



## AIDAN O'NEILL QC (SCOT) QC

### MAIN AREAS OF PRACTICE:

Competition and Regulation  
Discrimination and Equality  
Education Law  
Election  
Employment Law  
Environmental Law and Natural  
Resources  
EU Law  
Human Rights  
Immigration, Asylum and Free  
Movement  
Public and Private International  
Law  
Public Law  
Sports Law

Called to the Bar 1987 (Scot)  
1996 (English)

Appointed to Silk 1999 (Scot)  
2017 (English)

### CONTACT:

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Alison Scanes, Senior Practice  
Manager  
alisonscanes@matrixlaw.co.uk

Aidan O'Neill QC (Scot) QC is Queen's Counsel at the Scottish Bar and the Bar of England and Wales. Aidan has a wide ranging legal practice in both London and Edinburgh, with particular experience and expertise in commercial judicial review, environmental/Aarhus law and in employment/equality law. He is a specialist in EU law, human rights law and in UK constitutional law. Aidan was awarded the Legal 500 UK Bar Award for EU law silk of the year in 2015 and in both 2017 and 2018 was declared silk of the year in The Law Awards of Scotland.

Aidan is a highly experienced pleader before the top courts. He has appeared as senior counsel in some thirty or so cases to date from across the UK before the UK Supreme Court/House of Lords, as well as before the Court of Justice of the European Union and the European Court of Human Rights.

Aidan was previously a teaching fellow at Princeton and Edinburgh universities. He is the author of substantial academic articles, blog posts and legal practitioner textbooks.

### PROFESSIONAL QUALIFICATIONS

#### English Bar

February 2017 – Appointed Queen's Counsel (QC) in England and Wales  
December 2010 - Member, Matrix Chambers, Gray's Inn, London  
September 2000 - Associate, Matrix Chambers, Gray's Inn, London  
July 1996 - Called to the Bar of England and Wales

#### Scottish Bar

July 1999 - Appointed Queen's Counsel (QC) in Scotland  
1997 -1999 - Standing Junior Counsel to the Scottish Office Education and Industry Department  
July 1987 - Called to the Scottish Bar

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## DIRECTORIES' RECOMMENDATIONS

### HERE'S WHAT THEY SAY:

Chambers & Partners 2019 notes that Aidan 'has phenomenal knowledge of the law' on the subject of Civil Liberties & Human Rights.

Legal 500 2018 states on European Law, Aidan 'his main strength is his ability to consider work or areas of law at short notice and be familiar with them quickly.'

Chambers & Partners 2018 describes Aidan as 'someone to go to if you have a difficult claimant-side case and want to fight really hard.'

Legal 500 2018 notes Aidan is 'very helpful and focused. Pays great attention to detail.'

Chambers & Partners 2017 noted Aidan's 'written advocacy is excellent. He's an utterly comprehensive and knowledgeable advocate with virtually unrivalled experience in the higher courts.'

## RECENT CASES

### Constitutional law

2019 *Cherry v. Advocate General for Scotland/Miller v. Prime Minister* [2019] UKSC 41; [2019] CSIH 49; [2019] CSOH 70 on the lawfulness/constitutionality of HMG's prorogation of Parliament on 28 August 2019

2019 *Craig v. Advocate General for Scotland and the Lord Advocate* [2019] CSOH 117 judicial review of the failure/refusal by the UK Governments to commence in Scotland and Scots law the forum bar provisions passed by Parliament re extradition from the UK

2019 *Gifford v. Advocate General for Scotland and the Lord Advocate* [2019] CSOH 108 judicial review of the refusal by the UK and Scottish Governments to set up public inquiry into undercover policing in Scotland

2017 *Janah v. Libya/Benkharbouche v. Sudan* [2017] UKSC 62; [2015] EWCA Civ 33 on whether EU law principles of access to court may disapply State immunity claims to ET applications

2017 R (UNISON) v. Lord Chancellor [2017] UKSC 51 on incompatibility of ET fees with fundamental right of access to the court

2017 R (Miller) v Secretary of State [2017] UKSC 5 on prerogative powers and triggering Article 50 TEU for the UK to leave the EU

2016 R(Shindler) v. Chancellor of the Duchy of Lancaster 24 May [2016] UKSC 2016/0105; [2016] EWCA Civ 469; [2016] EWHC (Admin) 957 challenge to the EU and common law constitutional compatibility of the exclusion from the Brexit referendum franchise of British citizens who had exercised their EU free movement and citizenship rights to live outside the UK for more than 15 years.

