

MARCH 2023

Horizon Scanner: Infrastructure, Construction, Energy

Legal and regulatory developments impacting sectors across the economy including [energy](#), [construction & engineering](#), [real estate](#), [industrials](#), [transport](#) and [digital infrastructure](#).

Highlights this month...

OFFSHORE RENEWABLE ENERGY

As Phase 1 Projects prepare ORESS 1 auction bids, we look at the recent announcements on Phase 2, [here](#), and the consultation on the Enduring Phase, [here](#).

[Find out more](#)

CAN A BODY CORPORATE APPLY FOR LEGAL AID?

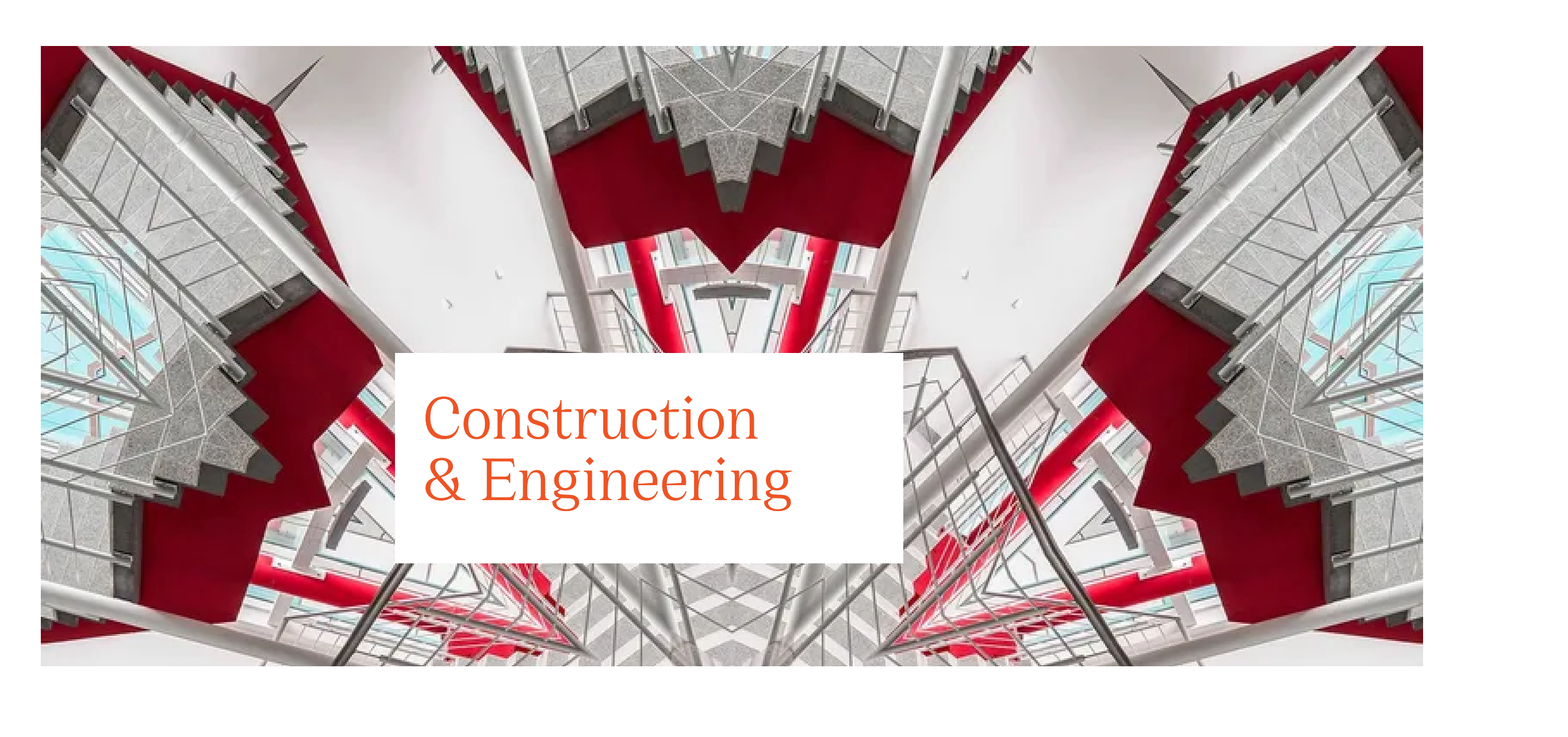
We look at Friends of the Irish Environment v The Legal Aid Board, an area to monitor as the Planning and Development Bill 2022 develops.

[Find out more](#)

NEW PROPERTY AGENCY

Tailte Éireann is now established as a centralised agency bringing together a range of State functions.

[Find out more](#)



Construction & Engineering

"NEC also published clauses for use in Northern Ireland to ensure alignment with the Construction Contracts (Northern Ireland) Order 1997."

STANDARD FORM CONTRACTS

The NEC published a second set of amendments to the NEC4 suite of contracts. They include:

- integration of Secondary Option X29 on climate change,
- integration of Secondary Option X22 on early contractor involvement in the Engineering and Construction Contract (with some amendments taking into account the [2022 practice note](#)),
- optional amendments for certain short contracts relating to contractor design liability.

NEC's summary is available [here](#) and includes a link to a webinar on 19 April 2023 to discuss the amendments. A table of amendments is available [here](#).

NEC also published clauses for use in Northern Ireland to ensure alignment with the Construction Contracts (Northern Ireland) Order 1997 (see [here](#)).

ADJUDICATION

The UK case of [Exyte Hargreaves Ltd v NG Bailey Ltd](#) [2023] EWHC 94 is a helpful reminder of the principle that, if a previous adjudicator has reached a decision on a dispute, a subsequent adjudicator has no jurisdiction to determine matters which are the same or substantially the same as those decided in the previous adjudication. The claimant had issued ten notices referring disputes to adjudication in the space of a month, and sought court enforcement of three of them. The court considered that the only common element was the sub-contract and that the adjudications were not dealing with the same disputes.

In Ireland, the Construction Contracts Act 2013 provides that the decision of the adjudicator is binding until the payment dispute is finally settled by the parties or in arbitral or court proceedings. In the Irish case of [Aakon](#), it was argued that a second adjudicator's decision superseded a first decision. Simons J rejected that argument and indicated that the interrelationship between a first and second adjudication is not clear cut and would require careful consideration of the legislative intent underlying the Act. That was an exercise which was not appropriate in that case for several reasons, though it was noted that the existence of a subsequent adjudicator's decision was "merely a factor which a court might, in a suitable case, take into account in the exercise of its discretion to grant leave to enforce".

SUSTAINABILITY

Fit for 55/REPowerEU

Many instruments are at final negotiation stage and work continues on progressing others. Recent developments include a Parliament vote on the Energy Performance of Buildings Directive, indicating that faster progress is sought – see our latest update [here](#).

Skills

The CIF, IGBC, Technological University of the Shannon, and Laois-Offaly Education and Training Board launched an initiative - [BUSI2030](#) - to build up skills to support decarbonisation of Ireland's built environment.

"...if a previous adjudicator has reached a decision on a dispute, a subsequent adjudicator has no jurisdiction to determine matters which are the same or substantially the same as those decided in the previous adjudication."

