

# Courts and Civil Law (Miscellaneous Provisions) Bill 2022

Bill No. 84 of 2022

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## Abstract

The Courts and Civil Law (Miscellaneous Provisions) Bill 2022 introduces a variety of miscellaneous amendments across a wide range of areas. It fulfils the Department of Justice's commitment to statutory reforms to progress the centralisation and automation of court offices and processes. It also provides for several other amendments, including the introduction of new legal partnerships between solicitors and barristers.



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## Summary

The [Courts and Civil Law \(Miscellaneous Provisions\) Bill](#) (the Bill) was published on 13 September 2022, on the Oireachtas website, together with an [Explanatory Memorandum](#). The Bill has 9 Parts and contains 35 sections. The Explanatory Memorandum sets out the purpose of the Bill and the various pieces of legislation that will be amended by the Bill:

“The purpose of this Bill is to fulfil the commitment to statutory reforms outlined in the Department of Justice’s 2021 Action Plan under Action 69 to ‘progress the centralisation and automation of court offices and processes through the publication of the Courts and Civil Law (Miscellaneous Provisions) Bill’. The Bill also provides for several other important legislative measures.”

The Bill proposes a number of amendments, including:

- Part 2 - Amendments to the *Irish Nationality and Citizenship Act 1956*, relating to certificates of nationality.
- Part 3 - Amendments to the *Bankruptcy Act 1988*.
- Part 4 - Amendment of *Civil Liability and Courts Act 2004*, relating to dormant funds.
- Part 5 - Amendment of the *Legal Services Regulation Act 2015*, relating to legal partnerships.
- Part 6 - Amendment of the *International Protection Act 2015*, including provisions relating to electronic service of documents, extension of notification periods and the International Protection Appeals Tribunal.
- Part 7 - Amendment of *Judicial Council Act 2019* to allow for the substitution of members.
- Part 8 – Miscellaneous amendments relating to the Courts.
- Part 9 – Other Miscellaneous amendments.

The legislation that the Bill proposes to amend includes:

- Courts-related processes and procedures including amendments to:
  - [Civil Liability and Courts Act 2004](#)
  - [Courts Act 1964](#)
  - [Courts Service Act 1998](#)
  - [Offences against the State Act 1939](#)
  - [Court Officers Act 1945](#)
- [Bankruptcy Act 1988](#)
- [Irish Nationality and Citizenship Act 1956](#)
- [Legal Services Regulation Act 2015](#)
- [International Protection Act 2015](#)
- [Judicial Council Act 2019](#)
- [Gaming and Lotteries Act 1956](#)
- [Guardianship of Infants Act 1964](#)

- [Civil Legal Aid Act 1995](#)
- [Immigration Act 2004](#)
- [Civil Law and Criminal Law \(Miscellaneous Provisions\) Act 2020](#)<sup>1</sup>

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<sup>1</sup> Courts and Civil Law (Miscellaneous Provisions) Bill 2022 [Explanatory Memorandum](#)

## Table of provisions

A summary of the Bill's provisions is included in 1 below.

**Table 1 Table of provisions of the Courts and Civil Law (Miscellaneous Provisions) Bill 2022**

Section	Title	Effect
<b>Part 1- Preliminary and General</b>		
1	Short Title and Commencement	<b>Section 1</b> is a standard provision which provides for the title of the Act and that commencement will be by order of the Minister in full or in part on different days as determined by the Minister.
<b>Part 2 – Amendment of Irish Nationality and Citizenship Act 1956</b>		
2	Definition (Part 2)	<b>Section 2</b> provides that, in Part 2, “Act of 1956” means the <a href="#">Irish Nationality and Citizenship Act 1956</a>
3	Amendment of section 28 of Act of 1956	<b>Section 3</b> amends <a href="#">section 28(2)</a> of the Act of 1956. Section 28 provides for the issuing of certificates of nationality. The Bill proposes to amend section 28 by adding “by the signature of an officer of the Minister duly authorised in that behalf by the Minister” as a method of authenticating a certificate of nationality.
<b>Part 3 - Amendment of Bankruptcy Act 1988</b>		
4	Definition (Part 3)	<b>Section 4</b> provides that reference to the 1988 Act means the <a href="#">Bankruptcy Act 1988</a> .
5	Amendment of section 3 of Act of 1988	<b>Section 5</b> amends <a href="#">section 3</a> of the Act of 1988 in paragraph (ii) of the definition of “Bankruptcy Inspector”, by substituting “a position” for “the position”.
6	Amendment of section 11 of Act of 1988	<b>Section 6</b> amends <a href="#">section 11</a> of the Act of 1988 which relates to the process involved in presenting petitions by the substitution of a new paragraph (d). This provides that the Insolvency Regulation <sup>2</sup> does not apply to the proceedings. In ‘centre of main interests’ must be interpreted in accordance with the Insolvency Regulation.
7	Amendment of section 17 of Act of 1988	<b>Section 7</b> amends <a href="#">section 17</a> of the Act of 1988 by substituting a new subsection (2) to provide that a Court must ensure that a notice of bankruptcy adjudication is