### EU law

2019 Case C-93/18 *Bajratari v. Secretary of State for the Home Department* EU:C:2019:809 CJEU reference by NICA on whether income from employment deemed "unlawful" under UK law may establish, in whole or in part, the availability of sufficient resources for EU law purposes under Article 7(1)(b) of the Citizens Directive

2019 *LC Management Services (Scotland) Limited v. The Scottish Ministers and Highlands and Islands Enterprise* [2019] CSOH 72 re State aid and Francovich damages

2019 Case C-129/18 SM (Algeria) v. Entry Clearance Office, UK Visa Section EU:C:2019:248; [2018] UKSC 9 CJEU reference by UKSC on whether family member for purposes of EU free movement includes child under Islamic kefalalah

2018 Case C-621/18 Wightman v. Secretary of State EU:C:2018:999; [2018] CSH 62; [2018] CSH 61; [2018] CSH 18; [2018] CSH 8 on whether Article 50 TEU notification is unilaterally revocable by UK

2018 R (Simonis) v. Arts Council England [2018] EWHC 1822 (Admin) on the licence requirements under EU law for the transfer of cultural goods from one Member State to another

2017 Case C-333/14 Scotch Whisky Association and others v. Scottish Ministers [2017] UKSC 76; [2016] CSH 77; EU:C:2015:845; EU:C:2019:512 [2014] CSH 38; [2013] CSH 70 re compatibility minimum pricing for alcohol with EU free movement of goods/CAP

2013 R. (Chester) v Secretary of State for Justice/McGeoch v. Lord President of the Council [2013] UKSC 63; [2011] CSH 67; [2011] CSH 65 JR of prisoners' disenfranchisement from elections following within ambit of EU law, viz. local government and for European Parliament

2012 Walton (formerly Roadsense) v. Scottish Ministers [2012] UKSC 44 EU law and the Aarhus Convention in relation to duties of strategic environmental assessment, public consultation and statutory title of "persons aggrieved" to object to road schemes on environmental grounds

#### Private international law

2018 Docherty's Executors v. Secretary of State for Business, Innovation and Skills [2018] CSH 57 (Scots law as lex loci delicti and separately the applicable law where wrongful asbestos exposure in Scotland but asbestos related condition then developed in England)

#### Human rights law

2018 Campbell v. Dugdale [2018] SC EDIN 49 (defamation action raising issues of fair comment defence consonant with Article 10 ECHR)

2018 Van Phan v. Her Majesty's Advocate [2018] HCJAC 7 on defences available to criminal charges for those claiming to be victims of modern slavery/people trafficking

2018 Maguire's Judicial Review of the General Council of Bar of Northern Ireland [2018] UKSC 17; [2015] NIQB 4 JR of compatibility of NI Bar Council rules requiring instruction of senior counsel with Convention right to lawyer of one's choosing

2017 AB v. Her Majesty's Advocate [2017] UKSC 25; [2017] HCJAC 70 JR of Scottish legislation removing reasonable belief defence as to the age of a sexual partner

2016 Gordon Ross v. Lord Advocate [2016] CSH 12; [2015] CSH 123 JR challenge to the Lord Advocate's failure/refusal to publish guidelines on

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prosecution policy in cases of assisted suicide

**2010 Cadder v. Her Majesty's Advocate [2010] UKSC 43** on the Convention right to have a solicitor present during a police interview while in police detention

**2010 R (JF and Thompson) v. Minister of Justice [2010] UKSC 17**  
Article 8 ECHR right to privacy and its compatibility with the imposition of indefinite period of notification on the sex offenders register without provision for review or removal

#### Public law

**2019 MH v. Mental Health Tribunal for Scotland [2019] CSIH 29** whether a Mental Health Tribunal considering an application for compulsory preventive hospital detention and medical treatment of an individual was properly constituted by the legal chair participating by conference call rather than in person

**2018-20 Infected Blood Inquiry: chair Sir Brian Langstaff (ongoing)** acting for c250+ core participants of those from Scotland infected and affected by virally contaminated blood from blood transfusions and blood products

**2017 O'Brien v. Scottish Ministers [2017] CSOH 96** on security of tenure and statutory powers of removal of chairs of public inquiries held under the Inquiries Act 2005

**2017 Petroineos Manufacturing Scotland Ltd. v. Clydeport Operations Ltd. [2017] CSOH 49** on whether Clydeport was the statutory harbour authority within the Faslane Naval Dockyard with power to impose conservancy charges on floating oil storage units berthed there.