[Read more about our Construction & Engineering Group >](#)



Digital Infrastructure

COMREG UPDATES

ComReg issues final transition plan for the Multi Band Spectrum Award in 2.1 GHz Band

On 26 January 2023, ComReg issued a draft transition plan for the Multi Band Spectrum Award in the 2.1 GHz band. All three mobile network operators (“MNO”) submitted responses to the draft but did not offer any alternative proposals or completion dates for consideration. Accordingly, the final transitional plan was adopted. The final plan sets out a phased move for each of the MNOs with the deadline for the spectrum migration of the last of MNO (Vodafone) scheduled for 3 March 2023. Read the full report [here](#).

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Proposed lease of spectrum rights from Dense Air and Vodafone to Eir

On 19 January 2023 and 1 February 2023, Eir submitted to ComReg notifications to lease spectrum rights in the 3.6 GHz band from Dense Air and Vodafone Ireland respectively. ComReg will now consider all submissions made in response to the consultation notice of 2 February 2023. Once ComReg has ascertained the relevant information, it will determine that the leases may be put into effect, provided that the leases would not be likely to distort competition. Read the full report [here](#).

NCIT members agree taskforce should continue beyond its pilot phase

The Nuisance Communications Industry Taskforce (“NCIT”) was established in December 2021 with the objective of addressing nuisance communications within the telecommunications industry. The Taskforce is comprised of the largest MNOs within the State, and is chaired by an independent chair and secretariat who report to ComReg. The group was initially established for a period of twelve months, at which point its continuation was to be reviewed. On 4 January 2023, the NCIT members agreed that the organisation should continue beyond its pilot phase, due to the high prevalence of fraud and the effect it continues to have on Irish telecommunications services. Read the full report [here](#).

ComReg publishes draft decision on market review of the Fixed Voice and Mobile Voice Call Termination markets in Ireland

ComReg is required to review certain electronic communications markets to decide whether regulation is appropriate and, if so, what form it should take. This market relates to the wholesale transaction between one service provider and another, for the cost of terminating a call. The market can be divided into fixed voice call termination and mobile voice call termination, depending on whether the call is delivered to a fixed location or a mobile phone. In a 2019 decision, ComReg imposed obligations on designated significant market players (“SMP”). This draft decision, published on 24 February 2023, finds that the market for voice call termination cannot be subject to ex ante regulation and as such the SMP obligations imposed previously must be withdrawn. Read the full report [here](#).

INDUSTRY NEWS

EU Commission gives go-ahead to joint venture by Deutsche Telekom, Orange, Telefonica and Vodafone

The European Commission has approved the joint venture, under the EU Merger Regulation, which aims to create a platform to support brands and publishers’ digital advertising activities in the EU. The platform will create an alternative digital advertising space to the current ‘big tech’ providers. Implementing the principle of “privacy by design”, the joint venture platform will allocate each user with a unique digital code derived from their mobile network account. This code will allow brands to recognise and categorise users on a pseudonymous basis, and to tailor their content accordingly. Read the full report [here](#).

EU Commission launches consultation on future of the electronic communications sector and its infrastructure

The 12-week consultation period opened on 23 February 2023 and will close on 19 May 2023. The aim of the consultation is to gather views on the changing tech and market landscape. A plausible result of the consultation is that large tech companies could be required to contribute towards telecoms infrastructure costs, as has long been sought by some of the EU’s largest telecoms infrastructure providers. Read the full report [here](#).

Eir announces its high-speed fibre-to-the home network passes over one million premises in Ireland and commits to future investment

Eir announced that it now passes over one million premises across Ireland with its new high-speed fibre-to-the home network. The company committed to rolling out its gigabit broadband network to 1.9 million premises by the end of 2026. The network has been supported by more than €1 billion of investment so far, with another €250 million euro of investment planned each year until the end of 2026. Read the full report [here](#).

“A plausible result of the consultation is that large tech companies could be required to contribute towards telecoms infrastructure costs.”

The image is a symmetrical, kaleidoscopic architectural rendering of a modern building interior. The design features a complex, geometric structure with a central vertical axis. The color palette is dominated by vibrant red and neutral grey tones, creating a high-contrast, futuristic aesthetic. The architecture consists of multiple levels, with prominent white columns and intricate metal frameworks. The overall effect is one of depth and complexity, with the central text 'Employment' serving as a focal point.

Employment

"The Supreme Court considers that the claim raises matters of general public importance which are likely to arise in the case of other public service jobs with mandatory retirement ages."

SUPREME COURT SET TO HEAR APPEAL IN MANDATORY RETIREMENT AGE CASE

The Supreme Court has [granted leave to appeal](#) in the case of Seamus Mallon v Minister for Justice, Ireland and the Attorney General [2023] IESCDET 28 to the Plaintiff, a sheriff, following unsuccessful judicial review proceedings in the High Court. The proceedings relate to the decision by the Minister for Public Expenditure and Reform not to review the statutory retirement age of 70 for sheriffs, set by section 12(6)(b) of the Court Officers Act 1945, following a formal submission by the Sheriff's Association seeking an amendment to it. The Plaintiff claimed that there was no objective justification for the retirement age, and it was incompatible with Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, transposed in Irish law in the Employment Equality Acts 1998. The Supreme Court considers that the claim raises matters of general public importance which are likely to arise in the case of other public service jobs with mandatory retirement ages. The appeal will centre on issues including whether a national measure such as s12(6)(b) which provides for a mandatory retirement age is compatible with Directive 2000/78/EC and the Employment Equality Acts, and whether such limits can be based on general probabilities of age, health and competence, as opposed to individual characteristics.

THE PROTECTED DISCLOSURES (AMENDMENT) ACT 2022 PROVIDES THAT THE FREEDOM OF INFORMATION ACT 2014 DOES NOT APPLY TO RECORDS RELATING TO PROTECTED DISCLOSURES

In the case of Mr X and an FOI Body, an Investigator in the Office of the Information Commissioner (OIC) had to consider if an FOI Body had been justified in refusing the applicant access to records in relation to protected disclosures he had made. The Protected Disclosures (Amendment) Act 2022 ("**2022 Act**") had come into effect since the FOI body had made its decision. The Investigator noted that section 20 of that Act inserted section 42(ja) into the Freedom of Information Acts 2014 ("**FOI Act**") and served to generally disapply the FOI Act to records relating to protected disclosures, whether the protected disclosure was made before or after the coming into effect of the 2022 Act. The Investigator noted that the fact that the FOI body had previously released similar records was not a basis to disregard section 42(ja), and it was not relevant that the records refer/relate to the applicant himself. As all requested records related to protected disclosures, the FOI Act did not apply to them and the Investigator affirmed the FOI body's decision to refuse the applicant access. The OIC's decision is available [here](#).

LEGISLATION EXPECTED EARLY THIS YEAR

It is expected that the following Bills will pass into law in early 2023.

Work Life Balance and Miscellaneous Provisions Bill 2022

This [Bill](#) was before the Seanad for Report and Final stages on 1 March 2023.

Central Bank (Individual Accountability Framework) Bill 2022

This Bill, which aims to enhance individual accountability in the financial services industry (previously analysed [here](#)) was before the Dáil for amendments from the Seanad on 1 March 2023.

