



An Bille um Imeachtaí Cúirte (Moilleanna), 2023
Court Proceedings (Delays) Bill 2023

Mar a leasaíodh sa Roghchoiste um Dhlí agus Ceart

As amended in the Select Committee on Justice



**AN BILLE UM IMEACHTAÍ CÚIRTE (MOILLEANNA), 2023
COURT PROCEEDINGS (DELAYS) BILL 2023**

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As amended in the Select Committee on Justice*

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ACTS REFERRED TO

Companies Act 2014 (No. 38)

Courts and Civil Law (Miscellaneous Provisions) Act 2023 (No. 18)

Data Protection Act 2018 (No. 7)

European Convention on Human Rights Act 2003 (No. 20)

European Parliament Elections Act 1997 (No. 2)

Interpretation Act 2005 (No. 23)

Legal Services Regulation Act 2015 (No. 65)

Solicitors Act 1954 (No. 36)



AN BILLE UM IMEACHTAÍ CÚIRTE (MOILLEANNA), 2023
COURT PROCEEDINGS (DELAYS) BILL 2023

Bill

entitled

An Act to provide for the right of persons who are party to proceedings, where such proceedings are not concluded within a reasonable time, to seek a declaration of that fact and, in certain cases, compensation and, for that purpose to make provision for the making by such persons of applications for such a declaration and compensation and for the appointment of a Chief Court Delays Assessor and Court Delays Assessors to assess such applications; to provide for the making, in certain circumstances, of an application to the Circuit Court for such a declaration and compensation; and to provide for related matters.

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY AND GENERAL

Short title and commencement

- (1) This Act may be cited as the Court Proceedings (Delays) Act 2023.
- (2) This Act shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Interpretation

- (1) In this Act—
 - “Act of 2015” means the Legal Services Regulation Act 2015;
 - “Act of 2018” means the Data Protection Act 2018;
 - “applicant”, other than in the definition of “party” and *Part 5*, means a person who makes an assessment application in accordance with *section 12* and, where the context so admits, includes an authorised person;
 - “assessment” means an assessment made under *section 17*;

“assessment application” shall be construed in accordance with <i>section 12</i> ;	
“Assessor” has the meaning assigned to it by <i>section 5</i> ;	
“authorisation” means, in relation to an applicant, an authorisation issued under <i>section 20</i> ;	
“authorised person” has the meaning assigned to it by <i>section 31(4)</i> ;	5
“Chief Assessor” has the meaning assigned to it by <i>section 5</i> ;	
“Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms done at Rome on the 4th day of November, 1950, as amended by—	
(a) Protocol No. 11 done at Strasbourg on the 11th day of May 1994,	10
(b) Protocol No. 14 done at Strasbourg on the 13th day of May 2004, and	
(c) Protocol No. 15 done at Strasbourg on the 24th day of June 2013;	
“criminal proceedings” means proceedings against a person for an offence and includes any appeal proceedings related to the offence;	
“data controller” has the meaning it has in the General Data Protection Regulation;	15
“declaration” means a declaration made by an Assessor under <i>section 17(4)</i> or the Circuit Court under <i>section 24(6)(a)</i> , as the case may be, that a person’s right under <i>section 11(1)</i> has or has not been breached;	
“document” includes—	
(a) a book, record or other written or printed material,	20
(b) a photograph,	
(c) any information stored, maintained or preserved by means of any mechanical or electronic device, whether or not stored, maintained or preserved in legible form, and	
(d) any audio or video recording;	25
“European Court of Human Rights” means the European Court of Human Rights established under Article 19 of the Convention;	
“General Data Protection Regulation” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 ¹ on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);	30
“Minister” means the Minister for Justice;	
“party” means, in relation to proceedings—	
(a) in the case of criminal proceedings, the defendant against whom proceedings for the offence concerned were instituted, and	35
(b) in the case of any other proceedings, the plaintiff, defendant, applicant or respondent, as the case may be, in those proceedings;	

1 OJ No. L 119, 4.5.2016, p.1.

- “personal data” has the meaning it has in the General Data Protection Regulation;
- “practising barrister” has the meaning it has in section 2(1) of the Act of 2015;
- “practising solicitor” has the meaning it has in section 2(1) of the Act of 2015;
- “proceedings” includes any cause, action, suit, matter, appeal or application in or to any court, and includes criminal proceedings; 5
- “processing” has the meaning it has in the General Data Protection Regulation;
- “public body” means—
- (a) a Minister of the Government,
 - (b) a local authority, or
 - (c) a body (other than a company formed and registered under the Companies Act 2014 or an existing company within the meaning of that Act) established by or under any enactment; 10
- “relevant authority” means a body (other than the President or the Oireachtas or either House of the Oireachtas or a Committee of either such House or a Joint Committee of both such Houses) which is established by law or through which any of the legislative, executive or judicial powers of the State are exercised; 15
- “relevant proceedings” means, in relation to an assessment application or an application under *section 24*, as the case may be, proceedings to which *section 11* applies in respect of which a breach of the right under *section 11(1)* is asserted;
- “right under *section 11(1)*” means the right referred to in *section 11(1)*; 20
- “special categories of personal data” has the meaning it has in the Act of 2018.
- (2) In this Act, a reference to the conclusion of proceedings is a reference to proceedings having ended or having been ended, including where the period for appealing a decision or determination in those proceedings has expired without any such appeal having been made. 25

Regulations

3. (1) The Minister may by regulations provide for any matter referred to in this Act as prescribed or to be prescribed.
- (2) Where a provision of this Act requires or authorises the Minister to make regulations, such regulations— 30
- (a) may make different provision for different circumstances or cases, classes or types, and
 - (b) may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations. 35
- (3) Every regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House sits after the regulation is laid before it, the regulation shall be annulled

accordingly, but without prejudice to the validity of anything previously done thereunder.

