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

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**EXPLANATORY AND FINANCIAL MEMORANDUM**

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**Introduction**

1. This Bill makes provision for a number of changes to various elements of mainly non-criminal areas of law.

**Contents of Bill**

*Part 1: Preliminary*

2. *Section 1* of the Bill sets out the short title and provides that the Minister for Justice, Equality and Law Reform may make orders commencing its various provisions. *Section 2* of the Bill provides for the collective citations of various provisions of the Bill with Acts already on the statute book.

*Part 2: Legal Services Ombudsman*

3. The purpose of Part 2 is to establish on a statutory basis the office of the Legal Services Ombudsman to oversee the handling of complaints by the Bar Council and Law Society, review the procedures for same and report annually on the adequacy of the admissions policies of both professions.

Chapter 1

4. *Section 2* of the Bill sets out the interpretation of the primary terms referred to throughout Part 2 while *Section 3* of the Bill concerning expenses incurred in administration is a standard provision.

Chapter 2

5. *Section 4* provides for the establishment of the office of Legal Services Ombudsman. *Section 5* stipulates that the Legal Services Ombudsman shall be appointed by the Government, the person appointed shall be suitably qualified and the classes of person not eligible for appointment as Ombudsman.

6. *Section 6* sets out the period of office, allows re-appointment for a second or subsequent term and provides for the manner in which the Ombudsman may resign from office. It provides for the circumstances in which the Government may remove the Ombudsman from office as well as the circumstances in which a person ceases to hold the office of Legal Services Ombudsman. *Section 7* provides for terms and conditions relating to remuneration of the Ombudsman while *Section 8* restricts the Ombudsman from engaging in other paid employment unless approved by the Minister.

7. The primary functions and powers of the Legal Services Ombudsman are provided in *Section 9*. These are to ensure that complaints by clients of barristers and solicitors to the professional bodies are dealt with fairly, effectively and efficiently, to assess the adequacy of the admissions policies of the legal professions and to improve public understanding of issues relating to complaints. *Section 10* stipulates that the Ombudsman shall be independent in the performance of the functions of the office.

8. *Section 11* provides for the Ombudsman to appoint staff and set their terms and conditions of employment, subject to the consent of the Minister and Minister for Finance and following consultation with the Bar Council and Law Society. This section also provides that the Ombudsman, subject to the consent of the Minister, may engage the services of advisers or consultants and may also authorise a member of the staff to perform certain functions.

9. *Section 12* provides for financial accounting and audit matters including presentation of audited accounts to the Minister and their laying before both Houses of the Oireachtas.

10. *Sections 13* and *14* provide for various reports to be made by the Ombudsman, including an annual report to the Minister on the performance of the functions of the office, a report within 2 years of being appointed to the Minister on the effectiveness of the office and the adequacy of the functions of same and an annual report to the Minister on the adequacy of the admissions policies of the legal professions.

11. *Sections 15* and *16* provide for the appearance of the Ombudsman before the Public Accounts Committee and other committees of Houses of the Oireachtas. Standard provisions are made including that the Ombudsman is not required to account before an Oireachtas committee on a matter relating solely to an individual complaint or a matter that is or is likely to be the subject of proceedings before a court or tribunal.

12. *Section 17* declares various publications to be privileged for the purposes of the law of defamation, namely any matter in a report of the Ombudsman laid before either House of the Oireachtas and publications by the Ombudsman directed to particular persons.

13. *Section 18* makes provision for the payment each year of a levy to the Minister by the Bar Council and Law Society, on a pro-rata basis according to the ratio of practising barristers to practising solicitors. Other matters related to the levy are provided for including late payment. The levy will equate to the costs associated with the operating costs and administrative expenses of the Ombudsman in the preceding year. The Minister may make regulations under *Section 19* to provide for various matters related to the levy.

### Chapter 3

14. *Sections 20* and *21* provide for the making and investigation of complaints. A complaint may be made to the Ombudsman concerning the handling by the Bar Council or the Law Society of a complaint against a barrister or solicitor. A complaint may also be made to the Legal Services Ombudsman about a decision of the Law Society to make or refuse a grant from the Law Society's compensation fund. Complaints to the Legal Services Ombudsman must be made within 6 months of the determination of the related complaint by the relevant body. The circumstances in which a person is not entitled to make a complaint are also provided for.

