



SEANAD ÉIREANN

**AN BILLE UM CHÚIRTEANNA AGUS AN DLÍ SIBHIALTA
(FORÁLACHA ILGHNÉITHEACHA), 2013
COURTS AND CIVIL LAW (MISCELLANEOUS PROVISIONS)
BILL 2013**

**LEASUITHE TUARASCÁLA
REPORT AMENDMENTS**

SEANAD ÉIREANN

AN BILLE UM CHÚIRTEANNA AGUS AN DLÍ SIBHIALTA (FORÁLACHA ILGHNÉITHEACHA), 2013 —AN TUARASCÁIL

COURTS AND CIVIL LAW (MISCELLANEOUS PROVISIONS) BILL 2013 —REPORT

*Leasuithe
Amendments*

**Government amendments are denoted by an asterisk*

- *1. In page 7, line 16, to delete “Supreme Court judges” and substitute “ordinary judges of the Supreme Court”.
- *2. In page 9, line 7, to delete “each of the following” and substitute “any of the following provisions”.
- *3. In page 9, line 18, to delete “sections 33 and 38” and substitute “section 33 or 38”.
- *4. In page 9, line 21, to delete “sections 18, 30, 31, 49, 54 and 92” and substitute “section 18, 30, 31, 49, 54 or 92”.
- *5. In page 9, line 22, to delete “sections 145 and 199” and substitute “section 145 or 199”.
6. In page 12, to delete lines 36 to 39, and in page 13, to delete line 1 and substitute the following:
 - “(5A) (a) Bona fide representatives of the Press, in order to be permitted to attend proceedings referred to in subsection (1), shall be required to provide accreditation of the form prescribed in paragraph (b).
 - (b) Accreditation for the purposes of paragraph (a) shall be provided by the Court Reporting Accreditation Committee, which shall consist of the following ordinary members:
 - (i) a representative of the Press Council,
 - (ii) a representative of the Press Ombudsman’s Office,
 - (iii) a representative of the Department of Justice and Equality, and
 - (iv) a representative of the Children’s Ombudsman’s office,and the Minister for Justice and Equality shall also appoint a judge of the High Court as the chair of the Courts Reporting Accreditation Committee. The Courts Reporting Accreditation Committee shall operate on the basis of majority decision, and in the event of a tied decision among the ordinary members, the chair of the committee shall have the casting vote.
 - (c) Bona fide representatives of the Press, without accreditation as provided for in subsections (a) and (b) shall be prohibited from

attending proceedings referred to in subsection (1).

(d) Subject to subsection (c), nothing contained in this section shall operate to prohibit bona fide representatives of the Press from attending proceedings referred to in subsection (1).

(e) Subject to paragraphs (f) and (g), where, in proceedings referred to in subsection (1), a court is satisfied that it is necessary to do so —”.

—*Senators Trevor Ó Clochartaigh, Kathryn Reilly and David Cullinane.*

*7. In page 21, lines 10 and 11, to delete “additional jurors have been sworn in the trial of a criminal issue pursuant to” and substitute “jurors have been sworn in the trial of a criminal issue following the making of”.

*8. In page 21, line 33, to delete “additional jurors have been selected pursuant to” and substitute “jurors have been selected following the making of an order under”.

*9. In page 26, between lines 23 and 24, to insert the following:

“(b) by the insertion of the following definition:

“ ‘Director’ means the Director of the Insolvency Service;””.

*10. In page 30, line 4, to delete “of his or her” and substitute “of his”.

*11. In page 30, line 36, to delete “signature.”” and substitute the following:

“signature.

Transfer of records to Insolvency Service

60D. All documents and records in the custody and control of the Courts Service relating to the Office of the Official Assignee in Bankruptcy immediately before the coming into operation of *section 28* of the *Courts and Civil Law (Miscellaneous Provisions) Act 2013* shall on the coming into operation of that section be transferred to the Insolvency Service.””.

*12. In page 32, between lines 23 and 24, to insert the following:

“Insertion of section 86A in Act of 1988

33. The Act of 1988 is amended by the insertion, after section 86 but in Part IV, of the following section:

“Prohibition on presentation of petition for arrangement under section 87

86A. A person shall not present a petition to the Court under section 87 after the coming into operation of *section 33#* of the *Courts and Civil Law (Miscellaneous Provisions) Act 2013*.””.

