



LAW REFORM
COMMISSION/COIMISIÚN UM
ATHCHÓIRIÚ AN DLÍ

REPORT

CONSOLIDATION AND REFORM OF THE COURTS ACTS

[LRC 97 - 2010]



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Law Reform Commission

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LAW REFORM COMMISSION'S ROLE

The Law Reform Commission is an independent statutory body established by the *Law Reform Commission Act 1975*. The Commission's principal role is to keep the law under review and to make proposals for reform, in particular by recommending the enactment of legislation to clarify and modernise the law. Since it was established, the Commission has published over 150 documents (Consultation Papers and Reports) containing proposals for law reform and these are all available at www.lawreform.ie. Most of these proposals have led to reforming legislation.

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The Commission also wishes to thank sincerely the following, including members of the Commission's Project Steering Group (who reviewed the draft *Courts (Consolidation and Reform) Bill* and the initial draft of this Report) and those who made submissions to the Commission on the *Consultation Paper on Consolidation and Reform of the Courts Acts*.

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Full responsibility for this publication lies, however, with the Commission.

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INTRODUCTION

A Background

1. This Report forms part of the Commission's *Third Programme of Law Reform 2008-2014*¹ and follows the publication of a *Consultation Paper on the Consolidation and Reform of the Courts Acts*.² The Report contains the Commission's final recommendations on this area, and it confirms the view expressed in the Consultation Paper that the existing provisions concerning the role and essential jurisdiction of the courts in Ireland should be consolidated into a single *Courts (Consolidation and Reform) Bill*, and should also incorporate a number of reform elements. The need for consolidation arises because the relevant law in this area is currently contained in 240 Acts, 146 of which precede the foundation of the State in 1922. In terms of reform elements, the Commission has taken into account a number of proposals made by other bodies, including the Working Group on a Courts Commission (whose reports led to the establishment of the Courts Service), the Committee on Court Practice and Procedure and the Working Group on the Jurisdiction of the Courts, as well as reform elements which the Commission considers will enhance the effectiveness of the administration of justice in the courts.

2. The Report begins by describing how the Commission approached the management (including the phasing) of this project, which was a collaborative project with the Courts Service and the Department of Justice and Law Reform. In Chapter 1 of the Report, the Commission describes how it approached the development of a general structure for the draft *Courts (Consolidation and Reform) Bill*. In Chapter 2 the Commission discusses a number of the important reform elements contained in the Bill. Appendix A contains the draft *Courts (Consolidation and Reform) Bill*. The draft Bill, which comprises 359 sections and 14 Schedules, sets out the key elements concerning the role and essential jurisdiction of the courts in Ireland, and related matters concerning court offices. Appendix B consists of an Explanatory Memorandum to the Bill, which provides an introductory overview of the Bill as well as a narrative summary of each section in it.

B Development of the Project

3. As well as forming part of the Commission's *Third Programme of Law Reform*, this project may also be seen as connected to the Commission's general statutory mandate under the *Law Reform Commission Act 1975* to reform the law, including through the consolidation of statute law. This was why, in 2005, the Commission wholeheartedly agreed to begin a Project with the Courts Service and the Department of Justice and Law Reform to consolidate into a single Courts Act the existing legislative provisions which describe the key elements concerning the role and essential jurisdiction of the courts in Ireland.³

4. The Commission also notes that the Department of Justice's 1962 *Programme of Law Reform*⁴ indicated an intention to consolidate in a single Act the legislative provisions on the jurisdiction of the courts – whether contained in pre-1922 Acts or post-1922 Acts. This has not occurred to date, so that this Project is the first attempt to engage in this task. In the course of preparing the Consultation Paper that preceded this Report, the Commission was greatly assisted by the members of the Working Group established for that purpose.

¹ *Report on the Third Programme of Law Reform 2008–2014* (LRC 86–2007), Project 6.

² *Consultation Paper on the Consolidation and Reform of the Courts Acts* (LRC CP 46-2007), referred to as the Consultation Paper in the remainder of this Report.

³ The Commission had previously been involved, since 2003, in a collaborative project with the Department on land law and conveyancing law. This led to the Commission's *Report on Reform and Modernisation of Land Law and Conveyancing Law* (LRC 74-2005), which included a draft *Land and Conveyancing Bill*. On the initiative of the Attorney General and the Minister for Justice and Law Reform, the Commission was subsequently involved in preparing the *Land and Conveyancing Law Reform Bill 2006*, which was enacted by the Oireachtas as the *Land and Conveyancing Law Reform Act 2009*.

⁴ Department of Justice, *Programme of Law Reform* (Pr 6379, 1962).

5. The Commission was particularly conscious of previous work by two members of that Working Group, former Commissioner Professor Hilary Delany, Law School, Trinity College Dublin, and Mr Ben Ó Floinn, Barrister-at-Law, who had been involved in the preparation of a draft *Courts Bill* which had set out in consolidated form the relevant legislative provisions in the Courts Acts enacted from 1924 to 1999. The Commission, and the Working Group, had the benefit of that draft Bill in the preparation of the *Working Draft Consolidated Courts Bill* that had been appended to the Consultation Paper.

6. The Commission is also conscious that a number of bodies and persons have previously recommended specific reforms of the Courts Acts. These have included the Commission itself, the Working Group on a Courts Commission (whose reports led to the establishment of the Courts Service), the Committee on Court Practice and Procedure and the Working Group on the Jurisdiction of the Courts.

7. Indeed, the Working Group was established on foot of a lecture delivered in 2001 by the former Chief Justice, Mr Justice Ronan Keane, on the role and function of the courts in the 21st Century.⁵ Mr Justice Keane suggested that it would probably generally be agreed that it is the duty of the State to provide a system of civil and criminal justice whose key objectives are that it is “impartial, open and expeditious.” The Commission agrees with this analysis, and has had this in mind in approaching this project.

C Project management leading to the Report

8. The Commission used the *Working Draft Courts Bill* appended to the Consultation Paper as the basis on which it approached the development of the draft *Courts (Consolidation and Reform) Bill* now attached to this Report. The Commission was fully conscious that an enormous amount of additional research was required in order to prepare a truly comprehensive draft *Courts (Consolidation and Reform) Bill*. The Commission and the Department concluded that, in view of its importance, the project required specific financial support, in particular in terms of preparing and revising successive drafts of such a comprehensive Bill in a reasonable timeframe. The Commission gratefully acknowledges this support provided by the Department for this phase of the project.

9. The Commission and Department accepted that this would require the involvement of specialist legal drafting expertise. Therefore, in accordance with relevant public procurement requirements,⁶ in 2008 the Commission appointed Mr Seán Barton, Solicitor, McCann FitzGerald, Solicitors to prepare a *Draft Courts (Consolidation and Reform) Bill*.

10. In March 2008, Mr Barton presented to the Commission a detailed project management plan for the drafting exercise, which provided for the completion of a comprehensive draft *Courts (Consolidation and Reform) Bill* by the end of 2009. The Commission approved this project management plan and this phase of the project was supervised on behalf of the Commission by a Project Board, whose members are listed at the beginning of this Report. The Project Board met 11 times up to the end of 2009, by which time a completed initial draft Bill had been developed. During the first half of 2010, the Project Board completed detailed analysis of the initial draft Bill for publication as well as work on the text of this Report. In the second half of 2010, the Commission availed of the additional assistance and comments of the members of the Project’s Steering Group, who reviewed the draft *Courts (Consolidation and Reform) Bill* and the initial draft of this Report.

11. Bearing in mind the complexity of the project, the Commission is especially grateful to all those involved in this process. The Commission has noted in the Acknowledgements page the enormous contribution of Seán Barton in ensuring that the project was completed successfully. In addition, the Commission reserves particular thanks to Mr Noel Rubotham, Director of Reform and Development in the Courts Service. Mr Rubotham’s knowledge, expertise and sound judgement in this area were each equally invaluable to the project, and the Commission is also especially conscious that his involvement

⁵ Keane, “The Irish Courts System in the 21st Century: Planning for the Future” (2001) 6 *Bar Review* 321.

⁶ The Commission was assisted in the public procurement process by an Evaluation Committee, comprising Raymond Byrne, Director of Research, Robert Browne, Assistant Secretary General, Department of Justice and Law Reform, and Kieran Mooney, First Parliamentary Counsel, Office of the Attorney General.

was in addition to his onerous responsibilities in the Courts Service. The Commission is also conscious of the enormous ongoing support given to this lengthy project by the Department of Justice and Law Reform, including the advice and guidance given through the Project Board and the Steering Group.

D Scope of the Project and the Commission’s General Approach

12. Since this Project incorporates both pre-1922 and post-1922 legislation concerning the role and essential jurisdiction of the courts, the Commission has examined the history of the court system in Ireland. Such an examination is required because much of the current jurisdiction of the courts in Ireland is predicated on the jurisdiction of their pre-1922 predecessors. Thus, for example, while much of the current jurisdiction of the Circuit Court is set out in the various Courts Acts passed since 1922, some of its powers in civil cases are those carried over from the pre-1922 Acts dealing with the County Courts, which the Circuit Court replaced in 1924. Thus, in order to understand the full jurisdiction of the Circuit Court, it is necessary to trace whatever remains of the pre-1922 Acts conferring jurisdiction on the County Courts. The Commission reiterates briefly in Chapter 1 the historical overview it carried out in this respect in the Consultation Paper.⁷

13. The Project thus involved an initial audit of the extent to which pre-1922 courts-related legislation remains in place and a consequent attempt to incorporate, in modern form, at least some of those pre-1922 provisions into the draft *Courts (Consolidation and Reform) Bill* attached to this Report.⁸ To that extent, the Project has involved an exercise in statute law consolidation, that is, tidying up the existing law. The Commission was equally conscious, however, that a number of specific reforms concerning the jurisdiction of the courts had either been recommended by other bodies or should, in any event, be raised by the Commission in this Project. Consequently, in the Consultation Paper⁹ the Commission made provisional recommendations for reform and, in preparing this Report, has taken into account the submissions received on the Consultation Paper and the need to incorporate other reforms that were consistent with the general principles set out below.¹⁰ Of the many specific reforms included in the draft Bill, 27 of these are discussed in depth in Chapter 2.

14. Bearing in mind that the Project involved the first complete consolidation of the legislation concerning the role and essential jurisdiction of the courts since the foundation of the State, it was also necessary to consider the general structure, or architecture, of the draft Bill.¹¹ This general structure is intended to emphasise that the proposed new Courts Act should include only those elements which are appropriate to describe the essential jurisdiction of the courts, as well as provisions concerning the basis for court practice and procedure and court offices and court officers. In Chapter 1, the Commission discusses in more detail the precise scheme or framework used in the *Draft Courts (Consolidation and Reform) Bill*.

15. In approaching and completing this Project, therefore, the Commission has had in mind three overarching objectives. First, to publish a *Draft Courts (Consolidation and Reform) Bill* incorporating the text of existing legislation, both pre-1922 and post-1922, dealing with the essential jurisdiction of the courts, and related matters concerning court offices. Second, to present a suitable scheme or framework for a new Courts Act. Third, to incorporate in the Draft Bill a number of reforms arising from other relevant bodies (and the Commission itself) concerning the jurisdiction of the courts.

⁷ See in particular Chapter 1 of the Consultation Paper.

⁸ A similar approach had been adopted in the preparation of the Working Draft *Courts Bill* appended to the Consultation Paper.

⁹ See in particular Chapter 2 of the Consultation Paper.

¹⁰ See paragraph 20, below.

¹¹ See in particular Chapter 3 of the Consultation Paper.

E Phases in the Consolidation and Reform of the Courts Acts

16. The Commission has been conscious that, in view of the scale and complexity of this project on the consolidation and reform of the Courts Acts, it should be considered as falling into at least three phases, only two of which are within the timeframe leading up to this Report.

17. Phase 1 involved the publication of the Consultation Paper. This included: an analysis of the history of the court system, in order to understand the current jurisdiction of the courts; a number of specific reform proposals (including those derived from previous authoritative reviews of the jurisdiction of the courts, and also reflecting the general statutory remit of the Commission); a proposed scheme or framework for a new Courts Act; and a single draft Courts Bill, incorporating the text of existing Courts Acts, with annotated commentary.

18. Phase 2 involved the Commission's usual consultation process on the content of the Consultation Paper with a view to making final recommendations in this Report. Phase 2 is thus completed with the publication of the Report, which contains specific recommendations for reform and the text of the final *Draft Courts (Consolidation and Reform) Bill*.

19. Phase 3 involves, in effect, the ongoing review of the new Courts Act, assuming the draft Courts Bill, or a revised version of it, were to be enacted by the Oireachtas. The Commission is conscious in this respect that the Report, including the Draft Bill, is being published at a time when significant related developments concerning the jurisdiction of the courts are under review. These include, notably, the recommendation, made in the 2009 *Report of the Working Group on a Court of Appeal*,¹² for a new Court of Appeal, which would be positioned between the High Court and the Supreme Court. In addition, related work being undertaken by the Commission may also affect matters dealt with in this Report.¹³ To that extent this Report acknowledges that the jurisdiction of the courts is unlikely to remain static and that some areas will require further consideration, whether by the Commission or other bodies. Phase 3 may thus include, initially, those areas which are currently under review and which might be incorporated at some point into the Draft Courts Bill appended to this Report. Phase 3 thus primarily involves the future of the draft Bill. The Commission has, therefore, in developing the framework or structure of the draft Bill attempted to take into account that it will be subject to future amendments but that its essential architecture should as far as possible be capable of accommodating this.

F General Principles relevant to the Draft Bill

20. In light of the development of the project by the Commission in the first two phases just described, and taking into account its future third phase, the Commission has had regard to the following general guiding principles in approaching the preparation and drafting of the *Draft Courts (Consolidation and Reform) Bill*.

1. *Comprehensive and durable framework or structure.* The proposed new Courts Bill should be comprehensive, setting out the jurisdiction of the Supreme Court, the Court of Criminal Appeal, the High Court, the Circuit Court and the District Court. The framework or structure should be durable, in that it should be able to anticipate as far as possible future amendments without damaging the essential structure of the proposed Bill.

¹² Prn. A8/0153, available at www.courts.ie.

¹³ For example, the Commission's *Report on Vulnerable Adults and the Law* (LRC 83-2006), which is due to be implemented in large measure by the *Scheme of the Mental Capacity Bill 2008*, would affect the jurisdiction of the High Court and Circuit Court in connection with vulnerable persons. The Commission's *Report on Mediation and Conciliation* (LRC 98-2010), which includes a draft *Mediation and Conciliation Bill*, is related to, but also in important respects separate from, the civil jurisdiction of the courts. Similarly, the Commission's *Consultation Paper on Personal Debt Management and Debt Enforcement* (LRC 56-2009) and *Interim Report on Personal Debt Management and Debt Enforcement* (LRC 96-2010) would affect the current arrangements concerning enforcement of court orders. The Commission intends to publish a final *Report on Personal Debt Management and Debt Enforcement* by the end of 2010.

2. *General scope: jurisdiction of courts.* The proposed new Courts Bill should contain as complete a statement as possible of the essential jurisdiction of all the courts in Ireland, and should exclude any other, albeit related, provisions concerning the courts or the judiciary, which require separate treatment.

3. *Review of existing Acts to determine continuing relevance.* Existing provisions in the Courts Acts, in particular those predating the foundation of the State in 1922, should be assessed to determine whether they remain relevant to current needs. Where provisions in existing Acts are no longer relevant, they should be repealed without replacement (this is referred to as statute law revision).

4. *Updating and clarifying.* Where existing provisions, whether pre-1922 or post-1922, are retained in the proposed new Courts Bill, the text should, where necessary, be updated and clarified to ensure consistency with current statutory drafting principles, thus facilitating accessibility to law (in particular its understanding).

5. *Suitable for retention in an Act.* In the case of some provisions, in particular those from pre-1922 Acts, the detailed nature of the provisions (such as the precise details of court forms) may, in accordance with internationally recognised principles of good regulation, not be suitable for retention in an Act of the Oireachtas, but should be placed in statutory Rules of Court.

6. *Enhancing the effectiveness of the administration of justice.* The specific provisions of the proposed new Courts Act should enhance the effectiveness of the administration of justice in the courts, having regard to the overriding requirements of the Constitution of Ireland 1937, including the fundamental rights contained in it.

7. *Specific reforms and statutory codification.* In furthering the effectiveness of the administration of justice, specific reforms, notably those derived from previous authoritative reviews of the jurisdiction of the courts or arising from specific proposals made in the Report, should be incorporated into the proposed new Courts Bill. The proposed new Courts Bill should also include provision in statutory form of the most commonly exercised essential powers and functions of the courts (statutory codification).

21. The Commission now turns to outline the contents of this Report.

G Outline of the Report

22. In Chapter 1, the Commission describes the general scope of the draft *Courts (Consolidation and Reform) Bill* in Appendix A. This involves an analysis of what the Commission has included in – and excluded from – the draft Bill. The Commission then sets out the most important Acts, referred to as core Courts Acts, which formed the basis for the development of the draft Bill. These core Courts Acts include many pre-1922 Acts, which conferred jurisdiction on courts that were replaced by the courts established in Ireland since 1922. Because of this, Chapter 1 also contains a list of the courts currently in place by reference to their pre-1922 predecessors in order to identify the root title of any jurisdiction of the courts conferred by the pre-1922 Acts. This also allows a clear basis for incorporating into the draft Bill any pre-1922 provisions that remain of relevance to the jurisdiction of the courts now in place in Ireland.

23. Chapter 1 concludes with an overview of the scheme or framework for the draft *Courts (Consolidation and Reform) Bill*, based on the general principles already set out.

24. In Chapter 2, the Commission discusses 27 specific issues which the Commission considers merit particular discussion in the context of preparing the draft Bill. These have taken into account the overall objectives set for this project, the specific issues discussed in the Consultation Paper, the submissions received after the Consultation Paper was published in 2007 and other relevant developments since then.

25. The specific areas discussed in Chapter 2 include: (1) a simplified description of the process for initiating civil proceedings; (2) judicial control of proceedings, judicial case management and the obligation on parties in civil proceedings to conform to “case conduct principles”; (3) increasing the general monetary limits of the District Court and Circuit Court in civil proceedings; (4) in criminal cases, streamlining the summons process for initiating cases in the District Court, of which there are about

500,000 each year; (5) appeals against fixed charge penalties; (6) enhancing the arrangements concerning Irish language knowledge of judges in Gaeltacht areas; (7) reforming the circumstances in which the courts may protect the identify of vulnerable parties in civil proceedings; (8) the need to use plain language in the statutory Rules of Court; (9) in the context of appeals, the introduction of a single procedure for consultative cases stated (in effect, appeals on points of law) from the District Court and the Circuit Court; and (10) assigning High Court judges to hear civil appeals from the Circuit Court only where actually needed, rather than an automatic need for two sittings each year of the High Court on Circuit when the low volume of cases to be heard does not justify this.

26. Chapter 3 contains a summary of the recommendations made in the Report.

27. Appendix A contains the Commission's *Draft Courts (Consolidation and Reform) Bill*, which incorporates the text of many existing legislative provisions concerning the essential jurisdiction of the courts, both pre-1922 and post-1922, as well as the reform elements recommended by the Commission in this Report. It also provides for the repeal in full of 192 Acts, of which 135 are pre-1922 Acts.

28. Appendix B contains an Explanatory Memorandum, which provides an introductory overview of the Bill as well as a narrative summary of each section in it.

CHAPTER 1 THE GENERAL STRUCTURE OF THE DRAFT COURTS (CONSOLIDATION AND REFORM) BILL

A Introduction

1.01 In this Chapter, the Commission describes how it approached the development of the general structure of the draft *Courts (Consolidation and Reform) Bill* in Appendix A. In Part B, the Commission sets out the most important Acts, referred to as core Courts Acts, which formed the basis for the development of the draft Bill. These core Courts Acts include many pre-1922 Acts that conferred jurisdiction on courts which were replaced by the courts established in Ireland since 1922. As a result, Part C contains a list of the courts currently in place by reference to their pre-1922 predecessors in order to identify the root title of jurisdiction conferred by the pre-1922 Acts. This also allows a clear basis for incorporating into the draft Bill any pre-1922 provisions that remain of relevance to the jurisdiction of the courts now in place in Ireland. In Part D, the Commission discusses a number of key issues concerning the general structure of the draft Bill.

B The core Courts Acts and the *Draft Courts Consolidation and Reform Bill*

1.02 In this Part, the Commission identifies the main Acts that formed the basis for the development of the *Draft Courts (Consolidation and Reform) Bill*. For that purpose, the Commission has used the term “core Courts Acts” to identify the Acts in question.

1.03 In this respect, the relevant post-1922 Acts are relatively easy to identify, having been enacted using the title “Courts Act” and by reference to courts whose titles have not materially changed since 1924. In addition, these Acts are often included in the collective citation of Acts of relevance to the jurisdiction of the courts. In respect of pre-1922 Acts, the picture is more complicated. In some instances, the post-1922 Courts Acts made specific reference to the pre-1922 Acts whose provisions were carried over and made applicable to the post-1922 courts. In other instances, however, the post-1922 Courts Acts merely provided that the jurisdiction of a pre-1922 court was, in general terms, applied to a post-1922 court, without reference to any specific pre-1922 Act. In addition, it has not been the practice to include any pre-1922 Acts in the collective citation of courts-related Acts.

(1) Selection of the main post-1922 core Courts Acts

1.04 As already indicated, it is relatively easy to identify the main post-1922 core Courts Acts. These include:

1. The *Courts of Justice Act 1924*. The 1924 Act provided for the establishment of the courts under the Constitution of the Irish Free State 1922. It also set out the detailed jurisdiction of the courts, including how jurisdiction conferred on pre-1922 courts was to be transferred to the newly-established courts. While much of the 1924 Act has been superseded by the two *Courts Acts* passed in 1961, below, a large number of its provisions remain in force.

2. The *Court Officers Act 1926*. Although the 1926 Act was (like the 1924 Act) enacted in respect of the courts envisaged by the Constitution of the Irish Free State 1922, it still contains detailed provisions (as amended) concerning the role and functions of the court officers and offices of the courts currently in place.

3. The *Courts (Establishment and Constitution) Act 1961*. This very short 1961 Act, comprising 8 sections, provided for the establishment of the courts under the current Constitution of Ireland 1937.

4. The *Courts (Supplemental Provisions) Act 1961*. Although the title of this 1961 Act might appear to indicate that it contains relatively modest or secondary provisions,¹ it contains 61 sections and 8 Schedules concerning the detailed jurisdiction of the courts established under the current Constitution of Ireland 1937 by the *Courts (Establishment and Constitution) Act 1961*, above. It is notable that while this 1961 Act entailed partial consolidation, and reform, and repealed many provisions of the *Courts of Justice Act 1924*, a number of provisions in the 1924 Act were also retained.

1.05 The Commission emphasises that these post-1922 core Courts Acts have been amended many times, but that the *Draft Courts Consolidation and Reform Bill* is the first occasion on which their provisions concerning the jurisdiction of the courts have been consolidated into a single text.

(2) Selection of the main pre-1922 core Courts Acts

1.06 As already indicated, in respect of pre-1922 Acts the position is more complicated. In some instances, the post-1922 Courts Acts made specific reference to the pre-1922 Acts whose provisions were carried over and made applicable to the post-1922 courts. In other instances, however, the post-1922 Courts Acts merely provided that the jurisdiction of a pre-1922 court was, in general terms, applied to a post-1922 court, without reference to any specific pre-1922 Act. In addition, it has not been the practice to include any pre-1922 Acts in the collective citation of courts-related Acts. Bearing in mind these difficulties, however, the Commission has identified, with the assistance of the members of the Project Board, the main pre-1922 core Courts Acts. Most of these were enacted in the second half of the 19th Century, with some dating back as far as the 13th Century, beginning with the *Sheriffs Act 1293*. The pre-1922 Acts include:

1. The *Courts Act 1476*. The 1476 Act comprises a single paragraph of text stating that judges are to wear wigs and gowns (“coifs and habits”) during any Legal Terms.

2. The *Civil Bill Courts (Ireland) Act 1851*. This 1851 Act contains detailed provisions concerning the jurisdiction in civil cases of the county courts, the pre-1922 predecessor of the Circuit Court.

2. The *Petty Sessions (Ireland) Act 1851*. This 1851 Act contains detailed provisions concerning the jurisdiction in criminal cases of the courts of petty sessions, the pre-1922 predecessor of the District Court.

3. The *Summary Jurisdiction Act 1857*. The 1857 Act also contains detailed provisions concerning the jurisdiction in criminal cases of the courts of petty sessions, including arrangements for appeals to the higher courts.

4. The *Supreme Court of Judicature Act (Ireland) 1877*. The 1877 Act established a single High Court of Judicature and, while the post-1922 Acts provided for important changes to the jurisdiction conferred by the 1877 Act, many of its provisions have not been repealed or redrafted to take account of the courts established since 1922.

(3) List of over 100 of the 240 Acts examined

1.07 While the Acts listed above comprise some of the main Acts involved in this project, the Commission examined 240 Acts in total, containing over 1,500 sections, in developing the draft Bill in Appendix A. The 359 sections in the draft Bill incorporate not only all the provisions from those Acts that remain relevant, but also contain the new reform elements proposed in the Bill. Of the 240 Acts that were examined in preparing this Bill, 146 predate the foundation of the State in 1922 (over 100 Acts are from the 19th Century, but three Acts date back to the 13th Century), and since 1922 the Oireachtas has also enacted 94 Acts concerning the courts. The Bill proposes to repeal in full 192 of these Acts, of which 135 are pre-1922 Acts. The Bill also proposes to repeal many elements of the other 48 Acts. It is not appropriate to set out the 240 Acts here, but it may be helpful to set out a relatively complete list to indicate the scale of the project. The 240 Acts include the following 104 Acts, listed in chronological order.

1. Sheriffs Act 1215

¹ The Long Title to the *Courts (Supplemental Provisions) Act 1961* makes clear that it was enacted to “supplement” the *Courts (Establishment and Constitution) Act 1961*, which had provided for the formal establishment of the courts under the Constitution of Ireland 1937.

2. Courts Act 1476
3. Administration of Justice Act 1707
4. Enforcement of Court Orders Act 1751
5. Habeas Corpus Act 1781
6. Admiralty Act 1783
7. Court of Justice (Dublin) Act 1795
8. Quo Warranto Act 1798
9. Dublin Police Magistrates Act 1808
10. Common Law Procedure (Ireland) Act 1821
11. Court of Chancery (Ireland) Act 1823
12. Dublin Justices Act 1824
13. Chancery (Ireland) Act 1834
14. Chancery (Ireland) Act 1835
15. Constabulary (Ireland) Act 1836
16. Dublin Police Act 1836
17. Dublin Police Act 1842
18. Judgments (Ireland) Act 1844
19. Summary Jurisdiction Act 1848
20. Civil Bill Courts (Ireland) Act 1851
21. Summary Jurisdiction (Ireland) Act 1851
22. Petty Sessions (Ireland) Act 1851
23. Common Law Procedure Amendment Act (Ireland) 1853
24. Common Law Procedure Amendment Act (Ireland) 1856
25. Summary Jurisdiction Act 1857
26. Chancery Amendment Act 1858
27. Landed Estates Court (Ireland) Act 1858
28. Common Law Procedure (Ireland) Act 1860
29. Summary Jurisdiction (Ireland) Act 1862
30. Civil Bill Courts Procedure Amendment Act (Ireland) 1864
31. Chancery (Ireland) Act 1867
32. Chancery and Common Law Offices (Ireland) Act 1867
33. Common Law Procedure Amendment Act Ireland 1870
34. Summary Jurisdiction (Ireland) Amendment Act 1871
35. Civil Bill Courts Procedure Amendment Act (Ireland) 1871
36. Civil Bill Courts (Ireland) Act 1874
37. County Officers and Courts (Ireland) Act 1877
38. Supreme Court of Judicature Act (Ireland) 1877
39. County Court Amendment (Ireland) Act 1882

40. Supreme Court of Judicature (Ireland) Act 1882
41. Supreme Court of Judicature (Ireland) Act 1887
42. County Court Appeals (Ireland) Act 1889
43. Supreme Court of Judicature (Ireland) Act 1897
44. Summary Jurisdiction (Ireland) Act 1918
45. Courts of Justice Act 1924
46. Courts of Justice Act 1926
47. Court Officers Act 1926
48. Enforcement of Court Orders Act 1926
49. Courts of Justice Act 1927
50. Courts of Justice Act 1928
51. Courts of Justice (No.2) Act 1928
52. Courts of Justice Act 1929
53. Courts of Justice Act 1931
54. Courts of Justice (No.2) Act 1931
55. Courts of Justice Act 1936
56. Circuit Court (Registration of Judgments) Act 1937
57. Courts Officers (Amendment) Act 1937
58. Enforcement of Court Orders Act 1940
59. Court Officers Act 1945
60. Courts of Justice (District Court) Act 1946
61. Courts of Justice Act 1947
62. Courts of Justice (District Court) Act 1949
63. Court Officers Act 1951
64. Courts of Justice Act 1953
65. Court Officers Act 1959
66. Court of Justice and Court Officers (Superannuation) Act 1961
67. Courts (Establishment and Constitution) Act 1961
68. Courts (Supplemental Provisions) Act 1961
69. Courts (Supplemental Provisions) (Amendment) Act 1962
70. Courts Act 1964
71. Courts (Supplemental Provisions) (Amendment) Act 1964
72. Courts (Supplemental Provisions) (Amendment) Act 1968
73. Courts (Supplemental Provisions) (Amendment) (No. 2) Act 1968
74. Courts Act 1971
75. Court Officers Act 1972
76. Courts Act 1973
77. Courts Act 1977

78. Courts Act 1979
79. Courts Act 1981
80. Courts (No. 2) Act 1981
81. Court-Martial Appeals Act 1983
82. Courts Act 1983
83. Courts Act 1985
84. Courts Act 1986
85. Courts (No. 2) Act 1986
86. Courts (No. 3) Act 1986
87. Courts Act 1988
88. Courts (No. 2) Act 1988
89. Courts Act 1991
90. Courts (No. 2) Act 1991
91. Courts (Supplemental Provisions)(Amendment) Act 1991
92. Courts and Courts Officers Act 1995
93. Courts Act 1996
94. Courts Act 1997
95. Courts (No. 2) Act 1997
96. Courts (Supplemental Provisions)(Amendment) Act 1999
97. Courts (Supplemental Provisions)(Amendment) Act 2000
98. Courts and Courts Officers Act 2002
99. Courts and Courts Officers (Amendment) Act 2003
100. Civil Liability and Courts Act 2004
101. Courts and Courts Officers (Amendment) Act 2007
102. Enforcement of Court Orders (Amendment) Act 2009
103. Courts and Courts Officers Act 2009
104. Criminal Procedure Act 2010.

(4) *The need for a consolidated Courts Act*

1.08 Having regard to the diverse nature of the legislative provisions, both pre-1922 and post-1922, that comprise “the Courts Acts”, the Commission reiterates the view expressed in the Consultation Paper that there is a clear need for consolidation of the legislation concerning the jurisdiction of the courts. Of the 240 Acts which the Commission has examined, 146 predate the foundation of the State in 1922. Most were enacted in the second half of the 19th Century, including the *Petty Sessions (Ireland) Act 1851*, the *Summary Jurisdiction Act 1857* and the *Supreme Court of Judicature (Ireland) Act 1877*. Some of the relevant Acts date back as far as the 13th and 15th centuries, such as the *Sheriffs Act 1293* and the *Courts Act 1476*. Since 1922, 94 courts-related Acts have been enacted by the Oireachtas, but none has involved a complete consolidation. The main Acts in this respect – the *Courts of Justice Act 1924*, the *Courts (Establishment and Constitution) Act 1961* and the *Courts (Supplemental Provisions) Act 1961* – have involved part-consolidation, but they have also specifically carried over some aspects of the powers and jurisdiction of the pre-independence courts. It is clear, therefore, that consolidation of this area would

contribute to the overall objective of replacing in modern form all pre-1922 legislation, which has been greatly aided by the enactment of the *Statute Law Revision Act 2007*.²

1.09 *The Commission recommends that the statutory provisions concerning the role and essential jurisdiction of the courts, and related matters concerning court offices, which are currently contained in 240 separate Acts, should be set out in a single Courts (Consolidation and Reform) Act, and the Commission appends a draft Courts (Consolidation and Reform) Bill to this Report for this purpose.*

1.10 In the Consultation Paper, the Commission pointed out that the current jurisdiction of the courts is often conferred in the post-1922 Courts Acts by reference to the jurisdiction conferred on their pre-1922 predecessors. In addition, because a number of pre-1922 Acts remain in force, it was therefore important, in the context of preparing a complete consolidation, to understand the relationship between the current courts and the pre-1922 courts.

C The current courts and the “root title” of their jurisdiction

1.11 In this Part the Commission describes briefly the “root title” of the jurisdiction of the courts currently in place.

1. *The Supreme Court.* The jurisdiction of the Supreme Court has developed and been expanded considerably by the Constitution of Ireland, notably the jurisdiction to determine, on appeal from the High Court, whether an Act is in conflict with the provisions of the Constitution. Otherwise, the Supreme Court established in 1961 in accordance with the Constitution is vested with the jurisdiction of the pre-1922 Court of Appeal in Southern Ireland.³ The Supreme Court that operated between 1924 and 1961 inherited the jurisdiction vested in or capable of being exercised by the Court of Appeal of the Supreme Court of Judicature⁴, which had, in 1877, replaced the Court of Appeal in Chancery.⁵

2. *The Court of Criminal Appeal [proposed Court of Appeal].* The Court of Criminal Appeal was originally established by the *Courts of Justice Act 1924* and was re-established in 1961. Its jurisdiction is limited to whatever has been conferred by legislation. If the *2009 Report of the Working Group on a Court of Appeal*⁶ was implemented (a matter currently under review by the Government), the Court of Criminal Appeal would be replaced by the proposed Court of Appeal, which would have jurisdiction in both civil and criminal matters.

3. *The High Court.* As with the Supreme Court, the jurisdiction of the High Court has developed and been expanded considerably by the Constitution of Ireland, notably the jurisdiction to determine (subject to appeal to the Supreme Court) whether an Act is in conflict with the provisions of the Constitution. Otherwise, as to criminal matters, the High Court (Central Criminal Court) established in 1961 in accordance with the Constitution is vested with the jurisdiction of the High Court of Justice for Southern Ireland.⁷ The Central Criminal Court can trace its roots to the pre-1922 Court of Assize, Commission of Oyer and Terminer and Commission of Gaol Delivery and the High Court of the Supreme Court of Judicature.⁸

Similarly, in civil matters (and subject to the full nature of its jurisdiction under the Constitution of Ireland), the jurisdiction of the High Court is derived from a number of pre-1922 courts. These include a number of

² See generally the Commission’s *Report on Statute Law Restatement* (LRC 91-2008).

³ Section 7 of the *Courts (Supplemental Provisions) Act 1961*.

⁴ Section 18 of the *Courts of Justice Act 1924*.

⁵ Section 23 of the *Supreme Court of Judicature (Ireland) Act 1877*.

⁶ Available at www.courts.ie.

⁷ Section 8 of the *Courts (Supplemental Provisions) Act 1961*.

⁸ Section 21 of the *Supreme Court of Judicature (Ireland) Act 1877* provided that the High Court of Justice established by the 1877 Act was vested with criminal jurisdiction. Section 17 of the *Courts of Justice Act 1924* provided that the pre-1961 High Court was vested with the jurisdiction of the High Court of the Supreme Court of Judicature in Ireland.

common law courts: the Encumbered Estates Court, Court of Bankruptcy, Court of Probate, the Court of Matrimonial Matters and the Court of Admiralty and the Queen's/King's Bench Court. They also include the following chancery courts: the Court of Common Pleas, the Court of Exchequer and the Court of Chancery. These were later amalgamated into the High Court of Justice of the Supreme Court of Judicature and the jurisdiction of this court was transferred to the High Court of Justice for Southern Ireland.

4. *The Circuit Court.* Unlike the High Court or Supreme Court, the Circuit Court has no power to determine whether an Act is in conflict with the provisions of the Constitution. Its jurisdiction is limited to whatever has been conferred by legislation. As to criminal matters, the Circuit Court is, broadly, the successor of the pre-1922 Court of Quarter Sessions. As with the Court of Quarter Sessions, the Circuit Court is vested with jurisdiction to deal with less serious matters than the High Court (Central Criminal Court), much like the jurisdiction of the Court of Quarter Session as compared with that of the Court of Assize. Thus, the *Courts of Justice Act 1924* transferred the jurisdiction of the Court of Quarter Sessions to the Circuit Court.⁹ Since 1924, considerable changes have been made to the precise jurisdiction of the Circuit Court in criminal matters, notably in the *Courts (Supplemental Provisions) Act 1961*.

As to civil cases, because the key initiating document remains the civil bill, it is clear that the Circuit Court derives its jurisdiction from the pre-1922 County Courts and Recorders,¹⁰ notably governed by the *Civil Bill Courts (Ireland) Act 1851* and the *County Officers and Court (Ireland) Act 1870*.

5. *The District Court.* Like the Circuit Court, the District Court has no power to determine whether an Act is in conflict with the provisions of the Constitution. In both civil and criminal matters the clear pre-1922 predecessor of the District Court was the Court of Petty Sessions.¹¹ The criminal jurisdiction of the District Court thus remains regulated in certain respects by the *Petty Sessions (Ireland) Act 1851* and the *Summary Jurisdiction Act 1857* which set out the jurisdiction of the Court of Petty Sessions. As with the Circuit Court, its current jurisdiction is also set out primarily in the *Courts of Justice Act 1924* and the *Courts (Supplemental Provisions) Act 1961*.

D Structure of the Courts (Consolidation and Reform) Bill

1.12 In this Part, the Commission sets out the basis on which it devised the structure of the *Draft Courts (Consolidation and Reform) Bill* in Appendix A. As the Commission noted in the Consultation Paper,¹² the essential structure of the Working Draft Courts Bill was based on an analysis of comparable proposals for Courts Acts made by a number of law reform bodies in other States, notably in Australia and New Zealand.¹³ The Commission also had regard to the structure and format of Courts Acts in the United Kingdom, including those in Northern Ireland.¹⁴

(1) Included and excluded provisions in the draft Bill

1.13 In preparing this Report, and the draft Bill in Appendix A, the Commission has considered which provisions in the existing Courts Acts are sufficiently connected to the essential jurisdiction of the courts to merit inclusion in the draft Bill and which, as a consequence, should be excluded.

⁹ Section 51 of the *Courts of Justice Act 1924*.

¹⁰ Section 51 of the *Courts of Justice Act 1924*.

¹¹ See section 1(1) of the *District Court (Temporary Provisions) Act 1923*.

¹² See Chapter 4 of the Consultation Paper.

¹³ Queensland Law Reform Commission *A Bill to Consolidate, Amend and Reform the Supreme Court Acts and Ancillary Acts Regulating Civil Proceedings in the Supreme Court* (Report No 32 1988), New Zealand Law Commission *Preliminary Paper: The Structure of the Courts* (NZLC PP4 1987), New Zealand Law Commission *Report: The Structure of the Courts* (NZLC R7 1989), Australian Law Reform Commission *The Judicial Power of the Commonwealth: A Review of the Judiciary Act 1903* (Discussion Paper 64 2000), Australian Law Reform Commission *The Judicial Power of the Commonwealth: A Review of the Judiciary Act 1903* (Report No 92 2001).

¹⁴ See paragraphs 4.10ff and 4.28ff of the Consultation Paper.

1.14 The Commission provisionally recommended in the Consultation Paper¹⁵ that the purpose of the *Courts (Consolidation and Reform) Bill* would be to provide for the allocation of exercise of the judicial power of the State, the administration of justice, constitution and jurisdiction of the courts, allocation of jurisdiction between the courts, and officers of the courts. The Commission also provisionally recommended that provisions relating to appointment to judicial office¹⁶ and the salaries, remuneration and pensions of the judiciary¹⁷ should be omitted, as falling outside the scope of the project, and requiring separate treatment.

1.15 The Commission reaffirms that approach in this Report, and this is reflected in the draft Bill. The provisions relating to the appointment to judicial office, salaries, remuneration and pensions of the judiciary (and provisions as to remuneration and superannuation of court officers) have thus been excluded from the scope of the project, and the draft Bill. These provisions have been identified in Schedule 5 of the draft Bill for transparency as “preserved provisions” so that this intention is made clear. These “preserved provisions” could be reproduced in a more coherent form in future legislation, but the Commission has not done this in the context of this project.

1.16 The Commission recommends that provisions relating to the appointment to judicial office, salaries, remuneration and pensions of the judiciary (and provisions as to remuneration and superannuation of court officers) should not be included in the Courts (Consolidation and Reform) Bill.

(2) Overall scope and structure of the draft Bill

1.17 The Commission provisionally recommended in the Consultation Paper¹⁸ that a thematic approach be taken to a consolidated Courts Bill, with each part of the Bill reflecting a particular aspect and then sub-divided in relevant provisions for each of the courts. The Commission reaffirms that approach in this Report.

1.18 Building on the structure in the Draft Working Bill appended to the Consultation Paper, the Commission developed a revised structural approach, which was further refined during the drafting process that occurred in the development of this Report. The draft Bill ultimately prepared and appended to this Report proceeded on the following basis.

1.19 *Part 1* of the Bill, *Preliminary and General (sections 1 to 11)*, (broadly corresponding to Part 1 of the Bill in the Consultation Paper) contains a statement of the main purposes of the Bill, key definitions used throughout the Bill, and provisions to ensure the continuity of the current court system. This Part contains standard provisions (short title, commencement, interpretation, repeals, amendments, regulations, expenses) and also a general purposes clause, a confirmation that the Act is not intended to affect any Constitutional jurisdiction or obligation and an introduction to the provisions (set out in detail in Schedule 1) for transitional arrangements and for securing the continuity of the administration and enforcement of justice.

1.20 *Part 2, Jurisdiction (sections 12 to 177)* (broadly corresponding to Parts 3, 4 and 10 of the Bill in the Consultation Paper), which comprises half the total number of sections in the Bill, sets out the key elements concerning the role and essential jurisdiction of the principal courts in Ireland established under Article 34 of the Constitution. These are: the Supreme Court (the highest court in the State), the Court of Criminal Appeal and Courts-Martial Appeal Court, the High Court, the Circuit Court, and the District Court. *Part 2* of the Bill deals with the general powers of each court, both in civil and criminal proceedings. It also deals with how cases are distributed between the different courts.

1.21 In the context of civil proceedings, *Part 2* of the Bill requires that parties must comply with “case conduct principles” and must accept the general function of the court and judge to control the conduct of proceedings, which includes using its resources appropriately and proportionately. This means that: (a) issues between parties should, at as early a stage as possible, be identified, defined, narrowed (where

¹⁵ Paragraph 4.96 of the Consultation Paper.

¹⁶ Paragraph 4.100 of the Consultation Paper.

¹⁷ Paragraph 4.97 of the Consultation Paper.

¹⁸ Paragraphs 4.98 and 5.22 of the Consultation Paper.

possible) and prioritised or sequenced; (b) proceedings should be conducted in a manner that is just, expeditious and likely to minimise the costs of those proceedings; and (c) the parties should be encouraged to use alternative dispute resolution procedures where appropriate, to settle the whole or part of the proceedings where practicable, and should be facilitated in doing so.

1.22 *Part 2* also contains a modern framework for important procedural matters, including how evidence is taken in civil and criminal proceedings, how evidence may be taken abroad and how evidence may be given in Ireland in respect of proceedings begun outside the State.

1.23 The detailed provisions of *Part 2* are linked to *Schedules 1 to 11* of the Bill. *Schedule 1* of the Bill contains supplementary provisions to ensure the continuity of the administration and enforcement of justice as well as some transitional provisions. *Schedule 2* contains a list of 192 Acts repealed in their entirety and 48 Acts repealed in part. *Schedule 3* of the Bill contains some minor and consequential amendments to Acts, as well as amendments necessary to confirm Circuit Court and District Court jurisdiction in certain cases. *Schedule 4* contains updated text of certain pre-1922 Acts in order to ensure that they refer to the correct provisions of the Bill. *Schedule 5* contains a list of preserved statutory provisions from existing Courts Acts that do not fall within the scope of the Bill and so have not been incorporated into the consolidation and reform involved in this Bill. *Schedule 6* provides an indicative and non-exhaustive list of what is intended by the use of certain terms to indicate the extent of the courts' civil jurisdiction in certain areas. *Schedule 7* deals with the detailed rules on legal costs in civil proceedings and the specific rules on measurement of legal costs. *Schedule 8* of the Bill contains detailed rules on the enforcement of Court decisions in civil proceedings. *Schedule 9* deals with the detailed rules on the enforcement of EU-related civil proceedings. *Schedule 10* of the Bill sets out the detailed provisions on the execution and enforcement of fines and breached Court bonds. *Schedule 11* deals with regular sittings of the High Court outside Dublin.

1.24 *Part 3* of the Bill, *Judges and Presiding Judges (sections 178 to 192)* (broadly corresponding to Parts 2 and 6 of the Bill in the Consultation Paper), contains provisions concerning the role and functions of judges in general, as well as specific provisions as to the role of the presiding judges, the Chief Justice (who is also presiding judge of the Supreme Court), the President of the High Court, the President of the Circuit Court and the President of the District Court. *Part 3* is linked to *Schedule 12* of the Bill, which contains a list of the prescribed number of ordinary judges of each Court.

1.25 *Part 4* of the Bill, *Special Rules in Particular Proceedings and Matters of Procedure (sections 193 to 276)* (broadly corresponding to Part 9 of the Bill in the Consultation Paper), contains detailed provisions about court procedure and is linked to *Schedule 13* of the Bill. *Part 4* deals with the constitutional requirement that, subject to limited exceptions, the courts must administer justice in public. It also deals with some aspects of the role of juries (although much of this is dealt with in the *Juries Act 1976*, as amended). *Part 4* also deals with, for example, the use of Information and Communications Technology (ICT) in the courts and how proceedings in the courts are commenced. This will assist existing initiatives within the Courts Service on ICT. *Part 4* also describes the general basis on which the detailed statutory Rules of Court are drawn up. *Schedule 13* sets out the composition and related proceedings of the different Court Rules Committees, the Superior Courts Rules Committee, the Circuit Court Rules Committee and the District Court Rules Committee. *Part 4* also deals with offences related to the operation of the courts, notably, perjury and contempt of court.

1.26 *Part 5* of the Bill, *Rights of Appeal, Appeals and References of Questions of Law (sections 277 to 326)* (broadly corresponding to Part 5 of the Bill in the Consultation Paper), describes the different ways in which decisions of a court may be appealed to a higher court, notably by way of appeal on points of law. This follows the same sequence as in *Part 2*, beginning with appeals to the Supreme Court. This is followed by the process for appeals to the Court of Criminal Appeal, the Courts-Martial Appeal Court, to the High Court, and to the Circuit Court. It also deals with appeals to the District Court from statutory bodies other than the courts, particularly bodies and officers who are empowered to issue directions and notices to operators in certain regulated sectors and industries.

1.27 *Part 6* of the Bill, *Court Offices and Court Officers (sections 327 to 359)* (broadly corresponding to Parts 7 and 8 of the Bill in the Consultation Paper), sets out the general powers and functions of the many court offices and court officers involved in the courts and is linked to *Schedule 14* of the Bill. *Schedule 14* sets out the detailed functions, powers and duties of, and supplemental provisions concerning, court

officers. *Schedule 14* deals with: the Master of the High Court; the Taxing Masters; the Probate Officer; the Examiner; the Officer in charge of the Court Funds Office and Courts Accountant; the Registrar of Wards of Court; the Official Assignee in Bankruptcy; the Registrar of the Supreme Court; the officer managing the Central Office of the High Court; High Court Registrars; County Registrars; Sheriffs and County Registrars performing the office of sheriff; and District Court Clerks.

1.28 *The Commission recommends that a thematic approach be taken to the Courts (Consolidation and Reform) Bill, involving the following main Parts:*

Part 1: Preliminary and General

Part 2: Jurisdiction

Part 3: Judges and Presiding Judges

Part 4: Special Rules in Particular Proceedings and Matters of Procedure

Part 5: Rights of Appeal, Appeals and References of Questions of Law

Part 6: Court Offices and Court Officers.

(3) *The courts included in the draft Bill*

1.29 The Commission considered which courts ought properly to be included in the Bill and which, if any, excluded. From a constitutional perspective, it is self-evidently appropriate to include each of the courts established by the *Courts (Establishment and Constitution) Act 1961*, and explicitly mentioned or captured by Article 34 of the Constitution, that is, the Supreme Court, the Court of Criminal Appeal, the High Court, the Circuit Court and the District Court.

1.30 There might be doubt about whether the Courts-Martial Appeal Court is properly a statutory court captured by Article 34 (in the same way as is the Court of Criminal Appeal) or a military tribunal referred to in Article 38 of the Constitution. Although the *Courts-Martial Appeals Act 1983* establishing this court is silent as to its constitutional source, it appears correct to say that the Courts-Martial Appeal Court (though it hears appeals from military tribunals) is properly a statutory court captured by Article 34 and therefore logically sits together with the Court of Criminal Appeal.¹⁹

1.31 Factors which tend to support the view that the Courts-Martial Appeal Court should be within the scope of this project include that it comprises judges appointed in accordance with the Constitution and is a superior court of record.

1.32 It might be argued that the Summary Court-Martial established by section 187A of the *Defence Act 1954* (inserted by section 38 of the *Defence (Amendment) Act 2007*) could be said to be a court of justice captured by Article 34, but the Commission has concluded that it is a military court as it is established as a court-martial rather than a court and the military judge constituting that court is appointed under the *Defence Acts* rather than the Constitution and sits outside the judicial system. Even if it were captured by Article 34, the Summary Court-Martial is so intrinsically bound up in the *Defence Acts* that there would be a practical justification for not including it.

1.33 The Commission also concluded that it should exclude Special Criminal Courts for two reasons: first they are special courts originating in Article 38 rather than Article 34 and secondly because they do not have an establishment as a “standing” court which each of the other courts within the draft Bill has.

1.34 It should be noted that the draft Bill proceeds on the basis of the view in the Consultation Paper that the establishing provisions of the *Courts (Establishment and Constitution) Act 1961* are kept outside the scope of the consolidation; and that the same approach is taken to the establishing provisions of the *Courts-Martial Appeals Act 1983*.²⁰ The Commission has concluded, however, that it is not necessary to

¹⁹ In any event, the jurisprudence of the European Court of Human Rights has extended the protections afforded by the European Convention on Human Rights to persons susceptible to military law, and this is now reflected in the *Defence (Amendment) Act 2007*.

²⁰ Paragraph 5.02 of the Consultation Paper.

provide that the courts concerned be explicitly “continued” as this may only give rise to confusion or doubt.²¹

1.35 *The Commission recommends that the Courts (Consolidation and Reform) Bill deal with the role and essential jurisdiction of the following courts: the Supreme Court, the Court of Criminal Appeal, the Courts-Martial Appeal Court, the High Court, the Circuit Court and the District Court. The Commission also recommends that the establishing provisions of the Courts (Establishment and Constitution) Act 1961 remain outside the scope of the Courts (Consolidation and Reform) Bill.*

(4) The use of a general objects clause and part-specific content clauses

1.36 In the Consultation Paper²² the Commission described the purposes of the draft Courts Bill and the Commission concluded, in preparing this Report, that a version of these purposes should be included in the Long Title of the Bill and in section 3. Recent legislation has included an extensive “general objects clause” to explain the purposes of an Act and to set out objects to which regard is to be had by those implementing the Act (for example, section 6 of the *Education Act 1998*),²³ the Commission concluded that the first of these elements (explanation of purposes, by way of elaboration of the Long Title) should be accommodated in the draft Bill, but that difficulties could arise in attempting to provide the second element (objects to which regard is to be had by those implementing the Bill/Act) and that the latter element would not therefore be included.

1.37 A variation on an “objects clause” is to include a preliminary “purposes” or “contents” section at the beginning of each major Part (for example, section 10 of the *Personal Injuries Assessment Board Act 2003*). The Commission considered that this is especially suitable with such a large Bill, and part-specific content clauses have been developed for each Part of the Bill in Appendix A. These have been drafted specifically to be connective only and to be largely devoid of operative effect.

1.38 *The Commission recommends that the Courts (Consolidation and Reform) Bill should include a summary purposes clause and part-specific content clauses.*

(5) Maximising the consolidation process

1.39 As already mentioned, a key aspect of the Commission’s approach to drafting the Bill is to maximise the potential for consolidation of the relevant provisions in the draft *Courts (Consolidation and Reform) Bill*. In this context, the Commission notes that a number of post-1922 Courts Acts include provisions which amend non-Courts Acts. For example, the section 15 of the *Courts Act 1981* amended section 5 of the *Guardianship of Infants Act 1964*. Similarly, sections 6 and 7 of the *Courts (No.2) Act 1986* amended section 25 of the *Intoxicating Liquor Act 1927*.

1.40 In order to be in a position to repeal in full the 1981 and 1986 Acts, the Commission concluded that it was appropriate to re-state the provisions concerned from the non-Courts Acts as a Schedule to the Bill (see Schedule 4 of the Bill). In some instances, the Commission has assessed, on a case by case basis, the desirability of taking this approach, rather than, for example, dealing with the matter by way of consequential amendment to the Acts affected.

(6) Future-proofing of Bill and pending legislation

1.41 As already mentioned, another key aspect of the Commission’s approach to drafting the Bill is to provide to the greatest extent possible for future changes so that the essential architecture and integrity of the Bill is maintained. The positing of the provisions concerning the Court of Criminal Appeal is a specific example of this.²⁴

1.42 In general, of course, it is not possible to anticipate all future developments in this area, but the Commission has had regard to recent proposals made by other bodies, as well those in Bills before the Oireachtas or in proposed legislation, in particular those in the Government Legislation Programme. In

²¹ This departs from the view in paragraph 5.03 of the Consultation Paper.

²² Paragraph 4.40 of the Consultation Paper.

²³ A similar clause is included in the *Scheme of the Mental Capacity Bill 2008*.

²⁴ See paragraphs 2.08-2.13, below.

terms of pending and enacted legislation, the Commission has taken into account Acts enacted up to the end of July 2010. Pending legislation which the Commission has taken into account includes the *Criminal Justice (Forensic Evidence and DNA Database System) Bill 2010*. The Commission has also taken into account pending EU obligations, such as those arising under the 2008 EU Directive on Cross-Border Mediation; this is also relevant to the Commission's *Report on Alternative Dispute Resolution: Mediation and Conciliation*,²⁵ which proposes a general legislative framework for mediation and conciliation.

1.43 As to promised legislation, the Commission has taken into account, to the greatest extent practicable, the potential effects of legislation that might be enacted by the Oireachtas. This includes, for example, legislation that is likely to follow in broad terms the *Scheme of the Mental Capacity Bill 2008* published by the Department of Justice and Law Reform, in respect of which a Bill may be published by the end of 2010 or early 2011 and which would implement recommendations made in 2006 by the Commission.²⁶

²⁵ LRC 98-2010.

²⁶ *Report on Vulnerable Adults and the Law* (LRC 83-2006).

CHAPTER 2 SPECIFIC REFORMS IN THE DRAFT COURTS (CONSOLIDATION AND REFORM) BILL

A Introduction

2.01 As already mentioned and as its title suggests, the draft *Courts (Consolidation and Reform) Bill* appended to this Report involves, in part, a consolidation in one Bill of existing legislative provisions concerning the jurisdiction of the courts. The title of the draft Bill also indicates that some provisions involve elements of reform. In this Chapter, the Commission sets out 27 specific issues which the Commission considered in the preparation of the draft Bill. These have taken into account the overall objectives set for this project,¹ the eight specific issues discussed in the Consultation Paper, the submissions received after the Consultation Paper was published, and other relevant developments since then. Each of these specific issues is examined separately in Part B, followed by the Commission's recommendation. It should be noted that these 27 specific matters do not encompass all the reform elements in the draft Bill, such as those sections involving a first legislative statement of various powers of the courts. Rather, the 27 issues involve those which required the Commission to make specific reform choices in preparing the draft Bill. In respect of some sections in the draft Bill, the Commission has added a footnote to indicate that an aspect of the section has taken into account a recommendation for reform made by another body.²

B Specific reform Issues addressed in the draft *Courts (Consolidation and Reform) Bill*

(1) *Simplifying terms in court proceedings (section 5 of Bill)*

2.02 In preparing the Report, the Commission considered that it would be appropriate to include in the draft Bill new general terms intended to allow for the eventual simplification of existing court terminology. Notably, four connected definitions — “applicant”, “application,” “application notice” and “respondent” — are intended to assist in simplifying and standardising, to the greatest extent possible, court procedures and forms in civil proceedings. The word “applicant” could be used generally to describe any person bringing civil proceedings in a Court. At present, many different terms are used, including “plaintiff” (in many proceedings for money compensation), “petitioner” (in company law and family proceedings) and “applicant” (in judicial review cases). Similarly, the word “application” could be used generally to describe the process for initiating civil proceedings in a Court and that “application notice” could be used in the appropriate statutory Rules of Court to describe any document involved in commencing civil proceedings. At present, depending on the specific context and court, various terms such as “civil process,” “civil bill”, “petition,” “summons” and “writ” are used. The Commission also considers that the word “respondent” could be used generally to describe any person served with a claim form application in civil proceedings. At present, a number of different terms are used, including “defendant” which is also used in criminal cases.

2.03 The proposed new terms are intended to make clear the distinction between parties in civil and criminal proceedings at a general level only, and would leave any other sub-divisions (and the nomenclature for pleadings and other documents produced by the parties) for statutory Rules of Court. The Commission also considers that special provision should, however, continue to be made for family proceedings, as these should not be equated with other adversarial civil proceedings.

¹ See paragraph 20 of the Introduction to the Report, above.

² See, for example, the footnote to section 304 of the Bill in Appendix A.