<sup>2</sup> [Regulation \(EU\) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings \(recast\)](#) [2015] OJ L 141/19.

Section	Title	Effect
		published as soon as possible on the website of the Insolvency Service of Ireland.
8	Amendment of section 56 of Act of 1988	<b>Section 8</b> amends <a href="#">section 56</a> of the Act of 1988 by deleting the words “with the leave of the Court and” in subsection (1) thereby removing the requirement for an Official Assignee in Bankruptcy to obtain leave of the court, before any disclaimer of onerous property. It also inserts a new subsection 1A which provides that an Official Assignee has an obligation to give written notice of the disclaimer to each person who has an interest or has not had a liability discharged.
9	Statement of affairs	<b>Section 9</b> inserts a new section 61A into the Act of 1988 which provides for a more robust procedure around filing of a statement of affairs with the Court. This includes: <ul style="list-style-type: none"> <li>• that a debtor/bankrupt must make full and honest disclosure of their financial affairs.</li> <li>• a statement of affairs cannot be filed unless stamped, including electronically, by the Official Assignee.</li> <li>• the Official Assignee can refuse to stamp the statement of affairs if not satisfied that it is complete, true, and accurate. This includes the power to carry out checks and make enquiries to verify the accuracy and truth of any matter referred to in the statement of affairs.</li> </ul>
10	Amendment of section 82 of Act of 1988	<b>Section 10</b> amends section 82 of the Act of 1988 which relates to the distribution of estate. It provides that the Official Assignee must do the following: <ul style="list-style-type: none"> <li>• provide notice of filing to creditors via publication on the Insolvency Service website within 4 working days of the filing.</li> <li>• provide particulars to the creditors on proposed distribution of the estate within 4 working days of the publication of the notice.</li> <li>• distribute the estate in a manner compliant with particulars provided not before 15 days of such provision. Distribution cannot be made without the leave of the Court where an application is made by a creditor regarding distribution of the estate.</li> </ul> <p>It also provides for order of distribution where there are insufficient funds available.</p>

Section	Title	Effect
11	Amendment of section 85D of Act of 1988	<p><b>Section 11</b> amends <a href="#">section 85D</a> of the Act of 1988 which relates to bankruptcy payment orders. It makes several substitutions which provide for prevention of abuse of the Bankruptcy Payment Order process.</p> <p>These include:</p> <ul style="list-style-type: none"> <li>• that a bankruptcy payment order cannot have effect for longer than 3 years unless the order has not been complied with.</li> <li>• the order to be varied but to be within the 3-year period unless the order has not been complied with.</li> <li>• applies also in circumstances where the bankrupt has failed to co-operate or has hidden assets with the relevant time limit being 5 years.</li> </ul>
<b>Part 4 – Amendment of Civil Liability and Courts Act 2004</b>		
12	Definition (Part 4)	<b>Section 12</b> provides that the Act of 2004 means the <a href="#">Civil Liability and Courts Act 2004</a> .
13	Amendment of section 33 of Act of 2004	<b>Section 13</b> amends <a href="#">section 33</a> of the Act of 2004. Section 13 provides for an amendment to allow funds of the Circuit Court and District Court, where there has been no activity in respect of those funds, to be included with similar funds in the High Court.
14	Realisation of investment of dormant account of funds of suitors of Circuit Court and dormant funds of suitors of District Court	<b>Section 14</b> inserts a new section 34A into the Act of 2004 allowing the Chief Justice to direct that dormant funds of the Circuit Court and District Court are to be converted into cash every 5 years.
15	Amendment of section 35 of Act of 2004	<b>Section 15</b> substitutes a new section 35 into the Act of 2004 providing that the Minister for Justice can, with the consent of the Minister for Public Expenditure and Reform, use the proceedings of the dormant accounts of the Courts for the provision, management and maintenance of court buildings and the Courts Service's ICT facilities.
16	Amendment of section 38 of Act of 2004	<b>Section 16</b> substitutes a new section 38 into the Act of 2004 providing that the dormant funds of the Circuit Court and the District Court can be included in the register of funds maintained by the Accountant of the Courts of Justice. It also provides that details of the various proceedings to which the funds relate must be recorded in the register of funds.



