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Editor: Conal O'Boyle MA

Reporter: Barry O'Halloran

Designer: Nuala Redmond

Editorial Secretaries:
Andrea MacDermott, Catherine Kearney

Advertising: Seán Ó hOisín, tel/fax: 837 5018, mobile: 086 8117116, E-mail: seanos@iol.ie. 10 Arran Road, Dublin 9

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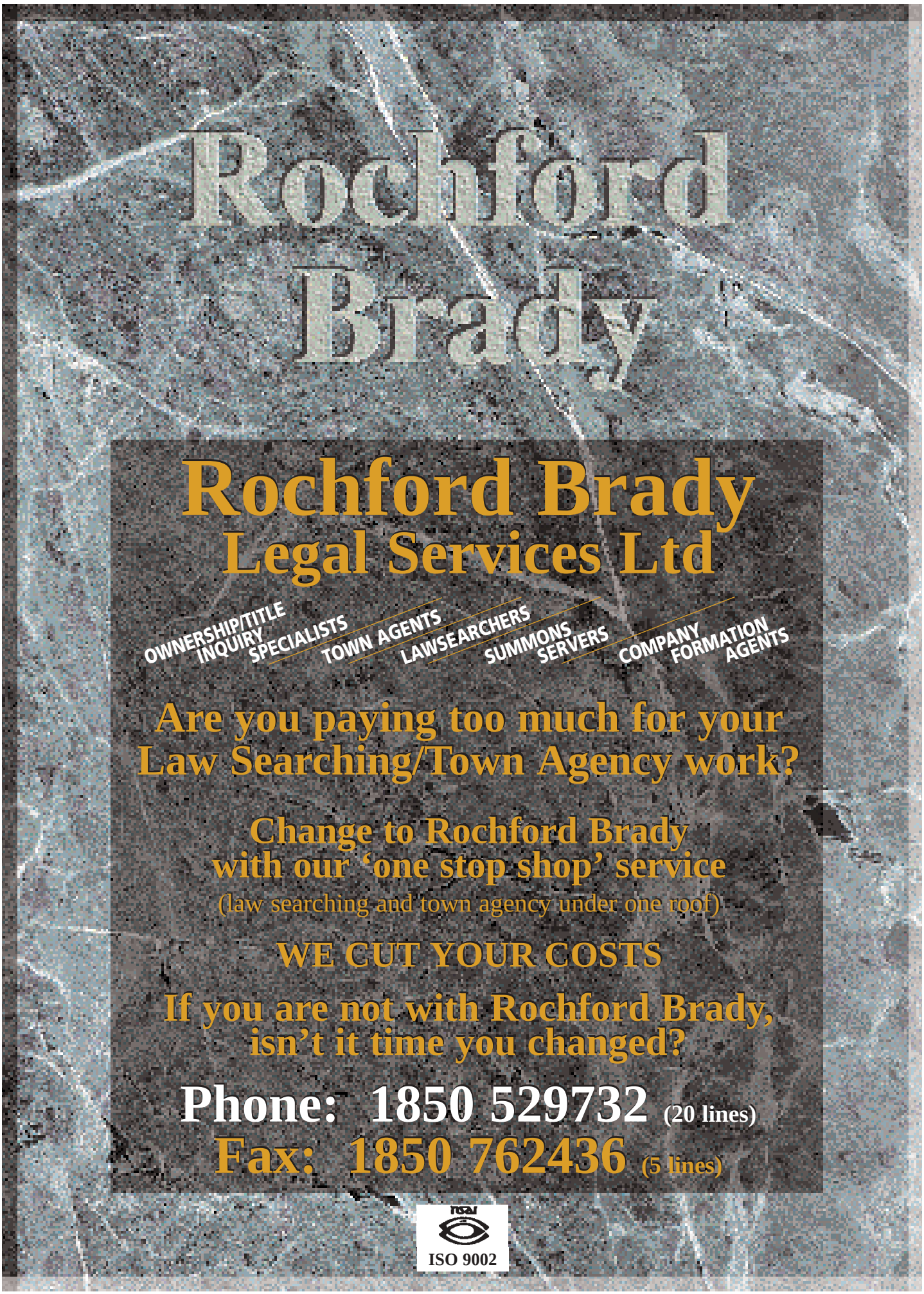

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Investing in our future

This is by far the most important message I have written in the course of my Presidential year. By now you will have received the *Report of the Education Policy Review Group*. The groundwork has been completed, and the time is now ripe for members of the Law Society to make decisions which can benefit the entire profession for decades to come.

I believe that the required decisions are big but, in the light of the report, not difficult. A Law School system designed in 1978 for an annual throughput of 150 apprentices is today required to cope with more than twice that number. The result is an ever-increasing backlog of apprentices awaiting admission to the professional course – with a current delay of 16 months and rising – together with an inability to improve the standard of education due to the intolerable pressures on a Law School engaged in continuous crisis management. Put quite simply, in the words of the report, 'the current facilities are entirely inadequate'. Unless this problem is addressed immediately, the profession can expect progressively adverse consequences, not least in terms of the Society being seen as unable to fulfil its statutory role in education and 'a public perception of a profession limited in its horizons'.

An independent report

Following a resolution of the members at an Annual General Meeting in November 1996, the Education Policy Review Group was set up, independently of the Law Society Council and its committees, to consider, comment upon, and make proposals in relation to a policy document from the Education Committee regarding the future of legal professional training which had been adopted by the Council in December 1995. All of the members of the group are solicitors, and they represent a wide variety of interests. They include eminent colleagues who have had a key involvement in the Law School, including the two proposers of the AGM motion.

Throughout the past 18 months, the group engaged in a comprehensive survey of the current direction of legal professional training in Ireland and abroad. It analysed the causes of the problems encountered by the Law School in recent years, and it reviewed accommodation options and relevant costings. I want to pay a particular tribute to the painstaking work of all of the members of the group. Their commitment was truly outstanding.

The *Report of the Education Policy Review Group*, and the decision of the members on its recommendations, will represent a policy milestone in the history of the Law Society. The future of our profession depends on your approval of the recommendations. As your President, I cannot emphasise strongly enough how essential it is that each of you reads and considers the report and, if at all possible, attends at the Law Society at the Special General Meeting convened for Wednesday 23 September 1998 at 6.30pm. It is our responsibility to ensure that we go into the next millennium a stronger and more vigorous profession.

The construction and proper equipping of an education centre, along the lines recommended by the Education Policy Review Group, will also provide enhanced facilities for post-qualification training of members, both through the Continuing Legal Education programme (my deep commitment to which you know well) and the burgeoning, highly-successful, programme of specialist diploma courses.

My personal view

In 1978 the profession put in place a legal professional training system which was an enormous improvement on what preceded it. As a lecturer in the old system prior to this, I recognise the great vision shown at that time. Thousands of members of the profession, the great majority of solicitors practising today, came through that new system and benefited from it. When it was established and for many years subsequently, the system was as good if not better than any in the world. Sadly that is no longer the case. Our system has become choked by the requirement to educate numbers for which the existing facilities are entirely inadequate.

The main thrust of the report is an educational framework for the future. The reason it must come before a Special General Meeting, however, is because part of that framework is the construction of an education centre on the Hendrick Place site which adjoins Blackhall Place, and which we own, at an estimated cost of £5 million to be paid back over ten years.

When the notion of such a building was first proposed some years ago, I was rather sceptical of it. Having spent a year as your President with a close-up view of the intolerable pressure on our Law School, together with the benefit of reading this well-researched and thought-out report, I have changed my mind. I believe I would be failing in my duty to the profession if I did not express my own personal view on this report.

I am absolutely convinced that it is not merely desirable but necessary for the profession that the recommendations of this report be adopted. No satisfactory alternative exists. Your Council is of the same view, having overwhelmingly endorsed the report on 16 July by 27 votes to 2.

Vision and optimism of our predecessors

The financial projections in the report shows that the profession *can* afford to adopt and implement the recommendations. The projections have been prepared by the Society's internal accountants and reviewed and approved by our external auditors. These projections are merely one option available. Others may be found.

The Society's architects have also advised that the educational facilities which the report requires can be accommodated within the proposed building for which planning permission has already been obtained.

I believe it is time for the profession once again to invest in its future. Let us proceed with vision and optimism as our predecessors did 30 years ago when they purchased Blackhall Place and 20 years ago when they developed a world-leading training system for lawyers. Let us get back to where we were then – at the cutting edge of legal professional training.

Laurence K Shields
President

Foul deeds need fair trials

The Omagh bombing was the worst and cruellest atrocity in 30 years of the Northern troubles. The explosion killed 28 and injured over 100 others, without distinguishing between Catholic or Protestant, young or old.

The country was swept by a wave of anger and revulsion after the bombing. The Irish and British governments were under pressure to take some dramatic action. There were calls for internment to be introduced. The Cabinet decided on a package of measures that the Taoiseach himself described as 'extremely draconian'. They include:

- Using an accused's refusal to answer questions to corroborate a Garda chief superintendent's opinion that the suspect is a member of an illegal organisation
- Measures to confiscate houses or farms where arms or explosives are found
- Creating new offences such as 'directing terrorism', and
- Extending the detention period for questioning from two to three days.

Some of these measures already exist in Northern Ireland, but Prime Minister Tony Blair is bringing in similar provisions, making an RUC officer's opinion evidence that an accused is a member of an illegal organisation, and using the suspect's silence to corroborate this. Significantly, he does not seem to be bringing in provisions allowing for the confiscation of property.

But emergency measures rushed through in the wake of an atrocity rarely make good law. We have only to remember the aftermath of the Birmingham bombings in 1974 when the *Prevention of Terrorism Act* was rushed through the British House of Commons. Those accused of that crime and the bombings in Guildford and Woolwich were given short shrift by the British authorities.

Our own record is not too good either. We have seven-day detention. In the wake of the British Ambassador's murder in 1976, we had the Sallins mail train case along with allegations of brutality being used to secure confessions.

We already have a very formidable array of emergency legislation. Do we really need more to deal with a tiny rump of dissidents who have lost all support and sympathy through this horrific bombing?

Section 3(2) of the *Offences Against the State (Amendment) Act, 1972* made a chief superintendent's opinion evidence of an accused's membership of an illegal organisation. This was always controversial and open to abuse, so the courts held that if the accused denied the charge, there must be some actual evidence to corroborate the Garda officer's opinion. But that evidence can be very slight. Possession of IRA posters was held to be sufficient in the case of Don O'Leary in 1987. A notebook with a childish rhyme about the IRA was enough in the case of Paul Walsh in 1994.

'We already have a very formidable array of emergency legislation. Do we really need more to deal with a tiny rump of dissidents who have lost all support and sympathy?'

The new measure, which will allow an accused's failure to answer any relevant question to be used as corroboration, seems to be an attempt to get around the courts' insistence that there must be some actual evidence to back up the officer's opinion. It seems to be a clear case of bending the rules just to get convictions. Widely used, it could amount to jailing people on suspicion.

Michael Farrell: 'shortcuts can lead to miscarriages of justice'

Form of reprisal

The proposal to confiscate houses and farms is an extraordinary departure from the rule of law as we know it and seems almost like a form of reprisal. The owners of property where arms or explosives are found can be charged with possession, and they usually are. To seize their property as well could penalise totally innocent spouses, children or relatives.

This provision sounds similar in effect to section 34 of the *Offences Against the State Act, 1939*, which deprived public employees convicted in the Special Criminal Court of their jobs and pensions. This was struck down as unconstitutional in *Cox v Ireland* in 1991 because it imposed an additional penalty on those employed in the public service.

The new offence of 'directing terrorism' is very vague. It has existed in Northern Ireland for ten years but there has been only one conviction for it. This sounds like a catch-all charge to convict people against whom no substantive evidence can be found, but it carries a possible life sentence on conviction.

The extension of the detention period from two to three days is clearly intended to put more pressure on people to make confessions. We have had an unfortunate history of people confessing to things that they did not do. Remember the Sallins and Kerry babies cases? More recently, we had the case of Dean Lyons who confessed to the murder of a psychiatric patient in Grangegorman in Dublin – a crime he clearly did not commit. We do not need any more false confessions.

Taken all in all, this package gives the clear impression that the rules are being bent to crush the group behind the Omagh bombing. But that will tend to undermine the integrity and credibility of the justice system as a whole. And it will do no credit to the memory of the Omagh victims if the suspected perpetrators are jailed by tainted means.

Foul deeds like the Omagh bombing require scrupulously fair trials so that there can be no doubt that anyone convicted got a fair hearing and was clearly guilty. Taking shortcuts can lead to miscarriages of justice and could eventually evoke some sympathy for the discredited group involved.

Undermining the agreement

The *Good Friday Agreement* promised to end emergency laws, North and South, and to put in place a whole range of new human rights protections in both jurisdictions. The bombers aimed to wreck this agreement, and the governments should not try to defend it by undermining one of its key elements.

I would argue that the way forward is by implementing the deal – and especially its human rights provisions – so that in future everyone can be confident that their grievances will be addressed by political and legal means, and that if they are accused of an offence, they will get due process and a fair trial. G

Michael Farrell is a solicitor with Michael E Hanahoe & Co and co-chairman of the Irish Council for Civil Liberties.

Why we need a solicitors' *pro bono* scheme

Samuel Johnson said: *'I do not wish to speak ill of any man behind his back, but I believe that gentleman is a lawyer'.*

Alongside this image of a lawyer is also the lawyer committed to serving the individual client and the community by acting for nothing or for much-reduced fees in deserving cases. This work is done everyday of the week by the solicitors' profession. However, it is sometimes difficult to harness this spirit of service either in a solicitors' firm or in the profession as a whole.

Pro bono publico activity is work undertaken 'for the public good'. In the context of activity undertaken by solicitors, it can be defined as *'legal work done without charge or at reduced cost, for members of the public with limited means, or for charitable and other non-profit-making organisations'.*

American law firms have highlighted a number of tangible benefits arising from *pro bono* work:

- **Personal development***: pro bono* work as well as extending legal expertise is also likely to extend the development of personal skills and broaden horizons. At the same time, undertaking *pro bono* activities can give valuable insight into other types of organisation
- **Training:** both in practical skills such as interviewing, time management and communication, as well as legal skills. Those undertaking *pro bono* work may also gain skills normally difficult to obtain within a larger law firm, for example, management skills
- **Improved staff morale:** firms with established *pro bono* programmes report that employee perception of the firm is significantly enhanced by the knowledge that the firm undertakes *pro bono* work and therefore demonstrates that it is a socially-responsible member of the business community
- **Public relations and business development.** Undertaking *pro bono* work allows individual firms to build closer links with the local community and, at the same time, provides an opportunity to enhance the reputation of solicitors among the public and the business community as a whole.

Homelessness and housing issues are just some areas where a *pro bono* scheme could help

It is this ideal which has generated organised *pro bono* schemes for legal work by lawyers in North America, New Zealand, Australia and last year in England and Wales. The schemes are so widespread in these countries that some firms have a solicitor, who is a full-time *pro bono* co-ordinator, organising all the *pro bono* work in their firms on a daily basis.

We are now one of the few common law countries without a properly organised *pro bono* programme for the solicitors' profession.

Irish solicitors have always done *pro bono* work, but the tendency has been for such work to be piecemeal and *ad hoc*, with much depending on the charitable instincts of the individual solicitor or firm. It is also difficult to assess whether the *pro bono* work is being channelled or targeted in the most effective ways, not only for the individual fee-earners and the firm but also, importantly, so as to address unmet legal needs.

Lord Bingham, the Lord Chief Justice in England, has said: *'The benefits of a clear profession-wide commitment to make the unrivalled expertise and experience of solicitors available to the less affluent members of society are obvious. Those who are helped are, of course, the first and main beneficiaries, but there is a benefit to the profession also, which vindicates in the most practical way possible its public commitment to serve the legal interests of all sorts and conditions of people'.*

The key role of a voluntary *pro bono* scheme in Ireland would be to support and help promote the work of all those solicitors already providing legal advice, assistance and representation without charge and to encourage others to do so within a coherent and supportive framework. This scheme should also ensure that the voluntary *pro bono* activity meets clients' needs by working closely with agencies already providing free legal advice services, including Citizens' Information Centres and Law Centres, building upon existing relationships between these groups and the legal profession.

One of the first tasks of the voluntary scheme would be to identify gaps in the legal services being provided and areas of law where expertise and/or training may be required. Many areas of legal work are being undertaken by solicitors on an informal *pro bono* basis already. However, I would like to highlight the following areas as examples of legal work which could be covered and accounted for on a more formal basis by a voluntary *pro bono* scheme*:*

- Employment appeals and social welfare appeals (the legal aid scheme does not cover representation at tribunals)
- Attending advice sessions of FLAC (mainly Dublin-based) or Citizens' Information Centres (in 85 locations around the country)
- Assisting entrepreneurs and other community organisations by providing legal assistance or general advice. Such a pro-

gramme operates in the UK under the *Business in the community* scheme. The types of legal services provided include incorporation, drafting of byelaws, review of contracts and other documents, advice on employment matters and so on

- Providing access on environmental law/expertise to communities around the country who wish to protect their local environment
- Providing information on housing and landlord and tenant matters where, for example, a tenant is wrongfully evicted
- Helping young artists by providing legal or business services to them during their impecunious early years, for example, in the intellectual property area (in the UK, the *Business in the arts* programme has been formed to assist young artists)

John Costello: 'the profession as a whole will benefit'

- Law-related talks to community groups, religious groups, schools and senior citizens groups
- Family law problems where the Legal Aid Centres or FLAC are not in the position to provide urgent legal assistance
- Health issues, including complaints about nursing home care and wrongful detention in a hospital or institution
- Low-cost legal advice hotline to certain groups or individuals in the community (one English firm provides advice for travellers)
- Advice to individuals who are representing themselves in the small claims court or other courts
- Political asylum and immigration laws – helping individuals and preparing the required paperwork and so on
- Public interest cases with a constitutional law or EU dimension.

Having identified the gaps in legal services being provided, our Law Society could well co-ordinate or arrange for individual bar associations to co-ordinate a *pro bono* programme for firms willing to participate on a voluntary basis around the country. Individual solicitors could volunteer a number of hours or one or more cases a year under a voluntary *pro bono* scheme. The Law Society should then consult with the Bar Council to co-ordinate the *pro bono* programme of both branches of the profession.

The profession as a whole will benefit from involvement and support from the Society for *pro bono* initiatives. Clear messages from the Law Society, for example, will begin to change the public image of a profession which is often unfairly seen as focused on itself, rather than on the public whom it serves. G

John Costello is an associate solicitor with the Dublin solicitors' firm Eugene F Collins and a member of the Law Society's Council.

The crime crisis that never was

The discovery that there is no crime crisis has nothing to do with government policies, Garda efficiency, or even John O'Donoghue. There has never been a crime crisis, except in the wild imaginings of opportunist politicians and the media (notably RTE).

Crime levels have remained relatively stable for the last 15 years, levels that by international standards are exceptionally low. The number of indictable crimes reported to the Gardai in 1983 was 102,387, almost precisely the same number of indictable crimes reported to the Gardai when the crime hysteria was at its zenith in 1995 (the figure then was 102,484).

In the intervening years between 1983 and 1997, the crime levels veered up and down, to a low of 85,358 in 1987 to the 102,484 of 1995. And through most of this period the levels of serious crime (crimes against the person), apart from sexual offences, declined. But the most telling element of our crime phenomenon has been the comparison with other countries, and for the first time the recently published annual Garda report for 1997 provides these statistics.

Vincent Browne: Garda report does not mention tax fraud

Hysteria in full swing

They show that in 1996 (when the crime hysteria was in full swing) the number of homicides in Ireland per 100,000 of the population was 1.2, which was the lowest of any EU country and a fraction that of the United States, where the figure was 7.4. Of offences involving violence, there were only 110 in Ireland in 1996 per 100,000 of the population. Only one other EU country had such a low rate (Italy with 110). The levels of such crimes in the other EU countries and in the US were a multiple of ours (658 in England and Wales, 485 in Scotland, 634 in the US, and 772 in Sweden).

As for the total number of crimes reported to police in 1996, Ireland had the second lowest per 100,000 of the population, 2,880 – only Spain was lower at 2,384. The figure for Scotland was 8,704, for England and Wales was 9,615 and for Sweden 11,646.

Hilarious report

In many ways the Garda annual report on crime is hilarious. There was no case of bribery recorded in 1997 and just one case of perjury (one wonders who that was). Crimes such as larceny from persons (pickpocketing), larceny of bicycles, begging, and urinating in a public place are all faithfully recorded in the report. But not a single mention of any offences under the *Finance Acts*, for example, tax fraud. Not alone are there no such recorded crimes, the Garda authorities apparently are of the view there is no such crime.

On 28 April last, the outgoing chairman of the Revenue Commissioners, Cathal MacDomhnaill, told the Committee of Public Accounts that the tax amnesty of 1993 showed tax fraud to be at a scale of £1.25 billion. And the Gardai apparently are of the view there is no such fraud. A segment of the question and answer session at the committee on that date reveals some further extraordinary insights into the scale of tax fraud.

Deputy Rabbitte: 'The largest bank in the country has conceded that it had 53,000 bogus accounts with about IR£600m in them and it defended that in public on the basis that the practice was industry-wide. Given the size of the country, 53,000 accounts in the largest bank and an admission that the practice was industry-wide, the tax-compliant citizens will want to know how that could have been going on at such a scale'.

Mr MacDomhnaill: 'That is what I refer to when I say that certain information came to light during the amnesty debate. These were the figures mentioned. A deputy said in the Dáil that there were two streams of hot money – hot money which is abroad and hot money in the country. The chief special collector's figure for the amnesty was just under IR£200m and grossed up that would represent undeclared income of over IR£1 billion, perhaps IR£1.25 billion. The deputy asks how this can happen. The Euromoney study has shown that there are trillions of dollars floating around in offshore funds. It is worldwide phenomenon'.

Deputy Rabbitte: 'What was going on in the AIB or the NIB does not fit into that trillions scenario for hot money, the origins of some of which may be very doubtful. We are talking about legitimate commercial and other undertakings within the jurisdiction where products were sold on the basis that the money would be hidden from the Revenue. In other words, straightforward tax evasion to middle Ireland, while hundreds of thousands of PAYE workers were in the streets. That is not to be compared with big-time hot money'.

Mr MacDomhnaill: 'It is seamless. The person who has international transactions can arrange to have kickbacks and discounts which do not come back into the country. There are a lot of legitimate interbank balances involved also. If one was to study the consolidated balance sheet published by the Central Bank, one would see that at the last count the indebtedness to overseas by Irish financial institutions was of the order of over IR£80 billion. That is the scale of amounts'.

Chairman (Jim Mitchell TD): 'IR£80 billion?'

Mr MacDomhnaill: 'Yes. Huge amounts are flowing in and out. That is not to say we do not use all means at our disposal to tackle evasion where we find it. We cannot go through the banking system to get that information but we have powers of audit for the taxpayers. Genuine non-resident accounts are one matter but bogus non-resident accounts are another. The main culprit in the case of the latter is the taxpayer who declares that the interest on the money is beneficially the property of someone not ordinarily resident in the State …'.

And still no reference, no category, no heading, and of course no recorded cases of tax fraud in the *Annual report 1997 of An Garda Síochána*. But if you want to know how many cases there were of juveniles urinating in a public place, you will find it right there on page 69. (By the way the figure was ten – isn't that nice to know?) G

Vincent Browne is a writer and broadcaster. He is also a qualified barrister.

Are mobile telephone conversations inviolable?

All of us – every man and women, boy and girl, every child – inherit an instinctive desire to communicate. Most of us need to talk. Lawyers, solicitors, barristers, academics and judges, by virtue of choosing law as a career, spend much of their time communicating with others. What is the legal status of mobile telephone conversations? May mobile telephone conversations be listened to, or recorded by, third parties?

The law in relation to the status of mobile telephone conversations has been clarified by the Postal and Telecommunications Services Act, 1983 *(Section 111(5)) Regulations 1997* (SI No 517 of 1997) made by the Minister for Public Enterprise. The implicit right to privacy in telephone conversations enshrined in section 98 of the *Postal and Telecommunications Services Act, 1983*, as amended by the *Interception of Postal Packets and Telecommunications Messages (Regulation) Act, 1993*, previously related to telecommunications messages transmitted by Telecom Éireann plc only. The 1997 regulations now apply the law as set out in section 98 to Eircell and Esat Digifone as if they had been originally covered in the 1983 legislation.

Recording conversations

Section 98 of the 1983 Act prohibits any person from intercepting a telecommunications message, defined as listening to, or recording, in the course of its transmission a telecommunications message without appropriate consent. The statutory prohibition on listening or recording telephone conversations applies only to listening or recording telephone conversations, including mobile conversations, by third parties. One party to a telephone conversation may record a mobile or fixed-line telephone conversation with another party without breaking the statute law. However, such a recording may be in breach of a person's constitutional right to privacy, depending on the use made of the fruits of the telephone conversation.

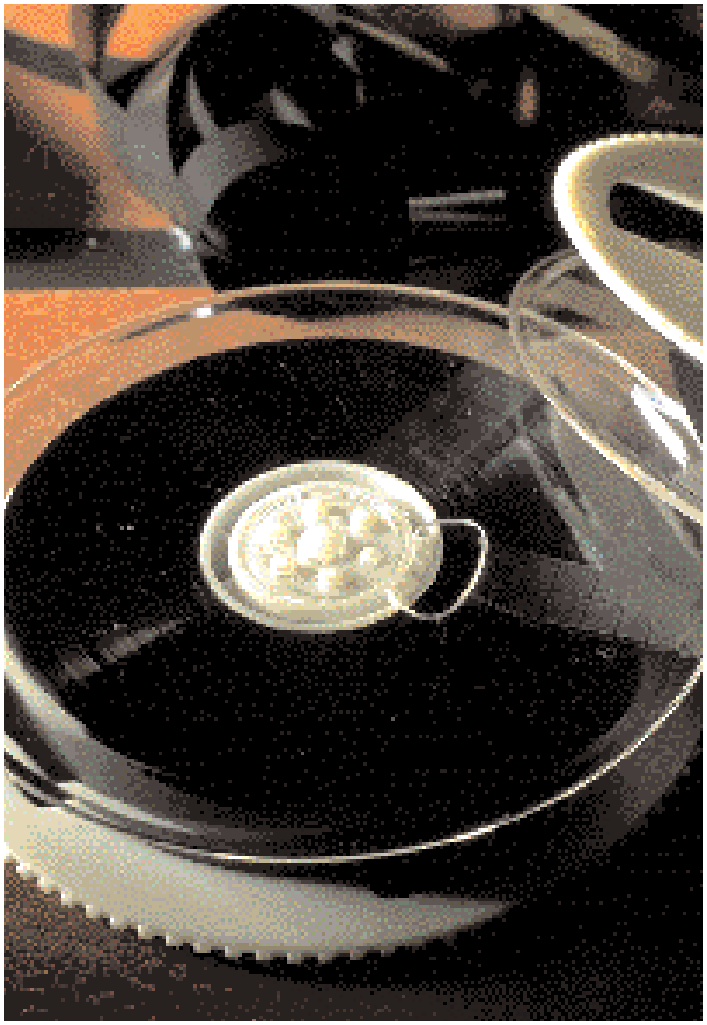
In general, a third party who listens to or records by any means, or permits another person to listen to or record, or does anything which enables another person to listen to or record, telephone conversations including mobile telephone conversations, or who discloses the existence, substance or purport of any such message, or uses, for any purpose, any information obtained from any such message, may be guilty of an offence. The penalties are discussed below.

Disclosure of phone use

A person employed by Telecom Éireann plc, Eircell or Esat Digifone who discloses to any person any information concerning the use made of mobile or other telecommunications services provided for any other person (for example, who made a telephone call to whom and when) shall be guilty of an offence unless the disclosure is made:

- At the request over the consent of that other person
- For the prevention or detection of crime or for the purpose of criminal proceedings
- In the interests of the security of the State
- In pursuance of a court order, or
- For the purpose of civil proceedings in any court.

Certain requests for telephone information by a member of the Garda Síochána must be in writing and signed by an officer not below the rank of chief superintendent. A request by an officer of the Defence Forces must be in writing and be signed by an officer not below the rank of colonel.



The penalties for unlawful listening to, or recording by any means, a third party conversation on a mobile or ordinary telephone are set out in section 4 of the 1983 Act. On summary conviction, a person is liable to a fine not exceeding £800 and to imprisonment for a term not exceeding 12 months. Upon conviction on indictment, a person is liable to a fine not exceeding £50,000 and to imprisonment for a term not exceeding five years.

The prohibition on listening to or recording a third-party conversation on mobile or land-line telephone services does not apply to a person who is acting for the purpose of an investigation by a member of the Garda Síochána in relation to a telephone message, mobile or otherwise, which is allegedly obscene, indecent, menacing, or constitutes a nuisance. Further, the prohibition on listening to or recording does not apply where there is a specific warrant by the Minister for Justice pursuant to the 1993 Act.

Finally, the prohibition on listening or recording does not apply to a person in the course of, and to the extent required by, his or her operating duties, or in connection with the installation or maintenance of telecommunications apparatus or equipment. These exceptions are set out in section 98 of the 1983 Act.

The status of inviolability, in the sense of statutory protection given to the privacy of mobile telephone conversations, became law on the enactment of the 1997 regulations by the Minister for Public Enterprise, Mary O'Rourke, on 22 December 1997. G

Dr Eamonn Hall is Chief Legal Officer with Telecom Éireann plc.

The problem with section 68 letters

From: Frank O'Mahony, Bantry, Co Cork

I hope that the *Gazette* will invite colleagues to give their views on how section 68 can be complied with, with the least structural damage to solicitor/client confidence.

I say this for a number of reasons.

1. One of our assistants sent out a fee estimate to a client. Two days later, our reception got a phone call: 'No, I do *not* wish to speak to the assistant who is supposed to be dealing with my business. I wish to speak to the senior partner'. I got an earful about: 'Do you trust me no more? Do you want me to pay now rather than when you do the job?' It took a fair time to calm him down and to explain that it was the Oireachtas' idea of how a solicitor should be up-front. But he still had the last word – 'the greatest load of rubbish...'.
2. A surveyor who consults solicitors very regularly got two pages of a s68 letter. He wrote: 'Can you explain this?' He got two more pages. He wrote: 'Sorry, I'm a bit dull on this one. Can you explain more simply?' He got two more pages. Exasperated, he phoned and then got the message. 'Look', he said, 'you don't send me any more s68 letters. If I don't like your bills, I'll phone you – don't worry'.