2.04 To provide for the greatest flexibility in any future Rules of Court, the Commission has avoided using some traditional terms to describe civil proceedings, such as “action”, “cause” “matter”, “suit” etc, but the Commission’s approach would not prevent them continuing in use in Rules of Court or in practice.

2.05 *The Commission recommends that the Courts (Consolidation and Reform) Bill should include the terms “applicant”, “application,” “application notice” and “respondent” to assist in simplifying and standardising, to the greatest extent possible, court procedures and forms in civil proceedings.*

2.06 Other examples of updating existing terminology are: (a) the use of “court bond” in place of “recognisance” as it uses more modern and understandable language; (b) “personal enforcement order” instead of “order of attachment and committal”; (c) “temporary seizure order” instead of “sequestration” and (d) “third party creditor order” instead of “garnishee order”.

2.07 In some instances, the Commission concluded that certain court titles should be retained; these include: “Central Criminal Court”, “Circuit Family Court” and “Children Court”. The Commission considered that these were so well known both in legal circles and the media that it was appropriate to retain them.

(2) Provisions concerning the Court of Criminal Appeal (sections 18 to 21 and 296 to 304 of Bill)

2.08 In the Consultation Paper, the Commission considered aspects of the jurisdiction of the Court of Criminal Appeal, notably whether its jurisdiction might be transferred to the Supreme Court and the requirement to obtain leave to appeal.³

2.09 In preparing the Report, the Commission concluded that the policy intention behind sections 4 and 5 of the *Courts and Court Officers Act 1995*, which propose vesting the jurisdiction of the Court of Criminal Appeal and Courts-Martial Appeal Court in the Supreme Court (these sections have never been commenced) can now be regarded as having been, in effect, superseded by subsequent events. The implementation of such a transfer would be impractical having regard to the caseload of the Supreme Court and that of the Court of Criminal Appeal. Although not definitive as indicators of current policy, the Commission notes that new functions have been conferred on the Court of Criminal Appeal by the *Criminal Procedure Act 2010*. Equally, although no decision has yet (November 2010) been taken on the establishment of a Court of Appeal, recommended in the *2009 Report of the Working Group on a Court of Appeal*, which would deal with civil and criminal appeals, the Commission has concluded that the draft Bill should incorporate the current provisions concerning the jurisdiction of the Court of Criminal Appeal. This would have the added advantage that, in the event that a Court of Appeal was established at some point in the future, the essential structure of the draft Bill would be preserved, in line with the Commission’s general principles in preparing this Report.⁴

2.10 Assuming that the requirement of leave to appeal is abolished entirely, as recommended in the *2003 Report of the Working Group on the Jurisdiction of the Courts: Criminal Jurisdiction of the Courts*, (an approach favoured by the Commission, and incorporated into the draft Bill) the possibility of summary determination by the Court of Criminal Appeal would no longer be relevant to applications for leave. The version proposed in the draft Bill would allow notices of appeal to be entered for summary determination, not by the Registrar, but by the Chief Justice or, if he or she chose, another judge nominated by him or her.

2.11 The Commission’s approach in the draft Bill, which takes account of the recommendation in the *2003 Report of the Working Group on the Jurisdiction of the Courts: Criminal Jurisdiction of the Courts*,⁵ is that if the Chief Justice or other nominated judge (not the Registrar) on considering the grounds of appeal, considers that the appeal is frivolous or vexatious, the appeal can be entered before the full court for summary determination (which operates as a workable filtering mechanism) and if not dismissed, the appeal would then be heard in the ordinary way.

³ See paragraphs 3.178 to 3.200 of the Consultation Paper.

⁴ See paragraph 20 of the Introduction to this Report.

⁵ See paragraph 646 of the 2003 Report.

2.12 The proposal in the Bill involves the discontinuance of the requirement of a certificate of leave to appeal to the Court of Criminal Appeal by the trial judge (or by the Court of Criminal Appeal itself on appeal). In practice, the two-stage process envisaged by the provision as originally formulated is telescoped. Almost invariably, leave to appeal is refused and the appeal against the refusal of leave either results in the Court of Criminal Appeal refusing leave and thereby bringing the possibility of appeal to an end or treating the hearing of the application for leave as the hearing of the appeal itself and making orders accordingly.⁶

2.13 *The Commission recommends that the Courts (Consolidation and Reform) Bill should include provisions setting out the current jurisdiction of the Court of Criminal Appeal and Courts-Martial Appeal Court, but that the requirement for leave to appeal should be removed.*

(3) Non-exhaustive statement of High Court civil jurisdiction (section 24 of Bill)

2.14 In preparing the Report, the Commission considered that it would be appropriate to include in the draft Bill a non-exhaustive statement of the jurisdiction of the High Court in civil proceedings. The Constitution confers “full” jurisdiction on the High Court and, to that extent, such a listing in the Bill is not necessary in the strict sense, but the Commission concluded that a listing is appropriate in the interests of transparency, having regard to the general principles underlying the Bill. In any event, the listing is expressed as not limiting the Court’s constitutional jurisdiction.

2.15 Another reason why these sections are desirable is that, since the *Courts (Supplemental Provisions) Act 1961*, elements of the Circuit Court’s jurisdiction have been expressed as jurisdiction exercised concurrently with the High Court. If the scope of the High Court’s relevant jurisdiction is opaque, this affects the description of the Circuit Court’s relevant concurrent jurisdiction. In other words, the description of the jurisdiction is not necessary for the purposes of the High Court, but is necessary for the purposes of the Circuit Court. The Commission considers that it is more sensible and transparent to describe these jurisdictions in the context of the High Court rather than in the context of the Circuit Court.

2.16 In identifying “significant” jurisdictions, the Commission has had regard to the *Rules of the Superior Courts 1986* (on the assumption that if cases of the relevant kind are sufficiently significant to be regulated in Rules of Court, they should be considered a “significant” element of jurisdiction).

2.17 As to the description of what is proposed to be entitled the “care and protection” jurisdiction (see section 25 of the Bill), the Commission considered that it is plainly desirable that the wardship jurisdiction currently regulated under the *Lunacy Regulation (Ireland) Act 1871* would be described in modern language. The proposed description assumes that the Oireachtas will enact legislation along the lines of *Scheme of the Mental Capacity Bill 2008* published by the Department of Justice and Law Reform, which would implement recommendations made in 2006 by the Commission.⁷

2.18 The Commission’s description of judicial review in sections 26 to 30 of the Bill are modelled on sections 18 to 22 of the *Judicature (Northern Ireland) Act 1978*. The language of the replacement of *quo warranto* in section 28 is modelled on section 42 of Queensland’s *Judicial Review Act 1991*. This also implements a previous recommendation of the Commission to abolish *quo warranto* on the basis that it was obsolete.⁸

2.19 The Bill also provides (section 29) that an application to the High Court for the review of the detention of any person is to be based on the procedure provided for in Article 40.4.2^o of the Constitution. In effect, Article 40.4.2^o is a constitutional version of the historic remedy of *habeas corpus*, although Article 40.4.2^o does not use the phrase *habeas corpus* (although the official Index to the printed version of the Constitution does use the phrase *habeas corpus* when referring to Article 40.4.2^o). Considerable doubts have been expressed about whether the pre-1922 legislation concerning *habeas corpus* could

⁶ See the comments of Geoghegan J in *The People (DPP) v Corbally* [2000] IESC 38, and the 2003 *Report of the Working Group on the Jurisdiction of the Courts: Criminal Jurisdiction of the Courts*, paragraph 643.

⁷ *Report on Vulnerable Adults and the Law* (LRC 83-2006).

⁸ *Report on Judicial Review Procedure* (LRC 71-2004).

continue to exist side by side with the procedure in Article 40.4.2⁹. For this reason, the Bill provides that any references to *habeas corpus* should be taken to be references to the procedure under Article 40.4.2⁰ of the Constitution. Schedule 2 (which contains the Acts proposed for repeal by the Bill) also provides for the consequent repeal of the *Habeas Corpus Act 1781*¹⁰ and the *Habeas Corpus Act 1804*. The repeal of these Acts reinforces the approach that Article 40.4.2⁰ of the Constitution contains the definitive form of *habeas corpus* in Irish law.

2.20 *The Commission recommends that the Courts (Consolidation and Reform) Bill should include a non-exhaustive statement of the jurisdiction of the High Court in civil proceedings.*

(4) Non-exhaustive statement of Circuit Court civil jurisdiction, including in equitable matters (sections 40 to 45 of Bill)

2.21 In the Consultation Paper, the Commission considered the issue of the Circuit Court's jurisdiction, including its general monetary jurisdiction and jurisdiction in land-related and equitable matters.¹¹

2.22 In preparing the Report, the Commission concluded that the Third Schedule to the *Courts (Supplemental Provisions) Act 1961* (exercise of jurisdiction concurrently with the High Court, but subject to monetary limits) should be retained as the Table to section 45 of the Bill. The Commission's approach to the British and Saorstát Éireann statutes specified in the Fourth and Fifth Schedules to the 1961 Act is to include these as a segment of the consequential amendments. The Commission considers that it may be confusing to read adaptations into these old statutes and, while the internal consistency of these statutes may be slightly disturbed by having individual sections drafted in modern language, it seems more effective to impose the provisions as to Circuit Court jurisdiction and its exercise by a particular judge of the Circuit Court directly into these statutes rather than have them modified by adaptation.

2.23 The Commission considered concerns that were expressed during the consultation process after the Consultation Paper was published about the transparency for parties in establishing whether the Circuit Court has jurisdiction in property matters, because of the archaic origins of the rateable valuation threshold and the possible difficulty of objectively establishing market value, as against the €3 million threshold introduced by the *Civil Liability and Courts Act 2004*, which has not at the time of writing (November 2010) been commenced. The Explanatory Memorandum to the 2004 Bill provided that the provisions of what became the 2004 Act "address the implications of the *Valuation Act 2001* for court jurisdiction in property matters, mainly insofar as the Circuit Court is concerned. That jurisdiction is at present determined by reference to rateable valuation and gives the Circuit Court jurisdiction where the rateable valuation does not exceed €253.95. The *Valuation Act 2001* provides for a new valuation system which will more accurately reflect current property values and the courts' jurisdiction needs to be modified to reflect this. These sections change the jurisdiction limit of €253.95 (£200) rateable valuation to a market value of €3,000,000.

2.24 The Commission notes that the Circuit Court is somewhat unusual by international standards in having a full equitable jurisdiction up to a monetary limit. The practice in many other common law jurisdictions, including several states of the United States, is to confine equitable jurisdiction entirely to superior courts (such as the High Court), so as to require the proceedings to be brought in a superior court if equitable relief is sought or an equitable interest in real property is potentially in issue, so no valuation based threshold is needed; some that do allow the proceedings to be brought in the lower court based on the plaintiff's asserts that the valuation of the property is no more than the threshold, without independent valuation. Either of these approaches is likely to be unsatisfactory in Ireland: without reference to an objective standard or the possibility of independent evidence (such as an auctioneer's independent valuation), it might be considered necessary to empower the Circuit Court to decline jurisdiction (much as the District Court does if it concludes that a criminal offence is not minor), which

⁹ See the discussion in Hogan and Whyte *JM Kelly: The Irish Constitution* (4th ed, 2003), paragraphs 7.3.342-7.4.358.

¹⁰ This is sometimes referred to as the *Habeas Corpus Act 1782*, but the *Statute Law Revision Act 2007* clarifies that 1781 is the correct year for the Act.

¹¹ See paragraph 3.214 of the Consultation Paper.

would be uncertain, inconvenient and involve potential for additional cost where cases were opened but later sent forward to a higher court. Reliance could be placed on some public valuation system other than rateable valuation. It would however be premature to anticipate such a prospect necessarily having utility in terms of the Circuit Court jurisdiction threshold.

2.25 Other suggestions referred to during the consultation process included making the limit referable to floor area or acreage. Any such fundamental change would require very careful consideration so that the inherent logic of the threshold would not be breached in particular cases, so as to have higher value cases confined to the Circuit Court and lower value cases in the High Court.

2.26 In the absence of an obvious alternative which would appear readily workable and capable of securing widespread support, the Commission has concluded that nothing further is appropriate for the present, other than noting the concern but maintaining the current provisions.

2.27 A particular issue is whether the monetary jurisdictional limit of the Circuit Court should now: (a) generally be increased to €100,000 as intended by section 13 of the *Courts and Court Officers Act 2002*, (but which has not been commenced) subject to a lower limit of €50,000 in personal injury claims and the distinct €50,000 limit in defamation actions (in the *Defamation Act 2009*) or (b) left at its existing level of c.€38,092 or some near round figure, such as €40,000, subject to the distinct limit in defamation actions. The Commission has concluded that option (a) should be included in the Bill, as recommended by the 2006 *Report of the Legal Costs Implementation Advisory Group*.

2.28 *The Commission recommends that the Courts (Consolidation and Reform) Bill should include a non-exhaustive statement of the jurisdiction of the Circuit Court, and that the Circuit Court's general monetary limit in civil proceedings be increased to €100,000 as intended by section 13 of the Courts and Court Officers Act 2002 (but which has not been commenced), subject to a lower limit of €50,000 in personal injury claims.*

(5) Non-exhaustive statement of District Court jurisdiction (sections 57 to 68 of Bill)

2.29 In preparing the Report, the Commission also considered that it would be appropriate to include in the draft Bill a non-exhaustive statement of the jurisdiction of the District Court.

2.30 While the Commission considered producing a listing (which, it is noted, would substantially be declaratory) of primary legislation by which jurisdiction is conferred on a particular judge of the District Court, this has not been done in the draft Bill, principally on the basis that exhaustiveness of such a listing could not readily be guaranteed and, to be complete, regard would also need to be had to relevant secondary legislation, which would make the scale of task disproportionate to the likely benefit.

2.31 A variation on this theme would be to configure a general formula or formulae in specific areas which might reduce the need for future legislation to include specific provision in this regard: for example, that an appeal to the District Court from any notice served by any public authority (now very common) would, unless otherwise provided, be to the judge assigned to the court district in which the notice was served, or in which any person named in the notice resides or carries on business, or where any premises to which the notice relates are situated.

2.32 As with the Circuit Court, a particular question is whether the monetary jurisdictional limit of the District Court in civil proceedings should now: (a) generally be increased to €20,000 as intended by section 14 of the *Courts and Court Officers Act 2002* (but which has not been commenced) or (b) left at its existing level of c.€6,349 (the euro equivalent of £5,000, set out in the *Courts Act 1991*) or some near round figure, such as €7,500, which would approximate to a "stand still" amount by reference to the figure set in 1991.

2.33 Having regard to the nature of the District Court as one of summary jurisdiction, the maximum levels of fines imposable by the District Court and what is understood might be the impracticability of a significant increase in civil jurisdiction, having regard to the Court's existing volume of criminal business, the draft Bill takes option (b).

2.34 *The Commission recommends that the Courts (Consolidation and Reform) Bill should include a non-exhaustive statement of the jurisdiction of the District Court, and that the District Court's general monetary limit in civil proceedings be increased to €7,500.*

(6) Judicial control of civil proceedings, judicial case management and case conduct principles (sections 75 to 77 and section 259 of Bill)

2.35 In preparing the Report, the Commission considered that, in respect of civil proceedings, the draft Bill should reflect one of the general principles underlying the project, enhancing the effectiveness of the administration of justice in the courts.¹² In this context, the Commission was conscious that the *Second Report of the Working Group on a Courts Commission* and the *Sixth Report of the Working Group on a Courts Commission*¹³ had recommended that the principle of judicial case management should be incorporated into the organisation of court services. Similarly, the 2003 *28th Report of the Committee on Court Practice and Procedure: Rules of Court Committees*¹⁴ had recommended that the statutory Rules of Court should, among other matters, provide for and support, where possible, the development of case management.

2.36 The Commission is conscious that, in light of these recommendations, the courts have incorporated judicial case management into many aspects of judicial work in recent years and that it has also been incorporated into relevant Rules of Court. This has included the Rules of Court concerning the Commercial Law List in the High Court¹⁵ and in family proceedings in the Circuit Court.¹⁶ Indeed, as the Reports of the Working Group on a Courts Commission had noted, judicial case management has developed in recent decades in many other common law States, including Australia, New Zealand, the United Kingdom and the United States of America. The Commission is conscious that, in the United Kingdom, the development of judicial case management followed the recommendations made in 1996 by Lord Woolf in *Access to Justice, Final Report*. The Commission accepts the importance attached by Lord Woolf to judicial case management in contributing to an efficient and effective civil justice system, which is already evidenced by the statutory Rules of Court concerning the Commercial Law List in the High Court and in family proceedings in the Circuit Court. The Commission also accepts that judicial case management should be developed in the light of experience and in specific contexts where it is appropriate.¹⁷ In that respect, the relevant provisions in the draft Bill provide for a degree of flexibility in the development of case management in the courts. The Commission adds that, in the Irish context, judicial case management also reflects the need to ensure compliance with the right of access to the courts under Article 40.3 of the Constitution, and comparable rights and obligations under Article 6 of the European Convention on Human Rights.

2.37 In preparing the draft Bill, therefore, the Commission concluded that it was important to include specific provisions on judicial case management in civil proceedings.¹⁸ This builds on the existing statutory provisions (such as in section 65 of the *Court Officers Act 1926*) which confirm that a judge has

¹² See paragraph 20 of the Introduction to this Report.

¹³ The Reports of the Working Group led to the establishment of the Courts Service, under the *Courts Service Act 1998*.

¹⁴ Available at www.courts.ie.

¹⁵ Order 63A of the *Rules of the Superior Courts 1986*, inserted by the *Rules of the Superior Courts (Commercial Proceedings) 2004* (SI No.2 of 2004).

¹⁶ *Circuit Court Rules (Case Progression in Family Law Proceedings) 2008* (SI No.358 of 2008).

¹⁷ For discussion on the experience in the UK of the “Woolf reforms,” introduced by the UK *Civil Procedure Act 1997* and the *Civil Procedure Rules 1998* (CPR), see Slapper and Kelly, *The English Legal System* (9th ed, Cavendish, 2008), pp.366-369. On the development of judicial case management in Ireland, see *Byrne and McCutcheon on the Irish Legal System* (5th ed, Bloomsbury Professional, 2009), paras 6.62-6.72.

¹⁸ The Commission’s proposals in the draft Bill on judicial case management in civil proceedings are without prejudice to comparable provisions that have been developed in the context of criminal trials, as to which see the Commission’s *Report on Prosecution Appeals and Pre-Trial Hearings* (LRC 81-2006), Chapter 4.

control of the conduct of the judicial business of a Court (this is reiterated in section 77 of the draft Bill). This is also reflected in comments made in the Supreme Court in 2009 that:¹⁹

“There is a constitutional right to access the courts. However, it is not an absolute right. With that right comes responsibility. For example, if there has been an excessive amount of litigation initiated by a person, or on his behalf, the courts have an inherent discretion, and indeed a duty, to review the use of court time. Court time is limited and there is a duty to use it justly.”

2.38 Thus, the draft Bill (section 76) provides that a court shall, so far as is practicable, in the conduct of civil proceedings: (a) ensure that the parties conduct the proceedings in accordance with case conduct principles (discussed below), (b) have regard to the need to allot its time and its resources appropriately among all of the proceedings the Court has to hear and determine and (c) deal with the proceedings in a manner that is proportionate to their nature, and the parties’ resources. Indeed, as already mentioned, this is an important part of one of the Commission’s general principles underlying the consolidation and reform of the Courts Acts, namely, to facilitate the effective administration of justice in the courts.

2.39 Complementing judicial case management, the Commission is equally conscious of the important role of the parties in civil proceedings. The Commission thus concluded that those involved in civil proceedings must accept the general function of the court and judge to control the conduct of proceedings. The Commission thus includes in the draft Bill (in section 75) an obligation on parties to comply with “case conduct principles,” which are defined to mean that: (a) issues between parties should, at as early a stage as possible, be identified, defined, narrowed (where possible) and prioritised or sequenced; (b) proceedings should be conducted in a manner that is just, expeditious and likely to minimise the costs of those proceedings; and (c) the parties should be encouraged to use alternative dispute resolution procedures where appropriate, to settle the whole or part of the proceedings where practicable, and be facilitated in doing so. The reference to alternative dispute resolution also complements the Commission’s *Report on Alternative Dispute Resolution: Mediation and Conciliation*,²⁰ which proposes a general legislative framework for mediation and conciliation.

2.40 *The Commission recommends that the Courts (Consolidation and Reform) Bill should include provisions on judicial control of civil proceedings, judicial case management and case conduct principles. The Commission recommends that, in respect of judicial case management, a court shall, so far as is practicable, in the conduct of civil proceedings: (a) ensure that the parties conduct the proceedings in accordance with case conduct principles, (b) have regard to the need to allot its time and its resources appropriately among all of the proceedings the Court has to hear and determine and (c) deal with the proceedings in a manner that is proportionate to their nature, and the parties’ resources. The Commission also recommends that “case conduct principles” require that: (a) issues between parties should, at as early a stage as possible, be identified, defined, narrowed (where possible) and prioritised or sequenced; (b) proceedings should be conducted in a manner that is just, expeditious and likely to minimise the costs of those proceedings; and (c) the parties should be encouraged to use alternative dispute resolution procedures where appropriate, to settle the whole or part of the proceedings where practicable, and be facilitated in doing so.*

(7) General powers of courts (sections 75 to 128 (Part 2, Chapters 6 to 11) of Bill)

2.41 In preparing the Report, the Commission considered that the draft Bill should incorporate the most significant powers of courts which are exercisable in civil and criminal cases. These have been included in Part 4, Chapters 6 to 11, of the Bill.

2.42 Part 2, Chapter 6, identifies powers common to all proceedings, for example, the power to summon witnesses, control over proceedings, contempt of court and adjournment.

2.43 Part 2, Chapter 6 includes (in section 80) a proposal to place on a statutory footing the existing power of the High Court and the Supreme Court to provide that any person who, without any reasonable ground, has repeatedly instituted vexatious legal proceedings in any Court, may not commence, or

¹⁹ *Bula Ltd and Ors v Crowley and Ors* [2009] IESC 35, at paragraph 59 of the judgment of Denham J (Kearns and McGovern JJ concurring).

²⁰ LRC 98-2010.

continue, proceedings in any Court without the leave of the High Court. Such a restriction is currently commonly referred to as an *Isaac Wunder Order*.²¹

2.44 Part 2, Chapter 7, identifies powers pre-trial and at trial and powers of disposal (remedies) in all civil proceedings. The proposed approach of harmonising the expression of powers has the effect of giving the District Court a direct power to enforce its own orders by contempt process, which had been subject to some doubt.

2.45 Part 2, Chapter 7 also contains a reference to mediation (section 96), and as already noted this complements the Commission's *Report on Alternative Dispute Resolution: Mediation and Conciliation*,²² which proposes a general legislative framework for mediation and conciliation, as well as for cross-border mediation under the 2008 EU Mediation Directive, 2008/52/EC.

2.46 Part 2, Chapter 8, (supplemented by Schedule 7 on execution) identifies post-trial (enforcement) powers in all civil proceedings. Part 2, Chapter 9 deals with special cross-border arrangements arising from European Union enactments, including recognition and enforcement of EU judgments, European Enforcement Orders and European Orders for Payment. Part 2, Chapter 10 mirrors Chapters 7 and 8 for criminal proceedings.

2.47 Part 2, Chapter 11 deals with special cross-border arrangements on the criminal side, including some arising from European Union enactments, such as European Arrest Warrants, but also extradition generally and execution of agreements for the transfer of persons serving sentences where an Irish court has a role to play.

2.48 The Commission concluded that the most coherent approach was to set out powers in a broadly "chronological" sequence according to when they were most likely to be invoked or used (remedies and execution being regarded as post-trial powers). In this respect, the provisions on judgment interest follow those on judgment. As rules on interest are mandatory, rather than discretionary, they are not strictly powers but the Commission concluded that they sit comfortably in this part of the Bill.

2.49 *The Commission recommends that the Courts (Consolidation and Reform) Bill should include provisions on the general powers exercisable by the courts in civil and criminal cases, including matters such as the power to summon witnesses, remedies in civil cases (including damages and injunctions and enforcement of judgments).*

(8) Legal costs (sections 104 to 106 and Schedule 7 of Bill)

2.50 The Commission considered that, in the wider context of general powers discussed above, the draft Bill should also set out the rules of general application concerning legal costs.

2.51 The draft Bill thus brings together (sections 104 to 106 and Schedule 7) the general rules and principles concerning costs, including the taxation of costs in contentious business (essentially litigation) by taxing offices (Taxing Masters and County Registrars). The 2007 *Report of the Legal Costs Implementation Advisory Group* recommended significant reform of the arrangements concerning the regulation of costs. The Government has committed to implementing the thrust of the 2007 Report, but no draft legislation has been published on this matter at the time of writing (November 2010). Because such detailed provisions are amenable to inclusion in a Schedule, and in light of possible pending legislation in this area, the Commission concluded that the detailed rules concerning taxation of costs should be included in a Schedule to the Bill (Schedule 7). This would facilitate any legislative implementation of the 2007 Report without altering the essential architecture of the Bill.

2.52 The rules as to the taxation of costs in non-contentious business are not included, but the language of the *Attorneys and Solicitors (Ireland) Act 1849* and sections 4 and 10 of the *Attorneys and Solicitors (Ireland) Act 1870*, as they extend to contentious business (as defined in the *Solicitors (Amendment) Act 1994*), has been modified and modernised and included in the Bill. The *Attorneys and Solicitors (Ireland) Act 1849* and sections 4 and 10 of the *Attorneys and Solicitors (Ireland) Act 1870* remain in place under this approach, but confined to non-contentious legal costs (though the remaining

²¹ See Delany and McGrath, *Civil Procedure in the Superior Courts* (2nd ed, 2005), paras 14.34-14.38.

²² LRC 98-2010.

provisions of the 1870 Act would continue to apply to contentious business). Each could be replaced with provisions similar to those proposed in the Bill in relation to non-contentious business, so that the expression of the principles would be identical for both categories, but the Commission considered this to be a separate exercise, and might be considered in the context of any legislation arising from the 2007 *Report of the Legal Costs Implementation Advisory Group*.

2.53 *The Commission recommends that the Courts (Consolidation and Reform) Bill should include comprehensive provisions on legal costs, including the taxation of costs in contentious business.*

(9) Execution and enforcement of court orders (sections 112 to 122 of Bill)

2.54 In preparing the Report, the Commission considered whether the draft Bill should include provisions concerning the execution and enforcement of judgments and court orders. In terms of civil debt, the existing legislation in this area is scattered through a wide range of Acts, both pre-1922 and post-1922. This includes: the *Debtors (Ireland) Acts 1840 and 1872*, the *Judgments (Ireland) Act 1844*, the *Debtors Act 1874*, the *Enforcement of Court Orders Acts 1926 to 2009*, As well as elements of the *Maintenance Act 1920*, *Maintenance Orders Act 1994* and the *Jurisdiction of Courts and Enforcement of Judgments Act 1998*. In relation to criminal fines, it includes the *Levy of Fines Act 1823*, the *Fines Act (Ireland) 1851*, and elements of the *Fines Act 2010* (the 2010 Act had not been brought into force at the time of writing in November 2010).

2.55 The Commission concluded that, as enforcement is an integral element of the sequence in proceedings and having regard to the desirability that the draft Bill should have the architecture of a code to the extent possible, the powers and provisions in relation to enforcement of court orders should be included in the Bill.

2.56 The Commission has already published a *Consultation Paper on Personal Debt Management and Enforcement*²³ and an *Interim Report on Personal Debt Management and Debt Enforcement*²⁴ and intends to publish a final *Report on Personal Debt Management and Debt Enforcement* by the end of 2010. As this Report is likely to include recommendations for significant reform in this area, including a non-judicial debt settlement scheme, the Commission has included the current detailed provisions on debt enforcement in a Schedule (Schedule 8), which will facilitate any future reforms without affecting the integrity of the Bill's architecture.

2.57 *The Commission recommends that the Courts (Consolidation and Reform) Bill should include comprehensive provisions on execution and enforcement of court orders.*

(10) Taking of evidence abroad and in connection with foreign proceedings (sections 123 to 125 of Bill)

2.58 In preparing the Report, the Commission considered whether provisions as to evidential matters, and related matters in the general law of evidence, should be included in the draft Bill. The Commission concluded that substantive rules of evidence, such as the hearsay rule and the rules concerning documentary evidence, should not be included as these were more appropriately dealt with in a project on the reform of law of civil and criminal evidence. The Commission is already engaged in a separate project on these areas of law as part of its *Third Programme of Law Reform 2008-2014*, and intends to publish a Report on this in 2011.²⁵

2.59 A distinct, but related, issue which the Commission considered was whether to include in the draft Bill provisions dealing with the procedural aspects of taking evidence concerning proceedings in another State and, correspondingly, to order evidence concerning proceedings in Ireland to be taken abroad. This

²³ LRC CP 56-2009.

²⁴ LRC 96-2010.

²⁵ Projects 7, 8 and 11 in the Third Programme. In 2008, the Commission published a *Consultation Paper on Expert Evidence* (LRC CP 52-2008). In 2009, the Commission published a *Consultation Paper on Electronic and Documentary Evidence* (LRC CP 57-2009). In 2010, the Commission published a *Consultation Paper on Hearsay in Civil and Criminal Cases* (LRC CP 60-2010). The Commission intends to publish a Report combining these three Consultation Papers in 2011.

also concerned powers in respect of which the relevant provisions are widely scattered in many Acts, most of which are pre-1922. They include the *Evidence on Commission Act 1831*, the *Perpetuation of Testimony Act 1842*, the *Evidence by Commission Act 1843* and the *Foreign Tribunals Evidence Act 1856*. The Commission concluded that these provisions should be included, and updated to reflect current conditions.

2.60 *The Commission recommends that the Courts (Consolidation and Reform) Bill should include comprehensive provisions dealing with the procedural aspects of taking evidence concerning proceedings in another State and, correspondingly, to order evidence concerning proceedings in Ireland to be taken abroad.*

(11) EU-related and international instruments on evidence and recognition of judgments (sections 124, 126 to 128 of Bill)

2.61 In preparing the Report, the Commission concluded that, consistently with the inclusion of the provisions on taking of evidence just discussed, the draft Bill should include EU-related matters concerning the taking of evidence and the recognition of judgments given in other EU States involving civil and commercial matters.

2.62 The main EU-related laws covered in the draft Bill (section 124 and sections 126 to 128) are: (a) the “Insolvency Regulation,” Regulation (EC) No.1346/2000 on insolvency proceedings; (b) the “Brussels I Regulation,” Regulation (EC) No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; (c) the “Evidence Regulation,” Regulation (EC) No. 1206/2001 on cooperation in the taking of evidence in civil or commercial matters; (d) the “European Enforcement Order Regulation,” Regulation (EC) No. 805/2004 creating a European Enforcement Order for uncontested claims; (e) the “European Order for Payment Regulation,” Regulation (EC) No. 1896/2006 creating a European Order for Payment procedure; and (f) the “Maintenance Regulation,” Regulation (EC) No. 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. Provision has already been made in Regulations made under the *European Communities Act 1972* for the administrative arrangements to ensure these instruments have practical effect in Irish law, so that the draft Bill does not involve any substantive change in this respect, but rather involves consolidation of existing arrangements into primary legislation to ensure transparency.

2.63 The Commission also concluded that the draft Bill should include other international instruments of a similar type. This includes, for example, the 1965 Hague Convention on Service of Judicial and Extrajudicial Documents.

2.64 *The Commission recommends that the Courts (Consolidation and Reform) Bill should include comprehensive provisions dealing with the procedural aspects of taking evidence and recognition of judgments in EU-related matters and comparable international instruments.*

(12) Transfer of criminal cases between Central Criminal Court and Circuit Court (section 152 of Bill)

2.65 In the Consultation Paper, the Commission considered the transfer of criminal cases between the Central Criminal Court (High Court) and the Circuit Court.²⁶

2.66 As noted in the Consultation Paper, the 2003 *Report of the Working Group on the Jurisdiction of the Courts: Criminal Jurisdiction of the Courts* had recommended that certain criminal matters which are currently within the exclusive jurisdiction of the Central Criminal Court (High Court) or the Circuit Court could be transferred between each court for trial depending on, for example, any backlog in either court.

2.67 While the Commission accepts that there may be good reasons of efficiency to support this approach, it also raises issues of the appropriate labelling of some offences. Thus, murder, rape and certain competition cases are currently exclusively triable in the Central Criminal Court (the High Court), which indicates that the Oireachtas has labelled the high seriousness of these offences. While a good argument can be made that these cases could or should be dealt with in the Circuit Criminal Court if a

²⁶ See paragraphs 3.312 to 3.349 of the Consultation Paper.

major backlog were to develop in the Central Criminal Court, the Commission accepts that the current arrangements can be supported as making a clear public statement that these are among the most serious cases in the criminal code. For that reason, the Commission has concluded that the draft Bill should reflect the current arrangements concerning these offences (section 152 on transfer of cases, and sections 32 and 52 concerning jurisdiction in indictable offences).²⁷

2.68 *The Commission recommends that the Courts (Consolidation and Reform) Bill should include the current provisions concerning those criminal offences within the exclusive jurisdiction of the Central Criminal Court (High Court).*

(13) Irish-speaking circuits and districts (sections 165 and 175 of Bill)

2.69 In preparing the Report, the Commission considered the existing provisions in sections 44 and 71 of the *Courts of Justice Act 1924*, which are intended essentially to support the availability of an Irish-speaking judge in Circuits and Districts including Gaeltacht areas, in particular in light of the requirements of sections 8 and 9 of the *Official Languages Act 2003* (which deal with a person choosing to use a national language of his or her choice in dealings with a public body).

2.70 The Commission notes that sections 44 and 71 of the 1924 Act are not in their terms intended to exhaust the cases in which an Irish-speaking judge is available. The Commission understands that where the judge permanently assigned to a Circuit or District (whether or not including a Gaeltacht area) cannot hear a case in Irish without an interpreter, this is sometimes dealt with by the temporary assignment to that Circuit or District of a judge who can. The Commission also notes that, in many such cases, an interpreter may also be required in the interest of witnesses, but the fact that a judge has Irish can expedite the hearing and reduce the risk of mistranslation or other misunderstanding.

2.71 The Commission concluded that, in drafting the Bill appended to the Report, the existing provisions in the 1924 Act could be enhanced, in particular having regard to the recent provisions on Irish language proficiency for legal practitioners introduced in the *Legal Practitioners (Irish Language) Act 2008*, *Acht na nDlí-Chleachtóirí (An Ghaeilge) 2008*. Thus, the Bill provides (in sections 165 and 175) that, in a designated Gaeltacht area, that is, an Irish speaking area, then *either*: (a) an assigned judge of the Circuit Court or, as the case may be, the District Court, must be registered in Clár na Gaeilge (Óstaí an Rí) (the Irish Language Register (King's Inns)) or in Clár na Gaeilge (An Dlí-Chumann) (the Irish Language Register (Law Society)) or (b) where no such judge is available, the assigned judge must possess sufficient knowledge of, or has sufficient experience of practising in, the Irish language as enables him or her to dispense with the assistance of an interpreter when conducting the business of the Court in the national language, Irish. The Bill also provides that these provisions do not limit any right or obligation under section 8 or section 9 of the *Official Languages Act 2003*.

2.72 *The Commission recommends that the Courts (Consolidation and Reform) Bill should include provisions that a judge of the Circuit Court or District Court in Gaeltacht areas would either (a) be registered in the Irish language registers provided for under the Legal Practitioners (Irish Language) Act 2008, Acht na nDlí-Chleachtóirí (An Ghaeilge) 2008, or (b) possesses sufficient knowledge of, or have sufficient experience of practising in, the Irish language to enable him or her to conduct court proceedings in the Irish language without the assistance of an interpreter. The Commission also recommends that these provisions would be without prejudice to any right or obligation under sections 8 or 9 of the Official Languages Act 2003.*

(14) District Court Areas (section 168 of Bill)

2.73 In preparing the Report, the Commission considered the distribution of District Court business, and concluded that the sub-division of District Court Districts into Areas (principally for the purpose of assigning local business to the local sitting) was unnecessarily rigid and could be inefficient.

²⁷ The Commission also understands that the relevant recommendations in the 2003 *Report of the Working Group on the Jurisdiction of the Courts: Criminal Jurisdiction of the Courts* are currently (November 2010) under consideration by Government.

2.74 Some confusion has existed as to whether District Court areas were an instrument to divide jurisdiction (in *O'Brien v O'Halloran*²⁸ it was decided they are not) and a Statutory Instrument is currently required to amalgamate or sub-divide areas or to reschedule regular sittings. As relevant information about the places and times of District Court sittings and the local areas intended to be covered by them can now be communicated much more effectively direct to interested persons (by internet, e-mail etc), this rigid approach no longer seems necessary, and a more fluid approach to distribution of District Court business within Districts is justified. The draft Bill (section 168) proposed an approach to such sub-division which is essentially permissive, though potential impacts on use of references to District Court Areas in other legislation, and in Rules of Court, is resolved by authorising the Courts Service to establish administrative sub-divisions of District Court Districts for operational purposes.

2.75 *The Commission recommends that the Courts (Consolidation and Reform) Bill should include a permissive provision authorising the Courts Service to establish administrative sub-divisions of District Court Districts, called Areas, for operational purposes.*

(15) Administration of justice in public, the in camera rule, and anonymity orders (sections 194 to 208 of Bill)

2.76 In the Consultation Paper, the Commission considered the current legislative provisions on the administration of justice otherwise than in public, often referred to as *in camera* hearings.²⁹

2.77 In preparing the Report, the Commission noted that the provisions to be included in the draft Bill would complement the requirement in Article 34.1 of the Constitution of Ireland that “[j]ustice shall be administered in courts established by law... and, save in such special and limited cases as may be prescribed by law, shall be administered in public.”

2.78 The draft Bill sets out the special and limited cases, referred to in Article 34.1 of the Constitution, in which a court may deal with a case otherwise than in public. Two phrases have, traditionally, been used for this purpose, “a hearing *in camera*” and “a hearing in chambers” and the specific legislative provisions concerned have used both, giving rise to the risk that some may consider that they mean different things. The draft Bill (section 194) proposes to avoid any confusion on this important matter; it provides that, where a court hearing otherwise than in public under section 196 concerns judicial business (that is, civil or criminal proceedings) it may be referred to as “a hearing in *camera*,” while a hearing by a judge that does not involve judicial business or is otherwise for a particular policy reason prescribed as one which is heard privately and not in an ordinary courtroom may be referred to as “a hearing in chambers.” The Latin word *camera* means a chamber or room (derived from the Greek *kamara*, meaning a vaulted room; *chambre* is, of course, also the modern French word for room), and a judge’s private office is often called his or her chambers. In effect, therefore both traditional phrases used for a court hearing other than in public have the same meaning, but the proposed distinction in the draft Bill (section 196) may be of use in clarifying the different types of hearing that are held otherwise than in public.

2.79 The draft Bill (section 196) then sets out the following specific cases in which a court may currently deal with a case otherwise than in public: (a) applications of an urgent nature for an inquiry under Article 40.4.2^o of the Constitution, for bail, for any injunction or in judicial review proceedings seeking an order of prohibition; (b) family proceedings; (c) in proceedings under the care and protection jurisdiction (this phrase anticipates the enactment by the Oireachtas of legislation along the lines of the *Scheme of the Mental Capacity Bill 2008*, which proposes to replace the wardship system); (d) proceedings concerning a child (a person under 18 years); (e) proceedings involving the disclosure of a secret manufacturing process; (f) any other cases prescribed by this Act or by any other Act of the Oireachtas, including in any case where any hearing is to be held in camera. Section 196 also provides that, to avoid any doubt, nothing in the Bill requires any business of a court that does not involve the administration of justice to be held in public. This largely reflects existing statutory provisions.

²⁸ [2001] 1 IR 556.

²⁹ See paragraphs 3.62 to 3.114 of the Consultation Paper.

2.80 The draft Bill also deals with: persons permitted to be present at such hearings; the delivery of decisions and written judgments in such cases and reporting on such cases; special cases where such proceedings are heard otherwise than in a normal courtroom; and general provisions on restrictions on the publication of certain information where the proceedings are heard in public. Again, these provisions largely reflect existing practice, although many are new in a Courts Bill.

2.81 In preparing the draft Bill, the Commission also considered the provisional recommendation made in the Consultation Paper³⁰ that a court should be empowered to provide that the identity of the person should not be disclosed in civil proceedings. The Consultation Paper noted that such arrangements are in place in many States, and apply regardless of whether the proceedings are covered by the *in camera* rule. The Commission has concluded that such a power should be conferred on the High Court, whether the case is being heard in the High Court or any other court. The draft Bill thus provides (section 206) that the High Court may make an anonymity order, an order that the identity of the person should not be disclosed in civil proceedings, whether the case is being heard in the High Court or any other court. This section introduces the possibility of allowing a person to remain anonymous in certain civil proceedings by using a pseudonym or initials (in this respect, names traditionally used include John Doe or Jane Doe). The High Court is empowered to make such an order only where it is satisfied that the person is not otherwise entitled to have his or her identity protected in the proceedings by virtue of this Act or any other enactment and, having regard to the damage which might be suffered by the applicant (or by another person) if the applicant's identity is disclosed in the proceedings, that the needs of justice require that the party should not be identified. Such an anonymity order is intended to protect the privacy and dignity of a person in sensitive civil proceedings.

2.82 *The Commission recommends that the Courts (Consolidation and Reform) Bill should provide that the High Court may make an anonymity order, an order that the identity of the person should not be disclosed in civil proceedings, whether the case is being heard in the High Court or any other court, on the grounds that the needs of justice require that the party should not be identified.*

(16) Cases involving trial with juries: civil and criminal (sections 209 to 214 of Bill)

2.83 In preparing the Report, the Commission considered whether to include in the draft Bill provisions concerning cases involving trial with juries, whether civil or criminal.

2.84 The Commission notes that the law on jury selection and aspects of procedure, currently set out in the *Juries Act 1976* (as most recently amended by the *Civil Law (Miscellaneous Provisions) Act 2008*), has traditionally been legislated for separately from the legislation on the jurisdiction of the courts. The Commission has concluded that the general circumstances in which a trial with a jury is to occur should be set out in the Courts Act, but that the detailed provisions on selection and procedure concerning juries should remain in a separate *Juries Act*.³¹

2.85 *The Commission recommends that the Courts (Consolidation and Reform) Bill should provide for the general circumstances in which a trial with a jury is to occur.*

(17) Criminal justice administration and criminal procedure (sections 215 to 224 of Bill)

2.86 In preparing the Report, the Commission considered to what extent it should include in the draft Bill provisions concerning criminal justice administration and criminal procedure generally. The Commission is conscious that, as with the law concerning juries, discussed above, there are a number of areas of overlap between what has traditionally been included in courts legislation and criminal procedure legislation. In broad terms, under current arrangements, the detail of summary criminal procedure (which originates in the *Petty Sessions (Ireland) Act 1851*) is regarded as belonging in courts legislation, but that the administration of and procedure in criminal proceedings on indictment, which is the subject of specialised legislation, is not.

³⁰ Paragraph 3.114 of the Consultation Paper.

³¹ As part of the *Third Programme of Law Reform 2008-2014*, the Commission has published a *Consultation Paper on Jury Service* (LRC CP 61-2010), which makes provisional recommendations to reform the selection process for juries as well as other aspects of the *Juries Act 1976*.

2.87 The Commission concluded that, while this division did not necessarily withstand close scrutiny, it was preferable in the context of the already large scale of the current project, to retain this approach. The Commission has thus included in the draft Bill provisions concerning summary criminal procedure, notably a single, integrated, procedure to commence summary criminal cases in the District Court, of which there are between 450,000 to 500,000 every year (over 300,000 of these, more than 60%, involve road traffic offences) (sections 217 to 219 of the Bill). The Commission has excluded provisions concerning criminal justice administration and criminal procedure concerning trials on indictment.³² The Commission has also included provisions on appeals in criminal cases, including on indictment, which originate both in the Courts Acts and in certain Criminal Procedure Acts. This ensures consistency with the provisions concerning appeals in civil cases.

2.88 *The Commission recommends that the Courts (Consolidation and Reform) Bill should include comprehensive provisions concerning summary criminal procedure.*

(18) Fixed charge notices (section 225 of Bill)

2.89 In the Consultation Paper, the Commission considered the current legislative provisions concerning fixed charge notices, in particular criteria for fixed charge notice systems and appeals from fixed charge notices.³³

2.90 In preparing the Report, the Commission concluded that provisions setting out criteria for fixed charge systems should not be set out in a Courts Act, and were more appropriately dealt with in legislation concerning criminal procedure, as to which see also the discussion in the previous heading, above. The Commission concluded that it was, on the other hand, appropriate to include in the draft Bill provisions dealing with appeals from fixed charge notices.

2.91 *The Commission recommends that the Courts (Consolidation and Reform) Bill should include provisions dealing with the right to appeal from fixed charge notices.*

(19) Service of court documents (sections 232 to 240 of Bill)

2.92 In preparing the Report, the Commission considered the extent to which primary legislation should regulate the mode of service of court documents or whether this should be entirely delegated to Rules of Court. The Commission concluded that the draft Bill should include a standard definition of what “constitutes” well-established forms of service (including personal service, registered post service, electronic service) for all cases, so as to support harmonisation across the jurisdictions (but without limiting the ability of a court either to inquire in any case whether service was on the facts effected or to allow substituted or other service).

2.93 It does not appear that there is any substantial justification for provisions on service in civil proceedings differing as between the Superior Courts (Supreme Court, Court of Criminal Appeals and High Court) on the one hand and the Circuit and District Courts on the other. In any event, with the modification made to section 7 of the *Courts Act 1964* by the *Civil Law (Miscellaneous Provisions) Act 2008*, there is no great substantial difference in practice.

2.94 The draft Bill mandates certain forms of service in all cases but (as at present) authorises Rules of Court to permit others. This would allow the rules to respond to new or developing technologies which might be used for service of court documents without revisiting the primary legislation.

2.95 The current provisions on service of criminal summonses reflect section 22 of the *Courts Act 1991*. The Commission is aware that there is considerable dissatisfaction in the context of District Court proceedings at the unrestricted availability of “post box service”, where section 22 of the 1991 Act allows that service of a criminal summons is deemed effective if it is merely put through the letter box of the last

³² The Commission, as part of its *First Programme of Statute Law Restatement* (as to which see the *Report on Statute Law Restatement* (LRC 91-2008)), is finalising a Statute Law Restatement of the *Criminal Procedure Act 1967* (an administrative consolidation of the 1967 Act, as amended). The *Statute Law (Restatement) Act 2002* provides that a Restatement certified by the Attorney General in accordance with the 2002 Act is *prima facie* evidence of the content of the law in the Restatement.

³³ See paragraphs 3.115 to 3.137 of the Consultation Paper.

known place of abode of the person accused. In practice, this means that there are a great many non-attendances on the return dates of criminal summonses and the judge of the District Court then either has to adjourn and direct another form of service or issue a bench warrant. Many cases proceed *in absentia*, on an adjourned date, and the Commission understands that there are many cases where the person accused appears, often after the issue of a default warrant on non-payment of a fine imposed *in absentia*, applying to set aside the proceedings.

2.96 While a facility to set aside proceedings should of course be available, it is desirable that it would be used in a relatively small number of cases. It is understood that this mechanism is availed of frequently, which consumes considerable court time. Therefore, the availability of “post box service” has been removed entirely (section 240).

2.97 *The Commission recommends that the Courts (Consolidation and Reform) Bill should include comprehensive provisions dealing with service of courts documents in civil and criminal proceedings, which should be drafted in a permissive manner, thus allowing for flexibility in specific contexts.*

(20) Rights to be heard in court (section 250 of Bill)

2.98 In preparing the Report, the Commission concluded that it was appropriate to include in the draft Bill a wide-ranging provision concerning rights of audience, that is, who may appear, address and make submissions to a court in civil and criminal proceedings. The draft Bill (section 250) includes those categories of legal practitioners who have a right of audience. These would obviously include practising barristers and solicitors, and litigants in person, though not a representative of a body corporate.³⁴

2.99 The provisions in the draft Bill do not constitute an exhaustive list of those who may have rights of audience, as the High Court at least may confer a right of audience on some other person, in some cases subject to conditions. This follows from the decision in *Coffey v Tara Mines Ltd*,³⁵ where it was held that, in rare and exceptional cases, the court has an inherent jurisdiction to authorise an unqualified advocate to represent a litigant. In that case, the plaintiff’s wife was permitted to represent him, the plaintiff being incapacitated and having been unsuccessful in finding a solicitor to represent him.

2.100 *The Commission recommends that the Courts (Consolidation and Reform) Bill should include a wide-ranging provision concerning rights of audience in the courts.*

(21) Rules of Court (sections 257 to 269 of Bill)

2.101 In the Consultation Paper, the Commission considered the current legislative provisions concerning the making of Rules of Court, and provisionally recommended that general guiding principles as to the drafting of Rules of Court should be set out in primary legislation.³⁶

2.102 In preparing the Report, the Commission reiterates and confirms that view, and in this respect has taken into account the wide-ranging recommendations made in 2003 in the 28th Report of the Committee on Court Practice and Procedure, *Rules of Court Committees*.³⁷ The draft Bill (section 259) thus provides that, in preparing rules of court, each Rules of Court Committee is to have regard to the following considerations: (a) rules of court should provide simple and efficient Court procedures, consistently with the requirements of justice; (b) rules of court should use plain language, and differences among the procedures and terms used in different Courts for similar matters should be avoided if possible; (c) rules of court should encourage the use of alternative dispute resolution procedures, where appropriate, and should encourage expeditious conduct of proceedings and discourage and, where appropriate and just, penalise delay by a party, so as to help minimise the cost of litigation; (d) rules of court should provide for and support, where possible, the development of case management, in accordance with the case conduct principles specified in section 75 of the Bill and (e) where practicable, rules of court should regularly be reviewed. The draft Bill also reiterates current arrangements under

³⁴ See *Battle v Irish Art Promotion Centre Ltd* [1968] IR 252. Section 250(3) of the draft Bill proposes to reverse this rule in small claims cases only.

³⁵ [2008] 1 IR 436.

³⁶ See paragraphs 3.215 – 3.271 of the Consultation Paper.

³⁷ Available at www.courts.ie.

which the Rules of Court Committees consult with each other. As indicated, these provisions are linked to the Commission's earlier recommendations concerning judicial case management.³⁸

2.103 The Commission also concluded that the draft Bill should include a provision (section 263) to dispense with the requirement that all forms of order, warrant etc are included in the published version of the Rules of Court. The District Court Rules 1997 currently includes upwards of 1,000 forms, but there is no reason why those forms could not continue to be accessible, as at present, on the Courts Service website. The Commission also concluded that it was appropriate to provide for a power (comparable to that available to the rule-making authorities of England and Wales under Schedule 1 paragraph 4 of the *Civil Procedure Act 1997*) to amend the rules of evidence relative to civil proceedings in the relevant court. The Commission emphasises that this power is without prejudice to proposals for reform of the law of evidence that may be made, including any arising from a separate project on the law of evidence which forms part of the Commission's *Third Programme of Law Reform 2008-2014*.³⁹ The Commission also considered that the draft Bill also provided an opportunity to provide a formal legislative basis for the making of Practice Directions by the President of a court. Such Practice Directions are currently made under the inherent jurisdiction of the courts to manage their business, but it would be of assistance if their status and role were stated explicitly in primary legislation.

2.104 The Commission recommends that the Courts (Consolidation and Reform) Bill should provide that, in drafting Rules of Court each Rules of Court Committee is to have regard to the following considerations: (a) rules of court should provide simple and efficient Court procedures, consistently with the requirements of justice; (b) rules of court should use plain language, and differences among the procedures and terms used in different Courts for similar matters should be avoided if possible; (c) rules of court should encourage the use of alternative dispute resolution procedures, where appropriate, and should encourage expeditious conduct of proceedings and discourage and, where appropriate and just, penalise delay by a party, so as to help minimise the cost of litigation; (d) rules of court should provide for and support, where possible, the development of case management, in accordance with the case conduct principles specified in the Courts (Consolidation and Reform) Bill and (e) where practicable, rules of court should regularly be reviewed. The Commission also recommends that rules of court need not contain all relevant forms or required documents in the rules themselves, provided they are otherwise published in an approved and easily accessible form. The Commission also recommends that rules of court may modify the rules of evidence as they apply to civil proceedings. The Commission also recommends that provision be made in the Bill for issuing Practice Directions by the President of each court.

(22) Criminal offences and civil wrongs against the administration of justice (sections 270 to 276 of Bill)

2.105 In preparing the Report, the Commission noted that a relatively small number of offences (for example, imitation of court documents and obstruction of execution of process) are defined in the existing Courts Acts. The Commission considered putting relevant common law offences (for example, perjury and embracery) on a statutory footing, but it was ultimately decided not to do this in the current project, as these are primarily matters for substantive criminal law reform.

2.106 The draft Bill (sections 270 to 276) thus lists for convenience the most significant criminal offences and civil wrongs against the administration of justice. These include contempt of court, perverting the course of justice (which may involve fabricating or disposing of evidence, intimidating or threatening a witness or juror, or intimidating or threatening a judge) and perjury. The draft Bill (section 270) also provides that any person who wilfully and corruptly takes an oath or makes an affidavit is guilty of the offence of perjury.

³⁸ See paragraphs 2.35-2.40 of this Report, above.

³⁹ Projects 7, 8 and 11 in the Third Programme. In 2008, the Commission published a *Consultation Paper on Expert Evidence* (LRC CP 52-2008). In 2009, the Commission published a *Consultation Paper on Electronic and Documentary Evidence* (LRC CP 57-2009). In 2010, the Commission published a *Consultation Paper on Hearsay in Civil and Criminal Cases* (LRC CP 60-2010). The Commission intends to publish a Report combining these three Consultation Papers in 2011.

2.107 As to civil liability for various interferences with the administration of justice, the draft Bill (section 276) refers to civil liability towards any person who has suffered financial loss arising from: perjury; embracery (attempting to influence a juror corruptly to give his or her verdict in favour of one side or the other); malicious prosecution (where a criminal prosecution was taken without reasonable and probable cause and was motivated by malice); maintenance or champerty (maintenance is the support of litigation by a non-party without just cause, while champerty is an aggravated form of maintenance because it involves the support of litigation by a non-party in return for a share of the proceeds).

2.108 *The Commission recommends that the Courts (Consolidation and Reform) Bill should make provision for the continuation of the most significant criminal offences and civil wrongs against the administration of justice. The criminal offences should include contempt of court, perverting the course of justice and perjury. The Bill should also deal with civil liability towards any person who has suffered financial loss arising from perjury, embracery, malicious prosecution, maintenance or champerty.*

(23) Appeals in general and conduct of appeals (sections 277 to 326 of Bill)

2.109 In the Consultation Paper, the Commission considered the issue of appeals in general and the conduct of appeals.⁴⁰

2.110 In preparing the Report, the Commission reviewed the provisional recommendation in the Consultation Paper that, in general, appeals would ordinarily not be by way of rehearing, but on the record of the proceedings in the court below. This approach would in principle apply to all appeals to the High Court (both from the Circuit Court and from other tribunals).

2.111 Having considered the matter, the Commission concluded that appeals from the District Court to the Circuit Court, and from the Circuit Court to the High Court, in both civil and criminal cases, should in general remain on the basis of current arrangements, that is, on the basis of a hearing *de novo*, and as of right (not subject to leave). In summary criminal cases, the hearing *de novo* as of right applies, unless otherwise specifically provided for, to the convicted defendant only. The Commission emphasises that the provisions in the draft Bill concerning appeals on points of law (including case stated, discussed below) are distinct from the appeal *de novo* provisions.

2.112 The Commission is aware that digital audio recordings will shortly be available in the District Court and Circuit Court, and this could, in some instances preclude the need for a full re-hearing on appeal from these courts. The Commission has concluded, however, that limiting such appeals to ones on points of law, or subjecting them to the need to obtain leave to appeal, could lead to a "preliminary-type hearing" in which it might have to be determined whether the lower court applied correctly the test in *Northern Bank Finance Corp Ltd v Charlton*⁴¹ as to the correctness of findings of law made from the facts established in evidence in the case. The Commission considers that in the vast majority of instances where such appeals are being brought, a *de novo* hearing is unlikely to take longer than a *Northern Bank Finance* hearing. The current arrangements also have the benefit, in the Commission's view, of providing for the "right" (subject to the exceptions listed) of a full re-hearing before another court, which enhances the sense of justice being done, and being seen to be done.

2.113 In addition, the Commission considered that it would be impracticable, or at least inefficient, at this time to impose a rule that appeals from the Circuit Court and the District Court would be on the trial court's record. This would in effect require the District Court and Circuit Court to produce a more detailed form of record (including perhaps detailed reasons for the decision) than currently applies, which could slow down significantly the processing of cases through those courts.

2.114 *The Commission recommends that the Courts (Consolidation and Reform) Bill should provide that, as at present, appeals from the District Court and the Circuit Court involve full re-hearings.*

⁴⁰ See paragraphs 3.138 - 3.177 of the Consultation Paper.

⁴¹ [1979] IR 149.

(24) Consultative cases stated and references of points of law (section 279 of Bill)

2.115 In the Consultation Paper, the Commission considered the issue of appeals involving points of law, in particular appeals using the consultative case stated and case stated procedures.⁴²

2.116 In preparing the Report, the Commission has concluded that the draft Bill should, as suggested in the Consultation Paper, incorporate a “merger” of consultative cases stated and appeals by way of case stated into a single form of consultative case stated. This would apply to consultative case stated from the District Court and Circuit Court and also from non-court bodies who, currently under some existing legislation, may be empowered to state a case or refer a question or point of law to the High Court. This would lead to a standard form of consultative case stated from all courts and other adjudicative bodies.

2.117 The draft Bill provides that the single “merged” process is the consultative case stated procedure, and thus replaces the *Summary Jurisdiction Act 1857*, section 38(3) of the *Courts of Justice Act 1936*, section 16 of the *Courts of Justice Act 1947* and section 53 of the *Courts (Supplemental Provisions) Act 1961*.

