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**AN BILLE UM CHÚNAMH DLÍTHIÚIL SIBHIALTA, 1995**  
**CIVIL LEGAL AID BILL, 1995**

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**EXPLANATORY AND FINANCIAL MEMORANDUM**

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*General*

1. The object of the Bill is to put the Scheme of Civil Legal Aid and Advice on a statutory footing. That Scheme is administered by the Legal Aid Board, a non-statutory body established in 1979 with funds provided by the Exchequer. The Scheme helps to ensure that persons of limited means have access to justice in civil matters.

*Main features of the Bill*

2. The main features of the Bill are the following—

(a) The Bill provides for the establishment of a Legal Aid Board (*section 3*), comprising a chairperson and twelve ordinary members to be appointed by the Minister. Of the Board members, two will be barristers and two will be solicitors who have been engaged in practice for at least seven years. Two further members will be appointed to represent the Board's staff. Not less than five members of the Board will be men and not less than five will be women (*section 4*).

(b) The Chief Executive and other administrative staff of the Board will become civil servants of the State (*section 11*). There is also provision for the designation of the Board's solicitors as civil servants.

(c) The Bill requires the Board to maintain a Legal Aid Fund to finance the provision of its services. The fund will consist of moneys paid out of the Exchequer and contributions made by recipients of the Board's services (*section 19*).

(d) The Bill goes on to elaborate the criteria to be considered by the Board when deciding on applications for legal aid and advice and the conditions under which such aid and advice will be made available (*sections 24 to 36*).

(e) The Bill also empowers the Minister to make regulations to give effect to the Bill (*section 37*). In particular, regulations may assign additional functions to the Board, determine or vary monetary limits in relation to means tests, make provision for contributions to be paid by applicants for legal aid and/or advice, make provision for the establishment and location of law centres and further elaborate the conditions under which legal aid or advice may be made available.

### *Implications for Women*

3. The Bill is drafted in gender-neutral terms and its provisions apply equally to men and women.

### *Provisions of the Bill*

#### *Interpretation*

4. *Section 1* sets out definitions of a number of terms used in the Bill (*subsection (1)*) and explains how references to sections, subsections, paragraphs and sub-paragraphs should be interpreted (*subsection (2)*).

#### *Establishment Day*

5. *Section 2* provides that the Minister (i.e. the Minister for Equality and Law Reform) may, by order, appoint a day to be the establishment day for the purposes of the Act.

#### *Establishment of Legal Aid Board*

6. *Section 3* provides that the Legal Aid Board shall stand established on the aforementioned establishment day, complete with all the powers afforded to it elsewhere in the Bill (*subsection (1)*). *Subsection (2)* endows the Board with legal personality, thereby entitling it, *inter alia*, to be a party to legal actions and to hold legal title to property. The Board shall, subject to the other provisions of the Bill, be independent in the exercise of its functions (*subsection (3)*).

#### *Membership of Board*

7. *Section 4* provides that the Board shall comprise a chairperson and 12 ordinary members appointed by the Minister and holding office upon such terms and conditions as he or she, with the consent of the Minister for Finance, may determine (*subsection (1)*). In appointing persons to be members of the Board, the Minister shall have regard to the desirability of their having expertise in particular areas, including law, court practice and procedure, business, finance, management and administration, and consumer and social affairs (*subsection (3) (a)*). Of the members of the Board, two shall be barristers who have been engaged in practice for at least seven years, two shall be solicitors who have been engaged in practice for at least seven years, two shall be representatives of the Board's staff, not less than five shall be men and not less than five shall be women (*subsection (3) (b)*). The term of office of Board members shall not exceed five years and no person may be appointed as a member of the Board for more than two terms (*subsection (4) (a)*). Board members shall act on a part-time basis except where the Minister is satisfied that it is necessary in the interest of the proper functioning of the Board to appoint a member or members to act on a full-time basis. Any such appointment must be consented to by the Minister for Finance (*subsection (4) (b)*). Members of the Board will be paid, out of moneys at the disposal of the Board, such remuneration, superannuation benefits and expenses as the Minister, with the consent of the Minister for Finance, may determine (*subsection (4) (c)*). *Subsection (4) (d)* goes on to provide for the manner in which a Board member may resign, while *subsection (4) (e)* provides for the removal of Board members from office. The Minister is empowered to appoint replacements for Board members who die, resign, become disqualified or are removed from office (*subsection (5) (a)*). Any Board member appointed under *subsection (5) (a)* shall hold office for the remainder of the term of office of the member he or she is replacing (*subsection (5) (b)*). It shall also be for the Minister to appoint the chairperson of the Board (*subsection 2 (a)*). Where the chairperson ceases to be a member of the Board, he or she shall simultaneously cease to be chairperson of the Board (*subsection (2)*).