Which brings me to my point.

The Law Society has, in my own view, come up with an idea for compliance which is excessively lengthy. Is this necessary?

If compliance can be done in four lines, great. If compliance can be compressed into one sentence, better still. Worth a try? Yes!

Fees are essentially a matter of contract. It's logical, and courteous, for a solicitor to say at the outset: 'I'll be glad to do this work. Can you and I now talk about my professional fees, so that we can have a clear understanding and agreement about what my bill to you will look like when I've done this work for you – hopefully to your satisfaction?'

Over 40-odd years, I've had perhaps one serious disagreement on fees in perhaps each 500 cases. I can live with that. What I'm far less happy with is the idea of allowing s68 to come between me and the other 499, perhaps unnecessarily.

Barristers on the Web

From: Kieron Wood, Barrister-at-Law, Dublin

I was pleased to see that the *Gazette* plans a regular series on the Internet – but surprised to note that the first feature on sites of interest to the legal profession failed to mention the only Irish barrister's Web site. The site – at http://welcome.to/barrister – contains a synopsis of the *Family Law (Divorce) Act*, family law forms and precedents, information about wills and much more of interest to the legal practitioner.

Crime and punishment: time for a new approach

From: Fionnuala O'Sullivan, Irish Penal Reform Trust, Dublin

Readers of the *Law Society Gazette* might be interested to learn of an exciting new approach to criminal justice. As is becoming acutely clear, our retributive system of justice does not work. It is costly in both social and economic terms and does little to prevent re-offending.

The Irish Penal Reform Trust is looking at different approaches to the question of crime and punishment. We believe that the philosophy behind 'restorative justice' has much to recommend it. Restorative justice is based on three central tenets: accountability, reintegration and reparation. It requires the victim, offender and community to come together to work out a solution. Both the victim and the community become an integral part of the process. It also gives the offender a vital opportunity to make amends and tends to include rather than exclude them.

The trust, in association with EXTERN (Belfast) and the Combat Poverty Agency, is setting up a 'Restorative Justice Ireland Network'. We intend to compile a directory of restorative projects, provide information and organise conferences and training events.

Readers of the *Gazette* who wish to find out more, or who would like to be part of the network, should contact the Irish Penal Reform Trust.

Dumb an

From: McCarten O'Gorman, Anthony F O'Gorman & Co, Co Wexford

Acting as solicitor for a vendor I have been asked for a letter re 'deaths on title, voluntary dispositions, adversity and expending'. I know our work-load is expanding, but!...

From: Francis Rowan, FX Rowan & Co, Dublin

I recently came across this interesting piece from the Turkish *Daily news*, which may be of interest to readers who wish to keep abreast of the developing area of personal injury law in the USA.

Man injured by dancer's breasts?

A Florida man has filed suit against a nightclub, claiming he suffered whiplash when a topless dancer knocked him out with her oversized breasts, the *Tampa Tribune* reported.

'Apparently, she jumped up and slammed her breasts on my head and just about knocked me out', the newspaper quoted plaintiff Paul Shimkonis as saying. 'It was like two cement blocks hit me. I saw stars. I've never been right since'.

Shimkonis (38) filed suit in Pinellas County Court seeking more than $15,000 in damages from the Diamond Dolls club. The dancer, known as Tawny Peaks, was not named in the lawsuit. According to the lawsuit, Shimkonis and friends visited the bar on 27 September 1996 for his bachelor party. Because he was the guest of honour, the dancers asked him to sit on a low chair, rest his head on the back of the chair and close his eyes. The lawsuit said Peaks danced in front of him, and without warning or consent 'jumped on the plaintiff forcing her very large breasts into his face causing his head to jerk backward'.

Shimkonis suffered head, neck and other injuries that caused bodily injury, disability, pain and suffering, disfigurement, mental anguish and loss of capacity for the enjoyment of life, the suit said.

'It's so embarrassing', Shimkonis told the newspaper. 'This is no joke. I'm dead serious. This really happened'.

Diamond Dolls representatives

The art of Gerry Caffrey

From: Emer Marron, Liaison Officer, Temple Bar Gallery & Studios, Dublin

The late artist Gerry Caffrey was a studio member at Temple Bar Gallery & Studios until his untimely death in January 1997. A group of Gerry's artist colleagues have formed a committee to organise a memorial exhibition of his work.

Small painting of nothing by Gerry Caffrey (1994)

The exhibition is scheduled for mid-December 1998, running until mid-January 1999 in both the main gallery and atrium space at the Temple Bar Gallery & Studios. The committee is currently trying to locate any individuals or organisations who may have bought Gerry's work for their art collection.

I would be most grateful to hear from anyone who would be willing to have any of Gerry's work considered for inclusion in the exhibition. Contact: Emer Marron, Gerry Caffrey Memorial Exhibition Committee, Temple Bar Gallery & Studios, 5-9 Temple Bar, Dublin 2 (tel: 01 671 0073, fax: 01 677 7527).

Shake, rattle and roll

From: Katherine Finn, Thomas J Kelly & Son, Co Wexford

Further to the article *Minister to shake the poor box* (*Gazette*, June, page 13), might I make the suggestion that, given the vagueness of the term 'poor box' and its anachronistic overtones (calling to mind TB epidemics, 'black babies', and other 1950s concepts), a new system could be implemented whereby a definite, named charity could be nominated as the intended recipient of all such discretionary fines. This nomination could last for a period of, say, six months to a year, following which another charity could takes its place and so on in rotation. It would be up to the various local charities or community groups to approach the relevant District Court clerk, or whoever is currently in charges of such funds, and a waiting list could be formed on a first-come, first-served basis.

If this custom were adopted, think how may local charities or voluntary groups around the country would benefit directly. After all, if the community at large suffers the effects of crime, that same community should also benefit from any atonement for it.

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scoffed at the lawsuit. 'We have bachelor parties all the time. Everyone has fun here', owner Jim Dato told the newspaper. 'This is all pretty bizarre'.

'You would think the guy would love it', day shift manager Vinny Randene said.

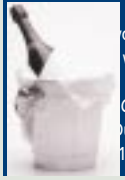
From: McCann FitzGerald, Dublin

The following was obtained off the Internet and claims to be the actual replies to questions on insurance claims forms.

- I started to slow down but the traffic was more stationary than I thought.
- I pulled into the lay-by with smoke coming from under the bonnet. I realised my car was on fire so took my dog and smothered it with a blanket.
- Q: Could either driver have done anything to avoid the accident? A: Travelled by bus?
- Three men approached me from the minibus. I thought they were coming to apologise. Two of the men grabbed hold of me by the arms, and the first slapped me several times across the face. I kneed the man in the groin, but did not connect properly, so I kicked him in the shin.
- I was going at about 70 or 80 mph when my girlfriend on the pillion reached over and grabbed my testicles so I lost control.
- Windscreen broken. Cause unknown. Probably Voodoo.
- The car in front hit the pedestrian, but he got up so I hit him again.
- A pedestrian hit me and went under my car.

McCarten O'Gorman wins the bottle of champagne this month.

A bottle of the finest champagne will go to the reader who sends in the funniest contribution to *Dumb and dumber* each month.



our examples of the wacky, weird and wonderful to the Editor, *Law Society Gazette*, Blackhall Place, ublin 7 or you can fax us on 1 671 0704.

The MIBI and hit-and-run accidents

From: Michael Halligan, Chief Executive, Motor Insurers' Bureau of Ireland

Under the heading *Should pay, won't pay* in the May issue of the *Gazette* (page 22), Professor Bryan McMahon details a hypothetical case where an innocent victim of a road traffic accident suffered both personal injuries and property damage. The offending car is identified but the driver and the owner of the offending car cannot be traced and there appears to be no insurance cover on the said car. Professor McMahon concludes this storyline by contending that the MIBI would refuse compensation for property damage in such circumstances. This is not, in fact, the case and has not been so for some time.

While it is a fact that the 1988 MIBI agreement does not fully reflect the relevant EU directive with respect to certain claims for property damage, the relevant provision of the 1988 agreement (viz clause 7.2) has not been enforced by the bureau since April 1996. At that time, the bureau, in recognition of this divergence from the directive, decided to take the widest possible interpretation of the agreement in favour of claimants and is effectively since that date only denying payment where the offending vehicle is unidentified as is the provision in the directive. In the meantime, an expert sub-committee of the bureau is reviewing the overall agreement which is now in its tenth anniversary.

I would also take this opportunity to point out that the bureau in 1997 paid out in excess of £30 million in compensation to the victims of uninsured and untraced drivers.

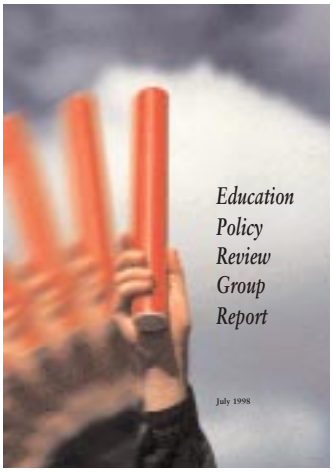
Broad-based group points the way on education

The *Education Policy Review Group Report* is the culmination of six years of reviews and reassessments of Law Society policy on the education and training of solicitors, *writes Ken Murphy*.

Many people, mostly solicitors but also, from time to time, education and training specialists, economists, accountants and others have been involved at various stages of the process. A number of High and Supreme Court decisions on aspects of the Society's education policy have also had to be taken into account.

The *Education Policy Review Group Report*, whose recommendations will be proposed for adoption at a Special General Meeting in Blackhall Place at 6.30pm on Wednesday 23 September 1998, is the work of by far the largest, most expert and most broadly-based group to examine the deepening problems – most of which derive from lack of resources and facilities – in the Society's Law School.

Boiled down to its absolute essence, the report's conclusion is that facilities which were adequate 20 years ago for 150 apprentices a year are now totally inadequate for the 300 or more apprentices which the Society must cater for in 1998 and in every year for the foreseeable future. This fact has many unfortunate consequences, not the least of which is the highly unsatisfactory delay of 16 months or more between an apprentice becoming entitled to enter the Law School and their actually starting a professional course.



The report: eminently readable and compellingly argued

A great deal of research and deliberation has gone into this report which, perhaps unusually for such reports, is not merely compellingly argued but also eminently readable. It should be read. It is the considered view of an expert group which includes Judge John Buckley, who was centrally involved in the creation of the new legal professional training system which began in 1978 and is a figure of international standing in the area of legal training, Professor Bryan McMahon, who is one of Ireland's leading legal authors, academics and practitioners as well as a chairman of the Board of Examiners for the Society's Final Examination – First Part, and Michael V O'Mahony, Senior Partner in McCann FitzGerald, former President of the Law Society and a member of the Society's Education Committee for many years.

Although these were perhaps the group's most eminent members, there were members of the group from all forms of practice, rural and urban, large and small, private and corporate. It also included both current and former Law School consultants, tutors and staff members as well as the Principal of the Law School, Albert Power, and the Law Society Director General, Ken Murphy, himself a former chairman of the Education Committee.

Just one of the group's 26 recommendations, albeit the one which most catches the eye, is that 'the Society constructs a modern Law School building on the Hendrick Place site'. Although the group was set up in response to a motion at a Law Society AGM in November 1996, with the proposers of the motion subsequently appointed to the group. Accordingly, it reports not to the Law Society Council but to the Special General Meeting next month. However, there was a debate on the contents of the report at the Law Society Council meeting of 16 July 1998, which is summarised at page 35 of this issue.

Society gets the vote out

Members elected to the Law Society's Council will serve two years instead of one under the regulations now governing the elections. The Society stresses it is important both for members of the profession to put themselves forward for Council and for elected members to have as large a mandate as possible.

Decisions made by Council and in committee have fundamental implications for the profession as a whole.

Unfortunately, many members do not vote in the Council elections. The more recently qualified, in particular, appear not to exercise this important right. All members are urged to participate in the election as candidates, or at least to vote for the candidates of their choice – they should not simply leave it to others.

So make your voice heard by filling out your candidacy and ballot papers and forwarding them to the Law Society. The final date for receipt of nominations is 28 September. The close of poll date is 29 October.

End gazumping, says IAVI

Auctioneers are demanding legislation to close off the loophole which exposes house-buyers to gazumping by unscrupulous vendors. The Irish Auctioneers and Valuers' Institute (IAVI) argues that a clause in contracts stating that the agreement is not binding on the seller until he signs it, allows him to increase the price before the deal is executed. The IAVI has called on Environment Minister Noel Dempsey to pass a new law rendering the clause ineffectual for the two weeks after the contract is issued. 'This would have the effect of giving the purchaser a two-week option once a private treaty contract is issued', the institute said.

Golf classic to raise cash for kids

The National Children's Hospital will host a fund raising golf classic at the K Club, Co Kildare, on Thursday 8 October. Entry fees for the Peter Pan Golf Classic are £300 and all cash raised will go to developing new adolescent healthcare services at the Tallaght, Co Dublin, facility. For further information, tel: 01 475 0936.

Compensation Fund payouts

The following claim amounts were admitted by the Compensation Fund Committee and approved for payment by the Council at its meeting in July: Dermot Kavanagh, 2 Mary Street, New Ross, Co Wexford – £3,470.50; Thomas Furlong, Lower Main Street, Letterkenny, Co Donegal – £1,000; James C Glynn, Dublin Road, Tuam, Co Galway – £1,200; John K Brennan, Mayfield, Enniscorthy, Co Wexford – £2,025.

Solicitors challenge asylum controls

A solicitors' firm is challenging the Government's system for processing asylum applications in an action that could force the State to apply more liberal standards to immigrants who arrived here before 1997. The High Court is to review the case of a Romanian immigrant refused asylum by the Department of Justice next month.

According to Eugene Carley of Cork-based firm Edmund W Cogan & Co, the refugee's solicitors, the department should have applied a less restrictive control procedure when dealing with his application. Officials vetted the case using the *Hope Hanlan* procedures, which came into effect last year. But Carley argues that his client applied for asylum in 1996, when the more liberal *Von Arnim* procedure was being used, and says that standard should have been used, instead of the tougher *Hope Hanlan* procedure. 'Basically what we are saying is that they should not have applied it retrospectively', he explained.

Refugees: this case could force the Government to take a more liberal approach

The refugee's application was turned down on the basis that it was 'manifestly unfounded', a phrase dismissed by Carley as a catch-all. '*Hope Hanlan* makes it practically impossible for anyone to get in', he said. He added that if the case is successful, it could mean that any applications dating back to before 1997 would have to be vetted using the less restrictive *Von Arnim* standard, which had been in force here since December 1985, when the Government agreed with the UN High Commissioner for Refugees to adopt this procedure.

Child law seminar

High Court judge Catherine McGuinness will top a distinguished list of speakers at the *Giving children a voice* seminar on Saturday 10 October in Blackhall Place. Topics covered will include:

- The legal and constitutional rights of children, a review of the *Children Act, 1997*, the role of solicitors and barristers in the representation of children
- The evolution of the guardian *ad litem* concept in the UK, comparison between the guardian *ad litem* in the UK and Ireland
- The competence and credibility of the child as a witness, expert evidence in a child law case, examination of children by expert witnesses, and
- Taking instructions from children, the solicitor acting as guardian *ad litem*.

The £70 fee includes morning coffee, lunch and afternoon tea. For information and bookings, contact Linda Kirwan, the Law Society, Blackhall Place, Dublin 7 (tel: 01 6710711).

Trust group to set up in Ireland

The global organisation for professionals involved in managing or accounting for trusts and estates is planning to open a branch in this country. The Society of Trust and Estate Practitioners (STEP) is an international body covering lawyers, accountants, corporate trust professionals, bankers, insurers and anyone else involved at an advanced level in trusts, estates, executorship administration and related taxes.

The group already has 5,000 members worldwide, with branches in Switzerland, the Netherlands, Channel Islands, Australia, New Zealand and elsewhere. It publishes an annual membership directory which gives quick and easy access to specialists in specific areas relating to trusts and estates.

Members receive a regular newsletter updating them on developments in these areas around the world, while STEP also promotes training and information exchange through conferences.

STEP hopes to establish an Irish branch on 6 October. Anyone interested in joining should contact Rachel Curran, Bank of Ireland Trust Services, Baggot Street, Dublin 2 (tel: 01 604 3653).

Admiration for Kenneth Starr

'Lawyers have the utmost admiration for Kenneth Starr', said one US attorney recently when questioned by a journalist on the American legal profession's attitude to the special prosecutor investigating the business and other affairs of US President Bill Clinton. 'We have respect bordering on awe for any lawyer who can persuade a client to spend $40 million on a four-year investigation without reaching a single conclusion'.

BRIEFLY

Software users face YK2 meltdown

Less than one in three users of *Italax* practice management software are preparing for the Year 2000 meltdown. The program's developer, IVUTEC, revealed that 31.6% of its customers have a plan to deal with the millennium hog, while just 11% are concerned about the Euro. Admitting the results were disappointing, IVUTEC managing director Dermot Mooney said the company was rewriting *Italax* to comply with Year 2000.

Irish pub licensed to appeal

The Irish pub is at the centre of a licensing row in Britain. Exeter Crown Court recently called time on a bid by Lionheart Inns, which owns a chain of 'Oirish' pubs called Porter Blacks, to get a license for a premises in Newtown Abbott in Devon, but the company has won permission to seek a judicial review of the decision. Newtown Abbot's Licensed Victuallers' Association did not want our best-known 'cultural export' on their doorstep, claiming the town already had enough pubs. But in a move that had Lionheart director Philip Cropley saying 'cheers' (or should that be 'sláinte'), the High Court has given the go-ahead for a judicial review of the decision next October.

***Industrial Relations Act* extended**

Local authority and health board officers are now covered by the Labour Relations Commission/Labour Court industrial relations machinery. Junior Employment Minister Tom Kitt recently made an order under section 23(5) of the *Industrial Relations Act, 1990* changing the definition of 'worker' to include these categories of staff. They were previously covered by a conciliation and arbitration scheme.

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The volume of new criminal legislation pushed through the Oireachtas in the wake of the murder of journalist Veronica Guerin is unprecedented in the history of this State. No less than ten substantive measures were enacted in 1996 and 1997 alone. Here, Professor Dermot Walsh discusses the impact of this recent legislation on criminal procedure and the administration of justice

The Oireachtas in 1996 delivered the *Criminal Assets Bureau Act*, the *Criminal Justice (Drug Trafficking)* , the *Disclosure of Certain axation and Other Purposes Act*, the *Act* and the *Sexual Offences* enetic pace was maintained in 1997 *Criminal Justice (Miscellaneous minal Law Act*, the *Transfer of Sentenced Persons (Amendment) Act* and the *Europol Act*.

While many of these measures can be interpreted primarily as an immediate response to the escalating threat posed by organised crime, drug-trafficking and transnational crime, most of them have general application in the criminal process. Indeed, it might be said that their cumulative effect is to force a fundamental change in the whole shape and direction of the criminal process in Ireland. Police powers have been streamlined and expanded dramatically, the basic principles underlying bail have been revised, the pre-eminence afforded to oral evidence has been undermined by the introduction of written procedures, and quite novel machinery and judicial processes have been introduced to strengthen the fight against organised crime.

Strengthening Garda powers

Arrest. Changes in police powers are a dominant feature of the recent legislative changes. The *Criminal Law Act, 1997* and the *Criminal Justice (Miscellaneous Provisions) Act, 1997* have effected some long overdue clarification and rationalisation in some key areas. Many of the uncertainties and inadequacies associated with the old common law

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power to arrest summarily on reasonable suspicion of a felony have been eradicated by the introduction of a statutory power to arrest without warrant anyone who is with reasonable cause suspected to be in the act of committing an arrestable offence (section 4(1)).

An arrestable offence in this context is any offence for which a person of full age and capacity and not previously convicted may be punished by imprisonment for a term of five years or by a more serious penalty. It also includes an attempt to commit any such offence. Despite the very broad range of offences covered by this definition, the Oireachtas considered it necessary to enact several additional powers of arrest for specific offences created by the *Criminal Assets Bureau Act, 1996*, the *Control of Horses Act, 1996*, the *Domestic Violence Act, 1996*, the *Litter Pollution Act, 1997* and the *Licensing (Combating Drug Abuse) Act, 1997*.

Entry, search and seizure. Police powers of entry, search and seizure have also benefited from rationalisation and clarification. The *Criminal Law Act, 1997*, for example, lays to rest much of the uncertainty surrounding the existence of a Garda power of summary entry onto private property in order to make an arrest. It stipulates that for the purpose of arresting a person on foot of a warrant, a member of the Garda Síochána may enter and search any premises (including a dwelling) where that person is or where that garda with reasonable cause suspects him to be. Reasonable force may be used in order to effect the entry (section 6(1)).

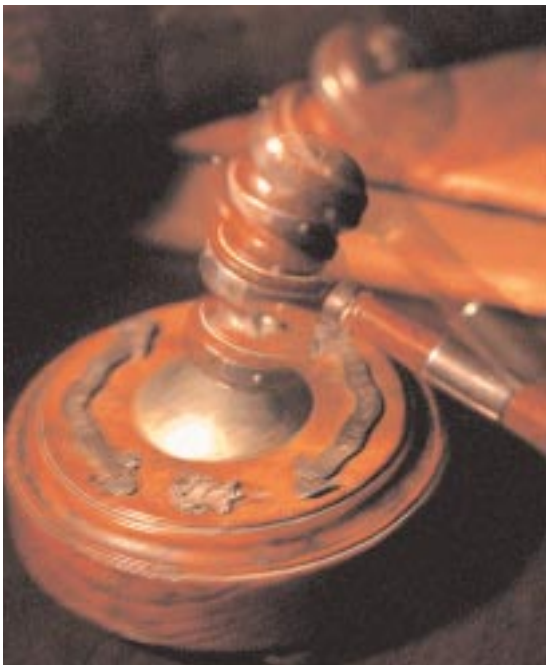
Of greater significance, perhaps, is the fact that a garda now enjoys a similar power to enter and search premises (apart from a dwelling) for the purpose of arresting a person without a warrant for an arrestable offence (section 6(2)). If the premises constitute a dwelling, a garda will still be able to enter and search for the purpose of making the arrest, but further restrictions apply.

The *Criminal Justice (Miscellaneous Provisions) Act, 1997* plugs a number of serious loopholes in police powers of entry, search and seizure under warrant. It empowers a judge of the District Court to issue a search warrant for any place (including a dwelling) where he or she is satisfied, after hearing evidence on oath from a member of the Garda Síochána not below the rank of inspector, that there are reasonable grounds for suspecting that evidence relating to the commission of one of a number of offences specified in the Act is to be found at that place (section 10(1)).

The warrant will authorise a named member of the force to enter and search the place in question within one week of the issue of the warrant. The garda may be accompanied by any other colleague and, if necessary, may use reasonable force to gain entry. Persons found in the place may be searched and may be required to give their names and addresses.

Anything found at the place or on any person there may be seized where the garda reasonably believes that it is evidence relating to an offence for which a warrant could be issued under the 1997 Act. The offences specified in the Act include: any indictable offence involving death or serious bodily injury to any person, false imprisonment, rape and incest.

Detention. From a civil liberties perspective, the most draconian measure to be introduced in recent years must be the power of detention in section 2 of the *Criminal Justice (Drug Trafficking) Act, 1996*. It stipulates that a person arrested for a drug trafficking offence may be detained without charge initially for a period of six hours. This period may be extended for further periods of 18 hours and 24 hours respectively on the direction of a garda not below the rank of chief superintendent. Further extensions of 72 hours and 48 hours respectively are possible, but only on the authority of a duly nominated District Court or Circuit Court judge.



Apart from the length of detention, most of the provisions governing the detention of a suspect under section 4 of the *Criminal Justice Act, 1984* are extended to persons detained under the 1996 Act. The latter also protects a suspect who has been detained under section 2 against repeated arrests.

This proved problematic in a recent case where a district judge was of the opinion that the prohibition on re-arrest precluded the gardai from re-arresting a suspect for the purpose of charging him with an offence in respect of which he had already been detained under section 2. However, the district judge's interpretation was overruled on appeal to the High Court where it was explained that the restriction on re-arresting a suspect who had already been detained under section 2 did not extend to an arrest effected for the purpose of charging the suspect immediately and bringing him before the District Court (*DPP v District Justice William Earley et al*, High Court, 2/12/97).

Suspects detained under section 2 of the 1996 Act are also subject to fairly draconian provisions on inferences that can be drawn from their failure to mention a particular fact when questioned during their detention. They are equally subject to the provisions of the *Criminal Justice (Forensic Evidence) Act, 1990* on the taking bodily samples.

Interrogation. One of the most interesting measures introduced in recent years must be that concerning the electronic recording of interviews in Garda stations. Although the *Criminal Justice Act, 1984* empowered the Minister for Justice to introduce the necessary regulations, and the Martin Committee strongly recommended its introduction in 1989, it was not until 1997 that detailed provision was made for the electronic recording of interviews in Garda stations.

The Criminal Justice Act, 1984 *(Electronic Recording of Interviews) Regulations 1997* stipulates that interviews of suspects detained under section 4 of the *Criminal Justice Act, 1984*, section 30 of the *Offences Against the State Act, 1939* or section 2 of the *Criminal Justice (Drug Trafficking) Act, 1996* must normally be recorded electronically when conducted in certain Garda stations. The stations affected are those that have been fitted out with the necessary equipment. The regulations go into considerable detail on the procedure that must be followed in the recording of such interviews and the steps that must be taken in order to preserve the integrity of the tapes.

As very few stations have the necessary equipment installed, it is too early to assess the impact that the regulations will have on the conduct of Garda interrogations and the prosecution and defence strategies in the criminal process. But potentially the rigorous and extensive application of these regulations could instigate significant changes in established police and defence practices.

Changes to pre-trial procedure

Bail. The changes in the bail laws are probably the most high profile developments in criminal procedure in the last few years. Following on the Sixteenth Amendment of the Constitution, the *Bail Act, 1997* was enacted to enable a court to refuse an application for bail for the purpose of preventing the applicant committing a serious offence while awaiting trial for the charge on which he or she stands accused. However, the key provisions in the Act will not come into effect until the Minister for Justice has issued the appropriate commencement order or orders, and that will not happen until Autumn 1998 at the earliest.

The *Bail Act* does not deal with police bail. This is dealt with in the *Criminal Justice (Miscellaneous Provisions) Act, 1997* which provides for the release of the suspect on station bail to appear before a sitting of the District Court in the District Court area in which he was been arrested (section 3 amending section 31 of the *Criminal Procedure Act, 1967*). The sitting in question may be the next sitting in that area or any subsequent sitting within a 30-day period of the next sitting. It is also worth noting in this context that the 1997 Act amends section 15 of the *Criminal Justice Act, 1951* to extend the circumstances in which a person arrested and charged may be held in a Garda station overnight before being brought before a sitting of the District Court.

Remand. The objective of releasing gardai from time-consuming court appearances has resulted in an extension to the length of pre-trial remands which may be granted in the District Court (section 4). The initial remand is still eight days, but after that the court may remand the accused for a maximum period of 15 days without consent and up to 30 days with consent. Moreover, where an accused is remanded in custody, the court may remand him to appear before a District Court in the district where the relevant prison or place of detention is located.

Evidence and trial procedure

As part of its drive to free gardai from court appearances, the *Criminal Justice (Miscellaneous Provisions) Act, 1997* introduces some novel provisions permitting gardai to give evidence by certificate rather than having to appear and give oral evidence in person. For example, on a first appearance of the accused before the District Court, a certificate signed by a garda can be tendered in evidence by a member of the force not below the rank of sergeant to establish that the garda arrested and charged the person concerned with the offence in question (section 6(1)). Such certificates were approved recently by the Supreme Court in the first legal challenge against their use (see the *Irish Times*, 30/7/98).

Similarly, a signed certificate can be given in evidence in any criminal proceedings to establish that the garda in question commenced or remained on duty at a scene of crime and that no person entered that place without his permission and that no evidence was disturbed while he was on duty there. The 1997 Act also makes provision for the power to take fingerprints or palmprints to be extended to include a recording of the image so taken (section 11(1)). Such a record will be admissible as evidence of the prints of the person concerned when attached to a certificate signed by the garda who recorded the image and stating that the prints are

those of the person concerned. A similar provision applies to a photograph of the accused.

The *Criminal Law Act, 1997* introduces greater flexibility on the verdicts which may be returned on an indictment and effects some long overdue updating of the law on sentencing. In large part, these are consequential on the abolition of the distinction between felonies and misdemeanours. Generally, the Act permits a verdict of guilty to be entered for a lesser offence than that actually charged so long as the allegations in the indictment expressly or by implication amount to or include an allegation of the lesser offence (section 10).

Sentencing reform includes the formal substitution of imprisonment for penal servitude and imprisonment with hard labour. Whipping is abolished and a prohibition imposed on the use of corporal punishment in prisons and places of detention. Other piecemeal changes include: clarification of the law on maximum sentences; the extension of the fine as an alternative sentence; increased provision for consecutive sentences for offences committed while on bail; and the requirement of the DPP's consent for other offences to be taken into consideration on sentencing.

Criminal Assets Bureau

The *Criminal Assets Bureau Act, 1996* has introduced a new concept in criminal law enforcement in this country. It makes provision for the establishment of a distinct unit with a primary remit to tackle the assets of suspected criminals as opposed to the suspects themselves. Although based in the Garda Síochána, the Criminal Assets Bureau incorporates non-Garda as well as Garda personnel. The former comprise officials from the Revenue Commissioners and the Department of Social Welfare The management of the bureau is statutorily entrusted to a member of the Garda Síochána not below the rank of chief superintendent and appointed by the Commissioner to act as head of the bureau.

The CAB breaks new ground through its resort to the civil process as a primary instrument of crime control. By seeking confiscation orders on criminal assets, it aims to neutralise individuals whom it suspects of being major players in organised crime. The powers available to it under the 1996 Act are supplemented by the provisions of the *Proceeds of Crime Act, 1996* and the *Disclosure of Certain Information for Taxation and Other Purposes Act, 1996*.

The measures outlined above are only some of the fundamental changes made to criminal procedure by legislation enacted in 1996 and 1997. Undoubtedly, many of them can be welcomed as long overdue reforms. But it must also be acknowledged that their cumulative effect may well amount to a fundamental re-alignment in the balance of our criminal process which has not been fully thought-out.

