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1 Environmental Policy and its Enforcement

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

As with other Member States of the EU, environmental policy in Ireland is largely derived from EU policy on the environment. It is developed locally by the Department of the Environment, Climate and Communications and the Department of Housing, Local Government and Heritage. Most environmental law in Ireland is administered, regulated and enforced by local authorities, such as City and County Councils, and by the Environmental Protection Agency ("EPA"). Water services functions are administered by Irish Water, a semi-state company established in 2013.

Local authorities deal with planning matters, including the grant of permission (also including conditions for minor environmental matters) for day-to-day development, subject to appeal to *An Bord Pleanála* ("ABP"). More significant development consent applications are made directly to ABP. The EPA licenses industrial activities, dealing with environmental discharges, emissions and waste handling.

In general, environmental enforcement is undertaken by local authorities, the EPA and other public authorities; however, members of the public (including NGOs) can enforce the legislation (and often do).

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

Unless the breach is particularly serious or recurring, public authorities can be expected to resolve matters by audit observation, warning letter or enforcement notice. Where the response is not satisfactory, the matter will be escalated by prosecution in the District Court, where fines of up to €5,000 per offence apply.

With serious or recurring offences, the matter will be escalated more quickly. Furthermore, for bodies corporate, it is likely that natural persons holding relevant office within the body corporate will be included in any prosecution.

Where the public authority is interested in obtaining a prohibition on a specific action or remediation in a specific manner, civil enforcement by injunction application in the Circuit or High Court is more common.

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

Public authorities are obliged to provide such information to interested parties on request and, in certain cases, by dissemination to the public generally.

The obligation relating to information on the environment arises pursuant to the European Communities (Access to Information on the Environment) Regulations 2007 to 2018, which transpose Directive 2003/4/EC into Irish law. A public authority has the discretion to refuse a request on certain grounds, including commercial or industrial confidentiality or intellectual property rights. This is in addition to "freedom of information" legislation, which requires the provision of information to the public in relation to activities of public authorities upon request.

2 Environmental Permits

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

Permits from the EPA, local authorities and/or Irish Water will be required for persons intending to discharge emissions into the environment during the course of their activities or business.

Depending on the nature of the activity and the emission or discharge, a person will require an Industrial Emissions Licence ("IE Licence"), an Integrated Pollution Control Licence ("IPC Licence"), a greenhouse gas emissions permit ("GHG Permit") or a waste licence from the EPA, an application for an air pollution licence or waste facility permit from the local authority, or a trade effluent discharge licence from Irish Water.

In most cases, a permit may be transferred from one person to another after obtaining consent from the granting authority. Consent is not usually required for a mere change in control of the permit holder; however, it is sensible to alert the relevant authority to any change, as a courtesy.

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

A decision of a local authority in relation to air pollution permits can be appealed to the EPA, and validity can be challenged in the High Court. Similarly, decisions of Irish Water in relation to water pollution permits can be appealed to ABP. Decisions of

a local authority in relation to waste collection permits may be appealed to the District Court, and appeals in relation to certificates of registration and waste facility permits are made to the court of competent jurisdiction.

Prior to the granting of an IE Licence, an IPC Licence, GHG Permit or waste licence, the EPA will issue a proposed decision on the permit/licence application and an applicant or other relevant person can make an objection to the EPA within eight weeks. Once a final permit has been granted, the validity of the decision of the EPA can be challenged in the High Court.

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

Yes. Under Directive 2011/92/EU (as amended by Directive 2014/52/EU), an environmental impact assessment is required before consent is granted for projects that are likely to have a significant impact on the environment. In addition, an appropriate assessment under the Habitats Directive will be required where a project is likely to have a significant effect on a Natura 2000 Site (labelled European sites). Most permits will include a requirement for an environmental management system; the monitoring and reporting procedure will be set out in the conditions of a permit.

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

See response to question 1.2. There are administrative, civil and criminal powers. Most breaches of permit are resolved by audit observation, warning letter or enforcement notice. Few are escalated by prosecution in the District Court, where fines of up to €5,000 per offence apply. Fewer still, one or two *per annum* are prosecuted on indictment, where maximum fines of up to €15 million and/or imprisonment of up to 10 years apply.