**2016 Christian Institute and others v. Lord Advocate [2016] UKSC 61; [2015] CSIH 64; [2015] CSOH 7 JR** on Data Protection grounds of the "named person service" provisions in Part 4 of the Children and Young People (Scotland) Act 2014

**2014 Moohan and others v. Scottish Government [2014] UKSC 67; [2014] CSIH 56; [2014] CSOH 199 JR** of the Scottish Independence Referendum (Franchise) Act 2013 for its exclusion of convicted prisoners from franchise

**2014 R (Sandiford) v. Foreign and Commonwealth Office [2014] UKSC 44; [2013] EWCA Civ 581; [2013] EWHC 168 (Admin)** on whether the FCO had duties at common law under the ECHR to provide funding for legal representation of British nationals facing death penalty abroad

#### Employment law

2019 Idu v. East Suffolk and North Essex NHS Foundation Trust [2019] EWCA Civ; [2019] UKEAT/15/18 whether disciplinary proceedings against a consultant surgeon were properly to be characterised for the purpose of disciplinary procedures as professional misconduct as or personal misconduct

2019 Anwar v. Advocate General for Scotland and the Lord Advocate [2019] CSIH 43 on whether interim diligence to freeze employer's assets available to claimants before Employment Tribunals

2019 R (Mackenzie) v. University of Cambridge [2019] EWCA Civ 1060; [2017] EWHC 2698 (Admin) on whether a re-engagement order from an Employment Tribunal created any enforceable legal obligation on an employer actually to re-engage a previously unfairly dismissed employee

2017 Informa UK Ltd. v. McDougall [2017] CSOH 149 employment restrictive covenant

2015 Hainsworth v. Ministry of Defence 1 December [2015] UKSC re Article 5 of Directive 2000/78 and the duty of an employer to make reasonable adjustments within the context of associative discrimination to accommodate the disability needs of a dependent child of an employee

2012 Ravat v. Halliburton Manufacturing & Services Ltd. [2012] UKSC 1; [2010] CSIH 52 whether a UK employment tribunal had jurisdiction to adjudicate on an unfair dismissal claim from an oil industry employee working outside the EU

#### Religion and law

2014 St. Margaret's Children and Family Care Society v. Office of the Scottish Charity Regulator SCAP App 02/13 (Scottish Charity Appeal Panel, 31 January 2014) whether religiously based adoption society could be required to amend its published guidance to ensure no discrimination on grounds of religion and belief or sexual orientation in respect of prospective adoptive parents

2013 Bulls v. Preddy and Hall [2013] UKSC 73 whether Christian guest house owners could, on grounds of religious conviction, lawfully refuse a double-bedded room to a couple in a civil partnership

2013 London Christian Radio v. Radio Advertising Clearance Centre and Secretary of State for Culture, Media and Sport [2013] EWCA Civ 1495 whether the ban on political advertising extended to an advertisement seeking information about claims of marginalization of Christians in the workplace

## UNIVERSITY EDUCATION

**2012 LL.D** University of Edinburgh (Doctoral degree awarded on the basis of published books and articles)

**1991-92 LL.M.** European University Institute, Florence (Masters' degree in Comparative, International and European law awarded on the basis of a thesis "The Government of Judges: a study in judicial politics and the rule of law". Thesis published by the EUI as Law Working Paper 93/3)

**1983-1985 LL.M. (Hons.) (First Class)** University of Sydney, Australia (Masters' degree in legal and moral philosophy and Structures of Legal Reasoning: an investigation into the role and scope of practical reasoning in our understanding of the law". Awarded Sydney law faculty medal for best Master's degree of 1987)

**1982-1983 Diploma in Legal Practice** University of Edinburgh

**1978-1982 LL.B. (Hons.) (First Class)** University of Edinburgh (Honours courses in: History of Scots Law; Comparative Law; International Private Law; Natural Law and Theories of Justice; Legal Reasoning and Legal Theory)

