



DÁIL ÉIREANN

AN BILLE UM AN DLÍ SIBHIALTA (FORÁLACHA ILGHNÉITHEACHA) 2006 CIVIL LAW (MISCELLANEOUS PROVISIONS) BILL 2006

LEASUITHE TUARASCÁLA REPORT AMENDMENTS

DÁIL ÉIREANN

AN BILLE UM AN DLÍ SIBHIALTA (FORÁLACHA ILGHNÉITHEACHA)
2006
—AN TUARASCÁIL

CIVIL LAW (MISCELLANEOUS PROVISIONS) BILL 2006
—REPORT

*Leasuithe
Amendments*

1. In page 7, line 11, after “1961,” to insert “THE COURTS ACT 1964,”.
—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.
2. In page 7, line 16, after “1954,” to insert “THE SOLICITORS (AMENDMENT) ACT 1960,”.
—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.
3. In page 7, lines 17 and 18, to delete “THE GAMING AND LOTTERIES ACT 1956,”.
—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.
4. In page 8, line 13, to delete “*section 23*” and substitute “*sections 23 and 24*”.
—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.
5. In page 9, between lines 3 and 4, to insert the following:

“Amendment of section 88 of Courts of Justice Act 1924.

6.—Section 88 of the Courts of Justice Act 1924 is amended by inserting the following after subsection (4):

“(5) For the purposes of this section (including any warrant under *subsection (1)*)—

- (a) subject to paragraphs (b) to (g), “county” means a county as referred to in section 10 of the Local Government Act 2001 and as its boundaries are in force from time to time under Part 8 of that Act,
- (b) the city of Cork and the county of Cork shall be regarded as a single county, and a reference to the county of Cork shall include the city of Cork,
- (c) the city of Dublin and the counties of Dun Laoghaire-Rathdown, Fingal and South Dublin shall be regarded as a single county, and a reference to the county of Dublin shall include the city of Dublin and the counties of Dun Laoghaire-Rathdown, Fingal and South Dublin,
- (d) the city of Galway and the county of Galway shall be regarded as a single county, and a reference to the county of Galway shall include the city of Galway,
- (e) the city of Limerick and the county of Limerick shall be regarded as a single county, and a reference to the county of Limerick shall include the city of Limerick,

(f) the city of Waterford and the county of Waterford shall be regarded as a single county, and a reference to the county of Waterford shall include the city of Waterford, and

(g) the counties of North Tipperary and South Tipperary shall be regarded as a single county.”.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

6. In page 9, to delete lines 12 to 18 and substitute the following:

“Amendment of section 48 of Court Officers Act 1926.

7.—Section 48 of the Court Officers Act 1926 is amended—

(a) in subsection (1)—

(i) by inserting “by regulations made under section 3 of the European Communities Act 1972” after “him by statute”, and

(ii) by inserting “by such regulations” after “provided by statute”,

and

(b) by inserting the following after subsection (2):

“(3) An assignment under subsection (1) of a district court clerk to a district court area may be—

(a) a permanent assignment,

(b) a temporary assignment, or

(c) a temporary assignment in addition to any permanent assignment.

(4) Where subsection (3)(c) applies to a district court clerk, the temporary assignment concerned shall be without prejudice to the exercise of all such powers and authorities and the performance of all such duties and functions for the time being conferred or imposed on him or her by law in relation to any district court area to which he or she is permanently assigned.

(5) Where a temporary assignment under subsection (1) of a district court clerk to a district court area is made pursuant to a direction given orally under that subsection, the Courts Service shall cause a record in writing to be made and kept, in such manner as the Courts Service thinks fit, of the direction.

(6) A record in writing referred to in subsection (5) shall, in any proceedings, be evidence that the district court clerk to which the record relates was temporarily assigned to the district court area to which the record relates until the contrary is shown.”.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

7. In page 9, to delete lines 21 to 47 and in page 10, to delete lines 1 to 17 and substitute the following:

“Minister for Justice, Equality and Law Reform may prescribe court fees. 65.—(1) The Minister for Justice, Equality and Law Reform may Finance— (a) prescribe the fees to be charged—