2.118 *The Commission recommends that the Courts (Consolidation and Reform) Bill should provide for a single form of consultative case stated to allow a reference of a point of law from the Circuit Court, District Court or other adjudicative body.*

(25) High Court appeals from the Circuit Court in civil cases (section 316 of Bill)

2.119 In preparing the Report, the Commission considered the current arrangements concerning High Court appeals from the Circuit Court in civil cases. In particular, the Commission considered that the existing provisions on the High Court on Circuit are unnecessarily inflexible and their language archaic. In general, the High Court sits ordinarily at the Four Courts (subject to exceptions where notice of trial is served for another venue in cases to which section 1(1) and 1(2) of the *Courts (No.2) Act 1988* apply), but is not constrained from sitting anywhere else (within the State) by order of the President of the High Court. The draft Bill (section 316) therefore contains a revised arrangement for what is described as the “High Court on Circuit” in section 34 of the *Courts of Justice Act 1936*. It clearly remains desirable that the High Court would sit at venues outside Dublin, and arguably also that this would occur a minimum number of times a year at each relevant venue, but the draft Bill provides for greater flexibility and removes any distinction between the “High Court on Circuit” and the High Court generally.

2.120 It is desirable that the timing of sittings of the High Court at locations outside Dublin should be determined by the number and likely duration of circuit appeals or other business to be determined by the High Court at a relevant venue, rather as at present be required twice a year regardless of the amount of business to be conducted. Efficiency might require such sittings to be more or less frequent than twice a year (as at present) and the draft Bill provides that they should be as frequently at each venue as the President of the High Court determines (though no less frequent than once a year), having regard to information on the volume of business available to be dealt with at that venue, and bearing in mind that other High Court business (civil and criminal) can be allocated trial venues outside Dublin where this is appropriate.

2.121 The draft Bill retains “fixed” High Court provincial venues but allows sittings at those venues and the business to be transacted at those sittings, to be regulated by Rules of Court (which already occurs in relation to “provincial” fatal and personal injuries actions under Order 36, rule 2 of the *Rules of the Superior Courts 1986*) or simply as part of the administration of the High Court’s business by the President of the High Court.

2.122 The existing provision is based on an assumption that it will always be more convenient for a Circuit Court appeal to be heard by the High Court at a venue near the Circuit Court venue concerned. This was probably very often the case at the time of the enactment of the 1936 Act, but is often not the case now.

2.123 The draft Bill allows the High Court to sit where the President of that Court directs from time to time. In practice, the President of the High Court must balance the desirability of having trials heard as

⁴² See paragraphs 3.04 to 3.61 of the Consultation Paper.

promptly as reasonably possible after they are ready for hearing with available court facilities and resources, having regard also to the convenience of those involved, including parties and their legal representatives. As these kinds of issues will always now be relevant, the treatment of Circuit Court appeals where oral evidence is given should merge into the remaining business of the High Court. If the President of the High Court concludes that such appeals should always be heard at a local venue, then they can be treated in the same way by direction or in the rules as “provincial” fatal and personal injuries actions.

2.124 The Commission emphasises that this arrangement is not intended to preclude or reduce the frequency with which the High Court may sit outside Dublin. There is a valuable public interest served in affording an opportunity to see a court of unlimited jurisdiction in operation at a local venue. This, however, should arise as a matter of the routine administration of High Court business rather than as a special arrangement for certain Circuit Court appeals.

2.125 *The Commission recommends that the Courts (Consolidation and Reform) Bill should permit the President of the High Court to determine the time and number of scheduled High Court sittings outside Dublin by reference to the volume of cases which is or can be assigned to each venue.*

(26) Court offices and court officers generally, including registers and records (sections 327 to 359, Part 6 and Schedule 14 of Bill)

2.126 In preparing the Report, the Commission considered the general provisions in the existing Courts Acts and Court Officers Acts concerning court offices and court officers, including the development and maintenance of court registers and records.

2.127 The draft Bill (Part 6 and Schedule 14) has incorporated the existing provisions and has attempted to ensure that these are presented in an orderly and coherent sequence. In terms of court officers, these may be divided into a number of categories.

1. Court Officers appointed by government (Master, Taxing Masters, County Registrars, Sheriffs), and who are therefore essentially fixed in post on appointment;
2. Court officers who are members of the staff of the Courts Service, but who are principle assignable to perform the duties of any court office, subject to meeting any minimum qualification requirements (e.g. Registrar of the Supreme Court, High Court Registrars, District Court Clerks);
3. Persons performing functions relative to courts, but who are not permanently attached to those courts, and who are not employed by the Courts Service (Commissioners for Oaths, summons servers, arguably solicitors);
4. Persons retained to perform services relative to courts, but who are not court officers but essentially hired service providers, though they may be required where providing services in the context of proceedings to undertake to abide a court’s orders and directions (e.g. stockbrokers, interpreters etc).

2.128 The draft Bill provides that each court officer is subject to the general direction of the Courts Service in matters of administrative business and subject to the general direction of the President of the High Court or relevant judge in matters of organisation of quasi-judicial business.

2.129 The draft Bill does not replicate section 61 of the *Court Officers Act 1926*, which provides that security may be required of certain officers in relation to the performance of their duties. The Commission considered this provisions to be anachronistic for this category, which comprises persons who are members of the staff of the Courts Service (so that performance ought be a matter of discipline), and this would seem to remain only appropriate for “officers” who are not part of the Courts Service staff, or third party service providers.

2.130 The Commission also concluded that the possibility of nominating new summons servers under section 44 of the 1926 Act should not be included in the draft Bill. The Commission understands that this provision has over-complicated the rules in relation to service and the practice is generally now not continued. The Commission therefore concluded that the concept of such “public” summons servers should not continue in any legislative form.

2.131 The form and content of most records kept in court offices for the purpose of the direct business of the courts is generally prescribed in Rules of Court. However, certain other registers and records are maintained in court offices which have no special connection to court business: these include the Registers of Chattel Mortgages under the Agriculture Credit Acts, the Register of Bills of Sale and Register of Bills of Exchange.

2.132 The Commission concluded that only registers which (1) affect priorities or deemed notice for the purpose of security or (2) have to date been required by primary legislation to support a separate policy purpose (for example, the Register of Personal Injury Actions) should require explicit mention in the Bill, and that the form and content of any registers which are purely or predominantly to support the courts' ordinary business can be left to the Rules of Court or administrative practice within the Courts Service.

2.133 *The Commission recommends that the Courts (Consolidation and Reform) Bill should include comprehensive provisions on court offices and court officers generally, including registers and records.*

(27) Court money management and processing (section 331 and Schedule 14, Part 1 of Bill)

2.134 In preparing the Report, the Commission considered the existing provisions concerning court money management and processing. The Commission understands that legislation is planned for the near future which would establish a Court Funds Office. The Commission agrees with the approach lying behind such legislation that it is desirable that responsibility for care and management of court funds would be dealt with by the Courts Service, rather than continuing as a personal role or responsibility of a particular court officer.

2.135 This sense of corporate responsibility has thus been included in the draft Bill, although the Commission acknowledges that any legislation in this area will involve significant changes to the detailed arrangements as to the role and functions of the relevant court officers involved. For this reason, these detailed provisions, reflecting current arrangements, have been included in a Schedule to the Bill (Schedule 14). This would facilitate any future legislation without affecting the overall architecture of the Bill.

2.136 *The Commission recommends that the Courts (Consolidation and Reform) Bill should include comprehensive provisions on court money management and processing.*

CHAPTER 3 SUMMARY OF RECOMMENDATIONS

The recommendations made in this Report may be summarised as follows.

3.01 The Commission recommends that the statutory provisions concerning the role and essential jurisdiction of the courts, and related matters concerning court offices, which are currently contained in 240 separate Acts, should be set out in a single *Courts (Consolidation and Reform) Act*, and the Commission appends a draft *Courts (Consolidation and Reform) Bill* to this Report for this purpose. [paragraph 1.09]

3.02 The Commission recommends that provisions relating to the appointment to judicial office, salaries, remuneration and pensions of the judiciary (and provisions as to remuneration and superannuation of court officers) should not be included in the draft *Courts (Consolidation and Reform) Bill*. [paragraph 1.16]

3.03 The Commission recommends that a thematic approach be taken to the draft *Courts (Consolidation and Reform) Bill*, involving the following main Parts:

Part 1: Preliminary and General

Part 2: Jurisdiction

Part 3: Judges and Presiding Judges

Part 4: Special Rules in Particular Proceedings and Matters of Procedure

Part 5: Rights of Appeal, Appeals and References of Questions of Law

Part 6: Court Offices and Court Officers [paragraph 1.28]

3.04 The Commission recommends that the *Courts (Consolidation and Reform) Bill* deal with the role and essential jurisdiction of the following courts: the Supreme Court, the Court of Criminal Appeal, the Courts-Martial Appeal Court, the High Court, the Circuit Court and the District Court. The Commission also recommends that the establishing provisions of the *Courts (Establishment and Constitution) Act 1961* remain outside the scope of the *Courts (Consolidation and Reform) Bill*. [paragraph 1.35]

3.05 The Commission recommends that the *Courts (Consolidation and Reform) Bill* should include a summary purposes clause and part-specific content clauses. [paragraph 1.38]

3.06 The Commission recommends that the *Courts (Consolidation and Reform) Bill* should include the terms “applicant”, “application,” “application notice” and “respondent” to assist in simplifying and standardising, to the greatest extent possible, court procedures and forms in civil proceedings. [paragraph 2.05]

3.07 The Commission recommends that the *Courts (Consolidation and Reform) Bill* should include provisions setting out the current jurisdiction of the Court of Criminal Appeal and Courts-Martial Appeal Court, but that the requirement for leave to appeal should be removed. [paragraph 2.13]

3.08 The Commission recommends that the *Courts (Consolidation and Reform) Bill* should include a non-exhaustive statement of the jurisdiction of the High Court in civil proceedings. [paragraph 2.20]

3.09 The Commission recommends that the *Courts (Consolidation and Reform) Bill* should include a non-exhaustive statement of the jurisdiction of the Circuit Court in civil proceedings, and that the Circuit Court’s general monetary limit in civil proceedings be increased to €100,000 as intended by section 13 of the *Courts and Court Officers Act 2002* (but which has not been commenced), subject to a lower limit of €50,000 in personal injury claims. [paragraph 2.28]

3.10 The Commission recommends that the *Courts (Consolidation and Reform) Bill* should include a non-exhaustive statement of the jurisdiction of the District Court, and that the District Court's general monetary limit in civil proceedings be increased to €7,500. [paragraph 2.34]

3.11 The Commission recommends that the *Courts (Consolidation and Reform) Bill* should include provisions on judicial control of civil proceedings, judicial case management and case conduct principles. The Commission recommends that, in respect of judicial case management, a court shall, so far as is practicable, in the conduct of civil proceedings: (a) ensure that the parties conduct the proceedings in accordance with case conduct principles, (b) have regard to the need to allot its time and its resources appropriately among all of the proceedings the Court has to hear and determine and (c) deal with the proceedings in a manner that is proportionate to their nature, and the parties' resources. The Commission also recommends that "case conduct principles" require that: (a) issues between parties should, at as early a stage as possible, be identified, defined, narrowed (where possible) and prioritised or sequenced; (b) proceedings should be conducted in a manner that is just, expeditious and likely to minimise the costs of those proceedings; and (c) the parties should be encouraged to use alternative dispute resolution procedures where appropriate, to settle the whole or part of the proceedings where practicable, and be facilitated in doing so. [paragraph 2.40]

3.12 The Commission recommends that the *Courts (Consolidation and Reform) Bill* should include provisions on the general powers exercisable by the courts in civil and criminal cases, including matters such as the power to summon witnesses, remedies in civil cases (including damages and injunctions and enforcement of judgments). [paragraph 2.49]

3.13 The Commission recommends that the *Courts (Consolidation and Reform) Bill* should include comprehensive provisions on legal costs, including the taxation of costs in contentious business. [paragraph 2.53]

3.14 The Commission recommends that the *Courts (Consolidation and Reform) Bill* should include comprehensive provisions on execution and enforcement of court orders. [paragraph 2.57]

3.15 The Commission recommends that the *Courts (Consolidation and Reform) Bill* should include comprehensive provisions dealing with the procedural aspects of taking evidence concerning proceedings in another State and, correspondingly, to order evidence concerning proceedings in Ireland to be taken abroad. [paragraph 2.60]

3.16 The Commission recommends that the *Courts (Consolidation and Reform) Bill* should include comprehensive provisions dealing with the procedural aspects of taking evidence and recognition of judgments in EU-related matters and comparable international instruments. [paragraph 2.64]

3.17 The Commission recommends that the *Courts (Consolidation and Reform) Bill* should include the current provisions concerning those criminal offences within the exclusive jurisdiction of the Central Criminal Court (High Court). [paragraph 2.68]

3.18 The Commission recommends that the *Courts (Consolidation and Reform) Bill* should include provisions that a judge of the Circuit Court or District Court in Gaeltacht areas would either (a) be registered in the Irish language registers provided for under the *Legal Practitioners (Irish Language) Act 2008*, *Acht na nDlí-Chleachtóirí (An Ghaeilge) 2008*, or (b) possesses sufficient knowledge of, or have sufficient experience of practising in, the Irish language to enable him or her to conduct court proceedings in the Irish language without the assistance of an interpreter. The Commission also recommends that these provisions would be without prejudice to any right or obligation under sections 8 or 9 of the *Official Languages Act 2003*. [paragraph 2.72]

3.19 The Commission recommends that the *Courts (Consolidation and Reform) Bill* should include a permissive provision authorising the Courts Service to establish administrative sub-divisions of District Court Districts, called Areas, for operational purposes. [paragraph 2.75]

3.20 The Commission recommends that the *Courts (Consolidation and Reform) Bill* should provide that the High Court may make an anonymity order, an order that the identity of the person should not be disclosed in civil proceedings, whether the case is being heard in the High Court or any other court, on the grounds that the needs of justice require that the party should not be identified. [paragraph 2.82]

- 3.21 The Commission recommends that the *Courts (Consolidation and Reform) Bill* should provide for the general circumstances in which a trial with a jury is to occur. [paragraph 2.85]
- 3.22 The Commission recommends that the *Courts (Consolidation and Reform) Bill* should include comprehensive provisions concerning summary criminal procedure. [paragraph 2.88]
- 3.23 The Commission recommends that the *Courts (Consolidation and Reform) Bill* should include provisions dealing with the right to appeal from fixed charge notices. [paragraph 2.91]
- 3.24 The Commission recommends that the *Courts (Consolidation and Reform) Bill* should include comprehensive provisions dealing with service of courts documents in civil and criminal proceedings, which should be drafted in a permissive manner, thus allowing for flexibility in specific contexts. [paragraph 2.97]
- 3.25 The Commission recommends that the *Courts (Consolidation and Reform) Bill* should include a wide-ranging provision concerning rights of audience in the courts. [paragraph 2.100]
- 3.26 The Commission recommends that the *Courts (Consolidation and Reform) Bill* should provide that, in drafting Rules of Court, each Rules of Court Committee is to have regard to the following considerations: (a) rules of court should provide simple and efficient Court procedures, consistently with the requirements of justice; (b) rules of court should use plain language, and differences among the procedures and terms used in different Courts for similar matters should be avoided if possible; (c) rules of court should encourage the use of alternative dispute resolution procedures, where appropriate, and should encourage expeditious conduct of proceedings and discourage and, where appropriate and just, penalise delay by a party, so as to help minimise the cost of litigation; (d) rules of court should provide for and support, where possible, the development of case management, in accordance with the case conduct principles specified in the *Courts (Consolidation and Reform) Bill* and (e) where practicable, rules of court should regularly be reviewed. The Commission also recommends that rules of court need not contain all relevant forms or required documents in the rules themselves, provided they are otherwise published in an approved and easily accessible form. The Commission also recommends that rules of court may modify the rules of evidence as they apply to civil proceedings. The Commission also recommends that provision be made in the Bill for issuing Practice Directions by the President of each court. [paragraph 2.104]
- 3.27 The Commission recommends that the *Courts (Consolidation and Reform) Bill* should make provision for the continuation of the most significant criminal offences and civil wrongs against the administration of justice. The criminal offences should include contempt of court, perverting the course of justice and perjury. The Bill should also deal with civil liability towards any person who has suffered financial loss arising from perjury, embracery, malicious prosecution, maintenance or champerty. [paragraph 2.108]
- 3.28 The Commission recommends that the *Courts (Consolidation and Reform) Bill* should provide that, as at present, appeals from the District Court and the Circuit Court involve full re-hearings. [paragraph 2.114]
- 3.29 The Commission recommends that the *Courts (Consolidation and Reform) Bill* should provide for a single form of consultative case stated to allow a reference of a point of law from the Circuit Court, District Court or other adjudicative body. [paragraph 2.118]
- 3.30 The Commission recommends that the *Courts (Consolidation and Reform) Bill* should permit the President of the High Court to determine the time and number of scheduled High Court sittings outside Dublin by reference to the volume of cases which is or can be assigned to each venue. [paragraph 2.125]
- 3.31 The Commission recommends that the *Courts (Consolidation and Reform) Bill* should include comprehensive provisions on court offices and court officers generally, including registers and records. [paragraph 2.133]
- 3.32 The Commission recommends that the *Courts (Consolidation and Reform) Bill* should include comprehensive provisions on court money management and processing. [paragraph 2.136]

APPENDIX A **DRAFT COURTS (CONSOLIDATION AND REFORM) BILL**

BILLE NA gCÚIRTEANNA (COMHDHLÚTHÚ AGUS ATHCHÓIRIÚ) 2010
DRAFT COURTS (CONSOLIDATION AND REFORM) BILL 2010

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16. Particular jurisdictions and functions of the Chief Justice
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18. Constitution of Court of Criminal Appeal and of Courts-Martial Appeal Court
19. Jurisdiction of Court of Criminal Appeal
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21. Majority judgment; single judgment only to be pronounced

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General

22. Jurisdiction of the High Court
23. Particular jurisdictions and functions of the President of the High Court

Original civil jurisdiction

24. Particular original civil jurisdictions of the High Court
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¹ The draft Bill assumes that legislation along the lines of the Scheme of the *Mental Capacity Bill 2008* (following from which a *Mental Capacity Bill* may be published by the end of 2010 or early 2011) is enacted, with the consequent repeal of the *Lunacy Regulation (Ireland) Act 1871* and related legislation. Mental capacity legislation would implement the thrust of the Commission's *Report on Vulnerable Adults and the Law* (LRC 83-2006).

- 26. Judicial review procedure
- 27. Judicial review proceedings
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- 31. Appellate civil jurisdiction

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- 39. Jurisdiction in urgent applications
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- 41. Exceptions to money limits
- 42. Variation of money limits
- 43. Power to strike out with costs applications in excess of money limit
- 44. Right to abandon excess over money limit

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- 45. Concurrent original civil jurisdiction
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- 52. Jurisdiction of Circuit Court in indictable offences
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- 56. Interpretation: this Chapter

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- 124. Evidence in aid of EU proceedings
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295. Reference of question of law to the Supreme Court

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306. Appeals to Courts-Martial Appeal Court

307. Appeal against special verdict; order or of committal or refusal of such order or decision that accused is unfit to take his or her trial

308. Application to Courts-Martial Appeal Court: alleged miscarriage of justice

309. Conduct and disposal of appeals and applications

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310. Reference of question of law to Courts-Martial Appeal Court

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314. Reference of question of law to the High Court in certain cases where no appeal lies

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318. Appeals from adjudicating bodies or persons

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319. Reference of question of law to the High Court by District Court

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321. Reference of question of law to the High Court by adjudicating body or person

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7. Suspension of execution on later stay
8. Execution of execution orders
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2. Examination order
3. Procedure on examination
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6. Non-compliance with instalment order
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12. Entry of European Union Institutional judgments: evidence and effects
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3. Imprisonment in default of payment of fine: conviction on indictment
4. Effect of subsequent payment
5. Payment and receipt of fines and remissions
6. Records and notices of fines
7. Issue of warrants on non-compliance with fine order
8. Receipt of fines by Garda Síochána and in prisons or places of detention
9. Effect of appeal

10. Disposal of fines
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1. Sittings at scheduled High Court venues
2. Directions
3. Criteria which may be considered
4. Appeal towns to become scheduled High Court venues
5. Variation of scheduled High Court venues
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Prescribed number of ordinary Judges of each Court

1. Supreme Court
2. High Court
3. Circuit Court
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Part 1: Composition and proceedings of the Superior Courts Rules Committee

1. Membership
2. Ex-officio members
3. Nominated members
4. Period of membership of nominated members
5. Re-nomination
6. Quorum
7. Vacancy
8. Appointment of substitute members
9. Secretary
10. Revocation of appointments

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1. Membership
2. Ex-officio members
3. Nominated members
4. Period of membership of nominated members
5. Re-nomination
6. Quorum
7. Vacancy
8. Appointment of substitute members
9. Secretary
10. Revocation of appointments

Part 3: Composition and proceedings of the District Court Rules Committee

1. Membership

2. Ex-officio members
3. Nominated members
4. Period of membership of nominated members
5. Re-nomination
6. Quorum
7. Vacancy
8. Appointment of substitute members
9. Secretary
10. Revocation of appointments

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1. Interpretation: this Part
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3. Custody and management of funds in Court
4. Dormant funds in Court
5. Combined Court Office
6. Office of Registrar of the Supreme Court
7. Central Office
8. Taxing Masters' Office
9. Office of Wards of Court²
10. Office of the Official Assignee in Bankruptcy
11. The Examiner's Office
12. The Probate Office
13. District Probate Registries
14. Circuit Court Offices
15. District Court Offices

Part 2: Functions, powers and duties of, and supplemental provisions concerning, court officers

1. Interpretation: this Part

The Master of the High Court

2. Functions, powers and jurisdiction of Master of the High Court
3. Qualification of Master of the High Court
4. Retirement age of Master of the High Court
5. Sittings of Master of the High Court
6. General direction

The Taxing Masters

7. Functions, powers, duties and authorities of Taxing Masters of the High Court
8. Qualification of Taxing Masters
9. Retirement age of Taxing Masters
10. General direction

The Probate Officer

11. Functions, powers, duties and authorities of Probate Officer

The Examiner

12. Functions, powers, duties and authorities of Examiner

² This provision may require adjustment in the context of the *Scheme of the Mental Capacity Bill 2008*: see note 1, above.

Appointment of Probate Officer and Examiner

13. Appointment of Probate Officer and Examiner
 - Officer in charge of the Court Funds Office and Courts Accountant
 14. Officer in charge of the Court Funds Office and Courts Accountant
 - The Registrar of Wards of Court³
 15. Duties, powers and authorities of Registrar of Wards of Court
 16. Qualifications of Registrar of Wards of Court
 - The Official Assignee in Bankruptcy
 17. The Official Assignee in Bankruptcy
 - The Registrar of the Supreme Court
 18. The Registrar of the Supreme Court
 - The officer managing the Central Office
 19. The officer managing the Central Office
 - High Court Registrars
 20. High Court Registrars
 - County Registrars
 21. Functions, powers and jurisdiction of County Registrars
 22. Duty of County Registrar as registrar to Court
 23. Orders which may be made by a County Registrar
 24. Further powers of County Registrars
 25. Witnesses and hearings before County Registrars
 26. Qualifications and retirement age of County Registrars
 27. Power to continue County Registrars in office after reaching the age of 65
 28. Assignment of County Registrars to Circuit Court Offices
 29. General direction
 - Sheriffs and County Registrars performing the office of sheriff
 30. County Registrars performing the office of sheriff
 - District Court Clerks
 31. Appointment and assignment of District Court Clerks
 32. Functions, powers duties and authorities of District Court Clerks
- Part 3: Deputies and alternates for certain court officers
1. Interpretation: this Part
 2. Deputy Master of the High Court
 3. Deputy Taxing Master
 4. Deputies and alternates for other principal officers
 5. Deputies and alternates for County Registrars

³ These provisions may require adjustment in the context of the *Scheme of the Mental Capacity Bill 2008*: see note 1, above.

6. Deputy District Probate Registrar
7. Deputy District Court Clerk

Acts Referred to and Marginal Abbreviations (where used)

| | | |
|-------------|---|--------------------------------|
| | Adaptation of Enactments Act 1922 | 1922 No. 2 |
| | Adoption Act 2010 | 2010 No. 21 |
| | Adoptive Leave Act 1995 | 1995 No. 2 |
| AJA 1707 | Administration of Justice Act 1707 | 1707 (6 Ann.) c. 10 |
| | Admiralty Act 1783 | 1783-84 (23 & 24 Geo. 3) c. 14 |
| | Agricultural Credit Act 1978 | 1978 No. 2 |
| | Air Navigation and Transport Act 1936 | 1936 No. 40 |
| | Anglo Irish Bank Corporation Act 2009 | 2009 No. 1 |
| | Animal Remedies Act 1993 | 1993 No. 23 |
| | Approved Investments Act 1933 | 1933 No. 34 |
| | Arbitration Act 2010 | 2010 No. 1 |
| | Attachment of Goods (Ireland) Act 1850 | 1850 (13 & 14 Vict.) c. 73 |
| | Attendance of Witnesses Act 1854 | 1854 (17 & 18 Vict.) c. 34 |
| ASIA 1849 | Attorneys and Solicitors (Ireland) Act 1849 | 1849 (12 & 13 Vict.) c. 53 |
| ASA 1870 | Attorneys and Solicitors Act 1870 | (33 & 34 Vict.) c. 28 |
| | Auctioneers and House Agents Act 1947 | 1947 No. 10 |
| | Auctioneers and House Agents Act 1967 | 1967 No. 9 |
| | Aviation Regulation Act 2001 | 2001 No. 1 |
| | Bail Act 1997 | 1997 No. 16 |
| | Bankers' Books Evidence Act 1879 | (42 & 43 Vict.) c. 11 |
| | Bankers' Books Evidence Acts 1879 and 1959 | |
| BA 1988 | Bankruptcy Act 1988 | 1988 No. 27 |
| | Bills of Sale (Ireland) Act 1879 | (42 & 43 Vict.) c. 50 |
| | Bills of Sale (Ireland) Act 1879 Amendment Act 1883 | (46 & 47 Vict.) c. 7 |
| | Boundary Survey (Ireland) Act 1854 | (17 & 18 Vict.) c. 17 |
| | Broadcasting Act 2009 | 2009 No. 18 |
| | Building Societies Act 1989 | 1989 No. 17 |
| | Carer's Leave Act 2001 | 2001 No. 19 |
| | Censorship of Publications Act 1929 | 1929 No. 21 |
| | Central Bank Act 1942 | 1942 No. 22 |
| | Central Bank Act 1971 | 1971 No. 24 |
| CIA 1858 | Chancery Amendment Act 1858 | 1858 (21 & 22 Vict.) c. 27 |
| CCLOIA 1867 | Chancery and Common Law Offices (Ireland) Act 1867 | 1867 (30 & 31 Vict.) c. 129 |
| | Chancery (Ireland) Act 1823 | 1823 (4 Geo. 4) c. 61 |
| CIA 1834 | Chancery (Ireland) Act 1834 | 1834 (4 & 5 Will. 4) c. 78 |
| | Chancery (Ireland) Act 1835 | 1835 (5 & 6 Will. 4) c. 18 |
| CIA 1867 | Chancery (Ireland) Act 1867 | 1867 (30 & 31 Vict.) c. 44 |
| CRIA 1856 | Chancery Receivers (Ireland) Act 1856 | 1856 (19 & 20 Vict.) c. 77 |
| CTMIA 1845 | Chancery Taxing Master (Ireland) Act 1845 | 1845 (8 & 9 Vict.) c. 115 |

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| | Charities Act 1961 | 1961 No. 17 |
| | Chemicals Act 2008 | 2008 No. 13 |
| | Child Abduction and Enforcement of Custody Orders Act 1991 | 1991 No. 6 |
| | Child Care Act 1991 | 1991 No. 17 |
| | Child Care Acts 1991 to 2007 | |
| | Children Act 1989 | 1989 No. 18 |
| CA 1997 | Children Act 1997 | 1997 No. 40 |
| CA 2001 | Children Act 2001 | 2001 No. 24 |
| CCRJA 1937 | Circuit Court (Registration of Judgments) Act 1937 | 1937 No. 3 |
| | Circuit Courts (Appeals) Act 1927 | 1927 No. 10 |
| CBCIA 1851 | Civil Bill Courts (Ireland) Act 1851 | 1851 (14 & 15 Vict.) c. 47 |
| | Civil Bill Court (Ireland) Act 1865 | 1865 (28 & 29 Vict.) c. 1 |
| CBCIA 1874 | Civil Bill Courts (Ireland) Act 1874 | 1874 (37 & 38 Vict.) c. 66 |
| CBCPAIA 1864 | Civil Bill Courts Procedure Amendment (Ireland) Act 1864 | 1864 (27 & 28 Vict.) c. 99 |
| | Civil Bill Courts Procedure Amendment Act (Ireland) 1871 | 1871 (34 & 35 Vict.) c. 99 |
| CLMPA 2008 | Civil Law (Miscellaneous Provisions) Act 2008 | 2008 No. 14 |
| | Civil Liability Acts 1961 and 1964 | |
| CLCA 2004 | Civil Liability and Courts Act 2004 | 2004 No. 31 |
| CPCROCA 2010 | Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 | 2010 No. 24 |
| | Civil Procedure Act 1833 | 1833 (3 & 4 Will. 4) c. 42 |
| | Civil Registration Act 2004 | 2004 No. 3 |
| | Civil Service (Transferred Officers) Compensation Act 1929 | 1929 No. 36 |
| | Civil Service Regulation Act 1956 | 1956 No. 46 |
| | Commissioners for Oaths (Ireland) Act 1872 | 1872 (35 & 36 Vict.) c. 75 |
| CFOA 1889 | Commissioners for Oaths Act 1889 | 1889 (52 & 53 Vict.) c. 10 |
| CFOA 1891 | Commissioners for Oaths Act 1891 | 1891 (54 & 55 Vict.) c. 50 |
| | Commission To Inquire Into Child Abuse Act 2000 | 2000 No. 7 |
| | Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act 1997 | 1997 No. 17 |
| CLPIA 1821 | Common Law Procedure (Ireland) Act 1821 | 1821 (1 & 2 Geo. 4) c. 53 |
| | Common Law Procedure (Ireland) Act 1860 | 1860 (23 & 24 Vict.) c. 82 |
| CLPAAI 1853 | Common Law Procedure Amendment Act (Ireland) 1853 | 1853 (16 & 17 Vict.) c. 113 |
| CLPAAI 1856 | Common Law Procedure Amendment Act (Ireland) 1856 | 1856 (19 & 20 Vict.) c. 102 |
| | Common Law Procedure Amendment Act Ireland 1870 | 1870 (33 & 34 Vict.) c. 109 |
| | Communications Regulation Act 2002 | 2002 No. 20 |
| | Companies Act 1963 | 1963 No. 33 |
| | Companies Act 1990 | 1990 No. 33 |
| | Companies Acts 1963 to 2009 | |
| | Companies Clauses Consolidation Act 1845 | (8 & 9 Vict.) c. 16 |
| | Competition Acts 2002 to 2010 | |
| CIA 1836 | Constabulary (Ireland) Act 1836 | 1836 (6 & 7 Will. 4) c. 13 |
| | Coroners (Qualification) Act 1924 | 1924 No. 4 |
| | Costs Act 1531 | 1531 (23 Hen. 8) c. 15 |
| | County Courts (Amendment) Act 1923 | 1923 No. 45 |
| | County Court Amendment (Ireland) Act 1882 | 1882 (45 & 46 Vict.) c. 29 |

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| | County Courts (Appeals) Act 1924 | 1924 No. 57 |
| | County Courts (Appeals) Act 1927 | 1927 No. 34 |
| CCAIA 1889 | County Court Appeals (Ireland) Act 1889 | 1889 (52 & 53 Vict.) c. 48 |
| | County Dublin Grand Jury Act 1844 | 1844 (7 & 8 Vict, c. 106) |
| COCAI 1877 | County Officers and Courts Act (Ireland) 1877 | 1876 (40 & 41 Vict.) c. 56 |
| | County Officers and Courts (Ireland) Amendment Act 1885 | 1885 (48 & 49 Vict.) c. 71 |
| | Courthouses and Gaols Act 1788 | 1788 (28 Geo. 3) c. 38 |
| | Court Houses (Ireland) Act 1840 | 1840 (3 & 4 Vict.) c. 102 |
| | Courthouses (Provision and Maintenance) Act 1935 | 1935 No. 18 |
| CAIA 1867 | Court of Admiralty (Ireland) Act 1867 | 1867 (30 & 31 Vict.) c. 114 |
| CAIAA 1876 | Court of Admiralty (Ireland) Amendment Act 1876 | 1876 (39 & 40 Vict.) c. 28 |
| CCIA 1823 | Court of Chancery (Ireland) Act 1823 | 1823 (4 Geo. 4) c. 61 |
| COA 1926 | Court Officers Act 1926 | 1926 No. 27 |
| COA 1945 | Court Officers Act 1945 | 1945 No. 25 |
| COA 1951 | Court Officers Act 1951 | 1951 No. 8 |
| | Court Officers (Temporary Appointments) Act 1924 | 1924 No. 2 |
| | Court of Probate (Ireland) Act 1861 | 1861 (24 & 25 Vict.) c. 111 |
| | Courts Act 1476 | 1476-77 (16 & 17 Edw. 4) c. 22 [P.R.O. vol. 4] |
| CA 1964 | Courts Act 1964 | 1964 No. 11 |
| CA 1971 | Courts Act 1971 | 1971 No. 36 |
| | Courts Act 1973 | 1973 No. 26 |
| CA 1977 | Courts Act 1977 | 1977 No. 11 |
| | Courts Act 1979 | 1979 No. 15 |
| CA 1981 | Courts Act 1981 | 1981 No. 11 |
| | Courts Act 1985 | 1985 No. 23 |
| | Courts Act 1986 | 1986 No. 1 |
| CA 1988 | Courts Act 1988 | 1988 No. 14 |
| CA 1991 | Courts Act 1991 | 1991 No. 20 |
| | Courts Act 1996 | 1996 No. 20 |
| | Courts Act 1997 | 1997 No. 6 |
| CCOA 1995 | Courts and Court Officers Act 1995 | 1995 No. 31 |
| CCOA 2002 | Courts and Court Officers Act 2002 | 2002 No. 15 |
| CCOA 2009 | Courts and Court Officers Act 2009 | 2009 No. 36 |
| | Courts and Court Officers (Amendment) Act 2003 | 2003 No. 36 |
| CCOAA 2007 | Courts and Court Officers (Amendment) Act 2007 | 2007 No. 4 |
| CECA 1961 | Courts (Establishment and Constitution) Act 1961 | 1961 No. 38 |
| CMAA 1983 | Courts-Martial Appeals Act 1983 | 1983 No. 19 |
| C2A 1986 | Courts (No. 2) Act 1986 | 1986 No. 26 |
| | Courts (No. 2) Act 1988 | 1988 No. 34 |
| C2A 1991 | Courts (No. 2) Act 1991 | 1991 No. 21 |
| C2A 1997 | Courts (No. 2) Act 1997 | 1997 No. 43 |
| C3A 1986 | Courts (No. 3) Act 1986 | 1986 No. 33 |
| CJA 1924 | The Courts of Justice Act 1924 | 1924 No. 10 |
| | Courts of Justice Act 1926 | 1926 No. 1 |
| CJA 1928 | Courts of Justice Act 1928 | 1928 No. 15 |
| CJA 1936 | Courts of Justice Act 1936 | 1936 No. 48 |
| CJA 1947 | Courts of Justice Act 1947 | 1947 No. 20 |

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| CJA 1953 | Courts of Justice Act 1953 | 1953 No. 32 |
| | Courts of Justice and Court Officers (Superannuation) Act 1961 | 1961 No. 16 |
| CJDCA 1946 | Courts of Justice (District Court) Act 1946 | 1946 No. 21 |
| | Courts of Justice (District Court) Act 1949 | 1949 No. 8 |
| | Courts of Justice (Dublin) Act 1795 | 1795 (35 Geo. 3) c. 25 |
| | Courts Service Act 1998 | 1998 No. 8 |
| CSPA 1961 | Courts (Supplemental Provisions) Act 1961 | 1961 No. 39 |
| | Courts (Supplemental Provisions) (Amendment) Act 1962 | 1962 No. 18 |
| | Courts (Supplemental Provisions) (Amendment) Act 1964 | 1964 No. 9 |
| | Courts (Supplemental Provisions) (Amendment) Act 1968 | 1968 No. 3 |
| | Courts (Supplemental Provisions)(Amendment) Act 1991 | 1991 No. 23 |
| | Courts (Supplemental Provisions)(Amendment) Act 1999 | 1999 No. 25 |
| | Courts (Supplemental Provisions)(Amendment) Act 2000 | 2000 No. 15 |
| | Courts (Supplemental Provisions)(Amendment) (No. 2) Act 1968 | 1968 No. 21 |
| | Criminal Assets Bureau Act 1996 | 1996 No. 31 |
| | Criminal Damage Act 1991 | 1991 No. 31 |
| CEA 1992 | Criminal Evidence Act 1992 | 1992 No. 12 |
| | Criminal Jurisdiction Act 1802 | 1802 (42 Geo. 3) c. 85 |
| CJA 1951 | Criminal Justice Act 1951 | 1951 No. 2 |
| CJA 1984 | Criminal Justice Act 1984 | 1984 No. 22 |
| | Criminal Justice Act 1994 | 1994 No. 15 |
| CJA 1993 | Criminal Justice Act 1993 | 1993 No. 6 |
| | Criminal Justice Act 1999 | 1999 No. 10 |
| CJA 2006 | Criminal Justice Act 2006 | 2006 No. 26 |
| CJA 2007 | Criminal Justice Act 2007 | 2007 No. 29 |
| CJAA 1914 | Criminal Justice Administration Act 1914 | 1914 (4 & 5 Geo. 5), c. 58 |
| CJAA 2009 | Criminal Justice (Amendment) Act 2009 | 2009 No. 32 |
| | Criminal Justice (Community Service) Act 1983 | 1983 No. 23 |
| | Criminal Justice (Illicit Traffic by Sea) Act 2003 | 2003 No. 18 |
| | Criminal Justice (Legal Aid) Act 1962 | 1962 No. 12 |
| CJMPA 1997 | Criminal Justice (Miscellaneous Provisions) Act 1997 | 1997 No. 4 |
| | Criminal Justice (Miscellaneous Provisions) Act 2009 | 2009 No. 28 |
| CJMAA 2008 | Criminal Justice (Mutual Assistance) Act 2008 | 2008 No. 7 |
| CJMLTFA 2010 | Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 | 2010 No. 6 |
| | Criminal Justice (Safety of United Nations Workers) Act 2000 | 2000 No. 16 |
| CJSA 2009 | Criminal Justice (Surveillance) Act 2009 | 2009 No. 19 |
| CJTFOA 2001 | Criminal Justice (Theft and Fraud Offences) Act 2001 | 2001 No. 50 |
| CJUNCATA 2000 | Criminal Justice (United Nations Convention Against Torture) Act 2000 | 2000 No. 11 |
| CLIA 2006 | Criminal Law (Insanity) Act 2006 | 2006 No. 11 |
| CLIA 1828 | Criminal Law (Ireland) Act 1828 | 1828 (9 Geo. 4.) c. 54 |
| CLRAA1990 | Criminal Law (Rape) (Amendment) Act 1990 | 1990 No. 32 |
| CPA 1967 | Criminal Procedure Act 1967 | 1967 No. 12 |
| CPA 1993 | Criminal Procedure Act 1993 | 1993 No. 40 |
| CPA 2010 | Criminal Procedure Act 2010 | 2010 No. 27 |
| CPAA 1973 | Criminal Procedure (Amendment) Act 1973 | 1973 No. 16 |

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| | Crown Cases Act 1848 | 1848 (11 & 12 Vict.) c. 78 |
| | Crown Debts and Judgments Act 1860 | 1860 (23 & 24 Vict.) c. 115 |
| | Crown Suits Act 1855 | 1855 (18 & 19 Vict.) c. 90 |
| | Crown Suits Act 1861 | 1861 (24 & 25 Vict.) c. 62 |
| | Customs Consolidation Act 1876 | 1876 (39 & 40 Vict.) c. 36 |
| DIA 1840 | Debtors (Ireland) Act 1840 | 1840 (3 & 4 Vict.) c. 105 |
| | Dáil Eireann Courts (Winding Up) Act 1923, Amendment Act 1924 | 1924 No. 32 |
| | Dáil Eireann Courts (Winding Up) Act 1925 | 1925 No. 9 |
| | Dáil Eireann Courts (Winding-Up) Act 1923 | 1923 No. 36 |
| | Dáil Supreme Court (Pensions) Act 1925 | 1925 No. 13 |
| | Damage To Property (Compensation) (Amendment) Act 1933 | 1933 No. 35 |
| | Damage To Property (Compensation) Act 1923 | 1923 No. 15 |
| | Debtors Act (Ireland) 1840 | 1840 (3 & 4 Vict.) c. 105 |
| DIA 1872 | Debtors (Ireland) Act 1872 | 1872 (35 & 36 Vict.) c. 57 |
| DA 1878 | Debtors Act 1878 | 1878 (41 & 42 Vict.) c. 54 |
| | Defamation Act 2009 | 2009 No. 31 |
| | Defence Act 1954 | 1954 No. 18 |
| | Deputy Registrar in Bankruptcy (Cork) Act 1926 | 1926 No. 23 |
| | Diplomatic and Consular Officers (Provision of Services) Act 1993 | 1993 No. 33 |
| | Disability Act 2005 | 2005 No. 14 |
| | Distress Act 1493 | 1493 (9 Hen. 7) [Analecta Hibernica No. 10] |
| | Distress Act 1796 | 1796 (36 Geo. 3) c. 38 |
| | Distress (Costs) Act 1817 | 1817 (57 Geo. 3) c. 93 |
| | Distress for Rent Act 1695 | 1695 (7 Will. 3) c. 22 |
| | Distress for Rent Act 1751 | 1751 (25 Geo. 2) c. 13 |
| | District Justices (Temporary Provisions) Act 1923 | 1923 No. 6 |
| | Domestic Violence Act 1996 | 1996 No. 1 |
| | Domestic Violence Acts 1996 and 2002 | |
| | Domicile and Recognition of Foreign Divorces Act 1986 | 1986 No. 24 |
| | Dublin Justices Act 1824 | 1824 (5 Geo. 4) c. 102 |
| | Dublin Police Act 1836 | 1836 (6 & 7 Will. 4) c. 29 |
| DPA 1839 | Dublin Police Act 1839 | 1839 (2 & 3 Vict.) c. 78 |
| DPA 1842 | Dublin Police Act 1842 | 1842 (5 & 6 Vict.) c. 24 |
| | Dublin Police Act 1848 | 1848 (11 & 12 Vict.) c. 113 |
| | Dublin Police Act 1859 | 1859 (22 & 23 Vict.) c. 52 |
| | Dublin Police Magistrates Act 1808 | 1808 (48 Geo. 3) c. 140 |
| | Ecclesiastical Courts Jurisdiction Act 1860 | 1860 (23 & 24 Vict.) c. 32 |
| | Ejectment and Distress (Ireland) Act 1846 | 1846 (9 & 10 Vict.) c. 111 |
| | Electoral Act 1992 | 1992 No. 23 |
| | Electricity Regulation Act 1999 | 1999 No. 23 |
| ECA 2000 | Electronic Commerce Act 2000 | 2000 No. 27 |
| | Employees (Provision of Information and Consultation) Act 2006 | 2006 No. 9 |
| | Employers and Workmen Act 1875 | 1875 (38 & 39 Vict.) c. 90 |
| | Employment Equality Act 1998 | 1998 No. 21 |
| | Employment Permits Act 2006 | 2006 No. 16 |
| ECO A 1751 | Enforcement of Court Orders Act 1751 | 1751 (25 Geo. 2) c. 12 |

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| EOCA 1926 | Enforcement of Court Orders Act 1926 | 1926 No. 18 |
| EOCA 1940 | Enforcement of Court Orders Act 1940 | 1940 No. 23 |
| EOCAA 2009 | Enforcement of Court Orders (Amendment) Act 2009 | 2009 No. 21 |
| | Enforcement of Law (Occasional Powers) Act 1923 | 1923 No. 4 |
| | Enforcement of Law (Occasional Powers) Act 1924 | 1924 No. 20 |
| | Enforcement of Law (Occasional Powers)(Continuance) Act 1925 | 1925 No. 16 |
| | Equal Status Act 2000 | 2000 No. 8 |
| | Ethics in Public Office Acts 1995 and 2001 | |
| | European Arrest Warrant Act 2003 | 2003 No. 45 |
| | European Communities Act 1972 | 1972 No. 27 |
| ECAA 1993 | European Communities (Amendment) Act 1993 | 1993 No. 25 |
| | European Convention on Human Rights Act 2003 | 2003 No. 20 |
| EA 1851 | Evidence Act 1851 | 1851 (14 & 15 Vict.) c. 99 |
| EBCA 1843 | Evidence by Commission Act 1843 | 1843 (6 & 7 Vict.) c. 82 |
| | Evidence by Commission Act 1859 | 1859 (22 Vict.) c. 20 |
| | Evidence (Colonial Statutes) Act 1907 | 1907 (7 Edw. 7) c. 16 |
| | Evidence (Ireland) Act 1815 | 1815 (55 Geo. 3) c. 157 |
| | Execution (Ireland) Act 1848 | 1848 (11 & 12 Vict.) c. 28 |
| EOCA 1831 | Evidence on Commission Act 1831 | 1831 (1 Will. 4) c. 22 |
| | Extradition Acts 1965 to 2001 | |
| FIA 1410 | False Imprisonment Act 1410 | 1410 (11 Hen. 4) c. 15 [P.R.O. vol. 1] |
| | Family Home Protection Act 1976 | 1976 No. 27 |
| | Family Law Act 1981 | 1981 No. 22 |
| FLA 1995 | Family Law Act 1995 | 1995 No. 26 |
| FLDA 1996 | Family Law (Divorce) Act 1996 | 1996 No. 33 |
| | Family Law (Maintenance of Spouses and Children) Act 1976 | 1976 No. 11 |
| FA 1819 | Felony Act 1819 | 1819 (59 Geo. 3) c. 27 |
| | Finance Act 1894 | 1894 (57 & 58 Vict.) c. 30 |
| | Finance (1909-10) Act 1910 | 1910 (10 Edw. 7 & 1 Geo. 5) c. 8 |
| | Finance Act 1993 | 1993 No. 13 |
| | Finance Act 1995 | 1995 No. 8 |
| | Finance Act 2001 | 2001 No. 7 |
| | Finance Act 2002 | 2002 No. 5 |
| | Finance (No. 2) Act 2008 | 2008 No. 25 |
| | Finance Act 2010 | 2010 No. 5 |
| FIA 1851 | Fines (Ireland) Act 1851 | 1851 (14 & 15 Vict.) c. 90 |
| FAIAA 1874 | Fines Act (Ireland) 1851 Amendment Act 1874 | 1874 (37 & 38 Vict.) c. 72 |
| FA 2010 | Fines Act 2010 | 2010 No. 8 |
| | Fisheries Act 1980 | 1980 No. 1 |
| | Fisheries (Amendment) Act 1997 | 1997 No. 23 |
| | Fisheries (Amendment) Act 2003 | 2003 No. 21 |
| | Fisheries (Consolidation) Act 1959 | 1959 No. 14 |
| | Foreign Law Ascertainment Act 1861 | 1861 (24 & 25 Vict.) c. 11 |
| FTEA 1856 | Foreign Tribunals Evidence Act 1856 | 1856 (19 & 20 Vict.) c. 113 |
| FA 1933 | Foreshore Act 1933 | 1933 No. 12 |
| | Foreshore (Amendment) Act 1992 | 1992 No. 17 |

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| | Foyle Fisheries Act 1952 | 1952 No. 5 |
| | Friendly Societies Act 1896 | 1896 (59 & 60 Vict.) c. 25 |
| | Funds of Suitors Act 1959 | 1959 No. 32 |
| | Funds of Suitors Act 1966 | 1966 No. 25 |
| | Funds of Suitors Act 1984 | 1984 No. 17 |
| | Gárda Síochána (Compensation) Acts 1941 and 1945 | |
| | Geneva Conventions Acts 1962 and 1998 | |
| GA 1973 | Genocide Act 1973 | 1973 No. 28 |
| | Grand Jury (Ireland) Act 1836 | 1836 (6 & 7 Will. 4) c. 116 |
| | Grand Jury (Ireland) Act 1856 | 1856 (19 & 20 Vict) c. 63 |
| | Guardianship of Infants Act 1964 | 1964 No. 7 |
| | Habeas Corpus Act 1781 | 1781-82 (21 & 22 Geo. 3) c. 11 |
| HCA 1804 | Habeas Corpus Act 1804 | 1804 (44 Geo. 3) c. 102 |
| | Harbours Acts 1996 to 2009 | |
| | Health Act 2004 | 2004 No. 42 |
| | Health Act 2007 | 2007 No. 23 |
| | Hotel Proprietors Act 1963 | 1963 No. 7 |
| | Human Rights Commission Act 2000 | 2000 No. 9 |
| | Illegal Immigrants (Trafficking) Act 2000 | 2000 No. 29 |
| | Indictable Offences Act 1848 | 1848 (11 & 12 Vict.) c. 42 |
| | Indictments and Pleadings Act 1428 | 1428 (7 Hen. 6) c. 8 [P.R.O. vol. 2] |
| | Industrial and Provident Societies Act 1893 | 1893 (56 & 57 Vict.) c. 39 |
| | Industrial Relations Act 1946 | 1946 No. 26 |
| INFA 1285 | Infants (Next Friend) Act 1285 | 1285 (13 Edw. 1) Stat. Westm. sec. c. 15 |
| | Inland Fisheries Act 2010 | 2010 No. 10 |
| | Insurance Acts 1909 to 2009 | |
| | Insurance Act 1936 | 1936 No. 45 |
| | Insurance Act 1964 | 1964 No. 18 |
| ICCA 2006 | International Criminal Court Act 2006 | 2006 No. 30 |
| | Interpretation Act 2005 | 2005 No. 23 |
| | Intoxicating Liquor Act 1927 | 1927 No. 15 |
| | Intoxicating Liquor Act 1981 | 1981 No. 5 |
| | Intoxicating Liquor Act 1988 | 1988 No. 16 |
| | Intoxicating Liquor Act 2003 | 2003 No. 31 |
| | Intoxicating Liquor Act 2008 | 2008 No. 17 |
| | Irish Land Act 1903 | 1903 (3 Edw. 7) c. 37 |
| | Irish Takeover Panel Act 1997 | 1997 No. 5 |
| | Judges' Salaries Act 1872 | 1872 (35 & 36 Vict.) c. 51 |
| JIA 1844 | Judgments (Ireland) Act 1844 | 1844 (7 & 8 Vict.) c. 82 |
| | Judgments (Ireland) Act 1849 | 1849 (12 & 13 Vict.) c. 95 |
| JRIA 1850 | Judgments Registry (Ireland) Act 1850 | 1850 (13 & 14 Vict.) c. 74 |
| JRIA 1871 | Judgments Registry (Ireland) Act 1871 | 1871 (34 & 35 Vict.) c. 72 |
| JSFLRA 1989 | Judicial Separation and Family Law Reform Act 1989 | 1989 No. 6 |
| | Juries Act 1976 | 1976 No. 4 |
| | Juries (Protection) Act 1929 | 1929 No. 33 |
| | Juries (Protection) Act 1931 | 1931 No. 18 |

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| | Jurisdiction of Courts and Enforcement of Judgments Act 1998 | 1998 No. 52 |
| | Jurisdiction of Courts (Maritime Conventions) Act 1989 | 1989 No. 5 |
| | Justices Protection (Ireland) Act 1849 | 1849 (12 & 13 Vict.) c. 16 |
| | Land and Conveyancing Law Reform Act 2009 | 2009 No. 27 |
| | Labour Services Act 1987 | 1987 No. 15 |
| | Labour Services (Amendment) Act 2009 | 2009 No. 38 |
| | Land Law (Ireland) Act 1881 | 1881 (44 & 45 Vict.) c. 49 |
| | Landlord and Tenant (Ireland) Act 1870 | 1870 (33 & 34 Vict.) c. 46 |
| | Landlord and Tenant Law Amendment Act Ireland 1860 | 1860 (23 & 24 Vict.) c. 154 |
| | Lands Clauses Consolidation Act 1845 | 1845 (8 & 9 Vict.) c. 18 |
| | Law of Distress Amendment Act 1908 | 1908 (8 Edw 7.) c. 53 |
| | Law of Distress and Small Debts (Ireland) Act 1888 | 1888 (51 & 52 Vict.) c. 47 |
| | Law of Distress and Small Debts (Ireland) Act 1893 | 1893 (56 & 57 Vict.) c. 36 |
| | Law Reform Commission Act 1975 | 1975 No. 3 |
| LPIA 1876 | Legal Practitioners (Ireland) Act 1876 | 1876 (39 & 40 Vict.) c. 44 |
| | Legal Practitioners (Irish Language) Act 2008 | 2008 No. 12 |
| LA 1931 | Legitimacy Act 1931 | 1931 No. 13 |
| | Legitimacy Declaration Act 1858 | 1858 (21 & 22 Vict.) c. 93 |
| LDIA 1868 | Legitimacy Declaration (Ireland) Act 1868 | 1868 (31 & 32 Vict.) c. 20 |
| | Levy of Fines Act 1823 | 1823 (4 Geo. 4) c. 37 |
| | Liability For Defective Products Act 1991 | 1991 No. 28 |
| | Licensing Acts 1833 to 2008 | |
| LACA 1896 | Life Assurance Companies (Payment into Court) Act 1896 | 1896 (59 & 60 Vict.) c. 8 |
| | Literary and Scientific Institutions Act 1854 | 1854 (17 & 18 Vict.) c. 112 |
| | Local Elections (Petitions and Disqualifications) Act 1974 | 1974 No. 8 |
| | Local Government Act 1925 | 1925 No. 5 |
| | Local Government Act 1941 | 1941 No. 23 |
| | Local Government Act 1946 | 1946 No. 24 |
| | Local Government Act 2001 | 2001 No. 37 |
| | Local Government (Delimitation of Water Supply Disconnection Powers) Act 1995 | 1995 No. 18 |
| LGDA 1993 | Local Government (Dublin) Act 1993 | 1993 No. 31 |
| | Local Government (Dublin) (Amendment) Act 1953 | 1953 No. 10 |
| | Local Government (Water Pollution) Act 1977 | 1977 No. 1 |
| LRIA 1871 | Lunacy Regulation (Ireland) Act 1871 | 1871 (34 & 35 Vict.) c. 22 |
| | Maintenance Act 1994 | 1994 No. 28 |
| | Maintenance and Embracery Act 1540 | 1540 (32 Hen. 8) c. 9 |
| MEA 1634 | Maintenance and Embracery Act 1634 | 1634 (10 Chas. 1 sess. 3) c. 15 |
| | Maintenance Orders Act 1974 | 1974 No. 16 |
| | Maintenance Orders (Facilities for Enforcement) Act 1920 | 1920 (10 & 11 Geo. 5) c. 33 |
| | Malicious Injuries Act 1981 | 1981 No. 9 |
| | Mandamus (Ireland) Act 1826 | 1826 (7 Geo. 4) c. 21 |
| | Maternity Protection Act 1994 | 1994 No. 34 |
| MCMLIA 1870 | Matrimonial Causes and Marriage Law (Ireland) Act 1870 | 1870 (33 & 34 Vict.) c. 110 |
| | Matrimonial Causes and Marriage Law (Ireland) Amendment Act 1871 | 1871 (34 & 35 Vict.) c. 49 |
| | Merchant Shipping Acts 1894 to 2010 | |
| | Merchant Shipping Act 1894 | 1894 (57 & 58 Vict.) c. 60 |