The regulator can also take steps to remedy a breach itself and seek to recover the cost from the permit holder, or the owner or occupier of the site where the breach occurred. Where there is a persistent and serious breach of a permit, a regulator can carry out a review or revoke or suspend a permit or licence.

3 Waste

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

The Waste Management Acts 1996, as amended ("WMA") define waste as any substance or object that the holder discards or intends or is required to discard, subject to certain exclusions, including various gaseous effluents. By-products are not waste. There are prescribed circumstances when waste will cease to be waste, having undergone a recovery process.

There are additional controls and/or extended producer responsibility obligations for hazardous waste, waste oils, biowaste, batteries, tyres, end-of-life vehicles, waste electrical and electronic equipment ("WEEE"), farm film plastics and packaging waste.

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

Certain waste can be stored on a temporary basis for up to six months, pending recovery or disposal.

Where a longer duration is contemplated, the producer must be authorised to dispose of waste and must carry out the treatment of the waste in accordance with the waste hierarchy and so as not to cause or facilitate the abandonment or dumping of waste or the transport, recovery or disposal of that waste in a manner that causes or is likely to cause environmental pollution.

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

No, provided the transferee is an "appropriate person", being a person authorised to undertake the collection, recovery or disposal of the class of waste in question, and provided the producer has no reason to believe the transferee would fail to comply with its obligations as a holder of waste. If the transferee is not authorised, title to the waste remains with the producer. If the producer has reason to believe the transferee would fail to comply with its obligations, there will be an imprecise residual liability.

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

Take-back and recovery obligations are imposed on waste producers (including retailers, importers and manufacturers) of certain streams of waste where extended producer responsibility obligations apply, including batteries, end-of-life vehicles, tyres, WEEE, packaging waste and farm plastics. There are a number of approved schemes for the collection and recovery of such waste.

4 Liabilities

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

There is risk of both criminal and civil liability. A breach of criminal law arises where a person breaches statutory duty, fails to comply with a direction and/or fails to comply with permit conditions. Depending on the nature of the breach, a person may be liable on prosecution for a fine and/or a term of imprisonment and any cost of clean-up and remediation required. Civil liability can arise where there is a claim for damages for breach of statutory duty, negligence, trespass or nuisance, and a claim for damages would include a claim for any loss, costs and expenses, including the cost of remediation. See response to question 1.2.

It would be a defence to show that the activity alleged to constitute a breach was carried out in accordance with the permit or licence conditions and/or that a person was not responsible for causing or permitting the breach (including an act of God) and/or they used reasonable care to prevent the breach. Environmental breaches are typically strict liability offences, meaning that proof of the intention of the person is not required.

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

In principle, an operator could be liable at common law for the torts of breach of statutory duty, negligence, trespass and nuisance, regardless of the fact that the polluting activity is operated within the permit limits.

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

Yes, although usually it would have to be shown that the director or officer was in control of and/or had knowledge of the breach and it arose due to an act or omission on their part. It is possible for directors to get insurance cover against civil liabilities but not against criminal liabilities. See section 11 below.

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

In a share sale, all the liabilities, both past and present, transfer on closing. In an asset purchase, only the asset transfers. Therefore, in an asset transfer, the liability for environmental issues is limited to those that relate specifically to the asset transferred and this, of course, could carry a risk of future liability for the cost of the clean-up and remediation of a contaminated site. Where consent of the EPA to transfer a licence required to operate a business at the asset is required, it may be necessary for the asset purchaser to assume historic liabilities of the vendor. Additionally, in practical terms, it may be difficult to differentiate the consequences for the environment and others from current and historic actions, so that a purchaser will not be able to avoid historic liability.

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

The law in relation to lender liability in Ireland is not settled. However, there is a risk that if a lender (in enforcing its security) has control over or participates in the activity and decision-making which causes or permits a breach of environmental law, it may incur liability. For this reason, lenders take special care when enforcing security, excluding difficult asset types, limiting appointments of insolvency professionals and/or disclaiming difficult obligation.