Section	Title	Effect
<b>Part 5 – Amendment of Legal Services Regulation Act 2015</b>		
17	Definition (Part 5)	<b>Section 17</b> provides that the Act of 2015 means the <a href="#">Legal Services Regulation Act 2015</a> .
18	Amendment of section 1 of Act of 2015	<b>Section 18</b> provides for amendments which will allow for the operation of section 100 of the 2015 Act, which provides for the introduction of Legal Partnerships i.e., partnerships between solicitors and barristers or between barristers and other barristers.
<b>Part 6 – Amendment of International Protection Act 2015</b>		
19	Definition (Part 6)	<b>Section 19</b> provides that, in this Part, the “Act of 2015” means the <a href="#">International Protection Act 2015</a> .
20	Amendment of section 5 of Act of 2015	<b>Section 20</b> amends <a href="#">section 5</a> of the 2015 Act, which provides for the service of documents. Section 5 lists three ways in which a notice or document may be served on or given to a person: by delivering it to the person; by leaving it at the address most recently furnished by them; or by sending it by prepaid registered post. The Bill proposes to add a new section (d) providing for service “ <b>by electronic means</b> ” where consent has been given by the recipient to serve the documents in this manner.
21	Amendment of section 48 of Act of 2015	<b>Section 21</b> amends <a href="#">section 48</a> of the 2015 Act, which provides the option for voluntary return. The Act does not provide for any particular period of time in which the person who has confirmed that they wish to return voluntarily must do so. <sup>3</sup>  After the Minister is notified of this intention to leave, they may not make a deportation order against the relevant person as long as the person can be shown to be making reasonable efforts to leave the State.  The Bill proposes to extend the period of time in which a person can notify the Minister of their intention to leave voluntarily <b>from 5 days to 30 days</b> . This does not change the undefined time period in which a person must leave the State after notification.
22	Amendment of section 52 of Act of 2015	<b>Section 22</b> amends <a href="#">section 52</a> of the 2015 Act, which provides for the procedures for the revocation of a refugee declaration or subsidiary protection declaration. The Bill

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<sup>3</sup> Ibid.

Section	Title	Effect
		proposes to insert a new section (9A) in section 52. This will provide that a decision of the Circuit Court on an appeal under subsection (8) shall be final save that, by leave of that Court, <b>an appeal shall lie to the High Court</b> on a point of law (which will thus not be a rehearing of the Circuit Court appeal).
23	Amendment of section 62 of Act of 2015	<p><b>Section 23</b> amends <a href="#">section 62</a> of the 2015 Act, which provides for membership of the International Protection Appeals Tribunal (IPAT). The IPAT exercises a quasi-judicial function and hears appeals from applicants for international protection in respect of recommendations made by international protection officers.</p> <p>The Bill proposes to amend section 62(7) of the Bill by changing the term of office of a member of the IPAT from 3 years to 5 years. The Bill also introduces a new subsection (7A) and (7B), which provides that:</p> <ul style="list-style-type: none"> <li>• a member of the Tribunal who has been reappointed for a second term is otherwise eligible for appointment by way of competition; and</li> <li>• a member the Tribunal who stood appointed or reappointed on the date of the enactment of the Bill shall be deemed to have been appointed or reappointed for a term of office of 5 years from the date on which he or she was so appointed or reappointed.</li> </ul>
<b>Part 7- Amendment of Judicial Council Act 2019</b>		
24	Definition (Part 7)	<b>Section 24</b> provides that, in this Part, the “Act of 2019” means the <a href="#">Judicial Council Act 2019</a> .
25	Complaints Review Committee: temporary replacement of member	<b>Section 25</b> amends <a href="#">section 55</a> of the 2019 Act, which provides for the Complaints Review Committee. The complaint review system established by the Act provides that a complaint against a judge is first dealt with by the Registrar of the Judicial Conduct Committee, who decides whether or not the conduct complained of could constitute misconduct (i.e. that the complaint is admissible). If so, it will be reviewed by the Complaints Review Committee. The judge can consent to a reprimand or the matter may

