



BILLE NA gCÚIRTEANNA (UIMH. 2), 1991

COURTS (NO. 2) BILL, 1991

EXPLANATORY MEMORANDUM

General

1. The main purpose of the Bill is to increase the monetary limits of the civil jurisdiction of the Circuit and District Courts, including monetary limits in certain family law matters. The Bill also proposes to amend the law relating to the transfer of actions from the High Court to the lower Courts and from the Circuit Court to the District Court; to empower the Government to amend the monetary limits of the civil jurisdiction of the lower Courts, by order, and to make some technical changes necessary as a consequence of the increases in jurisdiction proposed. The Bill also provides for an increase in the number of High Court judges, permanent judges of the Circuit Court and permanent justices of the District Court, and it contains provisions for the service of District Courts summonses in cases of summary jurisdiction by post.

Provisions of the Bill

2. *Section 1* is the interpretation section.

Circuit Court Jurisdiction

3. *Subsection (1)* of *section 2* extends the jurisdiction of the Circuit Court:

(1) in contract, tort, wrongful detention and claims for rent and use and occupation of land, to cases where the claim does not exceed £30,000 (£15,000 at present);

(2) in actions involving hire-purchase and credit-sale agreements, to cases where the claim does not exceed £30,000 (£15,000 at present);

(3) in actions under the Distress for Rent Act, 1741, for the recovery of double the value of goods fraudulently removed to prevent distress for rent, to cases where the value of goods removed does not exceed £15,000 (£7,500 at present).

Subsection (2) increases the jurisdiction of the Circuit Court in actions under the Attorneys' and Solicitors' Act, 1870 (relating to agreements on fees between solicitors and their clients) where the amount involved does not exceed £30,000 (£15,000 at present). This statute was adapted in relation to the Circuit Court and Circuit Court Judges by the Fifth Schedule to the Courts (Supplemental Provisions) Act, 1961. The increase is consequential on the proposed increase in the jurisdiction of the Circuit Court provided for in *subsection (1)*.

Subsection (3) amends *section 20* (which deals with the jurisdiction of the Circuit Court in actions for unliquidated damages transferred from the High Court) and *section 23* (which prohibits the splitting of

actions in the Circuit Court) of the Courts of Justice Act, 1936. The amendments are consequential on the proposed increases in the jurisdiction of the Circuit Court.

4. *Section 3* increases the jurisdiction of the Circuit Court under the Registration of Title Act, 1964 to land with a rateable valuation not exceeding £200 (£60 at present).

District Court Jurisdiction

5. *Section 4* extends the jurisdiction of the District Court:

(1) in contract, breach of contract, tort (except slander, libel, seduction, slander of title, malicious prosecution and false imprisonment) and claims for damages unconnected with contract, to cases where the claim does not exceed £5,000 (£2,500 at present);

(2) in ejectment for non-payment of rent or overholding in any class of tenancy, to cases where the rent does not exceed such sum as amounts or might amount to £5,000 per annum (£2,500 per annum at present); and

(3) in proceedings at the suit of the State or a State authority (within the meaning of the Courts (Supplemental Provisions) Act, 1961) or any officer thereof to cases where the claim does not exceed £5,000 (£2,500 at present).

The section retains the existing proviso that the decision of a justice in a case in which a question of title to land is in issue shall not operate as an estoppel in or a bar to a suit in any court in relation to such land.

Paragraph (c) of *section 4* gives a new jurisdiction to the District Court to hear and determine any civil case above its proposed monetary limit (of £5,000), where the parties to the proceedings consent. (A similar provision applies in the Circuit Court under *section 22 (1) (b)* of the Courts (Supplemental Provisions) Act, 1961.)

6. *Section 5* extends the jurisdiction of the District Court in proceedings by way of interpleader by under-sheriffs to cases where the value of the goods, animals or chattels taken in execution or intended execution does not exceed £5,000 (£2,500 at present).

7. *Section 6* extends the jurisdiction of the District Court in actions founded on

(1) hire-purchase agreements under *section 19* of the Hire-Purchase (Amendment) Act, 1960, and

(2) credit-sale agreements under *section 33 (4) (a)* of the Courts (Supplemental Provisions) Act, 1961,

to cases where the amount of the claim does not exceed £5,000 (£2,500 at present).

