



BILLE NA gCÚIRTEANNA AGUS NA nOIFIGEACH CÚIRTE, 1995

COURTS AND COURT OFFICERS BILL, 1995

EXPLANATORY MEMORANDUM

General

The Courts and Court Officers Bill, 1995 provides for increases in the numbers of judges of the Supreme, High, Circuit and District Courts to deal with arrears of cases and appeals in those courts and the ongoing business of those courts. It provides that the Supreme Court may sit in divisions and for the abolition of the Court of Criminal Appeal and the transfer of its jurisdiction to the Supreme Court.

It also makes provision for the establishment of a Judicial Appointments Advisory Board to advise the Government on the suitability of persons for judicial appointment.

The Bill also amends and extends the powers of the Master of the High Court by enabling the Master to exercise limited functions and powers of a judicial nature. It also extends the powers of County Registrars. 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 and the Circuit Court Rules Committee which will enable these Committees to make rules in relation to pre-trial disclosure of certain matters with the objective of shortening trials and reducing the costs associated with personal injuries actions.

The Bill allows the trial judge to decide on whether a criminal trial should be transferred for hearing to the Circuit Court in Dublin. It also removes limitations on the territorial jurisdiction of judges of the District Court in respect of criminal cases.

It makes provision for a number of other matters including the provision of funding for judicial training, qualifying solicitors for appointment as judges of the Circuit Court, prohibiting the wearing of wigs by barristers and solicitors in courts and reducing the retirement age of judges of the Supreme and High Courts.

PART I

PRELIMINARY AND GENERAL

1. *Section 1* sets out the short title, and provides for commencement, collective citation and construction. The effect of *subsection (2)* is that the Court of Criminal Appeal and the Courts-Martial Appeal Court will be abolished and their jurisdiction transferred to the Supreme Court on such day as the Government may fix by order

after consultation with the Chief Justice and the President of the High Court.

2. *Section 2* defines certain terms used in the Bill.

3. *Section 3* provides for certain repeals which are set out in the *First Schedule* to the Bill.

PART II

SUPREME COURT

4. *Section 4* provides for the transfer of all the powers, jurisdiction and functions of the Court of Criminal Appeal to the Supreme Court on foot of a Government order to be made under *section 1 (2)*. When that order is made the Court of Criminal Appeal shall cease to exist and all appeals pending before that Court shall be heard by the Supreme Court.

5. *Section 5* provides for the transfer of all the powers, jurisdiction and functions of the Courts-Martial Appeal Court to the Supreme Court on foot of a Government order to be made under *section 1 (2)*. When that order is made the Courts-Martial Appeal Court shall cease to exist and all appeals pending before that Court shall be heard by the Supreme Court.

6. *Section 6* increases the statutory limit on the number of ordinary judges of the Supreme Court from four to seven, or eight where a Supreme Court judge is a member of the Law Reform Commission.

7. *Section 7* provides that the Supreme Court may sit in two or more divisions at the same time.

8. Under this section, the Chief Justice may determine whether the divisions of the Court should comprise 5 or 3 judges, subject to paragraph 9, below.

9. The section requires that in matters cognisable by the Court under Articles 12 and 26 of the Constitution and on a question of the validity of a law having regard to the provisions of the Constitution, the Court shall be comprised of at least 5 judges.

10. *Section 8* provides that it shall be the function of the Chief Justice to arrange the business of the Supreme Court.

PART III

NUMBERS OF JUDGES OF HIGH COURT, CIRCUIT COURT AND DISTRICT COURT

11. *Section 9* increases the statutory maximum number of ordinary judges of the High Court from 16 to 18, or 19 where a High Court judge is a member of the Law Reform Commission.

12. *Section 10* increases the statutory maximum number of ordinary judges of the Circuit Court from 17 to 24.

13. *Section 11* increases the statutory maximum number of ordinary judges of the District Court in addition to the President of the District Court from 45 to 50.

14. The section also provides for an increase from 11 to 12 in the number of judges of the District Court who are not permanently assigned to a District.

PART IV

JUDICIAL APPOINTMENTS

15. *Section 12* is a definition provision relating to the Judicial Appointments Advisory Board established under *section 13*. By judicial office is meant an office of ordinary judge of the Supreme, High and Circuit Courts or judge of the District Court (other than the President of the District Court).

16. *Section 13* provides for the establishment and composition of a Judicial Appointments Advisory Board whose purpose is to identify and inform the Government of the suitability of persons for appointment to judicial office.

17. *Subsection (2)* prescribes three-year renewable terms of membership of the Board for those members nominated by the Minister, the Chairman of the Bar Council and the President of the Law Society.

18. *Section 14* provides that the Board may adopt its own procedures to discharge its functions including the establishment of subcommittees and may do such other things as are set out in *subsection (2)*.

19. *Section 15* makes provision for membership of the Board in the event of death or retirement of a judicial member of the Board.

20. *Section 16, subsection (1)* provides that a person who wishes to be considered for appointment to judicial office shall inform the Board in writing and shall provide the Board with information that the Board may require.