15. *Sections 22 and 23* enable the Ombudsman to establish procedures to be followed in relation to the receipt, resolution and investigation of complaints. Such procedures shall be published. *Section 24* provides that the Ombudsman shall ensure that investigations are conducted in private.

16. *Section 25* deals with the power of the Ombudsman to require the provision of information. The Ombudsman may require the production of any information, document or thing of relevance to an investigation.

17. *Section 26* renders it an offence to obstruct the Ombudsman in the performance of his/her functions.

18. *Sections 27 and 28* deal with the power of the Ombudsman to issue directions or make recommendations to the Bar Council and Law Society following investigations, the power to enforce directions and the duty of the Ombudsman to notify results, directions and recommendations to particular classes of person. Under *Section 27* the Ombudsman may, if not satisfied that the related complaint was adequately investigated, direct the Bar Council to re-investigate it under the Bar Council's Disciplinary Code, or in the case of the Law Society, direct the Law Society to reinvestigate or refer the complaint to the Solicitors Disciplinary Tribunal for an enquiry on the ground of alleged misconduct. The Ombudsman may make other directions and recommendations to both bodies including recommending that the Law Society make or increase a grant out of its Compensation Fund.

19. *Section 28* provides that the Ombudsman shall send a written statement on the results of the investigation, any direction given or recommendation made to the complainant, the relevant professional body and the barrister or solicitor concerned.

20. *Section 29* provides for High Court enforcement of directions of the Ombudsman and *Section 30* provides for referral of questions of law by the Ombudsman to the High Court for determination.

21. The Ombudsman shall, under *Section 31*, keep under review the procedures of the Bar Council and Law Society for dealing with complaints including the co-operation of barristers and solicitors, the effectiveness of their complaints procedures and the time taken to complete investigations. The Ombudsman may examine random samples of complaints made to the Bar Council and Law Society and examine complaints relating to specific matters. Arising from such review and examination, the Ombudsman may make written recommendations to the Bar Council and Law Society to improve their complaints investigation procedures and the co-operation of barristers and solicitors with these. The Ombudsman may, if not satisfied with the response of the Bar Council and Law Society to a recommendation under *Section 31*, direct that the recommendation or amended recommendation be implemented. The Ombudsman shall report on the performance of this function in his/her annual report.

22. *Section 32* provides that the Bar Council and Law Society keep complete records of matters related to their investigation of complaints and, on request, make them available to the Ombudsman.

23. *Section 33* provides that legal proceedings may only be commenced against the Ombudsman with the leave of the High Court and on notice to the Ombudsman.

24. *Sections 34 and 35* deal with confidentiality of information and the Freedom of Information Act.

25. *Sections 36 and 37* provide for the repeal of Section 15 of the Solicitors (Amendment) Act 1994 and the revocation of regulations which provide for the Law Society's Independent Adjudicator.

26. *Section 38* makes provisions to allow the transition of complaints from the Independent Adjudicator to the Legal Services Ombudsman.

### *Part 3: Courts and Court Officers*

27. *Section 39* of the Bill replaces section 65 of the Courts of Justice Act 1936, dealing with the setting of fees. The principal change of substance as between the existing and proposed provisions is that the new provision will leave to the Courts Service the minutiae of the manner in which such fees are to be collected rather than require that those details be set out in fees orders made by the Minister.

28. *Sections 40, 41 and 42* of the Bill deal with the pension provisions for judges of the Superior Courts, Circuit Court and District Court respectively who retire on age or infirmity grounds before having served long enough to gain entitlement to a full pension. At present no pension is available unless a judge has served a minimum of 5 years. Under the new provisions, a judge who retires on age grounds after a minimum of 2 years will be entitled to a pension based on the number of years served; the minimum period of service of 5 years will continue to apply where the retirement is on grounds of infirmity. The provisions are retrospective to those who retire after 2 June 2002.