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| | Merchant Shipping (Liability of Shipowners and Others) Act 1996 | 1996 No. 35 |
| | Ministers and Secretaries (Amendment) Act 1956 | 1956 No. 21 |
| | Murders Abroad Act 1817 | 1817 (57 Geo. 3) c. 53 |
| | National Asset Management Agency Act 2009 | 2009 No. 34 |
| | National Minimum Wage Act 2000 | 2000 No. 5 |
| | National Monuments (Amendment) Act 1994 | 1994 No. 17 |
| | Nursing Homes Support Scheme Act 2009 | 2009 No. 15 |
| | Occupiers Liability Act 1995 | 1995 No. 10 |
| OAPA 1861 | Offences Against the Person Act 1861 | 1861 (24 & 25 Vict.) c. 100 |
| | Offences Against the State Act 1939 | 1939 No. 13 |
| | Offences Against the State (Forfeiture) Act 1940 | 1940 No. 27 |
| | Official Languages Act 2003 | 2003 No. 32 |
| | Oil Pollution of the Sea (Civil Liability and Compensation) Act 1988 | 1988 No. 11 |
| | Oil Pollution of the Sea (Civil Liability and Compensation) Acts 1988 to 2005 | |
| | Ombudsman For Children Act 2002 | 2002 No. 22 |
| | Open Spaces Act 1906 | 1906 (6 Edw. 7.) c. 25 |
| | Organisation of Working Time Act 1997 | 1997 No. 20 |
| | Parental Leave Act 1998 | 1998 No. 30 |
| PDA 1846 | Parliamentary Deposits Act 1846 | 1846 (9 & 10 Vict.) c. 20 |
| PDBA 1892 | Parliamentary Deposits and Bonds Act 1892 | 1892 (55 & 56 Vict.) c. 27 |
| | Parliamentary Documents Deposit Act 1837 | 1837 (7 Will. 4 & 1 Vict.) c. 83 |
| | Patents Act 1992 | 1992 No. 1 |
| | Penal Servitude Act 1891 | 1891 (54 & 55 Vict.) c. 69 |
| | Pensions Act 1990 | 1990 No. 25 |
| PA 1586 | Perjury Act 1586 | 1586 (28 Eliz.) c. 1 |
| | Perjury Act 1791 | 1791 (31 Geo. 3) c. 18 |
| PTA 1842 | Perpetuation of Testimony Act 1842 | 1842 (5 & 6 Vict.) c. 69 |
| | Personal Injuries Assessment Board Act 2003 | 2003 No. 46 |
| PSIA 1851 | Petty Sessions (Ireland) Act 1851 | 1851 (14 & 15 Vict.) c. 93 |
| | Petty Sessions (Ireland) Act 1867 | 1867 (30 & 31 Vict.) c. 19 |
| | Petty Sessions (Ireland) Act 1882 | 1882 (45 & 46 Vict.) c. 24 |
| | Petty Sessions (Ireland) Amendment Act 1861 | 1861 (24 & 25 Vict.) c. 49 |
| | Petty Sessions (Ireland) Amendment Act 1863 | 1863 (26 & 27 Vict.) c. 96 |
| PSCIA 1858 | Petty Sessions Clerk (Ireland) Act 1858 | 1858 (21 & 22 Vict.) c. 100 |
| | Petty Sessions Clerk (Ireland) Act 1858, Amendment Act 1870 | 1870 (33 & 34 Vict.) c. 64 |
| | Petty Sessions Clerk (Ireland) Amendment Act 1907 | 1907 (7 Edw. 7) c. 22 |
| | Petty Sessions Clerks and Fines (Ireland) Act 1878 | 1878 (41 & 42 Vict.) c. 69 |
| | Planning and Development Act 2000 | 2000 No. 30 |
| | Pleading in Misdemeanour Act 1819 | (60 Geo. 3 & 1 Geo. 4) c. 4 |
| PPA 1897 | Police (Property) Act 1897 | 1897 (60 & 61 Vict.) c. 30 |
| | Poor Relief (Ireland) Act 1838 | 1838 (1 & 2 Vict.) c. 56 |
| | Poor Relief (Ireland) Act 1843 | 1843 (6 & 7 Vict.) c. 92 |
| | Poor Relief (Ireland) Act 1849 | 1849 (12 & 13 Vict.) c. 104 |
| | Prevention of Corruption Act 1906 | 1906 (6 Edw. 7) c. 34 |
| | Prisoners of War and Enemy Aliens Act 1956 | 1956 No. 27 |

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| PA 2007 | Prisons Act 2007 | 2007 No. 10 |
| | Prisons (Ireland) Act 1907 | 1907 (7 Edw. 7) c. 19 |
| | Private Security Services Act 2004 | 2004 No. 12 |
| | Probate and Legacy Duties (Ireland) Act 1814 | 1814 (54 Geo. 3.) c. 92 |
| | Probation of Offenders Act 1907 | 1907 (7 Edw 7.) c. 17 |
| | Promissory Oaths Act 1868 | 1868 (31 & 32 Vict.) c. 72 |
| | Promissory Oaths Act 1871 | 1871 (34 & 35 Vict.) c. 48 |
| | Prosecution of Offences Act 1974 | 1974 No. 22 |
| | Protection of Children (Hague Convention) Act 2000 | 2000 No. 37 |
| | Protection of Employees (Fixed-Term Work) Act 2003 | 2003 No. 29 |
| | Protection of Employees (Part-Time Work) Act 2001 | 2001 No. 45 |
| | Protection of Young Persons (Employment) Act 1996 | 1996 No. 16 |
| | Public Health (Ireland) Act 1878 | 1878 (41 & 42 Vict.) c. 52 |
| | Public Health Acts Amendment Act 1890 | 1890 (53 & 54 Vict.) c. 59 |
| | Public Health Acts Amendment Act 1907 | 1907 (7 Edw. 7.) c. 53 |
| POPAI 1803 | Public Officers Protection Act Ireland 1803 | 1803 (43 Geo. 3) c. 143 |
| | Public Safety (Punishment Of Offences) Temporary Act 1924 | 1924 No. 15 |
| | Quo Warranto Act 1798 | 1798 (38 Geo. 3) c. 2 |
| RIA 1817 | Recognisances (Ireland) Act 1817 | 1817 (57 Geo. 3) c. 56 |
| | Registration of Clubs Acts 1904 to 2008 | |
| | Registration of Clubs (Ireland) Act 1904 | 1904 (4 Edw 7.) c. 9 |
| | Registration of Title Act 1964 | 1964 No. 16 |
| | Roads Act 1993 | 1993 No. 14 |
| | Road Traffic Act 1961 | 1961 No. 24 |
| | Safety, Health and Welfare at Work Act 2005 | 2005 No. 10 |
| | Sea-Fisheries and Maritime Jurisdiction Act 2006 | 2006 No. 8 |
| | Sea Pollution Acts 1991 to 2006 | |
| | Sea Pollution (Hazardous Substances) (Compensation) Act 2005 | 2005 No. 9 |
| | Sea Pollution (Miscellaneous Provisions) Act 2006 | 2006 No. 29 |
| | Sex Offenders Act 2001 | 2001 No. 18 |
| | Sheriffs Act 1215 | 1215 (17 John) Magna Carta [45] |
| | Sheriffs Act 1293 | 1293 (21 Edw. 1) c. 1 [P.R.O. vol. 1] |
| | Sheriffs Act 1634 | 1634 (10 Chas. 1 sess. 3) c. 18 |
| SA 1707 | Sheriffs Act 1707 | 1707 (6 Ann.) c. 7. |
| | Sheriffs Act 1712 | 1712 (11 Ann.) c. 8 |
| | Sheriffs Act 1725 | 1725 (12 Geo. 1) c. 4 |
| | Sheriffs Act 1729 | 1729 (3 Geo. 2) c. 9 |
| | Sheriffs Act 1755 | 1755 (29 Geo. 2) c. 15 |
| | Sheriffs Act 1785 | 1785 (25 Geo. 3) c. 36 |
| | Sheriffs (Ireland) Act 1817 | 1817 (57 Geo. 3) c. 68 |
| SIA 1835 | Sheriffs (Ireland) Act 1835 | 1835 (5 & 6 Will. 4) c. 55 |
| | Sheriffs (Ireland) Act 1920 | 1920 (10 & 11 Geo 5.) c. 26 |
| | Sinn Fein Funds Act 1947 | 1947 No. 13 |
| | Social Welfare Consolidation Act 2005 | 2005 No. 26 |
| | Solicitors Act 1954 | 1954 No. 36 |
| | Solicitors (Amendment) Act 1960 | 1960 No. 37 |
| | Solicitors (Amendment) Act 1994 | 1994 No. 27 |

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| | Stamp Duties Consolidation Act 1999 | 1999 No. 31 |
| | State Property Act 1954 | 1954 No. 25 |
| | Status of Children Act 1987 | 1987 No. 26 |
| | Statute of Limitations 1957 | 1957 No. 6 |
| | Statute of Limitations (Amendment) Act 2000 | 2000 No. 13 |
| SLRA 2007 | Statute Law Revision Act 2007 | 2007 No. 28 |
| | Stock Transfer Act 1963 | 1963 No. 34 |
| | Street and House To House Collections Act 1962 | 1962 No. 13 |
| SA 1965 | Succession Act 1965 | 1965 No. 27 |
| | Succession Duty Act 1853 | 1853 (16 & 17 Vict.) c. 51 |
| | Summary Jurisdiction Act 1848 | 1848 (11 & 12 Vict.) c. 43 |
| | Summary Jurisdiction Act 1857 | 1857 (20 & 21 Vict.) c. 43 |
| SJIA 1851 | Summary Jurisdiction (Ireland) Act 1851 | 1851 (14 & 15 Vict.) c. 92 |
| | Summary Jurisdiction (Ireland) Act 1862 | 1862 (25 & 26 Vict.) c. 50 |
| | Summary Jurisdiction (Ireland) Act 1908 | 1908 (8 Edw. 7) c. 24 |
| | Summary Jurisdiction (Ireland) Act 1918 | 1918 (8 & 9 Geo. 5) c. 19 |
| SJIAA 1871 | Summary Jurisdiction (Ireland) Amendment Act 1871 | 1871 (34 & 35 Vict.) c. 76 |
| SPSFIA 1919 | Summons and Process Servers' Fees (Ireland) Act 1919 | 1919 (9 & 10 Geo. 5) c. 4 |
| | Supplies and Services (Temporary Provisions) Act 1946 | 1946 No. 22 |
| SCJIA 1877 | Supreme Court of Judicature (Ireland) Act 1877 | 1877 (40 & 41 Vict.) c. 57 |
| | Supreme Court of Judicature (Ireland) Act 1882 | 1882 (45 & 46 Vict.) c. 70 |
| | Supreme Court of Judicature (Ireland) Act 1887 | 1887 (50 Vict., Sess 2) c. 6 |
| | Supreme Court of Judicature (Ireland) Act 1897 | 1897 (60 Vict.) c. 17 |
| | Taxes Consolidation Act 1997 | 1997 No. 39 |
| | Taxing Masters (Ireland) Act 1848 | 1848 (11 & 12 Vict.) c. 132 |
| | Terms of Employment (Information) Act 1994 | 1994 No. 5 |
| | Town Police Clauses Act 1847 | 1847 (10 & 11 Vict.) c. 89 |
| | Trade Union Act 1913 | 1913 (2 & 3 Geo. 5) c. 10 |
| | Trade Union Act 1941 | 1941 No. 22 |
| | Transfer of Execution of Sentences Act 2005 | 2005 No. 28 |
| | Transfer of Sentenced Persons Acts 1995 and 1997 | |
| | Transport (Dublin Light Rail) Act 1996 | 1996 No. 24 |
| | Transport (Railway Infrastructure) Act 2001 | 2001 No. 55 |
| | Treason Act 1708 | 1708 (7 Ann.) c. 21 |
| | Treason Act 1939 | 1939 No. 10 |
| | Treason (Ireland) Act 1854 | 1854 (17 & 18 Vict.) c. 26 |
| | Treasury Solicitor Act 1876 | 1876 (39 & 40 Vict.) c. 18 |
| TA 1634 | Trespass Act 1634 | 1634 (10 Chas. 1 sess. 2) c. 6 |
| | Trustee Acts 1888 to 1958 | |
| | Trustee Act 1850 | 1850 (13 & 14 Vict.) c. 60 |
| | Trustee (Authorised Investments) Act 1958 | 1958 No. 8 |
| | Trustee Savings Banks Act 1989 | 1989 No. 21 |
| | Unfair Dismissals (Amendment) Act 1993 | 1993 No. 22 |
| | Value-Added Tax Act 1972 | 1972 No. 22 |
| | Waste Management Act 1996 | 1996 No. 10 |
| | Wireless Telegraphy Act 1926 | 1926 No. 45 |
| | Witnesses (Public Inquiries) Protection Act 1892 | 1892 (55 & 56 Vict.) c. 64 |
| | Workmen's Compensation (Amendment) Act 1948 | 1948 No. 23 |

BILLE NA gCÚIRTEANNA (COMHDHLÚTHÚ AGUS ATHCHÓIRIÚ) 2010
COURTS (CONSOLIDATION AND REFORM) BILL 2010

BILL

entitled

AN ACT TO PROVIDE FOR THE CONSOLIDATION OF VARIOUS ENACTMENTS CONCERNING COURTS; TO MODERNISE AND REFORM VARIOUS PROVISIONS CONCERNING COURTS AND PROCEEDINGS BEFORE COURTS; TO RE-STATE THE JURISDICTION AND POWERS OF THE CIRCUIT COURT AND DISTRICT COURT AS COURTS OF LIMITED AND LOCAL JURISDICTION IN ACCORDANCE WITH ARTICLE 34.3.4° OF THE CONSTITUTION; TO RE-STATE THE JURISDICTION AND POWERS OF STATUTORY COURTS EXERCISING APPELLATE JURISDICTION; TO REGULATE CERTAIN GENERAL MATTERS OF PROCEDURE; TO PROVIDE FOR THE EXERCISE IN ACCORDANCE WITH ARTICLE 37 OF THE CONSTITUTION OF LIMITED FUNCTIONS AND POWERS OF A JUDICIAL NATURE BY CERTAIN COURT OFFICERS AND TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1
Preliminary and General

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| Short title | 1.—This Act may be cited as the Courts (Consolidation and Reform) Act 2010. | [Standard] |
| Commencement | 2.—The Minister may, by order or orders, appoint such day or days on which this Act shall come into operation, and different days may be so appointed for different purposes and for different provisions. | [Standard] |
| Purposes: general | 3.—The purposes of this Act are: (a) in part, to consolidate provisions formerly contained in various enactments (repealed by this Act) concerning Courts (but not including either special courts referred to in Article 38.3 of the Constitution or military tribunals referred to in Article 38.4 of the Constitution); (b) in part, to modernise and, where appropriate, to reform, provisions concerning Courts and proceedings before Courts; (c) to re-state the jurisdiction and powers of the Circuit Court and of the District Court as Courts of limited and local jurisdiction in accordance with Article 34.3.4° of the Constitution and, in relation to those Courts, to regulate certain matters specified in Article 36 of the Constitution, in particular the organisation of those Courts, and the distribution of jurisdiction and business among those Courts and their Judges; (d) to re-state the jurisdiction and powers of the Court of Criminal Appeal and of the Courts-Martial Appeal Court and, in relation to those Courts, to regulate certain matters specified in Article 36 of the Constitution; (e) to regulate certain matters of procedure; (f) to provide for the exercise in accordance with Article 37 of the Constitution | [New] |

of limited functions and powers of a judicial nature by certain court officers and to provide generally for the conduct of the business of Courts which is not required by law to be transacted by or before a Judge by court officers, and

(g) to give effect to certain European Union enactments.

No effect on
Constitutional
jurisdiction or
obligation

4.— Nothing in this Act:

[New]

- (a) limits the jurisdiction of the Supreme Court in an appeal from the High Court, or the jurisdiction of the High Court mentioned in *section 22(1)*;
- (b) limits the powers of the Supreme Court or of the High Court in the exercise of the jurisdiction conferred on either of those Courts under or by virtue of the Constitution, or
- (c) reduces or modifies any obligation to exercise any jurisdiction or power in conformity with the Constitution.

Interpretation:
general

5.— In this Act, unless the context otherwise requires:—

[Standard]

“Establishment Act” means the *Courts (Establishment and Constitution) Act 1961*;

“Act of 1857” means the *Summary Jurisdiction Act 1857*;

“Act of 1860” means the *Landlord and Tenant Law Amendment Act Ireland 1860*;

“Act of 1924” means *The Courts of Justice Act 1924*;

“Act of 1926” means the *Court Officers Act 1926*;

“Act of 1936” means the *Courts of Justice Act 1936*;

“Act of 1939” means the *Offences Against the State Act 1939*;

“Act of 1953” means the *Courts of Justice Act 1953*;

“Act of 1954” means the *Defence Act 1954*;

“Act of 1961” means the *Courts (Supplemental Provisions) Act 1961*;

“Act of 1962” means the *Criminal Justice (Legal Aid) Act 1962*;

“Act of 1967” means the *Criminal Procedure Act 1967*;

“Act of 1976” means the *Family Law (Maintenance of Spouses and Children) Act 1976*;

“Act of 1983” means the *Courts-Martial Appeals Act 1983*;

“Act (No. 2) of 1991” means the *Courts (No. 2) Act 1991*;

“Act of 1997” means the *Courts (No. 2) Act 1997*;

“Act of 1998” means the *Jurisdiction of Courts and Enforcement of Judgments Act 1998*;

“Act of 2004” means the *Civil Liability and Courts Act 2004*;

“Act of 2006” means the *Criminal Law (Insanity) Act 2006*;

“Act of 2010” means the *Fines Act 2010*;

“adjudicating body or person” includes any legal or natural person (other than a Court) authorised by or in accordance with an enactment to make a binding determination or decision, based on evidence, affecting the rights of a person, and being either:

- (a) a body or person whose decision may be the subject of an appeal to a Court or Judge, or
- (b) a body or person authorised by law to refer a question of law for determination, decision or opinion of a Superior Court;

“affidavit” includes affirmation, statutory or other declaration, acknowledgment, examination, and attestation;

“alternative dispute resolution procedure” includes mediation, arbitration and conciliation;

an “applicant” includes any person bringing an application before a Court against another person (otherwise than by way of counterclaim or counter-application as a respondent) in any civil proceeding, or seeking a remedy from a Court in any civil proceeding;

“application” is the means by which an applicant seeks a remedy (including a remedy in connection with any claim, based on a cause or right of action recognised by the law) from a Court, against another person or otherwise, by way of civil proceeding;

“application notice” means the document (of whatever name) the issue of which is prescribed by the appropriate rules of court for the commencement in that Court of civil proceedings on the application concerned;

“application to register judgment” means an application to the Registrar of Judgments in accordance with *section 116*;

“attachment of earnings order” has the meaning assigned by *section 113*;

“authorised institution” has the meaning assigned by *section 123*;

“authority to enter judgment” has the meaning assigned by *section 113*;

“broadcast” has the same meaning as in *section 2* of the *Broadcasting Act 2009*;

“Brussels I enforcement order” has the meaning assigned by *section 123*;

“Brussels I Regulation” means Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;

“care and protection jurisdiction” shall be construed in accordance with *section 25*⁴;

“case conduct principles” has the meaning assigned by *section 75*;

⁴ This provision may require adjustment in the light of the *Scheme of the Mental Capacity Bill 2008*: see note 1, above.

“Central Office” means the Central Office of the High Court;

“Circuit”, when used without qualification, means a circuit of the Circuit Court;

“Circuit Court” means the Circuit Court established by *section 4* of the Establishment Act and for the time being maintained by law;

“Circuit Court money limit” has the meaning assigned by *section 36*;

“Circuit Court Rules Committee” and “Circuit Court Rules” each has the meaning assigned by *section 257*;

“civil partner” has the meaning assigned to it by the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*;

“civil partnership law proceedings” has the meaning assigned by *section 139* of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*;

“civil proceedings” means proceedings before a Court which may exercise civil jurisdiction, in which a remedy or a decision which is civil in nature is or may be claimed, and includes proceedings on appeal and proceedings for the execution or enforcement of a Court’s decision;

“cohabitancy proceedings” means proceedings under *Part 15* of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*;

“Combined court office” and “Combined court office manager” each has the meaning assigned by *section 328*;

“commissioner”, when used in the context of evidence of commission, shall be construed in accordance with *section 87(1)(d)*;

“concurrent jurisdiction proceedings”, when used in relation to the Circuit Court, has the meaning assigned by *section 45*;

“constituent court office” has the meaning assigned by *section 328*;

“corporate body” includes—

(a) a company within the meaning of the Companies Acts;

(b) a body (but not including a company within the meaning of the Companies Acts) established by or under an enactment or a charter as a body corporate (including both a corporation aggregate and a corporation sole), and

(c) a body established under the laws of a state other than the State and corresponding to a body referred to in *paragraph (a)*;

“costs” includes charges and expenses;

“counterapplication” (which includes counterclaim) means any application by a respondent seeking a remedy (including a remedy in connection with any claim, based on a cause or right of action recognised by the law) from a Court against an applicant in the applicant’s proceeding against that respondent;

“Court”, when used without qualification, includes the Supreme Court, the High Court, the Court of Criminal Appeal, the Courts-Martial Appeal Court, the Circuit Court and the District Court;

“Court bond”⁵ has the meaning assigned by *section 141*;

“Court fee” means any fee mentioned in *paragraph (a) or paragraph (b) of section 253(3)* chargeable under a Court fees order made in accordance with that section;

“Court friend” has the meaning assigned by *section 194*;

“Court Funds Office” means the office of that name mentioned in *section 331*;

“Court instrument” includes any written order (including an execution order), warrant or certificate signed by a Judge or court officer authorised to sign that instrument, or a Court bond;

“court officer” includes:

(a) in relation to the Supreme Court, the Registrar of the Supreme Court;

(b) in relation to the High Court, the Master of the High Court; a Taxing Master; the Probate Officer; the Official Assignee in Bankruptcy; the Examiner; the Accountant, the officer for the time being managing the Central Office and a High Court Registrar;

(c) in relation to the President of the High Court, the Registrar of Wards of Court⁶;

(d) in relation to the Court of Criminal Appeal and the Courts-Martial Appeal Court, the Registrar of the Supreme Court;

(e) in relation to the Circuit Court, a County Registrar or, where the context requires, the County Registrar for the time being assigned to the Circuit Court Office concerned;

(f) in relation to the District Court, a District Court Clerk or, where the context requires, a District Court Clerk for the time being assigned to the District Court concerned;

(g) the officer in charge of the Court Funds Office;

(h) a Combined Courts Officer Manager, and

where the context so admits, a member of the staff of the Service acting with the authority and under the direction of a person mentioned in *paragraphs (a) to (h)* inclusive;

“Court of Criminal Appeal” means the Court of Criminal Appeal established by *section 3* of the Establishment Act and for the time being maintained by law;

a “courtroom” includes any place in which a Court is conducting proceedings in accordance with law;

“Courts-Martial Appeal Court” means the Courts-Martial Appeal Court established by *section 9* of the Act of 1983 and for the time being maintained by law;

references to the “county of Dublin” are references to the counties of South

⁵ This expression is substituted for “recognisance” in the interest of clarity.

⁶ This provision may require adjustment in the context of the *Scheme of the Mental Capacity Bill 2008*: see note 1, above.

Dublin, Fingal and Dun Laoghaire-Rathdown and, where the context so admits, include reference to the city of Dublin;

“criminal proceedings” means proceedings for any offence, and includes any appeal or subsequent proceedings;

a “decision” of a Court in proceedings, or of an application in proceedings, before that Court, includes any judgment, direction, decree, dismiss, determination or order (including as to any costs), and cognate words shall be construed accordingly;

“District”, when used without qualification, means a district of the District Court;

“District Court” means the District Court established by *section 5* of the Establishment Act and for the time being maintained by law;

“District Court money limit” has the meaning assigned by *section 56*;

“District Court Rules Committee” and “District Court Rules” each has the meaning assigned by *section 257*;

“dormant Court fund” has the meaning assigned by *paragraph 1 of Part 1 of Schedule 14*;

“Dublin Circuit” means a Circuit of the Circuit Court consisting of the city of Dublin and the counties of South Dublin, Fingal and Dun Laoghaire-Rathdown;

“Dublin Metropolitan District” means the District of that name referred to in *section 166*;

“electronic service” has the meaning assigned by *section 232*;

“enactment” means:

- (a) an Act or a statutory instrument (each within the meaning of *section 2* of the *Interpretation Act 2005*);
- (b) a charter, or
- (c) a European Union enactment,

or any part of any of them, and a reference to a European Union enactment includes reference to such an enactment as amended from time to time, and to a subsequent European Union enactment which repeals and replaces the first-mentioned enactment;

“enforceable maintenance order” has the meaning assigned by *section 123*;

“European Enforcement Order Regulation” means Regulation (EC) No. 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims;

“European maintenance order” has the meaning assigned by *section 123*;

“European Order for Payment Regulation” means Regulation (EC) No. 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European Order for Payment procedure;

“European Small Claims Procedure Regulation” means Regulation (EC) No.

861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure;

“European Union enactment” means any:

- (a) measure (including a Regulation) in the field of judicial cooperation in civil matters referred to in Chapter 3 of Title 5 of Part 3 of the Treaty on the Functioning of the European Union and adopted in accordance with Article 251 of that Treaty (including such a measure adopted in accordance with the provisions of a prior Treaty which correspond to the provisions of that Article), or
- (b) measure (including a Decision and a Framework Decision) in the field of police and judicial cooperation in criminal matters referred to in Chapter 4 of Title 5 of Part 3 of the Treaty on the functioning of the European Union and adopted in accordance with Chapter 2 of Title 1 of Part 6 of that Treaty (including such a measure adopted in accordance with the provisions of a prior Treaty which correspond to the provisions of that Chapter)

in the adoption and application of which the State has taken part (in accordance with the Protocol (No. 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union), and which has force of law in the State;

“European Union Institutional judgment” has the meaning assigned by *section 123*;

“European Union judgment” has the meaning assigned by *section 123*;

“evidence on commission” and “commissioner”, when used in the context of evidence of commission, shall be construed in accordance with *section 87(1)(d)*;

“Evidence Regulation” means Council Regulation (EC) No. 1206/2001 of 28 May 2001 on cooperation between the Courts of the Member States in the taking of evidence in civil or commercial matters;

“examination order” has the meaning assigned by *section 113*;

“execution order” has the meaning assigned by *section 113*;

a reference to an order of a Court made “*ex parte*” is a reference to an order made where the Court has not heard, or given an opportunity to be heard to, a party or person affected by the making of that order;

“family law enactment”⁷ means:

- (a) the *Legitimacy Act 1931*;
- (b) the *Adoption Act 2010*⁸;
- (c) the *Guardianship of Infants Act 1964*;
- (d) the *Maintenance Orders Act 1974*, the *Act of 1976* or the *Maintenance Act 1994*;
- (e) the *Family Home Protection Act 1976*;
- (f) the *Family Law Act 1981*;
- (g) the *Domicile and Recognition of Foreign Divorces Act 1986*

⁷ Note that using this approach would require future cognate legislation to be included or treated as included in this definition.

⁸ The *Adoption Act 2010* came into force on 1 November 2010.

- (h) the *Status of Children Act 1987*;
- (i) the *Judicial Separation and Family Law Reform Act 1989*;
- (j) the *Child Abduction and Enforcement of Custody Orders Act 1991*;
- (k) the *Child Care Acts 1991 to 2007*;
- (l) the *Family Law Act 1995*;
- (m) the *Family Law (Divorce) Act 1996*;
- (n) the *Domestic Violence Acts 1996 and 2002*;
- (o) the *Protection of Children (Hague Convention) Act 2000*;
- (p) the *Children Act 2001*, excluding those provisions of that Act which concern the bringing, hearing and decision of criminal proceedings against a child;
- (q) the *European Convention on Human Rights Act 2003*, so far as it relates to the rights mentioned in Article 8 of the Convention set out in Schedule 1 to that Act;
- (r) the *Civil Registration Act 2004*;
- (s) the Matrimonial and Parental Regulation;
- (t) any other enactment conferring on a Court jurisdiction to grant a remedy which is cognate or related to a remedy which may be granted under or by virtue of a provision of any Act mentioned in *paragraphs (a) to (r)* inclusive, or to grant another remedy by reason of the family relationship between or among parties to proceedings;
- (u) any enactment giving further effect in the State to the Maintenance Regulation⁹, and
- (v) any enactment giving further effect in the law of the State to any other European Union enactment under or by virtue of which jurisdiction is conferred on a Court to grant a remedy which is cognate or related to a remedy which may be granted under or by virtue of a provision of any Act mentioned in *paragraphs (a) to (t)* inclusive, or to grant another remedy by reason of the family relationship between or among parties to proceedings;

“family proceedings” means civil proceedings before a Court which has jurisdiction to decide those proceedings in which a remedy is sought under or by virtue of Article 41 of the Constitution or any family law enactment (other than any such proceedings mentioned in *paragraph (b)* or *paragraph (c)* of the definition of “civil partnership law proceedings” in *section 139* of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*);

“fine” and “fine order” each has the meaning assigned by *paragraph 1* of *Schedule 10*;

“fund in Court” has the meaning assigned by *section 253*;

“goods seized” and “seizable goods” each has the meaning assigned by *section 113*;

“governor” includes:

(a) the governor, within the meaning of *section 2* of the *Prisons Act 2007*, of a prison, within the meaning of that Act;

(b) in relation to proceedings involving a child, the Director, within the meaning of *section 157* of the *Children Act 2001*, of a children detention school, within the meaning of that Act;

(c) in relation to proceedings involving a person subject to military law, the officer in charge of a military prison or detention barrack established by the Minister for Defence in accordance with *section 232* of the *Defence Act 1954*,

⁹ This reference would be replaced by a reference to any statutory instrument giving further effect to the Maintenance Regulation.

and

(d) the person in charge of any other place for the time being prescribed by law for the custody or detention of persons charged with or convicted of criminal offences;

“High Court” means the High Court established and constituted by *section 2* of the Establishment Act and for the time being maintained by law pursuant to Article 34 of the Constitution;

“Insolvency Regulation” means Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings;

“instalment order” has the meaning assigned by *paragraph 4* of *Part 3* of *Schedule 8*;

reference to a “Judge of the Supreme Court” includes, except where the context otherwise requires, the Chief Justice;

reference to a “Judge of the High Court” includes, except where the context otherwise requires, the President of the High Court;

reference to a “Judge of the Circuit Court” includes, except where the context otherwise requires, the President of the Circuit Court, and references in this or any enactment to the Judge of, for or assigned to, a particular Circuit are references to a Judge of the Circuit Court for the time being permanently or temporarily assigned to that Circuit;

reference to a “Judge of the District Court” includes, except where the context otherwise requires, the President of the District Court, and references in this or any enactment to the Judge of, for or assigned to, a particular District are references to a Judge of the District Court for the time being permanently or temporarily assigned to that District, and includes a reference to a substitute Judge (within the meaning of *section 174*) for the time being acting as such in relation to that District;

“judgment” has, in *Chapter 10* of *Part 2* and in *Schedule 8*, the meaning assigned by *section 112*;

“judgment creditor” has the meaning assigned by *section 113*;

“judgment debtor” has the meaning assigned by *section 113*;

“judgment interest rate” means the rate of interest specified in *section 109*;

“judicial business” means business of a Court which is required by law to be transacted by or before a Judge or Judges of that Court;

“judicial office” means an office being the office of ordinary Judge of the Supreme Court, the office of ordinary Judge of the High Court, the office of ordinary Judge of the Circuit Court or the office of ordinary Judge of the District Court;

“land” includes—

(a) any estate or interest in or over land, whether corporeal or incorporeal,

(b) mines, minerals and other substances in the substratum below the surface, whether or not owned in horizontal, vertical or other layers apart from the surface of the land,

(c) land covered by water,

(d) buildings or structures of any kind on land and any part of them, whether the division is made horizontally, vertically or in any other way,

(e) the airspace above the surface of land or above any building or structure on land which is capable of being or was previously occupied by a building or structure and any part of such airspace, whether the division is made horizontally, vertically or in any other way, and

(f) any part of land;

“leave appeal” shall be construed in accordance with *section 278*;

“legal aid certificate” means a certificate granted under the appropriate provision of the Act of 1962 or, as the case may be, the Act of 1983;

“legal representative”¹⁰ includes any one or more of the following, acting professionally on behalf of a client who is a party to proceedings (or, where the context requires, appointed or assigned by a Court to act professionally, otherwise than on behalf of a party, in support of or against a decision or proposition to which proceedings before that Court relate):

(a) a barrister,

(b) a solicitor,

(c) a person mentioned in *section 250(1)(d)* or *section 250(1)(e)*;

“live television link” has the meaning assigned by *section 226*;

reference to a “local government area” is to such an area constituted in accordance with *section 10(2)* and *Schedule 5* of the *Local Government Act 2001*;

“Lugano Convention 2007” means the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, done at Lugano on the 30th day of October 2007, as approved on behalf of the European Community by Council Decision 2009/430/EC of 27 November 2008, and includes the Protocols and Annexes;

“Lugano Convention 2007 enforcement order” has the meaning assigned by *section 123*;

“Lugano Convention 2007 judgment” has the meaning assigned by *section 123*;

¹⁰ This definition is intended to avoid using a multiplicity of terms (including, (senior or junior) counsel, barrister or barrister at law, solicitor, or other person having a right of audience) to capture the same concept. Many provisions concerning criminal procedure, legal aid and legal costs use certain of these terms. “Counsel” is generally understood to connote a barrister and is often used substitutably for “barrister”, but in certain pre-1971 legislation may mean the person acting professionally as advocate for the party (who may, in some instances, particularly in the District Court, be a solicitor). The use of this generic definition also avoids the potential criticism that by using domestic professional designations only, the Bill does not pay sufficient regard to the freedom of legal professionals qualified in other EU Member States to provide services in accordance with law – hence the reference to the other professionals mentioned in *section 250*. This section does not purport to modify the legal professionals a person may retain in connection with proceedings, the legal professionals whose services may be provided under legal aid provisions or the rules of legal professional bodies as to the circumstances in which they may act.

“Maintenance Regulation” means Council Regulation (EC) No. 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations;

“market value” in relation to land means the price that would have been obtained in respect of the unencumbered freehold estate were the land to have been sold on the open market, in the year immediately preceding the bringing of the proceedings concerned, in such manner and subject to such conditions as might reasonably be calculated to have resulted in the vendor obtaining the best price for the land;

“Matrimonial and Parental Regulation” means Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No. 1347/2000;

“mediation” includes any structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator¹¹;

“Mediation Directive” means Directive (EC) No. 2008/52 of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters;

“mediator” includes any third person (who is unconnected to any party) who is asked to conduct a mediation (including by facilitating negotiations between the parties in a mediation to assist them in reaching a voluntary agreement regarding their dispute) in an effective, impartial and competent way, regardless of the denomination or profession of that person and of the way in which that person has been appointed or requested to conduct the mediation;

“member state” in relation to a European Union enactment means a member state of the European Union in which the European Union enactment concerned is in force, but does not (unless the context requires otherwise) include the State;

“Minister”, when used without qualification, means the Minister for Justice and Law Reform¹²;

“money judgment” has the meaning assigned by *section 112*;

“next friend” has the meaning assigned by *section 241*;

“oath” includes affirmation and declaration;

“on-licence” has the same meaning as in the *Licensing Acts 1833 to 2008*;

“order to deliver property” has the meaning assigned by *section 113*;

“order of enforcement” has the meaning assigned by *section 113*;

¹¹ The definition of “mediation” is intended to include any mediation captured by the Mediation Directive. See also the Commission’s *Report on Alternative Dispute Resolution: Mediation and Conciliation* (LRC 98-2010), which proposes a general legislative framework for mediation and conciliation.

¹² The designation of the Minister has been revised in light of the Justice, Equality and Law Reform (Alteration of Name of Department and Title of Minister) Order 2010 (SI No. 216 of 2010).

“order of possession” has the meaning assigned by *section 113*;

“order of seizure and sale” has the meaning assigned by *section 113*;

“originating document” means an application notice in civil proceedings or a summons, warrant or other document by which criminal proceedings before the District Court are begun;

“other marketable security” has the same meaning as in *section 1* of the *Stamp Duties Consolidation Act 1999*;

“party” when used without qualification, means a party to proceedings and includes, in relation to civil proceedings any applicant and any respondent and, in relation to criminal proceedings, a prosecutor and any person accused in those proceedings of an offence;

“personal enforcement order” means an order:

- (a) by which a Court imprisons a person who the Court is satisfied beyond reasonable doubt has deliberately and without reasonable excuse disobeyed the order of a Court to compel or secure obedience by the person of the Court’s order, and
- (b) which is made only when the person who it is alleged or suspected has so disobeyed the Court’s order:
 - (i) has been served personally with a copy of the Court’s order and a written warning that he or she is liable to a personal enforcement order if he or she disobeys that order;
 - (ii) has been summoned or otherwise brought (including by arrest) to appear before the Court and has been informed of the details of his or her alleged or suspected disobedience, and
 - (iii) has been heard or given an opportunity to be heard by the Court in relation to his or her alleged or suspected disobedience;

“personal service” has the meaning assigned by *section 232*;

“pleadings” has the meaning assigned by *section 241*;

“practice direction” shall be construed in accordance with *section 262*;

“preserved provisions” has the meaning assigned by *section 9(3)*;

“President” or “presiding Judge” when used in relation to a Court means—

- (a) in the case of the Supreme Court, the Chief Justice;
- (b) in the case of the High Court, the President of the High Court;
- (c) in the case of the Circuit Court, the President of the Circuit Court;
- (d) in the case of the District Court, the President of the District Court;

“prison” has the same meaning as it has in the *Prisons Act 2007*;

“proceedings”, when used without qualification, includes civil proceedings and criminal proceedings;

“prison” includes:

- (a) a prison, within the meaning of *section 2* of the *Prisons Act 2007*;

(b) in relation to proceedings involving a child, a children detention school, within the meaning of *section 3* of the *Children Act 2001*;

(c) in relation to proceedings involving a person subject to military law, a military prison or detention barrack established by the Minister for Defence in accordance with *section 232* of the *Defence Act 1954*, and

(d) any other place for the time being prescribed by law for the custody or detention of persons charged with or convicted of criminal offences;

“public authority” means:

(a) a Minister of the Government,

(b) a local authority, within the meaning of the *Local Government Act 2001*,

(c) the Commissioners of Public Works in Ireland,

(d) a harbour authority, within the meaning of the *Harbours Acts 1946 to 2009*,

(e) a harbour company under the *Harbours Acts 1996 to 2009*,

(f) the Health Service Executive,

(g) a board or other body (but not including a company under the Companies Acts) established by or under statute, or

(h) a company under the Companies Acts, in which all the shares are held—

(i) by or on behalf of or jointly with a Minister of the Government,

(ii) by directors appointed by a Minister of the Government, or

(iii) by a board, company or other body referred to in *paragraph (g)* or *subparagraph (i)* or *subparagraph (ii)*;

“publish” means publish, other than by way of broadcast, to the public generally or a section of it;

a Court’s “record” in civil proceedings includes (where relevant):

(a) a contemporaneous record of the proceedings concerned made by any one or more means, including, without limitation –

(i) any shorthand or other note, whether written, typed or printed, and

(ii) any sound recording or other recording, capable of being reproduced in legible, audible or visual form, approved by the Court;

(b) where available, a transcript of the contemporaneous record mentioned in *paragraph (a)*, certified by the Judge (or presiding Judge) before whom the proceedings were heard to be a transcript of those proceedings;

(c) the original or a certified copy of the application notice and any pleadings or other Court documents (including any affidavit) exchanged between or among the parties or lodged in Court;

(d) the original or a certified copy of any document, exhibit or other thing connected with the proceedings produced at the hearing of the proceedings, and

(e) a certified copy of any written decision or order of the Court and of any Court instrument in the proceedings

produced for or on behalf of the Court;

a Court's "record" in criminal proceedings shall be construed in accordance with *section 304(1)*;

a court-martial's "record" shall be construed in accordance with *section 309(1)*;

"registered post service" has the meaning assigned by *section 232*;

the "register of judgments" means the register maintained in accordance with *section 116*;

"Registrar of Judgments" has the meaning assigned by *section 116*;

"remedy" includes relief and redress;

reference to a "repealed provision" is a reference to a provision repealed by *section 8*;

a "respondent" includes every person served with an application notice, or served with notice of, or entitled to attend and be heard in, any civil proceedings, but does not include a person charged with or accused of an offence;

"rules of court" means rules made or deemed to be made in accordance with *Chapter 10 of Part 4*;

"Rules of the Superior Courts" has the meaning assigned by *section 257*;

"scheduled sittings" of a Court has the meaning assigned by *section 155*;

"Service" means the Courts Service established by *section 4 of the Courts Service Act 1998*;

"Service Convention" means the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters done at the Hague on the 15th November 1965;

"Service Regulation" means Regulation (EC) No. 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No. 1348/2000;

"share" includes share, stock, debenture, debenture stock, loan stock, bond and other marketable security, and includes any dividend, coupon or other income accruing to it;

"Special Criminal Court" means a court established under *Part V* of the Act of 1939;

the "Statutes of Limitations" has the same meaning as in *section 1(2) of the Statute of Limitations (Amendment) Act 2000*;

"stock" has the same meaning as in *section 1 of the Stamp Duties Consolidation Act 1999*;

"Superior Courts" means the Supreme Court, the High Court, the Court of Criminal Appeal and the Courts-Martial Appeal Court;

"Superior Courts Rules Committee" has the meaning assigned by *section 257*;

“Supreme Court” means the Supreme Court established and constituted by *section 1* of the Establishment Act and for the time being maintained by law pursuant to Article 34 of the Constitution;

“swear” includes affirm and declare;

“temporary seizure order” includes any order of a Court by which a person is deprived of his property (including by the seizure of any such property) pending compliance by that person with the decision of that Court or another Court;

“third party creditor order” has the meaning assigned by *section 113*;

“unincorporated association” includes any unincorporated body of persons (including, without limitation, a club or society) who are bound together as members for a common purpose having a permanent character by contract, constitution or rules, but does not include any corporate body or public authority, and reference to the “secretary” of an unincorporated association includes in the case of an association not having a secretary, a reference to any person performing in relation to the association the functions which would, in the case of a corporate body, be performed by its secretary;

“ward of Court” shall be construed in accordance with *paragraph 2 of Schedule 6*¹³;

a “warrant” means a written order or authority issued by a Court or Judge (which, for the avoidance of doubt, may be signed by a court officer, where permitted by law) commanding or authorising a person to perform an act incident to the administration of justice, but does not, unless the context so requires, include a search warrant.

Interpretation: this Act and other enactments

6.— In this Act and in any other enactment:

[New]

a reference to any plaintiff, petitioner, applicant or other moving party in any civil proceedings before a Court means, or as the context requires, includes, a reference to an “applicant” within the meaning of *section 5(1)*;

a reference to:

- (a) any cause, action, suit or original proceeding, by whatever name, between an applicant and a respondent or between a plaintiff and a defendant, and
- (b) any matter or original proceeding, by whatever name, (other than criminal proceedings) not between parties,

means, or as the context requires, includes, a reference to an “application” and to “civil proceedings”, each within the meaning of *section 5(1)*;

a reference to any summons, petition, originating notice of motion, originating motion, civil bill, notice of application or other like document in connection with any civil proceedings before a Court means, or as the context requires, includes, a reference to an “application notice” within the meaning of *section 5(1)*;

a reference to an “application for judicial review” or to Order 84 of the Rules of the Superior Courts is a reference to the procedure referred to in *section 26(1)*;

¹³ This provision may require adjustment in the context of the *Scheme of the Mental Capacity Bill 2008*: see note 1, above.

a reference to an “area” in relation to the District Court is a reference to a “District” within the meaning of *section 5(1)*, but shall be construed in accordance with *section 166*;

a reference to an order for the attachment of any debt or to an order of garnishee is a reference to a third party creditor order, within the meaning of *Part 4* of *Schedule 8*;

a reference to a barrister, counsel, solicitor or other legal professional means, or as the context requires, includes, a reference to a “legal representative” within the meaning of *section 5(1)*;

a reference to the “Central Criminal Court” is a reference to the High Court exercising the criminal jurisdiction the criminal jurisdiction with which it is vested;

a reference to a “Circuit” in relation to the Circuit Court shall be construed in accordance with *section 160*;

a reference to the “Circuit Court damages limit” is a reference to the amount described as such in *section 40(2)*;

a reference to a determination, judgment or order of a Court means, or as the context requires, includes, a reference to a “decision” within the meaning of *section 5(1)*, and cognate words shall be construed accordingly;

a reference to an order or warrant of a Court of “distress” or of “distress and sale” or to an order of *feri facias* means, or as the context requires, includes, a reference:

(a) in civil proceedings, to an order of seizure and sale within the meaning of *section 113*, and

(b) in proceedings concerning a forfeited Court bond, to a warrant of seizure and sale within the meaning of *paragraph 1* of *Schedule 10*;

a reference to a “District” in relation to the District Court shall be construed in accordance with *section 166*;

a reference to the “District Court damages limit” is a reference to the amount described as such in *section 62*;

a reference to a hearing “in camera” is a reference to a hearing to which *section 196* applies in any proceedings or application;

a reference to a hearing “in chambers”¹⁴ is a reference to a hearing in chambers within the meaning of *section 194*;

[C2A 1997, s. 10]

a reference to a “Justice” of the District Court is a reference to a Judge of the District Court;

a reference, however expressed, to functions exercisable by a presiding Judge shall be construed as references to functions so exercisable by the person who is for the time being the presiding Judge of the Court concerned;

a reference to “process” of a Court includes reference to any execution order within the meaning of *section 5(1)* and to any order of enforcement within the

¹⁴ This provision is intended to clarify the existing law.

meaning of *section 113*;

a reference to a “recognisance” means, or as the context requires, includes, a reference to a Court bond within the meaning of *section 141(1)*;

a reference to any defendant, respondent or other party answering or defending civil proceedings before a Court means, or as the context requires, includes, a reference to a “respondent” within the meaning of *section 5(1)*;

a reference to any writ or order of sequestration means, or as the context requires, includes, a reference to a “temporary seizure order” within the meaning of *section 5(1)*;

a reference to any order of *subpoena* means, or as the context requires, includes, a reference to a “witness summons” issued in accordance with *section 88*;

a reference to an officer or an office of or attached to a Court or attached to a judicial person mentioned in *section 37(2)* is a reference to a County Registrar or, as the case may be, a Circuit Court office;

a reference to an officer or an office of or attached to a Court or attached to a judicial person mentioned in *section 57(2)* is a reference to a District Court Clerk or, as the case may be, a District Court office;

a reference to the rate of interest for the time being standing specified in *section 26* of the *Debtors (Ireland) Act 1840* is deemed to be a reference to the judgment interest rate fixed by or in accordance with *section 108*;

a reference to *section 10(4)* of the *Petty Sessions (Ireland) Act 1851* is deemed to be a reference to *section 217(2)*;

a reference to an application for a summons in relation to an offence is deemed to be a reference to an application for a summons under *section 218*;

a reference to the laying of an information before, or the making of a complaint to, a Judge of the District Court in relation to an offence shall be deemed to be a reference to an application under *section 219* for leave to apply for a summons;

where, under *section 337* or *section 339*, the business of a constituent court office is transacted in a Combined court office, then for the purpose of the transaction of that business, a reference in an enactment to an office of or attached to that constituent Court or to an officer or member of staff of that Court is, save where the context otherwise requires, deemed to include that Combined court office or an officer or member of staff of that Combined court office, as the case may be;

a reference to a claim, complaint or proceedings which may be brought before, or heard and decided by, a Court of or exercising summary jurisdiction is a reference to a claim, complaint or proceedings which the District Court has jurisdiction to hear and decide.

Continuity of administration and enforcement of justice

7.— (1) The continuity of the administration and enforcement of justice shall not be interrupted by the coming into operation of this Act. [CSPA 1961, s.49]

(2) *Part 1* of *Schedule 1* applies for the purpose of supplementing *subsection (1)*.

(3) The transitional provisions in *Part 2* of *Schedule 1* have effect.

Repeals and

8.— (1) The enactments specified in *column (2)* of *Chapters 1* to *5* of *Part 1* of [New]

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| revocations | <p><i>Schedule 2</i> are repealed in their entirety.</p> <p>(2) The enactments specified in <i>column (2)</i> of <i>Chapter 6</i> of <i>Part 1</i> of <i>Schedule 2</i> are revoked in their entirety.</p> <p>(3) The enactments specified in <i>column (2)</i> of <i>Chapters 1</i> and <i>2</i> of <i>Part 2</i> of <i>Schedule 2</i> are repealed to the extent specified in <i>column (3)</i> of those Chapters of that Part of <i>Schedule 2</i>.</p> <p>(4) The enactment specified in <i>column (2)</i> of <i>Chapter 3</i> of <i>Part 2</i> of <i>Schedule 2</i> is revoked to the extent specified in <i>column (3)</i> of that Chapter of that Part of <i>Schedule 2</i>.</p> | |
| Consequential amendments, restatements and preserved provisions | <p>9.— (1) The enactments specified in <i>Schedule 3</i> are amended as indicated in that Schedule.</p> <p>(2) To allow the repeal in their entirety of certain enactments containing repealed provisions, the provisions in <i>Schedule 4</i> continue to have effect as specified in that Schedule.</p> <p>(3) For the avoidance of doubt, certain provisions, mentioned in <i>Schedule 5</i>, concerning qualification, appointment, remuneration and superannuation of Judges and related matters (in this Act, the “preserved provisions”) are not included among the repealed provisions, and the preserved provisions continue to have effect.</p> | [New] |
| Regulations | <p>10.— (1) Subject to <i>subsection (3)</i> and to this Act, the Minister may by regulations provide for any matter referred to as prescribed or to be prescribed by the Minister.</p> <p>(2) Before making regulations referred to in <i>subsection (1)</i>, the Minister—</p> <p>(a) may consult with such persons as he or she considers appropriate, and</p> <p>(b) may publish in such manner as he or she thinks fit notice of his or her intention to do so and give persons who wish to make representations in relation to the proposed regulations a period of 21 days to do so.</p> <p>(3) This section does not apply to rules of court.</p> | [Standard] |
| Expenses | <p>11.— Any expenses incurred by the Minister in administering this Act shall, to the extent sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.</p> | [Standard] |

PART 2
Jurisdiction

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| Purposes of Part 2 | <p>12.— This Part —</p> <p>(a) sets out principles about the exercise in particular circumstances of jurisdiction by the Courts whose jurisdiction is conferred by the Constitution, but without inhibiting or limiting that jurisdiction [Chapters 1 and 3];</p> <p>(b) specifies the extent of the jurisdiction of the Court of Criminal Appeal and of the Courts-Martial Appeal Court [Chapter 2];</p> <p>(c) specifies the extent of the original jurisdiction of the Circuit and District Courts, the jurisdiction of each of which is conferred by statute, and sets out in</p> | [New] |
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each case rules about the several exercise of that original jurisdiction by an appropriate Judge [Chapters 4 and 5];

(d) sets out principles and rules about the making of orders and the issuing of Court instruments in exercise of jurisdiction, but without qualifying or limiting the powers of Courts whose jurisdiction is conferred by the Constitution, and prescribes powers exercisable in particular circumstances by the Courts whose jurisdiction is conferred by statute [Chapter 6];

(e) sets out rules and priorities in the application of rules of the common law and rules of equity, sets out rules about the making of orders in civil proceedings, and sets out particular remedies among which a Court may choose to award, alone or in combination with other remedies mentioned in this Act or in other enactments, in civil proceedings, to meet the justice of the case [Chapter 7];

(f) sets out particular rules about the award of legal costs in civil proceedings [Chapter 8];

(g) sets out particular rules about the award of, or right to, interest on money awarded in civil proceedings [Chapter 9];

(h) sets out particular rules about the execution and enforcement of decisions in civil proceedings [Chapter 10];

(i) sets out particular rules about the making of orders in aid of foreign proceedings and about judgments and proceedings to which European Union enactments apply [Chapter 11];

(j) sets out rules about the making of orders and the issuing of Court instruments in exercise of criminal jurisdiction, and in assistance of foreign criminal proceedings and investigations [Chapter 12];

(k) sets out rules about the issue, effect and execution of certain Court instruments [Chapter 13];

(l) provides for circumstances in which proceedings may be moved between different Courts [Chapters 14 and 15], and

(m) provides for the venues at which Courts may sit and for the organisation of Court business to be conducted at different places and times [Chapter 16].

Interpretation:
particular
jurisdictions

13.— The particular jurisdictions of a Court or Courts mentioned in this Part and in *Schedule 6* shall be construed in accordance with *Schedule 6*. [New]

Superior Courts of
record and Courts of
record

14.— (1) Each of the Supreme Court, the High Court, the Court of Criminal Appeal and the Courts-Martial Appeal Court continues to be a Superior Court of record. [CSPA 1961, s.7(1), 8(1), 12(1), 21] [CA 1971, s.13] [CMAA 1983, s. 10]

(2) Each of the Circuit Court and the District Court continues to be a Court of record.

Chapter 1: The Supreme Court

Original and
appellate jurisdiction
of the Supreme Court

15.— (1) The Supreme Court is vested with the original and appellate jurisdiction prescribed by the Constitution. [CSPA 1961, s7(1) and (2)]

(2) The Supreme Court is vested with all other appellate jurisdiction, in civil and criminal proceedings, vested in or capable of being exercised by the Supreme Court under or by virtue of any enactment.

(3) The Supreme Court is vested with all jurisdiction under or by virtue of any enactment to decide any question of law referred to the Supreme Court.

(4) The Supreme Court has all the power, authority, and jurisdiction vested in the High Court:

- (a) for the purposes of and incidental to the hearing and decision of any appeal or other proceedings within its jurisdiction,
- (b) for the purposes of the amendment, execution or enforcement of any decision made on any such appeal or in any such proceedings, and
- (c) for the purposes of every other authority expressly given to the Supreme Court by this Act.

(5) For the avoidance of doubt, the jurisdiction of the Supreme Court includes any surviving jurisdiction not mentioned in *subsection (1)* or *subsection (2)* which would, before 12 April 1924, have been exerciseable in, or in respect of, the State by a court of final appeal.

Particular jurisdictions and functions of the Chief Justice

16.— (1) The Chief Justice is vested with such jurisdictions and functions as are conferred on, vested in, or capable of being exercised by, the Chief Justice by any enactment.

[CSPA 1961, s10(1)]

(2) The Chief Justice has, in particular, such jurisdiction over solicitors, registered foreign lawyers and persons mentioned in *section 250(1)(d)* or *section 250(1)(e)* as is conferred by any enactment.

(3) The Chief Justice may:

- (a) appoint a person to be a notary public;
- (b) appoint a person to be a commissioner for oaths, and
- (c) revoke an appointment under *paragraph (a)* or *paragraph (b)*.

(4) The Chief Justice may make regulations, or may by practice direction prescribe requirements, as to:

- (a) the information in respect of the applicant's qualifications, competence and personal fitness to be submitted and verified in any application to be appointed a notary public or a commissioner for oaths, and
- (b) the form and mode of application to be appointed a notary public or a commissioner for oaths and of application for the revocation of an appointment.

Panels of the Supreme Court

17.— (1) The Supreme Court may sit in two or more panels, which may sit at the same time.

[CSPA 1961, s7(3), (4) and (5)]

(2) Subject to *subsection (3)*, the Chief Justice may decide that an appeal to, or other matter which may be heard and decided by, the Supreme Court may be so heard and decided by a panel of five or three Judges of the Supreme Court.

(3) An appeal to or other matter which may be heard and decided by the Supreme Court under Article 12 or Article 26 of the Constitution or a question of the validity of any law having regard to the provisions of the Constitution shall be heard and decided by a panel of not less than five Judges of the Supreme Court, who may include Judges who are additional Judges of the Supreme Court.

(4) Save as is otherwise expressly provided, the Judges of the Supreme Court have in all respects, equal power, authority, and jurisdiction one with another.

Chapter 2: The Court of Criminal Appeal and the Courts-Martial Appeal Court

Constitution of Court of Criminal Appeal and of Courts-Martial Appeal Court

18.— (1) This section applies to:

- (i) the Court of Criminal Appeal, and
- (ii) the Courts-Martial Appeal Court.

[CECA 1961, s.3(2)]
[CMAA 1983, s9(2)]

(2) The Chief Justice shall give directions, as and when he or she considers necessary, to convene:

- (i) the Court of Criminal Appeal, or
- (ii) the Courts-Martial Appeal Court,

to hear and decide appeals and applications which may be heard and decided by that Court.

(3) The Court of Criminal Appeal or the Courts-Martial Appeal Court is constituted if it consists of not fewer than three Judges—

(a) of whom one is the Chief Justice or an ordinary Judge of the Supreme Court nominated by the Chief Justice, and

(b) of whom the other two are Judges of the High Court nominated by the Chief Justice (who may include the President of the High Court, if nominated by the Chief Justice and willing to act).

(4) Any other available Judge of the Supreme Court or of the High Court may, at the request of the Chief Justice, attend as a member of the Court of Criminal Appeal or of the Courts-Martial Appeal Court.

Jurisdiction of Court of Criminal Appeal

19.— The Court of Criminal Appeal may hear and decide any appeal or application which may, under or by virtue of this Act or another enactment, be brought or made to that Court, and may decide any question necessary to be decided for the purpose of doing justice in the proceedings before it.

[CJA 1924, s30]
[CSPA 1961, s 12(1)]

Jurisdiction of Courts-Martial Appeal Court

20.— (1) The Courts-Martial Appeal Court may hear and determine:

[CMAA 1983, s13]

(a) any appeal or application which may, under or by virtue of this Act, be brought or made to that Court,

(b) any appeal brought in exercise of a right of appeal conferred by *section 203B, section 203C or section 203D* of the Act of 1954;

(c) any application by the Director of Military Prosecutions under *section 212B* of the Act of 1954,

(d) any question of law referred to that Court in accordance with *section 178G* of the Act of 1954,

and may decide any question necessary to be decided for the purpose of doing justice in the proceedings before it.

Majority judgment; single judgment only to be pronounced

21.— (1) Every question before the Court of Criminal Appeal or the Courts-Martial Appeal Court shall be decided according to the opinion of the majority of the members present.

[CJA 1924, s28]
[CMAA 1983, s12(2)]

(2) Unless the Court directs to the contrary, the Judge presiding, or another member of the Court as the Judge presiding directs, shall pronounce the decision of the Court of Criminal Appeal or of the Courts-Martial Appeal Court, and no opinion on the decision of any question may be separately pronounced by any other member of the Court.

Chapter 3: The High Court

General

Jurisdiction of the High Court

22.— (1) The High Court is vested with such original and other jurisdiction, in civil and criminal proceedings, as is prescribed by the Constitution and such jurisdiction as is conferred on, vested in, or capable of being exercised by, the High Court by any enactment¹⁵.

[CSPA 1961, s8(1), (2) and (3)]

(2) The jurisdiction vested in the High Court includes all powers, duties and authorities incident to any and every part of the jurisdictions so vested.

(3) For the avoidance of doubt, the jurisdiction of the High Court includes any and every surviving jurisdiction which, before 12 April 1924, was vested in, or would have been exercisable in or in respect of the State by, a court, judge or judicial officer, other than:

(a) any such jurisdiction which would have been exercisable by a court of final appeal;

(b) any such jurisdiction mentioned in *section 37(2)*, or

(c) any such jurisdiction mentioned in *section 57(2)*.

(4) The Judges of the High Court have in all respects, save as is otherwise expressly provided, equal power, authority, and jurisdiction one with another.

(5) The jurisdiction of the High Court in proceedings shall ordinarily be exercised by a single Judge of that Court (sitting with or without a jury) but where the President of the High Court directs that two or more Judges shall sit together for the purpose of particular civil or criminal proceedings, the jurisdiction of the High Court for that purpose shall be exercised by those Judges sitting together.