An indication of the undue haste at which some of these wide-ranging measures have been introduced can be found in the serious drafting errors apparent in some of them. For example, the *Criminal Justice (Drug Trafficking) Act, 1996* purports to substitute the old section 4(5) of the *Criminal Justice Act, 1984* with a new section 4(5) and a section 4(6). Unfortunately, it ignores the fact that there already is a section 4(6) in the 1984 Act which it does not repeal. The net effect is that there are now two sections 4(6) in the 1984 Act, both of which say quite different things.

Only time will tell whether there are even more unexpected surprises hidden in the new legislation. G

Professor Dermot Walsh is Director of the Centre for Criminal Justice at the University of Limerick. This article is a shortened version of a paper presented at a recent seminar hosted by the Centre for Criminal Justice (see Limerick papers in criminal justice No 2*).*

Recent deve in crim

The last couple of years have seen big changes made to Irish criminal law, from the abolition of the distinction between felonies and misdemeanours to the creation of new offences dealing with syringe attacks. J Paul McCutcheon outlines the main points of the legislation enacted in 1996 and 1997 affecting substantive criminal law

Where a statute creates new offences, or alters existing offences, it is now usual to abolish pre-existing offences. In addition, the statute might include a transition provision to facilitate the prosecution of offences committed prior to its coming into force. The *Non-Fatal Offences against the Person Act, 1997* abolished a number of common law offences but it did not contain a transition provision. Doubts arose as to whether an accused could be prosecuted in relation to conduct committed prior to the Act for the common law offence once the Act had come into force (*The People v Kavanagh*, Special Criminal Court, 29/10/97; *Quinlivan v Governor of Portlaoise Prison*, High Court, 9//12/97).

This was settled by the *Interpretation (Amendment) Act, 1997*. The Act provides that the abolition of a common law offence by statute does not affect the previous operation of the law; proceedings may be instituted in respect of the common law offence after the statute has come into force. The Act deals with potential constitutional issues by providing that it is subject to such limitations necessitated by a person's constitutional rights.

Although it was enacted to deal with the immediate difficulty posed by the *Non-Fatal Offences against the Person Act, 1997*, the provisions of the Act apply to any statute which abolishes common law offences.

Criminal Law Act, 1997

The *Criminal Law Act, 1997* abolished the distinction between felonies and misdemeanours and amended the law of participation. Section 7(1) provides for the punishment as a principal offender of a person who 'aids, abets, counsels or procures' the commission of an indictable offence. Section 7(2) deals with conduct after the commission of the principal offence. A person who without reasonable excuse acts with intent to impede the apprehension or prosecution of a person whom he or she knows or believes to be guilty of an offence that attra sentence of five years' imprisonment or more is liable. The Act repeals the *Accessories and Abettors Act, 1861*.

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Non-Fatal Offences against the Person Act, 1997

The *Non-Fatal Offences against the Person Act, 1997* simplifies the law and eliminates the arcane distinctions that characterised the common law and the *Offences against the Person Act 1861*. It abolished the common law offences of assault, battery, false imprisonment and kidnapping, and repealed many of the offences contained in the 1861 Act. The result is a simplified statutory scheme.

Assaults. A new summary offence of assault is contained in section 2 (*penalty: six months/£1,500 fine*). The new offence embraces the common law categories of assault and battery; it includes both the application of force and apprehended application of force ('force' is defined as including the application of heat, light, electric current, noise and other forms of energy).

Assault causing harm is an offence under section 3 (*five years/unlimited fine*). 'Harm' is defined as 'harm to body or mind and includes pain and unconsciousness'. The inclusion of mental harm reflects developments in relation to 'actual bodily harm' in the 1861 Act, section 47 (*R v Chan-Fook* [1994] 1 WLR 689; *R v Ireland* [1997] 1 All ER 112).

The intentional or reckless causing of serious harm is an offence under section 4 (*life/unlimited fine*). This is defined as 'injury which creates a substantial risk of death or which causes serious disfigurement or substantial loss or impairment of the mobility of the body as a whole or of the function of any particular bodily member or organ' (section 1). This is narrower than 'grievous bodily harm' in the 1861 Act (*The People v Messitt* [1974] IR 406; *DPP v Smith* [1961] AC 290).

The precise boundaries between assault, assault causing harm and causing serious harm are difficult to draw, and the definitions in the 1997 Act are liable to be supplemented by judicial interpretation.

Syringe attacks. The *Non-Fatal Offences against the Person Act, 1997* deals with the modern phenomenon of syringe attacks. Section 6 creates two categories of offence. The first involves the use of a syringe in circumstances where the accused intends to infect the victim or where a likelihood that the victim will believe that he or she may ome infected (*ten years/unlimited fine*). Central to these offences is an intention on the part of the accused to infect the victim or a fear on the victim's part that he or she may be infected; it is not necessary to prove infection, or risk of infection, nor that the syringe or blood was contaminated. The second group of offences involves the use of a taminated syringe or contaminated blood (*life*). Blood or uid is contaminated if it contains a disease, virus, agent or organism that could infect a person with a life-threatening disease. The possession of a syringe or blood in a container with intent to injure or threaten injury or to intimidate is an offence under section 7 (*seven years/unlimited fine*).

Poisoning. In many cases, poisoning will amount to the offence of causing serious harm. Section 12 creates a 'residual' poisoning offence (*three years/unlimited fine*) which might be employed where the conduct does not amount to another offence. The offence consists of intentionally or recklessly administering to or causing a person to take a substance which is known to be capable of 'interfering substantially with the [victim's] bodily functions' without his or her consent. A substance which induces sleep or unconsciousness is capable of interfering substantially with one's bodily functions, so spiking a person's drink with a sedative would come within this section.

Intimidation, threats, harassment. The *Non-Fatal Offences against the Person Act, 1997* creates several new offences which deal broadly with threats, intimidation and harassment. There is an overlap with the law of assault in that threats might induce a fear of suffering violence. Nevertheless, it is clear that the law of assault in itself is insufficient to deal with the phenomenon of threatening conduct.

Under section 5 it is an offence to make a threat to a person (intending that it be believed) to kill or cause serious harm to that person or another (*ten years/unlimited fine*). The intent that it be believed by the person to whom it is made distinguishes serious threats from those that are innocuous. It is not necessary to prove that the threat was believed, or had an effect on the person to whom it is made.

An offence of coercion is created by section 9 (*five years/unlimited fine*) in comprehensive terms, and it embraces all imaginable forms of conduct that might be considered intimidatory – using violence, injuring, damaging property, persistently following a person from place to place, watching or besetting premises, following a person in a disorderly manner. Peaceful picketing is excluded from the scope of the offence.

Section 10 creates the offence of harassment 'without lawful authority or reasonable excuse' (*seven years/unlimited fine*). In some cases, conduct which would otherwise amount to harassment might be done on lawful authority or with reasonable excuse, in which case no offence is committed. The forms of harassment against which the section is directed are 'persistently following, watching, pestering, besetting or communicating with the victim'. These may be achieved by any means, including the use of telephone.

Stalking and persistent unwanted communications with a victim constitute harassment. The *mens rea* component of the offence is set out in somewhat ambiguous terms. In section 10(2)(a), it is uncertain whether it is merely the act which must be intentional or reckless, or whether the accused must be shown to have been intentional or reckless as to the consequence of the act, namely seriously interfering with the victim's peace. This point could be crucial since, as a matter of general principle, it must be assumed that intent or recklessness is to be evaluated subjectively. If section 10(2)(a) requires intent or recklessness *both* as to the act *and* the consequence, it leaves open a possible defence that the accused subjectively lacked *mens rea* as to the consequence. The provision would be more effective were the specified intent or recklessness confined to the act. This view is reinforced by the fact that section 10(2)(b) makes specific provision in regard to the consequence and it introduces an objective element.

Endangerment. Two new offences of endangerment have been created. Section 13 creates a general offence of endangerment where the accused intentionally or recklessly engages in conduct that creates a substantial risk of death or serious harm to another (*seven years/unlimited fine*). 'Substantial risk' is not defined, but it clear that negligible and improbable risks are excluded. The risk created must be one of death or serious harm. The *mens rea* of the offence is intention or recklessness.

An offence of endangering traffic is created by section 14 (*seven years/unlimited fine*). This offence replaces a number of offences that dealt with interfering with railways and so on.

Offences against personal liberty. The common law offences of kidnapping and false imprisonment have been abolished and are replaced by a generic offence of false imprisonment (*life*). The offence of false imprisonment is committed where the accused intentionally or recklessly takes or detains, or causes to be taken or detained, or otherwise restricts the personal liberty of a person without their consent (section 15(1)). It is not necessary to establish any element of abduction or removal, nor is holding for ransom or reward an element of the offence.

Two offences of child abduction are created (*seven years/unlimited fine*). Section 16 applies to the taking of a child under the age of 16 years out of the State by a parent or guardian in defiance of a court order or without the consent of each person whose consent would by law be required. It is a defence to show that the accused had been unable to communicate with those whose consent was required but believed that they would have consented had they been aware of the relevant circumstances or that the accused did not intend to deprive others of their rights in respect of the child.

Defences. Sections 18-20 of the Act provide for the circumstances where the use of force is justified. Cumulatively, these sections broadly reflect the common law on the use of force in legitimate defence or in effecting an arrest. A case is to be determined on the facts as the accused believed them to be, again matching recent common law developments (*R v Williams (Gladstone)* [1987] 3 All ER 411). Sections 18-20 now comprise the exclusive provisions on the use of force in the circumstances outlined and the common law rules in this respect are abolished. It would appear that these provisions govern the use of fatal and non-fatal force alike. But, if this is the case, the Oireachtas would seem to have overlooked the decision in *The People v Dwyer* ([1972] IR 146). There the accused who used excessive fatal force in self-defence was guilty of manslaughter since he subjectively believed the level of force employed to be necessary.

One construction of sections 18-20 is that an accused now would be entitled to an acquittal since fatal force is necessary on the facts as he believed them to be. Could the Oireachtas have intended to overrule the decision in *Dwyer*? An alternative, but strained, construction is that sections 18-20 are confined to non-fatal force, with the common law governing the use of fatal force.

Sexual Offences (Jurisdiction) Act, 1996

The *Sexual Offences (Jurisdiction) Act, 1996* extends the law on sexual offences to offences committed with children (defined as persons under 17 years of age) outside the State. The Act deals with the commission of offences abroad and ancillary offences committed within and outside the State. The Act applies to citizens of the State and persons who are ordinarily resident within the State. A person is 'ordinarily resident' within the State if he or she has had their principal residence within the State for 12 months immediately prior to the commission of the offence (section 2(7)).

Jurisdiction is extended where a person commits an act outside the State which (a) constitutes an offence against the law of the place where it is done, and (b) if done within the State would constitute a scheduled offence. The scheduled offences are unlawful carnal knowledge of minors, rape, sexual assault, aggravated sexual assault, rape under section 4, buggery of a person under 17 years of age, gross indecency with a male under 17 years of age, and sexual intercourse with or buggery of a mentally impaired person. In these circumstances, the accused is guilty of the scheduled offence and is liable to the same penalty. It should be noted that if the conduct is not an offence against the law of the foreign country, the Act does not apply even though the same conduct, if committed within the State, would constitute an offence.

Sections 3 and 4 create ancillary offences (*five years/£10,000 fine*). Under section 3, it is an offence to transport, or make an arrangement to transport, a person abroad knowingly for the purpose of enabling that person to commit an offence against which the Act is directed. This provision is clearly directed against those who organise sex tours, but its terms are such that any person who provides a transport service in the knowledge that the traveller intends to commit child sex offences abroad is liable. Since the act must be done 'knowingly', those who act negligently or recklessly would not be guilty. G

J Paul McCutcheon is Senior Lecturer in Law at the University of Limerick. This article is a shortened version of a paper presented at a recent seminar hosted by the Centre for Criminal Justice (see Limerick papers in criminal justice No 1*).*

Inside the mind of a juror

Ever looked at those 12 men and women on a jury and wondered 'just what are they thinking?' Derek Moynihan recently served as a juror in a particularly fraught case. He describes some of their thoughts and very real fears

The testimony from the witness had been hard to endure. He had killed, and told us in some detail about the killings. It was compelling stuff. Eventually the morning session ended and we returned to the jury room for a welcome break. That was when the farce started. 'I think he did it', said one juror. We looked at her. 'I think he did it', she repeated. 'I think he's guilty'. Another jury member put her straight. 'We know he did it. He just told us he did it. He's not on trial. He's a witness for the defence'.

A week before this incident, I had turned up for jury service at the appointed court at the appointed time. A number of my friends and colleagues had advised me to try to avoid jury service but I felt I should attend. This was my second stint at jury service. On the first occasion, a number of years previously, I had to give up just a few hours of my time as the case for which I was chosen was settled out of court. So as I entered the courtroom on that morning, I was reasonably confident that my civic duty would be fulfilled by the day's end.

The courtroom was jammed so a stream of late arrivals had to stand at the back. The prospective jury members to my left and right were unsure about what was happening. They were concerned that the selection procedure had already started and that they had missed their names being called. It hadn't – other court business was being attended to – but no official was on hand to point this out or even to explain the overall selection procedure. At that point, many of the people in the courtroom were not involved with the jury selection.

The selection process

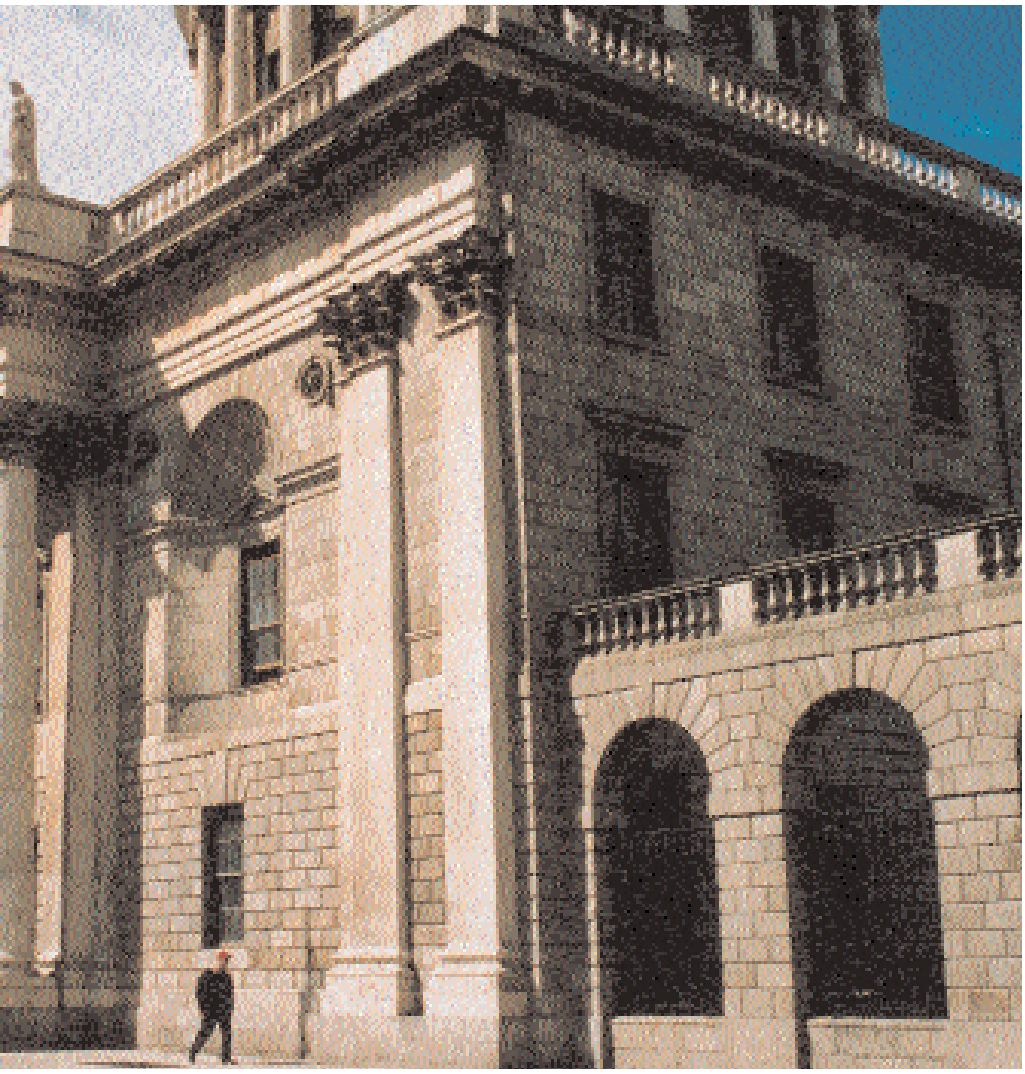
The jury members arriving late had great difficulty hearing what was happening at the front, but eventually the courtroom thinned out as the housekeeping issues were resolved. The selection process was underway.

Of the first 12 people to take their place in the jury box, a number were rejected by one or other of the legal teams. No reason was given for the rejection and the judge, sensing the mood of those rejected, helpfully pointed out that the decisions of the legal teams should not be taken personally. More men than women were rejected. It also appeared that those wearing a shirt and tie were more likely to be rejected than those dressed in casual clothes. (I had taken the opportunity to change from my normal business suit to wear jeans and sweatshirt – what a mistake that was.)

We finally ended up with eight women and four men on the jury panel, six of whom were in full-time employment. Our first duty was to select a foreman. The last person to be selected for the jury had sat in the foreman's seat so we chose her for the position on that basis.

The trial spanned four weeks, longer than had been initially indicated, with the result that I had to cancel a planned business trip abroad. The judge instructed us not to discuss the trial with friends or family members but no instruction was given regarding media coverage. Initially, I decided not to listen to radio or TV coverage or read newspaper reports, but jury members brought in newspapers and often read excerpts aloud so this was a pretty pointless exercise.

The first time we broke for lunch we traipsed back into our jury room unsure of what to do. Some jury members had heard that we would be escorted to a local restaurant for lunch. The foreperson went out to enquire. No joy. We would have to make our own arrangements for lunch. I assumed that we would be paid expenses for lunch (and had hoped that we would also be paid a travel allowance as I had parked in a city centre car park for the day). We learned gradually over a few days that no expenses would be paid. In fact, it was costing us money



just to be there, something which rankled with all the members of the jury.

I worked a double day for each day of the trial, as my work commitments obliged me to go into the office in the early morning before the trial and return afterwards to work into the evening. My employer was very understanding. The costs for employers and jury members, as well as the fact that there is a degree of self-selection (how many full-time or self-employed people try to avoid jury service?), should encourage the authorities to organise a PR campaign to emphasise how important it is for the administration of justice that people turn up for jury service. I would go further and suggest that expenses should be paid to jury members and that employers should be entitled to compensation where temporary staff are employed to cover for employees on jury duty.

The case we had to deal with centred on the allegation that the plaintiff was a senior member of a criminal gang. Presumably the authorities could not give any advice about our own personal security as this could have prejudiced our deliberations. Nevertheless, I personally believe that the plaintiff tried to intimidate the jury during the proceedings. On several occasions he would stare over at us during breaks in his testimony.

On one occasion, when his testimony was particularly inept, I leaned over to the jury member sitting beside me and whispered 'what a crock'. The plaintiff saw me whispering and, I believe, understood the gist of what I was saying. He smiled at me and gave me a wink. My blood ran cold. I continued to be careful about the route I travelled home and was always careful to ensure that I was not being followed. Looking back, it would seem that this was an over-reaction; at the time, it made perfect sense.

Spooked by the plaintiff

I was not the only one spooked by the plaintiff; some of the gardaí also appeared to be afraid. One in particular – who was stationed in the plaintiff's hometown – would not sit facing the court but tried to sit at an angle to the courtroom. When this garda arrived in court to give evidence for the defence, the plaintiff moved to sit in the middle of the court, in full view of the witness. The garda was clearly uncomfortable giving evidence and his responses to the various questions from the legal teams tended towards the monosyllabic. 'Yes, judge', 'No, judge', 'I don't know, judge' were his favoured answers.

The trial had progressed at a turgid rate but gradually the various witnesses gave their testimony. We were all grateful when each one was finished. Back we trooped into the jury room one more time. We began to discuss the case again. 'So the defence has had seven witnesses speaking for them', one juror began tentatively, 'and the plaintiff has had just three speaking for them'. 'Yee-esss ...', a fellow juror responded, not sure where this was heading. 'Well ... the defence would seem to be ahead. Like, they've had more people speaking for them'. It was pointed out to him that this was not a numbers game and that, in any event, the legal teams weren't finished calling witnesses yet.

The jury members could be divided into three groups using one criterion – note-taking. There were two who took detailed notes of the proceedings, there were about another five or six who took notes of what were perceived to be the key points, and the balance took no notes at all. Initially, we were not provided with pens or paper and the court official seemed to be caught off-guard at our request for notepaper. He returned some considerable time later with sheets of loose paper and apologised that there were no proper notebooks available.

In fact, the more diligent jury members were not the only ones taking notes – everyone seemed to be at it. The stenographer wrote down every word, the judge took notes, both teams of solicitors took notes, the barristers frequently took notes, and all the journalists present took notes. Surely in 1998 it would be possible to come up with a technological solution which would obviate the need for all these notes? One stenographer even used pen and paper in recording the court's proceedings. I found this amazing, as it meant that he would have to retype his notes later. This was a needless duplication of tasks and one which meant that the typed notes from the previous day's proceedings were not always available the next day.

The trial itself was particularly difficult as we were exposed to details of horrific crimes and, during one particular testimony, a number of jury members were in tears. But there was also a considerable sense of drama and, on occasion, a real sense of fun. The court officials unwittingly contributed to this. One dozed off on a number of occasions, and then there was the crotchety stenographer who would get increasingly grumpier if his replacement was late. The jury members were only too keen to use these individuals as a means of relieving the mental stress of the case.

As a result of our ordeal, the judge said that we would be exempt from jury service for a number of years. No one was going to appeal that decision. G

'Derek Moynihan' does not want his real name published for obvious reasons.

Company law:

Too much law and not enough order?

Serious abuses of company law have moved centre stage. A sadder and wiser nation is learning fast about commercial fraud, offshore accounts and non-resident Irish companies. Pat Igoe argues that it's time to enforce the provisions of company law rigorously – or be honest enough to repeal the legislation we have no intention of implementing

The recent emergence of strong indications of abuses of company law has now prompted the Government to establish a group to review the enforcement of company law. Two practising solicitors, Tom Courtney and Katherine Delahunt, are among its members, and it will be chaired by barrister and former TD Michael McDowell. The group is to report before the end of November. Recent scandals seem at last to have given a political fair wind both to company law reform and to the enforcing of that law.

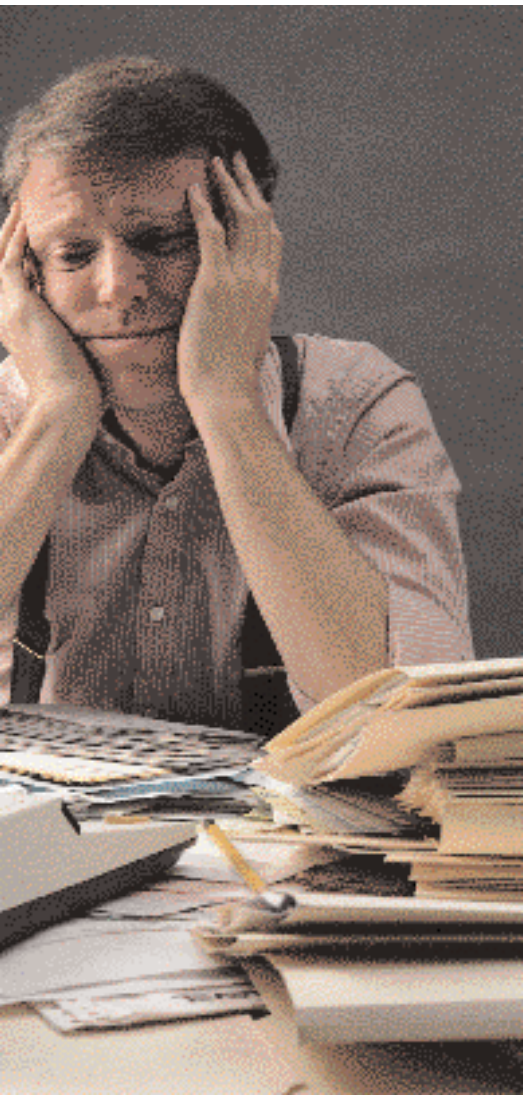
Reports on company law reform are traditionally not exciting stuff. The reports of the Task Force on Small Business and the Company Law Review Group, both of which were presented in 1994, were not exactly acclaimed across the land. It would be closer to say that they sank almost without trace. Yet – not unlike the European Union which the fabled Kerry woman said would never catch on in Kerry – their recommendations probably touch the lives of just about everybody in this country.

It would be difficult to overestimate the importance of the current review, and how it is received by the Government, for Ireland's economic future. Will the authorities be reminded yet again that we have perhaps too much law and not enough order? Economists warn that economic progress can be both short-lived and volatile, that sustained performance greatly depends on reliable and credible legal structures, and, indeed, that staying power (whether it's shareholders' agreements, a company decision or legal infrastructure) is tested when the going gets tough, not in the good times.

Former Commerce Minister Michael Smith complained last year that only 34% of Irish companies had filed their annual returns in the Companies Registration Office in 1996, which suggested a 'near anarchic disregard' for the provisions of the law if applied generally in our economy. The situation does not seem to have much improved. Official statistics indicate that of the 130,000 companies registered in Ireland at the end of last year, only 18,000 had filed their annual returns on time.

Murky world of commerce

An economy is opaque unless legislation forces the windows open. And the windows opened by the Greencore, Telecom, County Glen, Bula and the National Irish Bank investigations (to name but a few) are giving people an unsavoury view into what may increasingly be seen as the murky world of commerce. A founder-director of the



Jesuit Centre for Faith and Justice, Fr John Sweeney SJ, was moved to note a few years ago that he learnt more about the forces that shape Ireland today in reading about these scandals than in any ESRI or government report.

But business and commerce are the engines of economic growth. Few doubt that the implications of failing to restore confidence in the institutions of commerce and their legal underpinning will leave the country exposed to considerable distress when the economic boom goes down-cycle.

Most company solicitors (and that means most solicitors since nearly all have at least a handful of company clients) would agree that the small businessman is overburdened by the State. If too much is demanded of small businesses, they will simply try to turn a blind eye. More legislation often equals less implementation. Many small businesses take advantage of the benefits of limited liability, such as it is today, while remaining complacent or hostile about paying the price. And not filing annual reports is on the venial end of the scale; it's just that it is more tangible and calculable.

In *Re Aston Colour Print Limited* in the High Court last year, Mr Justice Peter Kelly held that a meeting of directors was not in fact a meeting of the board and that their decision was invalid. How many small Irish companies up and down the country comply with the rigorous provisions of the *Companies Acts* and *Table A*? And can we blame them when typically they are really quasi-partnerships?

Ten years ago, Mr Justice Ronan Keane suggested to the Society of Young Solicitors in Galway's Great Southern Hotel that our legal framework 'bears only a fragile relationship to the reality of Irish commercial life which is so often the one-man company'. Ten years on, and acknowledging the real progress in the *Companies Act, 1990*, he could give the same talk to a society of older solicitors.

He quoted approvingly from a series of lectures by LS Sealy which rings even more applicable now: 'The first priority must be to get our basic policies right: to identify what role the company plays in the modern world and what roles we need to play; and how the law can best make it serve that purpose. We cannot expect company law to work for us if we go on trying to get by with last century's institutions and last century's philosophy, overladen to the point of confusion by assorted bits of piecemeal statutory reform and judicial ad hoccery'.

Apart from simplifying and codifying company law, and making it particularly simpler for small enterprises, the Government can turn to the pages of the two reports already mentioned. The Company Law Review Group (CLRG), in particular, made 100 recommendations and conclusions. One of these was the idea of setting up an executive unit in the Department of Enterprise and Employment (now Enterprise, Trade and Employment) to apply for the disqualification of directors of companies in insolvent liquidation or receivership. The report also recommended that liquidators and receivers should be required to report to the executive unit, and that the fundamental differences between public and private companies be recognised in legislation. The list goes on.

High-profile investigations

Flouting company law has traditionally largely gone undetected, uninvestigated, unprosecuted and unpunished in Ireland. Yet, the high-profile investigations instituted under part 11 of the *Companies Act, 1990* have served notice of change.

It has been often said that the *Companies Acts* contain more criminal provisions than any other Act on the statute book. The punishments vary from fines for failing to indicate particulars of directors on some company documents to imprisonment for a misstatement in a prospectus. But who is watching? How many prosecutions have there been? Mark Sinnott remains a lonely figure as the only person sent to jail in this country for fraudulent trading.

More than three years ago, Mr Justice Murphy highlighted in the *Business Communications Limited* case that directors in creditors' voluntary liquidations were not being brought before the courts. He has sought to judicially shore-up the inadequacy in relation to official liquidations by requiring liquidators before him to apply for director disqualifications.

In answer to a recent query on progress towards implementing the 1994 CLRG recommendations, the Department of Enterprise, Trade and Employment replied that all of the issues raised would be 'considered' in future legislative proposals. It was 'hoped' that some of the recommendations, including exemption from audit requirements for small companies, would be included in a Bill to be published before the end of the year.

The *Companies Acts* since 1990 have the scope to impose full personal liability on directors, not just for fraudulent or reckless trading but also for other serious failures such as not keeping proper books of account and accepting prohibited loans from the company. But laws which are not rigorously enforced do not deter corporate wrongdoing.

Civil litigation

There are powers of enforcement of the *Companies Acts* given to the Department of Enterprise, Trade and Employment, the Registrar of Companies, and, indeed, the Director of Public Prosecutions, as well as to auditors, liquidators, examiners and, of course, inspectors. But the main thrust for enforcing the law has come from those most directly affected by misdeeds – by means of civil litigation. This received a major fillip in June this year when Mr Justice Shanley decided in the High Court that unpaid creditors of companies in liquidation *were* entitled to seek the restriction from future directorships of the directors of such companies. Such restrictions could then encourage civil actions to make directors who bring commercial activity into disrepute personally liable for the unpaid debts of their companies.

The judge held in *Re Steamline Limited* that a disgruntled unpaid creditor may bring a High Court application seeking restriction of directors of an insolvent company in liquidation. The onus then shifts to the directors who must satisfy the court that they acted honestly or face restriction. The decision may become a landmark in the enforcement of the law.

