorisation and  
renewal of authorisation prescribed fees)  
regulations 2013  
SI 246/2013

Personal insolvency act 2012 (written  
statement disclosing all of the debtor's  
financial affairs) regulations 2013  
EA Personal insolvency act, 2012 s3  
SI 312/2013

---

## INSURANCE

---

### Library Acquisition

Clarke, Malcolm Alister  
The law of liability insurance  
Colchester : Informa Law, 2014  
N290.Z45

### Article

Kelly, Lisa  
Fleck, Kieran  
European motor insurance directives: recent  
caselaw  
18(4) 2013 Bar review 66

Geraghty, Conor  
Stranger danger?  
2013 (Aug/Sept) Law Society Gazette 16

---

## INTELLECTUAL PROPERTY

---

### Library Acquisition

Cornish, William  
Llewelyn, David  
Aplin, Tanya  
Intellectual property: patents, copyrights,  
trade marks & allied rights  
8th ed  
London : Sweet & Maxwell, 2013  
N111

### Articles

Payne, Alistair  
Lawless, Amy  
Book by its cover?  
2013 (Aug/Sept) Law Society Gazette 24

Young, Linda  
Online file sharing: current law and  
developments in Ireland  
2013 (31) (14) Irish law times 209 [part I]  
2013 (31) (15) Irish law times 221 [part 2]

---

## INTERNATIONAL LAW

---

### Library Acquisitions

Fuller, Roslyn  
Biehler, Gernot  
Biehler on international law  
2nd ed  
Dublin : Round Hall, 2013  
C100.C5

Fox, Hazel  
Webb, Philippa  
The law of state immunity  
3rd ed  
Oxford : Oxford University Press, 2013  
C322

Schabas, William A.  
The universal declaration of human rights:  
the travaux préparatoires  
Cambridge : Cambridge University Press,  
2013  
C200

---

## JUDGES

---

### Library Acquisition

Schultz, Ulrike  
Gender and judging  
Oxford : Hart Publishing, 2013  
Shaw, Gisela  
L240.1

### Article

O'Farrell, Gemma  
An independent judicial commission -  
lessons to be learned from Canada  
18(4) 2013 Bar review 71

---

## JUDICIAL REVIEW

---

### Library Acquisitions

Woolf, The Right Honourable the Lord  
Jowell, Jeffrey  
Le Sueur, Andrew  
De Smith's judicial review  
7th ed  
London : Sweet & Maxwell, 2013  
M306  
Biehler, Hilary  
Judicial review of administrative action: a  
comparative analysis  
3rd ed  
Dublin : Round Hall, 2013  
M306.C5

---

## JURISPRUDENCE

---

### Article

Keating, Albert  
Utility and the constitution  
2013 (31) (17) Irish law times 253

---

## LAND LAW

---

### Library Acquisition

Wylie, John C W  
Irish land law  
5th ed  
Dublin : Bloomsbury Professional, 2013  
N60.C5

### Act

Land and Conveyancing Law Reform Act  
2013  
Act No. 30 of 2013  
Signed on 24<sup>th</sup> July 2013

## Statutory Instrument

Land and conveyancing law reform act 2013  
(commencement) order 2013  
SI 289/2013

---

## LANDLORD AND TENANT

---

### Articles

Walsh, Michael  
Clarke, Aoife Maeve  
Breaking bad  
2013 (Aug/Sept) Law Society Gazette 36

Hayden, Catherine  
'Lessor' of two evils  
2013 (July) Law Society Gazette 34

---

## LAND REGISTRATION

---

### Article

Farrell, Laura  
The land registration rules 2012 - an  
update  
2013 18 (3) Conveyancing and property  
journal 58

---

## LEGAL HISTORY

---

### Library Acquisitions

Osborough, W N  
An island's law: a bibliographical guide to  
Ireland's legal past  
3rd ed  
Dublin : Four Courts Press, 2013  
L403

Larkin, Felix M.  
Dawson, Norma M  
Lawyers, the law and history: Irish Legal  
History Society discourses and other papers,  
2005-2011  
Dublin : Four Courts Press, 2013  
L403

Lyall, Andrew  
The Irish House of Lords: a court of law in  
the eighteenth century  
Dublin : Clarus Press, 2013  
L403

---

## LEGAL PROFESSION

---

### Article

Nelson, Conor  
The structure of the legal professions in  
France  
18(3) 2013 Bar review 50

---

## LEGAL SYSTEMS

---

### Library Acquisitions

Wijffels, A  
van Rhee, C. H.  
European supreme courts: a portrait through  
history  
London : Third Millennium Publishing,  
2013  
L1.E95

Kenneally, Allison  
Tully, John  
The Irish legal system  
Dublin : Clarus Press Ltd, 2013  
L13

---

## LIMITATIONS

---

### Library Acquisition

Canny, Martin  
Limitation of actions in England and Wales  
Haywards Heath : Bloomsbury Professional, 2013  
N355

---

## LOCAL GOVERNMENT

---

### Statutory Instruments

Domestic waste water treatment systems (financial assistance) regulations 2013  
SI 222/2013

Domestic waste water treatment systems (registration) (amendment) regulations 2013  
SI 180/2013

European Union (household food waste and bio-waste) (amendment) regulations 2013 (DIR/1999-31 [DIR/99-31], DIR/2008-98)  
SI 251/2013

Local government (household charge) (amendment) regulations 2013  
SI 342/2013

Local government (household charge) regulations 2013  
SI 273/2013

Local government management agency (establishment) (amendment) order 2013  
SI 220/2013

Water services act 2007 (appointment of inspectors) regulations 2013  
SI 190/2013

Water services act 2007 (re-inspection) regulations 2013  
SI 189/2013

Water services act 2013 (prescribed persons) order 2013  
SI 269/2013

---

## MARITIME LAW

---

### Statutory Instruments

Harbours act 1996 (establishment of the pilotage district of Fenit Harbour) order 2013  
SI 205/2013

Harbours act 1996 (establishment of the pilotage district of Sligo Harbour) order 2013  
SI 206/2013

Merchant shipping (safety convention) (countries of acceptance) order 2013  
SI 270/2013

---

## MEDICAL LAW

---

### Library Acquisitions

Appelbe, Gordon E.  
Wingfield, Joy  
Dale and Appelbe's pharmacy and medicines law  
10th ed  
London : Pharmaceutical Press, 2013

Mason, John Kenyon  
Laurie, G T  
Mason and McCall Smith's law and medical ethics  
9th ed  
Oxford : Oxford University Press, 2013  
M608

### Act

Protection of Life During Pregnancy Act 2013  
Act No. 35 of 2013  
Signed on 30<sup>th</sup> July 2013

### Statutory Instruments

European Union (recognition of professional qualifications relating to the profession of pharmacist) (no. 2) regulations 2008 (DIR/2005-36)  
SI 377/2013

Rules specifying examinations and criteria for registration in the supervised division pursuant to the medical practitioners (amendment) act 2011  
SI 208/2013

---

## MORTGAGE

---

### Library Acquisition

Waters, Malcolm  
Ovey, Elizabeth  
Fell, Mark  
Retail mortgages  
London : Sweet and Maxwell, 2013  
N56.5

---

## NAVAL LAW

---

### Article

McDermott, Mark  
What lies beneath  
2013 (Oct) Law Society Gazette 22

---

## NEGLIGENCE

---

### Library Acquisition

Bernstein, Robby  
Economic loss  
3rd ed  
London : Thomson Sweet & Maxwell, 2013  
N39.E2

---

## NUISANCE

---

### Library Acquisition

Beever, Allan  
The law of private nuisance  
Oxford : Hart Publishing, 2013  
N38.8

---

## PENSIONS

---

### Library Acquisition

Cahill, Laura  
Pensions: a handbook for the family law practitioner  
Dublin : Bloomsbury Professional, 2013  
Dixon, Sonya  
N170.C5

### Statutory Instrument

Public service pensions (single scheme and other provisions) act 2012 (sections 68, 69, 70 and 71) (commencement) order 2013  
SI 314/2013

---

## PERSONAL INJURIES

---

### Articles

Quinn, Gráinne  
Particulars in personal injury cases  
2013 (31) (15) Irish law times 218

Corbett, Val  
Perceptions of nervous shock: the law on psychiatric harm  
2012/13 4 (4) Quarterly review of tort law 11

---

## PERSONAL PROPERTY

---

### Library Acquisition

Bridge, Michael  
Gullifer, Louise  
McMeel, Gerard  
The law of personal property  
London : Sweet and Maxwell, 2013  
N100

---

## PLANNING & ENVIRONMENTAL LAW

---

### Library Acquisitions

Denyer-Green, Barry  
Compulsory purchase and compensation  
10th ed  
Abingdon : Routledge, 2013  
N96.31

Bergkamp, Lucas  
Goldsmith, Barbara  
The EU environmental liability directive: a commentary  
Oxford : Oxford University Press, 2013  
W125

Rodgers, Christopher  
The law of nature conservation: property, environment, and the limits of law  
Oxford : Oxford University Press, 2013  
N95.1

### Articles

Heffron, Raphael  
Accommodating energy law within environmental law: an Irish exploration  
2013 (20) 2 Irish planning and environmental law journal 56

Simons, Garrett  
Recent case law on habitats directive

2013 (20) 2 Irish planning and environmental law journal 72

Hughes, Stephen

Section 160, unauthorised development and “inviolability” of the dwelling  
2013 (20) 2 Irish planning and environmental law journal 65

### **Statutory Instruments**

Building regulations (part D amendment) regulations 2013  
SI 224/2013

Domestic waste water treatment systems (financial assistance) regulations 2013  
SI 222/2013

Domestic waste water treatment systems (registration) (amendment) regulations 2013  
SI 180/2013

Environmental Protection Agency (integrated pollution control) (licensing) regulations 2013  
SI 283/2013

Environmental Protection Agency (licensing fees) regulations 2013  
SI 284/2013

European Communities (environmental impact assessment) (agriculture) (amendment) regulations 2013  
(DIR/2011-92)  
SI 142/2013

European Union (birds and natural habitats) (sea-fisheries) regulations 2013  
(DIR/2009-147, DIR/92-43 [DIR/1992-43])  
SI 290/2013

European Union (conservation of wild birds (Horn Head to Fanad Head special protection area 004194)) regulations 2013  
(DIR/2009-147, DIR/92-43 [DIR/1992-43])  
SI 281/2013

European Union (household food waste and bio-waste) (amendment) regulations 2013  
(DIR/1999-31 [DIR/99-31], DIR/2008-98)  
SI 251/2013

European Union (waste incineration plants and waste co-incineration plants) regulations 2013  
(DIR/2010-75)  
SI 148/2013

Planning and development (amendment) regulations 2013  
SI 219/2013

Waste management (landfill levy) (amendment) regulations 2013  
SI 194/2013

Water services act 2007 (appointment of inspectors) regulations 2013  
SI 190/2013

Water services act 2007 (re-inspection) regulations 2013  
SI 189/2013

Water services act 2013 (prescribed persons) order 2013  
SI 269/2013

---

## **PRISONS**

---

### **Articles**

Keane, Emma  
Jailhouse rock  
2013 (Aug/Sept) Law Society Gazette 28

O'Donnell, Ian  
Making progress with penal reform  
2013 (23) (3) Irish criminal law journal 66