[Read more about our Employment Group >](#)



Energy

OFFSHORE

Phase 2

DECC signalled a faster transition to plan-led development in Phase 2, which we look further at [here](#).

Enduring Regime

DECC began consultation on the OREDP II, which we look at [here](#).

ORESS and Grid

DECC has published the indicative [future RESS auction timetable](#) and EirGrid provided an updated ORESS 1 [timetable](#). The CRU published a supplementary decision ([CRU/2023/13](#)) to the decision on Offshore Grid Connection Asset Treatment for Phase 1 Projects ([CRU/2023/09](#)). DECC [indicated](#) the maximum offer price in ORESS 1 will be €150/MWh.

CLIMATE LITIGATION

Use of the courts to drive Governments and private entities to transition to net zero continues. Latest actions to be aware of include those set out below.

- **France:** NGOs are suing BNP Paribas, alleging a failure to comply with a French law on the duty of vigilance of multinational companies, outlined further at [page 14](#) here.
- **UK:** Shareholder NGOs issued a derivative claim against Shell, alleging directors mismanaged climate risk by failing to prepare for the energy transition, breaching duties under the Companies Act 2006 to assess, disclose and manage material risks to the company. Further information is available [here](#).
- **UK:** ClientEarth is seeking to judicially review the Financial Conduct Authority's decision to approve a prospectus for Ithaca Energy plc, alleging that it does not explain how climate risks affect its business specifically, or how significant they are for the company. Further information is available [here](#).

It has also been [reported](#) in the UK that ministers were recently warned of the threat of legal action on the basis that the Government is behind in spelling out how it will reach its net zero targets.

EU DEVELOPMENTS

Fit for 55/REPowerEU

Many instruments are at final negotiation stage and work continues on progressing the rest. Our latest update is [here](#).

Hydrogen

Two delegated regulations adopted under the RED Directive set out rules around what constitutes green hydrogen and how its lifecycle emissions are to be counted - see [here](#) and [here](#). A summary is available [here](#). These will be scrutinised by the Parliament and Council which may accept or reject them.

A roadmap on setting standards to enable deployment of largescale hydrogen solutions is available [here](#). It looks at standardisation needed for the hydrogen value chain and is intended, among other things, to support the Commission in preparing a standardisation mandate. Funding for nine [hydrogen valleys](#) was announced.

Metering and Consumption Data

A draft [implementing regulation under the IME Directive](#) deals with interoperability requirements and non-discriminatory and transparent procedures for access to metering and consumption data. It is to be considered by the Electricity cross-border committee under the [Article 4](#) advisory procedure, following which it may be adopted by the Commission.

Batteries

Member States are discussing ways to foster competitiveness of the European battery industry and indicate next actions [here](#).

Gas

EU gas consumption decreased by nearly a fifth – Eurostat figures are available [here](#).

INTERNAL MARKETS

Electricity Market Design

Responses to the [EU consultation](#) were published by [ACER](#), [CEER](#), [ENTSO-E](#) and [DECC](#).

Caselaw: ACER powers

In [T-606/20](#) and [T-607/20](#), the CJEU dismissed a challenge by Austrian Power Grid AG and other TSOs to a decision of the ACER Board of Appeal upholding an ACER decision. The ACER decision, broadly, was that proposals referred to it by national regulatory authorities for the performance of functions required to operate platforms for the exchange of balancing energy were not compatible with the [Balancing Guideline](#) - they did not include all the functions necessary for the efficient and safe establishment and operation of the platforms.

The CJEU considered that, given the facts of the case, the IME Regulation and Balancing Guideline confirmed that ACER had jurisdiction to decide on the development of the methodologies. ACER was entitled to modify the TSOs' proposals to ensure compliance with EU energy law, without being bound by any points of agreement between the national regulatory authorities. A summary is available [here](#).

Caselaw: Brexit lacuna

[Case T-492/21](#) concerned litigation around ACER's decision, upheld by the ACER Board of Appeal, not to grant Aquind Ltd and others an exemption / temporary derogation for the construction of an interconnector between the UK and France from obligations under [Regulation 714/2009](#) on Cross-Border Exchanges of Electricity.

"ACER was entitled to modify the TSOs' proposals to ensure compliance with EU energy law, without being bound by any points of agreement between the national regulatory authorities."

Following a judgment on the issue, the ACER Board of Appeal reopened the matter. However, it concluded that it no longer had jurisdiction to decide the issue because of Brexit. Acquind challenged that finding and the CJEU has now dismissed that challenge. The CJEU agrees that neither ACER nor the Board of Appeal can base a decision on the legal basis they used before Brexit, and nor is there a basis in the Withdrawal Agreement or Trading and Cooperation Agreement. The Court did not require Acquind to pay all costs, even though it was unsuccessful, in light of the fact that the situation is a consequence of Brexit.

Caselaw: Market Operators

[Case C-394/21](#) concerned a challenge to a decision by the Romanian regulatory authority not to issue a licence to BRM to organise and operate centralised electricity markets. BRM argued that the IME Regulation and Directive require regulators to ensure effective competition between market operators. The regulator considered that there is no requirement to designate several operators and that the creation of two separate markets in a small country would lead to distribution of bids from the same tenderers and result in infringement of competition rules. The Romanian court sought guidance on interpretation of EU law.

The CJEU replied that the relevant EU law does not prevent national legislation under which a national legal monopoly is maintained for intermediation services in respect of offers to sell and bids to buy electricity concerning:

- the day-ahead and intraday wholesale markets, provided that that monopoly existed at the time of the entry into force of Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management,
- the forward wholesale market, since conformity of such legislation with EU law must be assessed in the light of the relevant provisions of primary EU law (this area not being subject to exhaustive harmonisation at EU level).

Projects of Common Interest

ACER is updating its guidance on treatment of investment requests, including cross border allocation requests, for projects of common of interest. It [invites views](#) on the existing guidance by 31 March 2023.

Electricity

ACER is consulting on calculation of [scheduled exchanges](#) between NEMO trading hubs.

Gas

ACER published an assessment on the impact of the gas [Market Correction Mechanism](#) and updated the [LNG](#) price assessment methodology ahead of launch of the LNG benchmark.

BREXIT

Withdrawal Agreement – Protocol on Ireland/Northern Ireland

The EU and UK agreed the [Windsor Framework](#). There is nothing to indicate amendments to provisions expressly concerning the SEM. The Withdrawal Agreement provides for future EU legislation that amends or replaces the energy legislation at Annex 4 of the Protocol to apply in Northern Ireland. Under the Windsor Framework, there would be a mechanism whereby 30 members (across two parties) of the NI Assembly could request the UK Government to stop application of new legislation that may have a significant and lasting impact on the everyday lives of communities in Northern Ireland (by use by the UK Government of the unilateral declaration process provided by the Withdrawal Agreement). There is also a Commission statement on [enhanced engagement](#) with Northern Ireland stakeholders.

Interconnectors

The Specialised Committee on Energy formally adopted the [Recommendation](#) on next steps to be taken by TSOs for development of trading arrangements, endorsed by the [Council](#).

INVESTMENT

Green Bonds

The European Green Bond Regulation has been agreed and will establish a voluntary standard for green bonds. See more on this and developments in the areas of sustainable lending and corporate reporting in the [ESG section](#) of our Finance Horizon Scanner.

