



**An Bille um Dhliteanas Sibhialta (Leasú) (Cosc le Tairbhe a Fháil as Dúnbhású),
2017**

Civil Liability (Amendment) (Prevention of Benefits from Homicide) Bill 2017

Mar a tionscnaíodh

As initiated



**AN BILLE UM DHLITEANAS SIBHIALTA (LEASÚ) (COSC LE TAIRBHE A FHÁIL
AS DÚNBHÁSÚ), 2017**
**CIVIL LIABILITY (AMENDMENT) (PREVENTION OF BENEFITS FROM
HOMICIDE) BILL 2017**

Mar a tionscnaíodh

As initiated

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ACTS REFERRED TO

Civil Liability Act 1961 (No. 41)

Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (No. 24)

Criminal Law (Insanity) Act 2006 (No. 11)

Land and Conveyancing Law Reform Act 2009 (No. 27)

Succession Act 1965 (No. 27)



**AN BILLE UM DHLITEANAS SIBHIALTA (LEASÚ) (COSC LE TAIRBHE A FHÁIL
AS DÚNBHÁSÚ), 2017
CIVIL LIABILITY (AMENDMENT) (PREVENTION OF BENEFITS FROM
HOMICIDE) BILL 2017**

Bill

5

entitled

An Act to amend the Civil Liability Act 1961 to provide for the effects in civil law of the principle that a person should be precluded from benefitting from committing any homicide and the principle that no cause of action arises from one's own wrongful act; to amend the Succession Act 1965 and to provide for related matters.

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Be it enacted by the Oireachtas as follows:

Person who commits homicide not to benefit

1. The Civil Liability Act 1961 is amended by the insertion of the following Part after Part III:

“PART IIIA

15

PERSON WHO COMMITS HOMICIDE NOT TO BENEFIT

Interpretation (Part IIIA)

46A. In this Part—

‘Act of 1965’ means the Succession Act 1965;

‘Act of 2006’ means the Criminal Law (Insanity) Act 2006;

20

‘Act of 2009’ means the Land and Conveyancing Law Reform Act 2009;

‘Act of 2010’ means the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;

‘child’ means a person who is under the age of 18 years or if the person has attained that age is receiving full-time education or instruction at any university, college, school or other educational establishment and is under the age of 23 years;

25

‘dependent person’ means a person of any age whose capacity (including decision-making capacity) is such that it is not reasonably possible for the person to maintain himself or herself fully;

30

‘the court’ means the Circuit Court (where the property involved falls within its civil jurisdiction) or the High Court (where the property involved falls outside the civil jurisdiction of the Circuit Court).

Person who commits homicide not to benefit

- 46B.** (1) Subject to the following provisions of this Part, a person (referred to subsequently in this Part as ‘the offender’) who is convicted of the murder, attempted murder or manslaughter of another shall be precluded from taking any share in the property or estate of that other (referred to subsequently in this Part as ‘the victim’). 5
- (2) (a) In subsection (1)— 10
- ‘property’ means all property of whatever kind in which the victim has an interest, whether real or personal property or any part or combination of such property, including land, goods, money, property held under a trust, or the proceeds of an insurance policy or pension (whether such a pension arises from a pension contract or trust or by virtue of statute), and whether or not such property forms part of the estate of the victim, and 15
- ‘interest’ includes any legal or beneficial interest, actual or contingent, whether that interest has vested or is an interest in remainder. 20
- (b) Accordingly, the offender shall be precluded by subsection (1) from taking any share or interest in any interest of the victim in property which would otherwise have passed to the offender on the death of the victim.
- (3) Subsection (1) shall not apply to any person who aids, abets, counsels or procures the commission of an offence referred to in subsection (1). 25
- (4) Subsection (1) shall not apply where a person has been found to be unfit to be tried or not guilty by reason of insanity in accordance with the Act of 2006.
- (5) (a) Subsection (1) shall not apply in respect of a share arising under a will made by the victim after the date when an offence referred to in subsection (1) was committed. 30
- (b) Accordingly, subject to any enactment or rule of law in respect of wills and testamentary capacity, the victim of an offence referred to in subsection (1) may, after the date the offence was committed, make whatever provision in his or her will as he or she sees fit. 35
- (6) An offender shall be precluded from making an application under section 67A(3) or section 117 of the Act of 1965.
- (7) Any share which the offender is precluded from taking by this Part shall be distributed as if the offender had died before the victim. 40