### **Act**

Prison Development (Confirmation of Resolutions) Act 2013  
Act No. 28 of 2013  
Signed on 23<sup>rd</sup> July 2013

### **Statutory Instrument**

Prisons act 1970 (section 7) order 2013  
SI 223/2013

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## **PRIVATE SECURITY**

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### **Statutory Instrument**

Private security licence fees) regulations 2013  
SI 293/2013

---

## **PRIVILEGE**

---

### **Library Acquisition**

Passmore, Colin  
Privilege  
3rd ed  
London : Sweet & Maxwell, 2013  
N386.5

---

## **PROBATE**

---

### **Library Acquisition**

Dowling, Karl  
Grimes, Robert  
Probate pocketbook  
Dublin : Round Hall, 2013  
N127.C5

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## **PROFESSIONS**

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### **Statutory Instruments**

European Union (recognition of professional qualifications relating to the profession of pharmacist) (no. 2) regulations 2008  
(DIR/2005-36)  
SI 377/2013

Health professionals (reduction of payments to community pharmacy contractors) regulations 2013  
SI 279/2013

Health professionals (reduction of payments to consultant psychiatrists) regulations 2013  
SI 276/2013

Health professionals (reduction of payments to general practitioners) regulations 2013  
SI 277/2013

Health professionals (reduction of payments to general practitioners) (national immunisation programmes) regulations 2013  
SI 278/2013

Health professionals (reduction of payments to ophthalmologists, optometrists and dispensing opticians) regulations 2013  
SI 274/2013

Rules specifying examinations and criteria for registration in the supervised division pursuant to the medical practitioners (amendment) act 2011  
SI 208/2013

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## **PUBLIC SERVICE**

---

### **Statutory Instruments**

Appointment of special adviser (Minister of State at the Department of Health) order 2013  
SI 253/2013

Censorship of Publications Board and Censorship of Publications Appeal Board (transfer of ministerial functions) order 2013  
SI 255/2013

Ethics in Public Office  
SI 265/2013

Ethics in public office (prescribed public bodies, designated directorships of public bodies) (amendment) regulations 2013  
SI 271/2013

Financial emergency measures in the public interest (reduction in payments to state solicitors) (adjustment) regulations 2013  
SI 231/2013

Public service pensions (single scheme and other provisions) act 2012 (sections 68, 69, 70 and 71) (commencement) order 2013  
SI 314/2013

---

## **REVENUE**

---

### **Statutory Instrument**

European Communities (customs actions against goods suspected of infringing certain intellectual property rights) (amendment) regulations 2013  
(REG/1383-2003, REG/1891-2004)  
SI 309/2013

---

## **ROAD TRAFFIC**

---

### **Library Acquisition**

McCormac, Kevin  
Wallis, Peter  
Brown, Philip  
Wilkinson's road traffic offences  
26th ed  
London : Sweet & Maxwell, 2013  
M565.T7

### **Statutory Instruments**

Commercial vehicle roadworthiness (vehicle testing) (no. 2) regulations 2013  
SI 347/2013

European Communities (vehicle drivers certificate of professional competence) (amendment) regulations 2013 (DIR/2003-59)  
SI 345/2013

Non-use of motor vehicles act 2013 (commencement) (no. 2) order 2013  
SI 232/2013

Non-use of motor vehicles act 2013 (commencement) order 2013  
SI 207/2013

Non-use of motor vehicles regulations 2013  
SI 233/2013

Road Safety Authority (commercial vehicle roadworthiness) act 2012 (sections 30, 31 and 39) (commencement) order 2013  
SI 349/2013

Road Safety Authority (commercial vehicle roadworthiness) (vehicle maintenance and repair) regulations 2013  
SI 348/2013

Road Safety Authority staff superannuation scheme 2013  
SI 248/2013

Road traffic (licensing of drivers) (amendment) (no. 2) regulations 2013  
SI 234/2013

Road traffic (national car test) (amendment) (no. 2) regulations 2013  
SI 303/2013

Road traffic (signs) (amendment) regulations 2013  
SI 187/2013

Road traffic (traffic and parking) (amendment) regulations 2013  
SI 188/2013

Road transport operator licensing (fees) regulations 2013  
SI 310/2013

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## **SAFETY HEALTH AND WELFARE**

### **Statutory Instruments**

Safety, health and welfare at work (construction) (amendment) regulations 2013 (DIR/92-57 [DIR/1992-57])  
SI 182/2013

Safety, health and welfare at work (construction) regulations 2013 (DIR/92-57 [DIR/1992-57])  
SI 291/2013

---

## **SHIPPING**

### **Library Acquisition**

Caddell, Richard  
Rhidian Thomas, D  
Shipping, law and the marine environment in the 21st century: emerging

challenges for the law of the sea - legal implications and liabilities  
Witney : Lawtext Publishing Limited, 2013  
N332

---

## **SOCIAL WELFARE**

### **Act**

Social Welfare and Pensions (Miscellaneous Provisions) Act 2013  
Act No. 20 of 2013  
Signed on 28<sup>th</sup> June 2013

### **Statutory Instruments**

Social welfare (consolidated contributions and insurability) (amendment) (no. 3) (credits) regulations 2013  
SI 243/2013

Social welfare (consolidated supplementary welfare allowance) (amendment) (no. 2) (rent supplement) regulations 2013  
SI 215/2013

Social welfare (consolidated supplementary welfare allowance) (amendment) (no. 3) (prescribed activation measures) regulations 2013  
SI 258/2013

---

## **SOLICITORS**

### **Library Acquisition**

Crew, Anna  
CMS Cameron McKenna  
Solicitors' claims: a practical guide  
London : Sweet & Maxwell, 2013  
N33.73

### **Articles**

Rowe, David  
Back to the future  
2013 (Oct) Law Society Gazette 42

Barry, Leo  
Home and away  
2013 (July) Law Society Gazette 38

Fahy, Mary Frances  
Invasion of the auditors!  
2013 (July) Law Society Gazette 22

Rowe, David  
Shape of things to come  
2013 (Aug/Sept) Law Society Gazette 32

Armstrong, Maggie  
Shoot for the stars  
2013 (July) Law Society Gazette 30

### **Statutory Instruments**

Financial emergency measures in the public interest (reduction in payments to state solicitors) (adjustment) regulations 2013  
SI 231/2013

The solicitors acts 1954 to 2011 solicitors (practising certificate 2013) (amendment) regulations 2013  
SI 323/2013

---

## **SPORT**

### **Articles**

O'Connor, Brendan  
Anti-doping - practice & procedure in Ireland  
2013 (31) (13) Irish law times 192

O'Connor, Tim  
Rugby discipline and the courts: going through the phases?  
18(4) 2013 Bar review 75

---

## **STATISTICS**

### **Statutory Instruments**

Statistics (business accounts surveys) order 2013  
SI 151/2013

Statistics (outward foreign affiliates) order 2013  
[REG/2700-1998, REG/1893-2006, REG/716-2007]  
SI 154/2013

---

## **SUCCESSION**

### **Library Acquisition**

Dowling, Karl  
Grimes, Robert  
Succession law  
Dublin : Round Hall, 2013  
N120.C5

### **Articles**

Keating, Albert  
The doctrine of lapse and section 98 of the Succession act  
2013 (31) (12) Irish law times 182

Keating, Albert  
The recovery of estates of deceased persons by a state authority  
2013 18 (3) Conveyancing and property law journal 54

---

## **TAXATION**

### **Library Acquisitions**

Judge, Norman E  
Purcell McQuillan  
Irish income tax 2013  
2013 ed  
Dublin : Bloomsbury Professional, 2013  
M337.11.C5

Gaynor, Caitriona  
Holly, Raymond  
Kennedy, Pat  
Irish taxation: law and practice 2013/2014  
11th ed  
Dublin : Irish Taxation Institute, 2013  
M335.C5

Keogan, Aileen  
Scully, Emmet  
Law of capital acquisitions tax and stamp duty: finance act 2013  
2nd ed  
Dublin : Irish Taxation Institute, 2013  
M337.16.C5



Brennan, Philip

Tax acts 2013

24th ed

Dublin : Bloomsbury Professional, 2013

M335.C5.Z14

Martyn, Joe

Taxation summary: finance act 2013

37th ed

Dublin : Irish Taxation Institute, 2013

Cooney, Terry

M335.C5

O'Mara, John

Tax guide 2013

Dublin : Bloomsbury Professional Ltd,

2013

M335.C5

Power, Tom

Scully, Emmet

Devlin, Caroline

The law and practice of Irish stamp duty:  
finance act 2013

6th ed

Dublin : Irish Taxation Institute, 2013

M337.5.C5

Hardy, Ken

van der Hoeven, Ruud

The research and development tax credit  
- the professionals' guide

Dublin : Irish Tax Institute, 2013

M336.6.C5

## Article

Duggan, Gráinne

The taxation of termination payments

2013 (3) Irish employment law journal 76

## Statutory Instruments

European Union (value-added tax)  
regulations 2013

(DIR/2006-112, DIR/2013-13)

SI 252/2013

Mineral oil tax (amendment) regulations  
2013

SI 230/2013

Solid fuel carbon tax regulations 2013

SI 191/2013

Stamp duty (designation of clearing houses)  
regulations 2013

SI 192/2013

Taxes consolidation act 1997 (cessation of  
section 88A in respect of certain claims)  
order 2013

SI 229/2013

Taxes consolidation act 1997 (cessation of  
section 472A in respect of certain claims)  
order 2013

SI 227/2013

Value-added tax (refund of tax) (rescue boats  
and related equipment) order 2013

SI 249/2013

## TORT

### Library Acquisitions

Goudkamp, James

Tort law defences

Oxford : Hart Publishing, 2013

N30

School of Law, Trinity College

Cox, Neville

Ryan, Des

Craven, Ciaran

Ryan, Ray

Binchy, William

Tort litigation 2013: all the recent  
developments

Dublin: School of Law, Trinity College,  
2013

N30.C5

### Articles

Ryan, Des

On the move once more: new judicial  
approaches to vicarious liability

2012/13 4 (4) Quarterly review of tort  
law 6

Corbett, Val

Perceptions of nervous shock: the law on  
psychiatric harm

2012/13 4 (4) Quarterly review of tort  
law 11

Binchy, William

The Supreme Court's new approach to the  
statute of limitations in tort litigation

2012/13 4 (4) Quarterly review of tort  
law 1

## TRANSPORT

### Statutory Instruments

European Communities (carriage  
of dangerous goods by road and use  
of transportable pressure equipment)  
(amendment) regulations 2013

(DIR/2012-45, DIR/2008-68)

SI 238/2013

European Communities (interoperability of  
the rail system) regulations 2011 (amendment)  
regulations 2013

(DIR/2008-57, DIR/2013-9)

SI 186/2013

European Communities (marine equipment)  
(amendment) regulations 2013

(DIR/96-98 [DIR/1996-98],

DIR/2012-32)

