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**Cluster:** Gender and Public Policy

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**Further Reading:**

Buckley, L.A. (2018) 'Autonomy and Prenuptial Agreements in Ireland: A Relational Analysis' *Legal Studies*, 38: 164-186.

Buckley, L.A. (2015) 'Relational theory and choice rhetoric in the Supreme Court of Canada' *Canadian Journal of Family Law*, 29(2): 251-308.

Buckley, L.A. (2011) 'Ante-nuptial agreements and "proper provision": an Irish response to *Radmacher v Granatino*' *Irish Journal of Family Law*, 14(1): 3-14.

**Read More About:**

the [Gender and Public Policy](#) research cluster within the Whitaker Institute for Innovation and Societal Change

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## Prenuptial Agreements in Ireland

Prenuptial agreements have traditionally been considered legally void in Ireland. However, in 2007 a ministerial Study Group recommended limited legislative recognition of prenuptial agreements, in light of social and economic changes. The Study Group's recommendations have never been implemented, and the legal recognition of prenuptial agreements remains controversial, largely due to fairness concerns, particularly in relation to gender equity. However, the pressure to legislate has not abated, and is particularly driven by farming lobby groups. Any future legislation is likely to draw heavily on the Study Group recommendations (particularly as broadly similar recommendations have recently been made in England and Wales). This research therefore reviewed legal developments in Ireland since the Study Group report, to evaluate the continued appropriateness of the recommendations.

### Research Findings

The Irish legal context has changed significantly since the Study Group's report. The Study Group assumed that the legal safeguards it proposed, combined with existing legal doctrines, would protect intending spouses from exploitation. It also assumed that constitutional standards for financial provision on divorce would protect former spouses from poverty. Both of these assumptions have since been undermined. Leading court decisions on the related issue of separation agreements have emphasised the importance of respecting spousal agreements, but do not appear to recognise the potential impact of pressured, emotional or unequal negotiating contexts. This problem is compounded by the lack of any procedural safeguards for spousal agreements; for instance, there is currently no requirement that either party received legal advice. The constitutional requirements on financial provision have also been significantly eroded by judicial decisions. This increases the potential for unfairness, particularly for women.

### Policy Implications

The courts might well choose to recognise prenuptial agreements even without legislation (as happened in England and Wales). There is a serious risk that non-autonomous or exploitative prenuptial agreements might then be upheld, and that spouses might be left in need on divorce or separation. These dangers could be addressed through a range of statutory measures, notwithstanding constitutional constraints. However, simply introducing procedural safeguards will not be sufficient. Policy recommendations explored in detail in this research include a limited list of vitiating factors, which would direct the court's attention to particular concerns while ensuring that agreements were not too easily upset. Prenuptial agreements might also be accorded less weight in particular circumstances. Finally, there should be a rebuttable presumption that spouses should not be left in need, where this could be avoided. This would help to reduce the risk of poverty, particularly for women.