DOMESTIC DEVELOPMENTS

Legislation

The [Oil Emergency Contingency and Transfer of Renewable Transport Fuels Functions Act 2023](#) has been [commenced](#). It amends the National Oil Reserves Agency Act 2007 to provide for oil emergencies and to [transfer](#) the renewable transport fuel function to the Minister of Transport.

Energy Efficiency and Renewable Heat

DECC and SEAI [announced](#) expansion of the Support Scheme for Renewable Heat and Excellence in Energy Efficient Design scheme.

SEMC BUSINESS

System Services

Existing tariff rates are being maintained up to 30 September 2023 ([SEM-23-020](#)).

Imbalance Prices

The SEMC will not proceed with the proposed increase to the qPAR for calculating Imbalance Prices ([SEM-23-021](#)).

Capacity Market

The SEMC is consulting until 10 March 2023 on indexation of capacity payments ([SEM-23-014](#)). Auction parameters for T-4 2027/28 ([SEM-23-006](#)) and a decision on terms of reference for the Year 4 market audit ([SEM-23-018](#)) are available.

Marketing Monitoring

Monthly monitoring is available for October 2022 ([SEM-23-005](#)).



Environment
& Planning

RECENT JUDGMENTS

The Court of Appeal [held](#) that Friends of the Irish Environment is not entitled to apply for legal aid

The fundamental issue in this appeal was whether a body corporate may apply for and obtain legal aid pursuant to provisions of the Civil Legal Aid Act 1995 (the “Act”). This case centred on the meaning of ‘persons’ within the Act and whether references in the Act to ‘persons’ applies only to natural persons, or to both natural and legal persons. FIE relied on provisions of the Interpretation Act 2005, the EU Charter of Fundamental Rights and the Aarhus Convention in claiming that it was entitled to apply for legal aid. The Court of Appeal dismissed FIE’s appeal and held that only natural persons, i.e. individuals, may apply for legal aid, not bodies corporate.

It is interesting to note that the Heads of Bill for the Planning and Development Bill 2022 includes an “administrative scheme” for costs in judicial review. There are no details yet on who will be eligible for this but we are tracking the progress of the Bill closely.

The High Court [held](#) that environmental information held by subsidiary company was held on behalf of the parent company

The High Court emphasised that its finding was based on the statutory and factual context, and was not to undermine the distinction between parent and subsidiary companies. The consequence of this High Court judgment was that the environmental information was ultimately held ‘for’ a public authority, namely Bord Na Móna, and therefore could be disclosed as part of a request for access to environmental information.

The High Court [rejected](#) an application by an unsuccessful applicant for her own legal costs to be paid by the respondents (including the State) in circumstances where the applicant did not litigate effectively and wasted court time and taxpayer money

The applicant had been unsuccessful in a judicial review against a revised industrial emission licence. Subsequently, the applicant sought her legal costs to be paid by the respondents (including the State parties). In the main proceedings, the Court had been critical of the manner in which she carried on the hearing, which had included making arguments not properly pleaded in her papers. In the judgment on costs, the Court opined that applicants in environmental judicial reviews had the “privilege” of the general principle of costs protection but this came with a “greater onus .. to be efficient with court time”. The reasoning for this was that, ultimately, the cost of defending these judicial reviews falls to the taxpayer. The applicant here had not discharged this onus and had wasted court time and taxpayer money by arguing and dealing with points that were not pleaded – further, she had taken up more time and money by bringing these cost proceedings.

Finally, the court stated that there was a strong case that costs could have been awarded against the applicant and that if the respondents had sought their costs for the costs hearing, the Court would have granted that order.

"The applicant here had not discharged this onus and had wasted court time and taxpayer money by arguing and dealing with points that were not pleaded – further, she had taken up more time and money by bringing these cost proceedings."

The High Court [quashed](#) a decision of An Bord Pleanála (the “Board”) in relation to a housing development in Drumcondra on grounds that the Board had not followed the correct procedure in relation to a material contravention of the development plan and that the Board had not adequately engaged with the statutory system in relation to “protected structures”

Planning permission was granted for an SHD on a site with a number of protected structures. This was challenged on a number of grounds, and the Respondent and Notice Party raised preliminary objections to several of those grounds.

While the Court rejected most of the preliminary objections, it also refused relief on many of the grounds challenged and found that the applicant’s case boiled down to two issues arising from two objections that had been raised by the local council’s conservation officer.

First, the Court held that the development involved the demolition of part of a protected structure and that the Board had not appropriately considered this demolition. In addition to this, the scale and height of the development was, in the Court’s view, in contravention of the development plan’s policies around protected structures. The Board had not assessed this contravention in compliance with the relevant legislation. Second, the Board had not assessed the development of an underground structure (which was also a contravention of the development plan) appropriately and had not given reasons for failing to follow the inspector’s recommendation in relation to this.

Ultimately, the Court was critical of the Board’s “attitude” and noted that it was “fairly dismissive, if not depending on your point of view disrespectful, of the planning authority’s views and concerns”.

The Supreme Court has [granted](#) leave to appeal a High Court judgment in relation to whether a party in a joint venture between a subsidiary of ESB and a private company (who holds an electricity generation authorisation) was a “public authority” for the purpose of an environmental information request

The applicant sought to appeal a Court of Appeal decision which found that the private company was not a public authority (despite being vested with special powers). The Commissioner for Environmental Information did not participate in the Court of Appeal proceedings but wished to appeal on the grounds that the Court of Appeal’s decision was difficult to apply and inconsistent with existing EU case law.

Leave was granted on the following grounds:

- whether a party is entitled to appeal a decision of the Court of Appeal when that party did not participate in the Court of Appeal hearing;
- whether a party can appeal against a decision made in its favour on the basis that that party disagrees with the reasoning by which the result was reached; and
- whether the Commission was correct in deciding that the private company was not a public authority.

The High Court [admitted](#) proceedings to the Commercial Planning and SID List notwithstanding the fact that the monetary value fell well below €1 million threshold

A motion to admit the case to the Commercial Planning List was contested by Galway County Council. However, the High Court disagreed with the Council that the List would be more costly, and instead argued that the List judges are knowledgeable in the area and that that can give rise to quicker determinations. In addition, the fact that the value of the project (€85,000) fell below the €1 million threshold was no bar to entry, as the works were commercial in character.

The Supreme Court [rejected](#) an appeal against a decision of the High Court where a request for an order to quash a decision of the Board was rejected but questions were referred to the CJEU on the same regulation

The High Court had rejected an application to quash a decision of the Board based on the invalidity of certain sections of the Birds and Habitats Regulations. The High Court rejected this as the Court found that the decision in question did not rely on those particular sections. However, as a separate issue, the High Court held that there was an arguable case that the

sections could be declared invalid and it referred questions to the CJEU in relation to the Regulation.

The applicant subsequently appealed on the grounds that the Court should not have refused their request for quashing of the decision before the CJEU questions were answered. The Supreme Court rejected this appeal as the validity of the decision would not be impacted by any possible answer to the questions referred.