[#This is a reference to the section proposed to be inserted by this amendment.]

*13. In page 32, between lines 37 and 38, to insert the following:

“Repeal of section 6 of and Schedule 1 to Personal Insolvency Act 2012

34. Section 6 of and Schedule 1 to the Personal Insolvency Act 2012 are repealed.”.

*14. In page 35, to delete lines 27 to 29 and substitute the following:

“Amendment of section 34 of Act of 2012

44. Section 34 of the Act of 2012 is amended—

(a) in subsection (4)(b), by substituting “section 37(3) (as amended by *section 47#* of the *Courts and Civil Law (Miscellaneous Provisions) Act 2013*)” for “section 37(2)(a)”, and

(b) in subsection (5), by deleting the words “and the approved intermediary concerned”.”.

[#This is a reference to the section proposed to be inserted by amendment 16.]

*15. In page 35, between lines 35 and 36, to insert the following:

“Amendment of section 36 of Act of 2012

46. Section 36 of the Act of 2012 is amended—

(a) in subsection (2), by substituting “A specified debtor” for “Subject to subsection (5), a specified debtor”,

(b) in subsection (3), by substituting “Subject to subsection (4),” for “Subject to subsections (4) and (5),”, and

(c) by deleting subsection (5).”.

*16. In page 35, between lines 35 and 36, to insert the following:

“Amendment of section 37 of Act of 2012

47. Section 37 of the Act of 2012 is amended by substituting the following for subsections (2) and (3):

“(2) Where—

(a) a sum is paid by a specified debtor under this section, or surrendered by him or her under subsection (2) or (3) of section 36, that is, or

(b) the aggregate of the sums so paid or so surrendered is,

in an amount that is not less than 50 per cent of the total value of the specified qualifying debts concerned, subsection (3) shall apply.

(3) Where this subsection applies—

- (a) the Debt Relief Notice concerned shall cease to have effect,
- (b) the specified debtor shall stand discharged from all of the specified qualifying debts, and
- (c) the Insolvency Service shall, within 3 months of the date on which paragraph (a) or (b), as the case may be, of subsection (2) applies, remove from the Register of Debt Relief Notices all information recorded in respect of the Debt Relief Notice.”.”.

*17. In page 38, between lines 3 and 4, to insert the following:

“Amendment of section 71 of Act of 2012

56. Section 71(1)(c) of the Act of 2012 is amended by substituting the following for subparagraph (iv):

- “(iv) he or she is of the opinion that—
- (I) the debtor satisfies the eligibility criteria for the proposal of a Debt Settlement Arrangement specified in section 57,
 - (II) the proposed Debt Settlement Arrangement complies with the mandatory requirements referred to in section 65(2), and
 - (III) the proposed Debt Settlement Arrangement does not contain any terms that would release the debtor from an excluded debt, an excludable debt (other than a permitted debt) or a secured debt or otherwise affect such a debt;”.”.

*18. In page 38, between lines 10 and 11, to insert the following:

“Amendment of section 75 of Act of 2012

58. Section 75 of the Act of 2012 is amended by substituting the following for subsection (1):

- “(1) Where a Debt Settlement Arrangement is approved at a creditors’ meeting in accordance with section 73, the personal insolvency practitioner shall as soon as practicable after the meeting has concluded notify the Insolvency Service and each creditor concerned, which notification shall be accompanied by—
- (a) a certificate with the result of the vote taken at the creditors’ meeting, identifying the number of votes, in value of the creditors present and voting, in favour and against the proposed Debt Settlement Arrangement, and stating that the requisite percentage of creditors referred to in section 73(6) has approved the proposal for a Debt Settlement Arrangement,
 - (b) a copy of the approved Debt Settlement Arrangement, and
 - (c) a statement by the personal insolvency practitioner to the effect that

he or she is of the opinion that—

- (i) the debtor satisfies the eligibility criteria for the proposal of a Debt Settlement Arrangement specified in section 57,
- (ii) the approved Debt Settlement Arrangement complies with the mandatory requirements referred to in section 65(2), and
- (iii) the approved Debt Settlement Arrangement does not contain any terms that would release the debtor from an excluded debt, an excludable debt (other than a permitted debt) or a secured debt or otherwise affect such a debt.”.”.