Expenses

4. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure, National Development Plan Delivery and Reform, be paid out of monies provided by the Oireachtas. 5

PART 2

APPOINTMENT OF CHIEF ASSESSOR AND ASSESSORS

Appointment of Chief Assessor and Assessors

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5. (1) The Minister shall appoint—
- (a) a person (in this Act referred to as the “Chief Assessor”) to be the Chief Court Delays Assessor, and
 - (b) such and so many persons (each of whom in this Act shall be referred to as an “Assessor”) as the Minister considers appropriate to be Court Delays Assessors. 15
- (2) The Chief Assessor shall, on the date of his or her appointment, be—
- (a) a retired judge of the District Court, the Circuit Court, the High Court, the Court of Appeal or the Supreme Court, or
 - (b) a practising barrister or practising solicitor of not less than 10 years’ standing.
- (3) Each Assessor, other than the Chief Assessor, shall, on the date of his or her appointment, be— 20
- (a) a retired judge of the District Court, the Circuit Court, the High Court, the Court of Appeal or the Supreme Court, or
 - (b) a practising barrister or practising solicitor of not less than 5 years’ standing.
- (4) Subject to this Act, an Assessor appointed under this Act shall be independent in the performance of his or her functions. 25
- (5) A reference in this Act to an Assessor includes a reference to the Chief Assessor.

Term of appointment of Assessors

6. (1) Subject to this Act, an Assessor shall hold office for 5 years from the date of his or her appointment. 30
- (2) An Assessor whose term of office expires by the effluxion of time shall be eligible for reappointment as an Assessor.
- (3) The Chief Assessor and each Assessor shall be paid such remuneration (if any) as may be determined by the Minister, with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform. 35

- (4) The Chief Assessor and each Assessor shall be subject to such terms and conditions and be paid such allowances for expenses as the Minister may, with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform, determine.

Resignation, removal, disqualification, ineligibility for office of Assessor

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7. (1) An Assessor may at any time resign from office by giving notice in writing to the Minister of his or her resignation and the resignation shall take effect on such date as may be specified in the notice.

- (2) The Minister may at any time remove an Assessor from office for stated reasons if the Minister is satisfied that the Assessor—

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- (a) has become incapable through ill-health of performing his or her functions,
- (b) has committed stated misbehaviour, or
- (c) is otherwise unfit to hold office or unable to discharge the functions of the office.

- (3) An Assessor shall cease to be qualified for office as an Assessor and shall cease to hold such office if—

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- (a) he or she is convicted on indictment of an offence,
- (b) he or she is convicted of an offence involving fraud or dishonesty,
- (c) he or she is sentenced by a court of competent jurisdiction to a term of imprisonment,
- (d) in the case of a person who was, at the date of his or her appointment as an Assessor, a practising barrister, his or her name is removed from the roll of practising barristers (within the meaning of section 2(1) of the Act of 2015), or
- (e) in the case of a person who was, at the date of his or her appointment as an Assessor, a practising solicitor, his or her name is struck off the roll of solicitors (within the meaning of section 9 of the Solicitors Act 1954).

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- (4) Where an Assessor is—

- (a) nominated as a member of Seanad Éireann,
- (b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament,
- (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to be a member of the European Parliament, or
- (d) elected or co-opted as a member of a local authority,

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he or she shall thereupon cease to hold office as an Assessor.

- (5) A person who is for the time being—

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- (a) entitled under the Standing Orders of either House of the Oireachtas to sit therein,
- (b) a member of the European Parliament, or

- (c) entitled under the standing orders of a local authority to sit as a member thereof, shall, while he or she is so entitled or is such a member, as the case may be, be disqualified for office as an Assessor.
- (6) (a) Where an Assessor dies, resigns, ceases to be qualified for office, ceases to hold office or is removed from office, the Minister may appoint, in the same manner as the Assessor who occasioned the casual vacancy was appointed, a person to be an Assessor to fill the casual vacancy so occasioned. 5
- (b) A person appointed to be an Assessor pursuant to *paragraph (a)* shall hold office for that period of the term of office of the Assessor who occasioned the casual vacancy concerned that remains unexpired at the date of his or her appointment and shall be eligible for reappointment as an Assessor on the expiry of the said period. 10

Liability of Assessors

8. An Assessor shall not be liable in damages in respect of any act done or omitted to be done by him or her in the performance, or purported performance, of his or her functions under this Act, unless the act or omission concerned was done in bad faith. 15

Designated officers

9. (1) The Minister may designate such and so many of his or her officers as he or she considers necessary for the purposes of assisting Assessors in the performance of their functions. 20
- (2) The officers designated under *subsection (1)* shall perform their functions under the direction and control of the Chief Assessor.