SI 199/2013

European Union (transport of dangerous  
goods by rail) (amendment) regulations  
2013

(DIR/2008-68, DIR/2012-45)

SI 201/2013

National Transport Authority (extension of  
remit) order 2013

SI 237/2013

## BILLS INITIATED IN DÁIL ÉIREANN DURING THE PERIOD 21<sup>ST</sup> JUNE 2013 TO THE 17<sup>TH</sup> OCTOBER 2013

Road Traffic (No. 2) Bill 2013

Bill No. 74 of 2013

Thirty-Third Amendment of the Constitution  
(Court of Appeal) Bill 2013

Bill No. 79 of 2013

Child and Family Agency Bill 2013

Bill No. 81 of 2013

Assisted Decision-Making (Capacity) Bill  
2013

Bill No. 83 of 2013

Betting (Amendment) Bill 2013

Bill No. 86 of 2013

Fines (Payment and Recovery) Bill 2013

Bill No. 87 of 2013

Freedom of Information Bill 2013

Bill No. 89 of 2013

Gas Regulation Bill 2013

Bill No. 91 of 2013

Criminal Justice (Forensic Evidence and  
DNA Database System) Bill 2013

Bill No. 93 of 2013

Local Government Bill 2013

Bill No. 98 of 2013

Equal Status (Amendment) Bill 2013

Bill No. 72 of 2013

[pmb] *Deputy Pádraig Mac Lochlainn*

Child Care (Amendment) (No. 2) Bill 2013

Bill No. 73 of 2013

[pmb] *Deputy Robert Troy*

Mental Health (Anti-Discrimination) Bill  
2013

Bill No. 77 of 2013

[pmb] *Deputies Simon Harris, Maureen  
O'Sullivan, Caoimhín Ó Caoláin, Robert Troy*

Child Care (Amendment) (No. 3) Bill 2013

Bill No. 80 of 2013

[pmb] *Deputy Robert Troy*

Garda Síochána (Amendment) Bill 2013

Bill No. 82 of 2013

[pmb] *Deputy Mick Wallace*

Financial Services (Protection of Deposits)  
Bill 2013

Bill No. 84 of 2013

[pmb] *Deputy Michael McGrath*

Down's Syndrome (Equality of Access)  
Bill 2013

Bill No. 85 of 2013

[pmb] *Deputy Finian McGrath*

Electoral (Amendment) (Hours of Polling)  
Bill 2013

Bill No. 95/2013

[pmb] *Deputy Andrew Doyle*

Land and Conveyancing Law Reform  
(Amendment) Bill

Bill No. 96 of 2013

[pmb] *Deputy Pearse Doherty*

Energy Regulation (Code of Practice) Bill 2013

Bill No. 97 of 2013

[pmb] *Deputy Michael Moynihan*

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## **BILLS INITIATED IN SEANAD ÉIREANN DURING THE PERIOD 21<sup>ST</sup> JUNE 2013 TO THE 17<sup>TH</sup> OCTOBER 2013**

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Protected Disclosures Bill 2013

Bill No. 76/2013

Friendly Societies and Industrial and Provident Societies (Miscellaneous Provisions) Bill 2013

Bill No. 90/2013

County Enterprise Boards (Dissolution) Bill 2013

Bill No. 92 of 2013

Food Provenance Bill 2013

Bill No. 71 of 2013

[pmb] *Senator Feargal Quinn*

Legal Recognition of Gender Bill 2013

Bill No. 75 of 2013

[pmb] *Senator Katherine Zappone*

Parental Leave Bill 2013

Bill No. 78 of 2013

[pmb] *Senators Mary M. White, Diarmuid Wilson, Darragh O'Brien*

Medical Practitioners (Amendment) Bill 2013

Bill No. 88 of 2013

[pmb] *Senator David Norris, Senator Seán Barrett, Senator Rónán Mullen*

Upward Only Rent (Clauses and Reviews) Bill 2013

Bill No. 94 of 2013

[pmb] *Senators Feargal Quinn, Sean D. Barrett, David Norris*

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## **PROGRESS OF BILL AND BILLS AMENDED DURING THE PERIOD 21<sup>ST</sup> JUNE 2013 TO THE 17<sup>TH</sup> OCTOBER 2013**

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Central Bank (Supervision and Enforcement) Bill 2011

Bill No. 43 of 2011

Report Amendments

*Enacted*

Construction Contracts Bill 2010

Bill No. 21 of 2010

Amendments made by the Dáil

*Enacted*

County Enterprise Boards (Dissolution) Bill 2013 [Seanad]

Bill No. 92 of 2013

Report Amendments

Courts and Civil Law (Miscellaneous Provisions) Bill 2013

Bill No. 30 of 2013

Passed by Dáil Éireann

*Enacted*

Criminal Law (Human Trafficking) (Amendment) Bill 2013 [Seanad]

Bill No. 39 of 2013

Passed by Dáil Éireann

*Enacted*

Electoral, Local Government and Planning and Development Bill 2013

Bill No. 70 of 2013

Passed by Dáil Éireann

*Enacted*

Gas Regulation Bill 2013

Bill No. 91 of 2013

Passed by Dáil Éireann

Health (Amendment) Bill 2013 [Seanad]

Bill No. 65 of 2013

Passed by Dáil Éireann

*Enacted*

Health Service Executive (Governance) Bill 2012 [Seanad]

Bill No. 65 of 2012

Amendments made by the Dáil

*Enacted*

Houses of the Oireachtas (Inquiries, Privileges and Procedures) Bill 2013

Bill No. 53 of 2013

Committee Amendments

*Enacted*

Industrial Development (Science Foundation Ireland) (Amendment) Bill 2012 [Seanad]

Bill No. 113 of 2012

Amendments made by the Dáil

*Enacted*

Land and Conveyancing Law Reform Bill 2013

Bill No. 34 of 2013

Report Amendments

*Enacted*

Legal Services Regulation Bill 2011

Bill No. 58 of 2011

Committee Amendments

Ministers and Secretaries (Amendment) Bill 2012

Bill No. 81 of 2012

Report Amendments

*Enacted*

Prison Development (Confirmation of Resolutions) Bill 2013

Bill No. 69 of 2013

Committee Amendments

*Enacted*

Protected Disclosures Bill 2013 [Seanad]

Bill No. 76 of 2013

Committee Amendments

Protection of Life During Pregnancy Bill 2013

Bill No. 66 of 2013

Report Amendments

*Enacted*

Public Service Management (Recruitment and Appointments) (Amendment) Bill 2013 [Seanad]

Bill No. 58 of 2013

Committee Amendments

Residential Tenancies (Amendment) (No. 2) Bill 2012

Bill No. 69 of 2012

Passed by Dáil Éireann

Taxi Regulation Bill 2012 [Seanad]

Bill No. 107 of 2012

Amendments made by the Dáil

Thirty-Second Amendment of the Constitution (Abolition of Seanad Éireann) Bill 2013

Bill No. 63 No. 2013

Report Amendments

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### **Note re Official Journal**

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# Enforcing Mortgages and Charges: Recent Developments

DAVID O'NEILL BL

## Land and Conveyancing Law Reform Act 2013

This Act, which is intended to overcome some of the difficulties identified in *Start Mortgages v Gunn*<sup>1</sup>, is now in force in its entirety<sup>2</sup>. Section 1 of the Act applies to any mortgage or charge created before 1 December 2009<sup>3</sup> (when the Land and Conveyancing Law Reform Act 2009 came into force). It provides that any person

- may rely on ss 2 and 18 to 24 of the Conveyancing Act 1881, ss 3 to 5 of the Conveyancing Act 1911, and s 62(3), (7), and (8) of the Registration of Title Act 1964 “the statutory provisions”, as if they had not been repealed by the 2009 Act<sup>4</sup> and
- may further do so as if the reference to the provisions of the Conveyancing Acts in s 62(2) and (6) of the 1964 Act “the amended provisions” had not been replaced in the 2009 Act<sup>5</sup>.

Section 1 is without prejudice to any other basis for a person's relying on the Conveyancing Acts and the 1964 Act<sup>6</sup>.

## Does not apply to existing Proceedings

Section 1(5) significantly restricts the new Act. There are hundreds of cases pending, awaiting resolution of the perceived *Gunn* problem. Existing proceedings are unlikely to be salvable by amendment or liberally interpreting an unspecific special indorsement of claim. Proceedings may not be instituted in respect of a cause of action that had not accrued at the date on which the proceedings commenced<sup>7</sup>.

## Restricted Right to rely on new Act in High Court

As regards mortgages and charges that were not granted over land which is the principal private residence of the mortgagor, or of a person whose consent would be needed

for a conveyance of the equity of redemption pursuant to the Family Home Protection Act 1976 or the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, the 2013 Act does not affect any jurisdictional change.

As regards mortgages or charges within those categories, s 3(2) now enunciates the general principle (consistent with s 101(5) of the 2009 Act) that proceedings for possession pursuant to those instruments must be brought in the Circuit Court<sup>8</sup>. Section 3(4) exceptionally permits possession proceedings under the 2013 Act to be instituted in the High Court “where other proceedings relating to the enforcement of the mortgagee's rights under the mortgage concerned have been commenced in that court prior to the coming into operation of this section where those other proceedings have not been determined”. What this seems to mean is that a lender, whose existing High Court proceedings regarding a principal private residence are, for instance, stymied by *Gunn*, has not had those proceedings dismissed, it may institute concurrent proceedings under the 2013 Act (although it cannot, apparently, amend its existing proceedings).

## Dead Souls

There are certain instances in which a lender might have been irremediably prejudiced by *Gunn* because the borrower had died, and any cause of action not encompassed in extant proceedings stymied by *Gunn* had become barred by s 9 of the Civil Liability Act 1961. If, after the commencement of the 2013 Act, the lender institutes proceedings relying on the statutory provisions or the amended provisions<sup>9</sup> (by virtue of s 1), those proceedings are deemed by s 4 of that Act to have commenced within time for the purposes of s 9 of the 1961 Act provided that:

- (a) the lender had already commenced proceedings under the statutory provisions or the amended provisions,
- (b) those proceedings had not been determined when s 4 came into force,
- (c) the mortgage or charge was created before 1 December 2009,
- (d) the new proceedings are commenced within 6 months of s 4 coming into force, and
- (e) the land the subject of the proceedings protected

1 [2011] IEHC 275.

2 Ss 1 and 4 came into effect on enactment (24 July 2013). The Land and Conveyancing Law Reform Act (Commencement) Order 2013 SI 289/2013 commenced ss 2 and 3 as of 31 July 2013.

3 S 1(1).

4 S 1(2).

5 S 1(3).

6 S 1(4).

7 *Creed v Creed* [1913] 1 IR 48, *Gaffney v Faughnan* [2006] 1 ILRM 481, *Minister of State for the Interior v RT Co Pty Ltd* (1962) 107 CLR 1. In *Finnegan v Richards* [2007] 3 IR 671 the court thought the principle might be outmoded, but cf *Millburn-Snell v Evans* [2012] 1 WLR 41.

8 It seems that the relevant consideration is whether the land is a principal private residence when the application for possession is made and not whether it bore that status when the mortgage or charge was granted.