Application of section 46B to joint tenancy

- 46C.** (1) (a) Where the offender and the victim held property under a joint tenancy, the offender shall be precluded from obtaining the benefit

of the right of survivorship, and the legal and beneficial interests in the property held under the joint tenancy between the victim and the offender shall stand severed from the date when an offence referred to in section 46B(1) was committed, and in any proceedings brought under this Part the court shall make an order to that effect. 5

(b) Pending any determination by the court in any proceedings brought under this Part, the legal title in the property shall be held in trust and subject to the respective beneficial interests of the victim and the offender. 10

(c) Unless otherwise provided (whether in a deed creating the joint tenancy or otherwise by operation of law), and subject to the subsequent provisions of this section, it shall be presumed until the contrary is shown that, upon severance in accordance with paragraph (a), the victim (or, as appropriate, the estate of the victim) holds at least half of the interest in the property. 15

(2) Where proceedings are brought under this Part, the amount and value of the offender's interest in the property shall be determined by the court.

(3) The court shall, in determining the amount and value of the offender's interest in the property, make such order as appears to the court to be just and equitable having regard to the fact that the right of survivorship was accelerated by the act constituting an offence referred to in section 46B(1) and to all the circumstances. 20

(4) The court shall, in determining the amount and value of the offender's interest in the property, have regard, where relevant, to the following circumstances— 25

(a) any contributions, direct or indirect, made by the offender and the victim to the property held under the joint tenancy, including the relative values of their contributions, 30

(b) in a case where the offender and the victim were spouses of each other, or civil partners or cohabitants within the meaning of the Act of 2010, or were parents or guardians of or *in loco parentis* to a child or other dependent person, the contributions, direct or indirect, made by the offender and the victim to the welfare of their family, including any contribution made by each of them to the income, earning capacity, property and financial resources of the other spouse, civil partner, cohabitant or dependent person and any contribution made by either of them by looking after the home or caring for the family, 35 40

(c) the age and financial needs, obligations and responsibilities of any dependent, including any child, of the victim,

(d) the age and financial needs, obligations and responsibilities of the offender,

- (e) any income or benefits to which the offender or the victim is entitled, including by or under contract, trust or statute,
 - (f) whether the commission of an offence referred to in section 46B(1) resulted in a payment under a contract of life insurance, including the discharge of an outstanding mortgage debt, 5
 - (g) any civil liability on the part of the offender arising from the act constituting an offence referred to in section 46B(1), including any liability under sections 48 and 49,
 - (h) the nature of the offender’s conduct in relation to the offence and, in particular— 10
 - (i) whether the offender’s act constituted the offence of murder or attempted murder, or
 - (ii) if the offender’s act constituted the offence of manslaughter, whether it was voluntary or involuntary manslaughter,
 - (i) the presence of diminished responsibility (within the meaning of the Act of 2006), where relevant, 15
 - (j) whether there was a motive or intention to cause death, and
 - (k) any other matters which may appear to the court to be relevant.
- (5) (a) Where section 46B(1) applies and the offender held property under a joint tenancy with the victim and one or more other persons, the offender’s interest in the joint tenancy shall stand severed in accordance with subsection (1), and the joint tenancy shall, subject to paragraph (c), continue between the one or more other persons (referred to subsequently in this Part as ‘innocent joint tenants’), who shall take the victim’s interest by survivorship. 20 25
- (b) Where paragraph (a) applies the offender’s remaining interest shall be subject to the power of the court to determine that interest in accordance with subsections (2) and (3).
- (c) Where any remaining innocent joint tenant no longer wishes to continue as joint tenant with the offender, he or she may apply for relief under sections 30 and 31 of the Act of 2009. 30