- (i) in the several offices established by the Courts (Supplemental Provisions) Act 1961, or
 - (ii) in any other office of, or attached to, any court,
 - (b) subject to subsection (2), prescribe the fees to be charged, in every financial year commencing after the making of the order, in respect of the income or funds in court during that year, or both, of every person who is of unsound mind, under the jurisdiction vested in the High Court by section 9 of the Courts (Supplemental Provisions) Act 1961,
 - (c) subject to subsection (2)(a), prescribe the fees to be charged, in every financial year commencing after the making of the order, in respect of the income or funds in court during that year, or both, of every person who is a minor, under the jurisdiction vested in the High Court by section 9 of the Courts (Supplemental Provisions) Act 1961,
 - (d) prescribe the persons by whom such fees are to be paid, and
 - (e) prescribe the occasions upon which such fees are to be paid.
- (2) An order made under subsection (1)—
- (a) may prescribe general or special exemptions from the payment of fees prescribed under that subsection,
 - (b) may, in relation to income or funds referred to in paragraph (b) of that subsection, be made by way of variation or extension of or in substitution for all or any of the provisions of sections 109 to 114 of the Lunacy Regulation (Ireland) Act 1871.
- (3) Subject to subsection (2), the Courts Service shall collect all fees chargeable under an order made under subsection (1) in accordance with the provisions of the order prescribed under paragraphs (d) and (e) of subsection (1).
- (4) All fees collected under an order made under subsection (1) shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct.
- (5) The Courts Service may—
- (a) determine the manner or method of payment of any fees chargeable under an order made under subsection (1), and
 - (b) determine the form in which the payment of any such fees shall be recorded, including the provision of a receipt in respect of such payment.

(6) An order made under this section before the commencement of section 8 of the Civil Law (Miscellaneous Provisions) Act 2006 and in force immediately before that commencement shall, on and after that commencement, be deemed to be an order made under subsection (1) and, accordingly, be liable to amendment or revocation by another order made under that subsection.”.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

8. In page 12, between lines 23 and 24, to insert the following:

“Amendment of section 7 of Courts Act 1964.

13.—Section 7 of the Courts Act 1964 is amended—

(a) by substituting the following for subsections (2) to (4):

“(2) This section shall apply in relation to the service of any Circuit Court document and any District Court document in any area notwithstanding the fact that a summons server may stand assigned to that area by the County Registrar for the county in which the area is situate.

(3) Subject to subsection (5), the service of a Circuit Court document or a District Court document may be effected by any of the following methods:

(a) the sending of a copy of the document by registered prepaid post in an envelope addressed to the person to be served at his last known residence or place of business in the State and the document may be posted by the person on whose behalf it purports to be issued or a person authorised by him in that behalf;

(b) personal service (including such service by a person other than a summons server) upon the person to be served, in such manner as may be prescribed by rules of court, or upon such person on behalf of the person to be served, and in such manner, as may be so prescribed; or

(c) by such other means as may be prescribed by rules of court.

(4) The service of a Circuit Court document or a District Court document upon a person pursuant to subsection (3)(a) shall, upon proof that the envelope containing a copy of the document was addressed, registered and posted in accordance with that subsection, be deemed to be good service upon the person unless it is proved that such copy was not delivered.”.

(b) by substituting the following for paragraph (a) of subsection (5):

“(a) Where—

(i) a person upon whom it is proposed to effect service of a document pursuant to subsection (3)(a) or (b) is outside the State or his whereabouts are unknown and cannot be ascertained by reasonable inquiries,

- (ii) an envelope containing a copy of a document intended to be served upon a person pursuant to subsection (3)(a) is sent to the person by registered post and returned undelivered to the sender,
- (iii) personal service in accordance with subsection (3)(b) cannot be promptly effected, or
- (iv) in a case to which subsection (3)(c) is applicable, the circumstances, prescribed by rules of court for the purposes of this subparagraph, occur,

the Circuit Court (and, in the case of proceedings before that Court, the County Registrar for the county in which the proceedings have been instituted) or the District Court, as may be appropriate, may make such order for substituted service or for the substitution for service of notice by advertisement or otherwise as it (or, in the case of the County Registrar, he or she) may think proper.”,

(c) in subsection (6)—

(i) in paragraph (a)—

(I) by substituting “person pursuant to subsection (3)(a)” for “person pursuant to subsection (3) of this section”, and

(II) in subparagraph (iii), by substituting “subsection (3)(a)” for “the provisions of subsection (3) of this section”,

and

(ii) in paragraph (b), by substituting “subsection (3)(a)” for “subsection (3) of this section”,

and

(d) in subsection (7), by substituting “subsection (3)(a)” for “subsection (3) of this section”.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

9. In page 14, line 30, to delete “6” and substitute “7”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

10. In page 14, line 42, to delete “and”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

11. In page 15, line 2, to delete “Ireland.” and substitute the following:

“Ireland, and

(d) one shall be a county registrar, not being the county registrar referred to in subsection (3)(d), nominated by the Chief Executive Officer of the Courts Service.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

12. In page 15, line 11, to delete “or a practising solicitor” and substitute “, a practising solicitor or a county registrar”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

13. In page 17, to delete lines 12 to 33 and substitute the following:

“Evidentiary weight of signed orders or warrants made or issued by District Court judge.