(b)). The chairperson shall hold his or her office until the expiration of his or her term unless he or she dies, resigns, becomes disqualified or is removed from office before such date. If, however, he is reappointed for a second term on the Board he or she will also be eligible for reappointment as chairperson (*subsection (2) (c)*).

8. While the Bill provides that the Minister may fix the date, time and place of the first meeting of the Board (*subsection (7)*), the Board will be empowered to hold such and so many meetings as are necessary for it to perform its functions (*subsection (6)*). The quorum for such meetings will be five unless the Board agrees that the number should be greater (*subsection (8)*). Board meetings will be chaired by the chairperson of the Board. If the chairperson is not present or if the office of chairperson is vacant the members of the Board present at any given meeting will choose one of their number to chair that meeting (*subsection (9)*). The chairperson and each ordinary member of the Board attending such a meeting will have a vote (*subsection (10)*). *Subsection (11)* details the system of voting to be operated by the Board when deciding on any matter before it. The Board or any committee appointed by the Board will not be precluded from acting simply by reason of the existence of any vacancy or vacancies on the Board or committee (*subsection (12)*).

9. The Board shall regulate, by standing orders or otherwise, its own procedure and business (*subsection (13)*) and will be obliged, as soon as possible after its establishment, to provide itself with a seal (*subsection (14)*). The Board's seal, when used, will have to be authenticated by the signatures of its chairperson and an officer authorised by the Board for that purpose (*subsection (15)*). Judicial notice shall be taken of the Board's seal and every document sealed with it shall be received in evidence and deemed to be genuine without further proof unless the contrary is proved (*subsection (16)*).

#### *Functions of Board*

10. *Section 5* provides that the principal function of the Board shall be to provide, within the Board's resources, legal aid and advice to persons who satisfy the criteria specified in *section 29* and the other requirements of the Bill (*subsection 5(1)*). The Board may perform any of its functions through any of its members or any member(s) of its staff so authorised (*subsection (2)*).

#### *Conferral of additional functions on Board*

11. *Section 6* provides that the Minister may, by order, assign to the Board such additional functions as he considers to be related to those already assigned to it by the Bill (*subsection (1)*). The Minister is also empowered to amend or revoke such orders (*subsection (2)*).

#### *General policy directives as to legal aid and advice*

12. *Section 7* empowers the Minister to issue, by order, general policy directives in relation to legal aid and advice to the Board (*subsection (1)*) and compels the Board to comply with such directives (*subsection (2)*). Nothing in *section 7*, however, is to be construed as enabling the Minister to exercise any power or control in relation to any particular case with which the Board is or may be concerned (*subsection (3)*). The Minister will also be empowered to amend or revoke any order made under *section 7* (*subsection (4)*).

#### *Powers of Board*

13. *Section 8* provides that, subject to the other provisions of the Bill, the Board may do anything which it considers necessary or expedient in order to enable it to perform its functions under the Bill.

