



DÁIL ÉIREANN

AN BILLE UM AN DLÍ SIBHIALTA (FORÁLACHA ILGHNÉITHEACHA), 2011 CIVIL LAW (MISCELLANEOUS PROVISIONS) BILL 2011

LEASUITHE TUARASCÁLA REPORT AMENDMENTS

DÁIL ÉIREANN

AN BILLE UM AN DLÍ SIBHIALTA (FORÁLACHA ILGHNÉITHEACHA), 2011 —AN TUARASCÁIL

CIVIL LAW (MISCELLANEOUS PROVISIONS) BILL 2011 —REPORT

Leasuithe Amendments

1. In page 7, line 21, after “INQUIRY;” to insert “TO TEMPER THE OFFICIAL LANGUAGES ACT 2003;”.

—Aengus Ó Snodaigh.

2. In page 7, line 27, before “Act” to insert the following:

“and the emasculation of the Official Languages Act 2003”.

—Aengus Ó Snodaigh.

3. In page 8, line 1, to delete “*sections 26 to 28*” and substitute the following:

“*section 21* insofar as it refers to section 21 of the Equal Status Act 2000 and *sections 26 to 28*”.

—An tAire Dlí agus Cirt agus Comhionannais.

4. In page 8, line 7, to delete “1996 to 2002” and substitute “1996 and 2002”.

—An tAire Dlí agus Cirt agus Comhionannais.

5. In page 8, to delete lines 12 and 13 and substitute the following:

“(10) *Sections 6, 12 and 29(g)* and *sections 48* to 54** shall come into operation on such day or”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*Note: This is a reference to the section proposed to be inserted by amendment 19.]

**Note: This is a reference to the section proposed to be inserted by amendment 25.]

6. In page 8, line 16, after “provisions” to insert the following:

“and that *section 54* shall not come into operation until the constitutionality of its provisions have been tested in the Supreme Court”.

—Aengus Ó Snodaigh.

7. In page 8, line 16, after “provisions” to insert the following:

“and that *section 54* shall not come into operation until such day as an Official Languages (Amendment) Act shall confirm its intent”.

—Aengus Ó Snodaigh.

8. In page 8, line 16, after “provisions” to insert the following:

“and that *section 54* shall be limited in its operation to the three months enactment”.

—Aengus Ó Snodaigh.

9. In page 21, line 19, to delete “and”.
—An tAire Dlí agus Cirt agus Comhionannais.
10. In page 21, to delete line 22 and substitute “a function under subsection (4)”,
and”.
—An tAire Dlí agus Cirt agus Comhionannais.
11. In page 21, between lines 22 and 23, to insert the following:
“(c) in subsection (7), by the substitution of “under section 77 or 86, or under
section 21 of the Equal Status Act 2000—” for “under section 77—”.
—An tAire Dlí agus Cirt agus Comhionannais.
12. In page 22, line 26, to delete “and”.
—An tAire Dlí agus Cirt agus Comhionannais.
13. In page 22, line 35, to delete “the reference.” and substitute “the reference.”,
and”.
—An tAire Dlí agus Cirt agus Comhionannais.
14. In page 22, between lines 35 and 36, to insert the following:
“(d) in subsection (6)(b), by the substitution of “subsection (3) or (3A)” for
“subsection (3)”.
—An tAire Dlí agus Cirt agus Comhionannais.
15. In page 23, between lines 10 and 11, to insert the following:

“Amendment of
section 83 of Act of
1998.

- 26.—Section 83 of the Act of 1998 is amended, in subsection (5), by the
substitution of “under section 79(3) or (3A)” for “under section 79(3)”.
—An tAire Dlí agus Cirt agus Comhionannais.

16. In page 35, to delete lines 22 to 45, to delete page 36 and in page 37, to delete
lines 1 to 36 and substitute the following:

“Amendment of
Irish Nationality and
Citizenship Act
1956.