21. *Subsection (2)* provides that at the request of the Minister, the Board shall submit to her the names of all persons who have been considered for appointment by the Board and the Board shall indicate at least ten persons whom it recommends for appointment.

22. *Subsection (4)* provides that where less than ten persons wish to be considered for appointment or where the Board is unable to recommend 10 persons, the Board may recommend a lesser number of persons for appointment.

23. *Subsection (5)* provides that the Board shall recommend at least ten persons in respect of each vacancy in the case of more than one vacancy arising, or such number of names as the Minister shall specify, following consultation with the Board.

24. *Subsection (6)* requires the Government to first consider persons who have been recommended by the Board in advising the President on appointments.

25. Under *subsection (7)*, the Board shall not submit or recommend the name of a person unless that person meets eligibility requirements laid down by statute and further, shall not recommend the name of any person unless that person satisfies the conditions set out in *paragraphs (a) to (d)* of the subsection.

26. *Subsection (8)* requires that when a person is appointed on a recommendation by the Board, notice of that fact shall be published in the *Iris Oifigiúil*.

27. *Section 17* provides that the procedures of the Board shall not apply where the Government proposes to advise the President on the appointment to judicial office of a serving judge or a judge of the court of Justice.

28. *Section 18* provides that the Board shall not recommend its own members for appointment with the exception of the Attorney General who must withdraw from the Board if he or she wishes to be considered for appointment to judicial office.

29. *Section 19* provides that persons wishing to be considered for judicial appointment must agree to take training courses as may be required after their appointment.

30. *Section 20* provides that the proceedings of the Board and all communications involving the Board shall be confidential and may only be disclosed for the purposes of the Act.

31. *Section 21* provides for the provision of services including staff to the Board.

32. *Section 22* provides for the payment of expenses incurred in the administration of the Board.

33. *Section 23* relates to appointments to the office of Chief Justice, President of the High Court, President of the Circuit Court and President of the District Court, which are not subject to the appointments procedures of the Board. It requires the Government when advising the President on an appointment to these offices to first consider serving judges for appointment.

PART V

MASTER OF HIGH COURT

34. *Section 24* 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 in like manner as a judge.

35. *Section 25, 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.

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

37. *Subsection (3)* is a saving provision.

38. *Subsection (4)* provides that the Master of the High Court may exercise further functions relating to pre-trial matters which may be conferred by rules of court.

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

40. *Subsection (6)* provides for the making of rules of court in

relation to the powers of the Master of the High Court which are conferred under this section.

41. *Section 26* provides for the arrangement of sittings of and the allocation of business to the Master of the High Court.

PART VI

TAXING MASTER OF HIGH COURT

42. *Section 27* provides for the powers of the Taxing Masters of the High Court or a County Registrar exercising the powers of a Taxing Master.

43. *Subsection (1)* provides that in relation to a party and party or a solicitor and client bill of costs, the Taxing Master may examine the nature and extent of any work done by counsel, solicitors or by an expert witness in a case in connection with the allowance or disallowance of any costs included in a bill of costs.

44. *Subsection (2)* provides that the Taxing Master shall have the power to allow or disallow costs included in a bill of costs as he or she considers to be fair and reasonable in the circumstances of the case.

45. *Subsection (3)* provides for appeals from decisions of the Taxing Master or a County Registrar.

46. Under *subsection (4)* the payment of standby or retainer fees to a solicitor, counsel or a witness shall not be payable if the Taxing Master deems the payment of that fee to be unreasonable.

47. *Subsection (5)* provides that a Certificate of Taxation shall not issue unless vouchers or receipts for charges on a solicitor and client bill of costs have been accepted by the Taxing Master.

48. *Subsection (6)* provides that a solicitor, legal cost accountant or a cost drawer may only recover his or her fees arising from the taxation of costs from the party who engages his or her services.

49. *Subsection (7)* provides that on a review of taxation by the High Court or the Circuit Court, the cost of attendance in the court of a solicitor, legal cost accountant or a cost drawer may only be recovered from the party who engages his or her services.

50. The effect of *subsection (8)* is that where the Taxing Master reduces a party and party bill of costs by one-sixth or more, the costs of taxation will be borne by the party claiming the costs except in certain circumstances.

51. *Subsection (9)* will allow a Taxing Master to tax part of a bill of costs only where only that part of a bill of costs is in dispute.

52. *Subsection (10)* empowers the Taxing Master, in respect of the taxation of part of a bill of costs to request further information from the parties to the taxation.

53. *Subsection (11)* provides that where part of a bill of costs only is taxed the cost of taxation shall be based on that part of the bill of costs only.

54. Under *subsection (12)*, legal costs arising from formal investigations under section 466 of the Merchant Shipping Act, 1894 may be taxed by the Taxing Master.

PART VII

QUALIFICATIONS OF JUDGES OF CIRCUIT COURT

55. *Section 28, 29 and 30* are related. The effect of these sections is to make practising solicitors of ten years standing eligible for appointment as judges of the Circuit Court. At present only barristers of ten years standing are so eligible. The effect of *paragraph (b)* of *section 29* is that in the case of a solicitor, service as a judge of the District Court shall be regarded as practice for the purposes of eligibility for appointment as a judge of the Circuit Court.