The High Court [granted](#) an extension of time to file judicial review proceedings on foot of exceptional medical and medical care circumstances, along with the timing of exam repeats for one of the applicants

The applicants had filed their judicial review challenge against the Board's decision to uphold a refusal by the local council to allow the applicants to build a house. However, the challenge had been filed 17 days late. The Court found that "*good and sufficient*" reasons had been raised including the requirement for full-time care of the applicants' children due to medical issues (who were on school holidays during the eight-week period) and the fact that one of the applicants had King's Inns repeats at the end of the eight-week period, for which he was required to spend the time studying. The medical issues and repeats were outside the applicants' control.

The Court therefore extended time and also granted leave to bring the proceedings as substantial grounds had been established, which mostly focused on the Board's failure to consider (or improper disregard of) the exceptional health circumstances of the applicants and the fact that a medical report from a senior clinical psychologist in the HSE had been submitted.

The High Court [rejected](#) an application for extension of time to file a judicial review challenge when the application was lodged one day late due to "human error"

The decision related to decisions arising from an application by a third party to two local Councils as to whether proposed works to an existing electricity line were exempted development. The judicial review was issued a day late as the legal team had "*put themselves in the way of harm*" by waiting until the last day of the eight-week period to present themselves to the Central Office to file the papers. They had attempted to file an unstamped Statement of Grounds, rejected by the Central Office and were, therefore, only able to file the following day.

The Court first established the day that the applicants ought to have known about the decision being made – the Court found that the Applicant "*can't be faulted for a failure of speculation or imagination, or a failure to join dots that might seem obvious with the benefit of hindsight*".

Following this, the Court noted that human error rarely qualifies as good and sufficient reason to extend the time to bring a challenge. He noted the advantages that an applicant has (including cost protection, generally less concern about delaying the development, and having to only win on one point) and that one way the Court rebalances the scales is by applying a reasonably strict eight-week time limit.

Therefore, the Court rejected the extension of time application. The Court also rejected a similar argument based on EU law.

"Following this, the Court noted that human error rarely qualifies as good and sufficient reason to extend the time to bring a challenge."

The High Court [dismissed](#) a challenge to the Board as an impermissible collateral attack upon an earlier declaration by the Council

This case concerned a declaration made by Wicklow County Council (the "Council") and a subsequent determination by An Bord Pleanála (the "Board") in respect of development consisting of a grid connection between a windfarm development and an ESB substation, which both found this development to be exempted development. In 2015, the Council issued its declaration, and in 2017, an appellant made a referral to the Board in relation to this same question.

The Court found that the Board should have exercised its discretion and refused to deal with a subsequent referral to it for a declaration as to whether the grid connection was exempted development. The Court agreed with the Applicant, Mr. Sweetman, that the Board engaged in "project-splitting" by holding that the grid connection was exempt development and the grid connection works should have been assessed as part of the EIA of the windfarm.

However, the Court dismissed this challenge by the Applicant, finding that the Applicant was making an "impermissible collateral attack" upon the earlier declaration by the Council, for which he had missed the time limit for judicial review. The Court held that there was no violation of the EIA Directive, and Ballycumber Wind Farm Limited, the Notice Party, was entitled to rely on the original consent and declaration by the Council.

The High Court [provides](#) reasons for successful challenge to development plan in relation to excessive zoning of land for residential use

The Applicant previously challenged the zoning of land for residential use by Meath County Council in respect of the Meath County Development Plan. In December 2022, the Court announced an order which imposed a stay on the effect of the specific zoning in Drogheda under the development plan, as well as a stay on planning applications or appeals until the final determination of proceedings.

In these proceedings, the Court provides the reasons for this order and describes how, by removing all of the phasings of residential zoning from relevant lands in Drogheda, the Council has departed from a "strategic" (i.e. plan-led) approach to development, instead allowing for a developer-led "survival-of-the-fittest" approach. In the submissions phase of the draft plan, it was noted that the quantum of lands zoned for residential use significantly exceeded the amount required to meet the population in the same period.

The Court found that the Council failed to comply with mandatory national and regional statutory development obligations in relation to infrastructure assessment methodology with no valid reason given and that, by zoning significantly more land for housing than follows from population projections, the Council failed to comply with the implied statutory obligation that population projections must inform housing provision.

CJEU AG opinion [finds](#) that Ireland failed to fulfil its obligations under the Habitats Directive to establish the necessary conservation measures in respect of protected sites

These proceedings arose from a Commission action against Ireland in relation to a failure to fulfil its obligations under the Habitats Directive. The Commission alleged that Ireland had adopted ineffective and incomplete conservation measures in respect of certain sites of community importance and that, in some instances, it had not adopted any conservation measures. The AG found that Ireland had failed to demonstrate that it had established the necessary conservation measures in a general and persistent manner, and therefore was in breach of the Habitats Directive.

LEGISLATION

Planning and Development Bill 2022

The draft Bill was approved in December 2022 and was published on 26 January 2023. A finalised Bill will be published once pre-legislative scrutiny by the Joint Oireachtas Committee on Housing, Local Government and Heritage has been concluded.

Government Legislative Programme - Spring Session 2023

The Government [published](#) the legislative programme for the Spring session. Please see below relevant legislation:

Legislation for Priority Publication

- **Land Value Sharing and Urban Development Zones Bill 2021** - To amend the Planning and Development Act 2000 to introduce new provisions to deal with land value sharing and urban development zones reflected in Housing for All.
- **Marine Protected Area Bill 2022** - To provide for the designation and effective management of Marine Protected Areas (MPAs) in the Irish maritime area.

Legislation for Priority Drafting

- **Energy (Windfall Gains in Energy Sector) Bill 2023** - To implement Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices.

All other Legislation for this Session

- **Aarhus Convention Bill** - To consolidate and further Ireland's implementation of the access to justice provisions of the Aarhus Convention.
- **Environmental Protection Agency (Amendment) Bill 2023** - To enable the EPA to be more efficient and effective in its determinations by providing a stream-lined approach for decision making and shortening the period for final determinations of the Agency.
- **Ireland Fisheries (Consolidation) Bill** - To consolidate and modernise existing inland fisheries legislation.
- **Just Transition Commission Bill** - To establish a statutory Just Transition Commission to provide strategic advice to the Government on the mainstreaming and integration of just transition principles into climate action policy design and delivery.
- **Housing (Miscellaneous Provisions) Bill** - To amend the Housing (Miscellaneous Provisions) Act 2009 including section 20 regarding social housing assessments and section 31 regarding rent schemes, and the Housing (Miscellaneous Provisions) Act 2014 regarding tenant purchase.

DOMESTIC REPORTS, CONSULTATIONS AND DECISIONS

Infringement Proceedings - Water: Commission decides to refer Ireland to Court

The EU Commission has [referred](#) Ireland to the CJEU for failing to correctly transpose the Water Framework Directive 2000/60/EU. EU Member States were required to transpose the Water Framework Directive by 22 December 2003. Ireland initially adopted national legislation but the Commission found this to be insufficient. The Commission notes that *"despite some progress and the adoption of new legislation in June and December 2022, the Irish authorities have not yet fully addressed the grievances"*.