8. *Section 7* extends the jurisdiction of the District Court in actions for wrongful detention to cases where the value of the goods claimed does not exceed £5,000 (£2,500 at present).

Jurisdiction under the Hotel Proprietors Act, 1963

9. *Paragraph (a)* of *section 9* extends the jurisdiction of the Circuit Court under the Hotel Proprietors Act, 1963, to cases where the amount claimed does not exceed £30,000 (£15,000 at present). *Paragraph (b)* of *section 9* extends the District Court's jurisdiction under the same Act from £2,500 to £5,000.

Jurisdiction under the Local Government (Water Pollution) Act, 1977

10. *Section 10* increases the jurisdiction of the Circuit Court to £30,000 (at present £15,000) and the District Court to £5,000 (at present £2,500) in proceedings taken under section 10 of the Local Government (Water Pollution) Act, 1977, as amended. These amendments are in line with the proposed increases in the contract and tort jurisdictions of these Courts provided for at *sections 2 and 4* of the Bill (paragraphs 3 and 5 of this Memorandum).

Jurisdiction under the Family Home Protection Act, 1976

11. *Section 8* amends section 10 of the Family Home Protection Act, 1976, by increasing the District Court's jurisdiction from £2,500 to £5,000 in cases involving the disposal of household chattels. This is in line with the provisions at *section 4* (District Court contract and tort jurisdiction) of the Bill (paragraph 5 of this Memorandum).

Jurisdiction in other Family Law Matters

12. *Section 11* increases the maximum maintenance order available in the District Court from £100 to £200 per week for a spouse and from £30 to £60 each per week for children under the Family Law (Maintenance of Spouses and Children) Act, 1976.

13. *Section 12* increases the maximum amount for maintenance which the District Court (and the Circuit Court on appeal) may award for a child under the Guardianship of Infants Act, 1964 from £30 to £60 per week.

14. *Section 13* increases the limit, above which the consent of the parties is required if the Circuit Court is to hear an action under section 8 of the Family Law Act, 1981 (jurisdiction in relation to an application to the court in a case of substantial benefit to a party, or in a case of substantial expenditure incurred by or on behalf of a party to a broken engagement). The new limit will be £30,000 (at present £15,000). *Paragraph (b)* of *section 13* extends the District Court's jurisdiction under the same Act from £2,500 to £5,000. These amendments are in line with the proposed increases in the contract and tort jurisdictions of these Courts provided for at *sections 2 and 4* of the Bill (paragraphs 3 and 5 of this Memorandum).

Recovery of Costs

15. *Section 17* of the Courts Act, 1981 specifies certain amounts which a plaintiff in a High Court action must recover, if his costs are not to be reduced to Circuit or District Court levels. *Section 14* of the Bill substitutes a new section 17 in the Courts Act, 1981.

Subsection (1) provides that (subject to the exceptions specified in *subsections (2) and (3)*) a plaintiff who takes an action in a court, other than the lowest court having jurisdiction, will be restricted to recovering costs at the level appropriate to the lowest court of jurisdiction.

Subsection (2) provides that a plaintiff will be restricted to recovering costs at the Circuit Court level in any action where the High Court awards damages between £25,000 and £30,000, unless the judge certifies that it was reasonable in the interests of justice that the action should have been commenced and determined in the High Court.

Subsection (3) limits the costs which a plaintiff may recover in any action where the High Court awards damages between £5,000 and £15,000, to the lesser of the amount of such damages or the amount of costs at the Circuit Court level.

Subsection (4) provides that rules of court may be made consistent with the provisions of the section.

Subsection (5) provides that where an action is taken in a court, other than the court of lowest jurisdiction, the court may order a successful plaintiff to pay a defendant an amount not exceeding the additional costs incurred by the defendant in having to defend the action in a higher court than was necessary.

Remittal or transfer of actions

16. *Section 15* is an extension of the provisions contained in sections 25 of the Courts of Justice Act, 1924, and section 2 of the Courts Act, 1988. It empowers the Circuit Court, on the application of any party to an action, to remit or transfer an action to the District Court at any time before the commencement of trial, where it is satisfied that the action is fit to be prosecuted in the District Court or it is of the opinion that the action should not have been commenced in the Circuit Court. (A similar provision — section 25 of the Courts of Justice Act, 1924 — already exists for the remittal or transfer of cases from the High Court to the Circuit or District Courts.)