*Reports of Board*

14. Section 9 requires the Board to make an annual report to the Minister in such form as he or she may approve (*subsection (1)*). The section requires the Minister to lay before the Houses of the Oireachtas copies of every such report received by him or her (*subsection (3)*). In addition, the Minister may request that the Board supply him or her with certain information and the Board may also supply the Minister with such information or advice as it considers appropriate (*subsection (2)*).

*Chief Executive of Board*

15. Section 10 provides for a chief executive officer of the Board who will be a civil servant of the state and will be appointed by the Minister on the recommendation of the Civil Service Commissioners (*subsection (1)*). The chief executive's functions will be such as are assigned to him or her by the Board (*subsection (2)*). The chief executive will, however, with the consent of the Board, be able to delegate such of his or her functions as he or she chooses to another officer of the Board (*subsection (3)*). In the absence of the chief executive or when the post is vacant the Board will be entitled to assign his or her functions to another officer (*subsection (4)*).

*Staff of the Board*

16. Section 11 deals with matters relating to the staffing of the Board. It provides that, subject to section 10, the Board may appoint such and so many staff as are approved by the Minister and the Minister for Finance (*subsection (1)*). Officers of the Board will be civil servants in the Civil Service of the State (*subsection (3)*). The Board will determine the grades of its staff, as well as the numbers in each grade, subject to the consent of the Minister and the Minister for Finance (*subsection (2)*). Solicitors appointed under *subsection (1)* will have such terms and conditions of employment as are determined by the Board and approved by the Minister and the Minister for Finance (*subsection (4)*). The Act will, however, empower the Minister, with the consent of the Minister for Finance, to designate Legal Aid Board solicitors as civil servants in the Civil Service of the State (*subsection 5 (a)*). The Act will also empower the Board to employ persons under contracts for services subject to the consent of the Minister and the Minister for Finance (*subsection (7)*). Persons employed pursuant to *subsections (1)* and *(7)* will be paid such remuneration, fees and expenses out of the Legal Aid Fund as the Board determines and is approved by the Minister and the Minister for Finance (*subsection (8)*). In relation to officers of the Board, the appropriate authority for the purposes of the Civil Service Regulation Acts will be the Minister (*subsection 6 (a)*).

*Membership of either House of Oireachtas or of European Parliament*

17. Section 12 disqualifies members of the Board from serving as such once they become members of either House of the Oireachtas (*subsections (1) (a)* and *(b)*) or are elected to the European Parliament (*subsection (1) (c)*). It also provides that any member of the staff of the Board who has become a member of either House of the Oireachtas (*subsections (2) (a)* and *(b)*) or the European Parliament (*subsections (1) (b)* and *(c)*) will thereupon stand seconded from his or her position with the Board.

*Dissolution of former Board*

18. Section 13 provides that the present non-statutory Board will stand dissolved as and from the establishment day (*subsection (1)*). It also automatically deems any references to that Board contained in any Acts of the Oireachtas or any statutory instruments to be references to the new Board after establishment day (*subsection (2)*).

*Transfer of assets and liabilities of former Board*

19. Section 14 transfers all property, rights and liabilities currently attaching to the non-statutory Board to the new Board (subsections (1) and (2)) and ensures that such rights and liabilities may be sued upon and obviates any necessity for the new Board to notify individuals whose rights or liabilities are being so transferred (subsection (3)).

*Preservation of certain continuing contracts and adaptation of references to former Board*

20. Section 15 serves to ensure that contracts entered into by the current non-statutory Board are transferred to the new Board, thereby preserving rights and liabilities arising out of such contracts (subsection (1)). The section also ensures that references to the current Board in the memorandum or articles of association of any company or companies will, after the establishment day, be construed as references to the new Board, thereby obviating the need for any such companies to amend their memoranda or articles of association (subsection (2)).

*Saving for certain acts*

21. Section 16 provides that nothing in the Bill will have the effect of invalidating any act done by or on behalf of the current Board prior to the establishment day.

*Pending legal proceedings*

22. Section 17 provides for the substitution of the name of the new Board for that of the current Board in respect of any or all legal proceedings pending on establishment day to avoid such proceedings being frustrated.

