



BILLE NA gCÚIRTEANNA AGUS NA nOIFIGEACH CÚIRTE,
1994
COURTS AND COURT OFFICERS BILL, 1994

EXPLANATORY MEMORANDUM

General

The Bill provides for the establishment of a Court of Appeal with a new jurisdiction to hear appeals from the High Court in personal injuries actions and certain other actions and applications, thereby reducing the delays associated with appeals in such matters which are currently heard in the Supreme Court. The new Court of Appeal will incorporate the existing Court of Criminal Appeal.

The Bill also makes provision for the establishment of a Judicial Appointments Advisory Board to advise the Government on the suitability of persons for judicial appointment and a judicial commission to advise on the organisation and management of the courts and courts service.

The Bill also amends and extends the powers of the Master of the High Court enabling the Master to exercise limited functions and powers of a judicial nature. The powers of the Taxing Masters of the High Court are being strengthened to ensure the effectiveness of their role in relation to the adjudication of legal costs. The Bill also confers further powers on the Superior Courts Rules Committee which will enable it to make rules in relation to pre-trial disclosure of certain matters with the objective of shortening trials and reducing the costs associated with court actions.

PART I

PRELIMINARY AND GENERAL

1. *Section 1* sets out the short title, and provides for commencement, collective citation and construction.

Subsection (2) provides that the provisions of the Bill relating to the establishment of the Court of Appeal shall come into operation on a day to be fixed by a Government order.

2. *Section 2* provides for certain repeals.

PART II

COURT OF APPEAL

3. *Section 3* provides for the establishment and constitution of the Court of Appeal.

Subsection (2) provides for the designation by the Government of an ordinary judge of the High Court to be President of the Court of Appeal and the designation by the Chief Justice of two ordinary judges of the High Court to be ordinary judges of the Court of Appeal.

Subsection 3 (a) provides that the Chief Justice and the President of the High Court shall be *ex officio* additional judges of the Court of Appeal. *Subsection 3 (b)* provides that the President of the Court of Appeal shall be *ex officio* an additional judge of the Supreme Court.

Subsection (4) provides for the appointment of additional judges from the High Court to the Court of Appeal in the event of illness of a judge of the Court or where for any other reason a sufficient number of judges of the Court is not available to conduct the business of the Court.

4. *Section 4* provides for the jurisdiction of the Court of Appeal.

Subsection (1) sets out the actions and applications in respect of which an order or judgement of the High Court can be appealed to the Court of Appeal. The Court's jurisdiction does not include appeals which involve a question as to the validity of any law having regard to the provisions of the Constitution.

Subsection (2) (a) transfers the jurisdiction of the Supreme Court to the new Court, in respect to any appeal or other matters specified in *subsection (1)*. *Subsection 2 (b)* transfers the powers, jurisdiction and functions of the Court of Criminal Appeal to the new Court.

Subsection (3) provides that there shall be no appeal to the Supreme Court from a decision of the High Court in respect of actions or applications specified in *subsection (1)*. However, it is provided that such an appeal will lie to the Supreme Court where it is certified that the case involves a question as to the validity of any law having regard to the provisions of the Constitution or a point of law of public importance fit to be heard by the Supreme Court.

Subsection (4) provides that the Court of Appeal shall be a superior court of record.

Subsection (5) provides that on the establishment of the Court of Appeal any reference to the Court of Criminal Appeal in legislation shall be construed as a reference to the Court of Appeal exercising its criminal jurisdiction.

Subsection (6) is a saving provision.

5. *Section 5* is similar to section 29 of the Courts of Justice Act, 1924, which provides for the finality of decisions of the Court of Criminal Appeal. Decisions of the Court of Appeal in civil cases may be appealed to the Supreme Court but only where such appeal involves a point of law of exceptional public importance and such appeal is desirable in the public interest.

6. *Section 6* deals with the remuneration and pension entitlements of the President of the Court of Appeal.

7. *Section 7 (1)* deals with vacancies in the Court of Appeal.

Subsection (2) provides that a vacancy in the office of the President or of an ordinary judge of the Court of Appeal shall not affect the constitution of the Court.

8. *Section 8* amends the provisions of section 9 of the Courts of Justice Act, 1924, relating to precedence between judges.

9. *Section 9* provides for the mode of addressing judges of the Court of Appeal.

10. *Section 10* amends section 55 (1) of the Courts (Supplemental Provisions) Act, 1961. The effect of the amendment is to apply the Eighth Schedule to that Act to the Court of Appeal. The existing Eighth Schedule to the Courts (Supplemental Provisions) Act, 1961 sets out the provisions in relation to offices and officers to be attached to the High Court, the Supreme Court and the President of the High Court.

11. *Section 11* amends the Eighth Schedule to the Courts (Supplemental Provisions) Act, 1961 by the insertion of the Office of the Registrar of the Court of Appeal as an office attached to the Court of Appeal. The provisions of paragraph 22 of the Eighth Schedule are also amended to make provision for the general staffing of the new Office of the Registrar of the Court of Appeal.

12. *Section 12* removes from the responsibility of the Office of the Registrar of the Supreme Court the business of the Court of Criminal Appeal. When the Court of Appeal is established, only the business of the Supreme Court will be dealt with by the Office of the Registrar of the Supreme Court.

