



**AN BILLE UM DHLITEANAS SIBHIALTA AGUS
CÚIRTEANNA 2004
CIVIL LIABILITY AND COURTS BILL 2004**

EXPLANATORY AND FINANCIAL MEMORANDUM

Introduction

The purpose of this Bill is to provide for procedural and other changes in actions to recover damages for personal injuries, to provide for the disposal of part of the funds of suitors vested in the Accountant of the Courts of Justice, to amend the law in regard to proceedings heard otherwise than in public, to make provision in relation to the jurisdiction of the courts in proceedings relating to land and to provide for other related matters.

Part 2 of the Bill amends the law on civil liability. In doing this, it implements certain commitments in the Agreed Programme of Government and relevant recommendations of the Motor Insurance Advisory Board.

Part 3, Chapter 1 provides for the realisation of the dormant funds of suitors of the High Court and of the special account for small balances and their transfer to the Exchequer for the specific benefit of the building projects of the Courts Service.

Chapter 2 amends the in camera rule, particularly in regard to family law proceedings, addresses the implications of the Valuation Act 2001 for court jurisdiction and contains other miscellaneous provisions relating to the courts.

Provisions of the Bill

Part 1 — Preliminary and General

Section 1 is a standard provision dealing with the Act's Short Title and commencement.

Section 2 defines some of the terms used in the Act and is a standard provision.

Section 3 is a standard provision relating to the making of orders and regulations.

Section 4 is a standard provision dealing with the expenses incurred by the Minister for Justice, Equality and Law Reform in the administration of the Act.

Part 2 — Civil Liability

Section 5 deals with the application of this Part of the Act and provides that, subject to *sections 13(8), 21(4), 22(4), 23(3) and 24(2)*, the Part applies to personal injuries actions brought after its commencement.

Section 6 amends the Statute of Limitations (Amendment) Act 1991, by substituting in subsection (1) of sections 3, 4 and 5 of that Act the words “one year” for “three years”.

Section 7 provides that a person intending to bring a personal injuries action must serve a letter of claim on the alleged wrongdoer. The letter of claim must be sent not later than 2 months after the date of accrual of the cause of action or date of knowledge (whichever occurs later). Failure to serve a letter of claim can result in a penalty in costs and in the court drawing such inferences from the failure as appear proper.

Section 8 makes it a function of the court to ensure that parties to a personal injuries action comply with the relevant rules of court so that the trial will take place within a reasonable period of the commencement of the action. Extensions to time limits will only be allowed where both parties agree, or the court considers that the extension is necessary or expedient to enable the action to be properly prosecuted or defended and the interests of justice require the extension. A court may make appropriate orders as to costs for the purpose of ensuring compliance with the rules of court.

Section 9 provides that a personal injuries action shall be brought by means of a summons to be known as a “personal injuries summons” and specifies the information which this must contain. Full particulars of all items of special damage, the wrongful acts of the defendant, the circumstances of the wrong and each instance of negligence must be included. The court is given powers to deal with non-compliance with these provisions, including the power to draw appropriate inferences from the non-compliance.

Section 10 provides that a plaintiff must supply, at the request of the defendant, certain further information. This includes particulars of any previous personal injuries actions, or injuries or medical treatment having a bearing on the current injury. The defendant may also require the plaintiff to provide documents from the Revenue Commissioners or the Minister for Social and Family Affairs relating to earnings or other income relevant to the claim. The court is given powers to deal with non-compliance.

Section 11 relates to defences and counterclaims. A defence must specify those elements of the claim of which the defendant does not require proof, the elements of the claim of which the defendant requires proof and the grounds on which the defendant claims s/he is not liable for any injuries suffered by the plaintiff. Counterclaims must contain similar information to that required in a personal injuries summons.

Section 12 requires that all pleadings contain full and detailed particulars. The section also requires that such pleadings be lodged in the relevant court.

Section 13 requires parties to swear an affidavit verifying the contents of any pleading or further information requested under *Section 10*. Such an affidavit must be lodged in the relevant court within seven days of the service of the pleading. This section applies not

only to actions brought after its commencement but also to certain actions pending at that time where one party requires the other to swear a verifying affidavit. Where a person makes a statement in an affidavit which is false or misleading and which that person knows to be false or misleading, s/he shall be guilty of an offence.

Section 14 introduces the concept of a mediation conference. A court may direct that parties to a personal injuries action meet to discuss and attempt to settle the action. The chairperson of a mediation conference shall be a person agreed by the parties or, if no agreement is reached, a practising barrister or practising solicitor of not less than 5 years standing or a person nominated by a body prescribed by the Minister. The notes of the chairperson of a mediation conference and all communications during it shall be confidential and cannot be used in evidence in subsequent proceedings.

Section 15 deals with the report of the mediation conference which must be prepared by the chairperson and submitted to the court. Where a party fails to comply with a direction to take part in the mediation, the court may direct that party to pay costs incurred after the direction.

Section 16 provides that both plaintiff and defendant shall serve a notice of an offer of settlement on the other party. After the expiration of a time period to be prescribed such offers are to be lodged in court. The judge shall not be aware of the terms of such offers until a judgement has been delivered in the action. The court shall have regard to the offers and the reasonableness of the conduct of the parties in making them when considering the making of an order as to costs in the action.

Section 17 provides for pre-trial hearings to determine what matters are in dispute, where the court considers this appropriate.