In a well-argued newspaper article last year while in opposition, Tánaiste Mary Harney wrote that if we did not want 'zero tolerance' we should be 'honest enough to repeal the laws we don't wish to enforce'. Few would disagree. But enforcement would still be better than repeal. G

Pat Igoe is principal of Dublin-based solicitors' firm Patrick Igoe and Company.

A private fu

New roads, railways and even prisons could soon be built with the help of private sector cash under a scheme recently endorsed by the Government. But striking a balance between value-for-money services and profit may not be that easy, as Niall Murphy reports

Private sector funding could be sought for public projects such as the Dublin light rail system and other large-scale investments under a public/private partnership (PPP) pilot scheme recently approved by Government. The pros and cons of this approach have already been scrutinised by an inter-departmental group, and consultants hired by the Department of Finance say that PPPs can make 'a limited and targeted contribution to the provision of public infrastructure'.

Using private sector funding for public projects is already common in Europe, and successive UK governments have relied on the private finance initiative (PFI) to help cut public spending and to invest in the country's infrastructure. But bridging the gap between public need and the private sector's desire to limit risks has not always been easy.

The employers' organisation IBEC and the Construction Industry Federation (CIF) began the debate in January with a joint submission to the Government. The document outlined the key principles governing any proposed private investment in public infrastructure, that is, sharing the risk involved allied to a value-for-money approach from all participants.

The British PFI began in the 1980s with the Conservative government's desire to save Exchequer money by privatising State and semi-State organisations. The next step was to examine ways in which the private sector could be encouraged to invest in the country's infrastructure, thus freeing up funds for use elsewhere. The Treasury set up a committee under Sir William Ryrie in 1981, and the resulting *Ryrie rules* became the criteria for determining a project's viability.

These rules stated that the use of private funding should be governed by two basic principles:

- Privately-funded solutions should be tested against publicly-funded alternatives and shown to be more cost effective, and
- Unless Ministers decided otherwise, public expenditure should be cut by the amount of private funding obtained.

But these rules gave the public sector no incentive to seek privately-funded solutions. Some projects were completed, such as the third crossing of the Thames at Dartford and the second Severn crossing, but it was not until 1992 that the PFI solution began to come into its

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own. The then Chancellor of the Exchequer, Norman Lamont, introduced new rules to govern the initiative. The most important of these were that self-financing projects undertaken by the private sector would no longer need to be compared with theoretical public sector alternatives, and that the Government would actively encourage the private sector to take the lead in joint ventures with the private sector.

Some months later, the new Chancellor, Kenneth Clarke, established the Private Sector Finance Panel, whose role would be to encourage greater participation in the process. In November 1993, the Treasury published a discussion paper called *Breaking new ground*, which identified three types of PFI projects:

- The first was financially free-standing projects, where the private sector undertakes the project on the basis that costs will be covered entirely through charges to the final user, for example, toll bridges
- The second category was services sold to the private sector, where the cost of the project is met wholly or mainly by charges from the private sector body to the public sector body which lets the contract, for example, privately-financed prisons or IT projects
- The third category relates to joint ventures, where the cost of the body is met partly by public funds and partly from other sources of income, for example, the Channel Tunnel rail link in the UK.

The Treasury laid down the fundamental requirements for PFIs, which superseded any other guidelines. The first was that any public sector spending must show value for money. The significance of this depended on the type of project. The second was that the private sector must genuinely assume risk. But this had to be balanced by the principle that risk should be allocated to whoever was best able to manage it. Consequently, the emphasis was on the allocation of risk and not its transfer, which is an important point to bear in mind.

The Conservatives' overall approach was based on a clear presumption that the better management inherent in a PFI project would give better value for money. The prevailing policy was that public bodies should always consider PFI options unless it was clear that the risk transfer was not feasible. But towards the end of the Tories' reign, the rule that all public projects be tested for suitability was gumming up the system with hopeless projects. The long procurement process cost the private sector money, and further frustrated and disillusioned participants.

The Labour Party took immediate action to kick-start the initiative when it came to power in May 1997. This involved abolishing the requirement to test all public sector capital projects for PFI potential, and replacing the Private Sector Finance Panel with departmental private finance units. Prospective bidders were required to complete a standard questionnaire, and departments were obliged to establish sets of model contracts. An accreditation facility was to be set up by a specialist Treasury task force to curb the numbers of poor-quality advisors.

In an effort to cut the private sector's costs, the maximum number of bidders was to be reduced to four, and service providers' bidding costs were to be refunded where a project did not go ahead for reasons other than the tenders' viability.

Project-based approach

The IBEC/CIF submission is vague when it comes to details of the proposed Irish model. It notes that a project-based rather than a programme-based approach would be the logical step, but grouping similar categories together would allow planners and advisors to ascertain the operational requirements of particular types of projects. The submission also endorses the notion that clear and objective criteria be established to identify suitable public sector projects. The UK experience shows that it is essential this examination be conducted before the public procurement process to avoid a logjam of unsuitable bidders.

The argument that public/private partnerships should be used for road maintenance or environmental infrastructure ignores the fact that information technology projects have been the fastest-growing and most numerous types of PFIs in England. They also require a very different framework, where the public sector requirements may not always be as easy to gauge as road maintenance.

Hopefully, the draft legislation will provide the framework for fleshing out the PPP structure outlined in the report. It should also try to avoid the difficulties encountered by the English approach. G

Niall Murphy is a commercial law solicitor with Dublin solicitors' firm Lennon Heather & Co.

Law firms on th

Most of the bigger law firms have already realised that having a Web site is now more of a necessity than a luxury. Grainne Rothery speaks to some of those firms about their experiences with the Web and whether it has measured up to their expectations

All but one of the top five or six practices now have their own relatively elaborate Web sites, while a growing number of the smaller firms have sites ranging in size from single page offerings to multi-section areas with detailed information on various aspects of the law. Although some sites seem to succeed in actually generating new business, the driving forces behind developing them in the first place tend to be a desire to both provide a better overall service for existing clients and to portray the firm as modern and technologically aware.

'We are getting new business from the Web site – but that's not the main issue', says John Furlong, information officer at William Fry. 'For us, a very important aspect of the site is the ability to offer an extra service for our existing clients by providing them with easy access to the latest legal information. The site is also part of our overall image'.

Gerry Kilby, managing director of Web design company Equinox, concurs with this view. 'I would see a Web site as back-up for existing clients rather than as a direct marketing tool. That said, prospective clients can use a Web site to access background information on the firm. And it says a lot about any company that goes to the bother of putting a site up', he says.

Aine Maguire, marketing manager at A&L Goodbody, believes that having a Web site is fast becoming a pre-requisite for bigger law firms, particularly if they are dealing with overseas clients. 'Over the past year or so, there has been a marked increase in the traffic on our Web site and in the levels of business it has created', she says. 'There is significantly higher usage among our US and technical clients who would tend to look at the site without being prompted'.

McCann FitzGerald established its Web presence last December. 'We felt that it was quite important to have one, both to demonstrate that this is a modern firm and to provide an additional information resource for our clients', says Denise Kenny, director of business development. 'We get a lot of work from overseas clients and our traffic on the Web site is predominantly from the United States and the UK. We find it particularly useful for dealing with enquiries as we can refer people to the site and they can immediately access details about the firm'.

Kieran English, operations manager at Web development company Visunet, points out that people will access a Web site again and again if

ne Web

they feel that they're getting something new from it each time. 'People will return to the Web site, possibly even bookmark it, if you appear to be giving something away for free. This includes up-to-date information. In the long run, people will be more inclined to use a company if they access the Web site frequently and it has high quality information', he says. 'However, it's really the death of any Web site if exactly the same content appears month after month'.

Anne-Marie Brennan, marketing manager at Nua, another Web development company, also stresses the importance of changing the content on a site. 'It's vital that a Web site contains information that is changed on a regular basis', she says. 'If somebody accesses your site a second and third time within a couple of months and the information stays the same, they probably won't visit it again'.

'The Internet works very well when it becomes a resource. For example, we developed a Web site for an accountancy firm which includes a Euro calculator and a mortgage calculator', says Gerry Kilby. 'If you are giving something extra, it will attract more people to the site. Likewise, if the information is changed frequently, people will come back. On the downside, changing or adding to a Web site on a regular basis requires additional resources. For the average small solicitor, a brochure-type site is probably quite adequate'.

Size and quality

In Ireland, the size of a solicitors' practice is usually (but not always) reflected by the size and quality of its Web site. Larger practices tend to have multi-section sites with up-to-date news and detailed information on developments in Irish law. Smaller firms, meanwhile, generally opt for more basic sites which simply provide details of who they are and what they do.

The William Fry Web site (www.william fry.ie) is one of the larger and more sophisticated examples and was redesigned and relaunched at the end of April 1998, one year after its initial development. 'We've improved the quality of the information and the efficiency with which it's provided', says John Furlong.

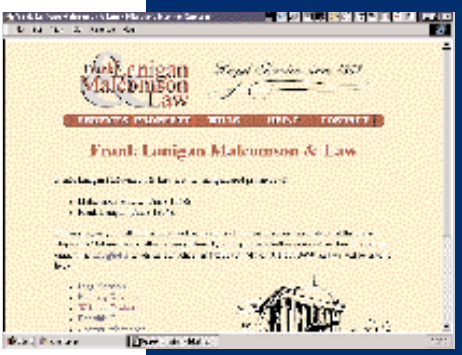
The site is divided into a number of different sections including *Company profile*, *Investing in Ireland*, *Specialist units and services*, *Irish legal news*, *Publications*, *Partner profiles*, *Contact us*, and *What's new*. *Irish legal news* is the area most likely to attract return visitors as

PLANNING A WEB SITE

According to the Web design experts, it's vital to have a clearly defined objective before starting to develop a Web site. 'The on-line company has to reflect the off-line company', says Anne Marie Brennan of Nua. 'Before developing a Web site, it's important to analyse the business structure and to know who the target audience is'. Nua has a three-step approach to developing its sites, which are normally large, high-budget projects. First of all, it assesses the company and holds workshops and training sessions to find out what is required of the site. Then it goes through the process of developing the site and setting up relevant links. 'The third phase allows for the evolution of the Web site', says Brennan. 'A Web site will grow and develop so it's important that the right tools are in place to allow this'.

Stephen Quinn, sales director of NSP, a Web design company currently working with a number of law firms, agrees that a firm must first define and establish clear objectives for what the Web site is trying to accomplish. 'It must be decided early on, for example, whether the Web site is there to generate new business, to raise the profile of the practice or to act as a new outlet for providing information to existing clients', he says. 'The design and development of the site is obviously vital. Many practices are now benefiting from foreign companies trying to source their legal representation in Ireland by investigating which law firms are contactable through the Internet. With this being the case, it is crucial that a Web site not only looks good, but is easy to use and informative'.

Kieran English of Visunet says that a Web site should be visually appealing and should deliver a message as quickly as possible. 'It may sound obvious, but there should be a clear and direct message on the first page stating what the company does', he says. 'It's also very important to promote the Web site properly as this will impact directly on its success'. English also stresses the need to keep it simple and to accommodate as many users as possible. 'Finally, it's vital to ensure that the developer either trains somebody within the firm to update the site or sets up a form for this purpose', he says.



It can cost anything from around £2,000 or £3,000 to develop a Web site. Kieran English estimates the minimum cost to be between £5,000 and £10,000 but says that it is possible to spend considerably more. Other estimates range between £5,000 and £30,000.

it contains up-to-date legal news stories, as well as an archive of information from the previous year. 'One of the problems with information on the Internet is that it's not always up-to-date. We've a policy of including the date when a piece of information is posted so people know exactly how recent it is', says Furlong.

The McCann FitzGerald site (www.mccann-fitzgerald.ie), meanwhile, includes such sections as *About us*, *Practice areas*, *Partners*, *Legal briefing*, *Ireland as a business location*, and *Contact us*. The *Legal briefing* section is further broken down into 15 or 16 areas such as corporate and commercial, personal injury, tax, employment, construction and intellectual property. Any news within these sections is dated, and a search engine has been set up to help navigate through the entire site. Denise Kelly says that approximately 75% of the information on the site remains the same and that the other 25% is modified and added to every fortnight. The *Legal briefing* section, for example, is constantly being changed and updated.

The A&L Goodbody Web site (www.algoodbody.ie) also has a search engine, as well as a site map with an overview of where everything on the site is located. Sections include *Doing business in Ireland*, *Partner profiles*, *Career opportunities*, *A&L news*, and *Internet law*, as well as welcoming pages in both French and German. The *Internet law* area has the latest details on changes to the law as well as topical information. 'This part of the site is constantly changing and is therefore of great interest to universities and in-house lawyers who would probably bookmark it', says Aine Maguire. 'We see this as a public information service rather than as an advertising tool'.

Matheson Ormbsby Prentice has divided its site (www.mop.ie) into *About us*, *Practice areas*, *MOP personnel*, *Overseas offices*, *Publications*, *What's new in MOP*, *Irish legal news*, and *Quarterly comment*. The latter contains briefings by partners and the summer edition included titles such as *Forum shopping: the enforcement of judgments in Europe*; *The National Pensions Policy Initiative: Pensions Board report*; and *The* Organisation of Working Time Act, 1997*: an update*.

Mason Hayes and Curran (www.mhc.ie) has a fairly extensive site with a range of different sections including *Corporate & commercial*, *Property*, *What's new*, *Commercial recoveries*, *Private clients*, *Arbitration*, and *Feedback form*. Unfortunately, however, there's no obvious reference to the date of the most recent change and the *What's new* section does not appear to have been updated during 1998.

Other sites, such as John Glynn & Co (www.tallaght.com) and Frank Lanigan Malcomson and Law (www.lowwwe.com/flml/), are aimed directly at prospective clients and contain information on the firms and the areas of the law with which they are concerned. Both of these sites have been designed so that they do not need to be updated on a regular basis. Many other Web sites contain very basic details about their respective firms and contact information. The latter usually only require an initial investment and annual payment to the company hosting the site. G

Grainne Rothery is a freelance journalist specialising in technology issues.

Webwatch

Law firms and the Internet

The battle to become the world's premier search engine intensified recently with the appearance of yet another such machine known as 'mama' (www.mama. com/). This engine actually searches a good number of other search engines and displays the results in a highly accessible format. Early tests were encouraging. Those with a more specific legal enquiry may wish to go directly to Ireland's Web directory for lawyers, Legal-Island (www.legal-island.demon.co.uk/). This contains numerous links to law firms and to legal databases – both free and fee-charging.

One law firm with a link in the directory is A&L Goodbody (www.algoodbody.ie/home.htm) which is likely to set the standard for other law firms to follow in Web design. The site also contains a useful section on Internet law which may be of interest to some practitioners. New to the web is Eiroline (www.eiro.eurofound.ie) which contains information and analysis on the most important events and issues in industrial relations in the 15 EU states. Information on the same subject with a definite domestic slant can be found at the Irish Congress of Trade Unions site (www.iol.ie/ictu/congress.htm), while the interests of management are well displayed on the Web pages of the Irish Management Institute (www.access.imi.ie/). Information on legal aid can be gained by carefully typing in the following web address (www.europa.eu.int/en/comm/spc/la/ir.html), while links to countless on-line newspapers both here and abroad can be found at (www.newslink.org/news.html). Commercial lawyers looking for information on the Web to assist their work would do well to start at the Web site for the International Centre for Commercial Law (www.occlaw.com/dev/ir-law.htm). This now

lists eight separate law firms in Ireland with Web pages containing information on various aspects of commercial law.

One example is provided by solicitors Gerrard, Scallan & O'Brien. Their guide to the *Working Time Act, 1997* is both well written and comprehensive, if now slightly out of date. A surprising number of Web users never change the default page on their browser. This means that when many people connect to the Internet the first page to download is Microsoft's or Netscape's home page. The On-line Spy page is far more interesting and useful (www.online-spy.com/index.htm/). On just one page you are given instant access to a top search engine, a site with a vast array of road maps, dictionaries and other research tools. Great stuff.

Meanwhile the popularity of LawLink (www.lawlink.ie/about.html) continues to grow – by 40 subscribers a month according to their Web site. LawLink offers two services: an on-line information system (with a somewhat limited databank of information) and a secure e-mail system approved by the Law Society.

The Irish Business and Employer's Confederation (IBEC) Web site (www.ibec.ie/core.htm) continues to improve. It now contains a live news service covering top business stories throughout the day as well as the usual guide to the services provided by IBEC. G

Mark Reid is a freelance journalist with a particular interest in the Web.

Council report

Report on Council meeting held on 16 July 1998

Payment by lending institutions for work done by borrowers' solicitors

The Council considered two counsels' opinions on the issue. It also heard the views of the Conveyancing Committee, as presented by Colm Price. Mr Price used the counsels' opinions to support the Conveyancing Committee's recommendation that the Society should not seek extra payment from lending institutions for the work done by solicitors in domestic conveyancing transactions because of the risk that this would unacceptably increase the liability of borrowers' solicitors. Following a debate, the Council agreed reluctantly that it was on balance in the best interest of the profession not to seek such an extra payment at this time. Mr Price emphasised the importance of all solicitors adhering rigidly to the agreement made between the Society and the lending institutions which, regrettably, some lending institutions were seeking to vary unilaterally.

Report of the Education Policy Review Group

The President welcomed the Report of the Education Policy Review Group, which had been circulated in advance of the meeting and which was formally presented to the Council by Donald Binchy, Chairman, and Bill Stokes, Group member. Donald Binchy noted the terms of reference of the group, that is, to consider:

a) Whether the Society's Law School required a new building and, if so, to make recommendations in relation thereto
b) Whether the professional and advanced courses required alteration and, if so, to make recommendations as to such alterations, and
c) The training and education of solicitors into the next century.

He highlighted the unanimous view of the group in favour of the continuation of the training of solicitors by the Society. He also noted the group's concerns regarding the pressures on the existing system and acknowledged the fact that its continuing success was attributable to the dedication and unstinting commitment of the members of the profession who contributed to the courses and to the Law School staff. A Coopers & Lybrand study, commissioned by the group, indicated that the average annual number of new apprentices until 2003 would be 350, reducing to 321 in 2004 and averaging at 292 from 2005 to 2010. The existing system had been expected to accommodate a maximum annual intake of 150. The group's recommendations for the future were based on the requirement to accommodate the maximum level predicted, that is, 350, while also dealing with the current backlogs. It was the view of 12 of the 14 members of the group that the Society should immediately construct a modern Law School building at Hendrick Place in accordance with the plans previously recommended by the Education Committee, with some modifications.

Mr Binchy reported that, having fully considered the professional and advanced courses, the group had recommended the establishment of a Curriculum Development Unit (CDU) to review and revise the course content on an on-going basis. The group also recommended an increase in the absorption time available to students and a restructuring of the courses so as to provide a mixture of lectures, tutorials and assignments. This would result in an increase in the duration of the professional course from four to six/seven months, with no anticipated increase in the length of the advanced course. The group also believed that there should be an appropriate increase in the number of suitably experienced lawyers employed as teachers on a full-time basis, with appropriate training being provided.

Mr Binchy referred to the financing proposal contained in the group's report and emphasised that it represented only one financing model, which was not designed to limit the Society to one course of action. The proposal suggested that the capital repayments on a £5 million ten-year building development loan should be funded by the profession by a specific allocation of between up to £100 a year as part of the practising certificate fee for the years 1999-2008, with the yearly interest forming part of the administration costs of the Law School to be funded out of course fees.

Mr Binchy noted that the group's report would be presented to the members in General Meeting and he hoped that it would receive the full support of the Society's Council.

The President complimented the group on its report and said that, in his view, its recommendations represented a challenge to the profession to re-establish the Law School in the premier position it held in previous years in legal professional training. It was a proposal which required the vision which had pertained in 1978, when the Law School had been established, and he regarded the implementation of the group's recommendations as central to the future of the solicitors' profession.

Orla Coyne expressed concerns regarding the formulation of the CDU, which she believed should include independent experts. She referred to an interim report, which had envisaged two professional courses being run in tandem, and asked whether this system could be introduced, prior to the development of a building and whether the interim report could also be circulated to members. Helen Sheehy queried the need for a new building and suggested that a study might be conducted on the investment of additional resources in the existing facilities. John Harte stressed the use to which the building would be put for the advancement of existing, as well as future, members of the profession. Philip Joyce emphasised the educational content of the group's report and urged that the Council would not lose sight of the primary reason for the review. John Costello welcomed the report and suggested that further consideration should be given to the arrangement of cheap student loans and an even greater increase in the level of facilities for students.

In response to queries from Peter Allen and Keenan Johnson, Review Group member Hugh O'Neill said that the group had considered a series of alternatives, including the investment of increased resources in the current facilities, outsourcing and renting and had concluded that the ultimate costs would be minimised by the proposed development. The proposal that two professional courses should be run in tandem was physically impossible, given the restrictions on facilities and the intolerable pressure this would put on consultants, tutors and the Law School staff. The group had consulted with Nottingham Law School on the concept of the CDU. Having spent 18 months examining the issue, he was firmly convinced that the

Continued on page 36

Committee reports

TAXATION

TAX BRIEFING

The following extracts from *Tax Briefing* (issue 31, April 1998) are reproduced by kind permission of the Revenue Commissioners.

Removal/relocation expenses: change in procedures

Change in procedure regarding advance Revenue clearance. *Statement of practice SP IT/1/91* set out the Revenue's practice in regard to certain removal/relocation expenses which were incurred by employees and reimbursed or borne by their employer. The statement outlined the expenses which could be reimbursed without giving rise to a charge to tax. One of the conditions governing the statement was that prior approval had to be obtained from the tax office before an employer could make qualifying payments free of tax.

With effect from April 1998, specific prior 'approval' by the Revenue will not now be required in respect of the removal/relocation expenses covered by this practice.

Removal/relocation expenses. It is an established principle under tax law that, where an employer pays or reimburses the personal expenses for an employee, the amount paid or reimbursed is to be treated as part of the employee's remuneration and taxed accordingly. In strictness this principle applies to payments made towards the costs incurred by an employee in moving house to take up employment at a new location.

However, it has long been accepted by the Revenue that the application of the principle to tax certain removal/relocation expenses should be relaxed in genuine cases of employees having to incur expenses to move to a new employment location and the payment made by the employer towards the expenses results in no net overall benefit to the employee.

Since 1991, the Revenue have accepted that the practice may be applied to similar payments made to or on behalf of an employee taking up employment with a new employer.

Conditions which must be satisfied. The conditions which must be satisfied to allow the removal/relocation expenses covered by this practice to be paid free of tax are as follows:

a) The reimbursement to the employee or payment directly by the employer must be in respect of removal/relocation expenses actually incurred
b) The expenses must be reasonable in amount
c) The payment of the expenses must be properly controlled
d) Moving house must be necessary in the circumstances.

Expenses covered by the practice. In general, the expenses which can be reimbursed without giving rise to a charge to tax would be those incurred directly as a result of the change of residence and would include:

- Auctioneer's and solicitor's fees and stamp duty arising from moving house
- Removal of furniture and effects
- Storage charges
- Insurance of furniture and effects in transit or in storage
- Cleaning stored furniture
- Travelling expenses on removal
- Temporary subsistence allowance while looking for accommodation at the new location (subject to a maximum of ten nights at the appropriate subsistence rate as per the schedule in *Leaflet IT54* on employees' subsistence expenses). The vouched rent of temporary accommodation for a period not exceeding three months (this may not be paid concurrently with the temporary subsistence referred to above).

With the exception of any temporary subsistence allowance, all payments must be matched with receipted expenditure. The amount reimbursed or borne by the employer may not exceed expenditure actually incurred. Any reimbursement of the capital cost of acquiring or building a house or any bridging loan interest or loans to finance such expenditure would be subject to tax.

In effect, payment free of tax is restricted to the reimbursement of actual outgoings of a revenue nature incurred at the time of the move.

Procedures being put on a self-assessment basis. In line with the Revenue's desire to ease the compliance burden on taxpayers, and following similar moves regarding employees' subsistence expenses, the procedures are being put on a self-assessment basis. With effect from April 1998, specific prior 'approval' by the Revenue will not now be required in respect of the removal/relocation expenses covered by this practice. However, please see below regarding the keeping of records and the auditing of these records.

Records to be kept: audit of records. All records relating to the removal/relocation expenses covered by these procedures should be retained by the employer and may be examined in the event of an audit. These records must be kept for six years unless an inspector of taxes indicates otherwise.

Share schemes: restricted shares

Shares acquired by employees on the exercise of options/rights and under other employee share offer schemes may be subject to a restriction or clog where disposal is prohibited for a number of years. The focus of this article is on such shares and is based on current practice. In it, we outline the Revenue's view on the market value of such shares at the date of acquisition, practice of abating the gain chargeable to income tax, and view on the base cost for capital gains tax purposes.

Market value at date of acquisition. Two issues arise as to whether or not shares with a prohibition on sale, and the same shares without a prohibition on sale, have the same market value for income tax purposes. It is our view that *a restriction on the sale of a share does not affect the market value of such a share***.**

Abatement of gain chargeable to income tax. The Revenue recognise that a restriction on the sale of shares could be said to reduce the benefit acquired by the individual, particularly, for exam-

ple, where the individual would like to dispose of the shares immediately but is prohibited. The Revenue are prepared, in cases where there is a genuine restriction, to allow the following % abatements on the gain chargeable to income tax:

No of years of restriction on sale	Abatement
One year	10%
Two years	20%
Three years	30%
Four years	40%
Five years	50%
Over five years	55%

EXAMPLE

Share offer granted/option exercised (short option*)	1/3/98
Subscription/exercise price	£4,000
Market value at 1/3/98	£5,000
Restriction on sale of share	Three years
Income tax: 1997/98	
Market value	£5,000
Price paid	£4,000
Gain	£1,000
Abatement (30%)	£300
Amount chargeable to income tax	£700

* Special rules apply to *long options/rights*, that is, those capable of being exercised later than seven years from the date of grant. In such cases, income tax is also chargeable at the date on which the option/right is granted. The amount chargeable at that date is the difference between the market value of the asset at the time the option/right is granted and the consideration for which the asset may be acquired. Any tax so charged can be deducted from any tax subsequently charged on the exercise, assignment or release of the option/right.

Base cost for capital gains tax purposes. Where an income tax abatement is given the base cost for capital gains tax purposes is as follows:

On the exercise of an option/right

- Cost of the option/right, if any, and
- Price paid for the shares on the exercise, and
- Any amount charged to income tax* (section 128(10), *Taxes Consolidation Act, 1997*).

Under other employee share offers where the benefit is assessable

- Price paid for the shares, and
- Any amount charged to income tax.*

* This is the abated amount, that is, in the above example, £700. Indexation is available by reference to the date expenditure is incurred. Where an amount charged to income tax forms part of the cost, that date is the date the tax is paid.

Alteration of terms. In cases where the original restriction on the sale of the shares is either removed or amended, the income tax charge will be amended to reflect such change. A similar adjustment will be made in cases where the shares are disposed of prior to the end of the clog period.

Requirements. Companies wishing to avail of the abatement should contact their local inspector of taxes. Any alteration to the terms of the grant/award, as mentioned in the previous paragraph, should also be notified to the inspector.

Details of all grants of options/rights, and allocations of shares under any options/rights must be made to the inspector not later than 30 days after the end of the tax year in accordance with section 128(11), *Taxes Consol-idation Act, 1997* on Form SO2. Details of other share awards should be included in Form P11D in accordance with section 897, *Taxes Consolidation Act, 1997*.

Anti-avoidance. The prohibition on the disposal of shares must be for genuine commercial reasons and not simply used for the purpose of tax avoidance. The above practice will be subject to review and the Revenue reserve the right to amend or withdraw it.

SADSI

Free barbecue

A free barbecue with £1,500 worth of free drink is organised for 11 September in Blackhall Place. The barbecue will start at 6pm and will be followed by a disco. All apprentices are welcome.

SADSI Ball

The SADSI Ball took place on 4 July in Whites Hotel, Wexford, and was enjoyed by all. The committee would like to thank the following sponsors for their generous support: Guinness, Cork Dry Gin, Matheson Ormsby Prentice, A&L Goodbody, William Fry, Hayes & Sons, Arthur Cox, Van Den Bergh Foods, Rochford Brady, Cannon Concrete Products, McCann FitzGerald, Whitney Moore & Keller, O'Rourke Reid & Co, Hibernian Legal, Mason Hayes & Curran, LK Shields, Oddbins, Molloys Liquor Stores, Galway Real Estate, Ellis & Ellis Patton, Allied Legal Services, Binchys, Gowan Group, Nestlé Ireland, Originate Limited, Doyle Court Reporters, Matthew Molloy & Co, Irish Building Chemicals, Irish Cement Limited, Eugene F Collins, Castletown Press Limited, Umbro Ireland, Coopers Restaurant, and Lennon Heather & Co.

Debating

The Society hopes to enter a number of teams in the upcoming intervarsity competitions such as the *Irish Times* and *Observer Mace*. Any apprentices interested in participating should contact John Cahir, c/o the Law Society.

YOUNGER MEMBERS

The Annual Soccer Blitz on 27 June was an unqualified success despite the sterling efforts of the weather to thwart the entertainment. In between showers, 23 teams competed for the ultimate in football – the Younger Members' Seven-a-Side Trophy. In the end, the final pairing saw HJ Ward & Co take on last year's runners-up, Sherlocks. On this occasion, Sherlocks edged a keenly-fought final to take the cup which was presented to them by the President, Laurence K Shields. The occasion will also be remembered for a temporary merger between A&L Goodbody and McCann FitzGerald. I would like to take this opportunity to thank the President for his attendance and also Monika Leech, Seamus O Croinin, Gail O'Keeffe, John Cahir, Feargal Brennan and Jill Curran for their invaluable work in organising the event.

We have received a phenomenal response to our salary survey. So far we have a 38% response rate, which is excellent. We are now in the process of evaluating the data. This should be completed in the near future when we will be in a position to report on its findings. We believe it will make very interesting reading.

We will be running our annual Quiz Night at the end of October. Full details will be provided in the next issue of the *Gazette*.

Stuart Gilhooly, Chairman

PRACTICE NOTE

VAT: transfer of business as a going concern

The Taxation Committee would like to draw the attention of solicitors to situations where businesses and business assets are sold by one registered trader to another. In such situations, section 3(5)(b)(iii) of the *VAT Act, 1972* should be availed of. The Revenue Commissioners themselves have drawn this matter to the attention of practitioners through the TALC sub-committee on VAT and have explained that under the legislation they had no option but to resist claims for refunds of VAT which should not have been paid over and where the vendor has failed to account to them.