29. *Section 43* of the Bill makes two amendments to the Eighth Schedule to the Courts (Supplemental Provisions) Act 1961. The first of these is to ensure that regulations made under the European Communities Act 1972 may confer functions on the Master of the High Court (at present such powers may be conferred only by primary legislation or rules of court). The second amendment alters the qualification requirements for appointment as the Registrar of Wards of Court. The present requirements are that the appointee must be a barrister with either 10 years' practice or, if serving in the offices of the High or Supreme Court, 12 years' experience in those offices; the new requirements, for an already serving officer of the Courts Service, be a minimum of 9 years' service in one of those offices or such other service as the Courts Service, with the consent of the President of the High Court, thinks fit.

30. *Sections 44 and 45* extend the functions of the Courts Service as set out in section 5 of the Courts Service Act 1998; the former in a general way to encompass any functions that may be created for the Service by future statutes and the latter to cover the provision of support services to the Rules Committees arising out of the changes made in *sections 46, 47 and 48* of the Bill.

31. *Sections 46, 47 and 48* of the Bill draw together and restate the present statutory provisions (at present scattered throughout the statute book) relating to the make-up of the three bodies responsible for making Rules of Court: the Superior Courts Rules Committee, the Circuit Court Rules Committee and the District Court Rules Committee. An innovative feature of each of the three provisions is the power of the Chief Executive of the Courts Service to appoint a member of the Courts Service staff to act as secretary to each Committee.

32. *Section 49* of the Bill allows for the authentication of a District Court order by a District Court judge or District Court clerk other than the judge or clerk who was present when the order was made. It provides the same authentication for a warrant issued by a District Court judge, other than a warrant issued on foot of a sworn information.

33. *Section 50* of the Bill repeals section 20(4) of the Petty Sessions (Ireland) Act 1851 which requires District Judges to keep a note of the evidence.

34. *Section 51* of the Bill allows a court hearing civil matters to direct that a party may participate in a hearing, or a witness may give evidence, from a location other than the court itself by means of a live television link. Such videoconferencing shall not be permitted however, unless the facilities are available to enable the parties or witness to see and hear the proceedings and to be seen and heard by those present in the courtroom.

35. *Section 52* of the Bill makes an amendment to Section 6(1)(a) of the Court Officers Act 1945. This alters the qualifications requirements for appointment as Examiner and as Probate Officer. The present requirements are that the appointee must be either a barrister or solicitor or has during the 12 years preceding the appointment been employed in the offices in question. The new requirements set out a period of 9 years' service in the offices. The amendment also provides for the Courts Service to specify with the consent of the President of the High Court such qualifications for appointment to the posts as it considers appropriate.

#### *Part 4: Solicitors*

36. *Section 53* of the Bill amends section 73 of the Solicitors Act 1954. Under that provision at present (as amended by s. 7 of the Solicitors (Amendment) Act 1994), a committee of the Council of the Law Society of Ireland may include solicitors who are not members of the Council and also persons who are not solicitors, but two-thirds of the membership of any committee to which powers of the Council are delegated (or any quorum of the Committee) must be members of the Council. The effect of the amendment is to remove the two-thirds requirement and, in the case of a committee to which the Council's functions under section 8 or 9 of the Solicitors (Amendment) Act 1994 (the Complaints and Client Relations Committee), a majority of that committee (and of any division, and the quorum of either) must be non-solicitors but the committee (or any division) must be chaired by a solicitor.

37. *Section 54* of the Bill amends section 8 of the Solicitors (Amendment) Act 1994 to enable the Law Society to direct a solicitor to pay a client a sum not exceeding €3,000 as compensation for loss suffered as a result of providing inadequate legal services. It also provides that the Minister may vary the amount by order (no more frequently than at two-year intervals) so as to reflect the rate of inflation.

#### *Part 5: Gaming and Lotteries*

38. *Sections 55* and *56* amend the Gaming and Lotteries Act 1956 to insert new values of 50 cent (at present sixpence or 3 cent) as the maximum stake and €30 (at present ten shillings or 63 cent) as the maximum prize for gaming machines. Provision is also made for the Minister for Justice, Equality and Law Reform to vary the amounts in stake and prize money in the future.