European Commission confirms closing of Derrybrien infringement case

The European Commission has [confirmed](#) that daily fines being applied against the State in relation to the Derrybrien windfarm in Co Galway will cease. The Department of Housing, Local Government and Heritage has received a response confirming that the Commission considers that, on foot of An Bord Pleanála's decision of 4 February 2022 to refuse substitute consent, that Ireland has taken all measures necessary to ensure compliance with the judgment. Once the final instalment of daily fines is paid, Commission services will initiate an internal process to propose to the College of Commissioners to close this file. This final instalment of daily fines covers the period 13 November 2021 to 4 February 2022. The final sum due to be paid is €1,245,000.

The Commissioner for Environmental Information upholds [appeal](#) concerning request for environmental information

The Department of Agriculture, Food and the Marine had refused a request for environmental information on the basis that the information requested did not exist or could not be found. The refusal was appealed to the Commissioner, who found that there was no evidence that the Department had taken reasonable and adequate steps to ensure that no relevant information was held by it. The Department must now deal with the request afresh and bear in mind the requirement to provide reasons for refusal.

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Public Procurement

IRELAND

Court upholds HSE's decision

In [Sere Holdings Ltd v Health Service Executive](#), the High Court in Ireland rejected a challenge to award of a contract for emergency air ambulance services, finding that a RWIND tenderer would have interpreted the tender documents in the same way the HSE had. We look at the judgment [here](#). The Court also took the opportunity to comment on mediation. We look at that aspect of the judgment [here](#).

Survey on Public Procurement in Ireland

The Department of Enterprise, Trade and Employment and the Office of Government Procurement engaged DCU to conduct a nationwide [survey](#) on public procurement with the objective of improving procurement in the current marketplace.

EU

International Procurement Regulation

Commission guidance on the application of the [IPI Regulation](#) is now available [here](#). The IPI Regulation lays down procedures relating to third-country measures or practices against EU economic operators, goods and services.

Standing to Challenge an Award

Article 1(3) of the Remedies Directive requires Member States to ensure that review procedures are available at least to any person having or having had an interest in obtaining a particular contract and who has been or risks being harmed by an alleged infringement.

In [Case C-53/22](#), a tenderer was excluded from a competition on the basis that it did not have the required certification as proof of its technical and professional capacity. Its challenge to this decision was unsuccessful and conclusively dealt with in the Italian courts.

However, the excluded tenderer later pointed to a competition authority decision that other tenderers, including the successful tenderer, had engaged in anti-competitive behaviour, capable of affecting the assessment of integrity and reliability, as well as constituting grave professional misconduct contrary to the Italian Public Procurement Code. The excluded tenderer sought annulment of the decision to award the contract. The Italian court sought clarification on applicable legal principles, given that the excluded tenderer was no longer involved in the competition.

The CJEU responded that Article 1(3) of the Remedies Directive does not prevent national legislation that does not allow an excluded tenderer in these circumstances to challenge the refusal by the contracting authority to annul its decision to award the contract.

UK

Tackling Modern Slavery

UK Government guidance on identifying and managing the risk of modern slavery in supply chains is available here: [PPN 02/23](#).

Low Value Procurements

The Welsh Government has published a [route planner](#) including guidance and templates for low value procurements (under £25,000 including VAT).

Procurement Bill

The current stage of progress is shown [here](#). Recent amendments of the Public Bill Committee are available [here](#).

Bromcom Computers Plc succeeds in challenging United Learning Trust's Decision

The case of [Bromcom Computers Plc v United Learning Trust](#) concerned the award of a contract for supply of a Management Information System for nearly 60 academies, valued at £2 million, to the incumbent provider, which came first by a narrow margin following a competitive dialogue procedure.

The High Court in England & Wales found breaches of the Public Contract Regulations, that the counterfactual assessment indicated Bromcom would otherwise have won the competition, and that the breaches were sufficiently serious to justify a damages claim.

Breaches centred around the following areas:

- The tender documentation provided for a single score out of 5 across four separate quality elements. However, the average score from each evaluator across the four areas was compiled and averaged again, and then rounded. There was no moderated discussion that could have led to the awarding authority being in a position to give reasons for its scoring. Some evaluators also made manifest errors in scoring quality and price, which impacted final scores.
- The winning tenderer had been allowed to benefit from its position as incumbent by including in its bid price a discount on a separate contract it had already entered into with the awarding authority. The awarding authority also acted unfairly by adding a particular cost to Bromcom's bid, without verifying its belief that Bromcom had forgotten to price that cost.
- The winning tenderer had submitted its final tender by reference to a drop-box, rather than attaching the documents to its mail, and it continued to have access to the drop-box after the submission deadline passed. Though this was held to be contrary to the Regulations, it was not a successful basis of challenge because the counterfactual was that the awarding authority would just have asked the incumbent to resubmit its bid.
- Similarly, the incumbent's submission of two further documents after the deadline for submission had not made a difference to the outcome, albeit that the awarding authority should have kept Bromcom informed about what it was doing, in order to comply with its obligations around equal treatment and transparency.

This judgment contains analysis around a number of practicalities central to procurement processes. The Court will now consider further submissions to assess quantum of damages to be awarded to Bromcom.

Tender Submission Procedures: Careful Scrutiny and Planning needed from the Outset

We previously mentioned proceedings in [Inhealth Intelligence Ltd v NHS England](#), in which Inhealth was excluded for failing to submit a compliant bid by the deadline. The Court has now dismissed

"The High Court in England & Wales found that there were numerous breaches of the Public Contract Regulations, that

the counterfactual assessment indicated Bromcom would otherwise have won the competition, and that the breaches were sufficiently serious to justify a damages claim."

Inhealth's challenge ([\[2023\] EWHC 352 \(TCC\)](#)).

Tender documents indicated that tender responses were to be submitted via an e-portal; that tenderers were to indicate the Lots in respect of which they were submitting responses; that attachments were to be uploaded to the correct location or 'placeholder'; that mandatory attachments were to be uploaded before the bids for each of the Lots were 'submitted'; and that the portal did not accept files with the same name.

There were also numerous statements around submission: any failure to submit the bid by the deadline would result in exclusion and every part of the bid not being 'visible' to the awarding authority. While there was an express discretion to extend the deadline, it applied only prior to the expiry of the deadline, and would have had to be granted to all bidders. Faults in the bidder's system were not the responsibility of the awarding authority.

The Court found that Inhealth uploaded all documents for Lots 1 to 3. For Lot 4, mandatory documents were uploaded but two documents were in the wrong places at 11.49: one was removed by 11.59, and the other was in a corrupted or non-retrievable form and would have needed to be removed and re-uploaded successfully before submission in order to be visible to the awarding authority.

Inhealth's request for assistance was acknowledged some minutes before the deadline and there were further communications between the parties. The awarding authority had asked sufficient questions as to the state of the submissions, and reasons for that, in advance of making its decision.

The portal was not defective. There was nothing improper with a contracting authority choosing to use an 'off-the-shelf' product as long as its functionality was suitable and clearly explained in the ITT. Critically, nothing in the system used in the context of a multi-lot/single bid process offended the principles of equal treatment, transparency or proportionality. The problem was not the design of the e-portal, but human error in its use. The resulting error message was clear and transparent to a RWIND tenderer.

For awarding authorities, it is worth also noting that, as a matter of law, the awarding authority did have a discretion to allow into the competition and evaluate the bid responses that Inhealth did upload before the deadline. In acting the way it did in this case, however, it had not breached procurement law.