14.—(1) Subject to subparagraph (2) of paragraph 4 of the Sixth Schedule to the Courts (Supplemental Provisions) Act 1961, an order made on or after the commencement of this section recording a decision of a judge of the District Court shall, when signed by—

(a) any judge of the District Court assigned to the District Court district in which the order was made, or

(b) subject to subsection (2), any district court clerk assigned to the District Court area in which the order was made,

be evidence in any legal proceedings of the decision until the contrary is shown.

(2) Paragraph (b) of subsection (1) shall not apply in the case of an order sending an accused person forward for trial.

(3) Subject to subparagraph (2) of paragraph 4 of the Sixth Schedule to the Courts (Supplemental Provisions) Act 1961, a warrant issued on or after the commencement of this section by a judge of the District Court shall, when signed by—

(a) any judge of the District Court assigned to the District Court district in which the warrant was issued, or

(b) subject to subsection (4), any district court clerk assigned to the District Court area in which the warrant was issued,

be evidence in any legal proceedings of the matters to which the warrant relates until the contrary is shown.

(4) Paragraph (b) of subsection (3) shall not apply in the case of a search warrant or a warrant sending an accused person forward for trial.”.”

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

14. In page 17, between lines 33 and 34, to insert the following:

“Amendment of section 23 of Courts Act 1971.

20.—Section 23 of the Courts Act 1971 is amended by substituting the following for subsection (1):

“(1) The service of a superior court document may be effected—

(a) by leaving the document or a copy thereof (as may be appropriate) at, or sending the document or a copy thereof (as may be appropriate) by registered pre-paid post to, the residence or place of business in the State of the person to be served or the place of business in the State of the solicitor (if any) acting for him or her in the proceedings to which the document relates, or

(b) by such other means as may be prescribed by rules of court.”.”

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

15. In page 17, to delete lines 34 and 35.

—Pat Rabbitte.

16. In page 20, between lines 10 and 11, to insert the following:

“Right of assistant to accompany blind or partially sighted party, counsel or solicitor to proceedings.

23.—(1) Where a court is satisfied in proceedings before it that—

(a) a party appearing before the court in the proceedings, or

- (b) counsel or a solicitor appearing before the court in the proceedings on behalf of a party,

is blind or partially sighted and for that reason requires assistance, the court may, at the request of the party, counsel or solicitor concerned and notwithstanding any enactment, statutory instrument made under any enactment or rule of law, authorise another person (in this section referred to as the “assistant”) to accompany the party, counsel or solicitor, as the case may be, in the proceedings and provide such assistance subject to such directions as the court may give to the assistant.

(2) The assistant in proceedings referred to in subsection (1)—

- (a) shall comply with directions referred to in that subsection given to him or her, and

- (b) shall not, by virtue of being the assistant, have any right of audience in the proceedings.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

17. In page 20, between lines 26 and 27, to insert the following:

“Amendment of section 9 of Court Officers Act 1945.

24.—Section 9 (as amended by section 35 of the Court and Court Officers Act 1995 and section 23 of the Courts and Court Officers Act 2002) is amended by substituting the following for subsection (3):

“(3) (a) Whenever an officer is required under subsection (1)(a) to perform the duties, or any duty or duties, of another office equivalent to his or her office, he or she shall, while the requirement remains in force, have all the powers of the holder of that other office in respect of the duty or duties concerned as fully as if he or she held that other office.

(b) Whenever a County Registrar is required under subsection (1)(b) to perform the duties, or any duty or duties, of the office of any other County Registrar, he or she—

(i) shall, while the requirement remains in force, have all the powers of the holder of that office in respect of the duty or duties concerned as fully as if he or she held that office, and

(ii) may exercise such powers concurrently with their being exercised by the other County Registrar.”.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

18. In page 21, between lines 20 and 21, to insert the following:

“Costs incurred due to negligence, etc.

26.—(1) If in any proceedings before a court it appears to the court that—

(a) costs have been improperly or without any reasonable cause incurred by a solicitor acting for a client who is a party to those proceedings, or

(b) by reason of any undue delay in proceeding under any judgment or order, or of any misconduct or default of that solicitor, any costs properly incurred have nevertheless proved fruitless to the client incurring those costs,

the court may, on its own motion or on the application of the client concerned—

- (i) call on the solicitor of the person by whom such costs have been so incurred to show cause why such costs should not be disallowed as between the solicitor and the client and also (if the circumstances of the case require) why the solicitor should not repay to the client any costs which the client may have been ordered to pay any other person, and
- (ii) make such order as the justice of the case may require.

(2) An order under *subsection (1)*—

- (a) shall not be made in respect of a solicitor acting in good faith and without negligence,
- (b) does not depend upon a finding by the court that the solicitor is guilty of professional misconduct or gross negligence in relation to their duty to the court.