Functions of Chief Assessor

10. (1) The Chief Assessor shall have all such powers as are necessary or expedient to enable the performance by— 25
- (a) him or her of his or her functions, including his or her functions as an Assessor, and
- (b) another Assessor, of his or her functions.
- (2) Subject to *subsection (5)*, the Chief Assessor shall, not later than 31 March in each year and after consulting with each Assessor to whom an assessment application was assigned under *section 13(1)* during the immediately preceding year, submit to the Minister a report in writing of the activities of the Assessors during the immediately preceding year. 30
- (3) A report referred to in *subsection (2)* shall include information on the performance of the functions of the Chief Assessor and Assessors during the period to which it relates and such other information, and be in such form, as the Chief Assessor considers appropriate. 35

- (4) An Assessor shall provide such information on his or her activities as the Chief Assessor may, for the purpose of discharging his or her functions under this section, require.
- (5) If, but for this subsection, the first report under this section would relate to a period of less than 6 months, the report shall relate to that period and to the year immediately following that period and shall be made as soon as may be, but not later than 3 months after the end of that year. 5
- (6) The Minister shall cause a report submitted to him or her in accordance with this section to be published on a website maintained by or on behalf of the Minister as soon as practicable after the report is so submitted. 10
- (7) Without prejudice to the generality of *subsection (1)* and subject to *subsection (8)*, the Chief Assessor may from time to time convene a meeting with an Assessor or Assessors for the purpose of discussing matters relating to the making of assessments by the Assessor or Assessors, including, in particular, the avoidance of undue divergences in the making of assessments. 15
- (8) Where at least one Assessor, other than the Chief Assessor, stands appointed, the Chief Assessor shall convene a meeting of the Assessors at least once a year for the purpose of reviewing the making of assessments by Assessors and for any other purpose the Chief Assessor considers relevant.

PART 3 20

RIGHT TO CONCLUSION OF PROCEEDINGS WITHIN REASONABLE TIME

Right to conclusion of proceedings within reasonable time

- 11. (1) A person who is or was a party to proceedings to which this section applies has the right to the conclusion of those proceedings within a reasonable time.
- (2) This section applies to proceedings that— 25
 - (a) were—
 - (i) concluded in the period of 6 months prior to the date of coming into operation of this subsection, or
 - (ii) initiated before the date of coming into operation of this subsection that have not by that date been concluded, 30
 - or
 - (b) are initiated on or after the date of the coming into operation of this subsection.
- (3) A person whose right under *subsection (1)* has been breached shall be entitled, in accordance with this Act, to—
 - (a) a declaration under *section 17(4)(a)* or *section 24(6)(a)(i)* that there has been a breach of that right, and 35
 - (b) where *section 17(5)(b)* or *section 24(6)(b)(ii)* applies, the payment to him or her of compensation for that breach.

- (4) In determining for the purposes of this Act whether the right under *subsection (1)* of a person has been breached, due account shall be taken by the Assessor or the Circuit Court, as the case may be, of the following matters:
- (a) in relation to the proceedings concerned—
 - (i) their complexity and duration, 5
 - (ii) the duration of the delay in their conclusion asserted by the person,
 - (iii) the issues at stake for each of the parties and the likely effect on the parties of a delay in the conclusion of the proceedings, and
 - (iv) the conduct of—
 - (I) the person, 10
 - (II) the other party or parties to the proceedings, and
 - (III) any other person under an obligation to perform a function in relation to those proceedings;
 - (b) the steps (if any) taken by the person to avail of such means or mechanisms as were or are available to him or her to facilitate the conclusion of the proceedings within a reasonable time; 15
 - (c) the principles laid down in respect of a breach of the right to the conclusion of proceedings within a reasonable time—
 - (i) in any declaration, decision, advisory opinion or judgment of the European Court of Human Rights, and 20
 - (ii) in any decision of the High Court, Court of Appeal or Supreme Court;
 - (d) such other information relevant to the proceedings and their conclusion that the Assessor or the Circuit Court, as the case may be, considers appropriate.

PART 4

ASSESSMENT, ACCEPTANCE OF ASSESSMENT, AUTHORISATIONS, ETC. 25

Assessment application for breach of right to conclusion of proceedings within reasonable time

- 12.** (1) Subject to *section 15(7)*, a person who considers that his or her right under *section 11(1)* has been breached may, in accordance with this Part, make an application (in this Act referred to as an “assessment application”) to the Chief Assessor for— 30
- (a) an assessment of whether the person’s right under *section 11(1)* has been so breached,
 - (b) a declaration under *section 17(4)(a)* that there has been a breach of the person’s right under *section 11(1)*, and 35
 - (c) where applicable, compensation in accordance with this Part.

- (2) Subject to *subsection (3)*, an assessment application may be made only—
 - (a) where the relevant proceedings concerned have not been concluded, or
 - (b) where the relevant proceedings concerned have been concluded, within 6 months of the date of conclusion of those proceedings.
- (3) Where the relevant proceedings concerned were concluded in the period of 6 months prior to the date of coming into operation of this subsection, an assessment application in respect of those proceedings may be made not later than 6 months after the date of the coming into operation of this subsection. 5
- (4) An assessment application shall—
 - (a) be in such form, 10
 - (b) contain such information, and
 - (c) be accompanied by—
 - (i) such documents, and
 - (ii) such fee, if any,
 as the Minister may determine. 15
- (5) The Minister shall arrange for the following to be made available electronically on a website maintained by or on behalf of the Minister:
 - (a) the assessment application form referred to in *subsection (4)(a)*;
 - (b) a statement of—
 - (i) the information referred to in *subsection (4)(b)*, 20
 - (ii) the documents referred to in *subsection (4)(c)(i)*, and
 - (iii) the fee referred to in *subsection (4)(c)(ii)*.

Assignment of assessment application

- 13. (1) As soon as practicable after the Chief Assessor receives an assessment application, he or she shall assign the application to an Assessor for the purposes of making an assessment of the application concerned. 25
- (2) An Assessor shall, as soon as practicable after an assessment application has been assigned to him or her in accordance with *subsection (1)*—
 - (a) for the purpose of making an assessment, examine the assessment application, and 30
 - (b) send to the Minister a notice notifying him or her of the making of the assessment application, and a copy of that application.
- (3) Subject to this Act, the Minister shall, in consultation with the Chief Assessor, determine the procedures for the making of assessments under this Part.