- 32.—The Irish Nationality and Citizenship Act 1956 is amended—
 - (a) in section 2, by the insertion of the following definition:
“ ‘civil partner’ means a civil partner within the meaning of section 3 of
the Civil Partnership and Certain Rights and Obligations of Cohabitants
Act 2010;”,
 - (b) in section 15 (amended by section 8 of the Irish Nationality and
Citizenship Act 2004)—
 - (i) by the substitution of the following for subsection (1)(e):
“(e) has, before a judge of the District Court in open court, in a
citizenship ceremony or in such manner as the Minister, for
special reasons, allows—
 - (i) made a declaration, in the prescribed manner, of fidelity
to the nation and loyalty to the State, and
 - (ii) undertaken to faithfully observe the laws of the State and
to respect its democratic values.”,

and

- (ii) by the insertion of the following after subsection (3) (inserted by section 8 of the Irish Nationality and Citizenship Act 2004):

“(4) In this section and section 15A, ‘citizenship ceremony’ means a ceremony, held before a judge, or a retired judge, of the District Court, Circuit Court, High Court or Supreme Court, or such other person as may be designated for that purpose by the Minister, at a place and in a form approved by the Minister, at which the applicant has made the declaration and undertaking referred to in subsection (1) (e) or section 15A(1)(h)”,

- (c) by the substitution of the following section for section 15A (amended by section 9 of the Irish Nationality and Citizenship Act 2004):

“15A.—(1) Notwithstanding the provisions of section 15, the Minister may, in his or her absolute discretion, grant an application for a certificate of naturalisation to the non-national spouse or civil partner of an Irish citizen if satisfied that the applicant—

- (a) is of full age,
- (b) is of good character,
- (c) and that citizen—
 - (i) are married to each other, have been married to each other for a period of not less than 3 years, and are living together, as attested to by affidavit submitted by the citizen to the Minister in the prescribed form, or
 - (ii) are civil partners of each other, have been civil partners of each other for a period of not less than 3 years, and are living together, as attested to by affidavit submitted by the citizen to the Minister in the prescribed form,
- (d) is, in the case of a spouse, in a marriage recognised under the laws of the State as subsisting,
- (e) had, immediately before the date of the application, a period of one year’s continuous residence in the island of Ireland,
- (f) had, during the 4 years immediately preceding that period, a total residence in the island of Ireland amounting to 2 years,
- (g) intends in good faith to continue to reside in the island of Ireland after naturalisation, and
- (h) has, before a judge of the District Court in open court, in a citizenship ceremony or in such manner as the Minister, for special reasons, allows—
 - (i) made a declaration, in the prescribed manner, of fidelity to the nation and loyalty to the State, and
 - (ii) undertaken to faithfully observe the laws of the State and to respect its democratic values.

(2) The Minister may, in his or her absolute discretion, waive the conditions at paragraph (c), (e), (f) or (g) of subsection (1) or any of them if satisfied that the applicant would suffer serious consequences in respect of his or her bodily integrity or liberty if not granted Irish citizenship.

(3) Paragraph (g) of subsection (1) shall not apply to an applicant for a certificate of naturalisation to whom subsection (4) applies.

(4) Any period of residence outside the Island of Ireland, during which

—
(a) the applicant for a certificate of naturalisation to which this section applies was—

(i) married to and living with his or her spouse, or

(ii) in a civil partnership with and living with his or her civil partner,

and

(b) the applicant's spouse or, as the case may be, civil partner was in the public service,

shall be reckoned as a period of residence in the island of Ireland for the purposes of calculating—

(i) continuous residence under paragraph (e) of subsection (1), or

(ii) total residence under paragraph (f) of that subsection.”,

(d) in section 16 (amended by section 10 of the Irish Nationality and Citizenship Act 2004)—

(i) by the insertion in subsection (2)(a) of “, or is the civil partner of,” after “related by blood, affinity or adoption to”, and

(ii) by the insertion in subsection (2)(b) of “, or was the civil partner of,” after “related by blood, affinity or adoption to”,

(e) by the substitution of the following section for section 17 (amended by section 12 of the Irish Nationality and Citizenship Act 2004):

