



An Bille um Chlárú Uachtanna, 2021
Registration of Wills Bill 2021

Meabhrán Míniúcháin agus Airgeadais
Explanatory and Financial Memorandum



AN BILLE UM CHLÁRÚ UACHTANNA, 2021
REGISTRATION OF WILLS BILL, 2021

EXPLANATORY AND FINANCIAL MEMORANDUM

Introduction

The Registration of Wills Bill 2021 provides a clear statutory basis for the registration of wills by extending the Civil Registration Service or, in the Irish language, an tSeirbhís um Chlarú Sibhialta. This Bill will enable a testator or his solicitor to register the name and address of the custodian of his will in order to reduce the risk of the will remaining unknown or being found belatedly, and to facilitate the discovery of the existence of a will after the death of a testator. This Bill provides for the privacy of the registered particulars of the will prior to the testator's death. This will underpin the development of a modern system of registration of wills that responds to the needs of modern society. The register of wills shall be kept in The General Register Office (Oifig an Ard-Chláraitheora), Government Offices, Convent Road, Roscommon, Co. Roscommon, The system of registration of wills will also require the amendment of certain provisions in the Civil Registration Act 2004 which deals with the Civil Registration Service or, in the Irish language, an tSeirbhís um Chlarú Sibhialta.

The Bill contains 4 parts—

Part 1 (Sections 1 to 5) contains the usual provisions for short title, collective citation, definitions and commencement.

Part 2 (Sections 6 to 8) outlines the organisational structure for the administration of the register of wills.

Part 3 (Sections 9 to 12) provides for the registration of wills.

Part 4 (Sections 13 to 19) provides for amendments to the Civil Registration Act 2004.

PART 1

Preliminary and General

(Sections 1 to 5)

This Part is concerned with the provisions for the short title, collective citation, commencement of the Act, definitions, regulations and expenses of the Ministers for Health and Children and Finance.

Section 1 is a standard provision dealing with the short title and collective citation.

Section 2 deals with the commencement of the Act and is also a standard provision.

Section 3 contains the definition of key terms used in the Bill.

Section 4 contains standard provisions for the making of regulations by the Minister for Health and Children.

Section 5 provides for the expenses of the Minister for Health and Children and the Minister for Finance in the administration of the Bill.

PART 2

Administration

(Sections 6 to 8)

This Part outlines the organisational structure for the administration of the register of wills.

Section 6 provides for the introduction and maintenance of a new register of wills. *Subsection (3)* provides that evidence of an entry in a register of wills may be given on production of a legible copy of an entry duly certified by an tArd-Chláraitheoir, a person authorised in that behalf by an tArd-Chláraitheoir, a Superintendent Registrar, an authorised officer or a registrar.

Section 7 provides that a correction or addition to an entry in the register of wills may be made at the request of the testator to an tArd-Chláraitheoir.

Section 8 provides for an annual report on the operation of this Act to be prepared by an tArd-Chláraitheoir and submitted to the Minister for Health and Children. This report shall contain such information as the Minister directs and it shall be laid before the Houses of the Oireachtas.

PART 3

Registration of Wills

(Sections 9 to 12)

This Part is concerned with the registration of wills.

Section 9 provides for the definition of “the register” used in *Part 3*.

Section 10 provides for the registration of wills by a registrar of any local registration authority. Qualified informants may register wills at a convenient office by providing the required particulars of the will and signing the register in the presence of the registrar. A qualified informant is the testator or his instructed solicitor. The required particulars of the will are set out in the *Schedule* and include the name and address of the custodian of the will and the signature of the testator consenting to the registration. *Subsection (3)* provides that one or more wills, including codicils, made by the same testator may be registered or re-registered.

Section 11 provides that information held in the register of wills shall not be accessible to the public and that such information shall not be made available except as provided under *section 12*.

Section 12 requires an tArd-Chláraitheoir or a member of his or her staff authorised by him or her to search the register of wills and provide a certified copy of an entry in such register at the request of an applicant on

payment of the appropriate fee, provided the death of the testator has been registered or the applicant is the testator. The certified copy shall include details of the particulars registered other than the testator’s personal public service number.

PART 4

Amendment to Civil Registration Act 2004

(Sections 13 to 19)

This Part provides for amendments to the Civil Registration Act 2004.

Section 13 amends Section 2 of the Act of 2004 by adding the definitions of “the Act of 2005” and “register of wills” and amending the definition of “registrar”.

Section 14 (Amendment of section 8 of the Act of 2004) enlarges the principal functions of an tArd-Chláraitheoir to extending the Civil Registration Service to wills, to establishing and maintaining a register and indexes for the purposes of the registration of wills and to monitoring the operation of this Act.

Section 15 amends section 15 of the Act of 2004 such that a local registration authority shall perform in its functional area the functions conferred on it by or under the Act of 2004 and this Act.

Section 16 amends section 17 of the Act of 2004, which concerns staff of local registration authorities, as follows:

Section 17(1) of the Act of 2004 is amended such that a local registration authority shall appoint such number of registrars of births, stillbirths, deaths and marriages and wills as it considers necessary for the purpose of the performance of its functions;

Section 17(4) of the Act of 2004 is amended such that a registrar shall have and perform in the functional area of the local registration authority by which he or she was appointed functions conferred on him or her by or under the Act of 2004 or this Act;

Section 17(7) of the Act of 2004 is amended such that the Minister for Health and Children may confer on registrars such additional functions as he or she considers appropriate for the purposes of the Act of 2004 or this Act;

Section 17(10)(a) of the Act of 2004 is amended such that a local registration authority may appoint officers of the authority to be authorised officers either, as may be specified in the instrument of appointment, for the purposes of the Act of 2004 or this Act or for the purposes of specified provisions of the Act of 2004 or this Act;

Section 17(10)(b) of the Act of 2004 is amended such that an authorised officer, when exercising a power under the Act of 2004 or this Act shall, if so requested by a person affected, produce to the person evidence in writing of his or her appointment as an authorised officer;

Section 17(13) of the Act of 2004 contains an amended definition of registrar under that section.

Section 17 (Amendment of section 60 of the Act of 2004) provides for appeals where a registrar fails or refuses to register in the register of wills a will or to enter in such a register one or more of the particulars required by this Act and furnished to him or her.

Section 18 inserts subsection (4A) of section 69 of the Act of 2004 which provides that a registrar is guilty of an offence who, without reasonable cause, fails or refuses to register a will or to include in the relevant entry in the appropriate register any of the particulars required by this Act to be entered in the register in relation to the will and given to him or her.

Section 19 amends section 70 of the Act of 2004 by providing that a person guilty of an offence under subsection (4A) of section 69 of the Act of 2004 shall be liable on summary conviction to a fine not exceeding

€2,000 or imprisonment for a term not exceeding 6 months or both.

SCHEDULE

The *Schedule* contains the required particulars to be entered in the register of wills.

*Senators Victor Boyhan, Michael McDowell, Sharon Keogan,
Rónán Mullen, David Norris, Gerard Craughwell*

Meán Fómhair, 2021.