Withdrawal of assessment application by applicant

14. (1) An applicant may withdraw his or her assessment application by sending a written notice of such withdrawal to the Chief Assessor not later than the date on which the period specified in *section 18(1)(b)* expires.
- (2) Where an applicant withdraws his or her assessment application pursuant to *subsection (1)*, he or she shall not—
- (a) be issued with an authorisation, or
 - (b) be awarded costs by the Assessor under *section 23* in respect of the making of the assessment application.

Provision of further information to Assessor and deferment and discontinuation of assessment

15. (1) For the purposes of his or her examination of an assessment application, an Assessor may by notice in writing request the applicant to, within the period specified in the notice—
- (a) clarify in writing any information or document submitted with, or
 - (b) provide further information in writing or documents relevant to, the assessment application concerned.
- (2) The period specified in a notice under *subsection (1)* may be extended by the Assessor.
- (3) Where an applicant fails to comply with a request under *subsection (1)* within the time period specified in the notice under that subsection or as extended under *subsection (2)*, the Assessor may, if he or she considers it necessary and appropriate to do so—
- (a) defer further examination by him or her of the assessment application unless and until the applicant complies with the request concerned, and
 - (b) send the applicant a notice in writing—
 - (i) informing him or her of the deferral,
 - (ii) requiring him or her to provide, within such period as is specified in the notice, the clarification, information or document to which the request relates, and
 - (iii) informing him or her of the effect of *subsections (4), (5) and (6)*.
- (4) An applicant shall comply with a requirement under *subsection (3)(b)(ii)*.
- (5) Where an Assessor defers under *subsection (3)(a)* his or her further examination of an assessment application, he or she shall resume examination of the application only where he or she is satisfied that—
- (a) the applicant has complied with the requirement under *subsection (3)(b)(ii)*, or
 - (b) he or she is able to make an assessment without compliance by the applicant with the requirement.

- (6) Where—
- (a) the applicant has failed, without reasonable cause, to comply with the requirement under *subsection (3)(b)(ii)*, and
 - (b) the Assessor is of the opinion that he or she is unable to make an assessment without compliance by the applicant with the requirement,
- the Assessor shall—
- (i) discontinue his or her examination of the assessment application concerned,
 - (ii) not make a declaration, determination or assessment under *section 17*,
 - (iii) not issue an authorisation under *section 20*, and
 - (iv) not later than 10 working days after the discontinuing under *subparagraph (i)* of his or her examination of the assessment application, notify the applicant concerned and the Minister in writing of the discontinuance and the reasons therefor.
- (7) Where an Assessor has, in accordance with *subsection (6)(i)*, discontinued his or her examination of an assessment application (in this subsection referred to as the “first assessment application”), the applicant concerned shall not be entitled to make a further assessment application in respect of the alleged breach of the right under *section 11(1)* to which the first assessment application relates.
- (8) The information or documents referred to in this section and *section 16* may include information or documents that came into existence, or into the possession of the person from whom the information or documents are requested or required, before the date of the coming into operation of this subsection.

Power of Assessor to require provision of information from third parties

- 16.** (1) For the purpose of his or her examination of an assessment application, an Assessor may, by notice in writing, require any person, other than the applicant, or public body (other than the Revenue Commissioners), to, within such period as may be specified in the notice—
- (a) provide the Assessor with such information or documents as are specified by him or her that, in his or her opinion, is or are reasonably required for the purposes of his or her examination of the application, or
 - (b) verify such information or documents submitted with the application, provided under *paragraph (a)* or provided in accordance with a request or requirement under *section 15* as are specified by the Assessor.
- (2) A person or public body to whom a notice under *subsection (1)* is addressed shall comply with a requirement under *subsection (1)* within the time period specified in the notice or as extended under *subsection (3)*.
- (3) The period specified in a notice under *subsection (1)* may be extended by the Assessor.
- (4) A notice under *subsection (1)* shall not require the provision of information by a judge, court officer or the Courts Service in relation to the performance of the judicial

function (including the management by a judge of the relevant proceedings concerned).

- (5) Where a person fails to comply with a requirement under *subsection (1)*, the Assessor shall proceed to make the assessment in the absence of such compliance and based on the information and documents available to him or her. 5
- (6) Subject to *subsections (7) and (8)*, where a person, other than a public body, complies with a requirement under *subsection (1)* within the time period specified in the notice under that subsection or as extended under *subsection (3)*, an Assessor may, not later than 1 month after such compliance, direct that the person (in this section referred to as a “relevant person”) be paid such amount as the Assessor considers reasonable in respect of the costs incurred by the relevant person in complying with the requirement. 10
- (7) The costs directed to be paid under *subsection (6)* shall not include any amount relating to costs incurred by the relevant person in respect of legal advice obtained by him or her in relation to a requirement under *subsection (1)* or compliance with such a requirement. 15
- (8) The Minister may from time to time prepare and issue guidelines as to the level of costs that may be directed to be paid under *subsection (6)* and, if he or she does so, an Assessor, in making a direction under the subsection shall—
- (a) do so in accordance with such guidelines, and 20
- (b) not direct that costs be paid that are in excess of such maximum amount (if any) of costs that may be directed to be paid that is specified by the Minister in the guidelines.
- (9) The Minister shall publish, on a website maintained by or on behalf of the Minister, guidelines prepared and issued by him or her under *subsection (8)* as soon as practicable after they are issued. 25
- (10) The Minister shall, not later than 2 months after the date on which costs (if any) are directed to be paid under *subsection (6)*, pay to the relevant person such costs.