“17.—An application for a certificate of naturalisation shall be—

(a) in the prescribed form, and

(b) accompanied by—

(i) such fee (if any) as may be prescribed, and

(ii) such evidence (including statutory declarations) to vouch the application as the Minister may require.”,

(f) in section 19(1)(e), by the substitution for “act other than marriage” of “act, other than marriage or entry into a civil partnership,”,

(g) by the substitution of the following section for section 20:

“Acquisition of citizenship by person who is married or a civil partner. 20.—Acquisition of Irish citizenship by a person shall not of itself confer Irish citizenship on his or her spouse or civil partner.”,

(h) by the substitution of the following section for section 22:

“Non-effect of death or loss of citizenship on person’s spouse, civil partner or children. 22.—(1) The death of an Irish citizen shall not affect the citizenship of his or her surviving spouse, civil partner or children.
(2) Loss of Irish citizenship by a person shall not of itself affect the citizenship of his or her spouse, civil partner or children.”,

and

(i) by the substitution of the following section for section 23 (amended by section 8 of the Irish Nationality and Citizenship Act 2001):

“Marriage or civil partnership not to effect loss of citizenship. 23.—A person who marries, or enters into a civil partnership with, a non-national shall not, merely by virtue of the marriage or civil partnership, cease to be an Irish citizen, whether or not he or she acquires the nationality of the non-national.”.
—An tAire Dlí agus Cirt agus Comhionannais.

17. In page 39, to delete lines 36 to 44.

—Jonathan O’ Brien.

18. In page 39, line 48, after “the” to insert the following:

“making of an application for, or the giving of, a permission and the”.

—Jonathan O’ Brien.

19. In page 46, after line 47, to insert the following:

“PART 16*

FAMILY MEDIATION SERVICES

Definitions (*Part 16**).

48.—In this Part—

“Agency” means the Family Support Agency;

“Board” means the Legal Aid Board;

“family mediation services” has the same meaning as it has in the Civil Legal Aid Act 1995 (inserted by *section 53*** of this Act).”.

—An tAire Dlí agus Cirt agus Comhionannais.

[**Note: The proposed new Part comprehends the inclusion of amendments 19 to 25.*]

[***Note: This is a reference to the section proposed to be inserted by amendment 24.*]

20. In page 46, after line 47, to insert the following:

“Transfer of functions relating to family mediation services from Agency to Board.

49.—On the coming into operation of this section the functions of the Agency relating to family mediation services shall be transferred to and be a function of the Board.”.

—An tAire Dlí agus Cirt agus Comhionannais.

21. In page 46, after line 47, to insert the following:

“Transfer of certain property.

50.—(1) The Agency shall, as soon as practicable following receipt by it of a direction from the Minister for Children and Youth Affairs in that regard, transfer such land as may be specified in that direction to the Board.

(2) A direction referred to in *subsection (1)* shall be made with the consent of the Minister and the Minister for Public Expenditure and Reform.”.

—An tAire Dlí agus Cirt agus Comhionannais.

22. In page 46, after line 47, to insert the following:

“Transfer of certain rights and liabilities.

51.—(1) The Agency shall, as soon as practicable following receipt by it of a direction from the Minister for Children and Youth Affairs in that regard, transfer such rights and liabilities as may be specified in that direction to the Board.

(2) A direction referred to in *subsection (1)* may be made by reference to a class or classes of rights or liabilities.

(3) A direction referred to in *subsection (1)* shall be made with the consent of the Minister and the Minister for Public Expenditure and Reform.

(4) In the event of any doubt arising as to whether a right or obligation stands transferred to the Board in accordance with this section, the Minister for Public Expenditure and Reform may issue a determination as respects any such right or liability and such determination shall be admissible as evidence in any proceedings relating to the right or liability concerned.

(5) Every right or liability transferred to the Board pursuant to this section may, on and after such transfer, be sued on, recovered or enforced by or against the Board in its own name.”.

—An tAire Dlí agus Cirt agus Comhionannais.

23. In page 46, after line 47, to insert the following:

“Transfer of officers and staff.

52.—(1) Subject to the provisions of this section, such officers and members of the staff of the Agency who are designated by the Minister for the purposes of this section shall stand transferred to the Board on such day as may be specified for the purpose by the Minister.

