



SEANAD ÉIREANN

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

LEASUITHE COISTE
COMMITTEE AMENDMENTS

SEANAD ÉIREANN

AN BILLE UM AN DLÍ SIBHIALTA (FORÁLACHA ILGHNÉITHEACHA) 2006

CIVIL LAW (MISCELLANEOUS PROVISIONS) BILL 2006 —COMMITTEE STAGE

*Leasuithe
Amendments*

**Government amendments are distinguished by an asterisk*

SECTION 1

*1. In page 10, subsection (4), line 13, to delete “23 and 24” and substitute “27 and 28”.

*2. In page 10, lines 21 and 22, to delete subsection (8) and substitute the following:

“(8) The Employment Equality Acts 1998 to 2007 and *Part 16* may be cited together as the Employment Equality Acts 1998 to 2008.”.

SECTION 14

*3. In page 16, line 16, after “his” to insert “or her”.

*4. In page 16, line 41, after “his” to insert “or her”.

SECTION 23

Section opposed.

— *Senators Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast,
Dominic Hannigan, Alan Kelly.*

SECTION 28

*5. In page 26, line 36, after “2002)” to insert “of the Court Officers Act 1945”.

SECTION 31

6. In page 28, before section 31, but in Part 3, to insert the following new section:

“Costs incurred due
to negligence, etc.

31.—(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—

[SECTION 31]

(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.

(c) Any costs of the solicitor appointed under *subsection (3)(a)* shall be paid by such parties, or out of such funds as the court may direct or, if not otherwise paid, may be paid out of such moneys (if any) as may be provided by the Oireachtas.

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

—*Senators Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan, Alan Kelly.*

*7. In page 28, line 3, to delete “as substituted” and substitute “inserted”.

SECTION 33

*8. In page 28, line 29, to delete “as substituted” and substitute “inserted”.

SECTION 34

*9. In page 28, before section 34, to insert the following new section:

“Insertion of new section 6A into Solicitors (Amendment) Act 1960.

34.—The Solicitors (Amendment) Act 1960 is amended by the insertion of the following section after section 6:

“Power of Society to investigate alleged misconduct by solicitor.

6A.—(1) For the avoidance of doubt it is hereby declared that the Society have, and always have had, a power to investigate alleged misconduct by a solicitor.

[SECTION 34]

(2) If subsection (1) would, but for this subsection, conflict with a constitutional right of any person, the operation of that subsection shall be subject to such limitation as is necessary to secure that it does not so conflict but shall otherwise be of full force and effect.”.”.

***10.** In page 28, before section 34, to insert the following new section:

“Amendment of section 8 of Solicitors (Amendment) Act 1960.

34.—Section 8 (inserted by section 18 of the Solicitors (Amendment) Act 1994 and amended by section 10 of the Solicitors (Amendment) Act 2002) of the Solicitors (Amendment) Act 1960 is amended—

- (a) in subsection (1)(a), by the substitution of “the High Court, after consideration of the report and the submissions (if any) made to it by the Society under subsection (1A) of this section” for “the High Court, after consideration of the report”, and
- (b) by the insertion of the following subsection after subsection (1):

“(1A)The Society may make submissions to the High Court in relation to—

- (a) the opinion of the Disciplinary Tribunal as to the fitness or otherwise of the solicitor to be a member of the solicitors’ profession, having regard to the findings of the Disciplinary Tribunal, and
- (b) the recommendations of the Disciplinary Tribunal as to the sanction which in the opinion of the Disciplinary Tribunal should be imposed, having regard to their findings, to any finding of misconduct on the part of the solicitor previously made by them (or by their predecessor, the Disciplinary Committee) and not rescinded by the Court, and to any order made by the Court under the *Solicitors Acts 1954 to 2008* in respect of the solicitor.”.”.

***11.** In page 28, before section 34, to insert the following new section:

“Amendment of section 2 of Solicitors (Amendment) Act 1994.

34.—Section 2 of the Solicitors (Amendment) Act 1994 is amended by the substitution of the following subsection for subsection (2) (inserted by section 12 of the Solicitors (Amendment) Act 2002):

“(2) References in sections 10, 10A (inserted by section 13 of the Solicitors (Amendment) Act 2002), 12 (inserted by section 14 of that Act) and 22 of this Act to complaints made to or received by the Society include references to any complaints made to the Society by the registrar under section 14B of this Act, and those provisions of this Act shall have effect accordingly.”.”.