Example: An ethnic restaurant business was transferred to a purchaser who changed it to another style of restaurant. VAT was charged on the sale despite the exemption under the *VAT Act, 1972*, section 3. The vendor absconded without paying the VAT to the Revenue. The Revenue refused to allow the purchaser a refund of the VAT on the grounds that it should not have been paid in the first place.

The Revenue acknowledge that the VAT treatment of transfers of a business or a part of a business from one taxable person to another can be a difficult area and advise that persons in doubt should seek preclearance.

Taxation Committee

Annual Licensing Court checklist

The President of the District Court has advised the Litigation Committee that, in an effort to streamline the processing of applications, new procedures are to be introduced on an experimental basis. Checklists in respect of filing requirements and time limits for the full range of applications are set out hereunder.

CHECKLISTS

1. Clubs

i) Application signed by the chairman or secretary stating the name and object of the club and the address of the premises occupied by the club are lodged not less than 21 days before the Annual Licensing Court

ii) Two copies of the rules of the club

iii) List of names and addresses of the officials and committee of management or governing body

iv) List of members of the club

v) Statutory certificate of two Peace Commissioners (*not* Commissioners for Oaths)

vi) Declaration of service on the Fire Officer at least one month prior to the Licensing Court

vii) Copy of newspaper published not less than 21 days before the annual Licensing Court. The full page of the paper (including the date at the top) should be filed.

2. Restaurant certificates

i) Application, lodged not less than four days before Annual Licensing Court

ii) Declaration of service not less than ten days prior to the Annual Licensing Court on the Garda Superintendent.

3. Dance licences

i) Application lodged seven days before the court

ii) Declaration of service on:

a) The Garda Superintendent at least one month

b) The Fire Authority at least one month or such lesser period as they agree

c) The local authority at least one month

ii) Copy of newspaper published not less than one month before the court.

4. General exemptions order

i) Application lodged at least 48 hours before the court

ii) Declaration of service on the Garda Superintendent not less than seven days.

5. Music and singing licences

i) Application lodged not less than 14 days prior to the Annual Licensing Court

ii) Declaration of service on:

a) The Garda Superintendent not less than 14 days prior to the court

b) The Fire Authority not less than one month or such lesser period as they agree.

6. Confirmation of transfer

i) 21 days' notice of application lodged with the Licensing Office

ii) Declaration of service, 21 days' notice to the Superintendent Garda Síochána and one month to the Fire Office

iii) Original licence with *ad interim* transfer endorsed

iv) Newspaper published not less than 21 days or more than 35 days in the case of *on licences* and not less than two weeks and not more than four weeks in the case of *off licences.*

7. Objections

i) 21 days' notice to licence holder

ii) Ten days' notice to the Licensing Office

iii) Declaration of service.

The committee believes that adherence to the guidelines will operate in ease of the court, practitioners and clients.

Litigation Committee

Continued from page 33

group's recommendations represented the only way forward for the profession.

Ward McEllin said that full consideration would have to be given to the most tax-efficient method of financing the development proposal. Michael Irvine suggested that the matter should be deferred to enable further consideration of the financing and tax implications. Michael V O'Mahony said that the document was a report to the members and was being presented to the Council as part of an information process, rather than for amendment or endorsement. He noted that the delay of 18 months since the members had been presented with the initial Education Committee proposal had resulted in an increase in construction costs from £3.2 million to £5 million. Any postponement in the presentation of the report to the members would potentially increase the costs further.

The Director General said that the adoption of the report represented one of the most important decisions to be taken by the members for decades. He viewed the report's implementation as absolutely essential. The profession was being asked primarily to embrace a vision about the future of legal professional training. The construction of a building was secondary. From a cost point of view, moreover, he said that after many years of a hair-shirt policy on spending, the Society's general finances were in a strong position and the Compensation Fund was now protected by reserves and insurance for claims of up to £14 million. He believed that, in the absence of any massive new claims on the Society, the necessary investment in educational facilities could be made without any increase in the members' annual subscription. Bill Stokes said that, once the group had been presented with the projected intake figures, it was clear that a building had to be considered. The increasing numbers had resulted in the running of additional courses in an effort to deal with the demand, but it was now apparent that the increased level of intake was not going to abate. The increasing focus on CLE meant that the building would also benefit existing members.

The Council endorsed the group's report by 27 votes to 2 and agreed that the Special General Meeting should be held on Wednesday 23 September 1998 at 6.30pm.

Business plan

At the request of the President, the Director General outlined the contents of the two-year business plan, which had been circulated, and noted that it represented the first plan for the direction and management of the Society of which he was aware.

On behalf of the Council, the President complimented the Director General and his Senior Management Team on the plan and on their enthusiasm for achieving its objectives. He said that the plan had the Council's full support.

President of the CCBE

On behalf of the Council, the President warmly welcomed Michel Gout, President of the CCBE (the Combined Law Societies and Bars of Europe), who attended the meeting as an observer. Mr Gout addressed the Council on the current agenda for the CCBE, which included efforts to secure a reduction in VAT on legal services, issues relating to conflicts of interest and professional secrecy, MDPs, transnational legal practices and a review of their *Code of ethics*. G

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ACTS PASSED

Air Navigation and Transport (Amendment) Act, 1998
Number: 24/1998
Contents note: Provides for the setting up of Aer Rianta as a commercial State body; for the transfer of all of the Minister's assets at Dublin, Cork and Shannon airports to Aer Rianta and assigns to the company certain functions previously undertaken by the Minister in relation to the management and development of the three State airports. Amends the *Air Navigation and Transport Acts, 1936 to 1988*, the *Irish Aviation Authority Act, 1993*, and provides for related matters.
Date enacted: 5/7/1998
Commencement date: Commencement order/s to be made (per s1(3) of the Act).

Child Trafficking and Pornography Act, 1998
Number: 22/1998
Contents note: Prohibits trafficking in, or the use of, children for the purposes of their sexual exploitation and the production, dissemination, handling or possession of child pornography. Takes account of the *EU Joint action against trafficking in human beings and the sexual exploitation of children* and of art 34 of the *United Nations convention on the rights of the child* which influenced the text of the *Joint action*.
Date enacted: 29/6/1998
Commencement date: 29/7/1998 (per s1(2) of the Act).

Criminal Justice (Release of Prisoners) Act, 1998
Number: 36/1998
Contents note: Provides for the establishment of the Release of Prisoners Commission to advise the Minister for Justice, Equality and Law Reform with respect to the exercise of powers of release of prisoners or remission or commutation of sentences in the context of the *Agreement reached in the multi-party talks in Belfast* on 10/4/1998.
Date enacted: 13/7/1998
Commencement date: 23/7/1998 appointed as the establishment day for the Release of Prisoners Commission (per s2(1) of the Act).

Defence (Amendment) Act, 1998
Number: 31/1998
Contents note: Amends the *Defence Act, 1954* to give legislative effect to the reorganisation of the top-level structure of the Defence Forces.
Date enacted: 8/7/1998
Commencement date: Commencement order to be made (per s12(2) of the Act).

Economic and Monetary Union Act, 1998
Number: 38/1998
Contents note: Makes provision in relation to the introduction of the single currency, the Euro; provides for the design, issue and sale of commemorative legal tender coinage and provides for related matters.
Leg-implemented: Reg 974/98
Leg-implemented: Reg 1103/97
Date enacted: 13/7/1998
Commencement date: Commencement order/s to be made (per s1(2) of the Act). 28/7/1998 appointed for ss5, 6(2), 11(1), 12, 13, 20, 23, 27, 28 and 29 of the Act (per SI 279/1998).

Electoral (Amendment) (No 2) Act, 1998
Number: 19/1998
Contents note: Revises the Dáil constituencies in the light of the 1996 census of population and implements the recommendations contained in the Constituency Commission Report 1998. The Commission was established under part II of the *Electoral Act, 1997* to make a report in relation to the constituencies for the election of members to Dáil Éireann and to the European Parliament.
Date enacted: 16/6/1998
Commencement date: 16/6/1998 for all provisions except s 5(1) (Repeal of the *Electoral (Amendment) Act, 1995*) which will come into operation on the dissolution of Dáil Éireann that next occurs after the passing of this Act (per s 5(2) of the Act).

Employment Equality Act, 1998
Number: 21/1998
Contents note: Outlaws discrimination in employment on nine distinct grounds – sex, marital status, family status, sexual orientation, religion, age, disability, race and membership of the travelling community. Covers aspects of discrimination in employment: equal pay for work of equal value, access to employment, vocational training, conditions of employment, work experience, promotion and dismissal. Applies to employers in both the public and private sectors and to employment agencies, vocational training bodies, trade unions and professional bodies and to the publication of advertisements. Provides for a statutory office of Director of Equality Investigations to hear claims for redress in the event of discrimination. An Equality Authority is established under the Act (replacing the Employment Equality Agency) to promote equality on each of the nine grounds and to make available advice and to support the drive towards equal opportunities.
Leg-implemented: Dir 75/117
Leg-implemented: Dir 76/207
Date enacted: 18/6/1998
Commencement date: Various (see Act) and commencement order/s to be made (per s1(2) of the Act).

European Communities (Amendment) Act, 1998
Number: 25/1998
Contents note: Amends the *European Communities Act, 1972* to include provisions of the *Amsterdam treaty* which must be made part of the domestic law of the State in order to enable the State to ratify the *Amsterdam treaty*.
Date enacted: 6/7/1998
Commencement date: Commencement order to be made (per s2(3) of the Act).

Firearms (Temporary Provisions) Act, 1998
Number: 32/1998
Contents note: Provides for temporary measures to allow the Minister for Justice, Equality and Law Reform to continue to grant firearm certificates under section 3 of the *Firearms Act, 1925*, and the Minister for Arts, Heritage, Gaeltacht and the Islands to continue to grant hunting licences under section 29 of the *Wildlife Act, 1976* to persons not ordinarily resident in the State provided they fulfil certain conditions. Arises from a judgment of the High Court which precludes the Ministers from granting such certificates and licences.
Date enacted: 13/7/1998
Commencement date: 13/7/1998

Food Safety Authority of Ireland Act, 1998
Number: 29/1998
Contents note: Provides for the establishment of the Food Safety Authority of Ireland; amends the *Radiological Protection Act, 1991*, and provides for related matters.
Date enacted: 8/7/1998
Commencement date: Commencement order/s to be made for part IV (ss44-57); 8/7/1998 for other sections; establishment day order to be made for the establishment of the Food Safety Authority of Ireland.

Geneva Conventions (Amendment) Act, 1998
Number: 35/1998
Contents note: Enables effect to be given to the protocols additional to the *Geneva conventions* of 1949 done at Geneva on 10 June 1977 and for that purpose amends the *Geneva Conventions Act, 1962*, the *Red Cross Act, 1938*, s6(1), and the *Prisoners of War and Enemy Aliens Act, 1956.*
Date enacted: 13/7/1998
Commencement date: Commencement order/s to be made (per s18(5) of the Act).

Housing (Traveller Accommodation) Act, 1998
Number: 33/1998
Contents note: Amends and extends the *Housing Acts, 1966 to 1997*, the *Local Government (Planning and Development) Acts, 1963 to 1993*, the *Local Government Act, 1991*, to make provision for the accommodation needs of travellers; provides for the appointment of a National Traveller Accommodation Consultative Committee and local traveller accommodation consultative committees and for related matters.
Date enacted: 13/7/1998
Commencement date: Commencement order/s to be made (per s1(4) of the Act).

Industrial Development (Enterprise Ireland) Act, 1998
Number: 34/1998
Contents note: Establishes a new industrial development agency of Forfás to be known as Enterprise Ireland, through the amalgamation and restructuring of Forbairt, An Bord Tráchtála and certain elements of the services to business function of FÁS; consequentially, provides for the dissolution of Forbairt and An Bord Tráchtála. Also provides for the transfer of the metrology functions currently exercised by Forbairt to the National Standards Authority of

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Ireland. Amends the *Industrial Development Acts, 1986 to 1995*, the *Shannon Free Airport Development Company Ltd (Amendment) Act, 1986*, the *Metrology Act, 1996*, and the *National Standards Authority of Ireland Act, 1996.*
Date enacted: 13/7/1998
Commencement date: 23/7/1998 appointed as the establishment day for Enterprise Ireland (per SI 252/1998).

Intellectual Property (Miscellaneous Provisions) Act, 1998
Number: 28/1998
Contents note: Amends the *Copyright Act, 1963*, s26, to strengthen presumptions in favour of rightsholders taking civil actions on foot of copyright infringements; and amends the *Copyright Act, 1963*, s27, to increase the levels of penalty for copyright offences and introduce indictable offences into copyright law.
Date enacted: 7/7/1998
Commencement date: 7/7/1998 for ss1, 2, 3 and 6; commencement order/s to be made for ss4 and 5 (per s6 of the Act).

Investor Compensation Act, 1998
Number: 37/1998
Contents note: Provides for the payment of compensation to clients of investment business firms, stock exchange member firms, credit institutions and insurance intermediaries ('investment firms') when an investment firm is unable to return money or investment instruments belonging to clients. Gives effect to the EU *Investor Compensation Directive*. Amends the *Insurance Act, 1989*, the *Solicitors (Amendment) Act, 1994*, the *Stock Exchange Act, 1995* and the *Investment Intermediaries Act, 1995.*
Leg-implemented: Dir 97/9
Date enacted: 13/7/1998
Commencement date: 1/8/1998 (per SI 266/1998).

Merchant Shipping (Miscellaneous Provisions) Act, 1998
Number: 20/1998
Contents note: Amends the *Conspiracy and Protection of Property Act 1875* and the *Merchant Shipping Act 1894* in order to repeal and amend out of date penal provisions in general maritime law to reflect International Labour Organisation conventions and the Council of Europe's *Social charter*. Amends the *Mercantile Marine Act, 1955* to bring Irish law on registration of ships and recreational craft into line with the requirements of the European treaties. Amends the *Merchant Shipping Act, 1992* in regard to licensing of small passenger ferries. Amends section 680 of the *Merchant Shipping Act 1894* to bring penalties provided thereunder into line with present-day norms.
Date enacted: 16/6/1998
Commencement date: 16/6/1998

Parental Leave Act, 1998
Number: 30/1998
Date enacted: 8/7/1998
Commencement date: 3/12/1998 (per s1(2) of the Act).
Contents note: Provides for a new entitlement for men and women to avail of unpaid parental leave to enable them to take care of their young children. Gives effect to Council Directive 96/34/EC of 3 June 1996 on the *Framework agreement on parental leave* concluded by UNICE (Union of Industrial and Employers' Confederation of Europe), CEEP (European Centre of Public Enterprises) and the ETUC (European Trade Union Confederation). Additionally, in line with the terms of the directive, the Act contains provision for limited leave for employees for family crises – to be known as *force majeure* leave – which will be paid by employers.
Leg-implemented: Dir 96/34
Date enacted: 8/7/1998
Commencement date: 3/12/1998 (per s1(2) of the Act).

Roads (Amendment) Act, 1998
Number: 23/1998
Date enacted: 1/7/1998
Commencement date: 1/7/1998
Contents note: Amends and extends the *Roads Act, 1993* and the *Transport (Dublin Light Rail) Act, 1996* to provide for the compulsory acquisition of substrata of lands for the construction and maintenance of a road tunnel, and a light rail tunnel should this be necessary.
Date enacted: 1/7/1998
Commencement date: 1/7/1998

Tribunals of Inquiry (Evidence) (Amendment) (No 2) Act, 1998
Number: 18/1998
Contents note: Amends the *Tribunals of Inquiry (Evidence) Acts 1921 to 1998* to enable the Houses of the Oireachtas to resolve to change the terms of reference of a tribunal to which these Acts apply, subject to the consent of the tribunal.
Date enacted: 12/6/1998
Commencement date: 12/6/1998

Turf Development Act, 1998
Number: 26/1998
Contents note: Provides for the conversion of Bord na Móna from a statutory operation, as established under the *Turf Development Act, 1946*, into a public limited company under the *Companies Acts, 1963 to 1990* and provides for related matters.
Date enacted: 7/7/1998
Commencement date: 7/7/1998; vesting day order for Bord na Móna plc to be made (per s6 of the Act)

Urban Renewal Act, 1998
Number: 27/1998
Contents note: Provides a framework for a new urban renewal scheme involving the preparation by local authorities, or companies authorised by them, of integrated area plans for the socio-economic and physical renewal of urban areas within their functional areas and the submission of such plans to the Minister for the Environment and Local Government. Provides for recommendations on the basis of such integrated area plans in relation to the application of the urban renewal reliefs provided for under chapter 7, part X of the *Taxes Consolidation Act, 1997*. Provides for the remission of rates within areas to which such plans relate. Confers certain functions on the Dublin Docklands Development Authority. Enables grants to be made to local authorities and certain other bodies for the purposes of urban and village renewal and certain conservation purposes and provides for related matters.
Date enacted: 7/7/1998
Commencement date: 1/5/1997 for ss1-8 (per s2(2) of the Act); 1/2/1998 for s13 (per s2(3) of the Act); 28/5/1998 for ss18 and 20(2) (per s2(4) of the Act); commencement order to be made for s20(1) (per s2(5) of the Act); 29/7/1998 for ss9-12, 14-17 (per SI 271/1998); commencement order/s to be made for remaining sections (per s2(1) of the Act).

SELECTED STATUTORY INSTRUMENTS

Aquaculture (Licence Application) Regulations 1998
Number: SI 236/1998
Commencement date: 30/6/1998
Contents note: Establish procedures in relation to the making of applications for aquaculture licences and trial licences, including provisions for public notice and consultation, and also procedures for renewal and review of aquaculture licences, under the *Fisheries (Amendment) Act, 1997.*

Aquaculture (Licence Application and Licence Fees) Regulations 1998
Number: SI 270/1998
Commencement date: 14/7/1998
Contents note: Prescribes the fees payable in respect of applications for, and the grant of aquaculture licences under, the *Fisheries (Amendment) Act, 1997.*

Aquaculture (Licences Appeals Board) Establishment) Order 1998
Number: SI 204/1998
Contents note: Appoints 17 June 1998 as the establishment date for the Aquaculture Licences Appeals Board.

Decommissioning Act, 1997 *(Decommissioning) Regulations 1998*
Number: SI 216/1998
Commencement date: 30/6/1998 – 22/5/2000
Contents note: Provides for the decommissioning of arms and for the functions of the Independent International Commission in relation to such decommissioning in accordance with ss2 and 4(2)(g) of the *Decommissioning Act, 1997*

Decommissioning Act, 1997 *(Sections 5 and 6) (Commencement) Order 1998*
Number: SI 215/1998
Contents note: Appoints 30/6/1998 as the commencement date for sections 5 and 6 of the Act.

District Court (Domestic Violence) Rules 1998
Number: SI 201/1998
Commencement date: 26/6/1998
Contents note: Substitutes a new Form No 59.6, which prescribes an amended form of interim barring

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order, in Schedule C to the *District Court Rules 1997* (SI 93/1997).

European Communities (Full Competition in Telecommunications) Regulations 1998
Number: SI 180/1998
Commencement date: 1/12/1998
Contents note: Gives legal effect to Council Directive 96/19/EC of 13/3/1996 amending Directive 90/388/EEC with regard to the implementation of full competition in telecommunications markets, with effect from 1 December 1998.

Finance Act, 1998 *(Commencement of Section 90) Order 1998*
Number: SI 206/1998
Contents note: Appoints 1/7/1998 as the commencement date for section 90 of the *Finance Act, 1998* – relating to the expansion of the excise definition of a motor vehicle to include a 'trailer' and to the inclusion of a definition of 'fuel tank'.

Fisheries (Amendment) Act, 1997 *(Commencement) (No 2) Order 1998*
Number: SI 203/1998
Contents note: Appoints 16/6/1998 as the commencement date for ss19, 22, 24-39, 68 and 70 of the Act; appoints 30/6/1998 for the remainder of the Act which was not commenced by SI 46/1998, but excluding ss11 and 13.

Investor Compensation Act, 1998 *(Prescription of Bodies) Regulations 1998*
Number: SI 280/1998
Commencement date: 1/8/1998
Contents note: Sets out the bodies representing the financial services industry who may nominate directors to the board of the Investor Compensation Company.

Professional Indemnity Insurance (Amendment) Regulations 1998
Number: SI 209/1998
Commencement date: 1/1/1999
Contents note: Increases, with effect from 1/1/1999, the minimum level of solicitors professional indemnity insurance cover to £1,000,000 for each and every claim from the present level of £350,000 for each and every claim, as provided for in SI 312/1995.

Road Traffic (Immobilisation of Vehicles) Regulations 1998
Number: SI 247/1998
Commencement date: 20/7/1998
Contents note: Gives effect to s101B of the *Road Traffic Act, 1961* (as inserted by s9 of the *Dublin Transport Authority (Dissolution) Act, 1987*) which provides for the immobilisation of vehicles which are found to be parked on a public road in contravention of a prohibition or restriction under s35 or s36 of the *Road Traffic Act, 1994.*

Social Welfare Act, 1998 *(Section 18) (Commencement) Order 1998*
Number: SI 255/1998
Contents note: Appoints 14/7/1998 as the commencement date for s18 of the Act (pre-retirement allowance).

Social Welfare Act, 1998 *(Section 21) (Commencement) Order 1998*
Number: SI 256/1998
Contents note: Appoints 14/7/1998 as the commencement date for s21 of the Act (backdating of claims for disablement benefit).

Social Welfare Act, 1997 *(Section 22(3)) (Commencement) Order 1998*
Number: SI 227/1998
Contents note: Appoints 3/6/1998 as the commencement date for section 22(3) of the Act (disability allowance).

Taxes Consolidation Act, 1997 *(Section 858) (Commencement) Order 1998*
Number: SI 212/1998
Contents note: Appoints 1/7/1998 as the commencement date for s858 of the Act (evidence of authorisation, by means of an identity card, of officers of the Revenue Commissioners who have been authorised to exercise functions, including powers and duties, under specified statutory provisions of the *Tax Acts*).

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ADMINISTRATIVE

***Oireachtas (Allowances to Members) and Ministerial, Parliamentary, Judicial and Court Offices (Amendment) Act, 1998* (No 5 of 1998)**

This Act was signed by the President on 1 April 1998.

Oireachtas allowances increased and expanded

A series of orders and regulations have been made, increasing the allowances payable to members of the Oireachtas.

Members of the Oireachtas and Ministerial and Parliamentary Offices (Allowances and Salaries) Order; *Houses of the Oireachtas (Members) Pensions (Amendment) Scheme 1998*; Oireachtas (Allowances to Members) and Ministerial, Parliamentary, Judicial and Court Offices (Amendment) Act, 1998 *(Allowances and Allocations) Order 1998; Houses of the Oireachtas (Members) Pensions Scheme (Additional Allowances) (Deduction of Contributions) Regulations*; *Oireachtas (Termination Allowances) (Amendment) Regulations 1998*; *Oireachtas (Allowances to Members) (Telephone and Postal Facilities) Regulations 1998*; and Oireachtas (Allowances to Members) and Ministerial, Parliamentary, Judicial and Court Offices (Amendment) Act, 1992 *(Allowances) (Amendment) Regulations* (SI Nos 74, 75, 94 and 97–100 of 1998)

***Minister for Arts, Heritage, Gaeltacht and the Islands (Powers and Functions) Act, 1998* (No 7 of 1998)**

This Act was signed by the President on 8 April 1998. (See (1998) 16 ILT 18.)

Appointment of District Court clerk upheld

- The principle outlined in the *Carltona* case was a common constitutional power and one which was capable of being negatived or confined by express statutory provision.

A summons was issued on 16 December 1996 by the notice party as the 'appropriate District Court clerk' summoning the applicant, who allegedly committed certain offences under the *Road Traffic Acts*, to appear before the District Court. The summons was challenged on the grounds that the notice party had not been validly appointed as a District Court clerk. The matter was adjourned in the District Court pending the determination of judicial review proceedings. The notice party had been an executive officer in the Department of the Environment and was a civil servant. Ms K was the personnel officer in the Department of Justice and was responsible for appointing District Court clerks. Mr S was responsible for assigning District Court clerks. On 5 December 1996, a document (signed by Ms K as 'an officer authorised in this behalf by the said Minister') appointed the notice party as a District Court clerk pursuant to s46(l) of the *Court Officers Act, 1926*. A further document dated 5 December 1996 assigned the notice party to specific District Court areas pursuant to s48(l) of the 1926 Act and was signed by Mr S. The fundamental issue for determination was whether or not the notice party had been appointed as a District Court clerk and assigned to the relevant District Court area on 16 December 1996. In the High Court, it was claimed, *inter alia*, by the applicant that the summons of the 16 December 1996 was invalid having regard to the fact that the notice party was not appointed by the Minister for Justice (the respondent) pursuant to s46(2) of the 1926 Act. The applicant submitted that a District Court clerk had to be appointed personally by the Minister and that this was not a ministerial power which was open to delegation. The respondent argued that the appointment of a District Court clerk was a matter in which a Minister may act through relevant officials without any personal input and relied on the *Carltona* principle (*Carltona Ltd v Commissioners of Works* [1943] 2 All ER 560). The core of the *Carltona* principle is that as a matter of statutory construction responsible officers may exercise some of the statutory powers of a Minister. The High Court found that the *Carltona* principle did not apply and held that the appointment of District Court clerks was an important statutory position which carried serious responsibilities and that the Minister 'must personally make the decision' to appoint a District Court clerk. The respondent appealed to the Supreme Court and the appeal was allowed.

Devanny v Shields (Supreme Court), 28 November 1997

***Courts Service Act, 1998* (No 8 of 1998)**

This Act was signed by the President on 16 April 1998. (See (1998) 16 ILT 2.)

ADOPTION

Adoption (No 2) Bill, 1996

This Bill has been passed by both Houses of the Oireachtas. (See (1996) 14 ILT 199.)

AGRICULTURAL

New measures to combat BSE etc

With effect from 16 March 1998, new regulations have given effect to Commission Decision 96/449 /EC (of 18 July 1996) which deals with heat treatment in the processing of animal protein with a view to the inactivation of spongiform encephalopathy agents.

European Communities (Processing of Mammalian Animal Waste) Regulations 1998 (SI No 62 of 1998)

BANKING

Central Bank Act, 1998 (No 2 of 1998)

This Act was signed by the President on 18 March 1998. (See (1998) 16 ILT 34.)

CHILDREN

Reporting child abuse Bill progresses

The *Children (Reporting of Alleged Abuse) Bill, 1998* has been changed to the *Protections for Persons Reporting Child Abuse Bill, 1998*. It has been amended in the Select Committee on Health and Children and been passed by Dáil Éireann. (See (1998) 16 ILT 66.)

Acquiescence in child abduction

- If acquiescence was passive, it depended on the circumstances in each case how long a period would elapse before the court would infer from such inactivity that the aggrieved party had accepted or acquiesced in the removal or retention.

The applicant applied, pursuant to the *Hague convention*, for an order returning his two young children, V and C, to England so that the English courts could determine the question of custody. The respondent, who was an Irish citizen, had returned to Ireland with the children after six years of marriage. In August 1996, she informed the applicant that she would not be returning to England. The applicant brought the application two months later. In refusing the relief sought, it was held that:

- It was not open to the respondent to argue that the children were now settled in their environment and that consequently the court was not obliged to make an order directing their return because such a defence only arose where the proceedings had been issued after a year had elapsed since the removal of the children
- Acquiescence meant acceptance and could be either active or passive. If passive, it depended on the circumstances in each case how long a period would elapse before the court would infer from such inactivity that the aggrieved party had accepted or acquiesced in the removal or retention
- The applicant had also made out a sufficient case for the court to conclude that there was a grave risk that the return of V would expose her at the very least to psychological harm to a substantial degree
- If an order for the return of V was to be refused, then *ipso facto* an order returning C should also be refused.

AS v PS (Geoghegan J), 20 November 1997

COMPETITION

Competition Authority decision re petrol retailers upheld

- The powers contained in s4(2) of the *Competition Act, 1991* were extensive and could involve the analysis of very complex questions of fact but the legislative bounds within which these powers must be exercised were clearly laid down and amounted to no more than the implementation of principles and policies contained on the statute itself.

The applicant was the licensee of a petrol filling station in Dublin. On 13 March 1992, the respondent, the Competition Authority, placed an advertisement in the newspapers announcing that it had received notification from Texaco Ltd of five different types of agreement for the supply of motor fuel. The applicant took no steps in relation to this notification. On 6 November, the respondent published a notice to the effect that it had received notification of, *inter alia*, a new licence agreement for Texaco (Ireland) Ltd Licensees. On 20 November, the applicant wrote to the respondent requesting material of the notification which had been advertised on 6 November. On 3 December, the respondent replied that details of a notification were confidential. On 11 December, a draft of the relevant category licence was made available to the applicant. He sought to quash a decision made by the respondent in July 1993 to grant a category licence under s4(2)(a) of the *Competition Act, 1991* and also made a claim against the Minister for Enterprise and Employment on the grounds that he failed to carry out a duty allegedly placed upon him to make regulations prescribing procedures to be followed by the respondent. The High Court found that the procedures adopted by the respondent were fair and reasonable. The applicant appealed to the Supreme Court. The appeal was dismissed.

Cronin v Competition Authority (Supreme Court), *27 November 1997*

CONSTITUTIONAL

Character and antecedents of juvenile in criminal case

- There was no constitutional prohibition on any other court considering the consistency of a pre-1937 law with the Constitution
- If, in appropriate proceedings, the District Court judge was faced with a conflict between a pre-1937 law and the Constitution, he was bound to give effect to the higher law, namely the Constitution, by disapplying the ordinary law.

Three questions were posed for the opinion of the High Court:

1. Whether the constitutionality of a pre-1937 law could form the basis of a case stated from the District Court to the High Court
2. Whether a District Court judge had the jurisdiction to entertain a challenge to the constitutional validity of a pre-1937 statute, and
3. Whether, if the answers to the first two questions were in the affirmative, the relevant provisions of s5(1) of the *Summary Jurisdiction Over Children (Ireland) Act 1884* were carried over in accordance with article 50 of the Constitution.