9 See Section 1 of this article above, and fn 4 and 5.

by s 4 is in whole or part the same land as is the subject of the extant proceedings.

The 2013 Act was commenced on 24 July 2013, so any such new proceedings must be commenced by 23 January 2014.

### Restoration of Right to Possession unconstitutional?

Borrowers may well seek to argue that, in particular, the restoration of lenders' powers under s 62(7) of the 1964 Act is unconstitutional. That argument will be difficult. The repeal of s 62(7) may be unconstitutional because it targeted an arbitrarily selected cohort of lenders<sup>10</sup>. But then s 62(7) is deemed never to have been repealed and the 2013 legislation in s 1(4) recognizes this. If the repeal was constitutional then it is difficult to see how the restoration of the lender's rights would not equally be constitutional.

Nonetheless, s 1 may be vulnerable. If the reasoning in *Gunn* is correct, and no rights vest under s 62(7) until the full balance becomes due in accordance with the terms of the charge, then removing those rights while they were still contingent might be constitutionally defensible even if the removal was effected in an anomalous manner. By contrast, where the full balance became due between the repeal of s 62(7) and its restoration, the adverse consequences for the borrower arguably vested on the date the balance became due. To legislate that the lender also gains a backdated right to possession could be held to be an unjust attack on the borrower's property rights.

In passing, it might be noted that if the repeal of s 62(7) was unconstitutional, it is still in force notwithstanding the 2013 Act, and could be invoked by a chargeant under Part 10 of the 2009 Act in parallel to, and notwithstanding the less lender-friendly aspects of, Part 10 in relation to lenders' remedies. Admittedly, a court might regard that invocation as an abuse of process.

### Does not address other Issues raised by recent Decisions

The decision in *Stepstone Mortgage Funding Ltd v Fitzell*<sup>11</sup> (with regard to the need for a lender to prove compliance with the applicable Code of Conduct on Mortgage Arrears) as well as aspects of *Gunn*, and its successors, will remain in place. A lender restored to the benefits of s 62(7) will still have to ensure that an adequate demand has been made for the principal if that is required by the deed of charge<sup>12</sup>. A recent newspaper report about a particular lender's demands might make one wonder whether this point has been appreciated. Moreover, in the light of *Irish Life and Permanent v Duff*<sup>13</sup>, even where a demand is not required, if the lender has chosen to defer reliance on its acceleration clause, it may need to notify the borrower before reverting to its strict legal entitlement<sup>14</sup>.

10 Cp the observations of Hogan J in *Irish Life and Permanent plc v Duff* [2013] IEHC 43 at para 35.

11 [2012] IEHC 242.

12 The court would now have jurisdiction to hear the application for possession, but the absence of an adequate demand would be a defence to those proceedings.

13 Above, fn 10.

14 The correctness of this ruling in *Duff* would fall to be decided if

And the lender will have to satisfy the court that it had complied with whatever may be the Code of Conduct on Mortgage Arrears at the relevant time.

### Deeming Clauses

Most mortgages and charges from before 1 December 2009 have a clause deeming the principal to have become due on the date of execution of the instrument, or shortly thereafter. The deeming is said to be for the purposes of the Conveyancing Acts, which are often defined to include the Registration of Title Act 1964. The purpose of the clause was that the Conveyancing Acts distinguished between the date on which the power of sale had arisen (which in old-fashioned mortgages was generally the earliest date on which it could be redeemed), and the date when the power became exercisable, which usually imported some instance of default. Once the power of sale had arisen, any misuse of it before it had become exercisable entitled the borrower to damages only, but if the power had not arisen the borrower could have the sale set aside<sup>15</sup>. Hence the need for an artificial point at which the power was agreed to arise so that purchasers would not have to make a detailed enquiry in that regard.

In *McAteer v Sheaban*<sup>16</sup> the lender relied on such a clause to argue that repayment of the principal had become due for the purposes of s 62(7) of the Registration of Title Act 1964 immediately on execution of the deed of charge, subject to a covenant not to seek possession until an event of default occurred. In the particular instance, the purpose was to justify proceedings under s 62(7) where the default had occurred after the repeal of that subsection. But lenders hoped that a successful argument would revive proceedings that, because no adequate demand had preceded their issue, would otherwise be defeated by the reasoning in *Gunn*, even though default occurred before repeal. The argument was that the right of action was acquired on the execution of the deed, and accrued, *pace* Dunne J in *Gunn*, on the occasion of default, without the need for a demand. However, O'Malley J, at paras 138-140 of her judgment, ruled that when the principal became due was governed above all else by the covenant to pay, and if this required a demand the requirement could not be circumvented by reliance on the deeming clause<sup>17</sup>.

A similar conclusion had earlier in the summer been reached by Finlay-Geoghegan J in *ACC Bank v Fagan*<sup>18</sup> where one clause in the deed of charge asserted that the total balance became due on default, whereas the covenant to pay required a demand; the learned Judge effectively held that the terms of the covenant to pay took priority.

### Double Construction

Arguably the main contention in *McAteer v Sheaban*<sup>19</sup> was

the Supreme Court holds that it has jurisdiction to entertain the case stated by Hogan J in *Irish Life and Permanent plc v Dunphy* [2013] IEHC 235.

15 Conveyancing Act 1881, s 21(2).

16 [2013] IEHC 417.

17 It is clear that she was influenced in this regard by the observations of Lord Scott in *West Bromwich Building Society v Wilkinson* [2005] 1 WLR 2303 at 2310.

18 [2013] IEHC 346.

19 Above, fn 16.

that to deprive a fairly arbitrarily selected cohort of lenders of effective means of enforcing its securities would be unconstitutional<sup>20</sup>, and that, to avoid that outcome, the relevant statutes should be construed so as to preserve the lenders' right to apply for possession. The difficulty, of course, with this argument, is that the principle of double construction (or the presumption of constitutionality) is applicable to an enactment capable of more than one meaning, so that the court will prefer a constitutional meaning to an unconstitutional one if the former is reasonably available. However, there must be some scope for doubt as to the meaning of the provision alleged to be unconstitutional. In the current context, the provision that may be unconstitutional is s 8(3) of the 2009 Act (and the corresponding reference in Schedule 2), which decrees the repeal of s 62(7); however, there is absolutely no ambiguity in its terms. Contrariwise, s 27(1)(c) of the Interpretation Act 2005, which preserves only rights acquired or accrued, might be ambiguous, but could hardly, in specifying as those rights to be preserved on repeal rights that have been acquired or accrued, be regarded as irrational or a disproportionate interference with property or other rights.

Hence, O'Malley J in *McAteer v Sheahan* at para 131 rejected the lender's reliance on this rule. The lender's argument begged the question. If the right had not been acquired or accrued, the right's non-preservation could not be an interference with that right. If it had been acquired or accrued, s 27(1)(c) maintained the holder's entitlement to rely on it. With regard to when a right was acquired or accrued in any given instance, such as in the context of construing s 62(7), s 27(1)(c) was constitutionally neutral.

### Other Ways around Gunn

That said, there are still unexplored routes around *Gunn*. One is that, when s 62(7) speaks of "repayment of the principal...has become due", it means the principal or any part of it. That would be supported by the decision of the English Divisional Court in *Payne v Cardiff RDC*<sup>21</sup> and possibly by the reasoning of Barron J in *First Southern Bank Ltd v Maher*<sup>22</sup>. Some sympathy for this approach seems to have

been indicated in *GE Capital Woodchester Home Loans Ltd v Reade (No 1)*<sup>23</sup>. It may be possible to distinguish *Wise Finance Ltd v Lanigan*<sup>24</sup> because there the loan was repayable in a lump sum, not by instalments. The value of this approach is that, once an instalment consisting in part of principal becomes due, s 62(7) may be invoked without having to worry what event might trigger the acceleration clause so as to render the entire balance due. Admittedly, the reasoning at paragraph 35 of *ACC Bank v Fagan* above<sup>25</sup> is inconsistent with this argument, but neither *Payne* nor *First Southern* were opened to the court in the *Fagan* case.

Feeney J suggested another possible escape in *McEnergy v Sheahan*<sup>26</sup>. He opined that s 62 of the 1964 Act gave the lender a plenary right to possession and s 62(7) was merely procedural, giving the lender the right to use a special summons. This suggestion has not been well received<sup>27</sup> since it seems inconsistent with the principle that the holder of a charge has no right in equity to possession. Indeed it was conceded in *McAteer v Sheahan* that the late Feeney J had erred in law in this regard. Yet it is arguable that the statutory charge under s 62, which was always intended to embody a statutory right to possession, was more like a civil law hypothecation than an equitable charge<sup>28</sup>, and should not necessarily be read as subject to the limitations of the latter. If so, an underlying right to possession might be held to have survived the repeal<sup>29</sup>. This would help lenders with extant proceedings, although it would not meet a defence based on the inadequacy of the demand if the charge requires one. Section 62(7) may not have been needed to allow the lender move by special summons since this seems adequately covered by O 3(15) and O 54 r 3.

It might finally be noted that the court has an inherent power to put the mortgagee or chargeant into possession in aid of a judicial sale. A recent exercise of this power in favour of an equitable chargeant was Irvine J's decision in *Ulster Investment Bank Ltd v Rockroban Estate Ltd*<sup>30</sup>. As enunciated in *Rockroban*, it had been the traditional view at the turn of the 20th century that this power should only be exercised in special circumstances, such as where the borrower was damaging the property, or impeding the sale, or intimidating

20 Cp the observations of Hogan J in *Duff* mentioned above, fn 10.

21 [1932] 1 KB 241. This case was concerned with the meaning of the words "when the mortgage money has become due" in s 101(1)(i) of the English Law of Property Act 1925 (cp Conveyancing Act 1881, s 19(1)(i)), upon which instant of becoming due the defendant chargeant's power of sale arose. The defendant held a statutory charge with no acceleration clause and wished to exercise its power of sale once some, but not all, of the instalments had become due. The plaintiff contended that the power of sale only arose when all of the instalments had become due. At pp 251 the Divisional Court remarked that "That would be an unfortunate and almost grotesque result." It held that the power of sale had indeed arisen once any part of the "mortgage money" had fallen into arrears. The court also clearly distinguished between the "mortgage money" and interest on it, thus equating "mortgage money" and "principal".

22 [1990] 2 IR 477 at 480. The issue in the case was whether, for limitation purposes, a debt had fallen due on default or demand. Default on an instalment of principal payable on foot of a promissory note first occurred in May 1981. Under the terms of the note, the whole principal became due one month after the first default if it was not remedied, that is in June 1981. The contention was that, despite the terms of the promissory note, the charge

that secured it required the promisee to demand payment before seeking possession pursuant to the charge. No demand was made until September 1984. So the only matter at issue was 1981 or 1984, and Barron J held that the principal had become due without the need for a demand in 1981. But he also expressed the view at p 480 that the time in 1981 when the principal became due for the purpose of s 62(7) was May 1981 (ie when the first instalment went unpaid), rather than June (when the whole amount was rendered due by the triggering of the acceleration clause).