Subsection (2) provides that where any action for unliquidated damages has been remitted or transferred to the District Court by the High Court or the Circuit Court, the District Court may make an order awarding an amount in excess of its proposed new general jurisdiction limit of £5,000, but not in excess of £10,000.

The effect of *subsection (3)* is to change the period, set out in section 25 of the Courts of Justice Act, 1924, during which an action may be remitted or transferred from the High Court to the Circuit and District Court, from anytime before service of notice of trial to anytime before commencement of the trial.

Variation of monetary jurisdiction limits

17. *Section 16* provides that the Government may vary, by order, the monetary limits of any civil jurisdiction conferred on the Circuit Court and the District Court in any enactment, or any monetary amounts specified in section 17 of the Courts Act, 1981, having regard to changes in the general value of money since the monetary limits or amounts were last fixed. A draft of any proposed order under this section will require to be approved by resolutions of both Houses of the Oireachtas before the order can be made.

Increase in the number of ordinary High Court judges

18. *Section 17 (1)* provides for an increase from fourteen to sixteen in the maximum number of ordinary judges of the High Court. *Subsection (2)* (replacing a provision on similar lines in section 14 (1) of the Law Reform Commission Act, 1975) provides that in the event of either the President of the High Court or an ordinary judge of the High Court being appointed to the Law Reform Commission the number of ordinary judges of the High Court may be increased to seventeen. The purpose is to enable a replacement judge to be appointed to the High Court during the relevant period.

Increase in the number of permanent Circuit Court judges

19. *Section 18* amends sections 1 and 2 of the Courts Act, 1977 which provide, inter alia, for the number of ordinary Circuit Court judges and the assignment of such judges to Circuit Court Circuits. The effect of the section is to increase the number of ordinary judges of the Circuit Court from fifteen to seventeen, and to provide that eight Circuit Court judges shall be permanently assigned to the Dublin Circuit and two to the Cork Circuit. At present six judges are permanently assigned to the Dublin Circuit and one judge to each of the other Circuits.

Increase in the number of permanent District Justices and assignment of District Justices

20. *Section 19* amends the Courts Act, 1977 (section 1 (3)) by providing that the number of justices of the District Court shall not be more than forty-five (at present thirty-nine) in addition to the President of the District Court.

21. *Section 20* increases the number of justices of the District Court who are not required to be permanently assigned to particular districts by amending the Courts (Supplemental Provisions) Act, 1961.

Service of summonses by post

22. *Section 21* provides for service by post of District Court summonses in cases of summary jurisdiction. This mode of service will be additional to and not in replacement of existing modes of service of summonses, such as personal service.

Subsection (1) provides that service by post may be made by registered prepaid post, or by any other system of recorded delivery post which may be provided by rules of court.

Subsections (2) and (3) provide that service by post (as defined in *subsection (1)*) shall be deemed to be good service where it is proved to the Court that an envelope containing a copy of a summons was addressed, registered (or recorded) and sent to a person's last known address or most usual place of abode or place of business in the State, unless it is proved that the person did not receive notice of the summons or of the hearing to which it relates. For the purposes of the section, service of a summons will be deemed to have occurred at the time at which the envelope would be delivered in the ordinary course of post, and there is provision in *subsection (3)* for proving the posting of a summons by way of statutory declaration made by the person who posted it.

Subsection (4) empowers the Court to adjourn proceedings where a person served with a summons does not appear at a hearing and the Court considers it undesirable in the interests of justice to continue the hearing in his absence. This will enable the person to be notified of the adjourned hearing.

Subsection (5) empowers the Court to issue a warrant for the arrest of a person who fails to attend at an adjourned hearing of which s/he has been notified, or to proceed with the hearing of the complaint or accusation against the person.

Subsection (6) provides that where a summons has been issued and the Court has proceeded to hear a case in the absence of the accused, s/he may apply to set the proceedings aside if s/he did not receive notice of the summons, by applying to the Court within the time specified. It also provides that it will be an offence for a person to make a false statement in connection with a notice applying to terminate or set aside proceedings.

Subsection (7) provides that the District Court, on the hearing of an application under *subsection (6)*, may grant or refuse the application and may direct that the complaint or accusation be heard again.

Commencement

23. *Section 22* provides for the short title and collective citation, and for the commencement of the various provisions. The provisions specified in *subsection (3)* will come into operation 1 month after the date of passing of the legislation. The provisions specified in