Making of assessment

17. (1) Subject to *subsection (2)* and *sections 15 and 16*, an Assessor shall, as soon as practicable but not later than 6 months after the date of receipt by the Chief Assessor of an assessment application to which he or she has been assigned in accordance with *section 13(1)*, make an assessment in accordance with this section. 30
- (2) Where an Assessor is of the view that it will not be possible for him or her to make an assessment within the period referred to in *subsection (1)*, he or she shall, before the expiry of that period, by notice in writing— 35
- (a) inform the applicant and Minister of his or her view and the reasons for it, and
- (b) specify the date, being a date not later than 3 months after the expiry of the period referred to in *subsection (1)*, before which the Assessor shall make the assessment. 40

- (3) For the purposes of making an assessment, an Assessor shall consider—
- (a) the assessment application and all accompanying information and documents,
 - (b) any clarification, information or document provided in accordance with a request under *section 15(1)* or a requirement under *section 15(3)(b)(ii)* or *section 16*, and
 - (c) such other information or documents, including information or documents relating to the assessment application, as he or she considers appropriate. 5
- (4) An Assessor, having considered the matters specified in *subsection (3)*, shall, taking due account of the matters referred to in *paragraphs (a) to (d)* of *section 11(4)*, make a declaration that, in relation to the relevant proceedings the subject of the application— 10
- (a) there has been a breach of the applicant’s right under *section 11(1)*, or
 - (b) there has not been a breach of the applicant’s right under *section 11(1)*.
- (5) Where an Assessor makes a declaration referred to in *subsection (4)(a)*, he or she shall determine— 15
- (a) whether compensation is payable in accordance with this Part to the applicant concerned, and
 - (b) if so payable, the amount of compensation payable, calculated in accordance with *subsection (6)*.
- (6) An Assessor, in making a determination under *subsection (5)*, shall— 20
- (a) take due account of the matters referred to in *paragraphs (a) to (d)* of *section 11(4)*, and
 - (b) in calculating the amount of compensation payable (if any)— 25
 - (i) do so by reference to, and on the basis of, the principles applied by, the practice of and the levels of compensation awarded by the European Court of Human Rights in decisions in which that Court found that there was a violation of a person’s right under Article 6(1) of the Convention to the conclusion of proceedings within a reasonable time and, in particular, any such decision in which the facts and circumstances of the case to which the decision relates are, in the Assessor’s opinion, comparable to those relating to the relevant proceedings to which the assessment application concerned relates, and 30
 - (ii) have regard to any injury, loss or damage suffered by the applicant as a direct result of the breach of the applicant’s right under *section 11(1)* to which the declaration under *subsection (4)(a)* relates.
- (7) An Assessor, having complied with *subsections (3), (4), (5) and (6)*, shall prepare an assessment in writing that shall consist of the following: 35
- (a) a declaration under *subsection (4)*;
 - (b) a determination under *subsection (5)*, where applicable;
 - (c) the reasons for the declaration and, where applicable, the determination;

- (d) where the applicant has failed to comply with a request under *section 15(1)* or a requirement under *section 15(3)(b)(ii)*, a statement by the Assessor of the failure concerned;
- (e) any other information that the Assessor considers relevant to the assessment.

- (8) In this section and *section 24*, a reference to “compensation awarded by the European Court of Human Rights” is a reference to the compensation awarded by the European Court of Human Rights in affording just satisfaction to an injured party in accordance with Article 41 of the Convention. 5

Provision of copy of assessment to applicant and Minister

18. (1) An Assessor shall, as soon as practicable after preparing an assessment, send or cause to be sent to each of the applicant and Minister (each of whom in this subsection shall be referred to as the “recipient”)— 10
- (a) a copy of the assessment, and
 - (b) a notice in writing requesting the recipient to confirm, in writing and not later than 28 days after the date of the notice, that— 15
 - (i) he or she accepts the assessment, or
 - (ii) he or she does not accept the assessment.
- (2) Where *section 31(1)* or (2) applies in respect of an assessment application, the notice referred to in *paragraph (b)* of *subsection (1)* shall include a direction to the authorised person concerned that he or she— 20
- (a) obtain legal advice from a person who is independent of him or her as to whether the assessment ought to be accepted, and
 - (b) confirm to the Assessor in writing that the authorised person has obtained the legal advice concerned.

Deemed non-acceptance, acceptance, of assessment 25

19. (1) Where an applicant does not provide the confirmation requested under *paragraph (b)* of *section 18(1)* within the period specified in that paragraph, he or she shall be deemed not to have accepted the assessment concerned.
- (2) Where the Minister does not provide the confirmation requested under *paragraph (b)* of *section 18(1)* within the period specified in that paragraph, he or she shall be deemed to have accepted the assessment concerned. 30

Application under *section 24* to be authorised if assessment not accepted

20. (1) An Assessor shall, as soon as practicable after the expiry of the period specified in *paragraph (b)* of *section 18(1)*, issue an authorisation to the applicant concerned where either or both of the following applies: 35
- (a) the applicant—
 - (i) confirms, in accordance with that paragraph, that he or she does not accept the assessment concerned, or

- (ii) is deemed under *section 19(1)* to not have accepted the assessment concerned;
 - (b) the Minister confirms, in accordance with that paragraph, that he or she does not accept the assessment concerned.
- (2) An authorisation under this section shall entitle the person to whom it is issued to make an application to the Circuit Court under *section 24* in respect of the relevant proceedings. 5
- (3) Where *paragraph (a)* or *(b)* of *subsection (1)* applies, an assessment shall not become binding on the applicant concerned or the Minister.