(2) The designation of staff and the specifying of a day in accordance with *subsection (1)* shall be made with the consent of the Minister for Children and Youth Affairs and the Minister for Public Expenditure and Reform.

(3) (a) Subject to *paragraph (b)* every person who, immediately before he or she was transferred to the Board in accordance with *subsection (1)*, was an officer of the Agency shall, on such transfer, be an officer of the Board and hold an unestablished position in the Civil Service.

(b) Every person who, immediately before he or she was transferred to the Board in accordance with *subsection (1)*, was a fixed-term employee of the Agency shall, on such transfer, hold an unestablished position as a fixed-term employee of the Board for the unexpired duration of his or her contract of employment.

(4) Save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned, a person referred to in *subsection (1)* shall not, on being transferred to the Board, be made subject to less beneficial terms and conditions of service (including those relating to tenure of office) or of remuneration than the terms and conditions of service (including those relating to tenure of office) or of remuneration to which he or she was subject immediately before that transfer.

(5) The previous service of a person transferred under *subsection (1)* shall be reckonable for the purposes of, but subject to the exceptions or exclusions in, the following:

- (a) the Redundancy Payments Acts 1967 to 2007;
- (b) the Protection of Employees (Part-Time Work) Act 2001;
- (c) the Protection of Employees (Fixed-Term Work) Act 2003;
- (d) the Organisation of Working Time Act 1997;
- (e) the Terms of Employment (Information) Acts 1994 and 2001;
- (f) the Minimum Notice and Terms of Employment Acts 1973 to 2005;
- (g) the Unfair Dismissals Acts 1977 to 2007;
- (h) the Maternity Protection Acts 1994 and 2004;
- (i) the Parental Leave Acts 1998 and 2006;
- (j) the Adoptive Leave Acts 1995 and 2005;
- (k) the Carer's Leave Act 2001.

(6) Any superannuation benefits awarded to or in respect of a person transferred under *subsection (1)*, and the terms and conditions relating to those benefits, shall be no less favourable than those applicable to or in respect of the person immediately before the transfer.

(7) In this section—

“Civil Service” has the same meaning as in the Civil Service Regulations Act 1956;

“recognised trade union or staff association” means a trade union or staff association recognised by the Agency or the Board for the purposes of negotiations which are concerned with the remuneration, conditions of employment or working conditions of the persons concerned.”

—An tAire Dlí agus Cirt agus Comhionannais.

24. In page 46, after line 47, to insert the following:

“Amendment of
Civil Legal Aid Act
1995.

53.—With effect from the coming into operation of *section 49** of the *Civil Law (Miscellaneous Provisions) Act 2011*, the Civil Legal Aid Act 1995 is amended:

(a) in section 1, by the insertion of the following definition:

“ ‘family mediation services’ means services designed to assist persons involved in the process of seeking—

- (i) a separation,
- (ii) a divorce,
- (iii) a dissolution of a civil partnership,
- (iv) payment of maintenance,
- (v) an order of a court or an agreement relating to guardianship or custody of a child, or to parental access to a child,

to reach agreement relating to some or all of such matters as relate to the persons concerned;”

(b) in section 5, by the substitution of the following for subsection (1):

“(1) The principal functions of the Board shall be:

- (a) to provide, within the Board’s resources and subject to the other provisions of this Act—
 - (i) legal aid and advice in civil cases to persons who satisfy the requirements of this Act, and
 - (ii) a family mediation service;
- (b) where the Board considers it necessary or expedient to do so to make arrangements for the provision of—
 - (i) family mediation services on its behalf by the engagement of persons appointed by it for that purpose, and
 - (ii) training in family mediation, either by itself or by persons appointed by it for that purpose.”

(c) by the insertion, after section 11, of the following section:

“Appointment of persons to provide family mediation services or training in relation to such services.

11A.—(1) The Board may appoint persons who it considers to be qualified by reason of training and experience, to provide family mediation services on its behalf or to provide training in family mediation.