23 [2012] IEHC 363 at para 37.

24 [2004] IESC 4.

25 Fn 18.

26 [2012] IEHC 331.

27 Cp *Irish Life and Permanent v Dunphy* at paras 33-24, and *McAteer v Sheahan* at paras 141 and 142.

28 The principle would be that the statutory charge embodied a substantive right to possession contingent on repayment of the principal's becoming due, and that s 62(7) was merely a procedure for the enforcement of that right.

29 As to implied saver cp *Wigram v Fryer* (1887) 36 Ch D 87, *Sutton v Bradshaw* [1988] VR 920, *Commissioner of State Revenue v Bulzomi* (2009) 24 VR 643.

30 [2009] IEHC 4.

bidder. But as long ago as 1967, Lowry J in *Re O'Neill, a Bankrupt*<sup>31</sup> disapproved the restriction, observing that:

“Courts in the past have been reluctant to make orders for possession before sale, and have required evidence to satisfy them of what is today an obvious fact, that vacant possession is nearly always necessary in order to obtain the best price from a purchaser: *Bunyan v. Bunyan* ([1916] 1 I.R. 70). I would take the opportunity to state the present practice of our Chancery court, which is not to require such evidence unless the necessity of obtaining possession is challenged.”

## Power of Adjournment. Personal Insolvency Act 2012

Section 2 of the 2013 Act entitles a court, in respect of any mortgage or charge *whether created before or after 1 December 2009*, to adjourn (on application or of its own motion) proceedings for possession regarding a principal private residence in order to allow for a consultation with a personal insolvency practitioner and the possibility of a proposal being formulated for a Personal Insolvency Arrangement under the Personal Insolvency Act 2012<sup>32</sup>. If the adjournment is sought by application, the applicant must be a party who would be entitled to apply for a PIA<sup>33</sup>. Section 2(3) requires the court, if an adjournment is being sought by application under s 2, to have regard to:

- the applicant’s co-operation with the mortgage arrears resolution process or any replacement for it applicable to the property in question<sup>34</sup>
- the frequency, amount, and proportion of any payments made by the mortgagor or chargor in respect of the money lent on security of the property during the previous 12 months
- any previous adjournments granted to the mortgagor or chargor, their number, period, and rationale
- the parties’ conduct in seeking to resolve the matter of arrears
- any grounds for believing that the application is a delaying tactic.

The power is without prejudice to any other power of adjournment and the adjournment is to be initially for not more than two months<sup>35</sup>. The court may grant a further adjournment (the length of which is not specified) if it is satisfied that significant progress has been made in formulating the proposal<sup>36</sup>.

31 [1967] NI 129.

32 S 2(1) and (2).

33 S 2(2) and (7).

34 In any event, that co-operation over a period of 6 months, with the inability of the borrower and lender to agree, or the unwillingness of the lender to propose, an alternative payment arrangement, is a precondition for eligibility to enter into a PIA: 2012 Act, s 91(1)(g): unless the personal insolvency practitioner concerned vouches that entry into any such arrangement would probably not have restored the borrower to solvency within 5 years: s 91(2).

35 S 2(2) of the 2013 Act.

36 S 2(4).

A potential lacuna in this arrangement is as follows, albeit that it may not arise much in practice. The adjournment permitted by s 2(4) presupposes that no PIA proposal has yet been formulated. Once the proposal has been formulated, a gap may arise while the proposal is presented to the Insolvency Service of Ireland, while the ISI considers the proposal and whether to seek further information, and while, where the ISI is satisfied to submit the proposal to the relevant court with a view to the court’s issuing a protective certificate, that application for a protective certificate is pending before the court for its approval. Only when the court issues the protective certificate under s 95(2) of the 2012 Act does the borrower get the benefit of the stay on proceedings provided for in s 96(1)(b). Under the traditional view of the court’s general power of adjournment it *might* not have been regarded as appropriate to adjourn an application for possession during this interval, although this raises a more interesting point to be addressed presently.

The provisions of s 2 of the 2013 Act should be read in conjunction with s 95(5) and (6) of the 2012 Act regarding the duration of the protective certificate: a maximum of 70 days initially, followed by, in all normal circumstances, a single potential extension of 40 days, during which all steps necessary for the approval or rejection of the proposed PIA must be taken. The protection is further extended under s 113(2), if the PIA has been approved by the prescribed majority of creditors, until such time as it either comes into force or any objections to it by dissenting creditors have been disposed of by the relevant court. Once a PIA comes into effect and so long as it is in force, s 116(3)(b) precludes a lender from taking steps to further prosecute any proceedings in respect of matters covered by the PIA. Moreover, as appears from s 104 of the 2012 Act, it may fairly be said to be the intent of the scheme for PIAs under the Act that a principal private residence should only be sold as a last resort.

With regard to the court’s general powers, the observation of Laffoy J in *EBS Ltd v Gillespie*<sup>37</sup> to the effect that an order for possession would only be made where the application “was made *bona fide* with a view to realising the plaintiffs security” may prove significant. First, this may be an answer to the apparent gap that could allow a lender to pursue an application for possession between the date on which a PIA is proposed and that on which the protective certificate is issued. Second, and more controversially, it just might permit a court to circumscribe the secured creditor’s so-called veto under s 110 of the 2012 Act by holding that, where, in the courts’ view, a proposed PIA would be clearly more advantageous to the creditor, the rejection of the proposal and pursuit of an order for possession resulted in the application for possession’s not being necessary for realizing the security.

## Nature of a Receiver’s Possession

The lacuna apparently identified in *Gunn* and its successors has increased the incentive for lenders to appoint a receiver over the charged property. This is not least because many deeds purport to confer some form of right of possession on the receiver. However, there is remarkably sparse authority on the nature of this right in the context of the enforcement

37 [2012] IEHC 243.

of mortgages and charges. Section 2(iii) of the Conveyancing Act 1881 defined “possession” to include receipt of the rents and profits of the land, and a similar provision appears in s 2 of the 2009 Act. S 2(7) of the 2013 Act defines “mortgagee” for the purposes of ss 2 and 3 to include a receiver appointed by the mortgagee, so that where such a receiver applies for an order for possession of the borrower’s principal private residence, the application may be adjourned for the purposes of investigating relief for the borrower under the Personal Insolvency Act 2012, and any application by such a receiver for possession of a principal private residence must normally be brought in the Circuit Court subject to the exceptions contained in s 3 and outlined above.

In *Kavanagh v Lynch*<sup>38</sup> it appears that the defendants, against whom an order to deliver up possession was made, were not the mortgagors as such. Moreover, it is clear that in relation to the Irish Life and Permanent mortgage there was no express power to take possession in the mortgage documents. But at paragraph 5.2 of her judgment, Laffoy J held that a right to take possession had to be implied in order to allow the receiver to exercise the powers that were expressly conferred on him. In *McEneary v Sheahan*<sup>39</sup>, the entitlement of the receiver to possession was challenged entirely on the basis of the alleged invalidity of his appointment; moreover, the receiver needed to obtain an order for possession because the borrower would not let him in rather than because the receiver needed the borrower out. A specific challenge to the receiver’s right to possession was, however, raised in *McAteer v Sheahan*<sup>40</sup>, because there the deed permitted the appointment of a receiver of the rents and profits with power to let and manage the charged property at the risk of the mortgagor, without specifying that the receiver had the right to take possession. Following *Kavanagh*, O’Malley J held at paragraph 160 that where a receiver had power to let and manage the mortgaged property “it is implicit that he has a power to take possession in order to carry out his functions”.

The notion of “possession” in this context suggests a number of oddities. Behind many of them is the statutory fiction, meant to relieve the lender of the duties arising from being mortgagee in possession, that the receiver is the agent of the borrower<sup>41</sup>. For instance, as was pointed out in argument in *McAteer*, the statutory definition of “possession” extends to a situation, namely occupation by an authorized tenant and demand of rent from the tenant, that need not involve either the lender’s or the receiver’s going into actual occupation. The receiver then effectively stands in the shoes of the borrowing landlord, and may exercise the borrowing landlord’s rights of entry as against the tenant as the borrower’s agent. A receiver is generally expected to sue in the name of either the mortgagee or mortgagor<sup>42</sup>, and where a receiver appointed by the court sues in his or her own name the action must usually involve some personal right arising between him or her and the defendant<sup>43</sup>. Hence, if *Kavanagh* and *McEneary* were correctly constituted, the right

of possession asserted probably had to be that arising from the statutory agency between the receiver and the borrower. It is interesting to note that in *McAteer* the lender had itself joined to the receivership proceedings as co-plaintiff some time after their issue.

What was meant by the receiver’s getting in possession where the deed contained a clause to that effect was discussed by the English Court of Appeal in *Ratford v Northavon DC*<sup>44</sup>. The issue, which could prove to be of some importance here, was whether a receiver appointed under a deed containing such a clause had sufficient occupation of the property to render him liable for rates. Significantly, Slade LJ noted at p 374, in respect of a deed in an earlier decision which had been construed as vesting possession in the receiver, that:

“It could not have been said that in dispossessing the company, the receiver was acting as agent for the company. This would have been a contradiction in terms.”

The court went on to hold, effectively, that the normal possession of a receiver under such a clause was possession as agent of the borrower, with a strong indication that, if the receiver gained such control over the premises that the borrower’s possession was displaced, the receiver (1) was no longer in possession as the borrower’s agent and (2) was in rateable occupation.

The result is that, if in instances such as *McEneary* and *McAteer* the delivery of possession is meant literally, to the exclusion of the borrower, then the receiver cannot remain the agent of the borrower, but probably becomes the agent of the lender, thereby rendering the lender a mortgagee in possession. However, in all probability “possession” must be construed in those orders in a sense akin to “power to exercise the borrower’s rights of entry and occupation on the borrower’s behalf”. The borrower cannot keep the receiver out, but probably the receiver cannot completely exclude the borrower’s occupation either, provided that the borrower is not interfering with the receiver’s duties<sup>45</sup>. One wonders, for example, whether a receiver can change the locks on the charged property without giving a new set of keys to the borrower<sup>46</sup>.

## Lacuna is doubtful

This author remains of the respectful view that *Gunn*

38 [2011] IEHC 348.

39 [2012] IEHC 331.

40 Above, fn 16.

41 Conveyancing Act 1881, s 24(2); 2009 Act, s 108(2).

42 Conveyancing Act 1881, s 24(3); 2009 Act, s 108(3)(a), although s 108(3)(c) may extend the receiver’s power.

43 Cp *Halsbury*, Vol 88, Receivers, para 119.

44 [1987] QB 357.

45 In *Dowdall v O’Connor* [2013] IEHC 423 and *Taite v Beades* [2013] IEHC 440, in each of which cases the borrowers were not professionally represented, McDermott J, having found that the borrowers had been using their occupation of the premises to actively interfere with the receivers’ exercise of their duties, granted interlocutory orders excluding the borrowers from entry onto or interference with the premises without the receivers’ consent. The extent to which the borrowers could be excluded from possession was not expressly argued, but, in the face of active opposition to the receiver, such an order against the borrowers must surely be competent. However, the borrowers’ rights were recognized by the reference to the receivers’ consent, and, in the first instance, by an interlocutory order for possession not being granted, and in the second, such an order’s not being pursued.