Circumstances in which assessment becomes binding 10

21. (1) An assessment shall, on the expiry of the period specified in *paragraph (b)* of *section 18(1)*, become binding on the applicant concerned and the Minister where—
- (a) the applicant has confirmed, in accordance with that paragraph, that he or she accepts the assessment concerned, and
 - (b) the Minister— 15
 - (i) has confirmed, in accordance with that paragraph, that he or she accepts the assessment concerned, or
 - (ii) is deemed under *section 19(2)* to have accepted the assessment concerned.
- (2) An Assessor shall, as soon as practicable after an assessment becomes binding under *subsection (1)*, send or cause to be sent to the applicant and Minister confirmation in writing of that fact. 20

Payment of compensation where assessment has become binding

22. Where an assessment has become binding in accordance with *section 21(1)*, and the assessment concerned includes a determination under *section 17(5)* that compensation is payable to an applicant, the Minister shall, not later than 2 months after the date on which the assessment concerned becomes binding, pay compensation to the applicant in the amount specified by the Assessor in accordance with *section 17(5)*. 25

Applicant's costs in respect of making assessment application

23. (1) Subject to *subsection (5)*, an Assessor may, not later than one month after the expiry of the period specified in *paragraph (b)* of *section 18(1)*, award reasonable costs in favour of an applicant in relation to the costs incurred by him or her in the making of an assessment application where— 30
- (a) the Assessor has made a declaration, in accordance with *section 17(4)(a)*, that the applicant's right under *section 11(1)* has been breached, and
 - (b) the applicant has confirmed, in accordance with *section 18(1)(b)*, that he or she accepts the assessment made by the Assessor under that section. 35
- (2) Where *section 18(2)* applies in respect of an assessment application, an Assessor may, not later than one month after the expiry of the period specified in *paragraph (b)* of

- section 18(1)*, award reasonable costs in favour of an authorised person in relation to the costs incurred by him or her in respect of the legal advice obtained by him or her in accordance with that subsection.
- (3) The Minister may from time to time prepare and issue guidelines as to the level of costs that may be awarded under *subsection (1) and (2)* and, if he or she does so, an Assessor, in awarding costs under either subsection shall— 5
- (a) do so in accordance with such guidelines, and
 - (b) not award costs in excess of such maximum amount (if any) of costs awardable that is specified by the Minister in the guidelines.
- (4) The Minister shall publish, on a website maintained by or on behalf of the Minister, guidelines prepared and issued by him or her under *subsection (3)* as soon as practicable after they are issued. 10
- (5) Where *subsection (1)* applies and the assessment includes a statement referred to in *section 17(7)(d)*, an Assessor may, having regard to such failure and all other relevant circumstances, determine that no award of costs be made under *subsection (1)*. 15
- (6) The Minister shall, not later than 2 months after the date on which the assessment concerned becomes binding, pay to—
- (a) the applicant any costs awarded under *subsection (1)*, and
 - (b) the authorised person any costs awarded under *subsection (2)*.

PART 5 20

APPLICATION TO CIRCUIT COURT ON FOOT OF AUTHORISATION

Application to Circuit Court

- 24.** (1) A person to whom an authorisation has been issued (in this Part referred to as an “applicant”) may, in respect of the relevant proceedings to which the authorisation relates and in accordance with this section, institute proceedings (in this Part referred to as an “application”) in the Circuit Court to obtain a declaration under *subsection (6)(a)(i)* and, where applicable, any other relief specified in that subsection. 25
- (2) Subject to *subsection (3)*, an application under this section shall be made not later than 6 months after the date on which the authorisation is issued. 30
- (3) The Circuit Court may, if it considers it appropriate to do so in the interests of justice, by order extend the period referred to in *subsection (2)*.
- (4) An application under this section shall lie only against—
- (a) Ireland,
 - (b) the Minister, and 35
 - (c) notwithstanding section 100 of the Courts and Civil Law (Miscellaneous Provisions) Act 2023, the Courts Service.

- (5) No court or judge may be enjoined in an application under this section.
- (6) The Circuit Court shall, on hearing an application made under *subsection (1)*—
- (a) subject to *subsection (7)*, make a declaration that, in relation to the relevant proceedings the subject of the application—
 - (i) there has been a breach of the applicant’s right under *section 11(1)*, or 5
 - (ii) there has not been a breach of the applicant’s right under *section 11(1)*,
 - (b) subject to *subsection (8)*, where the Court has made a declaration under *paragraph (a)(i)*, determine—
 - (i) whether compensation is payable to the applicant, and
 - (ii) if so payable, the amount of such compensation, 10
 and
 - (c) subject to *sections 28 and 29*, make—
 - (i) an award of costs or any other order providing for the payment of costs to the applicant or a respondent or the respondents, or
 - (ii) no order as to the payment of costs to the applicant or a respondent or the respondents. 15
- (7) The Circuit Court shall make a declaration under *subsection (6)(a)* by reference to the matters referred to in *paragraphs (a) to (d)* of *section 11(4)*.
- (8) The Circuit Court, in making its determinations under *subsection (6)(b)*, shall—
- (a) take due account of the matters referred to in *paragraphs (a) to (d)* of *section 11(4)*, and 20
 - (b) in calculating the amount of compensation payable (if any)—
 - (i) do so by reference to, and on the basis of, the principles applied by, the practice of and the levels of compensation awarded by the European Court of Human Rights in decisions in which that Court found that there was a violation of a person’s right under Article 6(1) of the Convention to the conclusion of proceedings within a reasonable time and, in particular, any such decision in which the facts and circumstances of the case to which the decision relates are, in the opinion of the Circuit Court, comparable to those relating to the relevant proceedings to which the application under *subsection (1)* concerned relates, and 25 30
 - (ii) have regard to any injury, loss or damage suffered by the applicant as a direct result of the breach of the applicant’s right under *section 11(1)* to which the Court’s declaration under *subsection (6)(a)* relates.
- (9) The jurisdiction conferred on the Circuit Court by this section may be exercised by a judge of that Court assigned to the circuit in which the applicant ordinarily resides, carries on any profession, business or occupation or has an establishment. 35

(10) Any monetary limit on the jurisdiction of the Circuit Court to award compensation in tort that stands prescribed, for the time being by law, shall not apply to a determination under *subsection (6)(b)(ii)*.