Section 18 provides that a court may direct that evidence may be given by way of affidavit.

Section 19 enables the court to appoint approved persons to investigate and give expert evidence on any matter it shall direct. Parties to a personal injuries action are required to co-operate with an approved person. An 'approved person' is a person approved by the President of the High Court, in consultation with the Presidents of the Circuit and District Courts, for the purposes of the section.

Section 20 provides that where an appeal is taken to the Supreme Court, that court may, if it considers that any matter in the case, relating to either liability or damages, is of exceptional public importance and the action is one of a class of claims in which the same or similar matters arise, invite appropriate persons to make submissions to the court in relation to the matter. The Court may exercise this power on the request of a party or of a person who is not a party or of its own motion. Where a person declines an invitation from the Court to make submissions, the person shall state their reasons for declining in writing.

Section 21 makes it an offence to give or adduce or dishonestly cause to be given or adduced evidence that is false or misleading and which the person knows to be false or misleading. It is also to be an offence to give, adduce etc. false instructions or information to a solicitor or expert. This section applies not only to actions brought after its commencement but also to actions pending at that time.

Section 22 provides that, if a plaintiff gives or adduces or dishonestly causes to be given or adduced evidence which is false or misleading and which the person knows is false or misleading, the court shall dismiss the action unless for stated reasons the court considers the dismissal would result in injustice. A similar consequence applies if a plaintiff has sworn a false verifying affidavit. This section applies to actions pending at its commencement as well as to subsequent actions.

Section 23 amends the Civil Liability Acts 1961 and 1964 in relation to collateral benefits. It provides for the deductibility of charitable donations made by the defendant if the latter specifies in advance that s/he is making the donation on that basis.

Section 24 provides that in a personal injury action any income, in respect of which a plaintiff is making a claim but which has not been returned prior to the hearing in accordance with the Taxes Consolidation Act 1997 or has not otherwise been notified to the Revenue Commissioners, shall be disregarded by the court in assessing damages unless the court considers that it would be unjust to disregard it.

Section 25 provides that a person guilty of an offence under this Part shall be liable, on conviction on indictment, to a fine not exceeding €100,000, or imprisonment for a term not exceeding 10 years or both. A person tried summarily shall on conviction be subject to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both.

Part 3, Chapter 1 — Funds of Suitors

Section 26 defines some of the terms used in this Chapter and is a standard provision.

Section 27 provides that the Chief Justice shall order the Accountant of the Courts of Justice to realise all the investments of the dormant account of the funds of suitors of the High Court and of the special accounts for small balances. A proportion of the value of those investments, 2.5%, is to be retained.

Section 28 provides that the Bank of Ireland shall, where ordered by the Chief Justice, pay out of the account to the Exchequer such sums, subject to a maximum, as may be required for purposes of defraying the costs of providing, managing and maintaining court buildings.

Section 29 provides that if, due to compliance with an order under *section 28*, the funds of suitors are not sufficient to enable suitors to be fully indemnified, the Minister for Finance shall advance out of the Central Fund or the growing produce thereof an amount sufficient to enable suitors to be indemnified.

Part 3, Chapter 2 — Miscellaneous Provisions

Section 30 is a standard provision and defines some of the terms used in this Chapter.

Section 31 provides for the amendment of the ‘in camera’ rule, as contained in certain statutes relating to family law, so as to allow the publication of reports of proceedings so long as the report does not contain any information which would identify the parties or any child to which the proceedings relate. It further provides that nothing in any enactment prohibiting proceedings from being heard in public

shall prevent the production of a document or the giving of information or evidence relating to such proceedings to a body or person conducting a hearing, inquiry etc. pursuant to statute. This extends also to a body or person acting otherwise than under statute where the body or person is prescribed by order of the Minister. In both situations, the body or person is prohibited from publishing the document, information or other material.

Section 32 amends the Courts and Court Officers Act 2002 so as to provide that interest on legal costs shall not be payable until the amount of the costs is agreed by the parties or, in the absence of agreement, until the costs are taxed or measured. Thereafter, the costs bear interest until they are paid at a rate specified from time to time.

Section 33 provides that High Court registrars can be assigned to act as registrar to the Central Criminal Court.

Section 34 amends the Court Officers Act 1926 to provide for the carrying out of the functions of the registrar to the Central Criminal Court by the local county registrar or a member of the staff of the local Circuit Court office when the Central Criminal Court is sitting at that location.

Sections 35 to 42 address the implications of the Valuation Act 2001 for court jurisdiction in property matters, mainly insofar as the Circuit Court is concerned. That jurisdiction is at present determined by reference to rateable valuation and gives the Circuit Court jurisdiction where the rateable valuation does not exceed €253.95. The Valuation Act 2001 provides for a new valuation system which will more accurately reflect current property values and the courts' jurisdiction needs to be modified to reflect this. These sections change the jurisdiction limit of €253.95 (£200) rateable valuation to a market value of €3,000,000. 'Market value' is defined in the sections.

In addition, *section 38*, which deals with the jurisdiction limits in the Family Home Protection Act 1976, removes the jurisdiction of the District Court under that Act insofar as real property is concerned.

Financial and staffing implications

The Bill has no particular staffing implications. Its effect on the public finances should be positive in that it will serve to reduce the cost of litigation and deter bogus claimants, among other things.

An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí, Feabhra, 2004.