Section 5(1) of the 1884 Act provided for the summary trial of young persons charged with an indictable offence where the accused had been informed of his right to trial by jury. The court was also to have regard to the character and antecedents of the person charged. The judge expressed the concern that if he were to know the legal character and antecedents of the accused person that he might embark upon a trial in a prejudiced position. He also believed that the accused should be innocent until proved guilty, and that the tendering of evidence of character at such an early stage was a wholly inappropriate proceeding in the light of the terms of the Constitution. The applicant argued that s5(1) obligated a District Court judge in the case of a young person only to consider the character and antecedents of the person charged when deciding if the offence was fit to be tried summarily. As no such requirement was made under the *Criminal Justice Act, 1951*, young persons were been treated unequally in that regard. The three questions posed were answered in the affirmative.

Director of Public Prosecutions v O'Neill (Smyth J), 24 September 1997

CRIMINAL LAW

Bail changes

Section 10 of the *Bail Act, 1997* has been brought into operation with effect from 2 June 1998. The section effects an amendment to s11 of the *Criminal Justice Act, 1984* which permits a court to regard the commission of offences while on bail as an aggravating factor deserving an increased sentence.

Bail Act, 1997 *(Section 10) (Commencement) Order 1998* (SI No 140 of 1998)

Taking of drunk-driving specimen in hospital

- A garda is not required to caution or inform a person that he remains at liberty and is free to go from hospital before that garda makes a requirement of such person in a hospital that he furnish a blood or urine specimen pursuant to statute, such person not having first been arrested by the garda for any offence
- The garda had a statutory right, once the defendant had arrived at the hospital, to require him to let a specimen be taken, which constituted a right to require the defendant to incriminate himself. When the Garda decided he was going to exercise his s15 powers, while the defendant was not under arrest, it would be misleading to say that he was free to leave the hospital. Once the request was made, the defendant was not free to go and would commit an offence if he tried to leave before giving the specimen
- It was illogical to suggest that a person should be given a chance to avoid the exercise by a garda of his statutory right to require a specimen.

The defendant was taken to hospital following an accident and was accompanied there by a garda who had observed the defendant at the scene of the accident. Having formed the view that he had consumed an intoxicant, he required the defendant to allow a blood or urine specimen be taken, pursuant to s15 of the *Road Traffic Act, 1994*. The High Court's opinion was sought, by way of consultative case stated, as to whether, before a garda makes a requirement of a person in a hospital that he furnish a blood or urine specimen pursuant to s15 of the 1994 Act, such person not having first been arrested by the garda for any offence, the garda is required to caution or inform such person that he remains at liberty and is free to go from hospital. The case was answered in the negative.

Director of Public Prosecutions v Elliott (McCracken J), 6 February 1997

Accused's statement not ruled inadmissible

- There is no basis in law for excluding a statement from evidence on the grounds that the person who made the statement was upset at the time it was made
- The only basis on which a statement could be ruled out of evidence was if it was a involuntary statement or if there had been oppressive circumstances surrounding the taking of it, or if there had been a breach of the *Judges' rules*, in which case it became a matter for the judge's discretion.

The applicant was convicted of the murder of a man with whom his wife was having a relationship. The applicant now appealed that conviction on the ground, *inter alia*, that the trial judge should have excluded a statement made by the applicant to the Garda Síochána while he was in custody. Leave to appeal was refused.

People (Director of Public Prosecutions) v Connolly (Court of Criminal Appeal), 14 April 1997

Examination of car two years after offence refused

- Some consideration had to be given to the innocent owner of the car where the deprivation of possession would seriously prejudice or inconvenience him.

The applicant sought to injunct the respondent against proceeding with a prosecution of him on the grounds that the respondent breached the principles of natural justice and in particular breached the provisions of the *Criminal Procedure Act, 1967*. The applicant had been accused of stealing a car and denied the charge, claiming that he had requested that the said car be examined, but no request was ever received by the Garda Síochána. The Gardaí contended that the first time they heard of such a request was nearly two years after the accident. On that basis, the applicant contended that he had been denied fairness of procedures. His application was refused.

Dutton v Director of Public Prosecutions (Flood J), 9 July 1997

Bail refused to convicted person

- The criteria that are relevant to pre-trial applications for bail are not the same as those that operate post-conviction.

The applicant was convicted of murder in the Central Criminal Court and applied for bail pending the hearing of the application for leave to appeal the conviction. Pursuant to s32 of the *Courts of Justice Act, 1924* (as amended by s3(6) of the *Criminal Procedure Act, 1993*) the court retains a wide discretion whether to grant or refuse bail in any instance. The applicant objected to the admissibility in evidence of the applicant's own verbal statement on the grounds that it was the fruit of a voice identification which had been ruled inadmissible, that the accused had not signed the statement, that there was an allegation of improper conduct by the Garda Síochána, and that the admission of such statement would mean editing the circumstances under which it was alleged to have occurred. In refusing the applicant bail, it was held that:

- The criteria relevant to pre-trial applications for bail are not the same as those that operate post-conviction
- A convicted person no longer enjoys the presumption of innocence
- The proper course was to take the statement as it stood with the presumption that must operate at that stage that all things were done regularly in the course of the trial
- In the absence of any contrary evidence, the admission was clear evidence on which a jury would be entitled to convict him of murder, and
- The State case, based upon the materials before the court, was such a strong one that in exercising its discretion, the court was not justified in admitting the applicant to bail at that stage.

People (Director of Public Prosecutions) v Sweetman (Court of Criminal Appeal), *ex tempore*, 23 July 1997

Division between criminal and child care issues underlined in juvenile matters

- There should be a clear division between criminal proceedings deciding the guilt or innocence of an accused and child care proceedings which provided for the general welfare and future care and custody of a child.

This matter came before the High Court by way of consultative case stated from the District Court in criminal proceedings against the defendant, who was 15 years old. The defendant was remanded in custody pending the reply. It emerged in the District Court that the defendant was the subject of a fit person order which remained in force and he had been committed to the care of the Eastern Health Board. As part of its order, the court directed the board to submit its proposals for a secure residential assessment to confirm a preliminary psychiatric diagnosis and a care programme for the defendant while he remained in the care of the board. It was claimed by the latter

that it did not have to submit to the court's order. The questions posed were answered as follows:

- It was clearly open to the District Court to raise the fitness to plead issue of his own motion, and in these circumstances it was correct in so doing
- To decide whether the defendant was fit to plead, or fit to elect for summary disposal or trial on indictment, the judge was entitled to seek information from the guardian board through an assessment carried out by the board.

The primary issue before the District Court was the guilt or innocence of the defendant, and, bearing in mind the constitutional right to a reasonably expeditious trial in due course of law, the District Court's order should be limited to an assessment to ascertain whether the defendant had the capacity to follow the proceedings and instruct his legal advisors.

The District Court was not entitled to make an order extending to diagnosis and the provision of a care programme for the defendant while in the board's care. In a criminal trial, where there was a clash between the general welfare rights and the rights specifically delineated by the Constitution as relevant to the trial of offences, the latter category should in general have priority and should prevail.

It was clear from s98 that the court could make orders against a guardian who had been required to attend before the court and such orders were binding on the guardian. The board was bound to carry out an assessment, if so ordered, as to whether the defendant had the capacity to follow proceedings and instruct legal advisors. Once the assessment was received, the District Court should complete the investigation into whether the defendant was fit to understand and follow the proceedings and to give real and valid instructions concerning the defence. If the conclusion was that the defendant was not so fit, the District Court had to decline to enter upon the criminal proceedings and should make no order of any description with regard to the further attendance or custody of the defendant.

Director of Public Prosecutions v Thornton (McGuinness J), 24 September 1997

Garda entry into dwelling permitted

- Whether an arrest was legal or not could only be relevant where proof of a valid arrest was an essential ingredient to ground a charge. The safeguarding of life and limb was more important than the inviolability of the dwelling of a citizen.

The defendants appealed to the Supreme Court from the High Court's judgment on a consultative case stated from the District Court, where the defendants appeared on a variety of charges relating to a disturbance outside a flat involving a large crowd hostile to those within. A garda entered the flat under a power he believed he possessed at common law, and the defendants were arrested. The garda's evidence was that he thought he had the right to enter the dwelling on the basis of the safety of the children in the flat and in the interests of the persons inside the flat, having regard to the attitude of the crowd outside. The defendant's solicitor applied for a direction on the basis that the entry was illegal and in breach of the defendant's constitutional rights, and that the arrests were unlawful. It was submitted that the Garda Síochána only have power to arrest without warrant in a person's home where there existed reasonable grounds for suspecting that the person had committed a felony or permission had been given by an appropriate person to enter the premises. Article 40.5 of the Constitution provides that the dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law. The appeal was dismissed.

Director of Public Prosecutions v Delaney (Supreme Court), 27 November 1997

DEFENCE FORCES

Courts-martial entitled to deal with matters of a minor nature

- The courts cannot dictate to the Army how it should conduct its affairs by deciding that a matter is so minor as not to require a court-martial.

The applicant appealed a verdict reached by a limited court-martial held on 19 October 1995. He had been found guilty of disobeying an order to present himself at a volleyball championship. The grounds of appeal were, *inter alia*, that there had not been a proper line of command as regards the request and that because the infraction was of such a minor nature it should have been dealt with as an administrative matter. The appeal was refused.

Re Sergeant Denis O'Mahoney (Courts-Martial Appeal Court), 24 February 1997

ELECTIONS

Electoral (Amendment) Act, 1998 (No 4 of 1998)

This Act was signed by the President on 31 March 1998.

Constituency boundaries to be revised

A Bill has been presented which seeks to revise the boundaries of Dáil constituencies in the light of the 1996 census of population and to implement the recommendations contained in the *Constituency Commission Report 1998*.

Electoral (Amendment) (No 2) Bill, 1998

EMPLOYMENT

Period of lay-off may exceed 26 weeks

- There was nothing in the redundancy and minimum notice legislation which established that a period of lay-off could not exceed 26 weeks.

The EAT determined that the defendant was entitled to a statutory redundancy payment, the amount to be fixed according to certain criteria, and a £250 compensatory payment in lieu of notice under the relevant statutory provisions. The plaintiff challenged that determination on a number of grounds, claiming that the tribunal erred in law. The plaintiff's appeal was dismissed.

An Post v McNeill (O'Sullivan J), 21 October 1997

ENVIRONMENTAL

Ban on smoky coals extended

With effect from 1 October 1998, the ban on the sale of non-smokeless solid fuels in certain areas of Dublin and Cork is amended, renewed and extended to cover certain areas of Arklow, Drogheda, Dundalk, Limerick and Wexford.

Air Pollution Act, 1987 *(Marketing, Sale and Distribution of Fuels) Regulations 1998* (SI No 118 of 1998)

Oil Pollution of the Sea (Civil Liability and Compensation) (Amendment) Act, 1998 (No 13 of 1998)

This Act has been signed by the President. It is brought into operation with effect from 16 May 1998 by the Oil Pollution of the Sea (Civil Liability and Compensation) (Amendment) Act, 1998 *(Commencement) Order 1998* (SI No 159 of 1998).

FISHERIES

Sentence for concealed hold upheld

On 3 April 1997, the applicant's vessel was boarded by the Irish naval services, whereupon it was found that there was a hidden compartment on the vessel where fish could be stored. The applicant was charged with failure to keep on board documents certified by a

competent authority containing correct drawings or descriptions of its fish rooms and he pleaded guilty in the Cork Circuit Court. He appealed against the sentence imposed upon him on the grounds that it was too severe in the circumstances as he had pleaded guilty and the judge should not have taken into account the possibility that the compartment would be used for undersized fish. The prosecution argued that the legislature took a 'most serious view' of this offence and there was a huge increase of the penalty applicable in 1994. In affirming the order of the Circuit Court, it was held that:

- The Circuit Court gave a substantial enough discount in the circumstances
- The applicant did not confess his guilt at the outset of the investigation
- It required good detective work to discover the cleverly-constructed compartment and the applicant had not much alternative but to plead guilty in the last analysis.

People (Director of Public Prosecutions) v Urresti (Court of Criminal Appeal), *ex tempore*, 28 July 1997

HEALTH AND SAFETY

Food hygiene rules tightened

With effect from 1 April 1998, these regulations give effect to Council Directives 93/43/EEC and 96/3/EC on the hygiene of foodstuffs. They include:

- An obligation on proprietors of food business to ensure that such businesses are operated in a hygienic way
- An obligation on proprietors to identify steps in the activities of their businesses which are critical to ensuring food safety and to ensure that adequate safety procedures are identified, implemented and reviewed
- Specifications covering premises overall, rooms where food is prepared, foodstuffs, transportation, equipment, food waste, water supply, personal hygiene and training
- Equivalent conditions governing the bulk transport by ship of liquid oils or fats, and
- A facility enabling the Minister for Health to approve *Guides to good hygiene practice* for voluntary use by food businesses as a guide to compliance with the regulations.

European Communities (Hygiene of Foodstuffs) Regulations 1998 (SI No 86 of 1998)

New waste management regime

A series of new regulations has been made which:

- Prescribe the day on or after which further classes of waste disposal and recovery activity require a waste licence in accordance with s39(1) of the *Waste Management Act, 1996*
- Specify methods of labelling and disposal of asbestos waste, batteries, accumulators, polychlorinated biphenyls (PCBs), waste oils and hazardous wastes generally
- Prescribe the day on or after which the collection of waste oils requires a waste collection permit
- Provide for the prosecution of offences and the making of waste management plans, and
- Amend certain provisions of the *Waste Management Act, 1996*.

Waste Management (Hazardous Waste) Regulations 1998; Waste Management (Licensing) (Amendment) Regulations 1998; Waste Management (Miscellaneous Provisions) Regulations 1998; Waste Management (Permit) Regulations 1998; and European Communities (*Amendment of Waste Management Act, 1996*) Regulations 1998 *(SI Nos 162–166 of 1998)*

HOUSING

Changes to mortgage allowances and grants

New regulations provide for:

- The payment of increased grants by the Minister for the Environment and Local Government in respect of the provision of assistance by housing authorities to approved housing bodies
- The introduction of a higher rate of grant for such accommodation provided in certain built-up areas and off-shore islands
- Increases in mortgage allowances payable to certain tenants and tenant purchasers of local authority houses, and
- Extension of entitlement to the allowances to tenants of approved housing bodies who surrender their tenancies.

Housing (Accommodation Provided by Approved Bodies) Regulations 1992 (Amendment) Regulations 1998 and *Housing (Mortgage Allowance) Regulations 1993 (Amendment) Regulations 1998* (SI Nos 151 and 153 of 1998)

More money for thatched roofs

These regulations increase the grant for the renewal or repair of a thatched roof to a maximum of £2,400 or, in the case of a house on certain specified islands, £3,600.

Housing (Improvement Grants) (Thatched Roofs) Regulations 1990 (Amendment) Regulations 1998 (SI No 150 of 1998)

INTELLECTUAL PROPERTY

Improvements for copyright holders

A Bill has been introduced which will, if passed:

- Strengthen the presumptions in favour of rightsholders taking civil actions on foot of copyright infringements
- Introduce indictable copyright offences for the first time, and
- Increase the penalties for copyright offences to a maximum, on indictment, of a fine of £100,000 and/or five years' imprisonment.

Copyright (Amendment) Bill, 1998

JUDICIARY

Revised salaries for judges

With effect from 1 April 1998, the levels of remuneration for judges are as follows:

- Chief Justice – £104,535
- President of the High Court – £94,132
- Supreme Court judge – £90,597
- High Court judge – £83,426
- President of the Circuit Court – £83,426
- Circuit Court judge – £65,650
- President of the District Court – £65,650, and
- District Court judge – £54,540.

Courts (Supplemental Provisions) Act, 1961 *(Section 46) Order 1998* (SI No 73 of 1998)

LEGAL PROFESSION

Solicitors' advertising rules

New legislation has been proposed which, *inter alia*, aims to:

- Prohibit most forms of advertising for personal injuries work by solicitors (other than the use of the words 'personal injuries' in an advertisement, without further elaboration
- Prohibit the placement of such advertisements in 'inappropriate locations', and
- Enable the Law Society to prohibit the advertisement of any fee or charge for a particular service.

Solicitors (Amendment) Bill, 1998

Fee increase for criminal legal aid

The fees payable for attendance in the District Court, appeals to the Circuit Court, visits to prisons and certain bail applications are to be raised as follows:

- 1% increase with effect from 1 January 1997
- 2.5% increase with effect from 1 April 1998, and
- 2.25% increase with effect from 1 July 1998.

Criminal Justice (Legal Aid) (Amendment) (No 2) Regulations 1998 (SI No 160 of 1998)

LICENSING

District Court rules changed

These rules amend o77 of the District Court rules in relation to the *ad interim* transfer of licences. The new rules came into effect on 28 April 1998.

District Court (Licensing) Rules 1998 (SI No 123 of 1998)

Consideration of additional material after statutory objection period not required

- Natural justice did not require the Minister in the present case to call for and consider additional material which came to hand after the relevant statutory period for objection had elapsed.

The applicants sought to quash an extraction licence granted by the respondent to the second-named notice party. The applicants sought the relief because the extraction of minerals from certain areas posed a threat to fish stocks which were the basis of their livelihood. Furthermore, the applicants alleged that the operation actually conducted by the second-named notice party was very different to that described in the Environmental Impact Statement to the degree that the applicants contended that the respondent's licence had been procured by a misrepresentation. The applicants also argued that the respondent failed to consider certain relevant material when he made his decision. They also relied on s19 of the *Foreshore Act, 1933* to contend that the respondent had the power to consider their objections despite the fact that the time limit for making such objections had expired. The applicants contended that the respondent should have used the power under s19 to publish a notice and to afford the applicants the opportunity to make representations and representations. The respondent's failure to do so vitiated the grant of the licence. The applicants further argued that the licence imposed a royalty payment which was the equivalent of a rent, and that s3(4) of the 1933 Act required the sanction of the Minister for Finance, which was not obtained. They relied on the judgment of Morris J in the case of *Lancefort Limited v An Bord Pleanála*, unreported, 6 June 1997, to support their case for having the requisite *locus standi*. In reply, the respondent contended that there was no evidence that the applicants had demonstrated a *bona fide* interest by work and effort analogous to that referred to by Morris J in the *Lancefort* case. The applicants also failed to support their contention that they would suffer irreparable loss due to the granting of any licence to the second-named notice party. As for requiring the consent of the Minister for Finance, the respondent argued that the reference in s3(4) was to rent alone, and did not include royalty. The application was dismissed.

Cobh Fishermen's Association Limited v Minister for the Marine and Natural Resources (O'Sullivan J), 29 August 1997

LOCAL GOVERNMENT

Local Government Bill, 1998

This Bill has been amended in the Select Committee on Environment and Local Government and passed by Dáil Éireann.

PLANNING AND DEVELOPMENT

Local Government (Planning and Development) Act, 1998 (No 9 of 1998)

This Act was signed into law by the President on 16 April 1998. (See (1998) 16 ILT 51.)

Roads (Amendment) Bill, 1997

This Bill has been passed by Dáil Éireann. (See (1998) 16 ILT 51.)

SOCIAL WELFARE

Social Welfare Act, 1998 (No 6 of 1998)

This Act was signed by the President on 1 April 1998. (See (1998) 16 ILT 100.)

TAXATION

Changes to stamp duty and rental income relief

Legislation has been passed giving effect to the Government announcement of 23 April 1998 to the effect that:

- Relief against rental income will no longer be available in respect of interest on borrowed money employed on or after the date of the announcement in the purchase, improvement or repair of residential premises (subject to three exemptions)
- Stamp duty on conveyances and leases is reduced where the consideration does not exceed £500,000, and
- Stamp duty is imposed on new residential property where the purchaser is an investor.

Finance (No 2) Bill, 1998

Tax relief on course fees

With effect from 31 March 1998, s476 of the *Taxes Consolidation Act, 1997* (formerly s8 of the *Finance Act, 1998*) comes into operation, giving relief for fees paid for certain training courses.

Taxes Consolidation Act, 1997 *(Section 476) (Commencement) Order 1998* (SI No 87 of 1998)

CGT multipliers for 1998/'99 released

In relation to disposals in the current tax year, the multipliers for the purposes of s556(2) of the *Taxes Consolidation Act, 1997* have been made available.

Capital Gains Tax (Multipliers) (1998-99) Regulations 1998 (SI No 110 of 1998)

Finance (No 2) Act, 1998 (No 15 of 1998)

This Act was signed by the President on 20 May 1998.

TORT

Army deafness report given statutory footing

A Bill has been introduced by the Minister for Defence and passed by both Houses of the Oireachtas which:

- Obliges courts to take judicial notice of a report to the Minister for Health and Children, published on 9 April 1998, entitled *Hearing disability assessment*, and
- Obliges courts to have regard to certain specific parts of the report when determining the extent of injuries suffered and assessing tinnitus, especially chapter 7, paragraph 1 and table 4 (which are scheduled to the Bill).

Civil Liability (Assessment of Hearing Injury) Bill, 1998

TRANSPORT

Merchant Shipping (Miscellaneous Provisions) Bill, 1997

This Bill has been amended in the Select Committee on Agriculture, Food and the Marine and passed by Dáil Éireann. (See (1998) 16 ILT 51.)

News from the EU and International Affairs Committee

Edited by TP Kennedy, Education Officer, Law Society

Public procurement rules amended

Two EU directives have recently been adopted, amending the public procurement rules: directive 97/52/EC (OJ L 328, 28.11.97), amending the works, supplies and services directives (directives 93/37, 93/36 and 92/50 respectively), and directive 98/4 (OJL 101, 1.4.98), amending the *Utilities Directive*, (directive 93/38). The object of the amending directives is to align the EU procurement procedures with those of the *World Trade Organisation agreement on government procurement* (GPA).

The EU, Canada, Israel, Japan, Korea, Norway, Switzerland and the US signed the GPA in April 1994 and the agreement came into force on 1 January 1996. The GPA marks a significant step in the liberalisation of international procurement markets; its scope of application is substantially broader than that of the pre-existing GATT procurement code of 1979 and covers an estimated IR£267 billion of government contracts. The GPA also benefits from enhanced enforcement mechanisms.

There are two basic principles underlying the GPA: 'national treatment', which prohibits discrimination between foreign and domestic sources, and 'most favoured nation', which prohibits discrimination between foreign sources. The agreement also prohibits discrimination between locally-established suppliers on the basis of either the degree of foreign ownership or the country of origin of the goods or services being supplied.

However, a significant limitation on the national treatment provision is that it is subject to a rule of reciprocity: a contracting state is only obliged to open up the procurement of a particular entity in a particular sector to signatories of the agreement who have made a similar commitment in the same sector. There are detailed notes and derogations to the obligations which each contracting party undertakes. In this respect, the GPA is essentially a series of bilateral agreements, albeit co-existing in a multilateral framework.

GPA thresholds and scope of application

The GPA applies to contracts awarded by EU regional and local public authorities and bodies governed by public law which meet the following thresholds (expressed in SDR, which are special drawing rights of the International Monetary Fund):

- Supply and service contracts of central government of over SDR 130,000 (IR£104,545)
- Supply and services contracts of local/regional government of over SDR 200,000 (IR£160,839)
- Supply and services contracts in the utilities sectors of over SDR 400,000 (IR£321,678)
- Works contracts of over SDR 5 million (IR£4,020,974).

Most GPA thresholds are slightly higher than those of the EC directives but, in the case of central government service contracts, they are significantly lower (IR£104,545 rather than IR £156,138).

Tendering procedures

The GPA requires transparency, non-discrimination, fairness and objectivity in the award of contracts. It sets out detailed rules regarding:

- The choice of procedure
- The use of technical specifications
- The qualification of tenderers
- The publication of contract notices
- The contents of tender documentation
- Time limits
- The receipt and opening of tenders, and
- The provision of information to unsuccessful tenderers.

It provides that the contract must be awarded to the tenderer who has been determined to be fully capable of undertaking the contract and whose tender is either the lowest tender or the tender which, in terms of the specific evaluation criteria set forth in the notices or tender documentation, is determined to be the most advantageous.

Enforcement

There is a two-tier remedy system under the GPA. Firstly, each signatory state must provide non-discriminatory, timely, transparent and effective bid-challenge mechanisms under national law, including rapid interim measures, the possibility of a decision on the justification of the challenge and either correction of the breach or compensation for loss and damages. Secondly, a slightly tailored version of the *WTO dispute settlement understanding* can be invoked.

Amendments to the EU directives

By virtue of Council Decision 94/800 (OJ No L 336, 23/12/1994), the GPA became an integral part of the Community legal order from the date of its entry into force; no implementation was therefore required for tenderers from third-country GPA states to rely on the agreement in order to gain access to EU public procurement markets.

Although the procedures under the GPA are very similar to those under the existing EU directives, in certain limited respects they are stricter. The GPA did not in any way affect the rights of EU tenderers to access the EU market. Therefore, to the extent that the GPA procedures are stricter than the procedures under existing EU directives, third-country GPA tenderers are actually granted greater rights of access to EU markets than those enjoyed by EU tenderers under the existing EU directives.

In light of this, two amending directives were adopted in order to ensure, firstly, that Community tenderers are not disadvantaged as

a result of the GPA and, secondly, that there is coherence between the two legal regimes. The Commission has emphasised that the implementation of the GPA will not constitute a unilateral opening of EU markets to companies from third countries and that the amendments introduced in order to implement the GPA do not create any additional rights for suppliers from third countries over and above those rights exclusively derived from the GPA. The recitals to the two amending directives affirm that the GPA does not have direct effect and that a contracting authority which has complied with the directives as amended will also have complied with its obligations under the GPA.

Other notable inclusions in the recitals to the amending directives are:

- The confirmation that it is implicit in the principles of Community law on public contracts that contracting authorities may seek or accept advice which may be used in the preparation of specifications for a particular procurement as long as such advice does not have the effect of precluding competition
- The commitment that the Commission shall make available to small and medium-sized undertakings the training and information materials they need to enable them to participate fully in the changed procurement market, and
- The affirmation in the directive amending the *Utilities Directive* that the amendments it effects shall not prejudice the equal treatment of contracting entities operating in the public and private sectors.

The principal amendments to the directives are as follows.

Scope of application. The directives provide that the GPA does not apply to certain specified categories of service contracts. They also provide that, unlike the *Utilities Directive*, the GPA is not applicable to entities which are neither public authorities nor public undertakings but which carry out one of the 'relevant activities' listed in article 2(2) of the *Utilities Directive* and which operate on the basis of special or exclusive rights granted by a competent authority of a Member State.

Thresholds. The amending directives will make the rules in relation to the applicable threshold considerably more complicated: different thresholds will be laid down for contracts covered by the GPA (expressed in SDR) and those not covered by the GPA (expressed in ECU). The value in ECU and in national currencies of the GPA thresholds (outlined above) are to be revised every two years with effect from 1 January 1996 and published in the *Official journal* at the beginning of the following November. The thresholds of contracts outside the scope of the GPA remain unchanged.

Information. Under the existing directives, there is an obligation on the contracting authority to inform any eliminated candidate or tenderer within 15 days of the date on which a written request is received (or, in the case of utilities, 'promptly') of the reasons for its rejection and, in the case of a tender, the name of the successful tenderer. The new directives extend the contractor's right to information significantly by obliging the contracting authority to inform any admissible tenderer of the relative advantages and characteristics of the tender selected. Information may, however, be withheld where its release would impede law enforcement or otherwise be contrary to the public interest or would prejudice either legitimate commercial interests or fair competition.

Minimum time limits. Both amending directives provide for a greater degree of flexibility in determining the time limit for receipt of tenders in the open procedure. Rather than being fixed at 36 days, the relevant period is stated to be one which is *'sufficiently long to permit responsive tendering'*. This, as a general rule, will be not less than 36 days and in any case not less than 22 days from the date on which the contract notice was dispatched to the *Official journal* provided that (1) a PIN notice was dispatched to the *Official journal* between 52 days and 12 months before dispatch of the contract notice and (2) the PIN notice contained as much of the information normally required for the contract notice as was available at the time.

The directive amending the *Public Sector Directive* also makes the reduction in the time limit for receipt of tenders in the restricted procedure from 37 days to 26 days where a PIN notice has been published subject to the two provisos regarding the PIN notice set out above.

The directive amending the *Utilities Directive* provides, in relation to the restricted procedure and, where applicable, the negotiated procedure with prior publication of a tender notice, that:

- The minimum time limit shall as a general rule be 37 days from the date of dispatch of the notice or invitation (rather than five weeks under the existing directive) but this may be reduced to ten days after publication in the *Official journal*
- In default of agreement between the contracting entity and selected candidates, the time limit for receipt of tenders shall be 24 days (rather than three weeks under the existing directive) and in any case it shall be not less than ten days from the invitation to tender.

Submission of requests to participate and tenders. The directive amending the *Utilities Directive* makes a small change regarding the submission of requests for participation by telegram, telex, fax, telephone or other electronic means: Member States now have a discretion rather than an obligation to require that such requests be confirmed by letter before expiry of the relevant time limit.

A more significant indicator of a move towards electronic tendering is the insertion into both the public sector and the utilities directives of a new provision that tenders may be submitted by means other than writing, directly or by post, where such other means are authorised by Member States and fulfil certain specified requirements.

Non-discrimination. Due to concerns regarding possible reverse discrimination, the directives provide that Member States must, in their relations with each

FURTHER DEVELOPMENTS IN ENVIRONMENTAL LAW

CLIMATE CHANGE

Another development, not referred to in *Environmental law developments* in the last issue (*Gazette*, July, page 38), was the signing of the *Kyoto protocol*. This was agreed on 11 December 1997. It is an internationally legally-binding agreement to address the global environmental problem for the post-2000 era. The Kyoto targets for emission reductions are modest: developing countries are obliged to achieve an overall 5.2% reduction in their greenhouse gas emissions from 1990 levels by 2008-2012, with lower targets for the USA, Japan and Canada. To attain the targets set, mechanisms have been established, such as the controversial 'emissions trading' whereby a country in danger of breaching its emission target for a given substance can 'purchase' extra emissions from another country, and 'carbon sinus' whereby a country can get credit for its processes or activities which produce a surplus of environmentally-friendly gases against emissions of environmentally-damaging gases. Much of the important detailed rules and procedures remain to be agreed. The protocol was signed by Rit Bjerrgaard of the Commission on behalf of the EU.

On 4 June 1998, the European Environment Agency published its report *Europe's environment: the second assessment*. It states that since 1990 carbon dioxide emissions from fossil fuel fell 3% in Western Europe and 19% in Eastern Europe, due mainly to changes in industry and a switch to gas as an energy source.

Deborah Spence is an associate with Dublin solicitors A&L Goodbody.