*Advances by Minister to Board*

23. Section 18 empowers the Minister, with the consent of the Minister for Finance, to advance to the new Board, out of moneys provided by the Oireachtas, funds for the purposes of expenditure by the Board in the performance of its functions.

*Legal Aid Fund*

24. Section 19 empowers the Board to establish and maintain a fund to be known as the Legal Aid Fund (subsection (1)). The Fund shall consist of moneys advanced to the Board by the Minister pursuant to section 18 (subsection (2) (a)) and any other payments made to the Board (subsection (2) (b)). Subsection (3) empowers the Board to pay out of the Fund such sums as are required to be expended by it in accordance with its statutory functions.

*Accounts and audits of Board*

25. Section 20 requires that the Board keep, *inter alia*, proper income and expenditure accounts and balance sheets as well as such other accounts as the Minister may require (subsection (1)). Such accounts must be submitted to the Comptroller and Auditor General and presented to the Minister who shall lay them before each House of the Oireachtas (subsection (2)).

*Transfer of staff to Board*

26. Section 21 provides that every person employed by the current Board immediately before the establishment day shall, on that day, be transferred to the staff of the new Board (subsection (1)). Civil Servants of the Government on secondment to the current Board who are designated by the Minister will, on the day of such designation, be transferred to and become members of the staff of the

new Board (*subsection (2)*). The Minister is precluded (under *subsection (3)*) from making such a designation order without having notified in writing any recognised trade unions or staff associations and the Board of his intention to do so (*subsection (3) (a)*) and having considered, within a specified period of time, any representations made by such bodies in relation to the matter (*subsection (3) (b)*).

#### *Terms and conditions of staff transferred to the Board*

27. *Section 22* provides that staff transferred to the new Board by *section 21(1)* shall not be put on a lesser scale of pay or be made subject to less beneficial terms and conditions of service than those applicable to them prior to their transfers, subject to agreement with any recognised trade unions or staff associations concerned (*subsections (1) and (2)*). *Subsection (3)* serves to ensure that solicitors transferred to the staff of the new Board by *section 21 (1)* but not the subject of an order under *section 11 (5) (a)* can aggregate their service with the current Board with their service with the new Board for the purposes of accumulating rights under a broad range of labour legislation.

#### *Superannuation*

28. *Section 23* empowers the Board to establish a superannuation scheme for non-civil servants on the staff of the Board (*subsection (1)*). Such a scheme will regulate the terms and conditions of retirement of those staff members to whom "superannuation benefits" (this term is defined in *subsection (8)*) will be payable under the scheme (*subsection (2)*), while no superannuation or other similar benefit will be paid by the Board to staff members other than in accordance with the scheme in question (*subsection (5)*). *Subsection (3)* is a standard clause empowering the Board to amend or revoke a scheme made under *subsection (1)*, while *subsection (4)* provides that any dispute arising as a result of the implementation or interpretation of a scheme will ultimately be referred to the Minister for Finance whose decision in relation to the matter will be final. Schemes made under *section 23* will be laid before each House of the Oireachtas and either House may annul such a scheme (*subsection (6)*). The terms and conditions of any scheme made under *section 23* will not be less favourable than those applying in relation to any scheme currently in existence (*subsection (7) (a)*) and any such scheme will continue in the period between the establishment of the new Legal Aid Board and the creation of a new scheme (*subsection (7) (b)*).

#### *General criteria for grant of legal aid and advice*

29. *Section 24* provides that applicants will not be provided with legal aid or advice unless a reasonably prudent person whose means were such that the cost of obtaining such services at his or her own expense, while representing a financial obstacle to him or her would not be such as to impose undue hardship upon him or her, would be likely to seek such aid or advice at his or her own expense (*paragraph (a)*) and a solicitor or barrister would be likely to advise him or her to do so (*paragraph (b)*).