Section	Title	Effect
		<p>be referred for resolution by informal means or by a panel inquiry.<sup>4</sup></p> <p>The Bill proposes to amend section 55 by inserting a new section 55A, which provides for certain matters below:</p> <p><u>Recusal (section 55A(1))</u></p> <p>Where either</p> <ul style="list-style-type: none"> <li>• a <b>member of the Judicial Conduct Committee</b>, who is a member of the Complaints Review Committee, is the subject of a complaint or otherwise has a <b>conflict of interest</b>, or</li> <li>• the <b>lay member of the Complaints Review Committee</b> has a <b>conflict of interest</b> in respect of a matter before that Committee</li> </ul> <p>the members concerned shall not take part in the performance of that Committee's functions in relation to such complaint or matter and shall not attend relevant meetings or cast a vote.</p> <p><u>Substitution of members (section 55A(2))</u></p> <p>Where section 55A(1) (above) applies, the Judicial Conduct Committee shall replace the member of the Complaints Review Committee concerned, to perform the replaced member's duties in relation to the matter causing a conflict of interest. Members will be replaced:</p> <p>(a) in the case of an <b>ex officio member or elected member of the Judicial Conduct Committee</b> who is a member of the Complaints Review Committee, with another <i>ex officio</i> member or elected member of the Judicial Conduct Committee, or</p> <p>(b) in the case of the <b>lay member</b>, with another lay member of the Judicial Conduct Committee.</p> <p><u>Temporary illness (section 55A(3))</u></p> <p>Section 55A(3) provides that where a member of the Complaints Review Committee is temporarily unable to act as a member of that Committee, whether due to</p>

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<sup>4</sup> Judicial Council of Ireland, [Judicial Council Act 2019 - Judicial Conduct Committee - Complaints Procedure](#), 4 February 2022; Irish Council for Civil Liberties, '[Towards Best Practice: A report on the new Judicial Council in Ireland](#)', February 2022.

Section	Title	Effect
		illness, incapacity or for any other reason, the Judicial Conduct Committee shall temporarily replace that member in the same manner specified in section 55A(2)(a) and (b), above.
26	Amendment of section 59 of Act of 2019	<b>Section 26</b> amends <a href="#">section 59</a> of the 2019 Act, which provides for investigations of judicial misconduct in absence of, or after withdrawal of, complaint. Section 59(1) is amended to provide that the Judicial Conduct Committee may refer any matter relating to the conduct of a judge, including complaints that have subsequently been withdrawn, to a panel of inquiry for investigation. This clarifies the existing provision, which states that a matter may be referred “in the absence of a complaint or where a complaint in respect of a judge is withdrawn”.
<b>Part 8 – Miscellaneous (Acts relating to Courts)</b>		
27	Amendment of section 39 of Offences against the State Act 1939	<b>Section 27</b> amends <a href="#">section 39</a> of the <i>Offences against the State Act 1939</i> providing for the authority of the Courts Service to appoint registrars to a Special Criminal Court.
28	Offence of obstruction or interference with sheriff	<b>Section 28</b> inserts a new section 12A into the <i>Court Officers Act 1945</i> providing that a person who obstructs or interferes with a sheriff in the discharge of their functions may be found guilty of an offence and will be liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both.
29	Amendment of section 7(6) of Courts Act 1964	<b>Section 29</b> amends <a href="#">section 7(6)</a> of the <i>Courts Act 1964</i> providing that section 7(6)(a)(ii), in so far as it is not already repealed, is repealed. It relates to the date on which proceedings in the District Court are considered to be commenced for the purpose of the Statute of Limitations.
30	Amendment of Courts Service Act 1998	<b>Section 30</b> amends <a href="#">section 7</a> of the <i>Courts Service Act 1998</i> providing that the Courts Service must prepare and submit a Strategic Plan to the Minister for Justice for the ensuing three years. It also provides that it must be approved by the incoming Courts Service Board rather than the outgoing Board, as is the current position.
<b>Part 9 – Miscellaneous</b>		
31	Amendment of section 28 of Gaming and Lotteries Act 1956	<b>Section 31</b> amends <a href="#">section 28</a> of the <i>Gaming and Lotteries Act 1956</i> , which provides for a minor amendment substituting the word “licence” for “permit”, correcting a textual error in the Act of 1956.