Certificate in Legal German
Certifikat Deutsch für Juristen

Law Society of Ireland

The Law Society is delighted to announce its first course in *LEGAL GERMAN* in co-operation with the Goethe-Institut Dublin. The course will commence in October 1998 and consists of two terms. At the end of the course, the participants may obtain a CERTIFICATE IN LEGAL GERMAN, awarded by the Goethe-Institut Dublin and the Law Society of Ireland as proof of linguistic proficiency in the legal field.

Course dates:
1st term 28.09.1998–30.01.1999
(two weeks Christmas break)
2nd term 08.02.1999–12.06.1999
(two weeks Easter break)

Course times: 18.00–18.45, 19.00–19.45
Two teaching units @ 45 minutes,
once per week

Venue: Goethe-Institut
Language Department
62 Fitzwilliam Square
Dublin 2

Participants: Solicitors, barristers, apprentice solicitors and others with a good knowledge of German

Staff: All teachers are native speakers, fully qualified and experienced.

Assessment: will take place on Wednesday, 23.09.1998, 18.00–20.00 or Thursday, 24.09.1998, 12.00–14.00.

Course aims:
On completion of the programme, successful participants will be in a position to conduct business ably and proficiently with German-speaking lawyers and business people. They will also have acquired an excellent knowledge and understanding of the German legal system. Practitioners will benefit from the application of their professional and language skills and apprentices will enhance their career prospects by undertaking the programme.

Course Contents: Studienfach Rechtswissenschaft
Grundrechte
Verfassungsgrundsätze
Staatsorgane
Verwaltungsaufbau
Gesetzgebung
Die Europäische Gemeinschaft
Die Organe der Europäischen Gemeinschaft
Zivilrecht
Rechtsanwaltspraxis
HGB Handelsgesetzbuch
Gewerblicher Rechtsschutz
Gerichtsbarkeit

Course material: Legal textbooks, law books, legal documents, videos, newspapers

Price: (6–13 participants) £500 each
(14–20 participants) £350 each

If you want to take part in the course, please fill in the attached pre-course language assessment application form (the assessment is free of charge).
If you have any further queries, please do not hesitate to contact Anna Rankin at 01 6618506.

CERTIFICATE IN LEGAL GERMAN
PRE-COURSE LANGUAGE ASSESSMENT APPLICATION FORM

Name: _____ Position: _____

Firm: _____

Address: _____

Telephone: _____ Fax: _____

I wish to apply for the pre-course language assessment on:

☐ Wednesday 23 September 18.00–20.00
OR
☐ Thursday 24 September 12.00–14.00

Signature: _____ Date: _____

The final date for receipt of application for language assessment is Monday 21 September 1998
Please return application form to: Anna Rankin, Goethe-Institut, Language Department, 62 Fitzwilliam Square, Dublin 2

other, apply conditions as favourable as those which they grant to third countries under the GPA. They also affirm, in respect of works and supplies contracts, that contracting authorities shall ensure that there is no discrimination between the various contractors (affirmations to this effect were already contained in the services and utilities directives).

Statistical reports. The amending directives require that extensive statistical reports on the award of public contracts be sent by Member States to the Commission each year.

Model notices. It is important to note that the model notices have been amended and that new sets of model notices are annexed to the two amending directives.

Additional amendments to the utilities directive. The directive amending the *Utilities Directive* lists the information to be given to candidates where a periodic indicative notice is being used as a call for competition and also provides in relation to qualification systems that entities establishing such systems must ensure that contractors may apply for qualification at any time.

Implementation

Ireland must transpose directive 97/52/EC into national law by 13 October 1998 and directive 98/4/EC by 16 February 1999.

The Commission is already considering the position which the EU should take at the three-year review of the GPA. It regards the current GPA rules as overly complicated, inflexible and difficult to enforce, and is advocating that the EU should take the initiative in the WTO negotiations to simplify and update the agreement. It is expected, however, that this position may meet with resistance from some Member States. G

Sarah Johnson is a solicitor with Lee McEvoy.

Gender discrimination in the Irish civil service

Hill & Stapleton v The Revenue Commissioners and the Department of Finance (Case 243/95), judgment of 17 June 1998. The Irish civil service introduced job sharing in 1984. Those sharing jobs are paid the same hourly rate as full-time workers and work half the number of hours. The scale of annual incremental salary increases for job-sharers are parallel to that for full-time workers. Each point on the job-sharers' scale corresponded to 50% of the point on the full-time scale. 98% of job-sharers in the civil service are female.

Ms Hill and Ms Stapleton are Irish civil servants who transferred from job sharing to full-time employment. At first, they were placed on the same point on the full-time incremental scale as they had been on under the job-sharers' scale. They were then reclassified at a lower point on the full-time scale on the basis that two years on the job-sharers' scale was equivalent to one year on the full-time scale. They challenged this reclassification. The case arose by way of a reference from the Labour Court to the European Court of Justice.

The Court of Justice held that job-sharing workers who transferred to full-time work were entitled to expect both the number of hours worked and the level of their pay to increase by 50%, unless a difference in treatment could be justified. As former job-sharers were paid less than twice their job-sharing salary, their hourly rate of pay as full-time workers was reduced. This meant that there was discrimination among full-time workers between those who previously job-shared and those whose employment history was full-time work.

The court took into account that the overwhelming majority of those employed as job-sharers were female. Therefore, female workers were being discriminated against, contrary to article 119 which guarantees gender equality in employment. The court found that this practice of the Irish civil service would be defensible only if there were objective factors justifying the difference of treatment, unrelated to gender discrimination. This was a question for the Labour Court to decide. G

Courses in Legal French

Law Society of Ireland

The Law Society and the Alliance Française are pleased to announce that the 4th ***Diploma in legal French*** programme will commence in January 1999. Also in 1999 for the first time, a **new** course, **at certificate level,** is being offered. Both courses will be taught by native French lawyers and lecturers. Certified by the Paris Chamber of Commerce, the diploma is a practical qualification which provides a comprehensive study of the French legal environment. The certificate will be awarded jointly by the Alliance Française and the Law Society and will be an introductory course for those who want to familiarise themselves with the French legal system.

Course participants
The courses are open to solicitors, barristers, apprentices and other interested parties.

Course content
Both courses are divided into legal French and general French modules.

CERTIFICATE LEVEL
The certificate course will provide an introduction to the French legal system, institutions, and civil law. There will be an emphasis on general French.
Course aims: The aim of this course is to provide a basic knowledge of French law and French legal terminology and to improve French language skills. It is an ideal preparation for those who would like to consider the diploma course at a later date.

DIPLOMA LEVEL
The diploma will provide in-depth courses in such areas as contract law, company law, property law and political and constitutional law.
Course aims: The aim of this course is that successful participants will be qualified to interact proficiently with French-speaking lawyers and business people. They will also have acquired an excellent knowledge and understanding of the French legal system.

Fee
The course fee per student is £475 (certificate) and £700 (diploma), inclusive of course materials.

Venue and timetable
Lectures will take place on Saturdays at the Law Society, Blackhall Place, Dublin 7. Programmes will begin in January 1999 and conclude in December 1999. There will be a summer break from end June to early September.

Entry criteria
Admission will be based on a pre-course language assessment which will take place on Friday 27 November 1998 at 6.30 p.m. and Saturday 28 November 1998 at 10.30 a.m. The assessment fee is £15.

Preparatory course
A preparatory course for those interested in taking the assessment examination will begin in September. Apart from improving general French, the course will highlight legal vocabulary and will include some sessions with legal French teachers. The course fee is £160 per person.

For further information, contact TP Kennedy at the Law Society (01 671 02 00) or Louise Stirling at the Alliance Française (01 676 71 16).

COURSES IN LEGAL FRENCH APPLICATION FORM

Name: _____ Qualification: _____

Firm: _____

Address: _____

Telephone: _____ Fax: _____

I wish to apply for ☐ Preparatory course ☐ Certificate* ☐ Diploma*
*I enclose £15 assessment fee (cheques made payable to Alliance Française)
I would like to be assessed on o Friday at 6.30pm o Saturday at 10.30am

Signature: _____ Date: _____

The final date for receipt of applications for language assessment is Monday 23 November 1998.
Please return application and cheque to: Louise Stirling, Alliance Française, 1 Kildare St, Dublin 2

Protection for pregnant women

In *Mary Brown v Rentokil* (C-147/95), judgment of 30 June 1998, the Court of Justice has held that dismissal of a woman at any time during her pregnancy for absences caused by illness resulting from that pregnancy is contrary to EC law (specifically directive 76/207 on equal treatment for men and women in employment).

Ms Brown was a driver employed by Rentokil, primarily to transport and change *Sanitact* units in shops and other centres. In August 1990, she informed Rentokil that she was pregnant. From 16 August, she was unable to work owing to difficulties with the pregnancy. Under Rentokil's employment contracts, if an employee was absent for illness for more then 26 weeks continuously, he/she would be dismissed. Relying on this rule, Rentokil dismissed Ms Brown with effect from 8 February 1991. Her child was born on 22 March 1991. An industrial tribunal dismissed her application. She appealed its ruling to the House of Lords. It made a reference to the Court of Justice seeking guidance on the EC rules concerning equal treatment for men and women.

Advocate General Ruiz-Jarabo Colomer, in his opinion, recommended a finding of gender discrimination, contrary to the directive. The contractual provision in question could not be relied on to justify such a dismissal.

The court ruled that dismissal of a female worker on account of pregnancy can affect only women and is therefore direct discrimination on grounds of sex. Pregnancy is a period during which complications may arise compelling a woman to undergo strict medical supervision and in some cases to absolute rest for some or all of the pregnancy. Such disorders form part of the inherent risks in the condition of pregnancy and are thus a specific feature of that condition.

The court had established in earlier decisions that protection against dismissal must be afforded to women throughout the period of maternity leave. It held that this principle of non-discrimination required similar protection throughout the period of pregnancy. Dismissal of a woman during pregnancy for absences due to incapacity for work arising from the pregnancy is linked to the occurrence of risks inherent in pregnancy. Such a dismissal can affect only women and is therefore direct discrimination on grounds of gender. G

RECENT DEVELOPMENTS IN EUROPEAN ENVIRONMENTAL LAW

CONSUMER LAW

The Council has reached final agreement on the directive on the sale of goods and associated guarantees. It provides for a minimum two-year guarantee for consumers for goods purchased in the EU. Consumers can opt to have faulty goods repaired or replaced or accept a price reduction or a refund. The Council has agreed to delay the introduction of the directive for three years after its final adoption. The directive has to be considered by the European Parliament before its formal adoption.

DAMAGES AGAINST MEMBER STATES

R v Secretary of State for Transport, ex parte Factortame (No 5), The Times, 28 April 1998. The Court of Appeal has given judgment in the above case, thereby drawing this long court saga to a close. The case initially concerned UK legislation providing that a vessel could only be registered as British if it was beneficially owned up to 75% by a British citizen or company. This legislation removed from the register a number of persons. A number of Spanish trawler owners challenged the legislation. The Court of Justice held that the legislation contravened articles 7 and 52 of the treaty. In later proceedings, in the same case, the court held that a Member State is required to make good any loss caused by a breach of EC law provided that the law infringed was intended to confer rights upon private persons, the breach was sufficiently serious, and that the loss suffered by the applicant was directly caused by the Member State's breach of its obligations. The Court of Appeal then had to apply these principles. The UK Secretary of State accepted that the legislation gave rise to individual rights. The court had to decide whether the breach of EC law was sufficiently serious. The court looked at the nature of the breach. It held that actual awareness or negligence on the part of the State was unnecessary. The court held that the breach by the UK was sufficiently serious to justify an award of damages. There had been a direct breach of one of the fundamental principles of the *Treaty of Rome* – the right of establishment. Thus, an award of damages was justified.

EMPLOYMENT

Clean Car Autoservice GesmbH v Landeshauptmann von Wien (Case 350/96), judgment of 7 May 1998. In 1995, Clean Car applied to the Vienna City Council to register as a service station. The application was refused, as the manager of the business was not resident in Austria. He was a German, resident in Germany. The Court of Justice held that this was a clear violation of Article 48 of the *EC treaty*. This article prevents Member States from providing that a business may not appoint as a manger a person not resident in that state. The court also held that article 48, which sets out the rule of equal treatment for migrant workers, can be relied upon by an employer to employ a national of another Member State.

FAMILY LAW

The *Brussels II convention on jurisdiction and the recognition and enforcement of judgments in matrimonial matters* was signed by the EU Member States on 8 June 1998. The convention sets out jurisdictional rules in family law cases. It will determine which court can hear particular applications, based on habitual residence, nationality or domicile. It applies to all civil proceedings relating to divorce, legal separation, annulment or parental responsibility.

LEGAL PROFESSION

The Commission has initiated proceedings against France. France requires lawyers from other Member States to become French lawyers, even where they wish to practice EC law, international law or the law of their home state. The Commission is challenging the examination in French law, which France requires such lawyers to sit. This examination may be contrary to the EC rules on establishment.

LITIGATION

Brussels convention

Drouot Assurances SA v Consolidate metallurgical Industries (CMI Industrial Sites), Protea Assurance and Groupement d'Intérêt Économique (GIE) Réunion Européenne (Case 351/96), judgment of 19 May 1998. The court held that an insurer and its insured will not be regarded as 'the same parties' under article 21 of the convention unless, in relation to the subject matter of the dispute, the interests of the insurer are identical to and indistinguishable from those of its insured. The case concerned two actions for contribution to general average – one brought by the insurer of a hull of a ship which had foundered against the owner and the insurer of the cargo which the ship was carrying when it sank, and the other brought by the insurer of the cargo and its owner against the owner and charterer of the ship. The issue was whether the two actions should be heard by the court first seised of the matter under article 21. Was the insurer of the hull to be deemed the same person as its insured?

The court held that for article 21 to apply the parties to the two actions should be identical. It said that there may be a degree of identity between the interests of an insurer and its insured that a judgment given against one of them would have the force of *res judicata* against the other. An instance would be where an insurer, by virtue of its right of subrogation, brought or defended an action in the name of its insured without the insured being in a position to influence the proceedings. This was not the case here.

MONEY LAUNDERING

The Commission has announced that it intends extending the scope of the *Money Laundering Directive* (in its second report [COM (1998) 401] on the implementation of the 1991 *Money Laundering Directive*). Article 12 of the 1991 directive obliges the reporting of suspicious transactions. It is proposed to extend the scope of this article to activities outside the financial services sector. This means extending it to professions such as solicitors and auctioneers. The Commission hopes to put forward a proposal for an amended directive before the end of the year.

European Law Healthcheck 1998

SATURDAY 17 OCTOBER 1998
LAW SOCIETY, BLACKHALL PLACE, DUBLIN 7

10.00-10.10 **REGISTRATION AND COFFEE**

10.10-10.50 **Money laundering and solicitors**
John Fish (Arthur Cox)

10.55-11.35 **The Euro – legal aspects**
Mark Ryan
(Whitney Moore & Keller)

Free movement of persons – recent developments
John Handoll (William Fry)

11.40-12.20 **Recent developments in employment law**
Gary Byrne
(BCM Hanby Wallace)

Milk quota regulations
Owen Binchy
(James Binchy & Son)

12.25-1.00 **SANDWICH LUNCH – Members' Lounge**

1.05-1.45 **Intellectual property update**
Wendy Hederman
(Mason Hayes & Curran)

Cross-border litigation
Roderick Bourke
(McCann FitzGerald)

1.50-2.30 **Recent developments in consumer law**
Sandra Delany
(William Fry)

Competition update
Denis Cagney
(Matheson Ormsby Prentice)

Organised by the EU and International Affairs Committee

APPLICATION FORM

Name: _____

Address: _____

Telephone: _____ Fax: _____

☐ Solicitor ☐ Apprentice ☐ Student ☐ Other _____ (Please tick as appropriate)

Signature: _____ Date: _____

Cheque/Money Order for £60 [£30 – apprentices/students] attached. Send to:
TP Kennedy, Legal Education Co-ordinator, Law Society of Ireland, Blackhall Place, Dublin 7

Parallel imports restricted

In *Silhouette International Schmied GmbH & Co v Hartlauer Handelsgesellschaft mbH* (C-355/96), judgment of 16 July, the Court of Justice has given a judgment that will limit parallel importation of products. It ruled that national rules providing for exhaustion of trade mark rights in respect of products put on the market outside the European Economic Area under that mark by the proprietor or with his consent are contrary to EU trade mark legislation. This means that retailers will be unable to purchase products in third countries, such as the USA, and sell them within the EU. English supermarkets, such as Tesco, had bought products cheaply in the USA and then sold them at a lower cost than the retail price of similar products in the EU. This decision has received much negative media coverage in the UK.

Silhouette is an Austrian company which produces high-quality spectacles which it sells worldwide. It uses the trade mark 'Silhouette', which is registered in Austria and other countries. In Austria, Silhouette supplies opticians with spectacles directly – in other states it sells them through subsidiary companies or distributors.

Hartlauer is an Austrian retailer known for its low prices. Silhouette decided not to deliver frames to Hartlauer. It refused as it argued that distribution by Hartlauer would be harmful to its high quality fashion image. In 1995, Silhouette sold 21,000 outmoded spectacle frames in Bulgaria. Hartlauer bought them and launched a press campaign, announcing that they would be put on sale in Austria. Silhouette brought an action for interim relief to retrain Hartlauer from offering the spectacle frames for sale under the Silhouette trade mark, where they had not been put on the market within the EEA.

At first instance, the action was dismissed. On appeal, a reference was made to the Court of Justice. The Austrian court asked whether national rules providing for exhaustion of trade mark rights in respect of products put on the market outside the EEA under that mark by the proprietor or with his consent are contrary to EC trade mark legislation.

The Court of Justice held that national rules providing for exhaustion of trade mark rights in respect of products put on the market outside the EEA under that mark by the proprietor or with his consent are contrary to EU trade mark legislation. EU trade mark legislation provides that exhaustion of the right conferred by a trade mark occurs only when the products have been put on the market in the EEA. This legislation provides for complete harmonisation of the rules relating to the rights conferred by a trade mark. Thus, Member States cannot provide in their domestic law for exhaustion of the right conferred by a trade mark in respect of goods put on the market in non-Member States. The court held that this was the only interpretation of the directive which ensured the purpose of the directive was achieved – the functioning of the internal market. Otherwise, Member States could differ in providing for exhaustion of trade mark rights – some opting for exhaustion when the goods were marketed in the EU and some for marketing anywhere. Differing rules would result in barriers to the free movement of goods and services.

Thus, the court held that the proprietor of a trade mark can retrain parallel imports from non-Member States of goods under his mark. G

Conferences and seminars

Academy of European Law
Topic: *Biotechnology and the protection of industrial property in the EU*
Date: 9 October
Venue: Paris, France
Contact: Tel: 0049 651 937370

AIJA (International Association of Young Lawyers)
Topic: *Annual congress*
Date: 20-25 September
Venue: Sydney, Australia
Contact: Gerard Coll (tel: 01 667 5111)

Topic: *Human rights*
Date: 23-24 October
Venue: Brussels, Belgium
Contact: Gerard Coll (tel: 01 667 5111)

British Chamber of Commerce in Belgium
Topic: *Vertical restraints: the next steps*
Date: 1 October
Venue: Brussels, Belgium
Contact: Valerie Echard (tel: 0032 2540 9030)

British Institute of International and Comparative Law
Topic: *Service abroad, exterritoriality and the proposed reform of RSC, order 11*
Date: 28 September
Venue: London, England
Contact: Valerie Echard (tel: 0044 171 323 2016)

Topic: *Transnational litigation: the use and abuse of anti-suit injunctions*
Date: 13 October
Venue: London, England
Contact: Valerie Echard (tel: 0044 171 323 2016)

Topic: *National judges and judges* ad hoc *of the International Court of Justice*
Date: 14 October
Venue: London, England
Contact: Valerie Echard (tel: 0044 171 323 2016)

Topic: *Recent developments in the international law relating to torture*
Date: 15 October
Venue: London, England
Contact: Valerie Echard (tel: 0044 171 323 2016)

Topic: *Pleading and proof of foreign law in UK courts*
Date: 23 October
Venue: London, England
Contact: Valerie Echard (tel: 0044 171 323 2016)

European Lawyers' Union (UAE)
Topic: *Annual congress: European transport*
Date: 8-9 October
Venue: Marseilles, France
Contact: Christian Roth (tel: 0033 145 046173)

Franco-British Lawyers' Society
Topic: *New areas of consumer law*
Date: 24-26 September
Venue: Paris, France
Contact: Anne Lise Pouliquen (tel: 0044 171 222 3860)

IBC
Topic: *Telecommunications and EC competition law*
Date: 24-25 September
Venue: Brussels, Belgium
Contact: Tel: 0044 171 453 5492

Topic: *EU vertical restraints reform*
Date: 13 October
Venue: Brussels, Belgium
Contact: Tel: 0044 171 453 5492

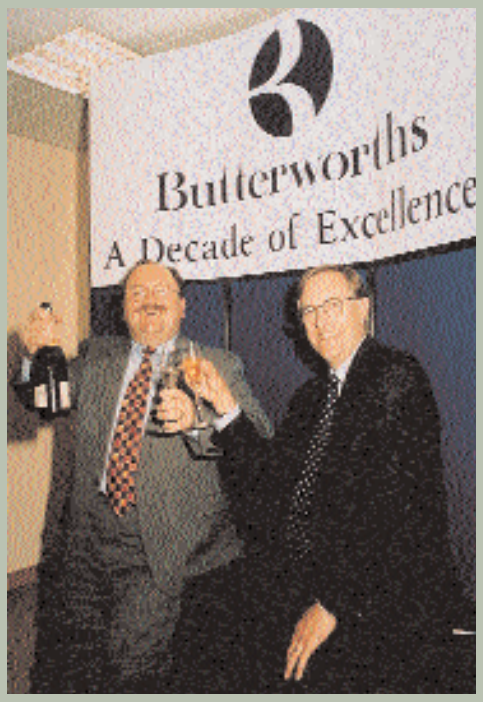
IIR
Topic: *Discovering the domestic legal responses to EC competition law*
Date: 14-15 October
Venue: London, England
Contact: Tel: 0044 171 915 5055

Topic: *Food industry: post-EMU*
Date: 27 October
Venue: London, England
Contact: Tel: 0044 171 915 5055

Law Society of Ireland
Topic: *European law healthcheck*
Date: 17 October
Venue: Blackhall Place, Dublin
Contact: TP Kennedy (tel: 01 6710200)

Society of Public Teachers of Law
Topic: *Human rights and legal traditions*
Date: 8-11 September
Venue: Manchester, England
Contact: Shirley Tiffany (0044 161 2757556)

Butterworths is ten years old



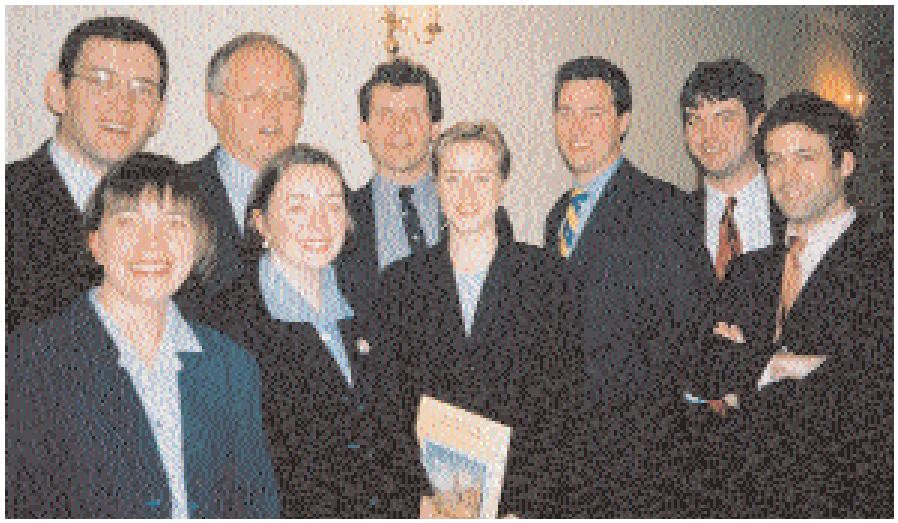
Celebrating ten years of publishing in Ireland: Gerry Coakley, Executive Director, Butterworths (left) and Professor John Wylie, author and director

In 1988, the legal profession in this country – particularly tax practitioners – pretty much had to rely on English text books for their needs. The situation has changed dramatically over the last decade, with Butterworths' list of Irish titles now totalling 50, made up of one-third taxation and two-thirds law. The Butterworths' library includes such leading titles as Keane's *Company law*, Wylie's *Irish land law* and Shatter's *Family law*. Next month will see the latest addition in the list, *Mareva injunctions and related interlocutory orders* by Thomas Courtney. The company recently produced its first CD-Rom, *Butterworths' Irish tax library* and plans to do the same on the legal side.

Polish lawyers from the Gdansk Bar Association recently joined the Law Society's advanced course students in studying commercial law. Pictured at a reception in Blackhall Place were (front row): TP Kennedy, Legal Education Co-ordinator, Law Society President Laurence K Shields, Polish Ambassador Januz Skolimowski, Law Society Senior Vice-President Pat O'Connor, and Director General Ken Murphy

TP Kennedy, Legal Education Co-ordinator (centre), pictured with a group of visiting French judges at a reception hosted by the EU and International Affairs Committee

Pictured at a dinner to mark the retirement of Cork County Council's Legal Assistant Maura Gleeson were *(l-r)* Peter O'Keeffe, retired Senior Executive Solicitor, Cork CC, Maura Gleeson, and Mary Roche, Cork County Solicitor



The Breda Young Bar association from Holland recently visited Blackhall Place. At a reception to mark the occasion were Gail O'Keeffe (Younger Members' Committee), Declan O'Sullivan (Society of Young Solicitors), Monika Leech (YMC), Paul Marren (EYBA), Erick Prillevitz (Breda Young Bar), Daniella Muller (Breda Young Bar), Olaf Happeren (Breda Young Bar), Stuart Gilhooly (YMC), and Barry Lyons (YMC)

Continuing their programme of visits to bar associations around the country, Law Society President Laurence K Shields and Director General Ken Murphy recently visited the Monaghan Bar Association (above), the Kerry Law Society (below), and the West Cork Bar Association (bottom)

European In-house Lawyers visit Blackhall Place

Colm Mannin (left) takes over from Philipe Marchandise as president of ECLA

The Law Society President Laurence K Shields hosted a dinner in Blackhall Place for the board members of ECLA, the association of in-house lawyers in Europe. The lawyers were in Dublin for their half-yearly meeting.

The President congratulated Colm Mannin on his election as President of ECLA. Colm was enrolled as a solicitor in Dublin but has been working in France for many years. He represented the *Association Française des Juristes d'Entreprise* (AFJE), so it was particularly appropriate that his election as President of ECLA should take place in the Law Society. He and Laurence K Shields took part together in many SADSI debates in the late 1960s. The evening was an opportunity for them to renew their acquaintance.

Society of Young Solicitors' international conference

An International Conference was hosted by the Society of Young Solicitors of Ireland in association with the Northern Ireland Young Solicitors Group and the European Young Bar Association at Hotel Dunloe Castle, Killarney, on 15-17 May.

The SYS and Northern Ireland Young Solicitors Group were pleased to host the AGM of the European Young Bar Association, and welcomed delegates from many European countries. The conference began with EYBA workshops on Friday 15 May. The lectures on Saturday were particularly interesting, and were delivered by solicitor Brian Sheridan, Group Law Agent, AIB plc, Tony McGlennon BL, Queens University, Belfast, and Brian Hutchinson BL, Associate Dean, Faculty of Law, UCD.

Mr Sheridan dealt with the Euro, and outlined the legal framework comprising the relevant treaty provisions and implementing legislation. The lecture walked us through the timetable for proposed introduction of the Euro, and substitution of the Euro for national currencies, as well as indicating some important provisions such as the continuity of contracts, determination of interest rates by using 'reference rates' and the impact of the Euro on a company's share capital.

Mr McGlennon's paper on post-traumatic stress disorder was particularly interesting to the delegates as it explained the diagnosis of post-traumatic stress disorder, from a medical point of view, which was of great benefit to the non-medics in the audience. Mr McGlennon took us through the law relating to nervous shock, and ended on a promising note when he suggested that research in the United States has recently indicated that there are clear neurochemical and pathological changes which are found among sufferers of post-traumatic stress disorder and which are not found in individuals suffering from other psychological and psychiatric disorders. Hopefully, this means that in the future it will be possible to biologically determine the presence or absence of a psychiatric injury in a claimant, which would have obvious benefits for the lawyers.

Mr Hutchinson's paper focused on the *Arbitration (International Commercial) Bill* of 1997, and also mentioned the new ICC *Rules of arbitration* which came into effect on 1 January 1998. The functions of the ICC Court of Arbitration were highlighted, and the benefit of including arbitration clauses was discussed, whereby the parties agree to refer disputes for resolution to be resolved under the ICC *Rules of arbitration* by arbitrators appointed in accordance with the *Rules*, and in accordance with ICC procedures. Mr Hutchinson urged all Irish lawyers to promote Ireland as a suitable venue for international arbitrations.

The Society of Young Solicitors wishes to acknowledge with thanks the generous sponsorship received from Behan & Associates, Doyle Court Reporters, Glennon Insurance Brokers and Rochford Brady, Law Searchers.

The next conference will be held in November 1998 in Galway.

Orla O'Dea

Pictured at the launch of the Law Society's Insurance Group Scheme were Dick Harnett, Group Area Sales Manager, Hibernian Group plc, Sinead Bourke, Investment Director, Irish Pensions Trust, Catherine Keating, Consultant, Solicitors Financial Services, and Cillian MacDomhnaill, the Law Society's Director of Finance and Administration

The proceeds of the recent production of *Trial by jury* were donated to charity. Accepting the cheques on behalf of the relevant charities are Tom Menton for the Solicitors' Benevolent Association, Judge Johnson for Temple Street Children's Hospital, and Maurice Gaffney for the Bar Benevolent Association. (Back row) Cast members Orla Coyne, Emile Daly, Judge Peter Kelly and Geraldine Clarke

At a recent CLE seminar on *Solicitors and the Euro* in the Law Society were (l-r) Mark Ryan, Whitney Moore & Keller, Law Society President Laurence K Shields, Bernadette McGrory-Farrell, Vice-President of the Institute of Certified Public Accountants in Ireland (and chairperson the Euro Working Party), and Michael Watson, Head of Bank of Ireland's EMU Unit

Apprentices exchange programme

As many of you are aware, the *Education and training regulations* provide at regulation 20 (b) that an apprentice, with the prior consent of the Education Committee and the master, be allowed to spend up to six months working in employment elsewhere than in the master's office if that employment is of benefit to the apprentice in the furtherance of his or her education and/or training and his or her preparation for admission to the solicitors' profession.