#### *Legal advice*

30. *Section 25* defines the term "legal advice" and includes within that definition all legal assistance provided by a solicitor or barrister other than any steps in relation to the institution or conduct of proceedings.

#### *Criteria for obtaining legal advice*

31. *Section 26* provides that persons shall not qualify for legal advice in respect of criminal law matters, proceedings designated in *section 28 (10) (a)* or matters concerning which the Board considers

it would be possible for the person, without hardship, to obtain advice other than from the Legal Aid Board (*subsection (2)*). The Board shall, however, provide legal advice, free of charge, to complainants in rape and aggravated sexual assault cases (*subsection (3)*). Where a person otherwise qualifies to obtain legal advice but requires such advice in relation to the law of another state, the Board may allow for the provision of such advice as it deems appropriate (*subsection (4)*). Where a person receives both legal advice and legal aid in relation to the same matter those services shall collectively be regarded as legal aid and all of the conditions (including those relating to contributions) relating to legal aid shall apply (*subsection (5)*).

#### *Legal aid*

32. *Section 27* provides that "legal aid" means representation by a solicitor or barrister nominated by the Board in any civil proceedings to which the section applies. The definition encompasses all such assistance as would normally be given to a client by a solicitor (and, where appropriate, by a barrister) in private practice in relation to instituting, defending or concluding court proceedings (*subsection (1)*). The section applies to all civil proceedings (other than those relating to "designated matters" provided for in *section 28 (10) (a)*) conducted in the District, Circuit, High or Supreme Courts or any court or tribunal prescribed by the Minister by order under *section 27 (subsection (2))*.

#### *Criteria for obtaining legal aid*

33. *Section 28* provides that an applicant will only be provided with legal aid where he or she is granted a legal aid certificate (*subsection (1)*). Subject to *section 29* and to regulations made under *section 37* the Board will grant a certificate to an applicant if it believes that:

- (a) the applicant satisfies the financial eligibility criteria provided for in *section 29*;
- (b) the applicant has reasonable grounds in law for instituting, defending or otherwise being a party to the anticipated proceedings;
- (c) the applicant is reasonably likely to be successful in the proceedings if the facts, as he or she has outlined them, are proved to the satisfaction of the appropriate court or tribunal;
- (d) the anticipated proceedings are the most appropriate means of attaining the end result desired by the applicant;
- (e) it is reasonable, in all the circumstances, to grant a certificate.

In assessing whether or not a grant of a certificate is appropriate the Board is required to weigh the probable cost to it involved in providing legal aid against the likely benefit to the applicant (*subsection (2)*).

34. Where the anticipated proceedings impact on the welfare of a child, the requirements detailed at (c) and (e) above will not fall to be considered by the Board (*subsection (3)*). For the purposes of the Bill "child" is defined as denoting a person under eighteen years of age other than a person who is or has been married (*subsection (12)*). Notwithstanding *subsection (2)* the Board will be precluded from granting a legal aid certificate in respect of proceedings in a court other than the lowest court having the appropriate jurisdiction. The Board may, however, grant a certificate where the applicant is

obliged, by virtue of any other party involved in the proceedings to be a party to a hearing by a higher court (*subsection (9)*). In addition, the Board is precluded from granting a legal aid certificate if:

- (a) the applicant is acting in a representative, fiduciary or official capacity and the Board, having regard to any resource from which the applicant is, or may, be entitled to be indemnified in respect of his or her legal costs by another individual or group or organisation, is of opinion that such a certificate should not be granted,
- (b) the applicant is acting on behalf of a group of persons having the same interest in the proceedings, or
- (c) the Board is of the opinion that the intended proceedings constitute a test case (*subsection (4)*).