[SCJIA 1877, s. 45]

[CSPA 1961, s. 11(2) (b)]

Particular jurisdictions and functions of the President of the High Court

23.— The President of the High Court is vested with such jurisdictions and functions as are conferred on, vested in, or capable of being exercised by, the President of the High Court by any enactment.

[CSPA 1961, s10(5)]

Original civil jurisdiction

Particular original civil jurisdictions of the High Court:

24.— (1) The original jurisdiction of the High Court in civil proceedings includes¹⁶ in particular full jurisdiction in connection with any matter within the original jurisdiction of the High Court as a Court of equity and of law and all of the following jurisdictions conferred on that Court (whether exclusively or

[New]

¹⁵ This would include both jurisdiction directly conferred by statute and the jurisdiction of discontinued bodies which has been transferred to the High Court, e.g. *Transport Act 1944*, section 106.

¹⁶ This section is intended to be (a) declaratory and (b) non-exhaustive.

concurrently with any other Court) by any enactment or other law:

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| contract, tort and other breach of duty | (a) full contract jurisdiction, full tort jurisdiction, and full jurisdiction in other breach of duty, without limitation of the amount of damages which may be awarded; |
| family law | (b) full family law jurisdiction; |
| civil partnership law | (c) full civil partnership law jurisdiction; |
| care and protection jurisdiction | (d) the care and protection jurisdiction vested in the High Court; |
| probate | (e) full probate jurisdiction in connection with probates and letters of administration, contentious and non-contentious; |
| trusts and instruments | (f) full trusts and instruments jurisdiction ¹⁷ ; |
| land | (g) full land jurisdiction save only where, and then only to the extent that, any land jurisdiction is conferred exclusively on the Circuit Court under or by virtue of the <i>Land and Conveyancing Law Reform Act 2009</i> ; |
| mortgages | (h) in connection with the decision of any question or the making of any order or granting of any remedy under or by virtue of the <i>Land and Conveyancing Law Reform Act 2009</i> or any other enactment or law in connection with any sale or delivery of possession by a mortgagor, or redemption, reconveyance or delivery of possession by a mortgagee; |
| disputed or uncertain funds | (i) full jurisdiction in connection with the decision of any question or the making of any order or granting of any remedy in connection with any money or other property the ownership or entitlement to possession of which is disputed or uncertain; |
| bankruptcy and insolvency | (j) full jurisdiction in connection with bankruptcy, personal and corporate insolvency; |
| companies | (k) full jurisdiction in connection with the constitution and legal acts of companies or other corporate bodies ¹⁸ ; |
| partnership | (l) full partnership jurisdiction; |
| intellectual property | (m) full jurisdiction in connection with the registration or validity of patents ¹⁹ , trade marks, designs, or other similar intellectual and industrial rights or property required to be registered (which, in this section, includes deposited or recorded), in which the registration has been applied for, has taken place, or is under the terms of an international convention deemed to have taken place, in the State; |
| admiralty | (n) full admiralty jurisdiction; |
| enforcement | (o) without limiting any other jurisdiction of the High Court: |

¹⁷ The draft does not anticipate the content of the *Trusts Bill* referred to at Section C of the Government's Legislative Programme Government's Legislative Programme for the Dáil Session commencing on 29 September 2010, which may reflect some of the Commission's *Report on Trust Law: General Proposals* (LRC 92-2008).

¹⁸ This will need to take account of the proposed *Company Law Consolidation and Reform Bill*.

¹⁹ This may need to take account of the proposed *Patents (Amendment) Bill*.

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| | (I) full jurisdiction in connection with the recognition and enforcement in the State of the decisions of courts outside the State ²⁰ ; | |
| | (II) every jurisdiction conferred by an enactment over the proceedings and decisions of, and appeals from, adjudicating bodies or persons or other persons; | |
| arbitration | (p) full jurisdiction in connection with the making of any order or granting of any remedy in connection with any arbitration agreement, the decision of any question or the making of any order or granting of any remedy in connection with any arbitration and in relation to the enforcement of any arbitration award, whether made in the State or elsewhere; | |
| competition | (q) full competition jurisdiction; | |
| professional practice and disciplinary matters | (r) full jurisdiction in connection with professional registration, practice and disciplinary matters; | |
| electoral | (s) full jurisdiction in connection with electoral petitions and questions concerning the validity of elections, other than as is provided in <i>section 47(3)</i> ; | |
| revenue | (t) full jurisdiction in connection with the ascertainment or payment of any tax, levy or penalty; | |
| extradition | (u) full jurisdiction in connection with extradition and the execution of European Arrest Warrants; | |
| proceeds of crime | (v) full jurisdiction in connection with the seizure or disposal of proceeds of crime; | |
| judicial review | (w) the judicial review jurisdiction. | |
| | (2) Unless this Act or another enactment provides that an original civil jurisdiction of the High Court shall be exercisable concurrently with another Court, the original civil jurisdiction of the High Court shall be exercisable exclusively by the High Court. | |
| Exercise of High Court's care and protection jurisdiction | 25. — The care and protection jurisdiction vested in the High Court is exercisable by the President of the High Court or, where the President of the High Court so directs, by an ordinary Judge of the High Court for the time being assigned in that behalf by the President of the High Court. | [CSPA1961, s. 9(2)] |
| Judicial review procedure | 26. — (1) The Rules of the Superior Courts shall prescribe a procedure for an application to the High Court seeking one or more of the orders referred to in <i>section 27(2)</i> , whether with or without any other remedy, which shall be known as a judicial review application ²¹ . | [New] |
| | (2) No judicial review application may be made without the leave of the High Court, which may be obtained in accordance with rules of court. The High Court shall not grant leave to make a judicial review application unless it considers that the applicant has a sufficient interest in the matter to which that application relates. | |
| | (3) If, on hearing a judicial review application seeking an order of <i>certiorari</i> , | |

²⁰ For example, under the *Sea Pollution (Hazardous Substances) (Compensation) Act 2005* or the *Sea Pollution (Miscellaneous Provisions) Act 2006*.

²¹ The outline description of judicial review is derived from the language used in section 31, *Supreme Court Act 1981* (now renamed *Senior Courts Act 1981*) (England & Wales) and section 41, *Judicial Review Act 1991* (Queensland). See also the Commission's *Report on Judicial Review Procedure* (LRC 71 - 2004).

the High Court is satisfied that there are grounds for quashing the decision to which that application relates, the High Court may, in addition to any other decision it may make:

(a) quash the decision and remit the matter to the Court or adjudicating body or person concerned, with a direction to reconsider it and to reach a decision in accordance with the findings of the High Court;

(b) without quashing the decision, remit the matter to the Court or adjudicating body or person concerned, with a direction to reconsider it and to reach a decision in accordance with the ruling of the High Court, or

(c) reverse or vary the decision of the Court or adjudicating body or person concerned.

(4) Where the High Court considers that there has been undue delay in seeking leave to make, or making, a judicial review application, the Court may refuse to grant—

(a) leave to make the application, or

(b) any remedy sought in the application,

if it considers that granting the remedy sought would in the circumstances be likely to cause substantial hardship to, or substantially prejudice the rights of, a person or would be detrimental to good administration.

(5) *Subsection (4)* is without prejudice to:

(a) any enactment or rule of court which limits the period within which a judicial review application may be made, and

(b) any rule of law concerning the effect of delay in making a judicial review application.

(6) In a judicial review application, the High Court may:

(a) grant a stay of proceedings before, or of enforcement of an order or decision of, the Court or adjudicating body or person concerned, or

(b) grant any interim or interlocutory remedy it considers appropriate,

pending final decision of the application.

(7) The procedure prescribed in *Order 84* of the *Rules of the Superior Courts 1986* (S.I. No. 15 of 1986) is, unless and until modified, the procedure referred to in *subsection (1)*.

(8) The procedure mentioned in *subsection (1)* may include a procedure for applications to the High Court for the review of the detention of a person by way of complaint referred to in Article 40.4.2 of the Constitution but, for the avoidance of doubt, the Rules of the Superior Courts may provide another procedure for such applications.

(9) The procedure mentioned in *subsection (1)* may include a procedure for applications to the High Court under or by virtue of a European Union enactment (or of an enactment which gives effect in the State to a European Union enactment) for the review of a decision but, for the avoidance of doubt, the Rules of the Superior Courts may provide another procedure for such applications.

Judicial review proceedings 27.— (1) An order in the nature of *mandamus*, *prohibition* or *certiorari* may only be made by the High Court, and may only be made in proceedings on a judicial review application. [New]

(2) The High Court may exercise its power to make an order referred to in *subsection (1)*, which shall be known as an order of *mandamus*, an order of *prohibition* or an order of *certiorari*, as the case may be, in any proceedings in which the High Court had power to make such an order immediately before the commencement of this Act.

(3) Every order of *mandamus*, *prohibition* or *certiorari* is final, subject to the right of appeal to the Supreme Court from the making of such an order.

(4) Where, in any judicial review proceedings an application has been made for an order of *mandamus*, *prohibition* or *certiorari*, and an application is also made for any other remedy (including, without limitation, a declaration, an injunction or damages), the High Court may award another remedy, in lieu of or in addition to any order of *mandamus*, *prohibition* or *certiorari*, where the High Court considers that it would be just and convenient to do so.

Replacement of *quo warranto*²² 28.— (1) Where a person not entitled to do so acts in any substantive office of a public nature and permanent character or which has been established by or under an enactment, the High Court may— [New]

(a) grant an injunction restraining that person from so acting; and

(b) if the case requires, declare the office to be vacant.

(2) Informations in the nature of, and writs and orders of, *quo warranto* are abolished.

Review of detention (*habeas corpus*)²³ 29.— (1) An application to the High Court for the review of the detention of any person shall be by way of complaint referred to in Article 40.4.2 of the Constitution. [New]

(2) References in any enactment or proceedings to any application for, or writ or order of, *habeas corpus ad subjiciendum* shall be deemed to be references, respectively, to a complaint referred to in, and an order made in exercise of the jurisdiction conferred on the High Court by, Article 40.4.2 of the Constitution.

High Court may decline jurisdiction where lower Court has jurisdiction 30.— Where the Circuit Court or the District Court has concurrent jurisdiction to hear and decide particular civil proceedings, the High Court may decline to exercise its original jurisdiction in those civil proceedings by remitting those proceedings to the Circuit Court or to the District Court, as appropriate, of its own motion or on application by party to the proceedings. [New]

Appellate civil jurisdiction

Appellate civil 31.— (1) The High Court has all jurisdiction conferred by this Act or another [New]

²² See the Commission's *Report on Judicial Review Procedure* (LRC 71 - 2004), paragraph 5.14. The language is based on the *Judicial Review Act 1991* (Queensland).

²³ This provision is, in conjunction with the repeals, intended to confirm the removal of any "common law" or old statutory *habeas corpus* procedure outside of the jurisdiction conferred on the High Court by Article 40.4.2. This would be consistent with *State (Walsh) v Lennon* [1942] IR 122 and the dicta of Walsh J in *State (Aherne) v Cotter* [1982] IR 188. This jurisdiction is treated discretely as it is a special constitutional jurisdiction.

jurisdiction

enactment to hear and decide appeals from the Circuit Court in civil proceedings in accordance with *Part 5*.

(2) The High Court has the jurisdiction conferred by any enactment to hear and decide an appeal from an adjudicating body or person in accordance with *Part 5*.

(3) The High Court has the jurisdiction conferred by any enactment to decide in accordance with this Act a question of law referred to it by an adjudicating body or person in accordance with *Part 5*.

Original criminal jurisdiction

The Central Criminal Court

32.— (1) The High Court exercising the criminal jurisdiction with which it is vested shall continue to be known as an *Phríomh-Chúirt Choiriúil* (the Central Criminal Court).

[CSPA 1961, s11]

(2) The jurisdiction exercisable by the Central Criminal Court shall be exercisable by Judges of the High Court nominated from time to time by the President of the High Court.

(3) Each person lawfully brought before the Central Criminal Court may be indicted before, tried, and sentenced by, the Central Criminal Court, wherever it is sitting, in the like manner in all respects as if the offence with which that person is charged had been committed in the county or other local government area in which the Court is then sitting.

Jurisdiction of the Central Criminal Court

33.— (1) The criminal jurisdiction exercisable by the Central Criminal Court includes jurisdiction to try any offence triable on indictment.

[CSPA 1961, s 25(2)]

(2) The Central Criminal Court has exclusive jurisdiction to try the following offences:

(a) treason or an offence under *section 2* or *section 3* of the *Treason Act 1939*;

(b) an offence under *section 6*, *section 7* or *section 8* of the Act of 1939;

(c) murder, attempt to murder or conspiracy to murder;

(d) piracy;

including, in any case mentioned in *paragraphs (a) to (d)* inclusive, an offence by an accessory before or after the fact;

(e) a rape offence or the offence of aggravated sexual assault or attempted aggravated sexual assault or of aiding, abetting, counselling or procuring the offence of aggravated sexual assault or attempted aggravated sexual assault or of incitement to the offence of aggravated sexual assault or conspiracy to commit any of the foregoing offences;

[CLRAA1990, s10]

(f) an offence under the *Geneva Conventions Acts 1962 and 1998*;

[ICCA 2006, Pt 2]

(g) an offence under *the Criminal Justice (United Nations Convention Against Torture) Act 2000*;

[CJ (UNCAT)A 2000, s.5(4)]

(h) an offence of murder or manslaughter or a rape offence under *section 2* of the *Criminal Justice (Safety of United Nations Workers) Act 2000*;

(i) an offence under *section 6* or *section 7* of the *Competition Act 2002*;

[CA 2002, s 11]

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| | (j) genocide, a crime against humanity or a war crime. | [ICCA 2006, ss. 6, 7] |
| Applications to the Central Criminal Court | 34. — Every application to the Central Criminal Court in relation to proceedings pending or formerly pending in that Court may be made to, and heard and decided by, a Judge of the High Court for the time being nominated by the President of the High Court to exercise the jurisdiction exercisable by the Central Criminal Court. | [CJA 1926, s.5(2)] |
| No appeal to High Court from decision in criminal proceedings | 35. — (1) No appeal lies to the High Court from a decision in criminal proceedings. (2) <i>Subsection (1)</i> does not limit the judicial review jurisdiction of the High Court or the jurisdiction of the High Court under <i>section 314</i> or <i>section 319</i> . | [New] |

Chapter 4: The Circuit Court

General and limits

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| Interpretation: this Chapter | 36. — In this Chapter: reference to a “Circuit Court money limit” is to the Circuit Court damages limit specified in <i>section 40(2)</i> or, as the case may be, the Circuit Court land valuation limit, specified in <i>section 40(3)</i> ; “concurrent jurisdiction proceedings” has the meaning assigned by <i>section 45</i> . | |
| Jurisdiction of the Circuit Court conferred only by statute | 37. — (1) The Circuit Court is vested only with the original and appellate jurisdiction vested in or capable of being exercised by the Circuit Court, and with any other function conferred on the Circuit Court, by virtue of this Act or of another enactment. (2) The Circuit Court continues to be vested with any surviving jurisdiction which, before 12 April 1924, was vested in, or would have been exercisable in the State by, a Recorder, a County Court or County Court Judge, or (save as provided by <i>section 57(2)(c)</i>) a Chairman or Court of Quarter Sessions. | [CSPA 1961, s22, 48] |
| Several exercise of jurisdiction of the Circuit Court | 38. — (1) Subject to this Chapter, the jurisdiction of the Circuit Court shall be exercisable severally by the Judges of the Circuit Court. That jurisdiction may be exercised in proceedings only by a Judge of the Circuit Court assigned to the Circuit in which the proceedings must be brought or decided in accordance with this Act or with another enactment. (2) Where a jurisdiction is vested in the Circuit Court by an enactment, but the exercise severally of that jurisdiction by the Judges of the Circuit Court is not provided for by that enactment, that jurisdiction shall be exercisable severally by the Judges of the Circuit Court in the manner provided by rules of court. (3) Save where otherwise provided, the criminal jurisdiction vested in the Circuit Court by <i>section 52</i> shall be exercisable by the Judge of the Circuit in which the offence charged has been committed or in which the accused person has been arrested or resides. | [New] |
| Jurisdiction in urgent applications | 39. — (1) A Judge of the Circuit Court may, outside his or her Circuit, hear and decide any application which: (a) he or she may hear and decide within that Circuit and | [CSPA 1961, s25(3)] [CSPA 1961, s22(11) & (14)] |

Limits of civil jurisdiction of the Circuit Court: money amounts

(b) in his or her opinion, should be dealt with as a matter of urgency.

(2) A Judge of the Circuit Court may make out of Court any order which he or she deems urgent.

40.— (1) Subject to the exceptions contained in this Chapter, the jurisdiction vested in or conferred on the Circuit Court may be exercised in civil proceedings only within each relevant Circuit Court money limit. [New]

(2) The Circuit Court damages limit is:

[CSPA 1961, s22(1)(c) and Third Schedule]

(a) in proceedings to which neither *paragraph (b)* nor *paragraph (c)* applies, €100,000²⁴;

(b) in a personal injuries action (within the meaning of *section 2* of the Act of 2004), €50,000, and

(c) in proceedings for the tort of defamation, €50,000²⁵.

(3) The Circuit Court land valuation limit is:

(a) a maximum rateable valuation of the land or interest in land to which the proceedings relate of €254.00, or

(b) a maximum market value of the land or interest in land to which the proceedings relate of €3,000,000, or [CLCA 2004, s45]

(c) in proceedings relating to foreshore or rights over or in respect of foreshore, the value as decided in accordance with the *Foreshore Act 1933*. [FA 1933, s. 16]

(4) A party who relies on the Circuit Court land valuation limit to establish the jurisdiction of that Court shall identify in his or her application notice whether he or she relies on *paragraph (a)*, on *paragraph (b)* or on either *paragraph (a)* or *paragraph (b)* of *subsection (3)* to establish that jurisdiction. [New]

(5) The rateable valuation of land or of an interest in land for the purposes of *paragraph (a)* of *subsection (3)* shall be decided in accordance with the enactments for the time being in force for the valuation of rateable property in the State, and where there is not a separate valuation of the whole or any part of the land concerned, may be estimated as to the land or part concerned according to the principles of valuation prescribed in those enactments, and any rateable valuation or estimate may be established by evidence. [COCAI 1877, s 31]

(6) A copy or extract certified by the officer responsible for records of rateable valuations for any place to be a true copy or extract of the rateable valuation of land is, for the purposes of proceedings in the Circuit Court, sufficient proof of the rateable valuation of the land concerned until the contrary is shown. [COCAI 1877, s 32]

(7) The relevant District Court money limit applies in the Circuit Court in proceedings on appeal from the District Court.

²⁴ The draft assumes that the uncommenced extension of jurisdiction in section 13 of the *Courts and Court Officers Act 2002* is applied, subject to the observations in the Report on personal injuries actions, so that generally the limit is increased to €100,000 as intended by the uncommenced provision of section 13, subject to a lower limit of €50,000 in personal injury claims and the distinct €50,000 limit in defamation actions established by the *Defamation Act 2009*.

²⁵ If the *Privacy Bill 2006* is enacted, reference would also be included here to a privacy action within the meaning of the *Privacy Act* (section 7 of the 2006 Bill).

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| Exceptions to money limits | <p>41.— (1) Notwithstanding <i>section 40</i>, the jurisdiction vested in or conferred on the Circuit Court may be exercised in proceedings otherwise than within a Circuit Court money limit where all of the parties to the proceedings have executed a consent to that effect in the form prescribed by rules of court.</p> <p>(2) Notwithstanding <i>section 40</i>, where civil proceedings in which unliquidated damages are sought are remitted or transferred by the High Court to the Circuit Court, the Circuit Court has jurisdiction to award damages in excess of the Circuit Court damages limit.</p> | [CSPA 1961, s22(1)(b)] [CJA 1936, s20] |
| Variation of money limits | <p>42.— (1) If and whenever they are satisfied that a Circuit Court money limit specified in <i>section 40</i> should, having regard to changes in the value of money generally in the State since that limit was last specified, be varied, the Government may make an order varying that limit and <i>section 40</i> has effect in accordance with the terms of any such order.</p> <p>(2) A draft of every order proposed to be made under this section shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving the draft has been passed by each such House.</p> <p>(3) Before making an order referred to in <i>subsection (1)</i>, the Government—</p> <p>(a) may consult with such persons as they considers appropriate, and</p> <p>(b) may publish in such manner as they think fit notice of their intention to do so and give persons who wish to make representations in relation to the proposed order a period of not less than 21 days to do so.</p> | [CA 1991, s16] |
| Power to strike out with costs applications in excess of money limit | <p>43.— (1) Where civil proceedings are brought in the Circuit Court which that Court does not have jurisdiction to hear and determine, the Judge, on the application of a respondent or of his or her own motion, as soon as that want of jurisdiction becomes apparent (and unless a consent referred to in <i>section 41(1)</i> is lodged within such time as the Judge allows):</p> <p>(a) may, if he or she is of the opinion that the High Court has jurisdiction to hear and decide the proceedings and he or she thinks it proper, transfer the proceedings to the High Court and make a decision concerning the costs of the proceedings had in the Circuit Court, or</p> <p>(b) if he or she does not transfer the proceedings to the High Court, shall strike out the proceedings and may, if he or she thinks proper, make such a decision concerning the costs of the proceedings as the Court could have made if it had jurisdiction to hear and decide the proceedings and the applicant had not appeared or had appeared and failed to prove his or her claim.</p> | [CJA 1936, s21 modified] |
| Right to abandon excess over money limit | <p>44.— (1) No cause of action for a liquidated sum which exceeds the Circuit Court damages limit may be split or divided, so as to be made the ground of two or more different applications in the Circuit Court, in order to bring the cause of action within the jurisdiction of the Circuit Court. Civil proceedings are not sustainable in the Circuit Court in respect of any portion of such a cause of action which is so split or divided, unless authorised by <i>subsection (2)</i>.</p> <p>(2) A person having a cause of action for a liquidated sum which exceeds the Circuit Court damages limit may bring one application in the Circuit Court founded on that cause of action if:</p> <p>(a) the amount claimed in that application does not exceed the Circuit Court damages limit and</p> <p>(b) the applicant states in his or her application notice that he or she abandons</p> | [CJA 1936, s23] |

all claims founded on the cause of action concerned which are not included in that application.

(3) If, in any application authorised by *subsection (2)*, the Court awards damages to the applicant, the amount awarded to the applicant shall be in full satisfaction of all claims which the applicant has abandoned in his or her application notice in that application.

Original civil jurisdiction

Concurrent original civil jurisdiction

45.— (1) The Circuit Court has, concurrently with the High Court, all the jurisdiction of the High Court to hear and decide civil proceedings of the kind mentioned in *column (2)* of the Table to this section (in this section “concurrent jurisdiction proceedings”) at any reference number, subject to the limitations in *column (3)* of that Table.

[CSPA 1961, s22]
[COCAI 1877, ss 33, 34, 40]

(2) The jurisdiction of the Circuit Court to hear and decide concurrent jurisdiction proceedings shall be exercised by a Judge of the Circuit Court mentioned in *column (4)* of the Table to this section immediately opposite the reference to proceedings of the kind concerned.

(3) For the purposes of proceedings involving interests in land, references in *column (4)* of the Table to this section to the situation of land include references to land out of, or in respect of, which any interest in land is annexed, arises, issues or is exercisable.

(4) References in the Table to this section to carrying on business include references to practising a profession or carrying on an occupation.

| Table to section 45 | | | |
|----------------------------|--|--|---|
| (1) No. | (2) Civil proceedings in respect of which concurrent jurisdiction is conferred on the Circuit Court | (3) Where jurisdiction may not be exercised by the Circuit Court (except in the circumstances specified in section 41) | (4) The Judge of the Circuit Court by whom the jurisdiction shall be exercised |
| 1 | Proceedings under the contract jurisdiction for specific performance. | Where the valuation or value of any land which is the subject matter of the contract exceeds the Circuit Court land valuation limit. | Where the subject matter of the contract consists entirely of property other than land, the Judge of the Circuit where a respondent resides or carries on business, and where the subject matter of the contract consists in whole or in part of land, at the option of the applicant— (a) the Judge of the Circuit where a respondent resides or carries on business, or (b) the Judge of the Circuit where the land or any part of the land is situated. |
| 2 | Proceedings under the contract jurisdiction, | Where the amount of the balance sought exceeds the Circuit Court | At the election of the applicant (whether the application is to |

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| | where the amount sought consists of a balance after a set-off of any debt or demand sought or recoverable by the respondent from the applicant, where the set-off is admitted by the applicant in his or her application notice. | damages limit. | enforce, rescind, dissolve or annul a contract or for damages or other remedy for breach of contract)— (a) the Judge of the Circuit within which the contract was made, or (b) the Judge of the Circuit where a respondent resides or carries on business. |
| 3 | Any other proceedings under the contract jurisdiction. | Where the amount sought in the application exceeds the Circuit Court damages limit. | At the election of the applicant (whether the application is to enforce, rescind, dissolve or annul a contract or for damages or other remedy for breach of contract)— (a) the Judge of the Circuit within which the contract was made, or (b) the Judge of the Circuit where a respondent resides or carries on business. |
| 4 | Proceedings under the tort jurisdiction. | Where the amount sought in the application exceeds (or in the case of proceedings claiming wrongful detention, where the alleged value of the goods exceeds) the Circuit Court damages limit which applies to the tort concerned. | At the election of the applicant— (a) the Judge of the Circuit where the tort is alleged to have been committed or (b) the Judge of the Circuit where a respondent resides or carries on business. |
| 5 | Proceedings under the care and protection jurisdiction in continuing wardship cases, within the meaning of <i>paragraph 2(2) of Schedule 6</i> . ²⁶ | Where the valuation or value of the property of the person exceeds the District Court damages limit in amount or value or the income from that person's property exceeds €400 per annum. | The Judge of the Circuit where the person mentioned in <i>paragraph 2 of Schedule 6</i> resides. |
| 6 | Proceedings for a declaration mentioned in <i>section 96(2)</i> , or for a remedy under the <i>Legitimacy Act 1931</i> . | Where proceedings for the same remedy are before the High Court. | The Judge of the Circuit where any party to the proceedings ordinarily resides or carries on business. |
| 7 | Proceedings under the family law jurisdiction. (other than those mentioned in <i>paragraph 6</i>) where a family law enactment confers jurisdiction on the Circuit Court. | Where proceedings for the same remedy are before the High Court or where the valuation or value of any land concerning which any remedy is sought in the proceedings exceeds the Circuit Court land valuation limit. | The Judge of the Circuit where either of the parties to the proceedings ordinarily resides or carries on business. |

²⁶ The *Mental Capacity Bill* (see note 1, above) may confer distinct jurisdiction on the Circuit Court as well as the High Court.

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| 8 | Civil partnership law proceedings and cohabitancy proceedings where the <i>Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010</i> confers jurisdiction on the Circuit Court. | Where concurrent jurisdiction is excluded by <i>section 140</i> or, as the case may be, <i>section 196</i> of the <i>Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010</i> . | The Judge of the Circuit where either of the parties to the proceedings ordinarily resides or carries on business. |
| 9 | Proceedings under the partnership jurisdiction. | Where the valuation or value of the property of the partnership, so far as it consists of land, exceeds the Circuit Court land valuation limit, or, so far as it consists of property other than land, exceeds the Circuit Court damages limit. | At the election of the applicant— (a) the Judge of the Circuit where the partnership business was or is carried on, or (b) the Judge of the Circuit where a respondent resides or carries on business. |
| 10 | Proceedings by any person, including a public authority, to recover any sum by way of debt, penalty, forfeiture or otherwise (but excluding a fine to which a person is liable on conviction of a criminal offence) recoverable by virtue of any enactment. | (a) Where the amount due or recoverable exceeds the Circuit Court damages limit, or (b) any such proceedings under the <i>Gárda Síochána (Compensation) Acts 1941 and 1945</i> . | The Judge of the Circuit where a respondent resides or carries on business. |
| 11 | Proceedings under the probate jurisdiction in respect of the grant or revocation of the grant of probate of the will or letters of administration of the estate of a deceased person, or for the administration of the estate of a deceased person. | Where the valuation or value of the estate of the deceased person (excluding any property not beneficially owned by him or her) so far as it consists of land, exceeded at the time of his or her death the Circuit Court land valuation limit. | The Judge of the Circuit where the deceased person had at the time of his or her death a fixed place of residence |
| 12 | Proceedings under the trusts and instruments jurisdiction for the execution of a trust. | Where the valuation or value of the trust estate, so far as it consists of land, exceeds the Circuit Court land valuation limit, or so far as it consists of property other than land, exceeds the Circuit Court damages limit, but no such limit applies in proceedings for the execution of the trusts of a scheme framed or approved under <i>section 20</i> of the <i>Irish Land Act 1903</i> . | The Judge of the Circuit where a respondent resides or carries on business. |
| 13 | Proceedings under the trusts and instruments jurisdiction under the <i>Trustee Acts 1888 to</i> | Where the valuation or value of the trust property, so far as it consists of land, exceeds the Circuit Court land valuation limit, or so far as it | The Judge of the Circuit where an applicant resides. |

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| | 1958. | consists of property other than land, exceeds the Circuit Court damages limit. | |
| 14 | Proceedings under the trusts and instruments jurisdiction for the rectification, setting aside or cancellation of any deed or other written instrument ²⁷ . | Where the valuation or value of the subject matter of the deed or instrument, so far as it consists of land, exceeds the Circuit Court land valuation limit, or so far as it consists of property other than land, exceeds the Circuit Court damages limit. | Where the subject matter consists in whole or in part of land, at the option of the applicant— (a) the Judge of the Circuit where a respondent resides or carries on business, or (b) the Judge of the Circuit where the land or any part of the land is situated. |
| 15 | Proceedings under the land jurisdiction (but not including proceedings for ejectment in which title to land comes into question). | Where the valuation or value of the land exceeds the Circuit Court land valuation limit. | The Judge of the Circuit where the land or any part of the land is situated. |
| 16 | Proceedings in relation to land seeking an injunction, otherwise than as ancillary to another remedy. | Where the valuation or value of the land exceeds the Circuit Court land valuation limit. | At the option of the applicant— (a) the Judge of the Circuit where a respondent resides or carries on business or (b) the Judge of the Circuit where the land or any part of the land is situated. |
| 17 | Proceedings for ejectment, other than under <i>section 52</i> , <i>section 78</i> or <i>section 80</i> of the Act of 1860. | Where the valuation or value of the land exceeds the Circuit Court land valuation limit. | The Judge of the Circuit where the land or any part of the land is situated. |
| 18 | Proceedings under the competition jurisdiction. | Where the amount sought in a civil application exceeds the Circuit Court damages limit. | The judge of the Circuit where a respondent ordinarily resides or carries on a business. |
| 19 | Proceedings not previously mentioned in this Table that may be instituted in the State by virtue of Article 2, Article 9(1)(a), Article 12, Article 16, Article 19(1) or Article 20 or the proviso to Article 22(1) either of the Brussels I Regulation ²⁸ or of the Lugano Convention 2007 (jurisdiction in which is additional to the | Where the amount sought in the application exceeds the Circuit Court damages limit. | The judge of the Circuit where a respondent ordinarily resides or carries on a business, and in proceedings that may be instituted in the State under Article 9(1)(b) or Article 16 either of the Brussels I Regulation or of the Lugano Convention 2007 by an applicant domiciled in the State, the judge of the Circuit where an applicant ordinarily resides or carries on a business. |

²⁷ This does not cover the jurisdiction under section 40 of the *Registration of Deeds and Title Act 2006*, which falls within section 47.

²⁸ SI No.52 of 2002, Regulation 12.

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| | jurisdiction mentioned in <i>section 16</i> , and <i>section 16</i> as applied by <i>Part III</i> , of the Act of 1998). | | |
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Original licensing jurisdiction²⁹

46.— (1) The Circuit Court has original licensing jurisdiction:

[CSPA 1961, s24]

- (i) in all cases of applications for new on-licences;
- (ii) in all cases of applications for certificates under *section 8* of the *Intoxicating Liquor Act 1988*;
- (iii) in any other case where so expressly provided by an Act of the Oireachtas.

(2) The jurisdiction conferred on the Circuit Court by this section shall be exercisable by the Judge of the Circuit in which the premises in respect of which the new on-licence is sought are situated.

(3) Where the Circuit Court grants a new on-licence under this section, then, notwithstanding anything contained in any enactment, the licence does not require to be confirmed at any subsequent sitting of the Circuit Court.

Other non-concurrent original jurisdiction

47.— (1) The Circuit Court has jurisdiction where conferred by an enactment in connection with the fixing of the terms of any lease or licence.

[New]

(2) The Circuit Court has jurisdiction where conferred by an enactment to enforce a decision of any adjudicating body or person including in particular, but without limitation, such bodies or persons empowered to make determinations in matters of employment law.

(3) The Circuit Court has the jurisdiction conferred by the *Local Elections (Petitions and Disqualifications) Act 1974* and by that Act as applied by the *Local Government Act 2001* in connection with electoral matters and petitions and questions concerning the validity of elections and such other jurisdiction in connection with electoral matters as is conferred by any enactment³⁰.

[CBCIA 1851, s 82]

(4) The jurisdiction of the Circuit Court in proceedings in ejectment for the recovery of possession against tenants at will or permissive occupants (which is, subject to the limitation in the table to *section 68*, shared with the District Court) shall be exercisable by the Judge of the Circuit in which the land the subject of the proceedings is situated.

Necessary amendments

48.— The Acts specified in *Part 2* of *Schedule 3* are amended as indicated in that Schedule, for the particular purpose of declaring the jurisdiction of the Circuit Court under those Acts and of identifying the Judge of the Circuit Court who, in accordance with *section 38(1)*, shall exercise the jurisdiction of the Circuit Court in proceedings under those Acts.

[CSPA 1961, Fourth and Fifth Schedules]

Change of venue: civil proceedings

49.— (1) A Judge of the Circuit Court may, on the application of a party or of his or her own motion, if he or she thinks fit, by order change the venue for the trial of civil proceedings pending before the Court in that Circuit from one venue to any other venue within that Circuit.

[CSPA 1961, s22]

(2) A Judge of the Circuit Court may, on the application of a party to civil proceedings which have been partly heard, transfer the remainder or any portion

²⁹ This does not anticipate the changes concerning intoxicating liquor jurisdiction which might arise in the proposed *Sale of Alcohol Bill*.

³⁰ In particular, the *Seanad Electoral (University Members) Act 1937*, section 11 and the *Electoral Act 1992*, section 21.

of the hearing to another venue within his or her Circuit or within the Dublin Circuit.

(3) Where—

(a) civil proceedings are pending before a Judge of the Circuit Court assigned to a Circuit (in this section, the “first Judge”), and

(b) a party to those proceedings applies for the transfer of the proceedings to another Circuit, for hearing by the Judge of the Circuit Court assigned to that other Circuit (in this section, the “second Judge”),

the first Judge may, with the consent of the second Judge, transfer the proceedings accordingly and thereupon the proceedings shall be heard and decided by the second Judge.

(4) An appeal lies under *section 315* from the decision of:

(a) a Judge making or refusing to make an order in accordance with *subsection (1)* or granting or refusing an application in accordance with *subsection (2)* or

(b) a first Judge granting or refusing an application in accordance with *subsection (3)*.

Special Circuit Court designations

50.— (1) The Circuit Court shall continue to be known as the “Circuit Family Court” when exercising its jurisdiction to hear and decide family proceedings or, where provided for, when transferring family proceedings to the High Court.

[JSFLRA 1989, s 32]

(2) The Circuit Family Court shall sit to hear and determine family proceedings or civil partnership law proceedings in a different place or at different times or on different days from those on which the ordinary sittings of the Circuit Court are held.

(3) The Circuit Court shall be known as the “Circuit Court of Care and Protection” when exercising its care and protection jurisdiction.³¹

Appellate civil jurisdiction

Appellate civil jurisdiction of Circuit Court

51.— (1) The Circuit Court has all jurisdiction conferred by this Act to hear and decide appeals from the District Court in civil proceedings in accordance with *Part 5*.

[New]

(2) The Circuit Court has jurisdiction where conferred by an enactment to hear and decide appeals from adjudicating bodies or persons including in particular, but without limitation, appeals from such bodies or persons empowered to make determinations or decisions in matters of employment law.

Original criminal jurisdiction

³¹ This may require revision in the context of the *Mental Capacity Bill*: see note 1, above.

Jurisdiction of Circuit Court in indictable offences

52.— (1) Subject to *subsection (2)*, the Circuit Court has and may exercise every jurisdiction in respect of indictable offences as is for the time being vested in the Central Criminal Court and every person lawfully brought before the Circuit Court in exercise of that jurisdiction may be indicted before, tried and, if convicted, sentenced, by the Circuit Court accordingly.

[CSPA 1961, s25(1), (2)]

(2) The jurisdiction vested in the Circuit Court by *subsection (1)* does not extend to the trial of an indictable offence the trial of which *section 33(2)* provides is within the exclusive jurisdiction of the Central Criminal Court.

Criminal jurisdiction where an offence is committed in more than one Circuit

53.— (1) Where an offence is committed:

[FA 1819; CLIA 1828, s 26]

(a) in part in one and in part in another Circuit or on the boundary between two Circuits;

(b) during the course of a journey on any vehicle or vessel which passed through two or more Circuits;

(c) save where otherwise provided by another enactment, on any territorial seas or inland waters of the State adjoining two or more Circuits,

proceedings for the offence may be brought before the Circuit Court and tried or otherwise dealt with by that Court in either, or as the case may be, in any, of those Circuits.

Exercise of criminal jurisdiction in certain cases: Circuit Court

54.— (1) Where, in respect of an offence committed in the State—

[CSPA 1961, s25A, inserted by CJA 2006, s179]

(a) the accused person does not reside in the State,

(b) the accused person was not arrested for and charged with the offence in the State, and

(c) either—

(i) the offence was committed in more than one Circuit, or

(ii) it is known that the offence was committed in one of not more than three Circuits, but the particular Circuit concerned is not known,

then, for the purposes of *section 52*, the offence is deemed to have been committed in each of the Circuits concerned and a Judge assigned to any of those Circuits has jurisdiction in the proceedings.

(2) Where the circumstances of an offence committed in the State fall within *paragraphs (a) and (b)*, but not *paragraph (c)*, of *subsection (1)* and the Circuit in which the offence was committed is not known, then, for the purposes of *section 52*, the offence is deemed to have been committed in the Dublin Circuit.

(3) A case does not fall within this section unless it is shown that reasonable efforts have been made to ascertain the whereabouts of the accused person for the purposes of arresting him or her for, and charging him or her with, the offence concerned.

(4) Where a Judge assigned to a Circuit exercises jurisdiction in relation to an indictable offence by virtue of this section, the Judge or another Judge assigned to that Circuit has jurisdiction in relation to the offence until the conclusion of proceedings in respect of that offence in the Circuit Court, notwithstanding that it is later established that, but for this section, that Judge would not have had jurisdiction in relation to that offence.

(5) In this section, “offence” means an indictable offence in respect of which jurisdiction is vested in the Circuit Court by *section 52*.

Appellate criminal jurisdiction

Appellate criminal jurisdiction of Circuit Court

55.— The Circuit Court may hear and decide appeals from decisions of the District Court in criminal proceedings in accordance with *Part 5*. [New]

Chapter 5: The District Court

Interpretation: this Chapter

56.— In this Chapter:

reference to a “District Court money limit” is to the District Court damages limit specified in *section 62(2)* or, as the case may be, the District Court periodic payment limit specified in *section 62(3)*.

General

Jurisdiction of the District Court conferred only by statute

57.— (1) The District Court is vested only with such original and other jurisdiction as is vested in or capable of being exercised by the District Court, and with any other function conferred on the District Court, by virtue of this Act or any other enactment. [CJA 1924, ss 77, 78] [CSPA 1961, s32, 48]

(2) For the avoidance of doubt, the District Court continues to be vested with any surviving jurisdiction which::

(a) before 12 April 1924, was vested in or would have been exercisable by the Divisional Justices of the Police District of Dublin Metropolis,

(b) before 12 April 1924, was vested in or would have been exercisable by a Court of Conscience;

(c) in the case of licensing jurisdiction, before 12 April 1924, was vested in or would have been exercisable by Justices of the Peace at Petty Sessions or at Quarter Sessions or by Courts of Quarter Sessions or by Recorders or by Justices of the Peace out of Petty Sessions;

(d) before 12 April 1924, was vested in or capable of being exercised by District Justices under the provisions of the *District Justices (Temporary Provisions) Act 1923*, or

(e) before 6 December 1922, was vested in or would have been exercisable by a Justice of the Peace, whether sitting in or out of Petty Sessions.

Several exercise of jurisdiction of the District Court: general

58.— (1) Subject to this Chapter, the jurisdiction of the District Court is exercisable severally by the Judges of the District Court. That jurisdiction may be exercised in any proceedings only by a Judge of the District Court assigned to the District in which the proceedings must be brought or decided in accordance with this Act or with another enactment. [CSPA 1961, s32, 48]

(2) Where a jurisdiction is vested in the District Court by an enactment, but the exercise severally of that jurisdiction by the Judges of the District Court is not provided for by that enactment or by another enactment, that jurisdiction shall be exercisable severally by the Judges of the District Court in the manner provided by rules of court.

Several exercise of jurisdiction of the

59.— (1) Subject to any provision in this Act to the contrary, the jurisdiction in [CJA 1924,

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|---|--|--|
| District Court: civil | civil and licensing proceedings vested by this Act in the District Court is exercisable severally by the Judges of the District Court as follows:— | s79] |
| | (a) in civil proceedings, other than family proceedings, civil partnership law proceedings, cohabitancy proceedings or proceedings in the licensing jurisdiction, by a Judge of the District Court for the time being assigned to the District in which a respondent ordinarily resides or carries on any profession, business or occupation; | |
| | (b) in family proceedings, civil partnership law proceedings or cohabitancy proceedings, by a Judge of the District Court for the time being assigned to the District in which either of the parties to the proceedings ordinarily resides or carries on a profession, business or occupation; | |
| | (c) in proceedings in the licensing jurisdiction, by a Judge of the District Court for the time being assigned to the District in which the premises or licensed premises to which the application relates are situated. | |
| Exception in case of urgency | 60.— Notwithstanding <i>section 58</i> and <i>section 59</i> , a Judge of the District Court may make an order under the <i>Guardianship of Infants Act 1964</i> or the <i>Child Care Acts 1991 to 2007</i> , outside his or her District, or outside of Court, where he or she is satisfied that the circumstances require that such an order be made as a matter of urgency. | [CJA1924, s 79(5)] [CCOA 1995, s. 41] |
| Necessary amendments | 61.— The Acts specified in <i>Part 3 of Schedule 3</i> are amended as indicated in that Schedule, for the particular purpose of declaring the jurisdiction of the District Court under those Acts and of identifying the Judge of the District Court who shall exercise the jurisdiction of the District Court in proceedings under those Acts. | [New] |
| Limits of civil jurisdiction of the District Court: money amounts | 62.— (1) Subject to the exceptions contained in this Chapter, the jurisdiction vested in or conferred on the District Court may be exercised in civil proceedings only within each relevant District Court money limit. (2) The District Court damages limit is €7,500 ³² . (3) The District Court periodic payment limit (in proceedings for an order for the payment of sums periodically) is the limit for the time being specified in: (a) <i>section 5(2)</i> of the <i>Guardianship of Infants Act 1964</i> in proceedings under <i>Part II</i> of that Act; (b) <i>section 23(2)</i> of the Act of 1976 in proceedings for the support of a spouse or of a child; (c) <i>section 140(2)</i> of the <i>Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010</i> in proceedings under <i>section 45</i> , <i>section 46</i> or <i>section 47</i> of that Act, or (d) <i>section 196(2)</i> of the <i>Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010</i> in proceedings referred to in <i>section 173</i> and proceedings under <i>section 194</i> of that Act. | [New] [CJA 1924, s77] |
| Exceptions to money limits | 63.— (1) Notwithstanding <i>section 62</i> , the jurisdiction vested in the District Court may be exercised in civil proceedings otherwise than within a relevant District Court money limit where all of the parties to the proceedings have executed a consent to that effect in the form prescribed for that purpose by rules of court. | [CA 1991, s15(2)] [CCOA 2002, s. 18] |

³² This reflects the recommendation in paragraph 2.34 of the Report.

(2) Notwithstanding *section 62*, where civil proceedings in which unliquidated damages are sought are remitted or transferred by the High Court to the District Court, the District Court has jurisdiction to award damages in excess of the District Court damages limit.

(3) Notwithstanding *section 62*, where civil proceedings in which unliquidated damages are sought are remitted or transferred by the Circuit Court to the District Court, the District Court has jurisdiction to award damages in excess of the District Court damages limit, but which do not exceed the amount which is 200 per cent of the District Court damages limit.

Variation of money limits

64.— (1) If and whenever they are satisfied that a District Court money limit specified in *section 62* should, having regard to changes in the value of money generally in the State since that limit was last specified, be varied, the Government may make an order varying that limit and *section 62* has effect in accordance with the terms of any such order.

[CA 1991, s16]

(2) A draft of every order proposed to be made under this section shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving the draft has been passed by each such House.

(3) Before making an order referred to in *subsection (1)*, the Government—

(a) may consult with such persons as they considers appropriate, and

(b) may publish in such manner as they think fit notice of their intention to do so and give persons who wish to make representations in relation to the proposed order a period of not less than 21 days to do so.

Power to strike out with costs applications in excess of money limit

65.— (1) Where civil proceedings are brought in the District Court which that Court does not have jurisdiction to hear and determine, the Judge of the District Court, on the application of a respondent or of his or her own motion, as soon as that want of jurisdiction becomes apparent (and unless a consent referred to in *section 63(1)* is lodged within such time as the Judge allows):

[CJA 1936, s60]

(a) may, if he or she is of the opinion that the High Court or, as the case may be, the Circuit Court, has jurisdiction to hear and decide the proceedings and he or she thinks it proper, transfer the proceedings to the High Court or, as the case may be, to the Circuit Court for the appropriate Circuit and make a decision concerning the costs of the proceedings had in the District Court, or

(b) if he or she does not transfer the proceedings to the High Court or to the Circuit Court, shall strike out the proceedings and may, if he or she thinks proper, make such a decision concerning the costs of the proceedings as the Court could have made if it had jurisdiction to hear and decide the proceedings and the applicant either had not appeared or had appeared and failed to prove his or her claim.

Right to abandon excess over money limit³³

66.— (1) No cause of action for a liquidated sum which exceeds the District Court damages limit may be split or divided, so as to be made the ground of two or more different applications to the District Court, in order to bring the cause of action within the jurisdiction of the District Court. Civil proceedings are not sustainable in the District Court in respect of any portion of such a cause of

[New]

³³

There does not seem to be any reason why the right which arises in the Circuit Court to abandon any excess over the money limit (section 23, Courts of Justice Act 1936) should not also apply in the District Court, and accordingly the draft includes such a right.

action which is so split or divided, unless authorised by *subsection (2)*.

(2) A person having a cause of action for a liquidated sum which exceeds the District Court damages limit may institute one application in the District Court founded on that cause of action if:

(a) the amount sought in that application does not exceed the District Court damages limit and

(b) the applicant states in his or her application notice that he or she abandons all claims founded on the cause of action which are not included in that application.

(3) If, in any proceeding authorised by *subsection (2)*, the Court awards damages to the applicant, the amount awarded to the applicant shall be in full satisfaction of all claims which the applicant has abandoned in his or her application notice in that application.

Children Court

67.— (1) The District Court, when hearing charges against children, when hearing applications for orders relating to a child at which the attendance of the child is required or when exercising any other jurisdiction conferred on the Children Court by or under the *Children Act 2001*, by *Part III, Part IV, Part IVA or Part V* of the *Child Care Act 1991* or by another Act, shall continue to be known as the Children Court.

[CA 2001, s. 71]

(2) When exercising its jurisdiction, the Children Court shall sit in a different building or courtroom from that in which sittings of any other Court are held or on different days or at different times from those on or at which sittings of any other Court are held.

Original civil jurisdiction

Original civil jurisdiction, excluding licensing

68.— (1) The District Court has jurisdiction in civil proceedings of the kind mentioned in *column (2)* of the Table to this section, at any reference number, subject to the limitations provided in *column (3)* of that Table.

[New]

(2) The jurisdiction of the District Court to hear and decide proceedings of that kind shall be exercisable by a Judge of the District Court mentioned in *column (4)* of the Table to this section, immediately opposite the reference to proceedings of the kind concerned.

(3) References in the Table to this section to carrying on business include references to practising a profession or carrying on an occupation.

Table to section 68

| (1) No. | (2) Civil proceedings in respect of which jurisdiction is conferred on the District Court | (3) Where jurisdiction may not be exercised by the District Court (except in the circumstances specified in section 63(1)) | (4) Judge of the District Court by whom the jurisdiction shall be exercised |
|------------|---|---|---|
| 1 | Proceedings under the contract jurisdiction (excluding any such proceedings in which any equitable remedy is sought), provided that the decision of a | Where the amount sought in the application exceeds the District Court damages limit. | At the election of the applicant, (1) a Judge assigned to the District in which a respondent ordinarily resides or carries on business or (2) a Judge assigned to the District in |

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| | Judge of the District Court in a case in which a question of title to land is in issue does not operate as an estoppel in or bar to proceedings in any other Court in relation to that land. | | which the contract is alleged to have been made. |
| 2 | Proceedings under the tort jurisdiction (except for the tort of defamation, seduction, slander of title, malicious prosecution and false imprisonment), provided that the decision of a Judge of the District Court in a case in which a question of title to land is in issue does not operate as an estoppel in or bar to proceedings in any other Court in relation to that land. | Where the amount sought in the application exceeds the District Court damages limit, or in proceedings for wrongful detention (detinue) of any goods, where the value alleged of the goods exceeds the District Court damages limit. | At the election of the applicant, (1) a Judge assigned to the District in which a respondent ordinarily resides or carries on business or (2) a Judge assigned to the District in which the tort is alleged to have been committed. |
| 3 | Proceedings for damages unconnected with contract or tort, provided that the decision of a Judge of the District Court in a case in which a question of title to land is in issue does not operate as an estoppel in or bar to any proceedings in any other Court in relation to that land. | Where the amount sought in the application exceeds the District Court damages limit. | At the election of the applicant, (1) a Judge assigned to the District in which a respondent ordinarily resides or carries on business or (2) a Judge assigned to the District in which the act or omission which gave rise to the claim for damages is alleged to have been committed. |
| 4 | Family proceedings where a family law enactment confers jurisdiction on the District Court. | Where the amount sought by way of periodic payment exceeds the District Court periodic payment limit. | A Judge assigned to the District where either of the parties to the proceedings ordinarily resides or carries on business. |
| 5 | Civil partnership law proceedings under <i>section 45, section 46, section 47 or section 50</i> of the <i>Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010</i> and cohabitancy proceedings referred to in <i>section 173 or under section 194</i> of that Act. | Where jurisdiction is excluded by <i>section 140</i> or, as the case may be, <i>section 196</i> of the <i>Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010</i> . | A Judge assigned to the District where either of the parties to the proceedings ordinarily resides or carries on business. |
| 6 ³⁴ | Proceedings in ejectment for non-payment of rent or overholding in any class of tenancy. | Where the rent per annum exceeds or would exceed the District Court damages limit. | At the election of the applicant, (1) a Judge assigned to the District in which a respondent ordinarily resides or carries on business or (2) a Judge assigned to the District in which the land the subject of the tenancy with which the proceedings are concerned is situated. |

³⁴ The jurisdiction under the *Hotel Proprietors Act 1963*, under the *Landlord and Tenant Law Amendment Act Ireland 1860* and under the *Public Health (Ireland) Act 1878* are each dealt with by amendment of the Act concerned: see Schedule 3.

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| 7 | Proceedings in ejectment for the recovery of possession against tenants at will or permissive occupants. | Where the rent per annum exceeds or would exceed the District Court damages limit. | At the election of the applicant, (1) a Judge assigned to the District in which a respondent ordinarily resides or carries on business or (2) a Judge assigned to the District in which the land with which the proceedings are concerned is situated. |
| 8 | Proceedings by any person, including a public authority, to recover any sum by way of debt, penalty, forfeiture or otherwise (but excluding a fine to which a person is liable on conviction of a criminal offence) recoverable by virtue of any enactment. | (a) Where the amount due or recoverable exceeds the District Court damages limit, or (b) any such proceedings under the <i>Gárda Síochána (Compensation) Acts 1941 and 1945</i> . | A Judge assigned to the District in which a respondent ordinarily resides or carries on business. |
| 9 | Proceedings by a local authority or a board of conservators of fisheries for the recovery of any sum in respect of rates due to that local authority or board. | Where the sum sought in the application exceeds the District Court damages limit. | A Judge assigned to the District in which a respondent ordinarily resides or carries on business. |
| 10 | Proceedings, without any limit as to the amount sought in the application, at the suit of an auditor or other person: (I) under <i>section 71(3) of the Local Government Act 1941</i> , or (II) under <i>paragraph 9(3) of the Third Schedule to the Fisheries (Consolidation) Act 1959</i> . | | A Judge assigned to the District in which a respondent ordinarily resides or carries on business. |
| 11 | Proceedings by way of interpleader, where the applicant is a sheriff or other person authorised to execute an execution order of the District Court and a claim is made by a person other than the person against whom the execution order was issued to any goods seized taken or seizeable goods intended to be taken in execution under any execution order, or to the proceeds or value of any goods seized. | | A Judge assigned to the District in which the judgment debtor or another person claiming the goods seized or seizeable goods ordinarily resides or carries on business. |
| 12 | Proceedings under the competition jurisdiction. | Where the amount sought in a civil application exceeds the District Court damages limit. | A Judge assigned to the District in which a respondent ordinarily resides or carries on a business. |
| 13 | Proceedings not previously mentioned in this Table that may be instituted in the State by virtue of Article 2, Article 9(1)(a), | Where the amount sought in the application exceeds the District Court damages limit. | A Judge assigned to the District in which a respondent ordinarily resides or carries on a business, and in proceedings that may be |

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| | Article 12, Article 16, Article 19(1) or Article 20 or the proviso to Article 22(1) either of the Brussels I Regulation ³⁵ or of the Lugano Convention 2007 (jurisdiction in which is additional to the jurisdiction mentioned in <i>section 16</i> , and <i>section 16</i> as applied by <i>Part III</i> , of the Act of 1998). | | instituted in the State under Article 9(1)(b) or Article 16 either of the Brussels I Regulation or of the Lugano Convention 2007 by an applicant domiciled in the State, a Judge assigned to the District in which an applicant ordinarily resides or carries on a business. |
| 14 | Proceedings permitted by any other enactment to be heard and decided by the District Court. | | A Judge assigned to the District identified by that enactment or by rules of court. |

Original civil jurisdiction of the District Court: licensing³⁶

69.— (1) Without limiting any right of appeal, the District Court has all original licensing jurisdiction, except the licensing jurisdiction conferred on the Circuit Court by *section 46*.

[CJA 1924, s 77C]

(2) The District Court has jurisdiction conferred by or under any enactment to grant any permit, licence or certificate (other than a licence or certificate referred to in *subsection (1)*).

Appellate Civil Jurisdiction

Appellate civil jurisdiction of the District Court

70.— The District Court has jurisdiction where conferred by another enactment to hear and decide an appeal from an adjudicating body or person in accordance with *Part 5*.

[New]

Original Criminal Jurisdiction

Criminal jurisdiction of the District Court

71.— (1) The District Court may try any offence triable summarily.

[SJIA 1851, s51]

(2) Any offence triable summarily shall be tried by a Judge of the District Court sitting alone, without a jury.

[OAPA 1861, s 76 (revised)]

(3) The District Court may try summarily a person charged with a scheduled offence if—

[CJA 1951, ss 2(2) & (3)]

(i) the Court is of the opinion that the facts proved or alleged constitute a minor offence fit to be tried summarily, and

(ii) the accused, on being informed by the Court of his or her right to be tried with a jury, does not object to being tried summarily.

(4) A person may not be tried summarily for a scheduled offence specified in the *First Schedule* to the *Criminal Justice Act 1951* at reference numbers 1, 2 or 3 or for an attempt to commit such an offence unless the Attorney General or Director of Public Prosecutions has consented to his or her being so tried.

(5) The District Court may try summarily a person charged with an indictable offence under the *Criminal Justice (Theft and Fraud Offences) Act 2001* in

[CJTFOA 2001, s 53]

³⁵ SI No.52 of 2002, Regulation 12.

³⁶ This does not anticipate any revision of intoxicating liquor jurisdiction which might arise from the promised *Sale of Alcohol Bill*.

accordance with *section 53* of that Act.

(6) This section does not prevent the District Court from sending forward a person for trial for a scheduled offence.

(7) Where an enactment provides that:

[FAIAA 1874,
s 5]

(a) a penalty may be recovered,

(b) an offence may be prosecuted, or

(c) proceedings may be taken

in a summary manner, and no further provision in that regard is contained in the enactment concerned, then

(i) any such penalty is recoverable,

(ii) any such offence may be prosecuted, or

(iii) any such proceedings may be taken

before the District Court in accordance with this Act.

(8) The District Court continues to have such jurisdiction in relation to pre-trial matters in criminal proceedings on indictment as is conferred by the Act of 1967 and other applicable law and that jurisdiction is unaffected by this Act.

(9) In this section:

reference to an offence triable summarily includes reference to an offence which may be tried on indictment or summarily, which is being tried summarily, and

a “scheduled offence” has the same meaning as in *section 2* of the *Criminal Justice Act 1951*.

Several exercise of jurisdiction of the District Court: criminal

72.— (1) Save where otherwise provided, the jurisdiction in criminal proceedings vested by this Act or by another enactment in the District Court is exercisable by a Judge of the District Court for the time being assigned to the District in which the offence was committed or the accused person has been arrested or resides (or, in the case of a corporate body, in which its registered office or principal place of business is situated).

[CJA 1924,
s79(2)-(4)]
[CCOA 1995,
s. 41]
[CCOA 2002,
s. 24]

(2) Where a Judge of the District Court for the time being assigned to a District is unavailable or no Judge is assigned for the time being to a District, any Judge of the District Court may exercise jurisdiction in respect of that District in criminal proceedings at any place in the State.