Section	Title	Effect
32	Amendment of section 11B of Guardianship of Infants Act 1964	<b>Section 32</b> amends <a href="#">section 11B</a> of the <a href="#">Guardianship of Infants Act 1964</a> which provides that relatives of a child, and other adults who reside or previously resided with a child, may apply to court for an order giving access to the child.
33	Amendment of section 11 of Civil Legal Aid Act 1995	<b>Section 33</b> inserts a new subsection 5A into <a href="#">section 11</a> of the <a href="#">Civil Legal Aid Act 1995</a> providing for the classification of solicitors who retired from the Legal Aid Board prior to 1 June 2014, as civil servants, for pension purposes only. This is required because Section 11 of the <i>Civil Legal Aid Act, 1995</i> designated serving Legal Aid Board solicitors as civil servants with effect from 1 June 2014 whereas they had previously been classified as public servants.
34	Amendment of section 4 of Immigration Act 2004	<b>Section 34</b> amends section 4 of the <a href="#">Immigration Act 2004</a> . Section 4 provides for procedures by which “non-nationals” may be given permission “to land or be” in the State. The Bill amends subsection (7), which provides that the Minister may vary or renew a permission given under section 4. The Bill substitutes “whether or not an application is made by the non-national concerned” for “on application therefor by the non-national concerned”. This means that the Minister will be able to renew or vary a permission, whether or not the non-national concerned has applied for their permission to be renewed or varied.
35	Amendment of Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020	<b>Section 35</b> amends <a href="#">section 31</a> of the <i>Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020</i> in two ways: <ul style="list-style-type: none"> <li>• provides that the holding of hearings remotely shall be optional for bodies designated under the Act, depending on their needs or requirements.</li> <li>• inserts a new section which provides for the committal of an offence where someone interferes with hearings, held remotely under the Act.</li> </ul>

Source: Derived from the [Courts and Civil Law Miscellaneous Provisions Bill 2022](#)

## Background

The [General Scheme of the Courts and Civil Law \(Miscellaneous Provisions\) Bill](#) was published on 8 June 2021, following government approval for priority drafting secured by the Minister for Justice, Heather Humphreys TD, and Minister of State with responsibility for Law Reform, Immigration and Youth Justice, James Browne, TD. The press release<sup>5</sup> noted that a General Scheme of a Courts and Civil Law (Miscellaneous Provisions) Bill was first approved for drafting in January 2020 but was paused due to Covid-19 and the challenges which it brought. The revised General Scheme, which was approved by Government in June 2021, includes 61 Heads, 32 of which are new. These amendments are to reflect new priorities and emerging developments in the intervening period.

Some of the key elements of the General Scheme included:

- the number of High Court judges to increase by 5;
- the residency requirements for naturalisation for children born in the State to reduce from 5 years to 3 years;
- the centralisation and automation of certain court offices and processes;
- introduction of new legal partnerships between solicitors and barristers for the first time.

The Minister for Justice, Heather Humphreys TD, commented on the significance of the Bill, stating that:

This wide-ranging Bill will provide for legislative changes across a number of important policy areas that will have a real impact on peoples' lives.

A key reform of this Bill is that it will facilitate the introduction of new legal partnerships, which will enable barristers and solicitors to jointly provide legal services for the first time, thereby offering a greater range of services and legal expertise to their clients.<sup>6</sup>

## Policy and legislative context

There has been an indication through media and parliamentary debate that several Government amendments will be added to the Bill at the Committee stage. These relate broadly to duty of care under occupier's liability, data protection and third-party legal funding.

In March 2022, a press release by the Tánaiste and Minister for Justice, Helen McEntee TD, announced reforms to duty of care legislation. Minister McEntee advised that she was "proposing to amend a number of sections of the Occupiers' Liability Act 1995 in line with the government policy objective of restricting the liability of occupiers." She also commented that the proposed legislation would be placed before the Oireachtas for enactment as part of the Courts and Civil Law (Miscellaneous Provisions) Bill 2022.<sup>7</sup> This was reaffirmed by Minister McEntee in response to

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<sup>5</sup> Department of Justice, '[Barristers and solicitors to jointly provide legal services for the first time under new Bill from Ministers Humphreys and Browne](#)', *Press Release*, 8 June 2021