5 Contaminated Land

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

There is no specific legislation with regard to contaminated land. The matter is regulated under waste law and other pollution controls. In general, liability for contamination falls on the owner or occupier of the land. The "polluter pays" principle applies to water and air where liability falls on the person who caused or permitted the pollution. See the response to question 3.3 on liability for waste.

Environmental clean-up is mandatory where a party breaches the provisions of the Environmental Protection Agency Act 1992, as amended ("EPA Acts"), the WMA and the Water Services Act 2007, as amended ("Water Services Act"). Sections 55 to 58 of the WMA are particularly relevant and may require that a person who is holding, recovering or disposing of waste be liable for the costs of clean-up and any costs incurred by the relevant regulatory authority in investigating an incident. A person found guilty of an offence under the WMA, the EPA Acts or the Water Services Act may face criminal prosecution (see response to questions 1.2 and 2.4 above). There is a statutory civil liability where water or air contamination causes injury, loss or damage to a person or a person's property. Larger installations are likely to be subject to the IE licensing regime, where the permit will require attention to the existing state and condition of an installation.

Where a development is proposed on contaminated land, the regulatory authority may make remediation of the site a condition to the grant of planning permission, licence or permit. There are also powers under legislation regarding derelict sites.

With regard to historic contamination of soil, unless the contamination is at risk of moving off-site and causing a threat to the environment, in general, there is no obligation to disclose such contamination or to do anything with the site.

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

Where there is more than one person responsible, all persons will be jointly and severally liable. The entire liability may be enforced in full against any of those found to be responsible.

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

A regulator could come back and require additional works. In practice, the regulator would reserve their rights to do so under any agreement. If the agreement is made under an order of court, the regulator would be unlikely to require more, unless there was some material change or unforeseen circumstance.

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

The general rule in property transactions is "*caveat emptor*" (buyer beware). The purchaser must satisfy itself as to the condition of the property and is not entitled to any redress from the seller unless it can demonstrate a misrepresentation or a breach of any agreed warranty. Where the seller is aware of the contamination, it is common for that to be disclosed and liability to be regulated on terms under the agreement for sale, with responsibility passed to the purchaser. The authorities may still pursue the previous owner for any offences it committed during its period of ownership, subject to any limitation periods.

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

Yes. Public authorities are entitled to claim general damages. The courts may also impose fines. The definition of environmental damage has been expanded under the Environmental Liability Directive, which has been transposed into Irish law.

6 Powers of Regulators

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

Regulators have extensive powers to issue notices, make directions,

order the production of documents, take samples, conduct site inspections and carry out investigations into breaches of the statutory code. For the most part, advance notice is given; however, for serious matters, they will be exercised without advance notice.

7 Reporting / Disclosure Obligations

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

Environmental legislation specifically provides that a person must disclose pollution to an environmental regulator when it is migrating off-site. Specific reporting provisions are set out under the IE and IPC licensing regimes, water pollution and waste legislation. For example, where waste is causing or is likely to cause environmental pollution, there is an obligation to inform the local authority of any loss, spillage, accident or other development. Where the waste is hazardous, the obligation extends to notifying the EPA also. An operator is also obliged under the Environmental Liability Regulations to notify the EPA where there is an imminent threat of environmental damage.

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

A person has an affirmative obligation to investigate land for contamination where there is an imminent threat of environmental damage. If there was a risk that land contamination was migrating off-site and/or polluting groundwater, there could be a threat of environmental damage. Even if there was historical contamination but no threat of environmental damage exists, there is no obligation to investigate for land contamination.

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

There are no specific statutory provisions that require the disclosure of environmental problems by a seller to a purchaser. The common terms and conditions for the sale of land require disclosure of problems about which the seller is aware. A purchaser typically raises pre-contract enquiries, requisitions on title and carries out a due diligence exercise which assists in identifying any environmental problems. Subsequent disclosure and negotiation of warranties may also identify environmental issues.

8 General

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

The use of environmental indemnities is possible and is often used in commercial transactions to limit exposure for environmental liabilities. However, payment under such an indemnity would not prevent criminal sanction following prosecution by regulatory authorities as those authorities would not (and could not) be bound by the indemnity. With regard to other third parties, they would be free to pursue either or both parties for environmental damage.