Court’s discretion to modify or disapply section 46B in manslaughter

- 46D.** (1) Where the offender has been convicted of manslaughter a court may, in its discretion in any proceedings brought under this Part, make an order to modify the application of or disapply completely section 46B(1), if the Court is satisfied that the interest of justice so requires. 35
- (2) In exercising its discretion under subsection (1), the court shall have regard to all of the circumstances of the case, including—
- (a) in a case where the offender and the victim were spouses of each other, or civil partners or cohabitants within the meaning of the Act of 2010, or were parents or guardians of or *in loco parentis* to a child or other dependent person, the contributions, direct or 40

- indirect, made by the offender and the victim to the welfare of their family, including any contribution made by each of them to the income, earning capacity, property and financial resources of the other spouse, civil partner, cohabitant or dependent and any contribution made by either of them by looking after the home or caring for the family, 5
- (b) any income or benefits to which the offender or the victim is entitled, including by or under any contract, trust or statute,
 - (c) the age and financial needs, obligations and responsibilities of any dependent, including any child, of the victim, 10
 - (d) the age and financial needs, obligations and responsibilities of the offender,
 - (e) the nature of the offender’s conduct in relation to the offence and, in particular, whether the offence was voluntary or involuntary manslaughter, 15
 - (f) the presence of diminished responsibility (within the meaning of the Act of 2006), where relevant, and
 - (g) any other matters which may appear to the court to be relevant.
- (3) In exercising its discretion under subsection (1), the court may, having regard to the matters set out in subsection (2), and notwithstanding section 46B(5), make an order allowing the offender to make an application under section 67A(3) or, as appropriate, section 117 of the Act of 1965. 20

Civil nature of proceedings under this Part

- 46E.** (1) Proceedings under this Part are civil proceedings and accordingly may be brought where— 25
- (a) there has been no criminal prosecution of the offender (who, for the purposes of this section, other than subsection (5), need not have been convicted of an offence referred to in section 46B(1)) in the State in connection with an offence referred to in section 46B(1) (which shall include a case where no proceedings were held or findings made under the Act of 2006), including where this is because the relevant act occurred outside the State, or 30
 - (b) though there has been such a prosecution, whether in or outside the State, the offender has been found not guilty (including after an appeal). 35
- (2) Proceedings under this Part may be brought by—
- (a) any interested person who may apply to the court for an order under section 46B precluding the offender from taking any share in the property or estate of the victim or for an order under section 46C(1) or a determination under section 46C(2), or 40
 - (b) any interested person, or the offender, who may apply to the court

for a determination under section 46C(2) or for an order under section 46D disapplying or modifying the application of section 46B.