"It stated there was nothing improper with a contracting authority choosing to use an 'off-the-shelf' product as long as its functionality was suitable and clearly explained within the ITT. Critically, nothing in the system ... offended the principles of equal treatment, transparency or proportionality."

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A 3D architectural rendering of a modern building's interior atrium. The scene is characterized by a central red staircase that spirals upwards, surrounded by a complex network of white structural beams and railings. The architecture is highly geometric and symmetrical, with a strong sense of verticality. The lighting is bright and even, highlighting the clean lines and materials of the design. In the center of the image, there is a white rectangular text box containing the words "Real Estate" in a serif font.

Real Estate

COMMERCIAL LANDLORD AND TENANT

Recovery of rent

In [Propmaster Ventures Ltd v Fun Galaxy Ashbourne Ltd](#) [2022] IEHC 731, the landlord sought a summary judgment in the High Court for rent arrears, which the tenant resisted on the ground that it had a defence based on a counterclaim against the landlord for furnishing a defective building and breach of repairing obligations.

Hyland J rejected the defence because the rent covenant in the lease required payment 'without any deduction set-off or counterclaim whatsoever'. Therefore, in any subsequent trial of the rent claim no counterclaim or set-off could be raised.

Apart from that, Hyland J ruled that it would be inequitable to allow such a counterclaim to be made since the tenant had failed, for two years since the present action by the landlord was commenced, to quantify the counterclaim or to pursue it. It was no answer to argue, as the tenant did, that it had quantified the counterclaim in separate Circuit Court proceedings by the landlord for ejectment. Such proceedings were irrelevant to the present High Court proceedings.

Hyland J adjourned the case to permit the parties to consider whether a stay should be put on her judgment in view of the separate Circuit Court proceedings.

Notice to quit

In [O G Thomas Amaethyddiaeth Cyf v Turner](#) [2002] EWCA Civ 1445, the landlord served a notice to quit on the original tenant of an oral tenancy of agricultural land, not knowing that the tenant had previously assigned the tenancy to a private company of which he was the sole director and shareholder. The company's registered office was the tenant's home address and the tenant had continued to farm the land.

It was agreed that the notice was invalid as being addressed to the wrong addressee (tenant) but the English County Court upheld it, applying the English 'reasonable recipient' rule, i.e. a reasonable recipient would have realised the mistake and would have read it as really addressed to the correct tenant (i.e. the company).

However, the Court of Appeal reversed this ruling, stating that the reasonable recipient rule does not apply where a notice fails to satisfy substantive conditions upon which its validity turns. In such a case, the question of how a notice is to be interpreted does not arise. At common law a notice to quit must be served on the current tenant of the property – the assignee (or its agent) where it has been assigned by the original tenant. Where it is addressed to a person or body by name, it is invalid if the named person or body is not the current tenant.

RESIDENTIAL LANDLORD AND TENANT

Temporary stay on residential tenancy terminations due to expire on 31 March 2023

It is being reported that the Irish Government has decided not to extend the temporary stay on tenancy terminations beyond 31 March 2023. It remains to be seen if the Government will introduce new measures to support tenants or to encourage landlords to remain in the sector. Read our briefing on the temporary stay and the phased termination of tenancies from 1 April to 18 June [here](#).

Meaning of 'landlord'

In [Allied Irish Banks Plc v Fitzgerald](#) [2022] IECA 286, the Court of Appeal, in a judgment given by Ni Raifeartaigh J (Barnville and Faherty JJ concurring), upheld Simon J's rulings in this case, in particular his reliance on the Court's previous ruling in [Kennedy v O'Kelly](#) [2020] IECA 288 that, since a lender is not entitled to receive rent from a tenanted mortgaged property, it is not a 'landlord' within the meaning of the [Residential Tenancies Act 2004](#).

Furthermore, where the borrower has leased the mortgaged property without the lender's consent the lender remains entitled to treat the purported lessee as a trespasser.

HOUSING

Extension of Local Authority Home Loan

The Minister for Housing, Local Government and Heritage, Darragh O'Brien, has announced increases to the prices of homes eligible for a Local Authority Home Loan and to the income limits of those eligible to apply.

Increases to house price limits for all local authorities' areas are:

- €320,000 to €360,000 – Dun Laoghaire Rathdown, South Dublin, Dublin City, Fingal, Wicklow, Kildare
- €320,000 to €330,000 – Galway City, Cork City, Louth, Meath, Galway County, Cork County
- €250,000 to €300,000 – Limerick, Waterford, Clare, Wexford, Westmeath, Kilkenny
- €250,000 to €275,000 – Offaly, Laois, Monaghan, Cavan, Donegal, Tipperary, Kerry, Mayo, Roscommon, Sligo, Leitrim, Longford, Carlow

Increased income limits for all applicants in each local authority area are:

- €50,000 and €65,000 to €70,000 for all single applicants nationwide
- €75,000 to €85,000 for all joint applicants nationwide

Read more [here](#).

Amended financial eligibility requirements for applicants for affordable dwellings

The Affordable Housing Regulations 2023 ([S.I. No.20 of 2023](#)) revoke S.I. No. 183 of 2022 and prescribe amended financial eligibility requirements for applicants for affordable dwellings under affordable dwelling purchase arrangements including:

- the manner in which applicants' income is to be determined by housing authorities;
- which assets, if any, of applicants are to be taken into account by housing authorities; and
- the procedures to be applied by housing authorities to assess applicants' eligibility by reference to income. For example, the Regulations provide that an applicant shall not be eligible for an affordable dwelling where their gross income multiplied by 4 exceeds 85.5 per cent of the market value of the dwelling (the multiplier was 3.5 under the revoked Regulations).

Amended provisions for affordable dwelling purchase arrangements

The Affordable Housing (No.2) Regulations 2023 ([S.I. No. 21 of 2023](#)) revoke S.I. No. 184 of 2022 and prescribe:

- the content of notifications to the public by housing authorities of their intention to make affordable dwellings available for sale;
- the manner in which housing authorities must deal with applications for affordable dwelling purchase arrangements;
- the manner in which housing authorities must prioritise applicants under schemes of priority (where the number of eligible applicants exceeds the number of dwellings for which applications have been accepted);
- the minimum price to be paid by an eligible applicant for a dwelling under an affordable dwelling purchase arrangement (based on applicants' gross income);
- the affordable dwelling contribution to be made by housing authorities (between 5 per cent and 40 per cent of the market value of the dwelling concerned);
- the minimum period for an affordable dwelling purchase arrangement (40 years);
- the covenants to be included in an affordable dwelling purchase arrangement (for example, to repair, insure, allow inspection by housing authority etc.); and
- the minimum amount of a redemption payment (whereby homeowners can redeem the affordable dwelling equity contributed by the housing authority) (€10,000).

Conversion of pubs into homes

The Minister for Housing, Local Government and Heritage, Darragh O'Brien, [published figures](#) showing that one-fifth of notifications received by local authorities in the last year to convert certain vacant commercial premises into homes related to former pubs.

The Planning and Development (Amendment) (No. 2) Regulations 2018 ([S.I. No. 30/2018](#)) provided an exemption from the requirement for planning permission for the conversion of certain types of vacant commercial property into residential units. In 2022, these Regulations were amended by the Planning and Development Act (Exempted Development) Regulations 2022 ([S.I. No. 75/2022](#)) to include the conversion of vacant pubs and extend the exemptions until the end of 2025.