(3) (a) Where a court is considering whether to make an order under *subsection (1)*, the court may at any stage refer the matter—

- (i) in the case of the High Court, to a Taxing Master,
- (ii) in the case of the Circuit Court, to a county registrar,

for inquiry and report and may also appoint a solicitor to attend and take part in such inquiry.

(b) Notice of an order under *paragraph (a)* shall be given to the client in such manner as the court may direct.

(4) In this section, “court” includes the Master of the High Court.”.

—Pat Rabbitte.

19. In page 22, between lines 2 and 3, to insert the following:

“Amendment of section 6 of Solicitors (Amendment) Act 1960.

28.—Section 6 (as substituted by section 16 of the Solicitors (Amendment) Act 1994 and amended by section 8 of the Solicitors (Amendment) Act 2002) of the Solicitors (Amendment) Act 1960 is amended by inserting the following after subsection (1A):

“(1B) Where a solicitor member of the Disciplinary Tribunal, during the course of his or her membership of the Disciplinary Tribunal, ceases to be a practising solicitor by virtue of not making an application for a practising certificate, that cesser shall not of itself—

- (a) cause the solicitor member to cease to be a solicitor member of the Disciplinary Tribunal, or
- (b) prevent the solicitor member from continuing to serve as a solicitor member of the Disciplinary Tribunal for the remainder of his or her appointment or reappointment as a solicitor member of the Disciplinary Tribunal.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

20. In page 23, between lines 28 and 29, to insert the following:

“(2) Where a tenant has, on or after the 12th day of December 2007, effected a renunciation as referred to in *subsection (1)*, the tenant shall be deemed not to be entitled to a new lease for a period of 20 years, and any lease for a shorter period effected on foot of such renunciation shall be deemed to be valid.”.

—Pat Rabbitte.

21. In page 28, between lines 12 and 13, to insert the following:

“Amendment of section 6 of Juries Act 1976.

37.—Section 6 of the Juries Act 1976 is amended by the deletion of “and under the age of seventy years” and the insertion of “and not incapable by reason of infirmity”.”.

—Pat Rabbitte.

22. In page 33, in line 5, to delete “, and” and substitute “, ”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

23. In page 33, line 19, to delete “purposes.” and substitute the following:

“purposes, and

(r) in section 33, by substituting the following for subsection (2):

“(2) The fees charged under this Act shall not be fixed at a level calculated to produce an annual amount which is less than that sufficient to discharge the expenses incurred in the administration of this Act.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

24. In page 38, line 7, to delete “and”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

25. In page 38, line 12, to delete “1994.” and substitute the following:

“1994), and

(c) those classes of insurance which are contracts of insurance, or other insurance arrangements, which fall within paragraph (d) of the definition of “health insurance contract” (inserted by section 2 of the Health Insurance (Amendment) Act 2001) in the Health Insurance Act 1994 if, but only if, the differences in treatment referred to in paragraph (da) of subsection (2), in so far as they relate to such contracts or arrangements, as the case may be, are permitted by the law of the place where such contracts or arrangements, as the case may be, are marketed.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

26. In page 41, lines 32, to delete “(iv)” and substitute “(v)”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

27. In page 42, to delete lines 7 to 16 and substitute the following:

“Amendment of section 28 of Civil Legal Aid Act 1995.

60.—Section 28(9)(c)(i) of the Civil Legal Aid Act 1995 is amended—

(a) by inserting “the Residential Tenancies Act 2004,” after “property),” and

(b) by deleting “the Rent Restrictions Acts, 1960 and 1967,”.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

28. In page 42, between lines 16 and 17, to insert the following:

“Amendment of section 29 of Civil Legal Aid Act 1995.

61.—Section 29 of the Civil Legal Aid Act 1995 is amended by substituting the following for subsection (2):

“(2) The Board may—

(a) in accordance with regulations under section 37, provide legal aid or advice to an applicant without reference to his or her financial resources,

(b) waive any contribution payable pursuant to this section and to any other regulations under section 37, or accept a lower contribution, on the ground that a failure to do so would cause severe hardship to the applicant.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

29. In page 42, between lines 16 and 17, to insert the following:

“Amendment of section 30 of Civil Legal Aid Act 1995.

62.—Section 30 of the Civil Legal Aid Act 1995 is amended—

(a) by inserting the following after subsection (6):

“(6A) Where the Board has granted a person a legal aid certificate for proceedings in any court or before any tribunal prescribed by the Minister under section 27(2), then, notwithstanding any enactment (including any provision of this Act), any statutory instrument made under any enactment, or any rule of law, the proceedings shall be issued in—

(a) the name of the law centre concerned where the law centre is responsible for providing the legal aid concerned,

(b) in any other case, the name of the solicitor or firm of solicitors responsible for providing the legal aid concerned.”,

and

(b) in subsection (7), by substituting “shall” for “may”.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.