- (3) (a) In proceedings brought under this Part, any matter shall be established in evidence on the balance of probabilities. 5
- (b) Without prejudice to the generality of paragraph (a)—
- (i) a person bringing proceedings for the purposes set out in subsection 2(a) shall establish to the satisfaction of the court that, on the balance of probabilities, the offender’s wrongful act caused (or, as the case may be, attempted to cause) the death of the victim, and 10
- (ii) the court shall not accede to the application or make any order under this Part unless it is satisfied, on the balance of probabilities, either that the offender has been convicted of an offence referred to in section 46B(1) or, on the balance of probabilities, has unlawfully killed the victim (and any such order shall be expressed to be made solely for the purposes of this Act and to have effects as a matter of civil law only), and 15
- (iii) in this paragraph ‘unlawfully killed’ means that the offender has, by his or her wrongful act, caused (or, as the case may be, attempted to cause) the death of the victim, and that the wrongful act was intentional, or reckless, or grossly negligent or that it resulted from excessive self-defence or provocation. 20
- (4) (a) In proceedings under this Part, an offender may adduce evidence that, though no prosecution was brought or finding made under the Act of 2006 in respect of his or her case, if such a prosecution had been brought a finding would have been made either that he or she was unfit to be tried or was not guilty by reason of insanity in accordance with the Act of 2006. 25
- (b) If the court is satisfied on the balance of probabilities that the offender has made out his or her case under paragraph (a), it may make an order that section 46B shall not apply to the offender (and any such order shall be expressed to be made solely for the purposes of this Act and to have effects as a matter of civil law only). 30 35
- (5) In proceedings under this Part, the conviction of a person for the murder, attempted murder or manslaughter of another person shall be conclusive evidence of that fact for the purposes of section 46B(1).
- (6) Any liability of the offender under this Part does not alter or affect any other civil liability of the offender arising from the act constituting the homicide, including liability under sections 48 and 49. 40
- (7) For the purpose of proceedings under this Part, ‘interested person’ includes—

- (a) a person who is entitled to an interest in any property of the victim,
- (b) the executor or personal representative of the estate of the victim,
- (c) a beneficiary under the will of the victim or a person who is entitled to an interest in any property on the intestacy of the victim,
- (d) a person claiming through the offender, or 5
- (e) any other person who may have an interest in the outcome of such proceedings.

Costs in proceedings under this Part

46F. In proceedings under this Part, the court shall, other than in exceptional circumstances, order that the costs of the proceedings shall be borne by the offender (which for the purposes of this section shall include any person against whom an order has been made under section 46E(3)(b)). 10

Related matters arising in connection with probate proceedings

46G. (1) Where a person has died in circumstances that gave rise to a criminal investigation in respect of which a prosecution for murder or manslaughter is or may be pending, an interested person may enter a caveat in the Probate Office of the High Court concerning the estate of the deceased, and while such a caveat is in force, there shall be no transfer of any estate or interest affected by the caveat. 15

(2) A person who is convicted of the murder or manslaughter of another shall be presumed, until the contrary is shown, to be unsuitable to administer the estate of the deceased and, accordingly, no grant of probate or letters of administration in the estate shall issue to such person notwithstanding that such person is the nominated executor of the deceased or the person who would but for this subsection be the person entitled as of right to extract letters of administration intestate of the deceased person’s estate.”. 20 25

Repeals

2. Section 120(1) and (4) of the Succession Act 1965 are repealed.

Short title and commencement 30

3. (1) This Act may be cited as the Civil Liability (Amendment) (Prevention of Benefit from Homicide) Act 2017.

(2) This Act comes into operation on such day or days as the Minister for Justice and Equality may appoint by order or orders either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes or provisions. 35

An Bille um Dhliteanas Sibhialta (Leasú)
(Cosc le Tairbhe a Fháil as Dúnbhású), 2017

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do leasú an Achta um Dhliteanas Sibhialta, 1961 chun socrú a dhéanamh, sa dlí sibhialta, maidir leis an bprionsabal gur chóir cosc a bheith ar dhuine tairbhe a fháil as aon dúnbhású a dhéanamh agus maidir leis an bprionsabal nach n-eascaíonn aon chúis chaingne as gníomh éagórach a dhéanann an duine féin; do leasú an Achta Comharbais, 1965 agus do dhéanamh socrú i dtaobh nithe gaolmhara.

*An Teachta Seamus Ó Ceallacháin a thug isteach,
2 Márta, 2017*

Civil Liability (Amendment) (Prevention of
Benefits from Homicide Bill 2017

BILL

(as initiated)

entitled

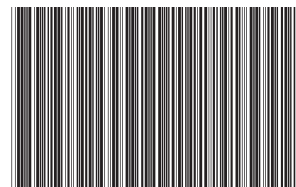
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*Introduced by Deputy Jim O'Callaghan,
2nd March, 2017*

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