PART VIII

CIRCUIT COURT

56. *Section 31* provides that an application for transfer of a criminal trial to the Dublin Circuit Court shall be granted only where the judge is satisfied that it would be manifestly unjust not to do so. Under existing law the accused appearing before the Circuit Court outside Dublin has an automatic right to opt for trial in the Dublin Circuit.

57. *Subsection (3)* requires that an application by the prosecution to transfer the trial of an accused person to the Dublin Circuit Court shall be granted where an application by a co-accused to have his or her trial transferred to the Dublin Circuit Court has been granted.

58. *Section 32* provides that the President of the District Court shall be an *ex-officio* judge of the Circuit Court.

59. *Section 33* confers additional powers (set out in the *Second Schedule* to the Bill) on County Registrars and makes provision for appeal from decisions of County Registrars.

60. *Section 34* enables the Minister for Justice to require County Registrars to perform the duties of another County Registrar where appropriate.

61. *Section 35* provides for the permanent assignment of judges to the Dublin and Cork Circuit Courts.

PART IX

DISTRICT COURT

62. *Section 36* transfers the power to temporarily assign judges of the District Court from the Minister for Justice to the President of the District Court.

63. The effect of *section 37* is to enable the Minister for Justice to permanently assign more than one District Court judge to any District Court District. At present the Minister may assign more than one judge to the Dublin Metropolitan District only.

64. *Section 38* is consequential on *section 37*.

65. *Section 39* enables the Minister to nominate any District Court clerk as secretary to the District Court Rules Committee. At present the Minister may nominate a clerk attached to the Dublin Metropolitan District only.

66. The effect of *section 40* is to provide for much greater flexibility in the hearing of criminal cases by District Court judges. At present it is not possible to dispose of a criminal case other than in the District Court District where the offence was committed or in the District Court District where the accused resides or was arrested. *Section 40* will allow for the trial of an offence by any District Court judge in any District Court District in certain circumstances.

PART X

MISCELLANEOUS

67. *Section 41* amends section 34 of the Courts of Justice Act, 1936. *Subsection (1)* provides that judges of the High Court shall sit in appeal towns where their attendance is required at times determined by the Chief Justice and the President of the High Court.

68. *Subsection (3)* provides that the Chief Justice and the President of the High Court shall determine the number of judges sitting on a High Court Circuit.

69. *Subsections (4) to (6)* re-enact provisions of section 12 of the Courts of Justice Act, 1953 relating to the High Court on Circuit.

70. *Section 42* amends section 38 of the Courts of Justice Act, 1936 and provides that appeals from the Circuit Court sitting outside Dublin may be heard in Dublin.

71. *Section 43* provides that service as a judge of the European Court of Justice or the Court of First Instance or as an Advocate-General of the Court of Justice shall be deemed to be practice at the Bar for the purposes of qualifying for appointment as a judge of the Supreme and High Courts.

72. *Section 44* provides that when the jurisdiction of the Court of Criminal Appeal is transferred to the Supreme Court on an order made under *section 1 (2)* of the Bill, the prohibition on an appeal to the Supreme Court by the prosecution against an acquittal shall continue to apply.

73. *Section 45, subsection (1)* provides that the Superior Courts Rules Committee or the Circuit Court Rules Committee may make rules in relation to the disclosure of certain matters by parties to High Court or Circuit Court personal injuries actions without the necessity of an application to court.

74. *Subsection (2)* provides that rules made by a rules committee may differentiate between different classes of cases etc.

75. *Subsection (4)* provides that a rules committee may, with the concurrence of the Minister for Justice make rules allowing for the admission in evidence of information etc. disclosed pursuant to *subsection (1)*.

76. *Section 46* empowers the Minister for Justice to prescribe by

regulations scales of solicitors' costs and counsels' fees in circumstances where a court rules committee fails to submit costs rules for the Minister's concurrence within 3 months of the Minister requesting the committee to submit such rules or, where they are submitted within 3 months, the Minister is of the opinion that the scales prescribed are excessive.

77. *Section 47 (1)* provides for a change in the retirement age of judges of the Supreme and High Courts appointed after the enactment of these measures from the current 72 years to 70 years.

78. *Subsection (2)* provides that existing judges of the High and Supreme Courts are unaffected by the change in retirement age.

79. *Subsection (3)* exempts existing judges of other courts from the new retirement age where these are appointed in the future as judges of the High or Supreme Courts.

80. *Section 48* gives the Minister a power to provide funds for training courses for judges with the consent of the Minister for Finance.

81. *Section 49* prohibits barristers and solicitors from wearing court wigs.

82. *Section 50, 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.

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

84. *Section 51* sets a limit of £250,000 on the value of property up to which the Commissioners of Charitable Donations and Bequests have power to frame charitable schemes. It also provides that the Minister shall have the power to vary the limit by order in line with changes in the value of money and that such an order shall be laid before each House of the Oireachtas.

*An Roinn Dlí agus Cirt,
Samhain, 1995.*