<sup>6</sup> Ibid

<sup>7</sup> Department of Justice, '[Tánaiste and Minister McEntee announce amendments to duty of care legislation](#)', *Press Release*, 18 March 2022.

a parliamentary question on the progress of reform of the duty of care legislation on 27 September 2022.<sup>8</sup>

In relation to data protection, it was noted by Anne Rabbitte TD, within the context of a Private Members Motion on the Report of the Joint Committee on Justice on GDPR that the Bill will include

“a number of Committee Stage amendments to the Data Protection Act 2018. These are currently being drafted and cover a number of areas, including ensuring data subjects have third-party beneficiary rights in primary law, clarifying confidentiality obligations and clarifying DPC powers in respect of the issuance of reprimands.”<sup>9</sup>

The potential introduction of third-party funding of international arbitration was announced by the Minister for Justice, Helen McEntee TD, during a trip to New York as part of Ireland for Law to promote Ireland’s unique attributes as a centre for international legal services. She indicated that this would be done through a government amendment to the Courts and Civil Law (Miscellaneous Provisions) Bill.<sup>10</sup>

## Pre-legislative scrutiny of the General Scheme of the Bill

The [General Scheme of the Courts and Civil Law \(Miscellaneous Provisions\) Bill 2021](#) was referred to the Justice Committee (the Committee) for pre-legislative scrutiny and the Committee was provided with a written briefing from Department of Justice officials which clarified several matters for Members. The Committee wrote to the Minister for Justice on 16th December 2021, advising that PLS was concluded on the General Scheme at its meeting on Wednesday 15th December 2021.<sup>11</sup> The Departmental written briefing, which was appended to the letter, provides a helpful summary of the General Scheme and highlights the variances between it and the Bill as currently published.

The written briefing referred to Part 10 of the General Scheme, which provided for the amendment to the *Licensing Acts 1833 to 2018*. This would make the granting of a certificate for a new licence for the sale of intoxicating liquor subject to a new statutory condition that the applicant must produce proof that planning permission has been obtained. However, this Part 10 has not been included within the published Bill. The proposed amendment to the [Courts and Court Officers Amendment Act 1995](#) to increase the number of High Court Judges that was to be included in this Bill was instead included in the [Civil Law \(Miscellaneous Provisions\) Act 2021](#) which was enacted on 3 July 2021.<sup>12</sup>

It is not clear whether the Committee held any consultations with relevant stakeholders. However, the Law Society of Ireland did make a submission to the Department of Justice on the General

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<sup>8</sup> Minister for Justice, Helen McEntee, T.D., ‘[Legislative Measures](#)’, *Dáil Éireann Debate*, Tuesday, 22 September, 2022

<sup>9</sup> Minister of State at the Department of Children, Equality, Disability, Integration and Youth, Anne Rabbitte, T.D., [Report of the Joint Committee on Justice on GDPR: Motion \[Private Members\]](#), *Dáil Éireann Debate*, Thursday, 6 October, 2022.

<sup>10</sup> Irish Legal News, ‘[Third-party arbitration funding to be legalised in Ireland](#)’, 19 September 2022.

<sup>11</sup> Joint Committee on Justice, ‘[Pre-Legislative Scrutiny Report on the General Scheme of the Courts and Civil Law \(Miscellaneous Provisions\) Bill 2021](#)’ 17 December 2021.

<sup>12</sup> Ibid.

Scheme, offering a range of observations on Heads relating to the Courts, legal partnerships and naturalisation and immigration matters.<sup>13</sup>

As no specific recommendations were published by the Committee, it is not possible to conduct the usual L&RS traffic light dashboard comparison with the Bill as published with Committee PLS recommendations.

## Principal provisions of the Bill

This section of the Bill Digest sets out some of the main provisions of the Bill. It does not provide a full examination of the Bill's provisions.

### Certificates of nationality

Part 2 of the Bill relates to amendments of the [Irish Nationality and Citizenship Act 1956](#).

**Section 3** amends [section 28\(2\)](#) of the Act of 1956. amends section 28(2) of the Act of 1956.

Section 28 provides for the issuing of certificates of nationality. Under section 28, any person who claims to be an Irish citizen, other than a naturalised Irish citizen, may apply to the Minister or, if resident outside Ireland, to any Irish diplomatic officer or consular officer, for a certificate of nationality stating that he or she is an Irish citizen.<sup>14</sup>

Section 28 currently provides that a certificate of nationality may be authorised by the seal of a consular officer or the Minister. The Bill proposes to amend section 28 by adding “by the signature of an officer of the Minister duly authorised in that behalf by the Minister” as a method of authenticating a certificate of nationality.