(3) A Judge of the District Court who exercises jurisdiction under *subsection (2)* may hold a sitting of the District Court in the District to which he or she is assigned at a place or time not standing appointed for the time being for a scheduled sitting of the District Court.

(4) Where a person accused of a criminal offence is before a Judge of the District Court in a District other than the District in which the offence has been committed or where the accused resides or was arrested (or, in the case of a corporate body, in which its registered office or principal place of business is situated), the Judge may (unless the Court is an alternative Court, within the meaning of *section 132*), of his or her own motion or on the application of the accused or of the prosecutor, transfer the proceedings to the District in which the offence was committed or in which the accused resides or was arrested.

Criminal jurisdiction

73.— (1) Where an offence is committed:

[FA 1819;

where an offence is committed in more than one District

CLIA 1828, s 26]

(a) in part in one and in part in another District or on the boundary between two Districts;

(b) during the course of a journey on any vehicle or vessel which passed through two or more Districts;

(c) save where otherwise provided by another enactment, on any territorial seas or inland waters of the State adjoining two or more Districts,

proceedings for the offence may be brought before the District Court and tried or otherwise dealt with by that Court in either, or, as the case may be, in any, of those Districts.

Exercise of criminal jurisdiction in certain cases: District Court

74.— (1) Where, in respect of an offence committed in the State—

[CJA 1924, s79A, inserted by CJA 2006, s178]

(a) the accused does not reside in the State,

(b) the accused was not arrested for and charged with the offence in the State, and

(c) either—

(i) the offence was committed in more than one District, or

(ii) it is known that the offence was committed in one of not more than five Districts, but the particular District concerned is not known,

then, for the purposes of *section 72*, the offence is deemed to have been committed in each of the Districts concerned, and a Judge of the District Court assigned to any of those Districts concerned has jurisdiction in the proceedings.

(2) Where the circumstances of an offence committed in the State fall within *paragraphs (a) and (b)*, but not *paragraph (c)*, of *subsection (1)* and the District in which the offence was committed is not known, then, for the purposes of *section 72*, the offence is deemed to have been committed in the Dublin Metropolitan District.

(3) A case does not fall within this section unless it is shown that reasonable efforts have been made to ascertain the whereabouts of the accused for the purposes of arresting him or her for, and charging him or her with, the offence concerned.

(4) Where a Judge of the District Court for the time being assigned to a District exercises jurisdiction in criminal proceedings by virtue of this section, that Judge or another Judge of the District Court assigned to that District has jurisdiction in the proceedings until the conclusion of the proceedings before the District Court, notwithstanding that it is later established that, but for this section, that Judge would not have had jurisdiction in the case.

(5) A Judge of the District Court for the time being assigned to a District who exercises jurisdiction in criminal proceedings by virtue of this section may deal with the case at any place within his or her District.

Chapter 6: Powers and functions of Courts as to conduct of proceedings: general

Case conduct principles

75.— (1) In the context of civil proceedings, “case conduct principles”, means the following:

[New]

(a) that the matters of law and fact arising in the proceedings which are at issue

between the parties should, at as early a stage as is practicable and to the extent practicable, be identified, defined, narrowed (where possible) and prioritised or sequenced;

(b) that proceedings should be conducted in a manner which is just, expeditious and likely to minimise the costs of those proceedings, and

(c) that the parties should use alternative dispute resolution procedures where appropriate, to settle the whole or part of the proceedings where practicable, and should be facilitated in doing so.

(2) Parties shall, so far as is practicable, conduct civil proceedings in accordance with the case conduct principles.

Conduct and control of proceedings

Function of Court in conduct of civil proceedings

76.— A Court shall, so far as is practicable, in the conduct of civil proceedings³⁷: [New]

(a) ensure that the parties conduct the proceedings in accordance with the case conduct principles;

(b) have regard to the need to allot its time and its resources appropriately among all of the proceedings the Court has to hear and determine, and

(c) deal with the proceedings in ways which are proportionate to -

(i) the amount of money or value at stake;

(ii) the importance and complexity of the issues; and

(iii) the resources of each party.

Judicial control over conduct of judicial business

77.— (1) The Judge (or, as the case may be, the presiding Judge) has control of the conduct of the judicial business of a Court. [COA 1926, s65,modified]

(2) When a court officer attached to, or performing duties in relation to, a Court is engaged on duties relating to the judicial business of that Court, he or she shall observe and obey all directions given to him or her by the Judge (or, as the case may be, by the presiding Judge).

(3) All proofs, documents and papers lodged in or handed in to a Court in relation to, or in the course of the hearing of, proceedings and the Court's record are held at the order and disposal of the Judge (or, as the case may be, of the presiding Judge) by or before whom those proceedings are heard.

Power to punish contempt

78.— (1) Every Court has the power in accordance with law to punish contempt of Court, whether by contempt in the face of the Court or by wilful disobedience of the Court's order³⁸. [PSIA 1851, s9] [SJIAA 1871, s6]

(2) The power to punish contempt includes a power:

(a) by verbal order to direct that a person be removed from the courtroom or other place where the Court is sitting,

³⁷ This implements the recommendation in paragraph 2.40 of the Report.

³⁸ As was noted in the Commission's Report on Contempt of Court (LRC 46-1994), paragraph 3.3, some degree of uncertainty arises as to the jurisdiction of the Circuit and District courts in relation to civil contempt. The Commission concluded that the Circuit Court and District Court should enjoy the same jurisdiction in relation to contempt as the High Court. Subject to limitations in relation to fines, that conclusion is reflected in this provision. In particular, this provision would confirm the power of the District Court to order imprisonment for wilful disobedience of an order.

(b) by verbal order to direct that a person be taken into custody, and at any time before the Court rises by warrant to commit that person to prison for any period (which may not, in the case of the District Court, exceed 7 days), or

(c) to fine a person in any sum (which may not, in the case of the District Court, exceed €2,000) and to impose a further fine which continues to accrue each day after the Court's decision on which the contempt continues or is not purged (which may not, in the case of the District Court, exceed €200).

(3) A person may not be committed to prison for wilful disobedience of a Court's order unless the person has been summoned before the Court (whether by application for a personal enforcement order or otherwise) and given an opportunity to be heard.

(4) This section does not modify the law in relation to any offence of, or concerning, contempt of Court.

Power to adjourn

79.— (1) Subject to *subsections* (2) and (3) and any other relevant provision of this Act, a Judge may adjourn the hearing of proceedings before that Judge or before his or her Court to another time or place.

[CBCIA 1851, ss8 & 109]
[CLPAAI 1856, s22]

(2)³⁹ Whenever it is found impracticable to hold a scheduled sitting of a Court at a place as published, the judicial business of that Court listed for or returnable to that scheduled sitting:

[CSPA 1961, s22(13)]

(a) may, by direction of the President of the Court, be transferred to be conducted at another place (including a place outside the Circuit or District concerned) on the date for which that sitting was scheduled or on such other date as is directed, or

(b) may, by direction of the Judge, or, in his absence, by direction of the proper officer of the Court (having consulted where practicable with the Judge), be adjourned to be conducted on another date at the same place, and

(c) where no such direction is given and the Court does not sit as scheduled, is deemed to be adjourned to be conducted at the next scheduled sitting of that Court at the same place,

and such notice as is in the circumstances practicable shall be given of a direction under this subsection.

(3) Save where otherwise permitted by this Act or another enactment, a Judge of the Circuit Court may only adjourn the hearing of any proceedings to another Court within his or her Circuit.

(4) Save where otherwise permitted by this Act or another enactment, a Judge of the District Court may only adjourn the hearing of any proceedings to another Court within his or her District.

Power of Supreme Court or High Court to restrict institution of vexatious

80.— The Supreme Court or the High Court may, on an application made for that purpose or, where appropriate, of its own motion:

[New]

³⁹ This a force majeure provision, which permits the transfer of scheduled business in advance of a sitting by the President of a Court (e.g. where a courthouse has been flooded) or on the date of a sitting by the Judge or proper officer (e.g. if the Judge is taken ill or prevented by other unforeseen reason from attending).

proceedings⁴⁰

(a) where it is satisfied that a person has without any reasonable ground repeatedly instituted vexatious legal proceedings in any Court, whether against the same person or against different persons, and

(b) after hearing that person or giving that person an opportunity to be heard,

order—

(i) that he or she may not, without the leave of the High Court, commence proceedings in any Court, or

(ii) that he or she may not continue any proceedings he or she has commenced in any Court before the making of the order, without the leave of the High Court,

and the High Court shall give leave only where it is satisfied:

- (I) that the intended proceedings or proceedings are not an abuse of the process of the Court concerned and that there are *prima facie* grounds for the proceedings, or
- (II) that the refusal of leave would involve an unreasonable interference with the person's right of access to the Courts.

General rules

Ex parte order may be set aside, discharged or varied

81.— Save where, and then only to the extent, otherwise provided by this Act or by another enactment, a Court may, on the application of a party or person affected by the order, set aside, discharge or vary any order mentioned in this Chapter, *Chapter 7*, or *Chapter 8* which was made *ex parte*.

[New]

Orders may be absolute or conditional

82.— An order mentioned in this Chapter, *Chapter 7*, *Chapter 8*, *Chapter 9* or *Chapter 10* may be made subject to the conditions (if any) the Court imposes, which may include the giving of any undertaking to the Court.

[New]

Powers in intended proceedings

83.— The High Court may, and another Court may where permitted by law, hear and decide an application for a remedy (including for any urgent or protective remedy or for permission to begin proceedings) which is related to proceedings intended to be begun before that Court, before those proceedings are begun, subject to any condition the Court imposes.

[New]

Powers available to trial Court also available to appeal Court

84.— Without limiting any other provision of this Act, a Court hearing an appeal may exercise any jurisdiction or power in the proceedings on appeal as might have been exercised in those proceedings by the Court or adjudicating body or person whose decision is appealed.

[COCAI 1877, s 80]

Powers on appeal

85.— (1) Where an appeal from a Court or adjudicating body or person is decided, the Court which has decided the appeal may, unless otherwise provided by law:

[CJDCA 1946, s23]
[CBCPAAI 1864, s 48]
[COCAI 1877, s 72]

(a) discharge, vary or amend an order or other Court instrument of a Court appealed from;

(b) discharge, vary or amend an order or instrument of an adjudicating body or person appealed from, or

(c) make or issue any order, warrant or other Court instrument authorised by law

⁴⁰ This provision is based on the *Supreme Court Act 1981* (renamed the *Senior Courts Act 1981*) (England and Wales), section 42, modified having regard to constitutional requirements.

necessary or requisite to execute or enforce the decision on appeal.

(2) Where a Court which has decided an appeal has affirmed or varied the decision of the Court appealed from (but not where the Court which has decided the appeal has substituted a decision for the decision of the Court appealed from), the Court appealed from may, where the Court which has decided the appeal has not done so, make or issue any order, warrant or other Court instrument authorised by law necessary or requisite to execute or enforce the decision as affirmed or varied.

Power to stay
execution of decision

86.— (1) Save where, and then only to the extent, otherwise provided by this Act or by another enactment, a Court may stay execution or enforcement of its decision pending: [New]

(a) the hearing and decision of an appeal from its decision, or

(b) a further decision, by a Court to which an appeal may be made or by the Court itself.

(2) Save where, and then only to the extent, otherwise provided by this Act or by another enactment, a Court to which an appeal is made from a decision of any Court or adjudicating body or person may stay the execution or enforcement of the decision of the Court or adjudicating body or person from the decision of which an appeal is made, pending the hearing and decision of the appeal or pending a further decision by the Court to which an appeal is made.

Orders to secure appearance or witness evidence

Power to summon
parties or witnesses
and order production
of documents

87.— (1) A Court or Judge may:

(a) order a person in the State to attend before the Court or Judge to answer⁴¹, or to give evidence in, proceedings before that Court or Judge; [CJA 1924, s 58]

(b) order a person in the State to produce before the Court or Judge any document or thing which is, or may be, relevant to any proceedings before that Court or Judge;

(c) order the production before the Court of a person in the State who is serving a term of imprisonment or detention, or who is otherwise in custody, to answer, or to give evidence in proceedings before that Court or Judge, and issue any warrant necessary for that purpose; [HCA 1804] [CBCPAIA 1864, s 43]

(d) order a person in the State to attend and give evidence (in this Part, “evidence on commission”) in proceedings, before a Judge, court officer or other person (in this section, a “commissioner”) in connection with proceedings, prior to the hearing or trial of the proceedings, in accordance with this Act or another enactment, or

(e) request a court or judicial authority in another State to require a person within the jurisdiction of that court or judicial authority to give evidence in proceedings prior to or at the hearing or trial of the proceedings concerned, on such terms and in such circumstances as it requests.

(2) The power of the Court referred to in *paragraphs (a) and (b) of subsection (1)* may be exercised by the appropriate court officer in the circumstances specified in *section 88*.

⁴¹ The words “to answer” are to capture the general power to summon in the *Petty Sessions (Ireland) Act 1851*.

88.— (1) The appropriate court officer may, on the application of a party to civil proceedings, or the prosecutor or accused in summary criminal proceedings, seeking to secure the attendance of a witness at the hearing of those proceedings, issue a written order (which may be known as a “witness summons”) directed to a person in the State, requiring that person to attend and give evidence at the hearing of the proceedings, and (where requested by the party applying for the summons) to bring with him or her and produce any, or any specified, documents or other things relevant to the matters at issue in the proceedings in the possession or power of the witness.

[PSIA 1851,
s13]
[CJA 1924,
s58]

(2) If a person on whom a witness summons was served in sufficient time before the hearing fails, without sufficient cause:

(a) to attend at the hearing of proceedings pursuant to a witness summons under *subsection (1)*, or

(b) to produce any, or any specified, documents or other things pursuant to a witness summons,

the person commits an offence and the Court or Judge hearing the proceedings may (in addition to any other order which that Court or Judge may make):

(i) convict the person of that offence and impose on the person a class D fine within the meaning of *Part 2* of the *Fines Act 2010* in such amount as the Court or Judge deems proper, or

[DPA 1842, s
49]

(ii) where the witness summons relates to criminal proceedings⁴², issue a warrant for the arrest of the person who has not attended, and direct that the person (and, where relevant, any, or any specified, documents or other things in that person’s possession or power relevant to the matters at issue in the proceedings) be brought before the Court at a time and place appointed.

(3) Any rule that a person who is served with a witness summons:

(a) is entitled to be paid or to have tendered to him or her on such service any *viaticum*, conduct money or expenses of the person’s attendance in Court, or

(b) may lawfully refuse or fail to attend in Court in answer to the witness summons if he or she has not been paid or had tendered to him or her on such service any *viaticum*, conduct money or expenses of attendance in Court,

is abolished⁴³.

(4) Every person whose attendance has been required by witness summons in any proceedings which are adjourned shall be obliged to attend on the day and at the place to which the adjournment takes place, without the issue or service of any further witness summons.

(5) A witness summons under *subsection (1)* includes any written order to the effect described in that subsection, by whatever name used in rules of court,

⁴² Note that a bench warrant cannot be issued on non-appearance by a witness in civil proceedings, only criminal proceedings: See the Commission’s *Consultation Paper on Search Warrants and Bench Warrants* (LRC CP 58-2009), paragraph 7.12.

⁴³ This would abolish the rule that a person served with a witness summons is entitled not to attend without a viaticum being paid: such a requirement may be inconsistent with Regulation (EC) No.1206/2001.

including an order of *subpoena ad testificandum* or *subpoena duces tecum*.

Supplemental provision on attendance on witnesses

89.— (1) *Sections 87 and 88* do not limit:

[New]

(a) the power of a Court to order a person to attend and give evidence or produce any document or thing at the hearing of proceedings, or

(b) any provision of another enactment which requires an order of a Court for the production by a particular officer or person of any document or thing, whether at the hearing of proceedings or otherwise, or

(c) the powers of a Court under *section 4K* and *section 4L* of the Act of 1967.

[CBCPAIA 1864, s. 52]

(2) The reasonable expenses of attendance and loss of time of a witness may be allowed as part of the costs in proceedings.

Evidence on commission

90.— (1) Where a person is summoned to appear before a commissioner to give evidence on commission in accordance with this Act or any enactment:

[EBCA 1853]

(a) the person is entitled to the like privileges, immunities, rights and incidents as if he or she were a witness in proceedings before the Court which appointed the commissioner;

(b) the person is entitled following attendance to the like payment of his or her expenses and for loss of time as for attending as a witness at proceedings before that Court, which are costs incurred in the proceedings, and may be comprised in, or the subject of, a decision on costs in the proceedings;

(c) where there is a reasonable apprehension that the person summoned will fail to appear before the commissioner at the time and place specified and give evidence or produce any document, the commissioner, or a party to the proceedings to which the evidence on commission relates, may apply for the issue of a witness summons in accordance with *section 88* in the same way as might a party to proceedings before the Court.

(2) A commissioner may certify to the Court which appointed him or her a failure by a person (whether a witness summons has or has not been served on that person) to attend and give evidence or to produce any document before the commissioner, or may refer or report any matter arising in or in connection with the evidence on commission to the Court, and the Court may make direct such further proceedings on the matter or make such order as is appropriate in the circumstances.

[EOCA 1831, s. 8]

Chapter 7: Particular orders which may be made in civil proceedings

Appointment of assessor or *amicus curiae*

91.— (1) The High Court may, before and in connection with the hearing and decision (or where appropriate, during the hearing) of civil proceedings appoint a specially qualified or suitably experienced assessor, and may try or hear civil proceedings wholly or partially with the assistance of such an assessor.

[SCJIA 1877, s. 59]
[CAIA 1867, s. 73]

(2) The Supreme Court may, for the purpose of the hearing and decision of an appeal in civil proceedings, and the High Court may, before and in connection with the hearing and decision (or where appropriate, during the hearing) of civil proceedings hear a person as *amicus curiae*, in the manner authorised by an enactment or otherwise.

(3) *Subsection (2)* does not limit the power of the Supreme Court under *section 21* of the *Civil Liability and Courts Act 2004*.

Order restraining

92.— The High Court may, on the summary application of a person sufficiently

[CIA 1867, s

or which is, or may be, evidence in the proceedings;

(d) an order for the examination (including by inspection, photographing or the taking of samples) of a place or thing which is, or may be, evidence in the proceedings, by the Court (including by any jury, assessor or court officer) or by or on behalf of a party;

[CLPAAI
1853, s 47]
[CAIA 1867, s.
66]

(e) an order for the medical examination of a person where the medical condition of that person is, or may be, material to the decision of the proceedings;

(f) subject to any enactment, an order directing the mode in which particular evidence may be given;

- in relation to
property

(g) an order for the sale, disposal or use of any thing which is the subject-matter of any proceedings and, where appropriate, for the application or investment of any proceeds of sale;

(h) an order directing or authorising the payment of any money or lodgment of any other property, into Court;

- in relation to the
efficient conduct of
proceedings

(i) an order permitting service or the giving of notice outside the State in accordance with *section 238* of an application notice or other Court document, in the cases or circumstances, and subject to any conditions, prescribed by rules of court;

[SCJIA 1877, s
33]

(j) an order directing a party to provide further or more detailed particulars of, or information concerning, any matter in any application notice or pleading;

[CLPAAI
1853, s 46]

(k) an order staying proceedings, which may, without limitation, be made in particular:

(I) where, by reason of a multiplicity of proceedings in any Court or Courts the proceedings ought not to continue,

(II) where a Court in the State is not a permitted or appropriate forum for the decision of the issue in the proceedings,

(III) for the purpose of referring a question to the Labour Court in accordance with *section 57* or *section 82* of the *Industrial Relations Act 1946*, or

(IV) where an order has been made under *section 96*, or where an order has been made that the proceedings or any question or issue of fact arising in the proceedings be tried before an arbitral tribunal in accordance with *section 32* of the *Arbitration Act 2010*;

(l) an order referring any proceedings or any issue or matter in proceedings to arbitration, in accordance with law⁴⁵;

(m) an order (which may provide for the costs of the proceedings) dismissing proceedings which may, without limitation, be made in particular:

(I) where the matter in question is *res judicata* between the parties;

(II) where the Court is satisfied that the proceedings do not disclose a valid cause of action or that the application concerned cannot succeed;

(III) for failure by the applicant to take any required step or action (want of prosecution);

(n) an order (which may provide for the costs of the proceedings) deciding proceedings against a respondent (or against a party defending an appeal) for failure by that respondent or party to take any required step or action (default of appearance or default of defence);

⁴⁵ Most obviously under section 32 of the *Arbitration Act 2010* but see also for example, *Landlord and Tenant (Ground Rents) Act 1967*.

- (o) an order joining a person to, or releasing a person from, proceedings; [CLPAAI 1853, s 51]
- (p) an order appointing or approving a person (as guardian *ad litem*) to act in proceedings in the interests of a child or an adult party who, in the opinion of the Court, lacks sufficient capacity to conduct the proceedings on his or her own account and does not otherwise have a person acting in relation to him or her who is responsible for performing that function, or an order revoking such an appointment or approval; [CIA 1867, s 116] [CCOIA 1877, s 66]
- (q) an order amending proceedings (including, without limitation, by striking out or requiring the amendment of any matter in any Court document which is framed so as to prejudice, embarrass or delay the fair trial of the proceedings) or curing a defect in proceedings; [CLPAAI 1853, s 83]
- (r) an order for the giving of security for costs; [CLPAAI 1853, s 52]
- (s) an order, in accordance with rules of court, enlarging or abridging the time prescribed for taking any step or action in proceedings, but this paragraph does not operate to modify the *Statutes of Limitations* or any other enactment concerning the limitation of actions; [CLPAAI 1853, s 92]
- (t) an order for the trial, without pleading, of a question of law; [CLPAAI 1853, s 96]
- (u) an order for the trial of a discrete issue or question of fact; [CLPAAI 1856, s 4]
- (v) an order that an account be taken or inquiry made by an officer of the Court or by another person nominated for that purpose by the Court or Judge; [CCAIA 1889, s 15]
- (w) an order directing the manner and sequence in which proceedings on a claim and cross-claim or counterapplication arising out of the same facts will be determined ⁴⁶. [CAIA 1867, s. 72]
- (2) Rules of court may prescribe circumstances in which an order dismissing proceedings for want of prosecution, or deciding proceedings against a respondent for default of appearance or defence is deemed to have been made without a hearing before the Court, provided that the Court may review or reopen any proceedings in which such an order is deemed to have been made. [CLPAAI 1853, s 100, 101 (modified)]
- (3) Where permitted by, and in any such case in accordance with, rules of court, an order mentioned in *subsection (1)* may be made:
- (a) by the Master of the High Court in proceedings before the High Court, or
- (b) by a County Registrar in proceedings before the Circuit Court.

Other orders not excluded **95.**— The orders mentioned in *section 91, section 92, section 93 and section 94* are in addition to any other order which the Court concerned may make before and in connection with the hearing and decision, or, as the case may be, during the hearing, of civil proceedings. [New]

Particular powers in relation to mediation **96.**— (1) In this section, “civil proceedings” includes proceedings which involve a cross-border dispute referred to in Article 2 of the Mediation Directive. [New]

⁴⁶ This subparagraph could be extended to empower the Court to direct the manner and sequence in which proceedings or issues in proceedings arising out of common or similar facts or involving common parties would be determined. Such a provision could underpin optimal case management in multiple proceedings involving common parties or, if subsection (2) were also amended, be extended to support use and management of multi-party proceedings, as to which see the Commission’s *Report on Multi-Party Litigation* (LRC 76-2005).

(2) A Court before which civil proceedings are brought may, when appropriate and having regard to all the circumstances of the case, on the application of a party or of its own motion, invite the parties to use mediation in order to settle the dispute to which the proceedings relate.

(3) Where a Court invites the parties to use mediation in accordance with *subsection (2)*, it may stay or adjourn the proceedings, for such period and on such terms as it considers appropriate, and may modify or suspend the operation of time limits (whether set by rules of court or by the Court itself) for the taking of any step or action in the proceedings.

(4) Unless the parties agree otherwise, no mediator or other person involved in the administration of a mediation process used in accordance with *subsection (2)* may be compelled in any civil proceedings or in any arbitration to give evidence of or regarding any information arising out of or in connection with that mediation process, except:

(a) where the Court considers that the giving of that evidence is necessary for over-riding considerations of public policy, in particular when the giving of that evidence is required to ensure the protection of the best interests of a child or to prevent harm to the physical or psychological integrity of a person; or

(b) where disclosure of the content of the agreement resulting from mediation is necessary in order to implement or enforce that agreement.

(5) Rules of court may provide for the use of conciliation or other alternative dispute resolution procedures in any civil proceedings.

(6)⁴⁷ A party to a written agreement resulting from a mediation, or a person acting on behalf of such a party, may:

(a) apply summarily for the agreement to be made an order of the Court, and a Court which makes such an agreement an order of the Court has jurisdiction to make that order notwithstanding any other provision of this Act, or

(b) where another party has failed to perform any obligation under such an agreement within the time permitted for that purpose in the agreement or within a reasonable time, apply to the Court in a summary manner for an order to enforce the agreement.

(7) In determining an application under *subsection (6)(b)*, the Court may make such order for the enforcement of the agreement or otherwise as it thinks fit in the circumstances of the case.

(8) In *subsection (6)*, “the Court” means:

(a) where the subject-matter of the mediation was, or could have been, the subject of civil proceedings in the District Court, the District Court for the District in which the proceedings were pending or, as the case may be, in which proceedings concerning the subject-matter of the mediation could have been brought in accordance with this Act or another enactment; or

⁴⁷ This section, in addition to implementing the EU Mediation Directive, gives effect to recommendation in the Commission’s *Report on Alternative Dispute Resolution: Mediation and Conciliation* (LRC 98-2010), to empower a court before which proceedings would have been taken to receive and make a rule of court a mediation agreement in pre-proceedings mediation and/or summarily to enforce such an agreement. The language on summary enforcement is based on section 22 of the *Land and Conveyancing Law Reform Act 2009*.

(b) where the subject-matter of the mediation was, or could have been, the subject of civil proceedings in the Circuit Court, the Circuit Court for the Circuit in which the proceedings were pending or, as the case may be, in which proceedings concerning the subject-matter of the mediation could have been brought in accordance with this Act or another enactment, or

(c) in any other case, the High Court.

(9) This section does not limit or affect any provision of any other enactment which concerns mediation.

Rules of equity and common law

Priority of rules of equity and common law

97.— (1) Subject to the provisions of this Act and of any other enactment, a Court exercising jurisdiction in civil proceedings shall administer all rules of common law and all rules of equity on the basis that, wherever there is any conflict or variance between any rule of equity and any rule of common law with reference to the same matter, the rule of equity prevails.

[derived from SCJIA 1877, ss 27, 28(11)]

(2) Every Court shall, to the extent permitted by the jurisdiction vested in it, by this Act or otherwise, give the same effect as immediately prior to the commencement of this Act:

(a) to all equitable estates, interests, rights, entitlements, remedies, defences and counterclaims, and to all equitable duties and liabilities, and

(b) subject to the matters mentioned in *paragraph (a)*, to all legal claims and demands and all estates, interests, rights, entitlements, duties, obligations and liabilities existing by the common law or by any custom or created by any enactment and,

subject to the provisions of this Act and of any other enactment, shall exercise its jurisdiction in civil proceedings so as to secure that, as far as possible, every matter in dispute between or among the parties is completely and finally decided, and further legal proceedings concerning any such matter are avoided.

(3) Nothing in this section affects the power of the Supreme Court, the High Court or the Circuit Court to stay any proceedings before it, where it thinks fit to do so, either of its own motion or on the application of a person, whether or not a party.

(4) Nothing in this section authorises civil proceedings pending in the Supreme Court, the High Court or the Circuit Court to be stayed by prohibition or injunction.

(5) Only the Supreme Court (in an appeal from the High Court), the High Court and the Circuit Court (to the extent permitted by the jurisdiction vested in it by this Act) may grant equitable remedies.

Continued operation of certain rules

98.— (1) The rules of law in *subsections (2) to (10)* continue to apply and have effect.

[SCJIA 1877, s 28]

(2) An absolute assignment in writing under the hand or seal of the assignor, which does not purport to be by way of charge only, of any debt or other legal chose in action, of which express notice in writing is given to the debtor, trustee or other person from whom the assignor would have been entitled to receive or claim the debt or chose in action, is effective in law (subject to equities having priority over the right of the assignee) to pass and transfer, on and from the date of the notice—

(a) the legal right to, and all legal and other remedies respecting, the debt or chose in action, and

(b) the power to give, without the concurrence of the assignor, a good discharge for the debt or chose in action.

(3) Notwithstanding *subsection (2)*, if the debtor, trustee or other person liable in respect of the debt or chose in action has had notice that the assignment is disputed by the assignor or by anyone claiming under the assignor, or of any other opposing or conflicting claims to the debt or chose in action, he or she may, if he or she thinks fit, call upon the persons concerned to pursue their claims by interpleader, or may, if he or she thinks fit, make an appropriate payment into Court under the relevant provisions of this Act.

(4) *Subsections (2) and (3)* do not affect any assignment of a policy of assurance or insurance made under or by virtue of the *Insurance Acts 1909 to 2009*, the *European Communities (Non-Life Insurance) Framework Regulations 1994 (S.I. No. 359 of 1994)* or the *European Communities (Life Assurance) Framework Regulations 1994 (S.I. No. 360 of 1994)*.

(5) An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any right to commit waste of the description known as equitable waste, unless an intention to confer that right expressly appears by the instrument creating the estate.

(6) There is no merger by operation of law only of any estate the beneficial interest in which would not be deemed to be merged or extinguished in equity.

(7) Stipulations in a contract as to time or otherwise which according to rules of equity are not to be deemed to be or to have become of the essence of the contract are also construed and have effect at law in accordance with the same rules.

(8)⁴⁸ A mortgagor pursuant to a mortgage executed before the entry into force of coming into force of *section 89* of the *Land and Conveyancing Law Reform Act 2009* and entitled for the time being to possession or receipt of the rents and profits of any land, as to which no notice of intention to take possession or to enter into receipt of the rents and profits has been given by the mortgagee, may:

(a) serve notices to quit,

(b) determine tenancies,

(c) accept surrenders of tenancies, or

(d) issue and prosecute proceedings:

(i) for possession,

(ii) for recovery of rents or profits,

(iii) to prevent damage,

(iv) to recover damages in respect of any trespass or other wrong to the land,

in the mortgagor's own name only, unless the cause of action arises on a lease or other contract made by the mortgagor jointly with any other person.

(9) No proceedings mentioned in *subsection (8)(d)* by a mortgagor shall be defeated by proof that the legal estate in the land in respect of which a remedy is

⁴⁸ The rules on mortgages in subsections (8) to (10) are only relevant to certain mortgages created before the coming into force of section 89 of the *Land and Conveyancing Law Reform Act 2009*.

sought is vested in a mortgagee.

(10) A mortgagor shall not be at liberty to exercise any of the powers conferred by *subsection (8)* if an express declaration that they shall not be exercised is contained in the mortgage.

Remedies

High Court remedies
in civil proceedings

99.— (1) The remedies which the High Court may grant in the exercise of its jurisdiction in civil proceedings include, in addition to any other remedy available at the commencement of this Act: [New]

(a) any remedy available at law or in equity, including damages in addition to, or in substitution for, an injunction or specific performance;

(b) a declaration, including:

(i) a declaration provided for by the Constitution,

(ii) a declaration of incompatibility referred to in *section 5* of the *European Convention on Human Rights Act 2003*,

(iii) a binding declaration of right in any proceedings (whether or not any other remedy is or could be sought in those proceedings), or

(iv) any other declaration to which a person would be entitled under this Act or another enactment,

and any such declaration shall be binding for all purposes on the State and on all persons, and no proceedings are open to objection on the ground that a decision which is merely declaratory is sought in them;

(c) an order mentioned in *section 27*;

(d) an order that any specified property with which the proceedings are concerned be charged, mortgaged or sold;

(e) a remedy by way of interpleader in accordance with rules of court;

(f) any remedy ancillary to any jurisdiction exercised by it, including, without limitation, an order binding a person to the peace or to good behaviour or to both the peace and good behaviour and requiring the person to enter into a Court bond for that purpose;

(g) any particular remedy provided for in another enactment in accordance with that enactment.

(2) Where the measurement of any damages is substantially a matter of calculation, the Court may refer the measurement of the amount of damages to a court officer, on such terms as it considers just.

Circuit Court
remedies in civil
proceedings

100.— (1) The Circuit Court may, within its jurisdictional limits, grant in the exercise of its jurisdiction in civil proceedings any one or more of the following remedies, or any other remedy available from the Circuit Court at the commencement of this Act: [New]

(a) any remedy available at law or in equity, including damages in addition to, or in substitution for, an injunction or specific performance; [COCAI 1877, s 44]

(b) a decision by way of binding declaration of right in any proceedings (whether or not any other remedy was or could be sought in those proceedings), and any such declaration shall be binding for all purposes on the State and on all persons, and no proceedings are open to objection on the ground that a decision which is merely declaratory is sought in them;

(c) an order that any specified property with which the proceedings are concerned be charged, mortgaged or sold;

(d) a remedy by way of interpleader in accordance with rules of court;

(e) any remedy ancillary to any jurisdiction exercised by it including, without limitation, an order binding a person to the peace or to good behaviour or to both the peace and good behaviour and requiring the person to enter into a Court bond for that purpose;

(f) any particular remedy provided for in another enactment in accordance with that enactment.

(2) Where the measurement of any damages is substantially a matter of calculation, the Court may refer the measurement of the amount of damages to the County Registrar, on such terms as it considers just. [CLPAAL, s 98]

District Court remedies in civil proceedings

101.— The District Court may, within its jurisdictional limits, grant in the exercise of its jurisdiction in civil proceedings any one or more of the following remedies, or any other remedy available from the District Court at the commencement of this Act: [New]

(1) an award of damages;

(2) a remedy by way of interpleader in accordance with this Act and rules of court;

(3) any remedy ancillary to any jurisdiction exercised by it including, without limitation, an order binding a person to the peace or to good behaviour or to both the peace and good behaviour and requiring the person to enter into a Court bond for that purpose;

(4) any particular remedy provided for in another enactment in accordance with that enactment.

Judgment for balance following set-off

102.— A Court shall, where required by an enactment, and in any other case may, in reaching its decision in civil proceedings, allow any set-off between or among parties, and make a decision awarding a balance following the application of a set-off. [CCOIA 1877, s 63]

Decisions effective immediately

103.— A Court's decision takes effect immediately, unless the Court itself or another competent Court otherwise provides. [CLPAAL 1853, s 127]

Chapter 8: Legal costs in civil proceedings

Legal costs: power to award and general principles

104.— (1) Save where, and then only to the extent, otherwise provided by this Act or by another enactment, every Court may, in its discretion, make a decision awarding to any party against any other party any costs of or incidental to any civil proceedings, or of any application in, or of any part of or issue in, civil proceedings. [CLPAAL 1853, s 60]

(2) Save where, and then only to the extent, otherwise provided by this Act or by another enactment, where proceedings before a Court concern the estate of a deceased person, or the property of any trust, the Court may, in its discretion, make a decision awarding to any party any costs of or incidental to those proceedings, or of any application in, or of any part of those proceedings, out of the estate or the trust property.

(3) The powers mentioned in *subsection (1)* and *subsection (2)* may be exercised at any stage in, and from time to time, in any civil proceedings.

(4) The powers mentioned in *subsection (1)* and *subsection (2)* may, in proceedings before him or her, be exercised by the Master of the High Court or by a County Registrar.

(5) A Court may, having made a decision in civil proceedings, exercise its power to join a person as a party to those proceedings, for the purpose of considering whether an order mentioned in *subsection (1)* should be made against that party.

(6) Save where, and then only to the extent, otherwise provided by rules of court, where a Court makes a decision on costs in civil proceedings which departs from the general principle that costs follow the event (that is to say that where a party succeeds entirely in his or her application, or in his or her defence against another party, he or she should be entitled to an award of costs against that other party) the Court shall express a particular reason (which may, without limitation, include the failure by a party to comply with *section 83*) for doing so.

(7) Nothing in this Chapter removes any right of action for the tort of maintenance.

Legal costs:
exceptions and
special rules

105.— (1) The special rules on legal costs in civil proceedings in *Schedule 7* have effect. [New]

(2) Unless otherwise agreed by the parties affected or otherwise ordered by a Court, where an applicant commences but discontinues or abandons civil proceedings (including any proceedings on appeal) against a respondent, the Court is deemed to have made a decision awarding to the respondent against the applicant the reasonable costs of defending the proceedings up to the time at which they were discontinued or abandoned. [CBCPAAI 1864, s 51] [CLPAAI 1853, s 75]

(3) Rules of court:

(a) may modify or supplement the rules in *Part 2 of Schedule 7*;

(b) may authorise a party:

(i) to pay money into Court by way of lodgment,

(ii) to make an offer of compensation,

(iii) subject to *section 248*, to make a tender of amends

to meet an application, and may provide for consequences, which depart from the rules as to costs in *section 104* and in *Schedule 7*, of accepting or failing to accept such a lodgment, offer or tender;

(c) may make further provision regulating liability to, and measurement of, legal costs, in particular circumstances or generally, for the purpose of avoiding unnecessary or unreasonable incurrence of legal costs or otherwise.

Legal costs:
measurement

106.— (1) The amount of any costs awarded by a Court: [CLPAAI 1853, s 193]

(a) may be fixed (in lieu of measured costs) or measured by the Court;

(b) may be agreed by the parties affected, or

⁴⁹ Provisions dealing with the modifications to the ordinary costs rule required by the judgment of the Court of Justice (Second Chamber), 16 July 2009 in Case C-427/07 *Commission of the European Communities v Ireland* have been deleted from this final draft, as they are now included as Section 50B of the *Planning and Development Act 2000*, inserted by section 33 of the *Planning and Development (Amendment) Act 2010*.

(c) if neither *paragraph (a)* nor *paragraph (b)* applies, shall be measured by the taxing officer of the Court concerned in accordance with the rules set out in *Part 2 of Schedule 7*.

(2) In the application of *section 104(1)* or *section 104(2)* to a County Registrar, a County Registrar may refer to himself or herself as taxing officer of the Circuit Court the measurement of any costs awarded by him or her, if the amount of those costs is not agreed by the parties affected.

Chapter 9: Interest in civil proceedings

| | | |
|----------------------------|--|---|
| Interest on damages | <p>107.— A Court may award interest on any damages, in respect of any period before the Court’s decision, or after the Court’s decision and before payment, in accordance with this Act, and in particular with <i>section 110</i>, provided that interest awarded by the Circuit Court or by the District Court in respect of any period before the Court’s decision may not cause the total amount awarded to exceed the Circuit Court damages limit or, as the case may be, the District Court damages limit.</p> | [CBCIA 1851, proviso to s. 35] |
| Interest on judgment debts | <p>108.— (1) Subject to <i>subsection (2)</i>, any money due and unpaid pursuant to a money judgment carries interest (in this Act, “judgment interest”) at the judgment interest rate from the judgment date, until payment or recovery. Judgment interest for any period between the judgment date and payment or recovery may be recovered under an execution order issued in respect of the money judgment concerned.</p> <p>(2) Neither a money judgment for an amount which is less in value than 10 per cent of the District Court damages limit nor any costs awarded to the party who obtained or is entitled to such a money judgment carries interest.</p> | [CSPA 1961, s. 47] [CA 1981, ss. 20, 23] |
| Judgment interest rate | <p>109.— (1) The judgment interest rate may be fixed by the Minister by order.</p> <p>(2) On the commencement of this section, the judgment interest rate shall be 8 per cent per annum⁵⁰.</p> <p>(3) Subject to <i>subsection (4)</i>, the Minister may make an order varying the judgment interest rate, if he or she is satisfied that the judgment interest rate ought, having regard to the level of rates of interest generally in the State, to be varied, and <i>subsection (1)</i> has effect in accordance with the terms of any such order.</p> <p>(4) An order under <i>subsection (3)</i> shall not come into operation within two years of the commencement of a previous order made under <i>subsection (3)</i> and not annulled.</p> <p>(5) Every order under <i>subsection (3)</i> shall be laid before each House of the Oireachtas as soon as may be after it is made. If a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done under that order.</p> | [CA 1981, s20] |
| Pre-judgment interest | <p>110.— Where a Court gives a money judgment, the Court may also order the party obliged to pay the sum concerned to pay interest at the judgment interest rate, on the whole or any part of that sum in respect of the whole or any part of</p> | [CA 1981, s. 22] |

⁵⁰ It has been suggested that the rate might be pegged to Euribor/ECB, though that would make calculation more complicated than at present.

the period between the date when the cause of action accrued and the judgment date.

(2) Nothing in *subsection (1)*—

(a) authorises the giving of interest on interest, or

(b) removes any entitlement to seek interest on any debt as of right, whether by virtue of any other enactment or by virtue of any contract, or

(c) affects any damages recoverable for the dishonour of a bill of exchange, or

(d) authorises the giving of interest on damages for personal injuries, or in respect of a person's death, in so far as the damages are for —

(i) any loss occurring after the judgment date, or

(ii) any loss (not being pecuniary loss) occurring between the date when the cause of action to which the damages related accrued and the judgment date.

(3) In this section —

“damages for personal injuries” includes damages for personal injuries arising out of a contract;

“money judgment” has the same meaning as in *section 112*;

“pecuniary loss” means loss in money or money's worth, whether by parting with what one has or by not getting what one might get;

“personal injuries” has the same meaning as in the *Civil Liability Act 1961*.

Interest on costs

111.—(1) Interest on the amount of costs awarded to a party in proceedings by a Court, Judge or court officer authorised to do so—

[CA 1981, s 21]
[CCOA 2002, s 30]
[CLCA 2004, s. 41]

(a) becomes payable only on the earlier of the dates when—

(i) if the amount of costs is agreed by the parties to the proceedings, that agreement is made, or

(ii) in default of such agreement, the taxing officer of the Court concerned certifies the amount of costs assessed, measured or ascertained to be due in accordance with this Act and rules of court

and

(b) shall be payable at the judgment interest rate, from the appropriate date mentioned in *paragraph (a)* until that amount is paid.

(2) *Subsection (1)* applies, where appropriate, to part only of the amount referred to in that *subsection*, and that *subsection* has effect accordingly.

Chapter 10: Execution and enforcement of judgments in civil proceedings⁵¹

⁵¹ Part 2, Chapter 10 and Schedule 8 present the rules on execution and enforcement of court decisions in civil proceedings as they currently stand. To a large extent, these current rules are as set out at Chapter 3F (pages 129–180) of the Commission's *Consultation Paper: Personal Debt Management and Debt Enforcement* (LRC CP 56 – 2009). That Consultation Paper reviews particular problems with the current law (see pages 184 et seq.) and includes provisional recommendations for reform, including a general preference for non-judicial debt settlement and the establishment of a clear distinction between “can't pay” and “won't pay” debtors, potentially in the context of a new model of enforcement system. Those reform proposals, if ultimately adopted, could imply significant changes to the arrangements set out in Schedule 8, at least so far as they relate to consumer debtors, though the enforcement arrangements in other debt cases and generally might ultimately remain broadly unaltered. In particular, Schedule 8, Part 3, relating to examination and instalment orders, periodic payment orders and imprisonment for non-compliance is particularly

112.— (1) In *Chapter 9*, this Chapter and *Schedule 8*:

[New]

a “judgment” includes:

(a) a final decision given by the Supreme Court, the High Court, the Circuit Court (including where any such Court gives any equitable remedy) or the District Court, exercising jurisdiction in civil proceedings, including for:

(i) the payment of any money (including as damages, interest or costs) by a person to another person, or

(ii) the delivery of land, goods or other chattels by a person to another person, or

(iii) the award to a person against another person of costs, but only when the amount of the costs concerned has been measured by the Court or a taxing officer or agreed between the person by whom and the person to whom those costs are payable;

(b) where the context admits or requires, an enforcement order in respect of a judgment given in a member state or Contracting State other than the State pursuant to:

(i) Chapter III of the Brussels I Regulation, or

(ii) Chapter III of the Lugano Convention 2007, or

(iii) Chapter III of the Matrimonial and Parental Regulation, or

(iv) *section 7* of the *Jurisdiction of Courts and Enforcement of Judgments Act 1998*;

(c) where the context so admits or requires, an enforceable maintenance order, or a maintenance order which is enforceable in the State under or by virtue of the Maintenance Regulation;

(d) a judgment, Court settlement or authentic instrument on an uncontested claim which has been certified as a European Enforcement Order in the member state of origin in accordance with the European Enforcement Order Regulation, which is, by virtue of this section, of the same force and effect as a judgment of the High Court and may be enforced by the High Court, and proceedings taken on it, as if it were a judgment of that Court;

[S.I. No. 648 of
2005, Reg. 7]

(e) a European Order for Payment which has become enforceable in the member state of origin in accordance with the European Order for Payment Regulation, which is, by virtue of this section, of the same force and effect as a judgment of the High Court and may be enforced by the High Court, and proceedings taken on it, as if it were a judgment of that Court; and

[S.I. No. 525 of
2008, Reg 7]

(f) any order, decision or instrument (of whatever name) issued by a public authority, which is, by virtue of an enactment, of the same force and effect as a judgment of a Court or which, by virtue of an enactment, may be enforced by a Court, and proceedings taken on it, as if it were a judgment of that Court⁵²;

and which is in force.

(2) In *Chapter 9*, this Chapter and *Schedule 8*:

likely to be affected (and perhaps removed entirely) in the event that significant change is ultimately decided on. The Commission has published an *Interim Report on Personal Debt Management and Debt Enforcement* (LRC 96-2010), and the draft assumes that the present law on civil enforcement will stay in place, at least for the present. The Commission intends to publish its final *Report on Personal Debt Management and Debt Enforcement* by the end of 2010.

⁵² Including, for example an “order to pay” issued by the Personal Injuries Assessment Board, by virtue of section 40 of the *Personal Injuries Assessment Board Act 2003*.

a “money judgment” means any judgment for the payment of a specified sum of money by any person to any person, whether or not the payment of money is the only remedy ordered by the Court, and includes:

(a) such a judgment which has been discharged in part or executed in part, where an ascertainable sum of money remains outstanding; and

(b) a decision by a Court or taxing officer of the amount of legal costs due by a person to another person, and

except where execution or enforcement of a money judgment is stayed, the “judgment date” means:

(a) the date on which a Court makes or is deemed to have made a decision which is a money judgment, or

(b) in a case which concerns only a decision of the amount of costs awarded to, or recoverable by, a party (or part only of any amount of such costs):

(i) if the amount of costs (or relevant part of that amount) is agreed by the parties, the date of that agreement, or

(ii) the date on which the amount of costs (or relevant part of that amount) is certified or measured by the appropriate taxing officer, or by a Court.

Further provisions on interpretation: this Chapter and Schedule 8

113.— (1) In this Chapter and *Schedule 8*:

an “attachment of earnings order”⁵³ includes any order of a Court directed to a person who (at the time of the making of the order or at any time thereafter) has a judgment debtor in his, her or its employment (or who is or will be otherwise obliged to make periodic payments to the judgment debtor) and which operates (subject to any condition of the order and to any other requirement of law) as a direction to that person to make, at times specified in the order, periodical deductions of amounts specified in the order, from the judgment debtor’s earnings and to pay the amounts deducted, at such times as the Court orders either —

to the judgment creditor, or

to a court office, court officer or authorised member of the staff of the Service for transmission to the judgment creditor;

an “authority to enter judgment” includes any written document given by a person which authorises another person to obtain (without defence, summarily or otherwise) a money judgment from a Court and, for the avoidance of doubt, includes any warrant of attorney to confess judgment mentioned in any enactment, any plea of confession, or consent for judgment;

an “examination order” has the meaning assigned by *Part 3 of Schedule 8*;

“execution order” includes any document, of whatever name, issued by a Court (and which may be issued by the proper officer of the Court without reference to a Judge) commanding or authorising a person to take action to execute and give full effect to a judgment, and includes, in particular, an order of possession, an order of seizure and sale, and an order to deliver property;

⁵³ At present, the only forms of attachment of earnings order for civil debt are under the *Family Law (Maintenance of Spouses and Children) Act 1976* and the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*. Attachment can be had over welfare payments, but only in respect of welfare overpayments (domestic or from elsewhere in the European Union). There is not as such a general form of attachment of future income – in such a case, the enforcement mechanism used is receiver by way of equitable execution. The draft contemplates that attachment of earnings might in future be made available otherwise than in maintenance cases only.

a “third party creditor order” has the meaning assigned by *Part 4 of Schedule 8*;

“goods seized” includes goods, animals, or chattels which are seized in order to give effect to an execution order, or against which an execution order is executed, and “seizable goods” includes any goods, animals, or chattels of a person (but does not include any estate or interest in land) which are capable of being seized in order to give effect to an execution order against that person, or against which an execution order against that person is capable of being executed;

an “instalment order” has the meaning assigned by *paragraph 4 of Part 3 of Schedule 8*;

“judgment creditor” means a person (including the State or a public authority) in whose favour a money judgment has been given, and includes an assignee or successor of that person and a person acting on behalf of, and with the authority of, that person;

“judgment debtor” means a person against whom a money judgment has been given;

an “order to deliver property” shall be an execution order, issued by the proper officer of the Court which gave the judgment, or of the High Court, directed to a sheriff, directing the sheriff to seize specified property (other than land) and to deliver possession of that property to the person having the benefit of the judgment to which that execution order relates or to another person named in the order, without giving the person from whom the property is seized the option of retaining the property on paying its assessed value, and an order to deliver property, when issued:

(a) authorises a sheriff, where the property mentioned in the order to deliver property is not produced or cannot be found, to seize and sell other property of the judgment debtor which appears to the sheriff to be of like value to the property mentioned in the order, as if the order to deliver property were an order of seizure and sale, and

(b) authorises a sheriff, where the judgment creditor so requests, in lieu of seizing the property mentioned in the order, to seize and sell other property of the judgment debtor which appears to the sheriff to be of like value to the property mentioned in the order to deliver property, as if the order to deliver property were an order of seizure and sale,

and the person having the benefit of the judgment to which the order relates may either by that order or by a separate execution order, execute against the seizable goods of the person against whom the judgment was given in respect of any damages, interest and measured costs awarded to the person having the benefit of the judgment in the proceedings to which the order to deliver property relates;

an “order of enforcement” includes any order mentioned in *section 118, section 119 or section 120*, and any other order which may be made by a Court for the particular purpose of securing compliance with, or the full effect of, a judgment or other decision of a Court;

an “order of possession” shall be an execution order issued by the proper officer of the Court which gave the judgment, directed to a sheriff, directing the sheriff to deliver possession of specified land to the person having the benefit of the judgment to which that execution order relates or to another person named in the order, and

(a) includes any former order or writ of whatever name to that effect, including

any writ or order of *habere facias possessionem*, and

(b) when issued, authorises the removal, if necessary by reasonable force, of any person other than the person having the benefit of the judgment to which that execution order relates or other person named in the order from occupation or possession of that land;

an “order of seizure and sale” shall be an execution order issued by the proper officer of the Court which gave the judgment or of the High Court, directed to a sheriff, directing the sheriff to seize seizeable goods of the judgment debtor, where necessary or appropriate to sell those goods, and to account to the judgment creditor for so much of the proceeds of sale, following the deduction from those proceeds of any charges which the sheriff may properly deduct, as will discharge the amount due to the judgment creditor, and an order of seizure and sale:

(a) includes any former order or writ of whatever name to that effect, including any writ or order of *feri facias* or distress and sale,

(b) shall and may be executed in accordance with *Part 2 of Schedule 8*, and

(c) is sufficient to confer on any purchaser from a sheriff all title and right to goods seized which are sold by the sheriff under the order as the judgment debtor had in those goods seized;

“sale” includes realisation;

“sheriff” includes a sheriff and a person for the time being authorised by law to perform functions and exercise powers of a sheriff or of the former office of under-sheriff.

(2) In this Chapter and *Schedule 8*, any reference to a payment of money to, or payment or transmission of money by, a District Court Clerk includes reference to a payment or transmission of money:

(a) to the Service or to another court officer or to a member of the staff of the Service authorised for that purpose on behalf of the District Court Clerk;

(b) to the governor of a prison on behalf of the District Court Clerk, or, as the case may be,

(c) by the Service or by another court officer or by a member of the staff of the Service authorised for that purpose on behalf of the District Court Clerk;

(3) An execution order authorises execution, in addition to any other sum, for the necessary fees and expenses of execution.

Particular powers to secure compliance with decision

114.— (1) For the purpose of securing compliance with a decision it has made in civil proceedings, the powers of the High Court include powers to make the orders specified in this section, and the Circuit Court may, within its jurisdictional limits, make:

(a) an order for the payment by a respondent of any damages or other money found due by a party in such manner (including by instalments) and at such times as are ordered;

[CBCIA 1851, s 112]

(b) an order requiring the transfer by a person of title to any property (including any property previously charged or attached) to or for the benefit of a party or

[CLPAAL, s 133]

other person on such terms as are ordered.

(c) any execution order or order of enforcement mentioned in this Chapter or *Schedule 8*.

Issue of particular execution orders

115.— (1) The proper officer of the Supreme Court may, without reference to that Court or to a Judge, issue to a person who has for the time being the benefit of any judgment of the Supreme Court or of any order or instrument which under or by virtue of an enactment has the same effect as a judgment of the Supreme Court an execution order which is:

[New]

- (a) an order of possession;
- (b) an order to deliver property;
- (c) an order of seizure and sale.

(2) The proper officer of the High Court may, without reference to that Court or to a Judge, issue to a person who has for the time being the benefit of any judgment an execution order which is:

- (a) an order of possession;
- (b) an order to deliver property;
- (c) an order of seizure and sale.

(3) The proper officer of the Circuit Court may, without reference to that Court or to a Judge, issue to a person who has for the time being the benefit of any judgment of the Circuit Court or of any order or instrument which under or by virtue of an enactment has the same effect as a judgment of the Circuit Court an execution order which is:

- (a) an order of possession;
- (b) an order to deliver property;
- (c) an order of seizure and sale.

(4) The proper officer of the District Court may, without reference to that Court or a Judge, issue to a person who has for the time being the benefit of any judgment of the District Court or of any order or instrument which under or by virtue of an enactment has the same effect as a judgment of the District Court an execution order which is:

- (a) an order to deliver property;
- (b) an order of seizure and sale.

Registration of judgments

116.— (1) A judgment creditor may apply to register a judgment by delivering an application to register judgment to the Registrar of Judgments.

[DIA 1840, s 22, 28]
[JIA 1844, ss 2, 8]
[JRIA 1850, ss 10-12]
[JRIA 1871, ss. 3, 4] [CCRJA 1937, s 2]
[CA 1981, s. 25]

(2) An application to register judgment shall include the following information:

(a) the name, usual or last known place of residence (or, in the case of a corporate body, the place of its registered office or principal place of business), and occupation or other description of every party to the proceedings in which the judgment was given;

(b) the Court in which the judgment was given, the date of the judgment, and the

amount of any debt, damages, costs, or other money ordered to be recovered or paid.

(3) The Registrar of Judgments shall maintain the Register of Judgments and shall promptly enter in the Register of Judgments the particulars in every application to register judgment by reference:

(a) in alphabetical order, to the name of the judgment debtor or other person intended to be affected by the judgment, and

(b) to the date on which the application to register judgment concerned was delivered to him or her, and

a judgment so registered is referred to in this section as a “registered judgment”.

(4) A judgment creditor shall be obliged to deliver to the Registrar of Judgments particulars of the discharge or satisfaction, in whole or in part, of a registered judgment, and the Registrar of Judgments shall promptly enter those particulars in the Register of Judgments.

(5) Where a Court is satisfied that a registered judgment has been satisfied or discharged, in whole or in part, it may direct the Registrar of Judgments to enter satisfaction or, as the case may be, to modify the particulars of the registered judgment concerned, in the Register of Judgments.

[CLPAAI
1853, s 143]

(6) The Registrar of Judgments shall, on payment of the prescribed fee:

[CLPAAI
1853, s 144]

(a) give a judgment creditor a certificate of registration of the judgment containing sufficient information to identify that judgment;

(b) give a judgment debtor or judgment creditor a certificate of registration of the discharge or satisfaction of a registered judgment containing sufficient information to identify the judgment discharged or satisfied;

(c) give any person requiring it a certificate of the result of a search conducted in the Register of Judgments.

(7) Where a registered judgment includes an award of costs, and the amount of any costs is not measured when the application to register judgment is delivered, registration extends to those costs, though not yet measured or ascertained. A further application to register judgment may be delivered by the judgment creditor notifying the Registrar of Judgments in writing of the amount of any costs measured or ascertained and the Registrar of Judgments shall register particulars of that notification.

(8) Costs properly incurred or proper to be incurred in the registration of a judgment may be allowed in a taxation of costs by a taxing officer.

(9) The President of the High Court may approve from time to time the form in which the Register of Judgments is kept (which may include electronic form) and members of the public may inspect the Register of Judgments during the times when the Central Office is open to the public or at any other time when the Register is available to the public in electronic form.

(10) The register of judgments maintained under the *Judgments (Ireland) Act 1844* immediately before the commencement of this section continues to be the Register of Judgments for the purposes of this section as if established and maintained in accordance with this section.

(11) The Rules of the Superior Courts may supplement the provisions of this

section which concern the form and manner of applications to register judgments.

(12) A registered judgment operates as a charge on any estate or interest in land of the judgment debtor and binds every successor or assignee of the judgment debtor.

(13) Notwithstanding *subsection (12)*, a judgment registered in accordance with this paragraph does not bind a *bona fide* purchaser or mortgagee of any estate or interest in land of the judgment debtor without notice of the judgment.

(14) In this section, a “judgment” includes any judgment which is re-entered or renewed by a Court and any judgment entered or to be entered on any authority to enter judgment.