13. *Section 13* removes from the superintendence and control of the Registrar of the Supreme Court all matters relating to the business of the Court of Criminal Appeal and repeals the duties and functions of the Registrar of the Supreme Court as Registrar of the Court of Criminal Appeal.

14. *Section 14* makes provision for the Office of the Registrar of the Court of Appeal.

15. *Section 15* applies the provisions of section 36 of the Courts of Justice Act, 1924 to Part II of the Bill. The effect of this provision is that the Superior Courts Rules Committee with the concurrence of the Minister for Justice may make Rules of Court for carrying into effect the provisions of the Bill relating to the Court of Appeal.

16. *Section 16 (1)* provides that the President of the Court of Appeal shall be a member of the Superior Courts Rules Committee.

Subsection (2) applies the provisions of section 65 of the Courts of Justice Act, 1936 to the Office of the Registrar of the Court of Appeal. The effect of this is that the Minister for Justice is empowered to prescribe, vary and revise by order made with the consent of the Minister for Finance court fees to be charged in the Office of the Registrar.

17. *Section 17* amends section 14 (2) and (3) of the Courts (Supplemental Provisions) Act, 1961 dealing with the exercise of jurisdiction of the superior courts to take account of the establishment of the Court of Appeal.

18. *Section 18* provides for the organisation of the business of the Court of Appeal.

19. *Section 19* provides that the number of ordinary judges of the High Court shall not be more than 19 of whom three shall be designated to be judges of the Court of Appeal.

Subsection (2) provides that the number of ordinary judges of the High Court shall be not more than 20 where a judge is appointed to the Law Reform Commission.

20. *Section 20* provides that service as a judge of the European Court of Justice or the Court of First Instance shall be deemed to be practice at the bar for the purpose of qualifying a person for appointment as a judge of the Supreme Court, the Court of Appeal and the High Court.

21. *Section 21* provides for transitional arrangements relating to the Court of Appeal.

PART III

JUDICIAL APPOINTMENTS ADVISORY BOARD

22. *Section 22* is a definition provision relating to the Judicial Appointments Advisory Board.

23. *Section 23* provides for the establishment of a Judicial Appointments Advisory Board.

24. *Section 24* provides that the Board shall perform its functions through committees and provides for the membership of the committees.

25. *Section 25* provides for the submission by the Board of names of persons suitable for appointment to judicial office.

26. *Section 26* provides that the Board may adopt its own procedures to discharge its functions.

27. *Section 27* provides for the provision of staff and services to the Board.

28. *Section 28* relates to appointment to the Office of Chief Justice, President of the Court of Appeal, President of the High Court, President of the Circuit Court and President of the District Court.

PART IV

COURTS COMMISSION

29. *Section 29* makes provision for the establishment of a commission to be known as the "Courts Commission" to advise on the organisation and management of the courts.

30. *Section 30* provides that expenses in relation to Parts III and IV of the Bill shall be paid out of moneys provided by the Oireachtas.

PART V

MISCELLANEOUS

31. *Section 31* empowers the Master of the High Court to exercise limited functions and powers of a judicial nature and provides that the Master shall be sworn into office.

32. *Section 32, subsection (1)* confers on the Master of the High Court the powers of a judge of the High Court in relation to High Court applications allocated for hearing by him or her by the President of the High Court.

Subsection (2) provides that the Master of the High Court may not exercise the functions specified in the subsection.

Subsection (3) is a saving provision.

Subsection (4) provides that the Master of the High Court may exercise other functions which may be conferred by rules of court.

Subsection (5) provides for appeals from orders of the Master of the High Court.

Subsection (6) provides for the making of rules of court in relation to the powers of the Master of the High Court.

33. *Section 33* provides for the arrangement of sittings of and the allocation of business to the Master of the High Court.

34. *Section 34* repeals paragraph 4 of the Eighth Schedule to the Courts (Supplemental Provisions) Act, 1961 relating to the powers and functions of the Master of the High Court, which are now set out in the Bill.

35. *Section 35, subsections (1), (2) and (3)* confer on the Master of the High Court and other court officers the discretion conferred on a judge by section 22 of the Courts Act, 1981 to order the payment of interest in relation to an order for the payment of monies, including damages.

Subsections (4) and (5) make provision for appeals in relation to the powers being conferred under *subsections (1), (2) and (3)*.

Subsection (6) provides that interest on costs will become payable from the time when the costs are taxed, or are agreed between the parties, whichever is the earlier. This amends the existing position whereby interest on Court costs are payable from the date of the Court judgement.

36. *Section 36* provides for the powers of the Taxing Masters of the High Court or a County Registrar exercising the powers of a Taxing Master.

37. *Section 37* provides that the Superior Courts Rules Committee may make rules in relation to the disclosure of certain matters by parties to personal injuries actions.

38. *Sections 38, 39 and 40* are related. The effect of these sections is to make solicitors eligible for appointment as judges of the Circuit Court.

39. *Section 41* prohibits barristers and solicitors from wearing ceremonial wigs in court.

40. *Section 42* provides for a change in the retirement age of judges.

41. *Section 43* empowers the Minister for Justice to prescribe by regulations scales of solicitors' costs and counsels' fees in certain circumstances.

*An Roinn Dlí agus Cirt,
Deireadh Fómhair, 1994.*