### Bankruptcy

Part 3 of the Bill relates to amendments of the [Bankruptcy Act 1988](#) (“the Act of 1988”).

**Section 9** inserts a new section 61A into the Act of 1988 which relates to the duties of debtors and Official Assignees in the context of the completion of a statement of affairs. It also gives the Official Assignee the power to process personal data in accordance with the General Data Protection Regulation and the Data Protection Act 2018.

**Section 10** amends [section 82](#) of the Act of 1988 which relates to the distribution of estate. It provides that the Official Assignee must do the following:

- provide notice of filing to creditors via publication on the Insolvency Service website within 4 working days of the filing.
- provide particulars to the creditors on proposed distribution of the estate within 4 working days of the publication of the notice.

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<sup>13</sup> Law Society of Ireland, '[Submission on the General Scheme of the Courts and Civil Law \(Miscellaneous Provisions\) Bill 2021](#)', July 2021.

<sup>14</sup> John Stanley, *Immigration and Citizenship Law* (Roundhall, 2018) at [27-44].



- distribute the estate in a manner compliant with particulars provided not before 15 days of such provision. Distribution cannot be made without the leave of the Court where an application is made by a creditor regarding distribution of the estate.

It also provides for an order of distribution where there are insufficient funds available.

**Section 11** amends [section 85D](#) of the Act of 1988 which relates to bankruptcy payment orders. It makes several substitutions which provide for prevention of abuse of the Bankruptcy Payment Order process.

These include:

- that a bankruptcy payment order cannot have effect for longer than 3 years unless the order has not been complied with.
- the order to be varied but to be within the 3-year period unless the order has not been complied with.

This applies also in circumstances where the bankrupt has failed to co-operate or has hidden assets with the relevant time limit being 5 years.

## Court Processes

Part 4 of the Bill deals with amendments to the [Courts and Civil Liability Act 2004](#).

**Section 13** substitutes a new definition for accounts. It inserts new definitions of ‘dormant account of the funds of suitors of the Circuit Court’ and ‘dormant funds of suitors of the District Court’. It also substitutes a new definition of “fully indemnified”.

## Legal Partnerships

Part 5 of the Bill deals with amendment of the [Legal Services Regulation Act 2015](#).

**Section 18** provides for amendments which will allow for the operation of [section 100](#) of the Act, which provides for the introduction of Legal Partnerships i.e., partnerships between solicitors and barristers or between barristers and other barristers. Concerns have been raised that the reform introducing the legal partnerships may undermine the independent referral Bar.<sup>15</sup> The concern centres around the limit of expertise that consumers engaging them would have access to.

## International Protection

Part 6 of the Bill relates to amendments of the [International Protection Act 2015](#).

**Section 20** amends [section 5](#) of the 2015 Act, which provides for the service of documents. Section 5 lists three ways in which a notice or document may be served on or given to a person: by delivering it to the person; by leaving it at the address most recently furnished by them; or by sending it by prepaid registered post. The Bill proposes to add a new section (d) providing for service “**by electronic means**” where consent has been given by the recipient to serve the documents in this manner.

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<sup>15</sup> Irish Legal News, ‘[New legal partnerships spark concern over future of independent referral Bar](#)’, 8 June 2021.

**Section 21** amends [section 48](#) of the 2015 Act, which provides the option for voluntary return. Under this section, a person who has been refused both permission to remain in the State and international protection status may notify the Minister of their intent to voluntarily return to their country of origin. The Minister is to be notified within 5 days of the date on which the notice is sent. The Act does not provide for any particular period of time in which the person who has confirmed that they wish to return voluntarily must do so.<sup>16</sup> After the Minister is notified of this intention to leave, they may not make a deportation order against the relevant person as long as the person can be shown to be making reasonable efforts to leave the State.

The Bill proposes to extend the period of time in which a person can notify the Minister of their intention to leave voluntarily **from 5 days to 30 days**. This does not change the undefined time period in which a person must leave the State after notification.