Set-off of judgments between parties

117.— (1) Where:

[COCAI 1877, s 63]

(a) money judgments are given on both an application and a counterapplication, or

(b) at any time a first party has the benefit of a money judgment of a Court against a second party, when the second party also has the benefit of a money judgment of that Court against the first party, the Court may, on the application of either party, make an order (in this section, a “set-off order”) that the money judgments be set off against each other.

(2) Where a set-off order is made:

(a) if the money judgments are equal in amount, then a fresh judgment is deemed to issue that no money is payable by either party to the other;

(b) if the money judgments are unequal in amount, then a fresh judgment is deemed to issue for the amount which remains after deducting from the sum due on the money judgment for the larger amount the sum due on the money judgment for the smaller amount and an execution order may issue only for the amount provided in the fresh judgment;

(c) the set-off order operates to stay execution of any earlier money judgment between the parties affected by the making of the set-off order;

(d) the set-off order operates to extinguish every earlier money judgment between the parties affected by the making of the set-off order.

Orders of enforcement: money judgments

118.— (1) Subject to the provisions of this Act, and to compliance with any applicable rules of court, a judgment creditor may apply to the Supreme Court, the High Court or the Circuit Court for, and that Court may make, any one or more of the following orders of enforcement of a money judgment:

[CIA 1834, s 8]
[CRIA 1856, s 3]
[CLPAAI 1853, s 132-135]
[CIA 1867, s 170]
[CLPAAI 1853, s 136]

(a) a third party creditor order;

(b) an order appointing a receiver by way of equitable execution, provided that no receiver may be appointed where the amount due does not exceed €200;

(c) an order attaching or charging any stock or share, or any contingent or future interest in any stock or share, restraining the transfer of any stock or share or interest therein (or restraining the registration of any such transfer) or, where an order charging any stock, share or interest has been served on the judgment debtor, requiring the transfer (or requiring registration of a transfer) of any stock, share or interest to or for the benefit of the judgment creditor;

[DIA 1840, ss. 23, 24]

(d) an order charging the interest of a person in a partnership;

(e) an order attaching or charging any funds held in Court on behalf of the judgment debtor or requiring such funds to be held as if they were held on trust for the judgment creditor;

(f) an order for the examination on oath of a judgment debtor (including, in the case of a corporate body, any officer or employee of the judgment debtor) as to the means of the judgment debtor (including such examination on commission) or for the making by a judgment debtor of discovery in aid of execution;

(g) an order for the payment of a judgment debt by instalments by a judgment debtor;

(h) an order for the production to the Court, by a person who the Court is satisfied has information or documents concerning the assets or means of a judgment debtor, of information or documents concerning the judgment debtor's assets or means, including any order requiring that person to attend and be examined on oath or to swear an affidavit, including an affidavit as to documents;

(i) an order directing the issue of an execution order;

(j) a personal enforcement order or a temporary seizure order.

(2) The Supreme Court may make any one or more of the orders of enforcement mentioned in *subsection (1)* in respect of a money judgment of the Supreme Court.

(3) The High Court may make any one or more of the orders of enforcement mentioned in *subsection (1)* in respect of any money judgment.

(4) The Circuit Court may make any one or more of the orders of enforcement mentioned in *subsection (1)* in respect of a money judgment of the Circuit Court.

(5) A person who knowingly makes a false statement in any examination conducted or affidavit sworn or delivered pursuant to this paragraph shall be guilty of perjury.

Orders of
enforcement:
judgments

other

119.— (1) Subject to the provisions of this Act, and to compliance with any applicable rules of court, the person having for the time being the benefit of a judgment or, where appropriate, a representative of that person, may apply to the Supreme Court, the High Court or the Circuit Court for any one or more of the following orders concerning that judgment:

(a) an order authorising a court officer or other person to execute an instrument (including an instrument within the meaning of *section 3* of the *Land and Conveyancing Law Reform Act 2009* or an instrument referred to in *section 2* of the *Stock Transfer Act 1963*) or to endorse a negotiable instrument where or if a person neglects or refuses to comply with a decision directing him or her to execute an instrument, or to endorse a negotiable instrument,

and any instrument so executed or endorsed operates and is for all purposes available as if it had been executed or endorsed by the person directed to execute or endorse it;

(b) a personal enforcement order or a temporary seizure order;

(c) an order declaring a solicitor entitled to a charge for costs on property recovered or preserved, on behalf of a party.

[LPIA 1876, s
3]

(2) When a declaration is made in accordance with *subsection (1)(c)*:

(a) the solicitor has a charge on and against, and a right to payment out of, the property concerned, for the costs incurred in the proceedings, when taxed or agreed, and

(b) the Court may make an order for the raising and payment of those costs out of the property, and

no conveyance or alienation of the property defeats the charge, unless to a *bona fide* purchaser for value without notice of the charge.

Orders of enforcement: District Court

120.— (1) Subject to the provisions of this Act, and to compliance with any applicable rules of court, a judgment creditor may apply to the District Court for any one or more of the following orders of enforcement of a money judgment:

(a) an examination order or an instalment order in accordance with *Part 3 of Schedule 8*;

(b) where authorised by an enactment, an attachment of earnings order in accordance with *Part 3 of Schedule 8*;

(c) an order directing the issue of an execution order to deliver property or an execution order for seizure and sale;

(d) a third party creditor order⁵⁴;

(e) a temporary seizure order.

Supplementary powers and rules on execution and enforcement of decisions

121.— (1) The supplementary rules on execution and enforcement of Court decisions in civil proceedings in *Schedule 8* have effect.

(2) A Court may exercise from time to time its power to issue an execution order or enforcement order, and may make any order for the execution or enforcement of its decision by any other means permitted by an Act or by rules of court.

[ECO 1926, s 26]

(3) A party to proceedings in which a Court has made a decision may from time to time apply for an execution order or order of enforcement, or may apply for or avail of any other means of executing or enforcing the decision of the Court permitted by an Act or by rules of court.

(4) Unless otherwise ordered by a Court, the costs of execution by an execution order shall be added to the amount authorised to be recovered or secured by that execution order.

[CLPAAI 1853, s 130]

(5) Rules of court:

(a) may specify conditions to be met and procedures to be followed before applying or when applying for an execution order or order of enforcement, or before such an order is issued or made;

(b) may provide for other means of executing or enforcing decisions of a Court in civil proceedings.

⁵⁴ The draft assumes that garnishee or sequestration would be available in the District Court. At present, a general garnishee order is not. Attachment and committal should not in principle be separately available in a money judgment claim as it is in effect available for breach of an instalment order. However, there seems no reason in principle why sequestration should not be available where an instalment debtor in breach is not a natural person, as this would be analogous to the receiver appointed on non-payment of a fine.

(6) Neither this Chapter nor *Schedule 8* affects:

(a) the registration or effect of registration of a judgment mortgage in accordance with *Part 11* of the *Land and Conveyancing Law Reform Act 2009*;

(b) the right of a judgment creditor to apply that a judgment be certified as a European Enforcement Order.

Limitation of execution of judgments

122.— Rules of court may limit the period following the date on which a Court’s decision becomes enforceable within which proceedings for particular means of enforcement mentioned in *Schedule 8* may be brought, or particular execution orders may be sought, issued or executed. [New]

Chapter 11: Orders in aid of foreign civil proceedings and special provisions on judgments and civil proceedings to which European Union enactments apply

Interpretation: this Chapter and *Schedule 9*

123.— (1) In this Chapter:

“authorised institution”⁵⁵ means any of the following:

(a) the holder of a licence under *section 9* of the *Central Bank Act 1971* , or

(b) a building society incorporated or deemed to be incorporated under the *Building Societies Act 1989*, or

(c) a trustee savings bank within the meaning of the *Trustee Savings Banks Act 1989*;

“Brussels I enforcement order” means an order for the recognition or enforcement of all or part of a European Union judgment where the order -

(a) is made by the Master of the High Court under *section 127* and *Schedule 9*, or

(b) is made or varied -

(i) on appeal from a decision of the Master of the High Court under that section, or

(ii) on appeal from a decision of the High Court on such an appeal;

“decision” in relation to the Maintenance Regulation has the same meaning as in Article 2.1.1 of that Regulation;

“enforceable maintenance order” means -

(a) a European maintenance order in respect of all of which a Brussels I enforcement order or a Lugano Convention 2007 enforcement order has been made; or

(b) if a Brussels I enforcement order or a Lugano Convention 2007 enforcement order has been made in respect only of part of a European maintenance order, the European maintenance order to the extent to which it is so ordered to be enforced, or

(c) a decision to which the Maintenance Regulation applies in respect of which a

[SI 52 of 2002, Regs 1, 11, extended to Lugano Convention 2007 and Maintenance Regulation]

⁵⁵ The modified definition is a modification of the definition of “authorised credit institution” in the European Communities (Deposit Guarantee Schemes)(Amendment) Regulations 2009 (S.I. No. 228 of 2009); an alternative definition would be that an “authorised institution” is a credit institution within the meaning of the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (SI 395 of 1992) which is for the time being authorised in the manner provided in those Regulations”.

declaration of enforceability has been made in accordance with Article 30 of the Maintenance Regulation;

“European maintenance order” means a European Union judgment or a Lugano Convention 2007 judgment relating to maintenance or a decision to which the Maintenance Regulation applies;

“European Union Institutional judgment” means any judgment, order or decision which is enforceable under or in accordance with -

(a) Article 280 or Article 299 of the Treaty on the Functioning of the European Union (mentioned in *section 1* of the Act of 1972),

(b) Article 18, Article 159 or Article 164 of the Euratom Treaty (within the meaning of *section 1* of the Act of 1972), or

(c) Article 44 or Article 92 of the ECSC Treaty (within the meaning of *section 1* of the Act of 1972)⁵⁶.

“European Union judgment” means a judgment or order (by whatever name called) that is a judgment for the purposes of the Brussels I Regulation and includes an authentic instrument within the meaning of Article 57 and a settlement referred to in Article 58 of the Brussels I Regulation;

“insolvency judgment” means a judgment referred to in Article 25 of the Insolvency Regulation;

“Lugano Convention 2007 enforcement order” means an order for the recognition or enforcement of all or part of a Lugano Convention 2007 judgment where the order -

(a) is made by the Master of the High Court under *section 127* and *Schedule 9*, or

(b) is made or varied -

(i) on appeal from a decision of the Master under that section, or

(ii) on appeal from a decision of the High Court on such an appeal;

“Lugano Convention 2007 judgment” means a judgment or order (by whatever name called) that is a judgment for the purposes of the Lugano Convention 2007 and includes an authentic instrument within the meaning of Article 57 of the Lugano Convention 2007 and a settlement referred to in Article 58 of the Lugano Convention 2007;

“maintenance” means maintenance within the meaning of the Brussels I Regulation, the Lugano Convention 2007 or, as the case may be, the Maintenance Regulation;

“maintenance creditor” means, in relation to a European maintenance order, the person entitled to the payments for which the European maintenance order provides;

“maintenance debtor” means, in relation to a European maintenance order, the person who is liable to make a payment under the European maintenance order;

(2) References in Article 42, Article 43, Article 45, Article 47, Article 48, Article 52, Article 53 and Article 57 of the Brussels I Regulation to a declaration of

⁵⁶ Although the ECSC Treaty expired in 2002, SI No.121 of 2007 included references, presumably on the basis that decisions given under the ECSC Treaty remain enforceable, so the reference is retained.

enforceability may be treated as references to a Brussels I enforcement order.

(3) References in Article 42, Article 43, Article 45, Article 47, Article 48, Article 52, Article 53 and Article 57 of the Lugano Convention 2007 to a declaration of enforceability may be treated as references to a Lugano Convention 2007 enforcement order.

(4) For the purposes of the Brussels I Regulation, the Lugano Convention 2007 and this Chapter -

(a) an individual is domiciled in the State or another state (not being a member state or, as the case may be, a Contracting State of the Lugano Convention 2007 in which that Convention is in force) only if he or she is ordinarily resident in the State or in that other state,

(b) an individual is domiciled in a place in the State only if he or she is domiciled in the State and is ordinarily resident or carries on any profession, business or occupation in that place, and

(c) a trust is domiciled in the State only if the law of the State is the system of law with which the trust has its closest and most real connection.

Evidence in aid of
EU proceedings

124.— (1) The Circuit Court⁵⁷ shall be competent to take evidence pursuant to a request to which Article 1.1(a) of the Evidence Regulation applies.

[SI 102 of
2008:
modified]

(2) Subject to *subsection (3)*, the power conferred on the Circuit Court by *subsection (1)* shall be exercisable by a County Registrar assigned to the county or other local government area in which the witness from whom evidence is to be taken resides, or carries on any profession, trade, business or other occupation.

(3) Where a request relates to more than one witness and *subsection (4)* would operate to require the taking of evidence from the witnesses concerned by County Registrars assigned to different counties or other local government areas, the power conferred on the Circuit Court by *subsection (4)* is, in relation to the taking of evidence from each of those witnesses, exercisable by the County Registrar for the County of Dublin.

(5) The Service is designated as the central body in the State for the purposes of Article 3 and Article 17 of the Evidence Regulation.

Evidence in aid of
proceedings in other
states

125.—(1) Where the High Court is satisfied that a court or tribunal of competent jurisdiction in another State (other than a member state in which the Evidence Regulation is in force), before which civil or commercial proceedings are pending, wishes to obtain evidence in relation to those proceedings of a person within the State (in this section, the “witness”), the High Court may make an order under *subsection (2)*.

[FTEA 1856, ss
1-6 modified]

(2) An order under this subsection may provide for the examination of the witness before a Judge, a commissioner appointed in accordance with *section 87(1)(d)* or another person appointed by the High Court for that purpose, on oath, on interrogatories or otherwise, or, where the High Court is satisfied that a witness before the foreign court or tribunal would enjoy no lesser privileges, immunities, rights and incidents than are enjoyed by a person when giving evidence before the High Court and that the foreign court or tribunal has so requested, may require that the witness give evidence before the foreign court or

⁵⁷ Under SI No.102 of 2008, the District Court is currently the competent court for the purpose of Regulation (EC) No.1206/2001; however, the Commission understands that it is intended to transfer this function to the Circuit Court and to have requests executed by County Registrars.

tribunal by a live television link.

(3) The High Court may, in an order under *subsection (2)*, or subsequent order, require the witness to attend and give evidence before the Judge, commissioner or other person appointed, or to produce before the Judge, commissioner or other person appointed any document or thing touching on the civil or commercial proceedings concerned, and may give such directions as to the time, place, and manner of the examination of the witness and all ancillary matters as appear reasonable and just.

(4) An order under *subsection (2)* is enforceable in the like manner as an order under *section 87(1)(a)*.

(5) A certificate under the hand of the ambassador, Minister, or other diplomatic or consular agent of any State, received as such by the Minister for Foreign Affairs, that:

(a) any proceedings in relation to which an application for an order under *subsection (2)* is made is are civil or commercial proceedings pending before a court or tribunal in the State concerned,

(b) the court or tribunal concerned wishes to obtain the evidence of the witness in the State to whom the application relates,

shall be evidence of the matters so certified, but without limiting the admissibility of other evidence to that effect.

(6) A Judge, commissioner or other person appointed by order of the High Court under *subsection (2)* may take the examination on oath, or on affirmation in any case where affirmation is allowed by law, to be administered by the Judge, commissioner or other person appointed, and if the witness wilfully and corruptly gives any false evidence on such oath or affirmation, the witness shall be guilty of perjury.

(7) A witness examined under an order of the High Court under *subsection (2)* shall have the like right to refuse to answer any question tending to criminate himself or herself, or to refuse to answer any other question, as he or she would have in proceedings before the High Court and such a witness shall not be compelled to produce under any such order any document which he or she would not be compelled to produce in proceedings before the High Court.

(8) This section does not modify or limit any privilege, immunity, right or and incident enjoyed by a person when giving evidence before a Court, a Judge, a commissioner or another person appointed in an order under *subsection (2)*.

(9) The Court may, in relation to the costs of the taking of evidence on commission:

[EOCA 1831, s 9, modified]

(a) order that those costs be paid by a party to the civil or commercial proceedings concerned;

(b) defer making any order for the payment of those costs pending the decision of the civil or commercial proceedings concerned;

(c) amend, vary or discharge any order it has made concerning those costs following the final decision of the civil or commercial proceedings concerned.

(10) This section does not modify or limit the effect of any other enactment which authorises the making of a request by a Court for the taking of evidence by a Court or tribunal outside the State or the taking of evidence by or with the

authority of a Court in the State in aid of proceedings before a foreign court or tribunal⁵⁸ or of proceedings before an adjudicating body or person⁵⁹.

Application of Brussels and 1988 Lugano Conventions by virtue of 1998 Act and of Lugano Convention 2007

126.— (1) The Act of 1998 does not apply as between the State and a member state, except as provided in Article 68 of the Brussels I Regulation.

[SI 52 of 2002, Reg 14]

(2) The Lugano Convention 2007 has force of law in the State by virtue of Council Decision 2009/430/EC of 27 November 2008, and applies as between the State and a Contracting State of the Lugano Convention 2007 (which is not a member state) in which the Lugano Convention 2007 is for the time being in force.

(3) The Act of 1998 continues to apply as between the State and a Contracting State of the Lugano Convention 2007 (which is not a member state) in which the Lugano Convention 2007 is not for the time being in force, but does not apply as between the State and a Contracting State of the Lugano Convention 2007 mentioned in *subsection (2)*.

Orders in aid of Community decisions, European Union and foreign proceedings

127.— (1) The High Court may make an order:

[SI 52 of 2002, Regs 4, 7, extended to Lugano Convention 2007 and Maintenance Regulation] [SI 112 of 2005, Regs 4, 5] [SI 333 of 2002, Regs 6, 9] [SI 334 of 2002, Regs 5, 8]

(a) for the giving of provisional, including protective, measures in accordance with the Brussels I Regulation;

(b) for the giving of provisional, including protective, measures in accordance with the Lugano Convention 2007;

(c) for the giving of provisional, including protective, measures in accordance with the Maintenance Regulation;

(d) declaring enforceable a judgment (including an insolvency judgment) that is a judgment for the purposes of the Brussels I Regulation, an authentic instrument within the meaning of Article 57 of the Brussels I Regulation or a settlement referred to in Article 58 of the Brussels I Regulation;

(e) declaring enforceable a judgment that is a judgment for the purposes of the Lugano Convention 2007, an authentic instrument within the meaning of Article 57 of the Lugano Convention 2007 or a settlement referred to in Article 58 of the Lugano Convention 2007;

(f) declaring enforceable a decision in accordance with Article 30 of the Maintenance Regulation;

(g) to enforce or enter any European Union Institutional judgment;

(h) deciding that a judgment be or not be recognised under Section 1 of Chapter III of the Matrimonial and Parental Regulation;

(i) declaring the enforceability of a judgment under Section 2 of Chapter III of the Matrimonial and Parental Regulation; or

(j) for the giving of measures to secure and preserve any of a debtor's assets in the State, in accordance with Article 38 of the Insolvency Regulation.

(2) The jurisdiction of the High Court under *subsection (1)(d), (e) or (f)* shall be exercised by the Master of the High Court in accordance with *Schedule 9*.

⁵⁸ e.g. *Maintenance Orders Act 1974*, sections 20 and 21; *Arbitration Act 2010*, section 15.

⁵⁹ e.g. *Industrial and Provident Societies (Amendment) Act 1978*, section 14.

(3) A declaration of enforceability granted pursuant to Section 2 of Chapter III of the Matrimonial and Parental Regulation of a judgment on the exercise of parental responsibility in respect of a child shall be of the same force and effect for all purposes as if it were an order of the District Court.

(4) In *subsection (3)*, “exercise of parental responsibility in respect of a child” does not, as regards any matter, include a matter relating to child abduction.

Supplementary provisions

128.— The supplemental provisions in *Schedule 9* have effect in proceedings to which the European Union enactments mentioned in that Schedule apply.

Chapter 12: Powers exercisable by Courts in criminal investigations and in criminal proceedings

Search warrants and cognate orders

129.— (1) A Judge of the District Court has power (which may, where appropriate, be exercised in the manner permitted by *section 177*) conferred by any enactment to grant an application for a search warrant, or for an order or instrument of a like nature authorising a search for, or requiring the production of, any evidential material⁶⁰ or bodily or other sample⁶¹, or to make any other order permitted by an enactment authorising the doing of any thing in the course of the investigation by the Garda Síochána or another public authority of an offence or suspected offence.

[New]

(2) An application under any enactment to a Court, or a Judge of a Court, for a search warrant shall be heard and decided otherwise than in public, and may be heard and decided in chambers.

[CJAA 2009, s 26]

Pre-trial powers of Court exercising criminal jurisdiction

130.⁶²— A Court exercising criminal jurisdiction may, to the extent permitted by, and in accordance with, any enactment or law, do any one or more of the following, before and in connection with the trial, or where appropriate, during the trial, of criminal proceedings:

[New]

(a) issue a warrant for the arrest of a person, including where at common law or under any Act, whether passed before or after the commencement of this Act, there is power to arrest a person without warrant;

[CJAA 1914, s 27]

(b) remand a person in custody or on bail in accordance with law;

(c) take a Court bond (or authorise a person empowered by law to take a Court bond) from a person on his or her release on bail conditioned on the person’s appearance before that Court or before another Court at a specified time and place, or take a Court bond from a person for any other purpose permitted by law;

(d) authorise the release on bail on his or her arrest of a person for whom a warrant has been issued, subject to the entry by that person into a Court bond (which may be taken by a person empowered by law to take a Court bond) conditioned on the person’s appearance before that Court or before another Court at a specified time and place;

(e) make an order for the production to the accused by the prosecutor of any document, thing or information;

(f) make any order authorised by an enactment in relation to the seizure, detention, freezing, realisation or disposal of any property;

⁶⁰ e.g. *Criminal Justice (Theft and Fraud Offences) Act 2001*, section 52

⁶¹ e.g. *Criminal Justice (Forensic Evidence and DNA Database System) Bill 2010*, section 54.

⁶² This section is intended to be declaratory.

(g) permitting service or the giving of notice outside the State in accordance with an enactment of a Court document or document, in the cases or circumstances, and subject to any conditions, prescribed by that enactment⁶³, or

(h) make an order binding a person to the peace or to good behaviour or to both the peace and good behaviour and requiring the person to enter into a Court bond for that purpose.

[CSPA 1961, s 54]

Remand to alternative Circuit

131.— (1) Notwithstanding *Chapter 4 of Part 2* or any other provision of any enactment, where an accused person has been sent forward for trial to the Circuit Court, that Court may remand the accused in custody to appear at a sitting of the Circuit Court (in this section, the “alternative Court”) in the Circuit in which is situated the prison or place of detention where the accused is to be held in custody.

[CPA 1967, s.4Q]

(2) If the accused is remanded under this section to a sitting of an alternative Court:

(a) the alternative Court may, from time to time as occasion requires, further remand the accused, in custody or on bail, to that Court or to another alternative Court,

(b) a reference in *section 4B(3) or (5) or section 4E* of the Act of 1967 to the trial Court shall be a reference to the alternative Court to which the accused is remanded⁶⁴ and a reference in *section 152* to the Circuit Court shall be a reference to the alternative Court to which the accused is remanded, and

(c) the alternative Court has the same power under *section 40* of the Act of 1967 to correct any defect in the charge against the accused as the trial Court.

(3) An alternative Court shall, for the purposes of the trial of the offence, remand the accused to a sitting of the Circuit Court in the Circuit (determined, where necessary, in accordance with *section 53 or section 54*):

(a) in which the offence was committed, or

(b) in which the accused was arrested or resides.

Remand to alternative District

132.— (1) Notwithstanding *Chapter 5 of Part 2* or any other provision of any enactment, the Court before which a person first appears charged with a particular offence or a Judge exercising jurisdiction under *section 72* may remand that person in custody to appear at a sitting of the District Court (in this section, the “alternative Court”) in the District in which the prison where he or she is to be held in custody is situated or a District adjoining the first-mentioned District.

[CJMPA 1997, s. 5]

(2) The alternative Court may from time to time, as occasion requires, further remand a person referred to in *subsection (1)* in custody or on bail to that Court or to an another alternative Court.

(3) An alternative Court shall, for the purposes of the trial of a person, remand the person to a sitting of the Court in the District (determined, where necessary, in accordance with *section 73 or section 74*):

⁶³ *Criminal Justice (Mutual Assistance) Act 2008*, section 80 refers.

⁶⁴ i.e. application for extension of time to serve book of evidence (but see in this regard, Walsh *Criminal Procedure*, p.702, fn 118), application to dismiss charge or transfer to the Central Criminal Court. However, neither section 4B nor section 4P (section 145 of this consolidation) refers in terms to the “trial court”.

- (a) in which the offence to which the trial relates was committed, or
- (b) in which the person resides or was arrested.

Disposal of offenders **133.**— The orders which a Court exercising criminal jurisdiction may make (to the extent permitted by, and then in accordance with, any enactment) following a decision in criminal proceedings, in the disposal of a person found to have committed an offence include: [New]

- (a) an order convicting the person;
- (b) an order remanding the person, in custody or on bail, for sentencing pending the production of any report or otherwise (and where a person is remanded on bail, an order mentioned in *section 130(c)* or *(d)*);
- (c) an order sentencing the person convicted to a term of imprisonment required or permitted by law;
- (d) an order suspending all or any part of a sentence of imprisonment in accordance with the *Criminal Justice Act 2006* or any other order mentioned in *Part 10* of that Act;
- (e) an order, in accordance with the Act of 2010, imposing on the person convicted any fine or penal or other sum having a penal effect (in this section, a “fine”) required or permitted by law, and any subsequent order in accordance with that Act in default of due payment of the fine;
- (f) an order binding the person to the peace or to good behaviour or to both the peace and good behaviour and requiring the person to enter into a Court bond for that purpose; [CSPA 1961, s. 54]
- (g) an order forfeiting, revoking or endorsing any licence, permit or authorisation held by the person, which is relevant to the offence concerned, in accordance with any enactment;
- (h) an order disqualifying the person for a specified period or indefinitely from holding a relevant licence, permit or authorisation or from acting in a particular capacity, in accordance with any enactment;
- (i) an order to the person to produce any goods or things relevant to the offence concerned and for the forfeiture or destruction of those goods or things in accordance with law;
- (j) an order that details of the person be included in any register required by law to be maintained;
- (k) any community service order, probation order, compensation order, restitution order, exclusion order, monitoring order or other order cognate with the foregoing orders authorised by an enactment and, where appropriate, requiring the person to enter into a Court bond for the purpose of such an order⁶⁵;

⁶⁵ The Commission considered the Court “poor box”, which is a non-statutory mechanism commonly used in the context of disposal of offenders, in its *Report on The Court Poor Box: Probation of Offenders* (LRC 75-2005). The 2005 Report recommended that the poor box could be placed on a statutory footing in the context of a replacement of the *Probation of Offenders Act 1907*. The current text of this section should be sufficient to capture any future replacement of the 1907 Act relating to the “poor box”. If, in the alternative, it was considered appropriate place the “poor box” on a statutory footing in this consolidation, appropriate provisions could appear at this point and Chapter 9 of Part 4.

(l) in a case involving a child, any order mentioned in *Part 9* of the *Children Act 2001*;

(m) an order discharging an offender.⁶⁶

Legal costs in criminal proceedings

134.— (1) Subject to *section 8* of the *Criminal Justice (Legal Aid) Act 1962* and to any contrary provision in rules of court⁶⁷, a Court which has heard and decided criminal proceedings may award such costs as seem appropriate to be paid to or by any party to those proceedings.

[New]

(2) A Court which has heard and decided criminal proceedings may, where a person has been convicted of an offence, order the person convicted to pay to the prosecutor, for transmission to the authority responsible for investigating the offence (where that authority is not the Garda Síochána), such amount as to it seems appropriate towards the cost incurred in detecting and investigating the offence⁶⁸.

Execution of sentences and penalties

135.— (1) A sentence, penalty or other order of a Court following the decision of criminal proceedings takes effect and shall be executed immediately, unless it is stayed, suspended or deferred under or in accordance with an enactment or by the order of a Court having jurisdiction to stay, suspend or defer it.

[New]

(2) When an order is made on the conviction of a person for an offence, the proper warrant for its execution shall be issued by the Judge of the District Court or by the proper officer of any other Court:

[PSIA 1851, s 23]

(a) immediately, when an order of imprisonment is to take effect immediately, or

(b) at the time fixed by the order for imprisonment to take place, where imprisonment is not to be immediate, or

(c) on the non-payment of any fine or penal sum or the non-performance of a

⁶⁶ As originally drafted, the draft contained the following as subsection (2) (reflecting section 22 of the *Petty Sessions (Ireland) Act 1851*), which is deemed no longer necessary in light of the enactment of the *Fines Act 2010*:

“(2) In criminal proceedings before the District Court where the Judge is authorised to award any fine:

(a) the Judge may order that the fine be paid either immediately or within a period fixed by the Judge for that purpose;

(b) the Judge may order that, in default of payment within the period fixed by the Court’s order, the amount concerned (or so much of the sum as remains unpaid at the expiry of the period fixed) be recovered by execution order for seizure and sale against the goods of the person against whom the order was made, together with the costs of execution;

(c) the Judge may order that, in default of payment within the period fixed by the Court’s order, or where it is found to be impossible to execute an execution order for seizure and sale, that the person convicted be imprisoned for the period permitted by law on default of payment of so much of the sum as remains unpaid at the expiry of the period fixed.”

⁶⁷ Section 8 of the 1962 Act (references changed in Schedule 3) contains provisions to the effect that where certain legal aid certificates have been granted in respect of a person, the Court of Criminal Appeal shall not have jurisdiction to award costs to the person in respect of the proceedings in relation to which the certificate applies. The reference to any contrary provision in rules of court has regard to the fact that the District Court cannot award costs against the DPP or a prosecuting Garda in summary criminal proceedings, by virtue of Order 36, rule 1 of the District Court Rules 1997 (though costs can be awarded to or against any other prosecutor). There are sound policy reasons for this and it is proposed to support that rule in the Bill. While no such rule applies at present in the Superior Courts or Circuit Court, the formulation of the provision allows for the possibility that such a rule might be made in respect of particular proceedings in the Superior Courts or Circuit Court.

⁶⁸ A provision commonly now appears in relation to offences, especially regulatory offences where costs of detection (as distinct from the legal costs of the prosecution) can be significant, authorising the award of the costs of detection, or a fixed amount towards those costs, against the offender. This would propose that this be made a rule of general application (except where the Garda Síochána is the investigating authority) subject, in every case, to the Court’s discretion.

condition, at the time and in the manner fixed by the Court's order or subsequent order for that purpose, subject to *Schedule 10*, (unless the fine or penal sum has been paid or collected, or remitted by any authority competent to do so, or any term of imprisonment has been remitted by such an authority in the interval),

unless otherwise expressly provided by another enactment, in which case the proper warrant shall issue in accordance with that enactment.

(3) The provisions of *Schedule 10* have effect in relation to the collection and disposal, and execution in the event of non-payment, of fines.

Mutual or international co-operation

Foreign criminal proceedings, extradition, European Arrest Warrant and Transfer of Sentenced Persons proceedings

136.— (1) A Court may where authorised by any other enactment make a request for the taking of evidence for criminal proceedings in the State by a Court or tribunal outside the State or make an order for or cause the taking of evidence by or with the authority of a Court in the State in aid of criminal proceedings before an international court or a court in another state⁶⁹. [New]

(2) A Court may issue a warrant (in accordance with *section 138*) addressed to an officer or employee of the State ordering or authorising that person to take the action specified in the warrant in connection with the exercise of any jurisdiction conferred on, or power exercisable by, that Court by or under:

- (a) the *Extradition Acts 1965 to 2001*⁷⁰;
- (b) the *European Arrest Warrant Act 2003*;
- (c) the *Transfer of Sentenced Persons Acts 1995 and 1997* and the *Transfer of Execution of Sentences Act 2005*,
- (d) the *International War Crimes Tribunals Act 1998*,
- (e) the *International Criminal Court Act 2006*, or
- (f) the *Criminal Justice (Illicit Traffic by Sea) Act 2003*.

and the provisions of *section 138 and section 139* apply to such warrants and to their execution.

Search warrants and cognate orders in aid of foreign proceedings and investigations

137.— (1) A Court or Judge may exercise a power conferred by any enactment in accordance with that enactment to grant any search warrant, or order of a like nature authorising a search for, or requiring the production of, any evidential material⁷¹ or bodily or other sample, on behalf of an authority in another state or to make any other order permitted by an enactment authorising the doing of any thing by the Garda Síochána or by another public authority on behalf of an authority in another state which is investigating an offence or suspected offence. [New]

(2) An application under any enactment to a Court, or a Judge of a Court, for a search warrant or order mentioned in *subsection (1)* shall be heard and decided otherwise than in public, and may be heard and decided in chambers. [CJAA 2009, s 26]

Chapter 13: Court instruments

Issue and execution of warrants

138.— (1) A Court may issue a warrant addressed to an officer or employee of the State, or where the Court considers it necessary, to another person, commanding or authorising that person to take the action specified in the warrant. [DPA 1839, s 14 and new provisions]

⁶⁹ e.g. *Criminal Law (Jurisdiction) Act 1976*, sections 11 and 12; *International Criminal Court Act 2006*, section 52.

⁷⁰ The proposed *Surrender and Extradition Bill* would also be referenced, separately or as appropriate within the collective citation of the Extradition Acts if enacted.

⁷¹ Contemplates the proposed *European Evidence Warrant Bill*.

(2) A warrant for the arrest of a person shall be addressed to the superintendent or an inspector of the Garda Síochána of the Garda Síochána district within which the place where the warrant is issued is situated or the person named in the warrant resides.

PSIA 1851, s 25(1) substituted by CJA 2006, s. 193]

(3) A warrant for the arrest of a person:

(a) may be executed by a member of the Garda Síochána within that district under the authority of the member to whom it is addressed;

(b) may be endorsed by the member to whom it is addressed to the superintendent or an inspector of the Garda Síochána of another Garda Síochána district within which it is believed or suspected the person to whom the warrant relates is, and may be executed by a member of the Garda Síochána within that other district under the authority of the member to whom it is endorsed.

(4) A member of the Garda Síochána who is commanded or authorised by warrant of a Court to arrest a person may do so only when that member or another member of the Garda Síochána is in possession of the warrant or of a copy of the warrant.

[DPA 1842, s 48]
[CJA 2006, s. 194]

(5) Subject to *subsection (3)(b)*, a warrant for the arrest of a person or an order or warrant of committal of a person may be executed by a member of the Garda Síochána in any part of the State.

(6) A person (other than a member of the Garda Síochána) commanded or authorised by a warrant to take action specified in the warrant (other than the arrest of a person) may take such action in execution of the warrant at any place in the State and from time to time.

(7) A person (other than a member of the Garda Síochána) commanded or authorised by a warrant to receive or detain a person in custody may only do so when that person or another person on his or her behalf is in possession of the warrant or a copy of the warrant.

(8) A person to whom a warrant is addressed and any other person authorised by law to execute a warrant shall, so far as possible, promptly execute a warrant mentioned in *subsection (1)*.

(9) It shall be not necessary to address any warrant of committal to the governor of a prison, but on the delivery of a warrant of committal by the person charged with its execution to the governor of the prison to which the committal is made, the governor shall receive and detain the person named in the warrant (or shall detain the person named if already in his or her custody) for the period and in the manner as it appears from the warrant that the person named is to be imprisoned or detained; and in cases of adjournments or remands the governor of the prison shall cause the person to be brought before the Court or Judge at the time and place fixed by the warrant for that purpose.

[PSIA 1851, s 25(2)]

(10) When a person is delivered with a warrant of committal to the governor of a prison, the governor shall give the member of the Garda Síochána a receipt for the prisoner, confirming the state and condition in which the prisoner has been delivered into the custody of the governor.

[PSIA 1851, s 32(6)]

(11) Where a Court or Judge orders a person to be imprisoned for any period, the person shall be committed to the prison or place of detention which appears most convenient for that purpose to the Court or Judge.

[PSIA 1851, s 32(7)]

(12) A warrant endorsed for release conditionally on the entry into a Court bond

shall be executed in accordance with its terms and in accordance with the *Bail Act 1997*.

| | | |
|--|---|---|
| Unexecuted warrants | <p>139.— (1) When the person to whom a warrant of arrest or committal is addressed, transmitted, or endorsed for execution is unable to execute the warrant, he or she shall return the warrant to the Court by which or Judge by whom it was issued within the time fixed by that warrant (or within a reasonable time where no time is so fixed), with a certificate of the reasons why the warrant was not executed⁷².</p> <p>(2) The Court or Judge may (having heard, where it considers necessary, any evidence of the person to whom the warrant was addressed, transmitted or endorsed), re-issue the warrant, or issue any other warrant for the same purpose from time to time, as the Court or Judge considers expedient.</p> | [PSIA 1851, s 33] |
| Protection of persons executing warrants | <p>140.— (1) A person commanded or authorised to execute a warrant in accordance with <i>section 138</i> incurs no legal liability (whether in false imprisonment, trespass to the person, or otherwise):</p> <p>(a) arising from arresting, receiving or detaining in custody a person named in the warrant, provided that the person executing the warrant:</p> <ul style="list-style-type: none">(i) complies with <i>section 138(4)</i> or, as the case may be, <i>section 138(7)</i>, and(ii) produces the warrant or a copy of it within a reasonable time after being called on to do so, or <p>(b) for any thing reasonably done in execution of a warrant mentioned in <i>section 138</i>.</p> <p>(2) <i>Subsection (1)</i> applies notwithstanding any want of jurisdiction on the part of the Court which, or Judge who, issued the warrant, or any irregularity in the circumstances in which the warrant was issued, which is not evident on the face of the warrant.</p> | [FIA 1410, s15; [POPAI 1803, s6] [CIA 1836, s 50] DPA 1839, s 13] |
| Court bonds: general | <p>141.— (1) In this Act:</p> <p>a “Court bond”⁷³ includes any binding undertaking in writing given by a person (the “principal”) and recorded before a Court or person authorised by the Court or otherwise by law, to comply with a condition specified by the Court to perform an act or requirement, whereby the principal acknowledges that he or she owes a personal debt to the State in the amount secured, provided that:</p> <p>(a) the obligation to pay that debt is avoided if the principal complies with the condition specified by the Court, and</p> <p>(b) the obligation to pay that debt may be enforced in the manner permitted by law against the principal and any surety if the principal fails to comply with the condition specified by the Court.</p> <p>(2) A Court may require that a principal enter into a Court bond (with or without a surety) for a purpose (whether connected with criminal or civil proceedings) permitted by this Act or otherwise by law.</p> <p>(3) The amount and every condition of a Court bond shall be fixed by a Court or Judge. The amount of a Court bond shall be an amount which appears sufficient in the circumstances to ensure the performance of its condition.</p> | [RIA 1817] [PSIA 1851, s 24] CCOIA 1877, s 75] [CJA 1951, s 17] |

⁷² See the Commission’s *Consultation Paper on Search Warrants and Bench Warrants* (LRC CP 58-2009), paragraphs 7.69 to 7.96.

⁷³ This expression is substituted for “recognisance” in the interest of clarity.

(4) A Court may require that a Court bond be entered by the principal and by any independent surety who the Court is satisfied is sufficient. [PSIA 1851, s 24]

(5) A Court bond shall include the name and ordinary place of residence of any principal or surety, and the period for which the Court bond has or is to have effect.

(6) Where the District Court remands a person or sends him or her forward for trial or sentence, and the Court releases the person conditionally on his or her entering into a Court bond, the Court bond may be given and taken in accordance with *section 22* of the Act of 1967.

(7) A Court bond to prosecute an appeal from the District Court, or binding a person to the peace or to good behaviour or to both the peace and good behaviour may be given before, and taken by— [PSIA 1851, s 24]
[CCOA 2009, s. 26]

(i) any Judge of the District Court,

(ii) any District Court Clerk,

(iii) a peace commissioner designated for that purpose by order of the Minister,

(iv) the governor of a prison, or

(v) a prison officer designated for that purpose by the governor of a prison.

(8) In any case in which neither *subsection (6)* nor *subsection (7)* applies, where a Court has fixed the condition of a Court bond, and is satisfied of the sufficiency of any person proposed as a surety, the Court bond may be given before, and taken by, any person authorised in law to take a Court bond. [CJA 1828, s 34]

(9) Where a payment of money intended to be paid into Court on foot of a Court bond is received by a person empowered to take a Court bond who is not a court officer, that payment shall be deemed to be a payment into Court and that person shall notify the appropriate court officer of the making of the payment and remit the payment to the appropriate court officer as soon as is reasonably practicable.

(10) Subject to *subsection (12)* and *section 143*, a Court bond shall be retained by the proper officer of the Court before which are pending any proceedings to which that Court bond relates, but where the proceedings are the subject of an appeal, the proper officer shall transmit the Court bond to the proper officer of the Court by which the appeal is to be heard.

(11) Where a principal is required to enter into a Court bond with sureties, the Court bonds of the sureties may be taken separately and either before or after the Court bond of the principal, and if so taken, the Court bonds of the principal and sureties are as binding as if they had been taken together and at the same time. [CJAA 1914, s 24]

(12) Where the conditions of a Court bond include a condition to appear before a Court, the Court bond shall be forwarded to the proper officer of the Court before which the principal is conditioned to appear. [PSIA 1851, s 34]

(13) Rules of court may provide procedures for the giving and taking of Court bonds consistently with this section.

(14) Nothing in this section removes any power of a corporation or person to take a recognisance under or by virtue of any charter or patent.

Court bonds given otherwise than by

142.— (1) When a corporate body, a partnership, the trustees of a trust or the members of an unincorporated association (in this section, the “collective body”) [RIA 1817]

individuals

is or are required by law or by an order of a Court to enter into a Court bond, the provisions of this section shall apply.

(2) The Court bond may be entered into by an agent for and on behalf of the collective body if—

(a) the agent is, in the case of partnership a member of the partnership (or a director of any corporate body which is a member of the partnership) or, in the case of the trustees of a trust, a trustee;

(b) the agent is duly authorised in writing by the collective body under its seal or in writing to enter into the Court bond on its behalf, and the agent produces the authorisation when executing the Court bond, and

(c) the Court bond is expressed to be entered into on behalf of the collective body, is expressed to bind the collective body by the conditions of the Court bond and is expressed to bind the goods of the collective body.

(2) Where the form of a Court bond is prescribed by an enactment and the Court bond is entered into on behalf of a collective body under this section, the modifications needed to comply with this section may be made to the form of Court bond prescribed.

(3) A Court bond entered into on behalf of a collective body binds the collective body and its goods as fully and in like manner as a like Court bond entered into by an individual would bind the individual and his or her goods.

Court bonds on binding to the peace

143.— (1) Where the conditions of a Court bond include a condition to keep the peace or to be of good behaviour, or both to keep the peace and to be of good behaviour, the Court bond shall be forwarded to the District Court Clerk assigned to the District in which the principal resides or carries on any business.

[CJA 1951, s 16]

(2) When an order is made binding a person to the peace or to good behaviour or to both the peace and good behaviour and requiring the person to enter into a Court bond in that behalf, the person may, within one month and on giving 7 days' notice to the officer of the Garda Síochána in charge of the district in which the person resides, apply by way of appeal to the Court to which an appeal lies under this Act to be released from the obligations imposed on him or her by the order and Court bond respectively.

(3) On hearing an appeal under *subsection (2)*, the appellate Court may, if it thinks proper, release the person from the obligations of the order and Court bond appealed from or modify in such manner as the Court thinks proper all or any of those obligations, and may make any release or modification either absolutely or subject to conditions and, in particular, subject to the person entering in the Court appealed from into a new Court bond in lieu of the first-mentioned Court bond.

Court bonds: satisfaction, breach and consequences of breach

144.— (1) Where a Court is satisfied that the condition of a Court bond has been performed, any sum or security paid into Court shall be repaid or returned to the person who paid it in.

[PSIA 1851, s 34]

(2) Save where, and then only to the extent, otherwise provided by this Act or by another enactment, where a Court is satisfied that a principal has failed to perform or comply with the condition of a Court bond (whether given before that Court or another Court), it may, in accordance with this section:

(a) find that there has been a breach of the Court bond and authorise its enforcement⁷⁴,

⁷⁴

Substituted for the idea of “estreatment”.

(b) order the forfeiture of any money or security paid into Court on foot of the Court bond by the principal,

(c) order or authorise the recovery of any money or security the payment by the principal of which is conditioned by the Court bond, but which has not been paid into Court,

(d) having afforded any surety an opportunity to be heard:

(i) order the forfeiture of any money or security paid into Court on foot of the Court bond by a surety,

(ii) order the recovery of any money or security the payment by a surety of which is conditioned by the Court bond, but which has not been paid into Court,

and no money or security to which a Court bond applies may be forfeited or recovered unless a Court has found that there has been a breach of the Court bond and authorised its enforcement.

(3) On any breach of a condition of a Court bond to appear before a Court, the Court before whom the principal has not appeared may certify the non-appearance, and that Court or another Court before which or by the order of which the Court bond was given, may direct that notice be given to the principal and to any surety of a date on which and place at which the Court will consider an application to enforce the Court bond (including by forfeiture or recovery) to the amount the Court sees fit, and on the date fixed for the hearing of the application to enforce the Court bond, the Court may make an order enforcing the Court bond to the amount and in the manner the Court sees fit.

(4) On any breach of a condition of a Court bond other than a condition to appear before a Court, the Court before whom the principal is bound or required to appear may certify that it is satisfied by evidence of the non-performance of the condition, and that Court or another Court before which or by the order of which the Court bond was given, may direct that notice be given to the principal and to any surety of a date on which and place at which the Court will consider an application to enforce the Court bond (including by forfeiture or recovery) to the amount the Court sees fit, and on the date fixed for the hearing of the application to enforce the Court bond, the Court may make an order enforcing the Court bond to the amount and in the manner the Court sees fit.

Evidentiary weight of Court instruments and records

145.— (1) A written judgment or Court instrument of a Superior Court or of the Circuit Court may be signed or authenticated in accordance with rules of court by a Judge or proper officer of the Court and shall be evidence, in the absence of proof to the contrary, in any proceedings of the decision of the Court or Judge of the Court to which the written judgment or Court instrument relates⁷⁵.

[New]

(2) A written order recording a decision of a Judge of the District Court shall be evidence in any legal proceedings of the decision of that Judge, until the contrary is shown, when the order is signed by—

[CA 1971, s 14]
[CLMPA 2008, s.23]

(a) a Judge of the District Court assigned to the District in which the order was made (which includes a Judge of the District Court acting in the circumstances mentioned in *section 174* as a substitute Judge for a Judge of the District Court assigned to the District in which the order was made), or

(b) a District Court Clerk assigned to the District in which the order was made, except in the case of an order sending an accused person forward for trial, which

⁷⁵ This provision is intended to clarify the existing law.

must be signed by a Judge referred to in *paragraph (a)*.

(3) A written warrant sending an accused person forward for trial or search warrant issued by a Judge of the District Court shall be evidence in any legal proceedings of the matters to which the warrant relates until the contrary is shown, when the warrant or search warrant is signed by a Judge of the District Court assigned to the District in which the search warrant or warrant was issued (which includes a Judge of the District Court acting in the circumstances mentioned in *section 174* as substitute Judge for a Judge of the District Court assigned to the District in which the warrant was issued).

(4) A written warrant (other than a warrant sending an accused person forward for trial or search warrant) issued by a Judge of the District Court shall be evidence in any legal proceedings of the matters to which the warrant relates until the contrary is shown, when the warrant is signed by a District Court Clerk assigned to the District in which the warrant was issued, but a warrant sending an accused person forward for trial or a search warrant must be signed by a Judge referred to in *subsection (3)*.

(5) In all proceedings, an entry in the Court's record kept by the proper officer of a Court shall be evidence of the matter to which it relates, unless the contrary is shown.

[CBCPAAI
1864, s 57]

Chapter 14: Remittal or transfer between Courts of civil proceedings

Remittal of
proceedings by High
Court

146.— (1) When civil proceedings are pending in the High Court which might have been commenced in the Circuit Court or in the District Court, a party may apply to the High Court for the proceedings to be remitted to the Circuit Court or, as the case may be, to the District Court.

[CJA 1924,
s25]
[CJA 1936,
s.11]

(2) An application mentioned in *subsection (1)* must be made promptly, but may be made at any time before the trial or the date scheduled for any hearing of an application to dispose summarily of the proceedings (where permitted by rules of court). The High Court may decide such an application before the commencement of the trial or before hearing an application to dispose summarily of the proceedings.

[CJA 1953,
s.13]
[CA 1991,
s.15(3)]

(3) In deciding an application mentioned in *subsection (1)*, the High Court shall:

(a) have regard to all the circumstances, including the extent of compliance with *section 83*, and

(b) have regard to whether it was reasonable that the proceedings should have been commenced in the High Court.⁷⁶

(4) Where the High Court grants an application mentioned in *subsection (1)*, it may, as it considers appropriate to the case, remit the proceedings to:

(a) the Circuit Court, to be prosecuted before the Judge of the Circuit Court assigned to the Circuit, or

(b) the District Court, to be prosecuted before the Judge of the District Court

⁷⁶ The reference to disregarding the jurisdiction of the Circuit Court where there is consent to increased jurisdiction is intentionally deleted. The proviso to section 25 of the *Courts of Justice Act 1924* is also intentionally deleted. If the latter were retained, this section would include an additional sub-section, as follows:

“The High Court may remit civil proceedings, whatever the amount formally sought made in the proceedings, if the High Court is of opinion that the proceedings should not have been commenced in the High Court, but in the Circuit Court or in the District Court if at all.”

assigned to the District,

which appears to the High Court suitable and convenient, on such terms, and in either such case subject to such conditions, as to costs or otherwise, as appear just.

(5) Proceedings for the recovery of a liquidated sum shall not be remitted under this section unless

(a) the applicant consents, or

(b) the respondent either:

- (i) satisfies the High Court that he or she has a good defence to the proceedings or some part of the proceedings, or
- (ii) discloses facts which, in the opinion of the High Court, are sufficient to entitle him or her to defend the proceedings or some part of the proceedings.

(6) The power to remit proceedings conferred by this section may, with the consent of the parties, be exercised by the Master of the High Court, and any proceedings remitted or transferred by the Master of the High Court are deemed to have been remitted by the High Court.

Remittal of
proceedings by
Circuit Court

147.— (1) When civil proceedings are pending in the Circuit Court which might have been commenced in the District Court, a party to those proceedings may apply to the Circuit Court for the proceedings to be remitted to the District Court.

[CA 1991, s
15]

(2) An application mentioned in *subsection (1)* must be made promptly, but may be made at any time before the trial or the date scheduled for any hearing of an application to dispose summarily of the proceedings (where permitted by rules of court). The Circuit Court may decide such an application before the commencement of the trial or before hearing an application to dispose summarily of the proceedings.

(3) In deciding an application mentioned in *subsection (1)*, the Circuit Court shall:

- (a) have regard to all the circumstances, including the extent of compliance with *section 83*, and
- (b) have regard to whether it was reasonable that the proceedings should have been commenced in the Circuit Court.

(4) Where the Circuit Court grants an application mentioned in *subsection (1)*, it may, as it considers appropriate to the case, remit the proceedings to the District Court, to be prosecuted before the Judge of the District Court assigned to such District as appears to the Circuit Court suitable and convenient, on such terms, and subject to such conditions, as to costs or otherwise, as appear just.

(5) Proceedings for the recovery of a liquidated sum shall not be remitted under this section unless:

(a) the applicant consents, or

(b) the respondent either:

- (i) satisfies the Circuit Court that he or she has a good defence to the proceedings or some part of the proceedings, or
- (ii) discloses facts which, in the opinion of the Circuit Court, are sufficient to entitle him or her to defend the proceedings or some part of the proceedings.

(6) The power to remit proceedings conferred by this section may, with the consent of the parties, be exercised by a County Registrar, and any proceedings remitted or transferred by a County Registrar are deemed to have been remitted by the Circuit Court.

Transfer of proceedings by Circuit Court

148.— (1) A party may at any time apply to the Judge of the Circuit Court before whom civil proceedings commenced in that Court are, or an appeal from the District Court is, pending, to have the proceedings or appeal forwarded to the High Court.

[CBCIA 1874, s 2]
[C(SP) 1961, s. 22(8)(a)]
[CA 1971, s. 21]

(2) On an application mentioned in *subsection (1)*, where the proceedings or appeal are fit to be tried in the High Court and the High Court appears to be the more appropriate Court in the circumstances, the Judge of the Circuit Court may send forward the proceedings or appeal to the High Court on such terms, and subject to such conditions, as to costs or otherwise, as appear just.

(3) An appeal lies under *section 315* from the decision of the Judge granting or refusing an application under *subsection (1)*.

Transfer of certain family, civil partnership law or cohabitancy proceedings

149.— (1) Where the valuation or rateable value of land to which proceedings in the Circuit Family Court or, as the case may be, the Circuit Court, under:

[JSFLR1989, s 31(3)]

(a) the *Family Home Protection Act 1976*,

[FLA 1995, s 38(3)]

(b) the *Judicial Separation and Family Law Reform Act 1989* for a decree of judicial separation,

[FLDA 1996, s 38(2)]

(c) the *Family Law Act 1995*,

[CPCROCA 2010, ss. 140(5), 196(6)]

(d) the *Family Law (Divorce) Act 1996*, or

(e) the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*

relate exceeds the Circuit Court land valuation limit, that Court shall, if a respondent so requires before the hearing of the proceedings, transfer the proceedings to the High Court. Any order made (including an interim order) or other act done or step taken in the course of the Circuit Family Court proceedings or, as the case may be, the Circuit Court proceedings, before transfer remains valid unless discharged or varied by the High Court.

(2) The Circuit Family Court or, as the case may be, the Circuit Court, may, for the purposes of *subsection (1)*, in relation to land that has not been given a rateable valuation or is the subject with other land of a rateable valuation, decide that its rateable valuation would exceed, or would not exceed, the Circuit Court land valuation limit.

[FLA 1995, s 38(5)]

Chapter 15: Remittal, transfer or sending forward between Courts of criminal proceedings

Sending forward by District Court of accused persons to trial

150.— In all criminal cases not disposed of summarily by a Judge of the District Court, the Judge of the District Court shall:

[CJA 1926, s.6]

(a) if all of the offences in respect of which the accused person is being sent forward are within the jurisdiction of the Circuit Court, send the accused person forward for trial in accordance with the Act of 1967 to the Judge of the Circuit Court or one of the Judges of the Circuit Court (selected by the Judge of the District Court) who under *section 50* has jurisdiction to try the proceedings, and

(b) in every other case send the accused person forward for trial in accordance with the Act of 1967 to the Central Criminal Court.

Charges and trials transferred to Special Criminal Courts **151.**— This Chapter does not affect any obligation under the Act of 1939 to transfer any charge or trial to a Special Criminal Court. [New]

Transfer of proceedings from the Circuit Court to the Central Criminal Court **152.**— Where, after being sent forward for trial to the Circuit Court for an indictable offence (the “original offence”), an accused person is sent forward for trial to the Central Criminal Court for another indictable offence connected with or arising from the circumstances that gave rise to the original offence, the Circuit Court may, unless it considers it that would not be in the interests of justice to do so, transfer the trial of the original offence to the Central Criminal Court. [CPA 1967, s.4P]

Transfer of criminal trials within Circuits **153.**— (1) A Judge of the Circuit Court may, if he or she thinks fit, transfer the trial of criminal proceedings from the place in that Circuit where it is required by law to be held to another place in that Circuit. In that event, the trial shall be held at the place to which it is transferred, with a jury drawn from the jury district or other area prescribed for trials by the Circuit Court sitting in that latter place. [CSPA1961, s26]

(2) An order of a Judge of the Circuit Court under *subsection (1)*—

(a) may be made only on the application of the Attorney General, the Director of Public Prosecutions or an accused person;

(b) may provide for matters ancillary or incidental to the transfer, and

(c) shall be final and unappealable.

Transfer of criminal trials to Dublin Circuit **154.**— (1) Where a person (in this section, “the accused”) has been sent forward for trial to the Circuit Court, sitting other than within the Dublin Circuit, the Judge of the Circuit Court before whom the accused is triable may, on the application of the prosecutor or of the accused, if satisfied that it would be manifestly unjust not to do so, transfer the trial to the Circuit Court sitting within the Dublin Circuit and the decision to grant or refuse the application shall be final and unappealable. [CCOA 1995, s32]

(2) Provision may be made by rules of court for the giving of notice of intention to make an application under *subsection (1)* and of the grounds on which such application will be based.

(3) Where—

(a) two or more accused are sent forward for trial to the Circuit Court sitting other than within the Dublin Circuit and it is proposed to try them together, and

(b) an application by one or more, but not all, of the accused under *subsection (1)* is granted,

an application, without notice to the accused, by the prosecutor to the Judge who granted the application to have the trial of one or more of the remaining accused transferred to the Circuit Court sitting within the Dublin Circuit shall be granted.

(4) Nothing in this section limits the power of a Judge of the Circuit Court to transfer proceedings under *section 17* of the *Criminal Evidence Act 1992*.

Chapter 16: Court venues, distribution of Court business and local jurisdiction

Interpretation: this Chapter **155.**— In this Chapter:

“relevant District”, in relation to a Judge of the District Court, means a District—

(a) to which that Judge is permanently assigned under *section 171*,

(b) to which that Judge is temporarily assigned under *section 172*, or

(c) in relation to which that Judge is acting as substitute Judge in the circumstances specified in *section 174* for another Judge who is permanently assigned to the District, and

[CSPA 1961,
Sixth Schedule,
paragraph 2]

[CA 1991,s.20]

“scheduled sittings” means:

(i) in relation to the Supreme Court, sittings scheduled in accordance with *section 157(1)*, *section 157(2)* and *section 157(3)*;

(ii) in relation to the High Court, sittings scheduled in accordance with *section 158(1)*, *section 158(2)*, *section 158(3)*, *section 158(7)* and *Schedule 11*;

(iii) in relation to the Court of Criminal Appeal or the Courts-Martial Appeal Court, sittings of each such Court, when constituted in accordance with *section 18*, scheduled in accordance with *section 159*;

(iv) in relation to the Circuit Court, sittings scheduled in accordance with *section 162* and directions under *section 189(2)*;

(v) in relation to the District Court, sittings scheduled in accordance with *section 168*.