(2) A person appointed pursuant to subsection (1) shall not be an officer or member of the staff of the Board.

(3) A person appointed by the Board pursuant to subsection (1) shall be appointed subject to such terms and conditions as may be determined by the Minister and the Minister for Public Expenditure and Reform.

(4) Subsection (2) shall not be construed as preventing the Board appointing a person as an officer or member of the staff of the Board in relation to the provision of a family mediation service by the Board.”

(d) by the insertion, after section 36, of the following sections:

“Confidentiality of information disclosed in course of family mediation.

36A.—(1) Any communication (including any record of such communication) between any of the parties to a family mediation provided by the Board or provided by other persons appointed for that purpose by the Board under this Act, and a third party, including a mediator, for the purposes of attempting to reach agreement relating to such of the following matters as relate to the parties to the mediation—

- (a) a separation,
- (b) a divorce,
- (c) a dissolution of a civil partnership,
- (d) payment of maintenance,
- (e) an order of a court or an agreement relating to guardianship or custody of a child, or to parental access to a child,

shall not be disclosed and shall not be admissible as evidence in any court.

(2) Subsection (1) is in addition to and not in substitution for any other statutory provision.

(3) Nothing in this section shall prevent a party who is engaged in or who engaged in a family mediation communicating the progress made in that mediation to his or her solicitor and obtaining legal advice in relation to the matters the subject of the mediation.

Guidelines relating to confidentiality of family mediation.

36B.—(1) The Board shall, with the consent of the Minister, make guidelines with the objective of preventing the disclosure of communications referred to in section 36A.

(2) Guidelines made under subsection (1) shall include provisions relating to—

- (a) the utilisation of premises for the purposes of family mediation services other than the premises where the solicitor of the Board is usually located who is acting for a person who has been issued with a legal aid certificate under section 29 and who is a party to a family mediation provided by the Board or a person appointed by it, and
- (b) the regular training of staff and officers of the Board and of persons appointed by the Board to provide family mediation services regarding the need to maintain confidentiality of communications made in connection with a family mediation.”,

and

(e) in section 37—

- (i) by the insertion in subsection (2), after paragraph (f), of the following paragraphs:

“(fa) make provision as to the conditions relating to the provision of family mediation services by the Board;

(fb) prescribe fees or charges which may be charged by the Board in relation to the provision of family mediation services, which regulations may prescribe different fees or charges in relation to different classes of persons or different classes of cases;”

and

(ii) by the insertion after subsection (2) of the following subsection:

“(3) Regulations made pursuant to subsection (2)(fb) shall not prescribe fees or charges in relation to the provision of family mediation services where the parties to the mediation had agreed to enter such mediation before the coming into operation of *section 49** of the *Civil Law (Miscellaneous Provisions) Act 2011*.”

—An tAire Dlí agus Cirt agus Comhionannais.

[*Note: This is a reference to the section proposed to be inserted by amendment 20.]

25. In page 46, after line 47, to insert the following:

“Amendment of
Family Support
Agency Act 2001.

54.—Section 4 of the Family Support Agency Act 2001 is amended—

(a) in subsection (1), by the deletion of paragraphs (a) and (b), and

(b) in subsection (2), by the deletion of paragraph (a).”

—An tAire Dlí agus Cirt agus Comhionannais.

26. In page 50, to delete lines 14 to 39.

—Jonathan O' Brien, Aengus Ó Snodaigh.

27. In page 50, line 24, to delete “in aon teanga oifigiúil” and substitute “in nGaeilge”.

—Aengus Ó Snodaigh.

28. In page 50, lines 37 and 38, to delete “one official language” and substitute “the Irish language”.

—Aengus Ó Snodaigh.

29. In page 54, to delete lines 51 and 52 and substitute the following:

“(f) by the substitution of the matter in the Schedule to this Act for the Second Schedule to that Act.”

—An tAire Dlí agus Cirt agus Comhionannais.

30. In page 56, to delete lines 8 to 9 and substitute the following:

Section 56.

“SCHEDULE

“SECOND SCHEDULE”.

—An tAire Dlí agus Cirt agus Comhionannais.