***12.** In page 29, line 19, to delete “subsection 8(1)(da)” and substitute “subsection (1)(da)”.

SECTION 35

***13.** In page 29, before section 35, to insert the following new section:

“Insertion of new section 14A into Solicitors (Amendment) Act 1994.

35.—The Solicitors (Amendment) Act 1994 is amended by the insertion of the following section after section 14:

[SECTION 35]

“Investigation of alleged misconduct by solicitor. 14A.—For the avoidance of doubt it is hereby declared that the power of the Society to investigate alleged misconduct by a solicitor may be exercised whether or not the Society receive a complaint in relation to the solicitor.”.”.

*14. In page 29, before section 35, to insert the following new section:

“Insertion of new section 14B into Solicitors (Amendment) Act 1994.

35.—The Solicitors (Amendment) Act 1994 is amended by the insertion of the following section after section 14A:

“Charging excessive fees may constitute misconduct by solicitor. 14B*.—Notwithstanding anything in this Part the issue by a solicitor of a bill of costs that is excessive may constitute misconduct.”.”.

[*This is the correct reference if amendment no. 13 is accepted]

*15. In page 29, before section 35, to insert the following new section:

“Insertion of new section 14C into Solicitors (Amendment) Act 1994.

35.—The Solicitors (Amendment) Act 1994 is amended by the insertion of the following section after section 14B:

“Complaints by registrar. 14C*.—The registrar may make a complaint to the Society in relation to a solicitor alleging—

(a) a contravention by the solicitor of any provision of the *Solicitors Acts 1954 to 2008* or any order or regulation made thereunder, or

(b) any conduct by the solicitor tending to bring the solicitors’ profession into disrepute.”.”.

[*This is the correct reference if amendment no. 14 is accepted]

SECTION 36

*16. In page 30, before section 36, but in Part 3, to insert the following new section:

“Insertion of new section 26A into Solicitors (Amendment) Act 1994.

36.—The Solicitors (Amendment) Act 1994 is amended by inserting the following after section 26:

“Limitation of solicitors’, etc. liability by contract. 26A.—(1) Subject to subsections (2) and (3), a contract between a solicitor and a client of the solicitor that any description of civil liability incurred—

(a) by the solicitor arising from his or her practice as a solicitor in respect of the provision of legal services to the client be limited to an amount specified or referred to in the contract, or

(b) by a partner, clerk or servant or former partner, clerk or servant of the solicitor arising from that solicitor’s practice as a solicitor in respect of the provision of legal services to the client be limited to an amount specified or referred to in the contract,

shall be binding on and enforceable by—

[SECTION 36]

(i) if paragraph (a) is applicable, the solicitor and the client, and

(ii) if paragraph (b) is applicable, the partner, clerk or servant or former partner, clerk or servant of the solicitor and the client.

(2) Nothing in subsection (1) shall affect the operation of—

(a) section 40 (as amended by section 31 of the Restrictive Practices (Amendment) Act 1987) of the Sale of Goods and Supply of Services Act 1980, or

(b) Regulation 6 of the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (S.I. No. 27 of 1995).

(3) The amount referred to in subsection (1) in respect of a description of civil liability the subject of the contract concerned shall be not less than the minimum level of cover, as specified from time to time in regulations under paragraph (b) of section 26 (4), for indemnity against losses arising from those classes of claims which fall within that description of civil liability and, accordingly, any such amount which is less than such minimum level of cover shall, by virtue of this subsection, be deemed to be increased to such minimum level of cover, and such contract shall be binding and enforceable accordingly.

(4) Section 7 of the Attorneys and Solicitors Act 1870 is repealed on the commencement of *section 36 of the Civil Law (Miscellaneous Provisions) Act 2008*.”.”.

*17. In page 30, before section 36, but in Part 3, to insert the following new section:

“Amendment of section 19 of Solicitors (Amendment) Act 2002.

36.—Section 19 of the Solicitors (Amendment) Act 2002 is amended—

(a) in subsection (3)(d), by the substitution of the following for subparagraph (iv):

“(iv) their opinion as to the fitness of the apprentice, having regard to their finding or findings, to be admitted as a solicitor either at any time or until the apprentice has satisfied the Society or the President of the High Court as to such fitness,

and the Society shall bring the report before the Court.”.