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

Although it is possible to hold contaminated land or a manufacturing site in a separate corporate entity, this will not necessarily achieve the desired result, as the directors and officers of that entity may well have personal liability in respect of the environmental liabilities. See response to question 4.3 above. It is not possible to transfer a waste licence granted to an operator under the WMA by private arrangement as that licence is personal to the licensee and is not transferable.

Subject to the above comments, particularly in relation to liability of directors, officers and possibly others in a company, the dissolution of a company holding a polluting asset could result in environmental liability being orphaned and borne by the State. However, depending on the precise circumstances of the case, if contamination by waste materials was involved (the most common situation) and if the directors or indeed shareholders of the dissolved company were themselves responsible for or aware of the polluting activities, then aside from criminal prosecution, they could possibly be held responsible for remediation costs in civil law.

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

Although unlikely in normal circumstances, under Ireland's legislative regime on waste and, in particular, Section 9(2) of the WMA, a company shareholder can (in limited situations) be held liable for the pollution caused by the company. This could arise in circumstances where the shareholder was in effective control of the company's non-compliant actions.

There is no provision of Irish law expressly permitting a parent company to be pursued in respect of pollution caused by its foreign subsidiary or affiliate.

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

Yes, the Protected Disclosures Act 2014 ("2014 Act") came into law in July 2014. The objective of the 2014 Act is to enable employees and contractors to make disclosures that are in the public interest without the fear of being identified. The 2014 Act also provides "whistle-blowers" with protection from victimisation and most civil proceedings.

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

Yes, group or "class" action is available, but not often used and never for environmental claims. There is no convenient procedure for commencing these claims or including claimants.

There is provision for exemplary or penal damages in Irish law; however, this is not often awarded.

8.6 Do individuals or public interest groups benefit from any exemption from liability to pay costs when pursuing environmental litigation?

Yes, there are three protections. Under Section 50B of the Planning and Development Act 2000, as amended, those persons are excused from paying their opponents costs, where making complaints relating to certain EU laws. Under the Environment (Miscellaneous Provisions) Act 2011, those persons are excused where enforcing a very wide range of environmental laws, in order to avoid damage to the environment. Under international law obligations, there is an interpretive obligation to protect those persons from prohibitively expensive costs when enforcing national environmental law. The precise scope of the last protection is uncertain and has been referred to the Court of Justice of the EU for clarification.

9 Emissions Trading and Climate Change

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

The only scheme is the EU Emissions Trading Scheme ("EU ETS"). As in other Member States of the EU, the EU ETS covers various types of high-emission stationary installations, including power stations, combustion plants and oil refineries. In 2012, the EU ETS was extended to include certain aircraft flying from, to or within the EU. The national emissions trading registry is required to be maintained and this is carried out by the EPA.

9.2 Aside from the emissions trading schemes mentioned in question 9.1 above, is there any other requirement to monitor and report greenhouse gas emissions?

GHG Permits are regulated in Ireland under the European Communities (Greenhouse Gas Emissions Trading) Regulations 2012, as amended ("2012 Regulations"). The 2012 Regulations implement the EU ETS in Ireland.

Under the EPA Acts, IE and IPC Licences are required for, but not limited to, any activity that releases emissions. The EPA will not grant an IE Licence or an IPC Licence unless it is satisfied that the emissions released will not contravene a relevant standard or cause significant environmental pollution. Conditions can be attached to these licences, which may include specifying the means of controlling and monitoring the emissions. More generally, the State has obligations with respect to all sectors generating such emissions.

9.3 What is the overall policy approach to climate change regulation in your jurisdiction?

The Climate Action and Low Carbon Development Act 2015, as amended ("Climate Act") provides for the establishment of a national framework with the aim of achieving a climate-resilient, biodiversity-rich, environmentally sustainable and climate-neutral economy by 2050. The Climate Act requires a Minister of Government to make and submit carbon budgets, a sectoral emissions ceiling, an annually updated climate action plan, a long-term climate action strategy, and a national climate change adaptation framework. Public authorities have a duty, in so far as practicable, to perform their functions in a manner consistent with, amongst other things, the most recently approved climate action plan, long-term climate strategy, and national and sectoral adaptation frameworks and plans. At EU level, Ireland has committed to the reduction of greenhouse gas ("GHG") emissions by 40% (of 1990 levels) by 2030.