(11) In this Part—

“applicant” means a person who makes an application under this section; 5

“respondent” means a party referred to in *subsection (4)* who is a respondent in an application under this section.

Acceptance or deemed acceptance of assessment not to prejudice applicant or Minister

25. Subject to *section 28*, the following shall not be admitted in evidence in an application under *section 24* or an appeal under *section 27* and, in the case of the Minister, shall not constitute an express or implied admission of fault or liability by him or her: 10

(a) the confirmation by an applicant or, as the case may be, the Minister, under *section 18(1)(b)*, that he or she accepts an assessment;

(b) the deemed acceptance, under *section 19(2)*, by the Minister, of an assessment.

Non-admissibility of assessment in evidence 15

26. Subject to *section 28*, an assessment under *section 17* in respect of relevant proceedings shall not—

(a) be admissible in evidence in—

(i) an application under *section 24*, or

(ii) an appeal under *section 27*, 20

in respect of the same relevant proceedings, or

(b) be referred to in any originating document, pleadings, notice or affidavit relating to the application or the appeal.

Appeal

27. (1) An applicant or a respondent, may, not later than 21 days after the date of the decision of the Circuit Court under *section 24(6)*, appeal to the High Court on a point of law. 25

(2) A decision of the High Court in an appeal under *subsection (1)* shall be final and no further appeal shall lie from an order of the High Court made on an appeal under this section.

Costs in application under *section 24* where assessment not accepted by applicant 30

28. (1) Where the Circuit Court determines under *section 24(6)(b)* that an amount of compensation is payable to the applicant, and the amount so determined does not exceed the amount of compensation determined under *section 17* to be payable to the applicant in respect of the same relevant proceedings, the Court, in making an order under *section 24(6)(c)*, may do either or both of the following: 35

(a) make no order as to the payment of costs to the applicant;

- (b) order the applicant to pay all or a portion of the costs of one, or more than one, of the respondents.
- (2) *Subsection (1)* shall not apply where—
 - (a) the Circuit Court considers there is good reason for not applying the subsection, or 5
 - (b) in relation to the assessment referred to in *subsection (1)*—
 - (i) the applicant and the Minister have each confirmed, under *section 18(1)(b)(ii)*, that he or she does not accept the assessment concerned, or
 - (ii) the Minister is deemed under *section 19(2)* not to have accepted the assessment. 10

Costs of assessment application

29. Where—

- (a) the Circuit Court makes a declaration under *section 24(6)(a)(i)*, and
- (b) the applicant concerned was not, in relation to his or her assessment application 15 in respect of the same relevant proceedings, awarded costs under *section 23(1)*, the Court, where it makes an order under *section 24(6)(c)(i)* in favour of an applicant, may include in the amount of costs awarded such amount in respect of any costs or expenses incurred by an applicant in the making of the assessment application as the Court considers reasonable. 20

Payment of compensation

30. Where the Circuit Court determines under *section 24(6)(b)* that compensation is payable to the applicant concerned, the Minister shall—

- (a) where no appeal has been made under *section 27(1)*, not later than 3 months after the date of the determination, pay compensation to the applicant in the amount determined by the Court, or 25
- (b) where an appeal has been made under *section 27(1)* and the High Court orders that compensation is payable to the applicant, pay compensation to the applicant not later than 3 months after the date of the Court’s decision in the amount specified by that Court. 30

PART 6

MISCELLANEOUS

Person acting on behalf of applicant

- 31.** (1) Where a person has not attained the age of 18 years, an assessment application or application under *section 24*, where applicable, may be made on his or her behalf by— 35

- (a) his or her parent or guardian,
 - (b) his or her next friend, or
 - (c) a person in *loco parentis* to him or her.
- (2) Where a person has attained the age of 18 years and, due to illness or disability, lacks capacity to make an assessment application or an application under *section 24*, as the case may be, an assessment application or application under *section 24*, where applicable, may be made on his or her behalf by—
- (a) his or her committee,
 - (b) where he or she is the donor of an enduring power of attorney, a person who is the donee of the enduring power of attorney, or
 - (c) any other person duly appointed or authorised to act on his or her behalf.
- (3) A person who, in accordance with *subsection (1)* or *(2)*, makes an assessment application or an application under *section 24* on behalf of another person may continue to act on behalf of that person for the purposes of the application.
- (4) A person who, in accordance with *subsection (1)* or *(2)*, makes an assessment application or an application under *section 24* on behalf of another person is referred to in this Act as an “authorised person”.