Not every apprentice wishes to avail of the opportunity provided by regulation 20(b) but some most certainly do and, with the consent of their masters, seek to find employment in an area not available to them in their master's office. This is not always easy and we are now offering assistance by way of the apprentices exchange programme.

When the apprentice secures a placement outside the master's office, the master may be left without a member of the firm who has begun to make him/herself rather useful, and the master may wish to fill the vacuum by taking on a replacement for the duration of the secondment period. The AEP will facilitate the master in finding this short-term replacement.

What about a master who because of working in-house or in a specialised area of the law has had a condition imposed upon him or her by the Law Society that they must find a placement in private practice for his or her apprentice at some stage during the 18-month in-office training? Again, the AEP is designed to ease the headache for the master in locating such a placement.

Those of you who are not currently acting as masters but who may be able to offer a short-term work placement to an apprentice which is to the advantage of both the apprentice and the office may also be interested in availing of the AEP

How does the AEP work?

The AEP is composed of two databases: the first is for masters/solicitors who are offering a placement to apprentices, and the second is for apprentices who are seeking a secondment period outside their own office.

A master/solicitor or apprentice may enrol on the appropriate database by filling out an application form and returning it to the Apprenticeship Officer at the Law School, Blackhall Place, Dublin 7.

When it is determined that the requirements of an office and an apprentice can be matched, the master/solicitor will be contacted by the Apprenticeship Officer and given the name and telephone number of the apprentice. It is then up to the master to make the contact and set up and carry out an interview process. When a decision has been made by the apprentice to accept an offer made by the master/solicitor, then the following must occur:

i) The Apprenticeship Officer must be contacted and informed of the situation

ii) An application must be made to the Education Committee for its consent to the arrangement. This application will be made by the Apprenticeship Officer on behalf of the apprentice and the master/solicitor.

The application must be supported by a letter of consent from the master of the apprentice, a letter of application from the apprentice, and a letter from the solicitor who is offering the secondment placement.

All enquiries should be addressed to the Apprenticeship Officer, Law School, Blackhall Place, Dublin 7.

MASTERS/SOLICITORS PLEASE NOTE

i) To avail of the AEP, you do not need to be a master or to become a master to the apprentice who comes to work in your office, *but* you do need to be at least five years qualified

ii) To avail of the AEP, you must be prepared to provide written confirmation of the time spent by the apprentice in your office and the work undertaken by that apprentice

iii) To avail of the AEP, you must undertake to pay to the apprentice at least the rates as recommended by the Law Society. These rate currently stand at £135 gross a week for the first six months following the professional course, £145 gross for the second six months, and £155 for the remaining six months.

APPRENTICES PLEASE NOTE

i) To avail of the AEP, you must be currently attending your professional course or have completed your professional course

ii) To avail of the AEP, you must have the consent of your master.

MASTERS/SOLICITORS AND APPRENTICES PLEASE NOTE

i) There is no fee charged for the AEP service

ii) There is no limitation on the amount of times a master may apply to the AEP. In the case of apprentices, the apprentice secondment period in total cannot exceed six months.

CLE conveyancing seminars

Some of the contributors to the recent series of CLE conveyancing seminars: (l-r) Brian Gallagher, Owen Binchy, Colm Price, Tom O'Connor, Ms Justice Mary Lafoy, Patrick Sweetman, Brid Brady and Barry Lysaght. The other contributors (not pictured) were Judge Catherine Murphy, John O'Connor and Terence Liston

Book review

Basic Community cases

Bernard Rudden and Diarmuid Rossa Phelan

Oxford University Press (1997), Great Clarendon Street, Oxford OX2 6DP, England. ISBN: 0-19-876439-1.
Price: stg£45 (hardback), stg£14.99 (paperback)

'The art of learning is to get as much benefit from as little study as possible.' Thus, the authors commence their preface. The preface to a book reveals much about the philosophy and style of the writer. The style of the authors is eminently pleasing. This book does not purport to be a comprehensive digest of European caselaw. The authors note that it is better to read intensively than extensively, hence only the seminal cases are considered.

The first edition of this book, published in 1987, was recognised as being the best collection of its kind. The pace of developments in EC/EU law warranted a revised edition with additional material relating to the EC/EU's constitutional structures, the internal market, and external relations.

The authors extract the essence of the judgment in each case. This is preceded by an introduction which follows a set pattern: the facts are summarised; the legal issues outlined; and finally the authors provide an analysis and guidance in relation to the implications of the case in the context of Community law.

Reading *Basic Community cases* is a privileged intellectual pleasure. One can only admire the industry and intellectual energy of the authors. Professor Bernard Rudden is Professor of Comparative Law at the University of Oxford; Dr Diarmuid Rossa Phelan is a barrister and Jean Monnet Lecturer in European Law at Trinity College, Dublin.

US Supreme Court Justice Oliver Wendell Holmes in one of his letters to Harold J Laski noted that he could not bring his conscience to skimming a book. He had to read every word. While engaged in the reading of a book, he wrote to Laski: 'You meantime will have eviscerated 100 pamphlets and skun six folios, and eaten x octavos, all en route for a *magnum opus*'. Dr Diarmuid Rossa Phelan has already produced a *magnum opus, Revolt or revolution: the Constitutional boundaries of the European Community*, one year before the completion of *Basic Community laws*. Professor Rudden's *Basic Community cases* is now in its sixth edition. The authors have eviscerated the many judgments, regulations and directives to produce this book on the new legal order.

Basic Community cases is a valuable source for the undergraduate, graduate and practitioner. Authoritative, comprehensive, innovative, beautifully written, the book contains a systematic survey in an attractive style of the significant cases of the new legal order that affects all our lives. G

Dr Eamonn Hall is Chief Legal Officer with Telecom Éireann plc.

JUST PUBLISHED

Banking law in the Republic of Ireland
John Breslin
Gill & Macmillan (1998), Goldenbridge, Inchicore, Dublin 8
ISBN: 0 7171 2373 1. Price: £150

Commercial secrecy: law and practice
John Hull
Sweet & Maxwell (1998), 100 Avenue Road, Swiss Cottage, London NW3 3PF, England
ISBN: 0421580402. Price: stg£85

Enforcement of intellectual property in European and international law
Christopher Wadlow
Sweet & Maxwell (1998), 100 Avenue Road, Swiss Cottage, London NW3 3PF, England
ISBN: 0 421 50160 X. Price: stg£120

The Irish courts guide
Bart D Daly
Inns Quay (1998), Richmond Business Campus, North Brunswick Street, Dublin 7
ISBN: 1 902354 00 1. Price: £12

WHERE THERE'S A WILL THIS IS THE WAY...

When a client makes a will in favour of the Society, it would be appreciated if the bequest were stated in the following words:

*"I give, devise and bequeath the sum of **X** pounds to the Irish Cancer Society Limited to be applied by it for any of its charitable objects, as it, at its absolute discretion, may decide."*

All monies received by the Society are expended within the Republic of Ireland.

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or
4b Arran Square, Dublin 7
Telephone: (01) 873 2378

LOST LAND CERTIFICATES

Registration of Title Act, 1964

An application has been received from the registered owners mentioned in the schedule hereto for the issue of a land certificate as stated to have been lost or inadvertently destroyed. A new certificate will be issued unless notification is received in the Registry within 28 days from the date of publication of this notice that the original certificate is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the certificate is being held.

(Register of Titles), Central Office, Land Registry, Chancery Street, Dublin
(Published 4 September 1998)

Regd owner: Seamus Snoddy, Blackbog Road, Carlow; Folio: 8096; Lands: Carlow; Area: 0.900 acres; **Co Carlow**

Regd owner: Valentine J and Ann P Browne, 1 Sandycove East, Dublin; Folio: 109F; Lands: Townland of Cloonlaheen Middle; Area: 0a 3r 9p; **Co Clare**

Regd owner: Thedore W Eckels; 101 O'Connell Street, Limerick; Folio: 5638; Lands: Townland of Clifden, Barony of Inchiquin; Area: 7a 2r 38p; **Co Clare**

Regd owner: Alice Quinn, Cappantymore, Meelick, Co Clare; Folio: 9253F; Lands: Townland of Cappateemore West, Barony of Bunratty Lower; Area: 2.569 Hectares; **Co Clare**

Regd owner: Shannon Free Airport Development Company Limited, Shannon Airport, Co Clare; Folio: 116F; Lands: Townland of Shantraud, Barony of Tulla Lower; Area: 1a 2r 10p; **Co Clare**

Regd owner: William Attridge; Folio: 8609; Lands: Property lands of Rossmore situate in the electoral division of Durrus West, Barony of Carberty West (West Division) and County of Cork; **Co Cork**

Regd owner: Edward Timothy Cronin; Folio: 2124; Lands: Property of the lands of Boherascrub West situate in the Barony of Orrery and Kilmore and County of Cork; **Co Cork**

Regd owner: Domnall Fleming and Ursula Egan; Folio: 42722F; Lands: Townland of Lisheens situate in the Barony of Muskerry East and County of Cork; **Co Cork**

Regd owner: Daniel and Nuala Linnane; Folio: 64834F; Lands: Property known as 48 The Woodlands, Old Cork Road, situate in the Urban District of Midleton and County Borough of Cork; **Co Cork**

Regd owner: Edward O'Connell; Folio: 32511F; Lands: Townland of Corbally North, East Division of Caherlag, situate in the Barony of Barrymore and County of Cork; **Co Cork**

Regd owner: John O'Keeffe (deceased); Folio: 59951F; Lands: Townland of Meentinny West in the Barony of Duhallow, County of Cork; **Co Cork**

Regd owner: John O'Keeffe (deceased); Folio: 59952F; Lands: Townland of Meentinny West in the Barony of Duhallow, County of Cork; **Co Cork**

Regd owner: Alan James Ward and Emily Margaret Mary Ward; Folio: 49652; Lands: Townland of Maughanaclea in the Barony of Bantry, Co Cork; **Co Cork**

Regd. owner: Parthalan O'Ceilleachair; Folio: 692L; Lands: Property situate on the East side of Allendale Avenue in the parish of St. Finbar's in the townland of Ballinaspig More and Barony of Cork; **Co Cork**

Regd owner: Philomena Ward; Folio: 6757F; Lands: Property situate in the Townland of Templemichael, Barony of Barrymore, County Cork; **Co Cork**

Regd owner: Christopher and Marion Waters; Folio: 23308F; Lands: Property part of the Townland of Knocknabohilly in the Barony of Cork; **Co Cork**

Regd owner: Aidan Whitty; Folio: 66393F; Lands: Property 8 The Maples, Passage West, Part of the Townland of Pembroke situate in the Barony of Kerrycurrihy, County Cork; **Co Cork**

Regd owner: Alexander Clarke, Lisminton, Ballintra; Folio: 22466; Lands: Derries; Area: 9a 1r 2p; **Co Donegal**

Regd owner: Noreen Gallagher, Cleenderry, Dungloe; Folio: 41640; Lands: No1 Cleenderry, No 2 Tievegarvlagh, No 3 Cleenderry; Area: 18.344 acres, 0.431 acres, 0.231 acres; **Co Donegal**

Regd owner: George Griffin, Hall Demesne, Mountcharles, Co Donegal also Clarloughеske, Donegal; Folio: 849F; Lands: Hall Demesne; Area: 1.756 acres; **Co Donegal**

Regd owner: Mary McConnell, Monellan, Killygordon, Co Donegal; Folio: 35944; Lands: Monellan; Area: 0a 1r 0p; **Co Donegal**

Regd owner: Patrick Ferguson (deceased) and Josie Ferguson of 688 Howth Road, Raheny, Dublin 5; Folio: 4935F; Lands: A plot of ground situate to the north side of Howth Road in the parish of Raheny, District of Raheny in the City of Dublin; **Co Dublin**

Regd owner: Caroline O'Reilly and Kieran Donovan of 21 Corbally Heath, Westbrook Glen, Tallaght, Dublin 24; Folio: 110763F; Lands: Townland of Corbally in the Barony of Uppercross; **Co Dublin**

Regd owner: Paul O'Reilly and Pamela O'Reilly of 38 Raheen Drive, Tallaght, Dublin 24; Folio: 2264F; Lands: Property situate on the north side of the Blessington to Tallaght Road in the parish and town of Tallaght, of Jobstown and Barony of Uppercross, **Co Dublin**

Regd owner: Solenette Limited of c/o Augustus Cullen & Son, Solicitors, 7 Wentworth Place, Wicklow; Folio: 76813L; Lands: Apartment No 6 on the Third Floor, situate at 15/16 Duke Street in the Parish of St Anne's and District of South Central; **Co Dublin**

Regd owner: Dorothy Gaynor, Leenane, County Galway; Folio: 43671; Lands: (1) Townland of Lissoughter, (2) Townland of Lissoughter (one undivided 11th part); Barony of Ballynahinch; Area: (1) 7a 2r 20p, (2) 719a 1r 35p; **Co Galway**

Regd owner: Sheila Kavanagh (nee Corcoran); Carrowbrowne, Galway & Trelick, Kinvara, County Galway; Folio: 19541; **Co Galway**

Regd owner: Laurence Christopher Murphy, deceased, Woodvillage, Tiaquin, Colemanstown, Co Galway; Folio: 5383; Lands: Townland of Tiaquin Demesne; Barony of Tiaquin; Area: 10a 1r 16p; **Co Galway**

Regd owner: Laurence O'Donnell, Drim, Kylebrack, Loughrea, County Galway; Folio: 34080; Lands: Townland of (1) Clooneen, (2) Drum, (3) Drum (one undivided seventeenth part), (4) Drum (one undivided fourteenth part); Barony of Tiaquin; Area: (1) 5a 0r 9p, (2) 11a 0r 4p, (3) 164a 3r 16p, (4) 115a 3r 17p; **Co Galway**

Regd owner: Malachy Ruane (deceased), Derryissane Road, Menlough, Ballinasloe, County Galway; Folio: 53914; Townland of (1) Derryglassaun, (2) Derryglassaun (one undivided 30th part), (3) Derryglassaun, Barony of Tiaquin; Area: (1) 25a 3r 11p, 40a 2r 4p, 7a 0r 7p; **Co Galway**

Regd owner: Austin and Norello O'Briain; Folio: 15761F; Lands: Townland of Farranredmond; Barony of Corkaguiny; Area: 0.400 acres; **Co Kerry**

Regd owner: John & Eileen O'Donovan; Folio: 22367F; Lands: Townland of Tooreencahill, Barony of Magunity; Area: 0.389 Hectares; **Co Kerry**

Regd owner: Teresa O'Regan (otherwise Marrgaret O'Regan); Folio: 21301; Lands: Townland of Ballyheigue, Barony of Clanmaurice; Area: 5.2 perches, 8 perches and 8.5 perches; **Co Kerry**

Regd owner: Shannon Free Airport Development Co Ltd; Folio: 413 ®; Lands: Townland of Cloonanorig, Barony of Trughanacmy; Area: 11.158 acres; **Co Kerry**

Regd owner: Paul Pidgeon and Sharon Brennan; Folio: 28079F; Lands: Osberstown, Barony of North Naas in the County of Kildare; **Co Kildare**

Regd owner: Alan George Clegg; Folio: 8421 & 8422; Lands: Borris Great, Barony of Maryborough East; **Co Laois**

Regd owner: Mark & Mairead Kavanagh; Folio: 11408F; Lands: Clonminam, Barony of Maryborough East; **Co Laois**

Regd owner: Thomas Canavan; Folio: 3096F; Lands: Townland of Arywee, Barony of Clanwilliam; Area: 1 rood and 248 perches; **Co Limerick**

Regd owner: Daniel Dalton; Folio: 1091; Lands: Townland of Carrigkerry, Barony of Shanid; Area: 57 acres, 3 roods and 11 perches; **Co Limerick**

Regd owner: Annie Duggan; Folio: 1631; Lands: Townland of Coonagh West, Barony of North Liberties; Area: 19 acres 1 rood and 7 perches; **Co Limerick**

Regd owner: William Keogh; Folio: 23319F; Lands: Townland of Killaculleen, Barony of Glenquin; Area: of 0.320 acres; **Co Limerick**

Regd owner: James O' Gorman; Folio: 27635; Lands: Townland of Ballyvologe, Barony of Connell Upper; Area: 1 rood; **Co Limerick**

Regd owner: John Treacy (deceased); Folio: 10754; Lands: Kildromin, Barony of Smallcounty; Area: 26 acres, 3 roods and 25 perches; **Co Limerick**

Regd owner: John Walsh; Folio: 1338L; Lands: Townland of Ballygrennan, Barony of North Liberties; Area: 14 perches, **Co Limerick**

National College of Ireland
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Regd owner: Richard Joseph Walsh; Folio: 2402F; Lands: Townland of Castleroberts, Barony of Coshma; Area: 3 roods and 29 perches; **Co Limerick**

Regd owner: Thomas Mannion and Anne Mannion Both of Balla, County Mayo; Folio 47935; Lands: Townland of Balla, Barony of Clanmorris; Area: 0a 0r 23p; Solicitor Ref: H.F.A. 123; **Co Mayo**

Regd owner: Nora Marley, Martry, Kells, Co Meath; Folio: 23857; Lands: No. 1 Martry, No. 2 Martry; Area: No. 1 11.958 acres, No. 2 20.931 acres; **Co Meath**

Regd owner: Francis O'Brien, Togan, Threemilhouse, Monaghan; Folio 6095; Lands: Drumsheeny; Area: 9.313 acres; **Co Monaghan**

Regd owner: John Murray; Folio: 2714; Lands: Townlands of Ballintogher, Derrynasunshion and Ballycarroll, Barony of Portnahinch; **Co Queens**

Regd owner: Bartholomew Bone (Jnr) (orse Bertie Bones), Creggane, Edmondstown, Ballaghaderreen, Co Roscommon; Lands: Townland of Creggan, Barony of Costello, Area: 64a 1r 25p; **Co Roscommon**

Regd owner: John Kelly (Junior), Runnabackan, Ballydooley, Co Roscommon; Folio: 7952; Lands: Townland of Runnabackan, Barony of Ballymoe; Area: 37a 3r 25p; **Co Roscommon**

Regd owner: Thomas Cawley, (deceased), 45 Clune Road, Finglas East, Dublin 11; Folio: 7746; Lands: Townland of Ballygilcash, Barony of Tireragh; Area: 0a 3r 3p; **Co Sligo**

Regd owner: James O'Dwyer; Folio 32063; Lands: Ballyvadlea; Area: 39a 2r; **Co Tipperary**

Regd owner: Michael O'Neill; Folio: 14303; Lands: Middlewalk, Barony of Ormond Upper; **Co Tipperary**

Regd owner: Denis & Richard Flynn; Folio: 10833; Lands: Townland of Ross, Barony of Upperthird; Area: 67 acres, 2 roods and 42 perches; **Co Waterford**

Regd owner: Michael Kearney; Folio: 2698L; Lands: Townland of St Johns Without; **Co Waterford**

Regd owner: Pim Brothers Limited; Folio 5326; Barony of Parish of St. Michael's; **Co Waterford**

Regd owner: Gerard Farrell, Knockdomny, Moate, Co. Westmeath; Folio: 6890; Lands: Knockdomny; Area: 9.812 acres; **Co Westmeath**

Regd owner: Mary Josephine Morrissey, Irish Street, Bunclody; Folio: 2927F; Lands: Newtownbarry; Area: 0a 3r 32p; **Co Wexford**

Regd owner: Maurice Doyle; Folio: 2905; Lands: Carnew, Barony of Shillelagh; **Co Wicklow**

WILLS

Byrne, Christopher, deceased, late of 27 Ave Maria Road, Maryland, Dublin 8 and formerly of 73 Harty Place, Dublin 8. Would any person having any knowledge of a will executed by the above named deceased who died on 20 February 1991, please contact John M Lynch & Co, Solicitors, Jervis House, Parnell Street, Clonmel, Co Tipperary, tel: 052 24344, fax: 052 24462

Carty, Patrick, deceased late of 5 Greentrees Park, Perrystown, Dublin 12. Would any person having knowledge of the existence of a will executed by the above named deceased who died on 8 May 1998, please contact Eames & Company, Solicitors, 1 Arran Square, Arran Quay, Dublin 7, tel: 8725155, fax 8725664

Costello, Julia Josephine, also known as Josie Costello, deceased late of 18 Foyle Road, Fairview, Dublin 3. Would any person with any information concerning the execution of a will by the above named deceased after 13 April 1987, please contact the undersigned firm of solicitors and, if the original or copy of any will executed after 13 Arpil 1987 is in your possession, please provide a copy of that document to the said firm of solicitors: Cantrell & Company, Solicitors, 14 Avoca Avenue, Blackrock, Co Dublin

Cowman, Christopher, late of 2 Irish Street, Bunclody, County Wexford. Date of death 7 June 1998. Would any person having knowledge of the whereabouts of the will of the above named deceased please contact: John G Logue and Company, Solicitors, 43 Strand Road, Derry City

Gibson, Andrew (otherwise Andy), deceased, late of 103 Shanard Road, Santry, Dublin 9. Would any person having knowledge of a will executed by the above named deceased who died on 26 July 1998, please contact Frances E Barron & Co, Solicitors, 1 Frederick House, Main Street, Ashbourne, Co Meath, tel: 8352550/1, fax: 01 8353451

Hardiman, Alice late of Liss, Headford, County Galway who died on 12 May 1997. Would any person having knowledge of the whereabouts of the original will of the late Alice Hardiman, please notify Bruen Glynn & Company, Solicitors, Dublin Road, Tuam, tel: 093 24168, fax: 093 24100, reference 6714.H/JG/TB

Moran, Brendan, deceased, late of 24 Penrose Street, Ringsend, Dublin 4 (otherwise 46 William Street, Wexford). Would

any person having knowledge of a will executed by the above named deceased (date of death 12 June 1998) since 13 February 1985, and in particular since the autumn of 1997, please contact LK Shields, Solicitors, 39/40 Upper Mount Street, Dublin 2, Ref: 874-001/NR, tel: 6610866, fax: 6612379

Murphy, Phyllis Alexandra, deceased, late of Brunswick, Upper Glenageary Road, Glenageary, Co Dublin (formerly of 70 Wellington Road, Ballsbridge, Dublin 4 and 142 Poplar Avenue, Edgebaston, Birmingham 17, England). Would any person having knowledge of a will executed by the above deceased who died on 4 June 1997, please contact Timothy R O'Sullivan & Co, 37 Molesworth Street, Dublin 2, tel: 6622800, fax: 6616554

Treanor, Joan, deceased, late of 44 Howth Road, Clontarf, Dublin 3 and Queen of Peace Centre, Garville Ave, Rathgar, Dublin 6. Would any person having knowledge of a will executed by the above deceased who died on 29 May 1998, please contact Anne Colley & Co, Solicitors, 6 Main Street, Dundrum, Dublin 14, tel: 2960488, fax: 2960490

Watson, Gerard, deceased, late of St. Patrick's College, Maynooth, Co Kildare. Would any person know the whereabouts of a will of the above named deceased who died on 24 July 1998. Please contact Mary Cowhey & Co, Solicitors, Main Street, Maynooth, Co Kildare, tel: 6285711, fax: 6285613

Yeates, James C, deceased late of 19 Penrose Street, Ringsend, Dublin 4 and The Halfway House, Walkinstown, Dublin 12. Would any person having knowledge of a will executed by the above named deceased, who died in or around 15 June 1998, and which was executed subsequent to 14 February 1974, please contact McNamara & Company, Solicitors, 60 Upper Grand Canal Street, Dublin 4, tel:6680005, fax: 6680754

EMPLOYMENT

Solicitor – South East. An experienced solicitor is now sought by a large practice in the South East, principally for conveyancing and litigation. Computer literacy desirable. Progressive salary and conditions. Apply initially with CV and references to: Ernst & Young (Ref DC), Chartered Accountants, Annaville House, Newtown, Waterford.

Legal secretary/law clerk, over 20 years' experience, seeks employment in the South East, preferably Waterford City. **Box No 70**

Locum solicitor required for busy South East practice November 98 to March 99. Conveyancing experience required. Reply to **Box No 71**

Solicitor – seven years' PQE in general practice seeks position in Dublin. Preference litigation and matrimonial work

Solicitor wanted by a firm in the Midlands. May suit newly qualified. Apply with CV to **Box No 72**

A young progressive loss adjusting company requires qualified solicitor with a minimum of two years' personal injury litigation experience. Very attractive package available. Replies to **Box No 73**

Solicitor's apprentice with experience and post-professional course seeks apprenticeship in Munster region. Reply **Box No 74**

MISCELLANEOUS

Northern Ireland agents for all contentious and non-contentious matters. Consultation in Dublin if required. Fee sharing envisaged. Offices in Belfast, Newry and Carrickfergus. Contact Norville Connolly, D&E Fisher, Solicitors, 8 Trevor Hill, Newry, tel: 0801693 61616, fax: 0801693 67712

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London solicitors will advise on UK matters and undertake agency work. All areas. Corporate/private clients. Ellis & Fairbairn, 26 Old Brompton Road, South Kensington, London SW7 3DL, tel: 0044 171 589 0141, fax: 0044 171 225 3935

Agents – England and Wales. We are willing to act as agents for Irish solicitors in civil and criminal litigation. Contact: Olliers, Solicitors, Alderman Downward House, 2/3 The Birtles, Civic Centre, Wythenshawe, Manchester M22 5RF, tel: 0044 161 437 0527, fax: 0044 161 437 3225

Northern Ireland solicitors. Will advise and undertake NI-related matters. All areas corporate/private. Agency or full referral of cases as preferred. Consultations in Dublin or elsewhere if required. Fee sharing envisaged. Donnelly Neary & Donnelly, 1 Downshire Road, Newry, Co Down, tel: 0801 693 64611, fax: 0801 693 67000. Contact KJ Neary

Northern Ireland solicitors providing an efficient and comprehensive Legal Service in all contentious/non-contentious matters. Dublin-based consultations and elsewhere. Fee apportionment. ML White, Solicitors, 43-45 Monaghan Street, Newry, County Down, tel: 08 01693 68144, fax: 08 01693 60966

Offices wanted. Professional firm require c 4/6,000 sq ft (Modern /Georgian) office space in Dublin 2 or 4, on a short term (c 5/6 years) lease. Please reply to **Box No 75**

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Solicitor wishes to purchase practice in provincial town. Reply in confidence to **Box No 76**

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Off-licences wanted. Any part of the country. Contact Richard Irwin, Irwin Kilcullen & Co, Solicitors, 56 Grand Parade, Cork, tel: 021 270934

For sale: Complete set of Butterworths, *Encyclopaedia of forms and precedents*, 4th ed. Excellent condition. Offers/enquiries to **Box No A/G22**

Vacancy! Italax @ Ivutec Dublin: Exp p/t Bookkeeper. Must like working with people, car essential and full training given, tel: 4971022 for full details

For sale: beer and spirit retailer's off-licence (North Cork Town). All enquiries to William Fitzgibbon, Solicitor, 24 Upper Cork Street, Mitchelstown, Co Cork, DX 30 003, tel: 025 84255, fax: 025 84329

TITLE DEEDS

In the matter of the *Registration of Titles Act, 1964* and of the application of John Spicer and Company Limited in respect of property in the townland at Tankardstown in the Barony of Balrothery East situate at Drogheda Street, Balbriggan, Co Dublin
Application nos 97DN01552, 98DN03080, 98DN03081 and 98DN03083

Take notice that John Spicer and Company Limited of Belmont, Dubin Road, Navan, County Meath has lodged an application for registration on the leasehold as full owner free from from encumbrances in respect of the above mentioned property.

The original title documents specified in the schedule hereto are stated to have been lost or mislaid.

The application will be proceeded with unless notification is received in the registry within 21 days from your receipt of this notice that the original documents of title are in the custody of one of your banks.

Any such notification should state the grounds on which the documents are held and quote reference nos 97DN01552, 98DN03080, 98DN03081, 98DN03083. The missing documents are detailed in the schedule hereto.

6 July 1998
G Collins, Examiner of Titles

SCHEDULE

1 Original lease dated 1 September 1903 made between William Cumisky and Patrick Cumisky of the first part and John Spicer of the second part.
2 Original lease dated 17 January 1905 made between William Cumisky and Patrick Cumisky of the first part and John Spicer and Company Limited of the second part.
3 Original lease dated 7 September 1908 made between William Cumisky and Patrick Cumisky of the first part and John Spicer and Company Limited of the second part.
4 Original lease dated 5 May 1908 made between Edward Purfield of the first part and John Spicer and Company Limited of the second part.
5 Original deed of assurance dated 2 April 1980 made between John Spicer of the first part and John Spicer and Company Limited of the second part.

Fortune, Margaret/Dunne Joseph, Would any person holding or knowing the whereabouts of title deeds of the above named persons, the first person being the former owner and the second person being the owner since 1961, to a dwelling at Slieve Roe, Rathdrum, County Wicklow, descrived in Folio 7854 of the register County Wicklow, please contact Conleth O'Reilly, Solicitor, 44 Marian Road, Rathfarnham, Dublin 14, tel: 4943851.

LAW SOCIETY RECRUITMENT SERVICE

This is a service for solicitors seeking employment and those wishing to recruit solicitors. A comprehensive list of current job vacancies is available to members on request.

Advice is available to both employers and employees on all aspects of recruitment including terms of employment, salary expectations & negotiation, CV drafting and interview skills.

Contact Geraldine Hynes on 01 6710200

HEPATITIS C COMPENSATION TRIBUNAL

DELAYS

The Tribunal is concerned that there are delays in processing claims before it. By the end of 1998 it is expected that approximately 1,200 of the 1,842 claims lodged will have been disposed of. However, the Tribunal Secretary is prevented from listing for hearing (or settlement) the vast majority of the remainder - largely due to failure to submit the necessary documentation.

The Tribunal has been in receipt of most of these claims since June 1996 and is conscious of the adverse effects on a Claimant of the long wait for a hearing. Any Claimant or Solicitor who may be having difficulty with any aspect of a claim is invited to contact the Tribunal Office for assistance.

Gerard Nugent
Secretary to the Hepatitis C Compensation Tribunal,

"Block C",
Iceland House,
Arran Court,
Arran Quay,
Dublin 7.

Tel. No. (01) 872 9255
Fax. No. (01) 872 9454