46 Cp the facts of *Love v Burns* [2012] IEHC 162, where the defendants were again lay litigants.

overlooked a valuable principle of statutory interpretation. The principle is that where statutory provisions are replaced in such a way that the new provisions are effectively a variation on their predecessors, then it is presumed that one or other or some combination of the old and new provisions will apply to the persons to whom they are addressed. Which provision, original or replacement, will apply in a given instance depends on whether, either by reason of the relevant Interpretation Act or at common law, those persons or some of them have acquired a vested right to the application of the original provisions before they were replaced. That was the decision of the High Court of Australia in *Carr v Finance Corporation of Australia (No 2)*<sup>47</sup>.

It is, of course, accepted that s 96(1)(a) contains a temporal limit restricting Part 10, Chapter 3, of the 2009 Act to mortgages and charges created after 1 December 2009. However, s 62(6) of the Registration of Title Act 1964 as amended by the Schedule to the 2009 Act provides that “the instrument of charge *shall operate as* a legal mortgage under

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47 (1982) 150 CLR 139.

*Part 10 of the Land and Conveyancing Law Reform Act 2009*” [emphasis added], which is a deeming clause, and by no necessity subject to the same temporal limit<sup>48</sup>.

Still, whether the principle enunciated in *Carr* will be applied with regard to the repeal of s 62(7) must now be very doubtful. The point has been reserved for further hearing in *McAteer v Sheahan*, but some of the terms in which the language of the extant judgment is expressed would suggest that the argument is unlikely to find favour. The attitude of the State generally has been to the effect that the want of a transitional arrangement for s 62(7) was an oversight. Moreover, there would be practical difficulties in accommodating the principle, valuable though it would have been, to the terms of the 2013 Act. ■

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48 Wylie’s rejection of this point in *Irish Land Law*, 5<sup>th</sup> Ed, pp 701-702 is respectfully noted; however, the author there relies wholly on the terms of s 96(1)(a), and neither addresses the meaning of “shall operate as” in s 62(6) of the 1964 Act, nor the principle of *Carr v Finance Corporation of Australia (No 2)*.

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# Moving Capacity out of the Victorian age: the new Assisted Decision-Making (Capacity) Bill

KATE BUTLER BL

## Introduction

In July this year, the government published the long awaited Assisted Decision-Making (Capacity) Bill. It promises a dramatic and radical overhaul of the law in relation to capacity and the Ward of Court system, and will give effect to the Hague Convention on the International Protection of Adults.

Reform of the law is also needed to bring us in line with our obligations and commitments under the UN Convention on the Rights of Persons with Disabilities<sup>1</sup>.

Under the existing regime, governed by the Lunacy Regulations (Ireland) Act 1871, once it has been proved that

a person lacks capacity, that position is presumed to continue until the contrary is proved on the balance of probabilities.

This so-called status approach – you either have it or you don’t – can be contrasted with the Bill’s assessment of capacity in functional and contextual terms. Under s.3 “a person’s capacity shall be assessed on the basis of his or her ability to understand the nature and consequences of a decision to be made by him or her in the context of the available choices at the time the decision is made”.

Capacity, then, is to be understood as a fluid, changeable concept rather than in an all-encompassing manner. In the definition, under s.3(2), a person lacks capacity to make a decision if he or she is unable to understand the information relevant to the decision; to retain that information; to use or weigh that information or to communicate his or her decision.

Under the Bill, the court may make a declaration as to whether a person lacks capacity in relation to a specified decision/decisions unless they have assistance (s.15(1)(a)), or whether, even with assistance, a person lacks capacity to make

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1 Ireland is among the last three countries in the EU which have not yet ratified the CRPD. <http://www.disability-federation.ie/index.php?uniqueID=10641>; Article 12 of the Convention states that people with disabilities shall enjoy legal capacity on an equal basis with others in all aspects of life and State Parties to the Convention shall take appropriate measures to provide access by people with disabilities to the support they may require in exercising their legal capacity.



a specified decision/decisions (s.15(1)(b)). The court must also review any such declarations on an interim basis (s.29).

Traditionally, a 'best interests' approach has governed interventions at a governmental, legal and societal level, but in relation to adults, this is increasingly understood to impinge on human rights<sup>2</sup>. Thus, the words 'best interests' are conspicuous by their absence in the guiding principles set out in s.8<sup>3</sup>. Instead, the principles emphasise the broad minded approach required when dealing with a Relevant Person (RP, *inter alia*, a person whose capacity is being called into question, s.2(1)). For example, an RP shall not be considered unable to make a decision merely because they have made, or are likely to make, an unwise decision (s.8(4)).

The intrinsic right to make one's own decisions, even where others may not agree, and may seek to disrupt that right in the 'best interests' of the RP, is further protected in Part 4 of the Bill, which, *inter alia*, provides the scope and restrictions on Co-Decision-Making Agreements. In s. 19, a co-decision-maker shall acquiesce to a decision by the RP, as long as a reasonable person could have made the decision, and as long as no harm to the RP or any person is likely to result from the decision.

The theme of this Bill, then, is that intervention in the decision-making of an RP should only occur when absolutely necessary, and then only in limited terms. It creates a concrete framework to assist RPs in decision-making; it provides a radical overhaul of the Wards of Court system and the creation of a new office, the Public Guardian; it modifies the law in relation to Enduring Power of Attorney. It repeals the 1811 Marriage of Lunatics Act and after a period of transition, the Lunacy Regulations (Ireland) Act 1871, will cease to have effect.

What it does not do is change the law in relation to capacity in key areas such as marriage, adoption, sexual relations and voting (s.106), or in relation to the capacity of a person to make a will (s.108(1)). However, where a person who has made a valid will loses testamentary capacity, the Bill provides that the High Court may alter the will in exceptional circumstances (s.108(2)).

## How Assisted Decision Making will work in practice

The Bill provides a framework that will allow vulnerable groups in society – including the elderly, people with intellectual disabilities and people with acquired brain injuries – to make decisions with assistance. It is open to interpretation, but it seems that the Bill limits these assisted decision-making tools to persons who come within the definition of a Relevant Person only – in other words, there must be a question mark over a person's capacity before the framework and protections provided by the Bill have effect. There is a hierarchy of tools: the more assistance is

required, the more intervention is allowed for and the more safeguards in place. It is also hierarchical in that the actions of an informal decision-maker shall not be in conflict with those of an assisted-decision maker, a co-decision maker, a decision-making representative or an attorney. The same principle applies as you go up the chain.

Section 113 provides that a decision-making assistant, co-decision-maker, decision-making representative, attorney or informal decision-maker for an RP who ill treats, or wilfully neglects the RP, will be guilty of an offence and liable for summary conviction or conviction on indictment.

### (i) Informal decision-making on personal welfare matters (Part 7, s.53-54)

The provisions in relation to an informal decision-maker (IDM) are scant, and so are their functions, which are limited to taking action in relation to personal welfare (s.53(1)). This may be intended to provide flexibility to what is likely to be the most widely used assisted decision-making tool, but the lack of safeguards, which are provided further up the chain, could potentially leave an RP open to abuse.

An IDM may take or authorise the taking of an action in respect of personal welfare (including healthcare and treatment, except for issues reserved to the High Court) (s.53(1)). He or she will not incur liability which he or she would not have incurred if the RP had the capacity to consent in relation to the action and had given consent (s.53(2)). The IDM shall be entitled to indemnity where action incurs the expenditure of money (s.53(3)) and shall keep a record of all expenditure and money received (s.53(4)). The IDM shall not be relieved from civil liability for loss or damage or criminal liability, arising from negligence in taking the action or authorising the taking of the action (s.53(5)).

Limitations are that an action/authorisation of an action which can only be taken pursuant to an order of the court or High Court cannot be taken by an IDM (s.54(1)), and actions cannot be in conflict with those of a decision-making assistant, co-decision maker, decision-making representative or attorney (s.54(2)). However, pending a decision by a court or High Court, an IDM is not prevented from providing life-sustaining treatment or doing any act which he or she reasonably believes to be necessary to prevent a serious deterioration in the health of an RP (s.54(3)).

### (ii) Assisted Decision-Making (Part 3, s.9-12)

A Decision-Making Assistant (DMA) is appointed by the RP, by agreement (s.10(1) and (2)). Any agreement must comply with Ministerial Regulations which may include safeguards such as a requirement that an agreement must include statements of understanding from both parties to the agreement (s.10(3)(d)). The agreement must be on notice to the Public Guardian.

The agreement shall be invalidated if a. it relates to a decision/ all decisions where, subsequent to the appointment of the DMA, there is a co-decision maker, decision-making representative or attorney (under an enduring power of attorney) in respect of that decision/ all decisions (s.10 (5) & (6)); and b. where the DMA is the spouse / civil partner / cohabitant of the RP, and the said relationship ends subsequent to the agreement (s.10(7),(8) & (9)). Invalidation

2 For more on the status approach v the functional approach, and the idea of 'best interests', see Prof Gerard Quinn's Ideas Paper, 2009, on the Inclusion Ireland website. <http://www.inclusionireland.ie/content/page/capacity>

3 In contrast, the guiding principles in Section 1 of the British Mental Capacity Act 2005 do provide that "An act done or decision made for or on behalf of a person who lacks capacity must be done or made in his best interests".

shall not affect prior decisions (s.10(10)). The RP may revoke the agreement (s.10(11)). There are no limitations set on this power to revoke which could be problematic should the RP's capacity deteriorate. Also, in practical terms, it may be difficult for an RP to revoke an agreement with a DMA where they are dependant on that DMA to implement their decisions.

The functions of the DMA is to advise; ascertain the will of the RP; assist in communicating that will; assist in making and expressing relevant decisions (i.e. decisions that are the subject of the agreement or fall within the scope of the agreement); ensure decisions are implemented (s.11(1)).

The DMA is restricted in that they shall not attempt (without consent) to obtain information not reasonably required, or use information for any purpose other than for a relevant decision (s.11(2)). They shall also take reasonable steps to ensure information is kept secure or is safely disposed of (s.11(3)).

A person shall not be appointed a DMA if they have been convicted of an offence in relation to the person or property of the RP, or in relation to a child of the RP, or if a safety/barring order has been made against them in relation to the RP or a child of the RP (s.12(1) & (2)). It is unclear why a general prohibition on those convicted of assault or fraud is not included. The agreement will be invalidated if the above occurs subsequently (s.12(3)).

### ***(iii) Co-Decision Making (Part 4, s.17-22)***

A co-decision making agreement can come into existence in two ways: a. Where a person who considers that his or her capacity might shortly be in question may appoint a suitable person to jointly make decisions (s.18(1)). b. Where there has been a declaration under s.15(1)(a) (i.e. lacks capacity to make a decision without assistance, not where a person is deemed to lack capacity even with assistance), the court may approve a co-decision-making agreement (s.17(1)&(2)).