*19. In page 38, between lines 10 and 11, to insert the following:

“Amendment of section 76 of Act of 2012

59. Section 76 of the Act of 2012 is amended by substituting the following for subsection (1):

- “(1) On receipt of a notification and accompanying documents from the personal insolvency practitioner pursuant to section 75(1) (as amended by *section 58# of the Courts and Civil Law (Miscellaneous Provisions) Act 2013*), the Insolvency Service shall—
 - (a) notify the appropriate court and furnish to that court a copy of the notification and documents, and
 - (b) record the approval of the Debt Settlement Arrangement concerned in the Register of Debt Settlement Arrangements.”.”.

[#This is a reference to the section proposed to be inserted by amendment 18.]

*20. In page 38, between lines 10 and 11, to insert the following:

“Amendment of section 78 of Act of 2012

60. Section 78 of the Act of 2012 is amended—

- (a) in subsection (2), by substituting “the notification and documents” for “the copy of the Debt Settlement Arrangement”,
- (b) by substituting the following for subsection (3):
 - “(3) Where the appropriate court, for the purpose of its arriving at a decision under subsection (2), requires—
 - (a) further information, it may request the Insolvency Service to provide this information, and the Insolvency Service shall provide the information requested to the court and to the personal insolvency practitioner concerned, or
 - (b) further information or evidence, it may hold a hearing, which hearing shall be on notice to the Insolvency Service and the

personal insolvency practitioner concerned.”,

and

(c) by substituting the following for subsection (5):

“(5) For the purposes of subsection (2), the appropriate court may accept—

- (a) the certificate of the personal insolvency practitioner referred to in section 75(1)(a) (as amended by *section 58# of the Courts and Civil Law (Miscellaneous Provisions) Act 2013*) as evidence that the requisite percentage of creditors referred to in section 73(6) has approved the proposal for a Debt Settlement Arrangement, and
- (b) the statement of the personal insolvency practitioner referred to in section 75(1)(c) (as amended by *section 58# of the Courts and Civil Law (Miscellaneous Provisions) Act 2013*) as evidence of any matter referred to in subsection (2) which is the subject of that statement.”.

[#This is a reference to the section proposed to be inserted by amendment 18.]

*21. In page 40, between lines 17 and 18, to insert the following:

“Amendment of section 107 of Act of 2012

66. Section 107(1)(c) of the Act of 2012 is amended by substituting the following for subparagraph (iv):

“(iv) he or she is of the opinion that—

- (I) the debtor satisfies the eligibility criteria for the proposal of a Personal Insolvency Arrangement specified in section 91,
- (II) the proposed Personal Insolvency Arrangement complies with the mandatory requirements referred to in section 99(2), and
- (III) the proposed Personal Insolvency Arrangement does not contain any terms that would release the debtor from an excluded debt or an excludable debt (other than a permitted debt) or otherwise affect such a debt;”.

*22. In page 40, between lines 17 and 18, to insert the following:

“Amendment of section 112 of Act of 2012

67. Section 112 of the Act of 2012 is amended by substituting the following for subsection (1):

“(1) Where a Personal Insolvency Arrangement is approved at a creditors’ meeting in accordance with section 110, the personal insolvency practitioner shall as soon as practicable after the meeting has concluded notify the Insolvency Service and each creditor concerned,

which notification shall be accompanied by—

- (a) a certificate with the result of the vote taken at the creditors’ meeting, identifying the proportions of the respective categories of votes cast by those voting at the creditors’ meeting and stating that the requisite percentage of creditors referred to in section 110(1) has approved the proposal for a Personal Insolvency Arrangement,
- (b) a copy of the approved Personal Insolvency Arrangement, and
- (c) a statement by the personal insolvency practitioner to the effect that he or she is of the opinion that—
 - (i) the debtor satisfies the eligibility criteria for the proposal of a Personal Insolvency Arrangement specified in section 91,
 - (ii) the approved Personal Insolvency Arrangement complies with the mandatory requirements referred to in section 99(2), and
 - (iii) the approved Personal Insolvency Arrangement does not contain any terms that would release the debtor from an excluded debt or an excludable debt (other than a permitted debt) or otherwise affect such a debt.”.”.