(b) in subsection (5), by the substitution of “The High Court, after consideration of the report of the Disciplinary Tribunal and the submissions (if any) made to it by the Society under subsection (5A) of this section” for “The High Court, on consideration of the report of the Disciplinary Tribunal”, and

(c) by the insertion of the following subsection after subsection (5):

[SECTION 36]

“(5A) The Society may make submissions to the High Court in relation to the opinion of the Disciplinary Tribunal as to the fitness of the apprentice, having regard to the finding or findings of the Disciplinary Tribunal, to be admitted as a solicitor either at any time or until the apprentice has satisfied the Society or the President of the High Court as to such fitness.”.

***18.** In page 30, before section 36, but in Part 3, to insert the following new section:

“Insertion of new section 19A into Solicitors (Amendment) Act 2002.

36.—(1) The Solicitors (Amendment) Act 2002 is amended by the insertion of the following section after section 19:

“Power of Society to investigate alleged misconduct by apprentice.

19A.—(1) For the avoidance of doubt it is hereby declared that the Society have a power to investigate alleged misconduct by an apprentice.

(2) The power of the Society referred to in subsection (1) of this section may be exercised whether or not the Society receive a complaint in relation to the apprentice.

(3) If subsection (1) of this section would, but for this subsection, conflict with a constitutional right of any person, the operation of that subsection shall be subject to such limitation as is necessary to secure that it does not so conflict but shall otherwise be of full force and effect.

(4) In this section ‘misconduct’ has the same meaning as it has in section 19 of this Act.”.

(2) This section shall be deemed to have come into operation on 1 January 2003.”.

19. In page 30, between lines 24 and 25, to insert the following subsection:

“(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.”.

—*Senators Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan, Alan Kelly.*

SECTION 43

***20.** In page 35, before section 43, but in Part 6, to insert the following new section:

“Amendment of section 6 of Juries Act 1976.

43.—Section 6 of the Juries Act 1976 is amended by deleting “and under the age of seventy years”.

21. In page 35, before section 43, but in Part 6, to insert the following new section:

“Amendment of section 6 of Juries Act 1976.

43.—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”.

—*Senators Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan, Alan Kelly.*

[SECTION 47]

SECTION 47

22. In page 36, before section 47, to insert the following new section:

“Amendment of section 31 of Juries Act 1976.

47.—Section 31 of the Juries Act 1976 is amended by deleting “and under the age of sixty-five years”.”

—*Senators Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan, Alan Kelly.*

SECTION 51

***23.** In page 36, before section 51, to insert the following new section:

“Amendment of First Schedule to Juries Act 1976.

51.—The First Schedule to the Juries Act 1976 is amended—

(a) in Part 1, by substituting—

“Other persons

Persons who have—

(a) an incapacity to read, or

(b) an enduring impairment

such that it is not practicable for them to perform the duties of a juror.”

for—

“Incapable persons

A person who because of insufficient capacity to read, deafness or other permanent infirmity is unfit to serve on a jury.”, and

(b) in Part II, by deleting “and under the age of seventy years”.”

[*Acceptance of this amendment involves the deletion of section 51 of the Bill.*]

SECTION 58

***24.** In page 41, subsection (1), line 25, after “Irish,” to insert “as”.

***25.** In page 41, subsection (1), line 30, to delete “as the Director of Film Classification” and substitute the following:

“, in English, as the Director of Film Classification and, in Irish, as *an Stiúrthóir Aicmithe Scannán*”.

SECTION 63

***26.** In page 45, lines 25 to 28, to delete all words from and including “health” in line 25 down to and including “2001” in line 28 and substitute “health insurance contract”.

SECTION 67

***27.** In page 49, line 39, to delete “severe” and substitute “undue”.

SECTION 68

***28.** In page 50, line 6, after “shall” to insert the following:

[*SECTION 68*]

“, in so far as they relate to the solicitor for any party to the proceedings pursuant to the certificate,”.

TITLE

***29.** In page 9, line 18, after “1994,” to insert “THE SOLICITORS (AMENDMENT) ACT 2002,”.