## MEMBERSHIPS/APPOINTMENTS

**2019** Equality and Human Rights Commission "A" Panel (both Scotland and England & Wales) of senior counsel

**2017** Fee paid (part-time) Chair of the First Tier Tribunal for Scotland – Housing and Property Chamber

**2016** Equality and Human Rights Commission "A" Panel (both Scotland and England & Wales) of senior counsel

**2015** Fee paid (part-time) Chair of the First Tier Tribunal for Scotland – Tax Tribunal

**2009-2013** Chairman of the Edinburgh Centre for Constitutional Law and Honorary Fellow in the School of Law, University of Edinburgh

**2009 & 2010** Visiting lecturer and course leader in "Human Rights law in Practice", Diploma in Legal Practice at Edinburgh Law School

**Sep 2007** Visiting Professor in the Woodrow Wilson School of Public and International Affairs, and Senior Research -Jun 2008 Scholar and Fellow in the Program in Law and Public Affairs, Princeton University, NJ, USA.

## FOREIGN LANGUAGES

French (good - written and spoken)

Italian (good - written and spoken)

German (fair- written only)

## PUBLICATIONS

### Books

*EU law after Brexit: a guide for the perplexed* (Hart Publishing, forthcoming, 2020)

*EU law for UK Lawyers* (Hart Publishing, 2011)

## Articles and Book Chapters

### 2019

"EU law in the Supreme Court" in Clarry (ed.) (2017-2018) 9 UK Supreme Court Yearbook 518-558

### 2018

"EU law in the Supreme Court" in Clarry (ed.) (2016-2017) 8 *UK Supreme Court Yearbook* 415-31

"After Brexit: future trade relations between the UK and the European Union" (2018) 18 *ERA Forum* 547-579

"Brexit, Bilateral Investment Treaties and their Enforcement" (2018) 17 *ERA Forum* (2018) 18 *ERA Forum* 513-546

### 2017

"EU fundamental rights in a devolved United Kingdom", Chapter 8 in Douglas-Scott (ed.) *Research handbook on EU law and human rights* (Edward Elgar Publishing, 2017) 186-208

"Miller, Brexit and breUK-up" (March 2017) *Counsel Magazine* 27-29

### 2016

"(Dis)Enfranchisement and Free Movement" Chapter 4 in Koutrakos, Nic Suibhne & Syrpis (eds.) *Exceptions from Free Movement Law* (Hart Publishing, 2016) 53-79

"European Dimension" (2015-2016) 7 *UK Supreme Court Yearbook* 336-346 (with Aidan Wills)

### 2015

"Strategic Litigation before the European courts" (2015) 16 *ERA Forum* 495-509

### 2014

"Not waving but drowning: EU law, common law, fundamental rights and the Supreme Court" (2014) 5 *UK Supreme Court Yearbook* 178-198

### 2013

"The courts, the church and the constitution revisited" Chapter 46 in Burrows, Johnston & Zimmermann (eds.) *Judge and Jurist: essays in memory of Lord Rodger of Earlsferry* (OUP, 2013) 637-653

"The sovereignty of the (Scottish) people: 1689 and all that" (2013) 18 *Judicial Review* 446-463

"Back to the future? Judges, politicians and the constitution in the new Scotland" (2013) 18 *Judicial Review* 45-71

### 2011

"EU law and Fundamental Rights" (2011) *Judicial Review* 216-247

"The curtailment of criminal appeals to London" (2011) 15 *Edinburgh Law Review* 88-92

"Prosecuting Crimes Against Peace Before the Scottish Courts" in Johnson & Zelter (eds.) *Trident and international law: Scotland's obligations* (Edinburgh: Luath Press, 2011) 177-201

### 2010

"Human rights and people and society" Chapter 2 in Sutherland, Goodall, Little & Davidson (eds.) *The Scottish Parliament: The Early Years* (Edinburgh University Press: 2010) 35-57

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**2009**

“Limited Government, Fundamental Rights and the Scottish Constitutional Tradition” (2009) *Juridical Review* 85-128

“Constitutional Judicial Review in Scotland – some recent developments” (2009) 14 *Judicial Review* 267-290

“Roman Catholicism and the temptation of shari’a” (2009) 15 *Common Knowledge* (Duke University Press) 269-315

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