35. Despite paragraphs (a) to (c) an applicant shall not be refused a certificate simply because the intended proceedings would, if successful, benefit persons other than the applicant (*subsection (5) (a)*). In such cases, however, the Board will, if it grants a certificate, be required to add on to the applicant's contribution such sum as any other anticipated beneficiaries might reasonably be expected to contribute (*subsection (5) (b)*). The Board will also have the option of refusing to grant a legal aid certificate where it feels that:

- (a) the applicant is entitled to be provided with legal representation or the cost of same by a body or association of which he or she is a member or by any other source;
- (b) the applicant has, on a previous occasion, obtained legal aid or advice and, without reasonable explanation, failed to comply with the terms on which it was granted;
- (c) the cost to the applicant of engaging lawyers in private practice would be less than the contribution payable by him or her under *section 29*;
- (d) the applicant has failed to provide such information as is required by the Board to make a decision on his or her application;
- (e) due to the applicant's act, omission or neglect any regulation under *section 37* cannot be complied with (*subsection (6)*).

36. The Board may, in addition, require an individual to whom it has granted a legal aid certificate to comply with such requirements as it reasonably considers expedient. If the individual fails to comply with such requirements the Board may withdraw the certificate (*subsection (8)*). Regardless of any other provision contained in the Bill, however, the Board will be obliged to grant a legal aid certificate to an applicant if any international instrument to which the State is a party or signatory obliges the State to provide civil legal aid to him or her (*subsection (7)*). *Subsection (10) (a)* goes on, subject to *subsection (11)*, to preclude the Board from granting legal aid certificates in respect of proceedings relating to "designated matters" and defines as "designated matters", matters relating to defamation, debt collection, disputes concerning rights and interests in or over land, civil matters arising under the District Court (Small Claims Procedure) Rules, 1993, licensing, conveyancing and election petitions. *Paragraphs (b) and (c)* preclude the following from being regarded as "designated proceedings".

- (a) the defence of a counterclaim for defamation (*subsection (10) (b)*);
- (b) proceedings under the Landlord and Tenant Acts, 1967 to 1994 (insofar as they relate to residential property), the Married Women's Status Act, 1957, the Rent Restrictions Acts, 1960 and 1967, the Family Home Protection Act, 1976, or proceedings arising out of a dispute between spouses in respect of the ownership of any property (*subsection (10) (c) (i)*);
- (c) proceedings relating to the applicant's home, where the Board is of the opinion that the applicant is infirm or may have been subjected to duress or undue influence or was a victim of fraud, and that hardship would ensue for the applicant should he or she not be granted a legal aid certificate (*subsection (10) (c) (ii)*);
- (d) matters relating to the preparation of an assent, where the Board is satisfied that the assent relates to the applicant's home and that a grant of representation has been taken out on behalf of the applicant (or he or she has taken out a personal grant of representation) and that hardship would ensue for the applicant should he or she not be granted a legal aid certificate (*subsection (10) (c) (iii)*);
- (e) licensing matters, where the Board is satisfied that the granting of the licence in question would result in the causation of hardship to the applicant (*subsection (10) (c) (iv)*);
- (f) conveyancing matters closely related to matters in respect of which a legal aid certificate has already been granted (*subsection (10) (c) (v)*).

37. The Minister may, by order, with the consent of the Minister for Finance, disapply any matter referred to in *subsection (10)* so that it will cease to be a designated matter (*subsection (11)*).

*Financial eligibility and contributions towards cost of legal aid and advice*

38. *Section 29* provides that, subject to *sections 24, 26* and *28*, an individual shall not qualify for legal aid or advice unless he or she comes within specified income limits and pays the required contribution to the Board (*subsections (1), (3)* and *(5)*). The Board may, however, ignore or moderate these requirements in respect of individual applicants in accordance with regulations made under *section 37*. An applicant's eligibility and contribution shall be assessed by reference to his or her disposable income and, where appropriate, disposable capital, in the manner prescribed by the Minister by regulations under *section 37 (subsection (3))*. If the Board feels that the applicant's behaviour is likely to cause an increase in the cost to it of providing him or her with legal aid or advice, it may, after notifying him or her of its intentions, refuse to grant legal aid or advice, increase the quantum of the payable contribution or revoke a legal aid certificate if such has already been granted (*subsection (6)*). In addition, the Board may include in its assessment of an applicant's resources the value of any income or assets of which the applicant has intentionally deprived himself or herself for the purpose of qualifying for legal aid or advice (*subsection (7)*). The terms "capital", "disposable capital", "disposable income" and "income" are defined in *subsection (8)*.