**Section 22** amends [section 52](#) of the 2015 Act, which provides for the procedures for the revocation of a refugee declaration or subsidiary protection declaration. The Minister may revoke such a declaration on grounds specified in the Act. Revocation is “a rare occurrence in the Irish context.”<sup>17</sup> A person who is the subject of a revocation proposal may make representations to the Minister. The Minister must consider these representations when deciding to revoke a declaration. If a final decision to revoke is made, notice must be sent to the relevant person, who may then appeal this decision to the Circuit Court (section 52(8) of the 2015 Act). The Circuit Court may either affirm the order or direct the Minister not to revoke the declaration (section 52(9)).

The Bill proposes to insert a new section (9A) in section 52. This will provide that a decision of the Circuit Court on an appeal under subsection (8) shall be final save that, by leave of that Court, **an appeal shall lie to the High Court** on a point of law (which will thus not be a rehearing of the Circuit Court appeal).

**Section 23** amends [section 62](#) of the 2015 Act, which provides for membership of the International Protection Appeals Tribunal (IPAT). The IPAT exercises a quasi-judicial function and hears appeals from applicants for international protection in respect of recommendations made by international protection officers. The [Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process](#)<sup>18</sup> made 4 recommendations in relation to the IPAT, one of which was:

“To enable the International Protection Appeals Tribunal (IPAT) to deliver within this timeframe, the period of office of Members of the IPAT should be increased from 3 to 5 years, renewable once without having to reapply and the number of full-time Tribunal members should be increased from 3 to 10.”

The Bill proposes to amend section 62(7) of the Bill by changing the term of office of a member of the IPAT from 3 years to 5 years, in accordance with the Report’s recommendation. The Bill also introduces a new subsection (7A) and (7B), which provides that:

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<sup>16</sup> John Stanley, *Immigration and Citizenship Law* (Roundhall, 2018) at [27-44].

<sup>17</sup> [Country Report: Withdrawal of protection status: Ireland, Asylum in Europe](#), 20 April 2022.

<sup>18</sup> [‘Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process’](#), 21 October 2020

- a member of the Tribunal who has been reappointed for a second term is otherwise eligible for appointment by way of competition; and
- a member the Tribunal who stood appointed or reappointed on the date of the enactment of the Bill shall be deemed to have been appointed or reappointed for a term of office of 5 years from the date on which he or she was so appointed or reappointed.

## Judicial Conduct

Part 7 of the Bill relates to amendments of the [Judicial Council Act 2019](#).

**Section 25** amends [section 55](#) of the 2019 Act, which provides for the Complaints Review Committee. The complaint review system established by the Act provides that a complaint against a judge is first dealt with by the Registrar of the Judicial Conduct Committee, who decides whether or not the conduct complained of could constitute misconduct (i.e. that the complaint is admissible). If so, it will be reviewed by the Complaints Review Committee. The judge can consent to a reprimand or the matter may be referred for resolution by informal means or by a panel inquiry.<sup>19</sup>

The Bill proposes to amend section 55 by inserting a new section 55A, which provides for certain matters below:

### Recusal (section 55A(1))

Where either

- a **member of the Judicial Conduct Committee**, who is a member of the Complaints Review Committee, is the subject of a complaint or otherwise has a **conflict of interest**, or
- the **lay member of the Complaints Review Committee** has a **conflict of interest** in respect of a matter before that Committee

the members concerned shall not take part in the performance of that Committee's functions in relation to such complaint or matter and shall not attend relevant meetings or cast a vote.

### Substitution of members (section 55A(2))

Where section 55A(1) (above) applies, the Judicial Conduct Committee shall replace the member of the Complaints Review Committee concerned, to perform the replaced member's duties in relation to the matter causing a conflict of interest. Members will be replaced:

(a) in the case of an **ex officio member or elected member of the Judicial Conduct Committee** who is a member of the Complaints Review Committee, with another *ex officio* member or elected member of the Judicial Conduct Committee, or

(b) in the case of the **lay member**, with another lay member of the Judicial Conduct Committee.

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<sup>19</sup> Judicial Council of Ireland, [Judicial Council Act 2019 - Judicial Conduct Committee - Complaints Procedure](#), 4 February 2022; Irish Council for Civil Liberties, '[Towards Best Practice: A report on the new Judicial Council in Ireland](#)', February 2022.

Temporary illness (section 55A(3))

Section 55A(3) provides that where a member of the Complaints Review Committee is temporarily unable to act as a member of that Committee, whether due to illness, incapacity or for any other reason, the Judicial Conduct Committee shall temporarily replace that member in the same manner specified in section 55A(2)(a) and (b), above.

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