Read more [here](#).

Covenants in deeds for new builds

The Law Society Conveyancing Committee has published a practice note in relation to the practice of including multiple covenants in deeds for new builds that appear to be generic but are not necessarily appropriate in every development. Most covenants are bespoke for a particular development, and are for the amenity and protection of the estate for the benefit of all residents.

The Committee recommends that solicitors acting for developers drafting scheme documentation carefully consider what the requirements are for a particular development, and not use superfluous covenants or unwittingly carry them over from other precedents or schedules.

LEGISLATION

Tailte Éireann

The Tailte Éireann Act 2022 (Establishment Day) Order 2023 (S.I. No. 58 of 2023) appointed 1 March 2023 as the establishment day for Tailte Éireann, a new centralised agency to provide a property registration system, a property valuation service, and a national mapping and surveying infrastructure for the State through a merger of the Property Registration Authority, the Valuation Office, and Ordnance Survey Ireland. The functions of the Property Registration Authority and the other dissolved bodies has now transferred to Tailte Éireann.

The Registries of the Land Registry and Registry of Deeds remain the same (in both name and function) after the transfer of the PRA's functions to Tailte Éireann; there is no change to how these registries operate or deal with title registration applications.

See: [Tailte Éireann website](#) and the Department of Housing's [press release](#).

Planning and Development Bill 2022

The draft Planning and Development Bill was [published](#) on 26 January 2023. Read the Department of Housing's press release [here](#).

The Joint Committee on Housing, Local Government and Heritage meet on Tuesday 7 and Thursday 9 March to discuss the pre-legislative scrutiny of the general scheme of the Bill. The Committee's PLS report can be viewed [here](#). Once PLS has been concluded, a finalised Bill will be published which will then proceed through the Houses of the Oireachtas.

Land Development Agency

The Land Development Agency Act 2021 (Remaining Provisions) (Commencement) Order 2022 ([S.I. 724/2022](#)) brings into operation, from 1 January 2023, the remaining provisions of the Land Development Agency Act 2021 (No. 26 of 2021), namely subsection (7) of section 55, Part 9, and Schedules 1, 2 and 3.

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"Tailte Éireann is a new centralised agency providing a property registration system, a property valuation service, and a national mapping and surveying infrastructure for the State through a merger of the Property Registration Authority, the Valuation Office, and Ordnance Survey Ireland into a new body called Tailte Éireann."

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State Aid

"The EU and UK agreed a [Joint Declaration](#) setting out a joint understanding of circumstances in which UK subsidies can affect trade between Northern Ireland and the EU."

PROTOCOL ON IRELAND/NORTHERN IRELAND TO THE WITHDRAWAL AGREEMENT BETWEEN THE EU & UK

In the context of the [Windsor Framework Agreement](#), the EU and UK agreed a [Joint Declaration](#) setting out a joint understanding of circumstances in which UK subsidies can affect trade between Northern Ireland and the EU, making them subject to Article 10 of the Protocol on Ireland/Northern Ireland. Further information is available [here](#).

RECENT EUROPEAN COMMISSION DECISIONS

Offshore wind energy generation

The Commission approved a €2.08 billion French measure to support offshore wind electricity production in France. The measure will contribute to France's energy and environmental targets and the EU's Offshore Renewable Energy Strategy and Green Deal. See the full article [here](#).

Green steel demonstration plant

The Commission approved a €55 million German measure to support ArcelorMittal Hamburg GmbH in building a demonstration plant for the production of green steel using renewable hydrogen. The measure will contribute to the EU Hydrogen Strategy, Green Deal, and REPowerEU. See the full article [here](#).

Steel production

The Commission approved a €460 million Spanish measure to support ArcelorMittal España in partially decarbonising its steel production processes. The measure will contribute to the EU Hydrogen Strategy, Green Deal, and REPowerEU. See the full article [here](#).

Rail transport using electric traction

The Commission approved a €1.1 billion German scheme to compensate rail transport operators using electric traction in the context of the recent spike in electricity prices. The measure will contribute to the Sustainable and Smart Mobility Strategy and European Green Deal. See the full article [here](#).

Energy-consuming companies

The Commission approved a €2 billion French guarantee scheme to support energy-consuming companies in the context of Russia's war against Ukraine. The scheme was approved under EU State aid rules, based on Article 107(3) (b) of the TFEU, in recognition that the EU economy is experiencing a serious disturbance. See the full article [here](#).

Commission extends in-depth investigation into Germany's plans for early closure of lignite-fired power plants

The Commission extended the scope of its ongoing in-depth inquiry into Germany's plans to compensate lignite-fired power plant operators for the early phase out. The extended investigation concerns an amendment to the agreement between Germany and RWE for the accelerated lignite phase-out in the Rhenish lignite mining area.

In March 2021, the Commission opened an in-depth investigation to assess whether Germany's plan to compensate RWE and LEAG for the early closure of their lignite-fired power plants was in line with the EU State aid rules. In particular, the Commission had doubts as to the proportionality of the compensation payments covering forgone profits and additional mine rehabilitation costs. See the full article [here](#).

"The Commission extended the scope of its ongoing in-depth inquiry into Germany's plans to compensate lignite-fired power plant operators for the early phase out."

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Transport

EU

Fit for 55/REPowerEU

Many instruments are at final negotiation stage and work continues on progressing others. Recent developments include work on new standards for vehicles – see our latest update [here](#).

Batteries

Member States are discussing ways to foster competitiveness of the European battery industry and indicate next actions [here](#).

Hydrogen

Two delegated regulations adopted under the Renewable Energy Directive set out rules around what constitutes green hydrogen and how its lifecycle emissions are to be counted - see [here](#) and [here](#). A summary is available [here](#). These will be scrutinised by the Parliament and Council which may accept or reject them.

A roadmap on setting standards to enable deployment of largescale hydrogen solutions is available [here](#). It looks at standardisation needed for the hydrogen value chain and is intended, among other things, to support the Commission in preparing a standardisation mandate. Funding for nine [hydrogen valleys](#) was announced.

"It looks at standardisation needed for the hydrogen value chain and is intended, among other things, to support the Commission in preparing a standardisation mandate."

DOMESTIC DEVELOPMENTS

Legislation

The [Oil Emergency Contingency and Transfer of Renewable Transport Fuels Functions Act 2023](#) has been [commenced](#) and [transfers](#) the renewable transport fuel function to the Minister of Transport.

The Department of Transport is [consulting](#) until 30 March 2023 on draft regulations for the issue of additional renewable transport fuel obligation certificates (formerly known as biofuel obligation certificates) for specified renewable transport fuels, and to specify the minimum percentage volume of ethanol to be blended with petrol placed on the market by sale or otherwise in the State by renewable transport fuel obligation account holders.

Department of Transport

The Department of Transport consulted on its draft [Statement of Strategy](#) 2023-2025 until 10 March 2023. The Minister for Transport confirmed investment of [€626 million](#) for regional and local roads in 2023, and [€554 million](#) funding to local authorities through Transport Infrastructure Ireland for national roads and greenways in 2023.

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