*Location of law centres and provision of legal aid and advice*

39. Section 30 provides that legal aid and advice may be made available through law centres established by the Board with the consent of the Minister, or through solicitors or barristers who are on panels maintained by it (*subsection (1)*). *Subsection (3)* empowers the Board to establish and maintain such panels. Solicitors and barristers who are prepared to comply with such terms and conditions as are laid down by the Minister and the Minister for Finance shall be entitled to have their names included on the appropriate panels, save where their professional conduct, in the opinion of the Board, renders them unsuitable to provide legal aid or advice (*subsection (4)*). Where a solicitor is entered on the solicitors' panel on behalf of his or her firm, he or she shall, when providing legal aid or advice, be deemed to be doing so on behalf of the firm (*subsection (5)*). Subject to the other provisions of the Bill, an individual shall be entitled to apply for legal aid and advice through any law centre, regardless of their place of residence (*subsection (2)*). Any centre may provide legal aid or advice to more than one party to a case, provided that each party is given separate legal representation (*subsection (6)*). All communications in respect of any proceedings involving a legally aided party may be addressed to the law centre responsible for the provision of that legal aid, rather than to the Board at its main office (*subsection (7)*).

*Selection of solicitor or barrister*

40. Section 31 provides that the Board, having decided to grant a person legal advice, shall nominate one of its solicitors or allow the person to choose a solicitor from the solicitors' panel for the purpose of providing the client with legal aid or advice (*subsection (1)*). Where the services of a barrister are required, the Board, having considered the views of its client, shall nominate a barrister from the barristers' panel for the purpose of providing such legal aid or advice as the Board deems necessary, on the instructions of the solicitor already nominated (*subsection (2)*). Where the client wishes to be provided with the services of an alternative solicitor or barrister, he or she shall be required to meet any additional expenses incurred as a result of that change of solicitor or barrister unless the Board deems it reasonable for it to meet such additional expenses out of the Fund (*subsection (3)*). Except where the Board deems it to be reasonable in all the circumstances a client shall not be permitted to seek a change of solicitor or barrister once he or she has accepted the nomination by the Board of the lawyer in question (*subsection (4)*). The solicitor nominated or engaged by the Board may nominate another eligible solicitor to act as his or her agent (*subsection (5)*).

*Relationship between lawyer and person in receipt of legal aid or advice*

41. Section 32 provides that, subject to the other provisions of the Bill, the relationship (and rights and privileges arising out of that relationship) between a solicitor or barrister and an applicant for, or recipient of, legal aid or advice shall be the same as that between a solicitor in private practice or a barrister and his or her private client (*subsection (1)*). Notwithstanding the existence of such a relationship, a solicitor or barrister providing legal aid or advice shall be obliged to provide to any person authorised by the Board any information that has been provided to him or her by his or her client in the course of him or her providing that legal aid or advice for the purpose of enabling the Board to discharge its statutory functions (*subsection (2)*).

*Costs recoverable by or on behalf of a person in receipt of legal aid or advice*