In the first instance, the Bill stipulates that a suitable person is a relative or friend of the proposed appointer who has a relationship of trust with them (s.18(2)). The agreement will be made in compliance with Ministerial regulations, which may require that the agreement must include statements of understanding from both parties to the agreement (s.18(4)). The agreement will be invalidated where, subsequent to the appointment of a co-decision maker (CDM), there is a decision-making representative or attorney (s.18(6) and (7)), and also if the CDM is a spouse, civil partner, cohabitant, and the relationship subsequently ends (s.18(8), (9) and (10)). The appointer can revoke or vary the agreement at any time before a court order is made in respect of a CDM agreement.

In the second instance, where a declaration has been made, then the court must approve a CDM agreement – an agreement will not have any effect otherwise and cannot be revoked or varied without consent of court (s.17(3)), and once it is in place, a decision made otherwise than jointly is void (s.17(4)). Either an RP or a person who comes under s.14 (e.g. a spouse or DMA), with the consent of an RP, may make the application (s.17(2)). Court must be satisfied that the RP has capacity to appoint a CDM and that there is a suitable person willing to be appointed (s.17(5)). It must review the order within three months, and thereafter, within 3 years (s.17(7)). It may revoke or vary the terms if the CDM is not

behaving appropriately, or if the RP's capacity has improved/deteriorated, or if the relationship has broken down, or if the RP is refusing to accept assistance or if the CDM is refusing to continue to give assistance (s.17 (9), (10) & (11)).

The functions provided for a CDM are wider than that for a DMA: a CDM can co-sign documents for relevant decisions (s.21(2)), they can be reimbursed out of the assets of the appointer in respect of expenses (s.21(6)) and they can make gifts, if provided for in the agreement (s.21(8)). As a consequence, they must report to the Public Guardian every 12 months (s.21(7)).

There are also greater limitations and safeguards provided for. For example, the owner (or employee/agent) of a nursing home, mental health facility or nursing home where the RP resides is excluded from being a CDM. All the exclusions provide protection from clear conflicts of interest, and it is difficult to see why they do not also apply to DMAs, which are likely to be widely used assisted decision-making tools under the legislation.

Another safeguard provided for in relation to CDMs, but not in the other categories of assisted-decision makers, is that of acquiescence: s. 19 provides that if the RP wishes to make a decision, and a reasonable person could have made that decision, then the CDM shall acquiesce as long as no harm to the RP or any other person is likely to result from the decision.

If both a CDM and a decision-making representative exists, or an attorney, then the CDM must exercise their powers in a manner not inconsistent with the powers of the DMR and the attorney (s.22(1) & (2)).

### ***(iv) Decision-Making Representative (Part 4, s.23-27)***

The court may appoint a decision-making representative, or make an order making a decision on behalf of the relevant person (where it is urgent or otherwise expedient to do so) in two situations: a. Where a declaration has been made under s.15(1)(a) (i.e. lacks capacity to make a decision without assistance) and the RP will not give consent to a CDM agreement or where restrictions apply to the proposed CDM; b. a declaration has been made under s.15(1)(b) (i.e. lacks capacity to make a decision even with assistance) (s.23(1) & (2)). The court may ask the PG to nominate a DMR from a panel for consideration (s.23(3)).

The restrictions on who may be appointed a DMR are the same as those for a CDM (s.24), and there is also a requirement to report to the PG every 12 months (s.24(7)). Functions include that the DMR is the agent of the RP (s.24(5)). The scope may be a general one (as per the order) (s.23(2)(b)), but may also include authority to make specified decisions in relation to personal welfare and property and affairs (s.25 & 26).

The order shall be invalidated where, if the DMR is a spouse, civil partner, cohabitant, and the relationship subsequently ends (s.24(9), (10) & (11)).

In terms of restrictions, a DMR shall not, without the express approval of the court, exercise any powers in relation to the settlement of any property of the RP, or exercise any power vested in the RP (s.27(2)); one ambiguity, however, is that s. 27(1) provides that a DMR shall not be given the

power to prohibit a particular person from having contact with the RP, yet there is no definition of ‘particular person’. The DMR shall not refuse life-sustaining treatment (s.27(4)) and shall not restrain the RP unless the RP lacks capacity in relation to the matter in question, it is necessary to restrain in order to prevent harm to the RP or another person, and the restraint is proportionate to the likelihood and seriousness of such harm (s.27(5)).

Where there is a DMR and an attorney, the DMR shall not exercise any power granted to the attorney and shall not exercise any of his or her powers in a manner which is inconsistent with the powers of the attorney (s. 27(3)).

(v) *Attorney (see below)*

## The Role of the Court

The Bill provides that the Circuit Court has exclusive jurisdiction (s.4) and that the functions, power and jurisdiction conferred on the Circuit Court may be performed by specialist judges (s.111). The key functions include making declarations as to capacity (see below), approving a CDM agreement and appointing a DMR (see above).

## Applications to the court

### Part 4 (s. 13-32)

This part does not apply to an RP who has not attained the age of 18 years (s.13). Section 14(1) sets out that any application under this part must be made on notice and to whom notice should be served (including the RP). Consent is needed from the court by way of *ex parte* application (s.14(2)) unless the applicant falls under s.14(3) (e.g. a spouse or the Public Guardian). There is a need to show the court what benefit the application seeks to achieve for the RP and that all steps have been exhausted prior to the application (s.14(4)). It is also necessary to inform the court of DMA agreement, CDM agreement, enduring power of attorney, or any order in relation to same which still has any force or effect (s.14(5)). In the course of the hearing, the court may allow the RP to be assisted by a court friend, unless there is a DMA, CDM, DMR or attorney who is willing to assist the RP, or there is another person whom the court is satisfied is suitable, willing and able to assist (subject to provisions under s.60(8) and 63(15) which provide for criteria and code of practice for the purposes of court friends) (s.14(8)). If there is none of the above available and the RP has not instructed a legal practitioner, the court may direct the Public Guardian to appoint a court friend (s.14(9)). Hearings of applications under this Part shall be conducted with the least amount of formality and shall be heard and determined otherwise than in public (s.14(10)).

## Declarations as to capacity

On application, the court may make two types of declaration: a. It may declare that the RP lacks capacity to make one or more than one decision specified in the application relating to his or her personal welfare, property or affairs, or both, unless the RP has the assistance of a co-decision-maker (s.15(1)(a)), or b. It may declare that the RP lacks capacity to make one or

more than one decision specified in the application relating to his or her personal welfare, property or affairs, or both, even with the assistance of a co-decision-maker (s.15(1)(b)).

## Interim orders and review of declaration

Where an application has been brought but not determined, the court may make an interim order in relation to the RP, so long as the matter is one in respect of which the court may make an order under this Part; the court has reason to believe the RP lacks capacity in relation to the matter; and that it is in the interests of the RP to make the order without delay (s.28(1)). The order shall have limited temporal and operative effect but the court may renew it (s.28(2)).

Section 29(1) provides that where a declaration under s.15 has been made, an application for a review of the declaration may be made to the court, with the consent of the court, at any time, by some of the persons referred to in s.14(3). Notwithstanding this, the court shall review a declaration at intervals of not more than 12 months, and if the RP is unlikely to recover capacity, not more than three years (s.29(2)). Following review, if the court is satisfied that the RP no longer lacks capacity, the court shall revoke or amend the declaration, and vary or discharge the CDM order or DMR order (s.29(4)(a)). If the court is satisfied that the RP continues to lack capacity, the court shall confirm the declaration (s.29(4)(b)).

Crucially, if the declaration was made in relation to a decision or decisions which are no longer relevant, then s. 29 does not apply. Because of the functional nature of the assessment of capacity, the court can only make a declaration and review said declaration based on an issue/issues that are put before the court, and that remain live (s.29(5)). This could be cumbersome, in that if another unforeseen issue arises, it will require a fresh application for a declaration in respect of that new issue.

## Expert reports

Section 30 provides that the court shall have all powers necessary to assist it in making a decision and it may direct that medical reports relating to the RP (including reports relating to the cognitive ability of that person), and reports relating to the circumstances of the RP (including financial reports and valuations of property), and reports from healthcare professionals, be furnished to it. There is no requirement for the court to consult with professionals when considering a declaration of capacity or reviewing same.

## Costs

Any party to the proceedings who retains legal representation is liable for costs of same (s.14(6)(a)) while the criteria for obtaining legal aid<sup>4</sup> shall apply to the proceedings (s.14(6)(b)). Where an applicant is unsuccessful in obtaining legal aid, the court may order that the applicant’s legal costs be paid out of the assets of the RP (s.14(6)(c)).

Section 32 amends the Civil Legal Aid Act 1995 so that s.26(3) provides that a party to an application under Part 4 of the Assisted Decision-Making (Capacity) Act 2013 shall

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4 S.28 of the Civil Legal Aid Act 1995

qualify for legal advice, and that the criteria under s.28(2)(c) and (e) (that the applicant is reasonably likely to be successful in the proceedings and that it is reasonable to grant a legal aid certificate in all the circumstances) shall not apply.

There are no provisions for the costs of expert reports ordered by the court under s.30.

The Circuit Court's jurisdiction is subject to a number of qualifications and therefore, the High Court's role within the Bill is still extensive:

1. S.4(2) provides that the High Court shall have jurisdiction relating to every matter - where the matter concerns an RP who lacks capacity - in connection with non-therapeutic sterilisation; withdrawal of artificial life-sustaining treatment; the donation of an organ.
2. S.15 provides that the court may make declarations regarding capacity, but that it shall not make declarations as to whether a person lacks capacity to create or revoke an enduring power of attorney. The court may make a declaration as to the lawfulness of an intervention, but not if the intervener is the High Court, or if the intervention is based on a Circuit Court or High Court order.
3. S.110 provides that the Lunacy Regulations (Ireland) Act 1871 ceases to have effect regarding applications relating to whether a person has capacity, or relating to the personal welfare, property and affairs of a person who lacks capacity. But this provision will not affect the validity of any order made by the High Court or Circuit Court within their respective jurisdiction and which was in force immediately before the commencement of this section, subject to Part 5 of the Bill (which provides for the review of all existing Wards of Court). Since the Bill does not repeal the 1871 Act, it seems that it will remain in force until all the Wards of Court have been reviewed and discharged (see section on Wards of Court below).
4. Part 5 (s.33-37) provides for the review and discharge of all existing Wards of Court. Wardship court means the High Court or Circuit Court exercising its jurisdiction in wardship matters and, in relation to a ward, means that court which made the order by virtue of which the ward is a ward (s.33).
5. Part 6 (s.38-54) provides for Enduring Powers of Attorney and envisages that all applications under this section go through the High Court as s.38(2) provides that an application to the High Court under this Part shall be made in a summary manner. S.49 sets out the functions of the High Court as respects enduring power of attorney and revocation of that power, but only where the instrument creating the power has been registered. Where the instrument has not been registered and where the High Court has reason to believe that the donor of the enduring power may lack, or may shortly lack capacity, and in the High Court's opinion it is necessary to exercise any of its powers

under s.49, then it may do so on application by any interested party (s.44).