#### *Part 6: Landlord and Tenant*

39. *Sections 57 and 58* amend the Landlord and Tenant (Amendment) Act 1980 to enable parties to a business tenancy to contract out of the provisions of Part II of the Act, conferring the right to a new tenancy, provided that the tenant has received independent legal advice.

#### *Part 7: Statutory Declarations*

40. *Section 59* of the Bill amends section 2 of the Statutory Declarations Act 1938 to allow for additional means of identification of a person making a statutory declaration. Under the 1938 Act, declarations must be completed before a person specified in the Act and the declarant must be known to, or identified by someone who was known to, the person taking the declaration. The amendment will enable a declarant to be identified to the person taking the declaration, additionally, by production of a passport or other like document.

41. *Section 60* of the Bill amends section 6 of the 1938 Act to allow summary proceedings to be commenced at any time within 12 months of which the offence was committed or at any time within 6 months from the date on which evidence, that in the opinion of the person bringing proceedings is sufficient to justify the bringing of proceedings, comes to that person's knowledge.

42. *Section 61* of the Bill amends the Schedule to the 1938 Act (setting out the form of a declaration) to take into account the changes provided for in *section 59*.

#### *Part 8: Juries*

43. *Section 62* of the Bill amends section 25 of the Juries Act 1976 to allow for a jury, unless the trial judge otherwise directs, to separate at any time before retirement to consider their verdict. It also allows the jury to separate, where the judge so directs, at any time after retirement to consider their verdict for such period or periods as the judge might allow.

44. *Sections 63 to 66* of the Bill amend sections 34 to 37 of the Juries Act 1976 to provide for increases in the maximum fine for failure to comply with the provisions set out in these sections. The fine for serving on a jury while knowing one is disqualified is increased from £200 to €2,000. The fine for all other offences is increased from £50 to €500.

45. *Section 67* of the Bill amends Part 1 of the First Schedule of the Juries Act 1976, which sets out the classes of persons who are ineligible for jury service. Among those classes at present there is reference to "Incapable persons", which encompasses persons who "because of insufficient capacity to read, deafness or other permanent infirmity" are "unfit to serve on a jury". That is to be replaced by a reference to "Other persons", namely those who have an incapacity to read or an enduring impairment such that it is not practical for them to perform the duties of a juror.

#### *Part 9: Bankruptcy*

46. *Section 68* of the Bill amends section 85(3)(a) of the Bankruptcy Act 1988 to ensure that the only persons who have a say in what happens in a bankruptcy are those people who have formally proved through the Bankruptcy Court.

47. *Section 69* of the Bill amends section 91 of the 1988 Act to change the deadline for the filing of the statement of affairs by the arranging debtor by substituting a reference to a period after one step in the process has taken place for the present provision that refers to a period before the next procedural step is taken.

*Part 10: Succession*

48. *Section 70* of the Bill amends section 3(1) of the Succession Act 1965 to remove the phrase “in good faith”. The amendment arises from a recommendation of the Law Reform Commission.

49. *Section 71* of the Bill addresses the situation where two persons (“*commorientes*”) die, or are presumed by law to die, simultaneously. Section 5 of the Succession Act 1965 creates a presumption of simultaneous death in appropriate circumstances. The Bill amends that section to provide for the situation where *commorientes* held property as joint tenants immediately before their deaths; the new subsection (2) provides that in that circumstance, the joint tenancy will on their deaths be deemed to become a tenancy in common in equal shares, and subsection (3) provides that the equal share forms part of the estate of the deceased in each case.

**Financial Implications**

50. The proposals at sections 40, 41 and 42 arise from the enactment of the Pension (Amendment) Act 2002 which reduced the qualifying period of pensions for public servants from five years to two years with effect from 2 June 2002. The provisions of the 2002 Act have been implemented on an administrative basis by the Department of Finance in respect of members of the judiciary. Accordingly, the amendment will not lead to any additional costs.

*An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí,  
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