42. Section 33 provides that courts and tribunals shall make orders for costs in cases involving legally aided persons in the same way as they would if neither party was in receipt of legal aid (*subsection (2)*). The term "costs" is defined as including solicitors' and witnesses costs and expenses, barristers' fees and all other outlays (*subsection (1)*). The amount of costs recoverable by the Board shall be the aggregate of its outlay as determined by the Board or such sum as may be measured by the court or tribunal, or taxed in accordance with the rules of the court or tribunal, or determined by the Taxing Master (*subsection (6)*). *Subsection (3)* requires legally aided persons to do everything possible to ensure that they recover for the Fund all sums to which they are entitled in respect of costs incurred by the Board on their behalf. *Subsection (4)* imposes a similar duty on solicitors nominated to represent such clients as well as requiring them to pay any costs recovered into the Fund. Legally aided persons are precluded from agreeing to forego any costs or to meet part or all of the costs of another party unless such agreement receives the prior approval of the Board (*subsection (5)*). Any general damages or costs recovered by or preserved for a person in receipt of legal aid or advice shall be paid into the Fund in order that the Board might recover its costs incurred in providing such aid or advice. Any other property recovered shall be made subject to an appropriate charge in favour of the Fund for the same reason (*subsection (7)*). The Board is obliged to waive such rights in respect of any house or portion thereof (including normal household chattels) which comprises the normal place of residence of its client, any maintenance payments, the first £2,500 of any arrears of maintenance, and the first £2,500 of any sum payable under the Social Welfare Acts, the Health Acts, 1947 to 1994, the Unfair Dismissals Acts, 1977 to 1993, the Minimum Notice and Terms of Employment Acts, 1973 to 1991, the Employment Equality Act, 1977, the Anti-Discrimination (Pay) Act, 1974, or the Redundancy Payments Acts, 1967 to 1991 (*subsection (8) (a)*). The Board may, in whole or in part, waive its right to any property or money to which *section 33* entitles it if it is of the opinion that its failure to do so would result in hardship for its client (*subsection (8) (b)*).

*Measurement of costs incurred by Board*

43. Section 34 provides that the Board or court or tribunal concerned may take all relevant factors into account in assessing the quantum of the costs incurred by the Board in providing legal aid or advice to an individual. Among those factors considered must be the salaries paid to the Board's staff (*paragraph (a)*), fees paid to solicitors or barristers (*paragraph (a)*), administrative expenses (*paragraph (b)*), expenses incurred in obtaining reports (*paragraph (c)*), witnesses expenses (*paragraph (d)*) and court fees (*paragraph (e)*).

*Refund of costs and damages*

44. Section 35 requires that if the total cost incurred by the Board in providing legal aid or advice to its client is less than the amount paid into the Fund by him or her by way of contribution under *section 29* and by way of payment made or charge created under *section 33(7)*, the balance shall be refunded to the client.

*Costs awarded against a person in receipt of legal aid*

45. Section 36 provides that costs awarded against a legally aided person shall not be paid out of the Fund (*subsection (1)*), save where the Board opts to make an *ex gratia* payment to the successful litigant following a submission of costs by him or her to the Board (*subsection (2)*). Before making any such *ex gratia* payment,

however, the Board must be satisfied, *inter alia*, that its client instituted the proceedings (*paragraph (a)*), that the successful litigant has taken all reasonable steps to recover his or her costs from the Board's client in person (*paragraph (b)*), that the successful litigant will suffer severe financial hardship unless such a payment is made (*paragraph (c)*) and that the case has been finally determined (*paragraph (e)*).

#### *Regulations*

46. Section 37 empowers the Minister to make such regulations as are necessary in order to give effect to the Bill (*subsection (1)*). *Subsection (2)* outlines a number of the specific regulations which the Minister may make.

#### *Orders*

47. Section 38 imposes the standard duty on the Minister to lay before each House of the Oireachtas every order or regulation made by him under the Act and empowers each of those Houses to annul any such order or regulation (*subsection (1)*).

#### *Expenses*

48. Section 39 provides that expenses incurred by the Minister in the administration of the Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

#### *Short title*

49. Section 40 provides that the Act may be cited as the Civil Legal Aid Act, 1995.

#### *Financial and Staffing Implications*

50. The Bill has no financial or staffing implications. It will not involve any additional charge on the Exchequer.

#### *An Roinn Comhionannais agus Athchóirithe Dlí, Feabhra, 1995.*