6. Part 9 (s.65-69) governs Detention Matters and provides that where an issue arises in the course of an application to the court or the High Court in relation to the Bill, as to whether the person who lacks capacity is suffering from a mental disorder, then the court shall follow the procedures provided for under the Mental Health Act 2001 as respects any proposal to detain (s.67). Section 68 and 69 of this Part also deal with reviews of detentions on the order of a wardship court (defined in s.33, see above) immediately before the commencement of these sections.
7. Part 10 (s.70-97) gives effect in the State to the Hague Convention on the International Protection of Adults and provides that the High Court, in interpreting this Part and the Convention may have regard to the Explanatory Report on the Convention (s.70(4)). The High Court has jurisdiction over an adult habitually resident in the State; an adult's property in the State; an adult present in the State, or who has property there, if the matter is urgent; or an adult present in the State, if a temporary and limited protective measure is proposed in relation to them (s. 75). Where an Irish citizen is living abroad, the High Court has concurrent subsidiary jurisdiction (s.76). Where an adult's property is located in Ireland, the High Court can take protective measures as long as they are compatible with the measures taken by authorities with jurisdiction under Articles 5-7 (i.e. the contracting state where the adult is habitually resident or where the adults is a national) (s.77).

## Wards of Court

### Part 5 (S.33-37)

Part 5 of the Bill requires that all existing wards<sup>5</sup> be reviewed in terms of their capacity before being discharged from wardship, whether they have been deemed to lack capacity or not. The Bill provides that the new regime will co-exist with the old one: the Lunacy Regulations (Ireland) Act 1871 is not repealed by the Bill, but from the commencement of the Bill, shall cease to apply to every application which relates to whether a person lacks capacity, or to the personal welfare or property and affairs of a person who lacks capacity in that regard (s.110(1)). However, since the jurisdiction in lunacy and minor matters is an inherent one (derived from *parens patriae*), rather than a purely a legislative one<sup>6</sup>, it is likely that

5 According to a document published by the National Disability Authority in 2009, there were at that time 2,200 wards of court; over one third suffered from dementia, 300-400 had brain damage and the remainder had mental or intellectual disabilities.

6 *J.M. v Board of Management of St Vincent's Hospital (and P.M. Notice Party)* [2003] 1 IR 321 – the court relied on *parens patriae* to circumvent usual statutory procedures and hear an application that a critically ill woman in a coma be taken into wardship. Plus, the Law Reform Commission has noted that Order 67 of the Rules of the Superior Court, which sets out the steps for taking people into wardship, seems to envisage that the Court has powers which do not derive from legislation regarding wardship matters. Finally,

the court's wardship jurisdiction under the old regime will survive enactment.

This is particularly relevant in relation to minors as s.37(2) of Part 5 provides that where a minor is taken into wardship by a wardship court *from* the commencement of s.37, the Public Guardian shall exercise his or her functions (subject to directions from the wardship court) as if the ward were the subject of a declaration under s.15(1)(b), i.e. that the ward lacks capacity. Section 37(2), then, seems to envisage that the ward system will survive the commencement of the Bill and that minors may be taken into wardship. It should be noted that minors are explicitly excluded from being the subject of applications under Part 4 of the Bill and while the wardship court is required to review all wards within three years of the commencement of the Bill, this does not apply to wards who are minors (s.35(2)).

A ward is defined as a relevant person in the wardship of a wardship court; a wardship court means the High Court or Circuit Court exercising its jurisdiction in wardship matters and is the court which made the order by virtue of which the ward is a ward (s.33). Pursuant to s.34, the Bill only applies to wards in two respects: a. The review of the capacity of wards under s.35-37; b. Where an action is taken by a person (including any court) in respect of a ward that is equivalent or similar to an action which would fall under the definition of an intervention (i.e. an action taken under the Bill, s.2(1)), in which case the guiding principles under Part 2 apply (the principles include that there is a presumption of capacity unless the contrary is shown in accordance with the provisions of the Bill, s.8(2)). This seems to mean that the review of the wards' capacity shall be assessed using the guiding principles, and therefore the definitions and criteria of the new regime.

The review of the capacity of wards who have attained the age of 18 years must take place within three years of the commencement of s.35(2). If the court finds that the ward does not lack capacity, then the ward shall be discharged from wardship. The court may make ancillary orders and directions having regard both to the discharge and the circumstances of the former ward (s.35(3)(a)). If the court finds that the ward lacks capacity to some degree or another, then the court shall make the appropriate declaration as per s.15, as if the wardship court were the court under Part 4, and may make orders under Part 4, and shall discharge the ward from wardship (s.35(3)(b) & (c)). In that situation, the Bill then applies to the former ward (s.35(4)).

With the time frame of three years provided, issues could arise where the Public Guardian needs to carry out its functions in relation to wards who have yet to be reviewed. S.36 & 37 seem to provide interim powers in that respect (this is not explicit, however). In the case of a ward, or class of wards who were wards immediately before the commencement of s.36 and 37, the wardship court, after consultation with the Public Guardian, may direct the Public Guardian to exercise his or her functions as if the ward were

the subject of a declaration under s.15(1)(b), i.e. that they lack capacity to make decisions even with assistance. Section 36 applies in this respect to wards who are adults while s.37(1) applies to wards who are minors.

## Enduring Powers of Attorney

Part 6 (s.38-52) will ultimately replace the Powers of Attorney Act 1996. After the commencement of s.39, no powers shall be created under the 1996 Act. The Bill will not apply to powers created under the 1996 Act, while the 1996 Act will not apply to powers created under the Bill. The exception is where a power was created under the 1996 Act but was not registered before the commencement of the Bill – in that scenario, the new regime applies on registration (s.39).

For the most part, the EPA framework is changed only in so far as it must give effect to the new regime provided for in the rest of the Bill. An attorney comes under the definition of an intervener, in that he or she is someone who takes an action under the Bill in relation to a relevant person (s.2(1)), while the duties and obligations of an attorney include the duty to act in accordance with the guiding principles of s. 8 (s.40(4)(d)).

However, the scope of authority of enduring power has been extended, in that an enduring power may confer authority on an attorney to make decisions about the donor's personal welfare (s.41(1)). Previously, an attorney could make personal care decisions, which were defined by the 1996 Act but did not include the giving or refusing of medical treatment. The Bill provides that a personal welfare decision shall not extend to making decisions on healthcare in respect of a donor in circumstances other than those where the donor lacks or shortly may lack capacity, and extends to giving or refusing treatment by a person providing healthcare for the donor other than refusing life-sustaining treatment (s.41(2)).

The Bill also explicitly sets out that an EPA does not authorise an attorney to do an act that is intended to restrain the donor unless the RP lacks capacity in relation to the matter in question, the attorney reasonably believes that it is necessary to do so to prevent harm to the RP or another person, and the act is a proportionate response to the likelihood and seriousness of such harm (s. 41(4)).

Under the old regime, an instrument donating an EPA was registered by the Registrar of Wards of Courts. The Bill provides that such registration will be by the Public Guardian (s.45). Further, once an EPA has been registered, the attorney shall submit a report as to the performance of their functions to the Public Guardian at least once every 12 months (s.48(4)).

## Public Guardian

The new office of Public Guardian (PG) will replace the Registrar of Wards of Court. There is no longer a requirement that the office be filled by a barrister. Instead, the Courts Service, which makes the appointment, has to be satisfied that the person has the appropriate experience, qualifications, training or expertise (s.55(1) and (2)). Some of the main functions of the PG include supervision of decision-making assistants, co-decision-makers, decision-making representatives and attorneys (s.56(2)(a); to appoint special

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Art 40.3.2 of the Constitution empowers the Court to step in and protect from unjust attack, and to vindicate the life and person of every citizen in circumstances of injustice done. For further discussion, see O'Neill, Wards of Court in Ireland, First Law (2004).

visitors and general visitors (who can be directed to make visits and submit reports to the PG) (s.56(2)(f) and (g)); if required by court, to have custody, control and management of the property of an RP (s.56(2)(i)); to report to the court or High Court in relation to proceedings (s.56(2)(k)); to receive and consider complaints, and to act on same if satisfied they have substance, including by way of application to court (s.56(2)(l) and (m)); to nominate persons to act as decision-making representatives (s.56(2)(n)); to appoint court friends (s.56(2)(o)); to promote public awareness (s.56(2)(q)). Another important function is that the PG may prepare and publish a code of practice, and may request another body to prepare a code of practice (s.63).

## **Detention Matters**

Part 9 (s.65-69) deals with two aspects of detention: 1. Where an application is being made under the Bill and an issue arises as to whether the person who lacks capacity is suffering from a mental disorder and there is a proposal to detain the person, then the court must follow the procedures provided for under the Mental Health Act 2001 (s.67); 2. Where a wardship court ordered the detention of a person immediately before the commencement of the Bill, and the person continues to be detained, then that order must be reviewed by the wardship court (s.68(1)).

When reviewing a detention, in this Part, unlike in Part 4 (which provides for the court to make declarations as to capacity) and Part 5 (which provides for the review of the capacity of all wards), the court is required to hear evidence from the consultant psychiatrist responsible for the care and treatment of the person concerned, and also from an independent consultant psychiatrist selected by the court (s.68(5)). It is open to the court, following review, to order the continuation of the detention for a further 3 months, at which point, a further review shall take place. Following the subsequent review, the court may order the continuation of the detention for a further 6 months (s.68(2)). A further review is then required and if following that the court is satisfied that the person concerned is suffering from a

mental disorder, it may direct that the detention continue (s.68(3)). There is no time limit set or provision for further review. Section 69 is a mirror of s.68 except that it deals with detention in a non-approved centre, as opposed to an approved centre.

An issue to note in respect of Part 9 is that there is no provision to review the detention of persons against their will who were not detained on the order of the court, for example, an elderly person or person with an intellectual disability in residential care.

## **Miscellaneous**

### ***Mental Health Act 2001***

Where a patient's treatment is being regulated by Part 4 of the Mental Health Act 2001, nothing in this Bill authorises a person to give a patient treatment for a mental disorder or to consent to a patient being given treatment for a mental disorder (s.104). It is unclear, however, whether a decision-making representative order may give powers to the DMR in relation to the RP opting to becoming a voluntary patient under the 2001 Act.

### ***UN Convention***

Part 10 (s.70-102) gives effect to the Hague Convention on the International Protection of Adults. Art 2 of the Convention states that it applies to "the protection in international situations of adults, who by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests".

### ***Proposed amendments***

At Committee Stage, the Bill will incorporate provisions relating to Advance Care Directives, which will be provided by the Department of Health. A government symposium took place in September, which invited submissions from interested groups. The Bill is due to go to the second stage in November. ■



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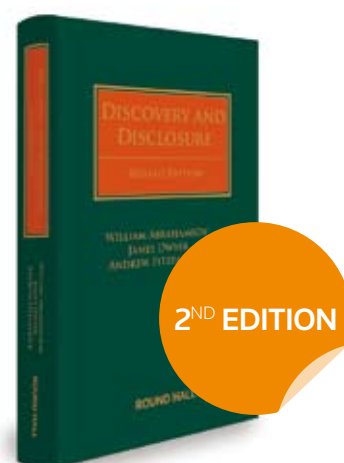
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