***23.** In page 40, between lines 17 and 18, to insert the following:

“Amendment of section 113 of Act of 2012

68. Section 113 of the Act of 2012 is amended by substituting the following for subsection (1):

“(1) On receipt of a notification and accompanying documents from the personal insolvency practitioner pursuant to section 112(1) (as amended by *section 67# of the Courts and Civil Law (Miscellaneous Provisions) Act 2013*), the Insolvency Service shall—

- (a) notify the appropriate court and furnish to that court a copy of the notification and documents, and
- (b) record the approval of the Personal Insolvency Arrangement concerned in the Register of Personal Insolvency Arrangements.”.”.

[#This is a reference to the section proposed to be inserted by amendment 22.]

***24.** In page 40, between lines 17 and 18, to insert the following:

“Amendment of section 115 of Act of 2012

69. Section 115 of the Act of 2012 is amended—

- (a) in subsection (2), by substituting “the notification and documents” for “the copy of the Personal Insolvency Arrangement”,
- (b) by substituting the following for subsection (3):

“(3) Where the appropriate court, for the purpose of its arriving at a decision under subsection (2), requires—

- (a) further information, it may request the Insolvency Service to provide this information, and the Insolvency Service shall provide the information requested to the court and to the personal insolvency practitioner concerned, or
- (b) further information or evidence, it may hold a hearing, which hearing shall be on notice to the Insolvency Service and the personal insolvency practitioner concerned.”,

and

(c) by substituting the following for subsection (5):

“(5) For the purposes of subsection (2), the appropriate court may accept—

- (a) the certificate of the personal insolvency practitioner referred to in section 112(1)(a) (as amended by *section 67# of the Courts and Civil Law (Miscellaneous Provisions) Act 2013*) as evidence that the requisite percentage of creditors referred to in section 110(1) has approved the proposal for a Personal Insolvency Arrangement, and
- (b) the statement of the personal insolvency practitioner referred to in section 112(1)(c) (as amended by *section 67# of the Courts and Civil Law (Miscellaneous Provisions) Act 2013*) as evidence of any matter referred to in subsection (2) which is the subject of that statement.”.

[#This is a reference to the section proposed to be inserted by amendment 22.]

25. In page 41, between lines 23 and 24, to insert the following:

“PART 9

INADMISSIBILITY OF SEXUAL ASSAULT COMMUNICATIONS

71. The Criminal Evidence Act 1992 is amended by the insertion of the following sections after section 30:

- “31. (1) Where a person engages in sexual assault counselling relating to a sexual assault occurring while they were under the age of 18, evidence disclosing the content of communications made in confidence in the course of the said sexual assault counselling shall not be admissible as evidence in criminal proceedings save by order of the court.
- (2) Any application for an order admitting such evidence must be made prior to the trial of the offence, to the court in which the offence is intended to be tried.

- (3) In determining an application for an order admitting such evidence, the court shall, subject to the Rules of the Court, have regard to the following requirements:
 - (a) the evidence must have substantial probative value;
 - (b) there must be no other evidence which could prove the disputed facts;
 - (c) the public interest in disclosure outweighs the potential harm to the complainant.
32. (1) For the purpose of section 31, sexual assault counselling shall mean communications made between a person being the victim of a sexual assault occurring while they were under the age of 18, and a person who—
 - (a) has undertaken training or study or has experience that is relevant to the process of counselling persons who have suffered harm, and
 - (b) who—
 - (i) listens to and gives verbal or other support to the other person, or
 - (ii) advises, gives therapy to or treats the other person, whether or not for fee or reward.
- (2) The Minister may by order set out detailed criteria regarding the conduct of sexual assault counselling, and the training or qualifications of those who provide sexual assault counselling for the purposes of this Act.”.”

—*Senators Jillian van Turnhout, Fiach Mac Conghail.*