10 Asbestos

10.1 What is the experience of asbestos litigation in your jurisdiction?

There has been little asbestos-related litigation. Controversial claims for damages about the fear of contracting an asbestos-related disease have been dismissed. Plaintiffs may only recover damages for an actual physical injury or recognisable psychiatric illness as a result of the exposure to asbestos.

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

Asbestos is managed as an employer/employee issue. Unlike in the United Kingdom, there is no express positive duty to manage asbestos. However, if asbestos fibres are loose and leaving the site, there is an air quality and pollution issue. Asbestos is classed as hazardous waste and, as such, those who handle it must be licensed to do so. The Safety, Health and Welfare at Work (Exposure to Asbestos) Regulations 2006, as amended, apply to activities in which employees are likely to be exposed to dust arising from either, or both, asbestos and materials containing asbestos during their work. Employers and occupiers also have duties in respect of workplaces and premises under the common law.

If its employees are "likely to be exposed", an employer is required to assess the risk to its employees' health and safety. Employers must take all necessary steps to identify presumed asbestos-containing materials at a premises or place of work before commencing any demolition, removal or maintenance work at the premises or place of work.

11 Environmental Insurance Liabilities

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

Environmental insurance is available in Ireland, but usually placed through London or other major insurance markets. The insurance types available include those covering environmental risks in the professional indemnity policies of engineers or architects, those contained in typical construction policies (which tend to exclude all but pollution from "one-off" accidents), and specific environmental insurance cover in relation to particular risks arising from known or suspected pollution or non-compliance with planning permission.

Environmental insurance plays an important role in the context of financial provision required under environmental licences. The EPA may require licensees to put in place environmental insurance as a form of financial provision to cover unknown liabilities from their licensed activities. This is particularly common for larger industrial facilities that hold an IE Licence.

11.2 What is the environmental insurance claims experience in your jurisdiction?

There are few reported cases and no substantial claims experience. Claims, where they arise, can be substantial; however, the exposure of insurers is usually limited by the care taken to assessing the risk involved and in drafting the relevant policies (in particular, the exclusion clauses).

12 Updates

12.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in environment law in your jurisdiction.

The Irish marine consenting regime has been overhauled by the enactment of the Marine Area Planning Act 2021 ("MAP Act"). The MAP Act was signed into law in December 2021 but has not been commenced as at the date of writing. The MAP Act establishes a new consenting regime for development in the maritime area, including offshore renewable energy development.

The enactment of the Climate Action and Low Carbon Development (Amendment) Act 2021 ("Climate Act 2021"), followed by the publication of the Climate Action Plan 2021, is the most ambitious commitment to cutting carbon emissions to date. The Climate Act 2021 commits Ireland to 2030 and 2050 targets for reducing GHG emissions. The Climate Action Plan 2021 establishes a sectoral roadmap for meeting Ireland's 2050 national climate objective.

Brendan Slattery has more than 20 years' experience in the areas of environment, planning and climate change, and is recognised as an expert at national and EU levels, having advised regulatory authorities, statutory bodies, local authorities and developers on the delivery of a wide range of local and national projects. In recent years, Brendan has advised on almost every contentious infrastructure project across Ireland spanning the areas of energy, transport, real estate development, water, wastewater and the agri-business sector.

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Sinéad Martyn advises on the preparation of complex planning applications for infrastructure developments. This includes the review and proofing of specialist documents such as the Natura Impact Statement and the Environmental Impact Assessment Report to ensure they meet the legal tests and standards required in this evolving area. Sinéad brings the experience and knowledge gained from her contentious practice to her transactional and advisory work, in which she has significant experience. She advises on projects at the earliest stage of development, which includes advising on consenting options and strategy in conjunction with advice on considerations for the preparation of environmental assessments. She works closely with clients and their technical advisers to navigate a path that is commercial, pragmatic and in compliance with all evolving legal requirements.

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