Functions of Assessor and judicial functions

- 32.** (1) No function conferred on an Assessor under this Act shall be exercised so as to interfere with the conduct of that part of the business of the courts required by law to be transacted by or before one or more judges or to impugn the independence of—
- (a) a judge in the performance of his or her judicial functions, or
 - (b) a person other than a judge in the performance of limited functions of a judicial nature conferred on that person by law.
- (2) Nothing in this Act shall operate to affect—
- (a) the independence of a judge in the performance of his or her judicial functions, or
 - (b) any enactment or rule of law relating to immunity from suit of judges.
- (3) In *subsection (2)*, “enactment” has the same meaning as it has in section 2(1) of the Interpretation Act 2005.

No liability on part of judge or court for breach of right under *section 11(1)*

- 33.** The following shall not constitute a finding of liability on the part of any judge or court:
- (a) a declaration under *section 17(4)(a)* that a person’s right under *section 11(1)* has been breached;
 - (b) a declaration under *section 24(6)(a)(i)*.

Bar on proceedings for further compensation

34. (1) Where an assessment becomes binding in accordance with *section 21(1)*, a confirmation by an applicant in accordance with *section 18(1)(b)* that he or she accepts an assessment of an Assessor shall constitute—
- (a) full compensation of the applicant’s claim for a breach of his or her right, in respect of the relevant proceedings concerned, under *section 11(1)*, and 5
 - (b) an agreement by the applicant—
 - (i) not to institute any proceedings, and
 - (ii) to discontinue any other proceedings instituted by him or her, against any person arising because the relevant proceedings concerned were not concluded within a reasonable time. 10
- (2) The right enjoyed by a person under *section 11(1)* shall, in respect of the proceedings to which that section applies, have effect in the place of the person’s common law right to trial with reasonable expedition.
- (3) Where the Circuit Court in an application under *section 24* makes a decision under *subsection (6)* of that section, the applicant concerned shall— 15
- (a) no longer have any right of action that he or she would otherwise have had against any relevant authority in respect of the delay in the conclusion of the relevant proceedings concerned, and
 - (b) discontinue any other proceedings instituted by him or her against a relevant authority in respect of the delay in the conclusion of the relevant proceedings concerned. 20
- (4) No proceedings, other than those provided for under this Act, may be brought in respect of an alleged breach of the right under *section 11(1)*.

Processing of personal data and special categories of personal data 25

35. (1) An Assessor may, where necessary and proportionate for the performance of his or her functions under this Act, process personal data, including special categories of personal data, in accordance with the General Data Protection Regulation and the Act of 2018 and any regulations under *subsection (3)*.
- (2) For the purposes of this Act, the Chief Assessor is designated as data controller in relation to personal data processed by an Assessor for the purposes of the performance by the Assessor of his or her functions under this Act. 30
- (3) The Minister may prescribe suitable and specific measures, including measures specified in section 36(1) of the Act of 2018, to be taken to safeguard the fundamental rights and freedoms of data subjects in the processing of personal data, including special categories of personal data under this Act. 35

No disclosure on grounds of legal professional privilege

36. Nothing in this Act shall operate to compel a person to disclose any information or document that the person would be entitled to refuse to produce on the grounds of legal professional privilege.

Transitional provisions

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37. (1) Where, before the date of the coming into operation of this section, a person has initiated proceedings to which *subsection (2)* applies and, on that date, such proceedings are in being, then—

(a) such proceedings shall continue and not abate by reason of such coming into operation,

10

(b) the person may not make an assessment application under *section 12*, and

(c) no cause of action shall lie under *section 24*.

(2) This subsection applies to—

(a) proceedings in respect of the breach of a common law or constitutional right to a trial with reasonable expedition,

15

(b) proceedings under section 3(2) of the European Convention on Human Rights Act 2003 in respect of an alleged contravention by the State of its obligations under Article 6(1) of the Convention in relation to the right of a person to the conclusion of proceedings within a reasonable time, and

(c) an action for a breach of the right to conclusion of proceedings within a reasonable time, regardless of the legal basis on which it is brought.

20

An Bille um Imeachtaí Cúirte (Moilleanna),
2023

BILLE

(mar a leasíodh sa Roghchoiste um Dhlí agus
Ceart)

dá ngairtear

Acht do dhéanamh socrú maidir le ceart daoine is páirtithe in imeachtaí, i gcás nach mbeidh na himeachtaí sin críochnaithe laistigh de thréimhse ama réasúnach, dearbhú ar an méid sin a lorg agus, i gcásanna áirithe, cúiteamh a lorg agus, chun na críche sin, do dhéanamh socrú maidir leis na daoine sin do dhéanamh iarratais ar dhearbhu agus ar chúiteamh den sórt sin agus maidir le Príomh-Mheasúinóir Moilleanna Cúirte agus Measúinóirí Moilleanna Cúirte a cheapadh chun na hiarratais sin a mheasúin; do dhéanamh socrú maidir le hiarratas a dhéanamh, in imthosca áirithe, chun na Cúirte Cuarda ar dhearbhu agus ar chúiteamh den sórt sin; agus do dhéanamh socrú i dtaobh nithe gaolmhara.

Ordaiodh ag an Roghchoiste a chlóbhualadh,
5 Nollaig, 2023

Court Proceedings (Delays) Bill 2023

BILL

(as amended in the Select Committee on Justice)

entitled

An Act to provide for the right of persons who are party to proceedings, where such proceedings are not concluded within a reasonable time, to seek a declaration of that fact and, in certain cases, compensation and, for that purpose to make provision for the making by such persons of applications for such a declaration and compensation and for the appointment of a Chief Court Delays Assessor and Court Delays Assessors to assess such applications; to provide for the making, in certain circumstances, of an application to the Circuit Court for such a declaration and compensation; and to provide for related matters.

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BÓTHAR BHAILE UÍ BHEOLÁIN, CILL MHAIGHNEANN,
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