General

Scheduled sittings
and urgent business

156.— (1) The times and places of (and, where relevant, the class of business to be transacted at) scheduled sittings of a Court shall be published in the manner directed or authorised by the President of that Court and, in the case of the Court of Criminal Appeal or the Courts-Martial Appeal Court, by the Chief Justice.

[New]

(2) Urgent business of a Court which may be transacted by a Court or Judge otherwise than at a scheduled sitting may be heard and determined at the time and place that Court or Judge directs.

The Supreme Court and the High Court

Sittings of the
Supreme Court

157.— (1) The Supreme Court has its permanent seat at the Four Courts, Dublin, but the Chief Justice may direct that the Supreme Court shall sit at any other place.

[New]

(2) The Supreme Court shall sit for the transaction of its judicial business, so far as is practicable, continuously on working days throughout the year, except during periods designated⁷⁷ as vacations of that Court.

[SCJA 1877, s
30, 31, 33
(modified)]

(3) The hours between which the Supreme Court shall sit to transact its judicial business shall be as directed by the Chief Justice.

(4) The Chief Justice may arrange for the Supreme Court to sit at any other time to transact judicial business he or she deems requires to be immediately or promptly heard.

⁷⁷

Court vacations are prescribed by rules of court under section 30 of the *Supreme Court of Judicature (Ireland) Act 1877*; removal of the reference to rules of court would leave vacation periods to be designated by the Chief Justice.

(5) The Supreme Court and Judges of the Supreme Court may sit and act at any time and at any place for the transaction of any part of the business of the Supreme Court, or for the discharge of any duty required to be discharged by them. [SCJIA 1877, s 29 (modified)]

Sittings of the High Court

158.— (1) The High Court has a permanent seat at Dublin, and shall sit at other places mentioned in *subsection (7)* in accordance with directions under this section and *Schedule 11*, but the President of the High Court may direct that the High Court shall sit at any other place. [CJA 1936, s.33] [CSPA 1961, s.13]

(2) The High Court shall sit for the transaction of its judicial business, so far as is practicable, continuously on working days throughout the year, except during periods designated⁷⁸ as vacations of that Court, provided that sittings of the High Court shall be scheduled during such periods where considered necessary by the President of the High Court for the transaction of judicial business of that Court he or she deems requires to be immediately or promptly heard. [SCJIA 1877, s 30, 31, 33 (modified)]

(3) The hours between which the High Court shall sit to transact its judicial business shall be as directed by the President of the High Court.

(4) The President of the High Court may arrange for the High Court to sit at any other time to transact judicial business he or she deems requires to be immediately or promptly heard.

(5) The High Court and the Judges of the High Court may sit and act at any time and at any place, for the transaction of any part of the business of the High Court, or for the discharge of any duty required to be discharged by them. [SCJIA 1877, s 29 (modified)]

(6) Any Judge of the High Court sitting at any place for the transaction of the judicial business of the High Court constitutes a Court of the High Court. [SCJIA 1877, s. 33 (part)]

(7) The High Court shall sit outside Dublin for such judicial business, original and appellate, as the President of the High Court directs or determines and *Schedule 11* applies to such sittings.

(8) References in this section and *Schedule 11* to the High Court include the Central Criminal Court.

The Court of Criminal Appeal and the Courts-Martial Appeal Court

Sittings of Court of Criminal Appeal and Courts-Martial Appeal Court

159.— (1) The Court of Criminal Appeal and the Courts-Martial Appeal Court, each when constituted, may sit and act and a Judge nominated to transact business of either of those Courts may sit and act at any time and place directed by the Chief Justice, for the transaction of that business of the Court, or for the discharge of any duty required to be discharged by that Court or Judge.

(2) The Court of Criminal Appeal and the Courts-Martial Appeal Court shall each ordinarily sit in Dublin, but the Chief Justice may direct that either such Court shall sit at any other place. [CMAA 1983, s. 12(1)]

Circuit Court Circuits and distribution of Circuit Court business

Circuits

160.— (1) The local government areas within the State, divided into the 8 groups [CJA 1953,

⁷⁸ See preceding note; removal of the reference to rules of court would leave vacation periods for the High Court to be designated by the President of the High Court.

specified in *Part 3 of Schedule 11* (in this Act, referred to as the “Circuits”), shall continue to be the Circuits for the purposes of the Circuit Court and of this Act, unless altered in accordance with *section 161*. s.16] [CSPA 1961, s. 20]

(2) Each Circuit mentioned in *column 1 of Part 3 of Schedule 11* corresponds to the existing circuit created under *section 16* of the Act of 1953 mentioned in *column 3 of Part 3 of Schedule 11* opposite that reference.

Alteration of circuits **161.**— (1) The Service may from time to time, if it thinks fit, by order— [CJA 1953, s.16] [CA 1964, s.3]

(a) alter the composition of a Circuit (other than the Dublin Circuit and the Cork Circuit) by adding to or removing from the Circuit any local government area, and

(b) attach to the Circuit a name by which the Circuit shall be known in substitution for its existing name.

(2) No county may be divided between or among Circuits.

(3) The Service shall consult with the President of the Circuit Court and with any Judge of the Circuit Court permanently assigned to a Circuit to which the order will relate, before making an order under this section.

(4) An order under this section may make provision for the continuation and completion of any business transacted in a Circuit to which the order relates which is initiated, but not completed, before the commencement of that order.

(5) For the purposes of this section, civil business transacted in the Circuit Court is initiated on the day on which the application notice relating to it is issued.

Sittings of the Circuit Court **162.**— (1) The Circuit Court shall sit for the transaction of its judicial business in accordance with directions given under *section 189(2)*. [New]

(2) The hours between which the Circuit Court shall sit to transact its judicial business shall be as directed by the President of the Circuit Court.

(3) This section does not limit the jurisdiction of a Judge of the Circuit Court in a case to which *section 39* applies.

Permanent assignment of Judges of the Circuit Court **163.**— (1) Such number of the Judges of the Circuit Court as the President of the Circuit Court thinks appropriate⁷⁹ having regard to the volume of the judicial business of the Court in or for that Circuit shall be permanently assigned to each Circuit, provided that at least one Judge of the Circuit Court shall be permanently assigned to every Circuit. [CSPA 1961, s.20] [CA 1977, s. 2] [CCOA 1995, s.36]

(2) The President of the Circuit Court⁸⁰ may:

(a) permanently assign a Judge of the Circuit Court to a Circuit, either to fill a vacancy for a Judge permanently assigned to that Circuit or otherwise in accordance with *subsection (1)*;

⁷⁹ The existing legislation fixes this number at 10 (and this number would potentially fluctuate having regard to the total number of Judges). The draft proceeds on the basis that the number of Judges permanently assigned to a particular Circuit could be varied by the President having regard to operational needs from time to time. The separate reference to the Dublin and Cork Circuits is no longer necessary if this change is made. This also permits further simplification in relation to permanent and temporary assignment of Judges.

⁸⁰ At present, permanent assignments of Judges of the Circuit and District Courts are made by the Government. The draft proposes to alter this arrangement, so that permanent assignments are made by the President of the Court concerned.

(b) from time to time temporarily assign a Judge of the Circuit Court who is not for the time being permanently assigned to a Circuit to any Circuit;

(c) with the consent of that Judge, transfer a Judge of the Circuit Court who is permanently assigned to a Circuit to another Circuit, either to fill a vacancy for a Judge permanently assigned to that Circuit or otherwise in accordance with *subsection (1)*, and on such a transfer, the Judge becomes and is permanently assigned to that other Circuit and ceases to be permanently assigned to the first-mentioned Circuit, or

(d) if he or she thinks fit, at that Judge's request, terminate the permanent assignment of a Judge of the Circuit Court to a Circuit, and that Judge may at any later time be permanently assigned to a Circuit in accordance with *paragraph (a)*.

Temporary assignment of Judges of the Circuit Court

164.— (1) A Judge of the Circuit Court who is temporarily assigned to a Circuit under *section 163(2)(b)* has in relation to that Circuit, while so temporarily assigned, concurrently with any Judge permanently assigned to that Circuit and any other Judge temporarily assigned to that Circuit under *section 163(2)(b)*, all privileges, powers and duties for the time being conferred or imposed by law on a Judge permanently assigned to that Circuit.

[CJA 1947, s.11]

[CA 1977, s.2(6)]

(2)⁸¹ Where it appears to the President of the Circuit Court, on the request of a Judge permanently assigned to a Circuit, that such Judge cannot properly deal with proceedings before him, the President of the Circuit Court may temporarily assign another Judge of the Circuit Court to hear and decide those proceedings in that Circuit. Where the President does so, those proceedings may be heard and decided by the temporarily assigned Judge accordingly.

Irish speaking areas

165.— (1) A Judge of the Circuit Court who is sitting at a place where a sitting of the Circuit Court is held in or for:

[CJA1924, s44 (modified)]

(a) an area determined to be a Gaeltacht area by order under *section 2* of the *Ministers and Secretaries (Amendment) Act 1956*, or

(b) an area where the Irish language is in general use,
(i) shall be registered in Clár na Gaeilge (Óstaí an Rí)(the Irish Language Register (King's Inns)) maintained in accordance with *section 1* of the *Legal Practitioners (Irish Language) Act 2008* or in Clár na Gaeilge (An Dlí-Chumann)(the Irish Language Register (Law Society)) maintained in accordance with *section 40(2A)* of the *Solicitors Act 1954* or, where no such Judge is available for the sitting concerned,
(ii) shall possess sufficient knowledge of, or have sufficient experience of practising in, the Irish language as enables him or her to dispense with the assistance of an interpreter when conducting the business of the Court in the national language.

(2) In this section, "proceedings conducted in the national language" means proceedings in which both or all parties conduct the proceedings in the national language and, for the avoidance of doubt, nothing in this section shall prevent any Judge from hearing and determining any proceedings which one or several parties conduct in the national language and one or several other parties conduct in the second official language.

(3) This section does not limit any right or obligation under *section 8* or *section 9* of the *Official Languages Act 2003*.

⁸¹ This matches a corresponding provision in relation to the District Court: see section 174(2) below and reintroduces section 10 of the *Courts of Justice Act 1928* in modernised form.

District Court Districts and distribution of District Court business

| | | |
|---------------------------------------|---|--|
| Districts | 166. — The existing districts set out in the <i>District Court (Districts) Order 2008</i> (S.I. No. 461 of 2008) and the Dublin Metropolitan District shall continue to be the Districts for the purposes of the District Court and of this Act, until modified in accordance with <i>section 168</i> . | [CJA 1953, s. 22 (repealed)] [CSPA 1961, s.32] |
| District Court venues | 167. — The Service shall, having consulted with the President of the District Court, appoint such and so many places as it considers necessary in, or within a reasonable distance of the boundary of, each District ⁸² , (in this Part, “District Court venues”) at which scheduled sittings of the District Court may be held to transact judicial business of the District Court for that District. | [CJA 1953, s.26 (part)] [CSPA 1961, s.40] |
| Scheduling of District Court sittings | 168. — (1) The Service shall, having consulted with the President of the District Court, ⁸³ from time to time: <p style="margin-left: 40px;">(a) determine the days on which, and hours between which, sittings of the District Court shall be held at each District Court venue;</p> <p style="margin-left: 40px;">(b) assign particular business of the District Court to each such sitting in accordance with this section,</p> <p style="margin-left: 40px;">and any such determination or assignment may be varied or revoked.</p> <p style="margin-left: 40px;">(2) Scheduled sittings of the District Court shall be held at the District Court venues in accordance with every determination and assignment made in accordance with this section.</p> <p style="margin-left: 40px;">(3) Particular business of the District Court shall be assigned to scheduled sittings having regard to:</p> <p style="margin-left: 80px;">(a) the requirements of the <i>Children Act 2001</i> concerning sittings of the Children Court;</p> <p style="margin-left: 80px;">(b) the requirements of this Act or any other enactment concerning the conduct of particular proceedings;</p> <p style="margin-left: 80px;">(c) the desirability that criminal proceedings and applications concerning the custody of persons should be conducted separately from civil proceedings, and</p> <p style="margin-left: 80px;">(d) the efficient use of resources.</p> <p style="margin-left: 40px;">(4) The proper officer may distribute business of the District Court of the same class among the scheduled sittings at the different District Court venues within a District.⁸⁴</p> | [CJA 1953, s.26 (part)] [CSPA 1961, s.41, 42, 43] |

⁸² The fixing of District Court venues by reference to Districts, rather than Areas, permits the intended abolition of the necessity for sub-division of Districts into Areas. Jurisdiction is by reference to Districts and it is considered desirable to remove the rigidity of District Court Areas and provide for more fluidity in the distribution of business within Districts.

⁸³ Or “the President of the District Court, having consulted with the Service”.

⁸⁴ This allows the District Court Clerk, rather than the moving party, to decide to which sitting a summons is initially returnable (so that distribution of business facilitates use of court resources more than the parties), though specific criteria could be imposed, e.g. earliest available sitting, regardless of proximity to the venue.

(5) The Service may subdivide Districts to facilitate the distribution of business in accordance with *subsection (4)* and any such subdivision of a District may be known as a District Court Area⁸⁵.

(6) This section does not limit the jurisdiction of a Judge of the District Court in a case to which *section 60* applies.

Transaction of
judicial business and
adjournments from
scheduled sittings

169.— (1) A Judge of the District Court, when transacting particular judicial business of the District Court at a scheduled sitting, may transact at that sitting any other class of judicial business of the District Court.

[CJA 1953,
s.27]

(2) When transacting any judicial business of the District Court, a Judge of the District Court may transfer or adjourn the transaction of any judicial business in which he or she has jurisdiction to another day and time at the District Court venue where he or she is then sitting or to another day and time at another District Court venue in his or her District (whether that occasion is or is not a scheduled sitting for the judicial business concerned).

Modification of
Districts

170.— (1) The Service may, from time to time, as it considers expedient, by order do all or any of the following things:—

[CJA 1953,
s.26]

[CJA1936,
s.64]

(a) vary or abolish a District,

(b) create a new District,

(c) assign a name to or change the name of any District,

(d) transfer the title the “Dublin Metropolitan District” to any other District prescribed under or in accordance with *section 166* or this section differing wholly or partially from the District to which that title is attached,

(e) having consulted, where necessary, with the President of the District Court, revoke or amend an order under this subsection.

(2) When the Service makes an order under *subsection (1)*, it may make provision for securing the continuation and completion of any business transacted in the District Court which is initiated, but not completed, before the commencement of that order.

(3) For the purposes of this section, business transacted in the District Court is initiated on the day on which the first originating document relating to it is issued.

(4) The abolition of a District under *subsection (1)* operates to terminate any assignment then in force of a Judge to that District and such a Judge may be permanently assigned at any time to another District in accordance with this Act.

Permanently assigned
Judges of the District
Court

171⁸⁶.— (1) Such number of the Judges of the District Court as the President of the District Court thinks appropriate having regard to the volume of the judicial business of the Court in or for that District shall be permanently assigned to each District, provided that at least one Judge of the District Court shall be permanently assigned to every District.

[CSPA 1961, s.
39 and Sixth
Schedule,
paragraph 2]

[CA 1991, s.
20]

[CCOA 1995,
s. 38]

(2) The President of the District Court may:

⁸⁵ The recasting of administratively subdivided District Court Districts as District Court Areas is principally to facilitate the application of any legislation (especially the District Court Rules) which makes provision by reference to Areas.

⁸⁶ See note to section 163 above.

(a) permanently assign a Judge of the District Court to a District, either to fill a vacancy for a Judge permanently assigned to that District or otherwise in accordance with *subsection (1)*;

(b) with the consent of that Judge, transfer a Judge of the District Court who is permanently assigned to a District to another District, either to fill a vacancy for a Judge permanently assigned to that District or otherwise in accordance with *subsection (1)*, and on such a transfer, the Judge becomes and is permanently assigned to that other District and ceases to be permanently assigned to the first-mentioned District, or

(c) if he or she thinks fit, at that Judge's request, terminate the permanent assignment of a Judge of the District Court to a District, and that Judge may at any later time be permanently assigned to a District in accordance with *paragraph (a)*.

Temporary assignment of Judges of the District Court

172.— (1) A Judge of the District Court who is permanently assigned to a District may, with his or her consent, from time to time, be temporarily assigned by the President of the District Court to another District or Districts, but any temporary assignment in accordance with this subsection shall be without prejudice to the exercise and performance by that Judge of the privileges, powers and duties for the time being conferred or imposed on him or her by law in relation to the District to which he or she is permanently assigned.

[CSPA 1961, Sixth Schedule, paragraph 3] [CCOA 1995, s. 37]

(2) A Judge of the District Court who is not for the time being permanently assigned to a District may from time to time be assigned by the President of the District Court to any District.

(3) Without prejudice to *subsection (2)*, the President of the District Court may, in relation to any District, temporarily assign for a period not exceeding 6 months a Judge of the District Court (whether or not any that Judge is permanently or temporarily assigned to another District) to exercise, in relation to that District, the powers specified in *subsection (4)*.

[CLMPA 2008, s 14]

(4) A Judge of the District Court who is temporarily assigned to a District under *subsection (3)* may exercise any of the powers of a Judge of the District Court to which *section 177* applies for the time being conferred on him or her by law, whether he or she is in or outside that District.

(5) The President of the District Court may at any time terminate a temporary assignment made under *subsection (2)* or *subsection (3)*.

Privileges, powers and duties of temporarily assigned Judges of the District Court

173.— (1) This section applies where a Judge of the District Court (the "temporarily assigned Judge") is temporarily assigned to a District under *section 172(2)* or where a Judge of the District Court (the "specially assigned Judge") is temporarily assigned to a District under *section 172(3)*.

[CSPA 1961, Sixth Schedule, paragraph 3]

(2) Where there is for the time being a Judge of the District Court permanently assigned to that District, a temporarily assigned Judge has, while so temporarily assigned to that District under *section 172(2)*, concurrently with any Judge permanently assigned to that District, all privileges, powers and duties for the time being conferred or imposed by law on the Judge permanently assigned to that District in relation to that District.

[CLMPA 2008, s 14]

(3) Where there is for the time being no Judge of the District Court permanently assigned to that District, a temporarily assigned Judge has, while so temporarily assigned, all privileges, powers and duties for the time being conferred or imposed by law on a Judge permanently assigned to that District in relation to that District.

(4) Where there is for the time being a Judge of the District Court permanently assigned to that District, a specially assigned Judge has, while so temporarily assigned to that District under *section 172(3)*, concurrently with any Judge permanently assigned to that District, all the powers of the Judge to which *section 177* applies for the time being conferred on the Judge of the District Court who is so permanently assigned to that District in relation to that District.

(5) Where there is for the time being no Judge of the District Court permanently assigned to that District, a specially assigned Judge has, while so temporarily assigned, all the powers of a Judge of the District Court to which *section 177* applies as would for the time being be conferred by law if he or she were a Judge of the District Court permanently assigned to that District.

Substitute Judges

174.— (1) In this section, a “substitute Judge” means a Judge of the District Court, who is not permanently or temporarily assigned to the District concerned, exercising and performing, in accordance with this section, the privileges, powers and duties for the time being conferred or imposed by law on another Judge of the District Court in relation to the District to which that other Judge is permanently assigned.

[CSPA 1961,
Sixth Schedule,
paragraph 4]

(2) Where it appears to the President of the District Court, on the request of a Judge permanently assigned to a District, that such Judge cannot properly deal with proceedings before him or her, the President of the District Court may nominate another Judge of the District Court to hear and decide those proceedings in that District as substitute Judge. Where the President does so, those proceedings may be heard and decided by the substitute Judge accordingly.

(3) Where a Judge of the District Court permanently assigned to a District (in this subsection, the “first Judge”) is due to illness or absence unable to exercise and perform during that illness or absence, the privileges, powers and duties for the time being conferred or imposed by law on him or her in relation to the District to which he or she is permanently assigned, another Judge of the District Court may, as substitute Judge, with the consent of the President of the District Court, exercise and perform during that illness or absence, the privileges, powers and duties for the time being conferred or imposed by law on the first Judge in relation to the District to which the first Judge is permanently assigned.

(4) Where a Judge of the District Court permanently assigned to a District (in this subsection, the “first Judge”) requests another Judge of the District Court to act as substitute Judge for him or her during a specified period (not exceeding 7 days) the substitute Judge may exercise and perform during that period the privileges, powers and duties for the time being conferred or imposed by law on the first Judge in relation to the District to which the first Judge is permanently assigned.

(5) A substitute Judge acting in accordance with this section who is permanently assigned to another District may exercise and perform the privileges, powers and duties for the time being conferred or imposed by law on the Judge for whom he or she is substitute in addition to exercising and performing the privileges, powers and duties conferred by law in relation to the District to which he or she is permanently assigned.

Irish speaking areas

175.— (1) A Judge of the District Court who is sitting at a place where a sitting of the District Court is held in or for:

[CJA1924, s 71
(modified)]

(a) an area determined to be a Gaeltacht area by order under section 2 of the *Ministers and Secretaries (Amendment) Act 1956*, or

(b) an area where the Irish language is in general use,

(i) shall be registered in Clár na Gaeilge (Óstaí an Rí)(the Irish Language Register (King’s Inns)) maintained in accordance with section 1 of the *Legal Practitioners (Irish Language) Act 2008* or in Clár na Gaeilge (An Dlí-Chumann)(the Irish Language Register (Law Society)) maintained in accordance with section 40(2A) of the *Solicitors Act 1954* or, where no such Judge is available for the sitting concerned,

(ii) shall possess sufficient knowledge of, or have sufficient experience of practising in, the Irish language as enables him or her to dispense with the assistance of an interpreter when conducting the business of the Court in the national language.

(2) In this section, “proceedings conducted in the national language” means proceedings in which both or all parties conduct the proceedings in the national language and, for the avoidance of doubt, nothing in this section shall prevent any Judge from hearing and determining any proceedings which one or several parties conduct in the national language and one or several other parties conduct in the second official language.

(3) This section does not limit any right or obligation under *section 8* or *section 9* of the *Official Languages Act 2003*.

Urgent cases of summary jurisdiction

176.— (1) When the Minister is of opinion that early trial or disposal by the District Court of every summary offence of a specified kind (in this section, a “relevant offence”) is desirable, he or she may by order so declare and the provisions of *subsection (2)* and *subsection (3)* have effect in relation to summary offences of any kind specified in such an order for the time being in force.

[CA 1971, s.15]

(2) A Judge of the District Court in whose District a relevant offence is committed—

(a) has jurisdiction to deal with the case at a sitting at any District Court venue within the District concerned, and

(b) may hold a sitting of the District Court within that District to deal with the offence at a place or time otherwise than at a scheduled sitting for criminal business.

(3) A summons issued in respect of a relevant offence may direct the appearance of the person named in the summons at any sitting (including a sitting referred to in *subsection (2)(b)*) of the District Court within the District in which the relevant offence was committed and may be served personally at any time not less than two clear days before that sitting.

(4) The Minister may by order revoke or amend an order under this section, including an order under this subsection.

(5) An order under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly but without prejudice to the validity of anything previously done under that order.

Exercise of powers by Judge of the District Court outside his or her District

177.— (1) This section applies to the following powers of a Judge of the District Court:

(a) the power to issue a warrant for the arrest of a person;

[CSPA 1961, s.32A, inserted by CJA 2006, s 180]
[CJMAA 2008, s. 108]

(b) the power conferred by any enactment to issue a warrant (in this section, a “relevant search warrant”)⁸⁷ to a member of the Garda Síochána or other person authorising the entry to, and search of, any place or premises (including a dwelling) and the search of any person found at that place or those premises for all or any of the following purposes:

- (i) the gathering of evidence of, or relating to, the commission or attempted commission of any criminal offence;
- (ii) the gathering of evidence of, or relating to, the contravention of any provision of an enactment;
- (iii) ascertaining whether there is or has been compliance with any provision of an enactment;
- (iv) the gathering of evidence of, or relating to, assets or proceeds deriving from criminal conduct (within the meaning of *section 1(1)* of the *Criminal Assets Bureau Act 1996*) or to their identity or whereabouts;

(c) the power conferred by any enactment to make an order (in this section, a “relevant order”), on the application of a member of the Garda Síochána or other person, directing a person to produce, to make available for inspection or to give access to any particular document, material or thing, or documents, material or things of a particular description, for the purposes of investigating—

- (i) any criminal offence,
- (ii) whether there is or has been a contravention of any provision of an enactment, or
- (iii) whether a person has benefited from assets or proceeds deriving from criminal conduct (within the meaning of *section 1(1)* of the *Criminal Assets Bureau Act 1996*) or is in receipt of or controls such assets or proceeds;

(d) the power conferred by *section 74(8)*, *section 75(9)* or *section 87* of the *Criminal Justice (Mutual Assistance) Act 2008* or under *section 63(2)* (as substituted by *section 105(g)* of the *Criminal Justice (Mutual Assistance) Act 2008*) of the *Criminal Justice Act 1994*;

(e) the power to issue, vary or renew an authorisation under *section 5* or *section 6* of the *Criminal Justice (Surveillance) Act 2009*;

(f) any of the following powers under *Part 3* of the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*:

- (i) the power to order a person not to carry out any service or transaction;
- (ii) the power to revoke an order referred to in *subparagraph (f)(i)*;
- (iii) the power to make an order in relation to property if considered essential to do so for the purpose of enabling—
 - (I) the person who applies for the order to discharge the reasonable living and other necessary expenses incurred or to be incurred in respect of the person or the person’s dependants, or
 - (II) the person who applies for the order to carry on a business, trade, profession or other occupation to which any of the property relates.

(2) A Judge of the District Court may, in relation to a relevant District, exercise at any place in the State outside that relevant District any power to which this section applies for the time being conferred on him or her by law if, but only if, he or she would be entitled to exercise the power concerned at a sitting of the District Court in that relevant District.

(3) A warrant does not cease to be a relevant search warrant if that warrant or the power under which it is issued also authorises all or any of the following:

⁸⁷ The draft does not take account of the provisional recommendations in the Commission’s *Consultation Paper on Search Warrants and Bench Warrants* (LRC CP 58-2009), Chapter 8.

- (a) the entry, if necessary by the use of force, to a place or premises (including a dwelling);
 - (b) the doing of acts in addition to those acts specified in *subsection (1)(b)*;
 - (c) the execution of the warrant by a person other than the member of the Garda Síochána or other person to whom it is issued;
 - (d) the accompaniment of the person executing the warrant by any other person during its execution.
- (4) An order does not cease to be a relevant order if that order or the power under which it is made also authorises all or any of the following:
- (a) a member of the Garda Síochána or other person to enter a place for the purpose of inspecting or getting access to any document, material or thing or documents, material or things of a particular description;
 - (b) the execution of the order by a person other than the member of the Garda Síochána or other person who applied for it;
 - (c) the retention, or copying by a member of the Garda Síochána or other person of any document, material or thing, or documents, material or things of a particular description, produced, made available for inspection or to which access is given.
- (5) *Subsections (2), (3) and (4)* apply with any necessary modifications in the case of a power mentioned in *subsection (1)(d)*.

PART 3
Judges and Presiding Judges

Purposes of Part 3

178.—This Part —

[New]

- (a) contains certain provisions about judicial office, but excluding those matters to which the preserved provisions relate [Chapter 1];
- (b) contains provisions concerning the senior ordinary Judge of a Court and concerning presiding Judges [Chapter 2], and
- (c) provides for the special responsibilities of the President of each Court concerning administration of Court business [Chapters 3 to 6].

Chapter 1: Provisions applicable to all Judges

Completion of partly heard proceedings by a Judge appointed to another judicial office

179.— (1) Where a Judge vacates a judicial office in accordance with *section 6(3)* of the Establishment Act, that Judge shall complete the hearing of any proceedings that he or she has partly heard in the Court in which he or she has vacated office (in this section, “part-heard proceedings”) if, at the request of the President of that Court—

[CECA 1961, s6A]
[CCOA 2002, s12]

- (a) where the Judge is appointed to the office of Chief Justice, President of the High Court or President of the Circuit Court, he or she considers it appropriate to do so, or
- (b) where the Judge is appointed to the office of ordinary Judge of the Supreme Court, the Chief Justice requests the Judge to do so, or where the Judge is appointed to the office of ordinary Judge of the High Court or of the Circuit

Court, the President of the High Court or the President of the Circuit Court, as may be appropriate, requests the Judge to do so.

(2) When a Judge sits in a Court pursuant to this section, he or she shall be an additional Judge of the Court concerned for all purposes.

Judicial precedence

180.— (1) The precedence among the Judges of the Supreme Court and of the High Court shall be as follows:

[CJA 1924, s.9]
[C2A 1997, s.9]
[CLMPA 2008, s 5]

(a) the Chief Justice ranks first;

(b) the President of the High Court ranks next after the Chief Justice;

(c) next rank the Judges of the Supreme Court who are former Chief Justices to whom *section 4(2)* of the Act of 1997 applies, each according to priority of that Judge's appointment as Chief Justice;

(d) next rank the other Judges of the Supreme Court, other than the *ex-officio* Judges of that Court to whom *paragraph (e)* relates, each according to priority of that Judge's first appointment as an ordinary Judge of the Supreme Court;

(e) next rank the Judges of the High Court who are *ex-officio* Judges of the Supreme Court (being former Presidents of the High Court to whom *section 4(2)* of the Act of 1997 applies) each according to priority of that Judge's appointment as President of the High Court;

(f) next rank the other Judges of the High Court, other than the *ex-officio* Judges of that Court to whom *paragraph (g)* or *paragraph (h)* relates, each according to priority of that Judge's first appointment as an ordinary Judge of the High Court;

(g) next ranks the President of the Circuit Court by virtue of being an additional Judge of the High Court; and

(h) next rank the other Judges of the Circuit Court who are *ex-officio* Judges of the High Court (being former Presidents of the Circuit Court to whom *section 4(2)* of the Act of 1997 applies) each according to priority of that Judge's appointment as President of the Circuit Court.

(2) The President of the Circuit Court takes precedence over all other Judges of the Circuit Court.

[CJA 1947, s 9(3)]

(3) The Judges of the Circuit Court (other than the President of the Circuit Court) shall rank amongst themselves according to priority of appointment.

[CJA 1924, s 38]

(4) The President of the District Court takes precedence over all other Judges of the District Court.

(5) The Judges of the District Court (other than the President of the District Court) shall rank amongst themselves according to priority of appointment.

Judges to have jurisdiction to hear all cases, but no Judge to sit on appeal from own decision

181.— (1) Subject to *subsection (2)*, each Judge of the Supreme Court and each Judge of the High Court has jurisdiction to hear and decide any proceedings.

[CJA 1924, s24]

(2) No Judge may sit on the hearing of an appeal in proceedings tried before him or her, or on an appeal from a decision made by him or her or by a Court of which he or she was a member.

Prescribed number of ordinary Judges of each Court

182.— The prescribed number of ordinary Judges of each Court shall be as provided in *Schedule 12*.

[CCOA 1995, s.6(1), 9(1), 10, 11(1)]
[CCOAA 2007,

Chapter 2: Presiding Judges and Senior ordinary Judges

| | | |
|--|---|----------------------------|
| Senior ordinary Judge | 183. — References in any enactment, however expressed, to the senior ordinary Judge of the Supreme Court or to the senior ordinary Judge of the High Court shall be construed— | [C2A 1997, s11] |
| | (a) in the case of the Supreme Court, by reference to the order of precedence of Judges of the Supreme Court in <i>paragraphs (c), (d) and (e) of section 180</i> , and | |
| | (b) in the case of the High Court, by reference to the order of precedence of Judges of the High Court in <i>paragraphs (f), (g) and (h) of section 180</i> . | |
| Temporary discharge of duties of President | 184. — (1) If, during any period, the Chief Justice is unable owing to illness or for any reason to act or the office of Chief Justice is vacant, then during that period— | [CA 1981, s 18] (modified) |
| | (a) the function mentioned in <i>section 186</i> of arranging the distribution and allocation of the business of the Supreme Court shall be performed, and | |
| | (b) the power of decision specified in <i>section 17(2)</i> shall be exercised, | |
| | by the senior ordinary Judge of the Supreme Court who is for the time being available, and all other jurisdictions, powers, authorities and functions for the time being vested in the Chief Justice by virtue of his or her office shall be exercised or performed by the President of the High Court. | |
| | (2) If, in circumstances to which <i>subsection (1)</i> applies, the President of the High Court is unable for any reason to exercise or perform the jurisdictions, powers, authorities and functions of the office of the Chief Justice, or the office of President of the High Court is vacant, the jurisdictions, powers, authorities and functions for the time being vested in the Chief Justice by virtue of his or her office shall during the period concerned be exercised or performed by the senior ordinary Judge of the Supreme Court who is for the time being available. | |
| | (3) If, during any period, the President of the High Court is unable for any reason to act or the office of President of the High Court is vacant, then, during that period, all jurisdictions, powers, authorities and functions for the time being vested in the President of the High Court by virtue of his or her office, (excluding any which would fall to be exercised or performed by him or her by operation of <i>subsection (1)</i>), shall be exercised or performed by the senior ordinary Judge of the High Court who is for the time being available. | |
| | (4) If, during any period, the President of the Circuit Court is unable for any reason to act or the office of President of the Circuit Court is vacant, then, during that period, all powers, authorities and functions for the time being vested in the President of the Circuit Court by virtue of his or her office shall be exercised or performed by the senior ordinary Judge of the Circuit Court for the time being available of the Judges of the Circuit Court permanently assigned to the Dublin Circuit. | |
| | (5) If, during any period, the President of the District Court is unable for any reason to act or the office of President of the District Court is vacant, then, during that period, all powers, authorities and functions for the time being vested in the President of the District Court by virtue of his or her office shall be exercised or performed by the senior ordinary Judge of the District Court for the time being available of the Judges of the District Court permanently assigned to the Dublin Metropolitan District. | |
| Presiding Judge | 185. — When the Court of Criminal Appeal or the Courts-Martial Appeal Court is | [CJA 1924, s28] |

sitting, the member of the Court present who is entitled to precedence over the other members shall preside.

Chapter 3: The Chief Justice

Administration of Supreme Court business

186.— Subject to *section 17(2)* and *section 184*, it shall be a function of the Chief Justice to arrange the distribution and allocation of the judicial business of the Supreme Court.

[CCOA 1995, s8]

Administration of the business of the Court of Criminal Appeal and of the Courts-Martial Appeal Court

187.— (1) The Chief Justice may nominate, for any period he or she considers appropriate, a Judge of the Supreme Court or, with the agreement of the President of the High Court, a Judge of High Court, to have charge of the list of the Court of Criminal Appeal and to perform such of the functions of a nominated Judge under *section 284(1)*, *section 284(2)*, *section 297(2)*, *section 304(10)* and *section 304(12)* as are specified in such nomination. A Judge so nominated shall, during the period of that nomination, have charge of the list of the Court of Criminal Appeal and shall perform the other functions assigned to him or her by virtue of the nomination.

[New]

(2) The Chief Justice may nominate, for any period he or she considers appropriate, a Judge of the Supreme Court or, with the agreement of the President of the High Court, a Judge of High Court, to have charge of the list of the Courts-Martial Appeal Court and to perform such of the functions of a nominated Judge under *section 284(1)*, *section 284(2)*, *section 309(10)* and *section 304(13)* as are specified in such nomination. A Judge so appointed shall, during the period of that nomination, have charge of the list of the Courts-Martial Appeal Court and shall perform the other functions assigned to him or her by virtue of the nomination.

(3) Where there is for the time being no appointment in force under *subsection (1)* or, as the case may be, *subsection (2)*, the Chief Justice shall continue to have charge of the list of the Court of Criminal Appeal or, as the case may be, the Courts-Martial Appeal Court and shall perform the other functions mentioned in *subsection (1)* or, as the case may be, *subsection (2)*.

Chapter 4: The President of the High Court

Administration of High Court business

188.— It shall be a function of the President of the High Court to arrange the distribution and allocation of the judicial business of the High Court.

[CSPA 1961, s10(3)]

Chapter 5: The President of the Circuit Court

Powers of the President of the Circuit Court

189.— (1) The President of the Circuit Court has the powers conferred by *section 163*, *section 164* and this section to ensure an equitable distribution of the judicial business of the Circuit Court amongst the Judges of the Circuit Court and the prompt despatch of the judicial business of the Circuit Court in the Circuits.

[CJA 1947, s10]

(2) The President of the Circuit Court may, having consulted any Judge of the Circuit Court permanently assigned to a Circuit affected:

(a) from time to time by order fix, in respect of any Circuit, places in that Circuit at which scheduled sittings of the Circuit Court are to be held;

(b) from time to time by order fix in respect of any Circuit, dates on which scheduled sittings of the Circuit Court shall commence at each place in that Circuit at which scheduled sittings are to be held;

(c) at any time by order revoke or amend an order made under this subsection,

and the Court shall sit in accordance with every such order.

Chapter 6: The President of the District Court

Powers of the President of the District Court

190.— (1) The President of the District Court has the powers conferred by *section 171, section 172, section 174* and this section to ensure an equitable distribution of the judicial business of the District Court amongst the Judges of the District Court to ensure the prompt despatch of the judicial business of the District Court in the Districts.

[CSPA 1961, ss.36, 42]
[CCOA 1995, s. 39]

(2) The President of the District Court may convene, not more frequently than twice in one year, meetings of the Judges of the District Court for the purpose of discussing matters relating to the discharge of the judicial business of the District Court, including the manner of disposal of criminal proceedings in the District Court⁸⁸.

(3) Every Judge of the District Court shall attend at every meeting convened in accordance with *subsection (2)* unless unable to do so owing to an unavoidable cause. Where a Judge is unable to attend such a meeting, he shall as soon as may be inform the President of the District Court of the reason for that inability.

(4) A meeting mentioned in *subsection (2)* may be held using a television link or other suitable technology.

(5) The President of the District Court may, having regard to the functions of the Service under *section 168*, make recommendations to the Service in relation to the places at which, days on which and times at which, scheduled sittings of the District Court should be held in or for any District.

(6) The President of the District Court shall arrange the distribution and allocation of the judicial business of the District Court in any District where more than one Judge of the District Court is permanently assigned among the Judges of the District Court assigned to each such District.

(7) Before arranging the distribution of any business under *subsection (6)*, the President may consult with any Judge of the District Court he or she thinks appropriate.

Assignment of President of the District Court

191.— The President of the District Court shall be permanently assigned to the Dublin Metropolitan District.

[CSPA 1961, s35(2)]

Assignment of continuing former President of the District Court

192.— (1) A former President of the District Court to whom *section 4(2)* of the Act of 1997 applies continues to be permanently assigned by virtue of *section 191* to the Dublin Metropolitan District.

[C2A1997, s12]

(2) Nothing in *subsection (1)* prevents a former President of the District Court to whom *section 4(2)* of the Act of 1997 applies from:

- (a) being transferred to another District or having his or her assignment to a District terminated in accordance with *section 171*, or
- (b) being temporarily assigned to another District in accordance with *section 172*, or

⁸⁸ The provisions of subsections (2) to (4) may now overlap somewhat with the intended provisions of the *Scheme of the Judicial Council Bill* and if they are no longer considered separately necessary, they might be considered for deletion.

- (c) hearing and determining proceedings in another District, or exercising and performing the privileges, powers and duties for the time being conferred or imposed by law on a Judge permanently assigned to another District in the circumstances and manner permitted by *section 174*.

PART 4

Special rules in particular proceedings and matters of procedure

Purposes of Part 4

193.— This Part —

[New]

- (a) provides for the kinds of proceedings, or circumstances, in which limitations are, or may be, exceptionally placed on public access to, and reporting or publication of matter in, Court proceedings, in accordance with Article 34.1 of the Constitution [Chapter 1];
- (b) sets out rules about the use of juries in Court proceedings (but without affecting the detailed rules on juries in the Juries Acts) [Chapter 2];
- (c) provides for the commencement and conduct of summary criminal proceedings in the District Court [Chapter 3];
- (d) sets out rules in relation to appeals from fixed charge notices [Chapter 4];
- (d) sets out basic requirements about the use of technology in and in relation to Court proceedings [Chapter 5];
- (e) sets out basic requirements about the service of Court documents [Chapter 6];
- (f) sets out basic requirements about certain common matters of practice and procedure, including commencement of, and pleading in, civil proceedings [Chapter 7];
- (g) sets out basic requirements about appearances in Court and rights of audience [Chapter 8];
- (h) sets out rules on Court fees and basic requirements about paying or lodging property into Court [Chapter 9];
- (i) provides for the continuance of rule-making authorities (rules of court committees) and for their powers, concurrently with the Minister, to make detailed rules, including rules supplementing the basic requirements mentioned in this Part, regulating the practice and procedure of Courts [Chapter 10], and
- (j) provides for certain offences and civil wrongs in connection with proceedings pending in or before Courts [Chapter 11].

Chapter 1: Publicity of proceedings

Interpretation: this Chapter

194. — In this Chapter:

[New]

“assistant” means a person authorised by a Court to accompany a person in proceedings in accordance with *section 199(1)*;

“Court friend” means a person approved by the Court in accordance with *section 197(1)(e)*;

a hearing in any proceedings or application to which *section 196* applies is

referred to as a hearing “in camera”;

a hearing in any proceedings or application:

(a) which is conducted at a place other than a place mentioned in *section 195(1)* and

(b) which is, if *section 196* applies, conducted otherwise than in public (in which case *section 197*, *section 198* and *section 199* apply to that hearing) and which may, if the hearing does not involve the administration of justice or judicial business, be conducted otherwise than in public

is referred to as a hearing “in chambers”.

Administration of
justice generally in
public

195.— (1) A Court when administering justice or conducting other judicial business at a scheduled sitting shall sit in a place provided by the Service which is open to the public, unless this Act or another enactment requires or permits that justice be administered in the proceedings, or the judicial business concerned be conducted, otherwise than in public.

[New]

(2) Nothing in this section prevents the members of a jury (in accordance with an order under *section 22* of the *Juries Act 1976*) or the members of a Court from attending at any place for a purpose connected with proceedings before that Court.

Administration of
justice otherwise than
in public

196.— (1) Justice may be administered otherwise than in public in any of the following cases:

[CSPA 1961,
s.45]

(a) in applications of an urgent nature for an inquiry under Article 40.4.2 of the Constitution, for bail, for any injunction or in judicial review proceedings seeking an order of prohibition;

[CPCROCA
2010, ss. 145,
199]

(b) in family proceedings⁸⁹;

[LRIA 1870, s
106].

(c) in civil partnership law proceedings or cohabitancy proceedings;

(d) in proceedings under the care and protection jurisdiction;

(e) in proceedings concerning a child;

(f) in proceedings involving the disclosure of a secret manufacturing process;

(g) in any other cases prescribed by this Act or by any other Act of the Oireachtas, including in any case where any hearing is expressed to be required or permitted to be “in camera”.

(2) Nothing in this Act requires any business of a Court which does not involve the administration of justice to be transacted in public.

(3) Subject to *section 201* and any order or regulations made under that section, a person permitted to be present at an in camera hearing shall not publish information given at the in camera hearing:

(a) which would, in family proceedings, civil partnership law proceedings or proceedings concerning the protection or welfare of a person, enable the parties, the person who is the subject of the proceedings or, as the case may be, a child to whom the proceedings relate, to be identified by the public or a substantial

⁸⁹ Note that by reference to the definition, this would then include cases under Article 41 of the Constitution or Article 8, ECHR.

section of it, or

(b) which would, in any other case, substantially deprive the party or person concerned of the benefit of the in camera hearing or, as the case may be, in chambers hearing.

(4) *Subsection (3)* does not apply to any communication made for the purposes of the proceedings concerned, or for the purpose of giving or receiving legal advice.

Persons ordinarily permitted to be present at in camera hearings⁹⁰

197.— (1) Subject to any direction given by the presiding Judge or Judge, an in camera hearing shall take place in a courtroom or other place from which persons other than the following shall be excluded while the hearing is in camera: [New]

(a) the members of the Court and of the jury, where the proceedings are being tried with a jury;

(b) the court officer acting as registrar to the Court;

(c) the parties to the proceedings;

(d) the parties' legal representatives, if any;

(e) a person approved by the Court who is permitted by the Court in accordance with *section 201(6)* to accompany a party to relevant proceedings (within the meaning of *section 201*) or to accompany a person who is the subject of proceedings under the care and protection jurisdiction, at an in camera hearing in those proceedings, subject to any directions the Court gives in that behalf;

(f) any assistant referred to in *section 199*;

(g) a person called or proposed to be called to give evidence as a witness in the hearing;

(h) a person permitted to be present in accordance with *section 201(4)*;

(i) a person whose presence is decided by the Presiding Judge or Judge to be necessary in accordance with *section 198*.

(2) The Presiding Judge or Judge may direct a person referred to in *paragraph (g), (h) or (i) of subsection (1)* to leave the courtroom or place where an in camera hearing is taking place during any part of that hearing.

Other necessary persons may be permitted to be present at in camera hearings⁹¹

198.— (1) *Section 196* does not require the exclusion from attendance at an in camera hearing of a person whose presence at the in camera hearing the Presiding Judge or Judge determines is necessary for the proper or efficient conduct of the hearing. [New]

(2) The persons mentioned in *subsection (1)* may, without limitation, include:

(a) another court officer or other person performing duties in relation to the Court,

(b) a prison officer,

(c) a member of the Garda Síochána,

⁹⁰ This provision is intended to clarify the existing law.

⁹¹ This provision is intended to clarify the existing law.

(d) a person (including a person employed by a person) retained by the Service to provide a security service (within the meaning of *section 2(1)* of the *Private Security Services Act 2004*) who is providing such a service in relation to the courtroom or other place where the Court is sitting, or

(e) an interpreter.

Assistant to person with a disability appearing at in camera hearing

199.— (1) Where a Court is satisfied in proceedings before it that a person mentioned in *section 197(1)* acting in the Court as a legal representative or a Court friend on behalf of a party in the proceedings has a disability⁹² (within the meaning of *section 2(1)* of the *Disability Act 2005*) and for that reason requires assistance, the Court may, on a request by or on behalf of that person and notwithstanding any other enactment or rule of law, authorise another person to accompany the person in the proceedings and provide assistance to that person, subject to such directions as the Court may give to the assistant.

[CLMPA 2008, s 28]

(2) The assistant in proceedings referred to in *subsection (1)*—

(a) shall comply with the Court's directions, and

(b) does not, by virtue of being the assistant, have a right of audience in the proceedings.

Reasons may be given in public, provided identification of parties or other affected persons is avoided⁹³

200.— (1) The reasons for the Court's decision in any proceedings or matter heard in camera or in chambers may be announced in public or published provided that, in the opinion of the presiding Judge or Judge, any published decision or statement of the Court's reasons does not contain information:

[New]

(a) which would, in family proceedings, civil partnership law proceedings, cohabitation proceeding or proceedings concerning the protection or welfare of a person, enable the parties, the person who is the subject of the proceedings or, as the case may be, a child to whom the proceedings relate, to be identified by the public or a substantial section of it, or

(b) which would, in any other case, substantially deprive the party or person concerned of the benefit of the in camera hearing or, as the case may be, in chambers hearing.

(2) Nothing in *subsection (1)* prevents a Court from giving its reasons or a written decision at a sitting otherwise than in public before announcing any reasons in public or publishing a written decision.

Exception for authorised reports of certain in camera proceedings

201.— (1) For the purposes of this section, each of the following is a "relevant enactment"—

[CLCA 2004, s 40]
[CLMPA 2008, s 31]
[CPCROCA 2010, ss. 145, 199]

(a) *section 2(1B)* of the *Legitimacy Act 1931*;

(b) *section 196*, in so far as it relates to family proceedings, civil partnership law proceedings, cohabitation proceedings or proceedings (other than care and protection proceedings) concerning a child;

(c) *section 25* of the *Act of 1976*;

⁹² The original reference in section 28 of the *Civil Law (Miscellaneous Provisions) Act 2008* refers only to a blind or partially-sighted person, but this proposes that the principle be extended to cover any disability.

⁹³ This provision is intended to clarify the existing law.

- (d) *section 10 of the Family Home Protection Act 1976;*
- (e) *section 36 of the Status of Children Act 1987;*
- (f) *section 34 of the Judicial Separation and Family Law Reform Act 1989;*
- (g) *Part III, Part IV, Part IVA or Part VI of the Child Care Act 1991;*
- (h) *section 7 of the Maintenance Act 1994;*
- (i) *section 33 of the Family Law Act 1995;*
- (j) *section 38 of the Family Law Act 1995;*
- (k) *section 38 of the Family Law (Divorce) Act 1996;*
- (l) *section 16 of the Domestic Violence Act 1996.*

(2) In this section :

“Court” includes the Master of the High Court and a County Registrar;

“relevant documents”, in relation to relevant proceedings—

- (a) subject to *paragraph (b)*, means—
 - (i) the application notice in the proceedings,
 - (ii) pleadings and other documents (including the terms of settlement, if any) produced to or lodged with the Court, or included in any book of pleadings, in the course of the proceedings, and
 - (iii) any order made by the Court in the proceedings,
- (b) does not include any document the contents of which are expressed to be without prejudice or in terms having a like effect;

“relevant proceedings” means proceedings to which the relevant enactment mentioned in *subsection (1)* relates.

(3) Nothing in this Act or in a relevant enactment operates to prohibit the preparation by —

- (a) a barrister, or
- (b) a solicitor, or
- (c) a person falling within a class of persons specified in regulations made by the Minister, or
- (d) in the case of proceedings under *Part III, Part IV, Part IVA or Part VI of the Child Care Act 1991*, a person representing the Children Acts Advisory Board and authorised in writing by that Board, following consultation by that Board with the Minister for Health and Children,

and publication of a report of relevant proceedings.

- (4) Unless in the special circumstances of the case, the Court otherwise directs, for reasons it specifies when giving its direction, a person referred to in *subsection (3)* may, for the purposes of preparing such a report—
 - (i) attend an in camera hearing in relevant proceedings, and
 - (ii) have access to any relevant documents,

subject to any directions the Court gives in that behalf.

(5) Nothing in this Act or in a relevant enactment prohibits a party to relevant proceedings from supplying copies of, or extracts from, orders made in the proceedings to such persons and in accordance with such conditions (if any) as may be prescribed by order of the Minister.

(6) Nothing in this Act or a relevant enactment prohibits a party to relevant proceedings from being accompanied, at an in camera hearing in the relevant proceedings by another person, subject to the approval of the Court and any directions the Court gives in that behalf.

Prohibitions on disclosure of certain information

202.— (1) Where a Court is:

[New]

(a) obliged or authorised by law to prevent the disclosure of particular information given in, or particular matter relating to, proceedings heard in public, or

(b) empowered by an enactment to make an order prohibiting the publication or broadcast of particular information given in, or particular matter relating to, proceedings heard in public and has made such an order,

the Court may give directions addressed to persons present at the hearing as it considers necessary to ensure the performance of that obligation or to secure the effectiveness of that order and may re-announce those directions at any subsequent hearing in the same proceedings.

(2) An application may be made to a Court which has given a direction to which *subsection (1)* relates by a person affected by that direction to vary or discharge the direction.

Order prohibiting disclosure of medical condition: civil proceedings

203.— (1) This section applies to any civil proceedings before a Court in which it may be disclosed that a relevant person has a medical condition.

[CLMPA 2008, s. 27]

(2) An application may be made to the Court at any time by a party or other relevant person for an order under this section prohibiting the publication or broadcast of any matter relating to the proceedings which would, or would be likely to, identify the relevant person as a person having that condition.

(3) The Court shall grant an order under this section only if it is satisfied that—

(a) the relevant person concerned has a medical condition,

(b) his or her identification as a person with that condition would be likely to cause undue stress to him or her, and

(c) the order would not be prejudicial to the interests of justice.

(4) An appeal may be made in accordance with this Act by any party or other relevant person from a refusal or grant of an application for an order under this section.

(5) The Court—

(a) hearing an appeal under *subsection (4)* may vary or revoke the order under this section the subject of the appeal,

(b) hearing an appeal against a decision in proceedings in which an order under this section was made may vary or revoke the order on the application of any party.

(6) An application for an order under this section, an appeal under *subsection (4)* or an application referred to in *subsection (5)(b)* —

(a) may only be made by a party on notice to each other party and to any other relevant person affected by the order, and

(b) shall be made and heard in camera.

(7) In this section —

“relevant person” means—

(a) a party to the proceedings, or

(b) a person called or proposed to be called to give evidence in the proceedings.

Order prohibiting disclosure of medical condition: criminal proceedings

204.— (1) Where in any criminal proceedings—

[CJA 2006, s 181]

(a) it is proposed to call a person to give evidence, and

(b) the person has a medical condition,

an application may be made for an order under this section prohibiting the publication of any matter relating to the proceedings which would identify the person as a person having that condition.

(2) An application for such an order may be made at any stage of the proceedings and shall be made—

(a) in case the accused person has been sent forward for trial, to the trial Judge,

(b) in case the proceedings are proceedings on appeal, to the Judge, or a Judge, of the appeal Court,

(c) in any other case, to a Judge of the District Court.

(3) An order under this section may be made only where the Judge concerned is satisfied that—

(a) the person concerned has a medical condition,

(b) his or her identification as a person with that condition would be likely to cause undue distress to him or her, and

(c) the order would not be prejudicial to the interests of justice.

(4) An appeal from a refusal or grant of an application for an order under this section lies—

(a) in relation to proceedings before the District Court, to a Judge of the Circuit Court,

(b) in relation to proceedings before the Circuit Court or a Special Criminal Court, to a Judge of the High Court, and

(c) in relation to proceedings before the Central Criminal Court or the Court of Criminal Appeal, to a Judge of the Supreme Court,

at the instance of the prosecution or of the defence.

(5) Where—

(a) an accused person is sent forward for trial, and

(b) an order has been made by a Judge of the District Court under this section,

the trial Judge may, on application made in that behalf, vary or revoke the order.

(6) Where—

(a) an appeal is taken against a decision of a Court in criminal proceedings, and

(b) the trial Judge has made an order under this section,

the Judge, or a Judge, of the appeal Court may, on application made in that behalf, vary or revoke the order.

(7) An application under this section, or an appeal under *subsection (4)*, may be made only by the prosecution or by the defence on notice to the other party to the proceedings and shall be made to the Judge concerned in chambers and heard in camera.

(8) In this section, “trial Judge” and “Judge”, in relation to proceedings before a Special Criminal Court, means a member of that Court, and the references in *subsection (2)(a)* and *subsection (5)(a)* to an accused person being sent forward for trial include, where appropriate, references to such a person being charged before that Court.

(9) This section does not limit any other provision of law which restricts or allows the restriction of the publication of any matter in any criminal proceedings.

Publication or broadcast in contravention of order under *section 203* or *section 204*

205.— (1) Each of the following persons who publishes or broadcasts any matter in contravention of an order under *section 203* or *section 204* shall be guilty of an offence and shall be liable on conviction on indictment to a fine not exceeding €25,000 or imprisonment for a term not exceeding 3 years or both:

[CJA 2006, s 181]

(a) if the matter is published in a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical;

(b) if the matter is published otherwise, the person who publishes it; or

(c) if the matter is broadcast, any person transmitting or providing the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of an editor of a newspaper.

(2) Where a person is charged with an offence under *subsection (1)*, it shall be a defence to prove that at the time of the alleged offence the person was not aware, and neither suspected nor had any reason to suspect, that the publication or broadcast concerned was of any matter mentioned in *section 203(1)*, or, as the case may be, *section 204(1)*.

(3) Where an offence under *subsection (1)* has been committed by a corporate body and it is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any person who, when the offence was committed, was a director, manager, secretary or other officer of the corporate body, or a person purporting to act in any such capacity, that person, as well as the corporate body, shall be guilty of an offence and liable to be proceeded against and punished as if he or she were guilty of the first-mentioned

offence.

(4) Where the affairs of a corporate body are managed by its members, *subsection (3)* applies in relation to the acts and defaults of a member in connection with the functions of management as if he or she were a director or manager of the corporate body.

Anonymity order:
civil proceedings⁹⁴

206.— (1) The High Court may, subject to *subsection (3)*, on an application made for that purpose, which application shall be made and heard in camera, by a person intending to bring civil proceedings before a Court or to defend civil proceedings brought against him or her in a Court, make an order that the identity of the person should not be disclosed: [New]

(a) in the title of the proceedings,

(b) at any hearing in the proceedings,

(c) in any decision made in the proceedings, or

(d) if the proceedings are in public, by any person attending at any hearing in the proceedings.

(2) On the making of such an order, the person may proceed in such name or by such other means of identification as the High Court directs.

(3) The High Court shall make an order under *subsection (1)* only where it is satisfied that the person is not otherwise entitled to have his or her identity protected in the proceedings under or by virtue of this Act or any other enactment and, having regard to the damage which might be suffered by the applicant (or by another person) if the applicant's identity is disclosed in the proceedings, that the needs of justice require that the party should not be identified.

Continued effect of
prohibitions⁹⁵

207.— (1) Subject to *subsection (2)*, a direction under *section 202* or order under *section 203, section 204* or *section 206* continues to apply (or, as the case may be, continues to apply as varied): [New]

(a) in any application to vary or set aside the direction or order;

(b) in any appeal from the making, refusal, variation or setting aside of the direction or order;

(c) in any appeal in the proceedings to which the direction or order relates, and

(d) following the conclusion of the proceedings to which the direction or order relates.

(2) A direction under *section 202* or order under *section 203, section 204* or *section 206* ceases to apply:

(a) when the direction or order expires in accordance with its terms;

(b) in the event that the direction or order is set aside by a Court.

(3) Following the conclusion of the proceedings to which the direction or order relates, an application to vary or set aside the order or direction may be made by

⁹⁴ See Report, paragraph 2.82.

⁹⁵ This provision is intended to clarify the existing law.

any person interested to the Court which last decided the proceedings.

Exclusion of witnesses

208.— (1) A Court in civil proceedings may, of its own motion or on the application of a party, direct that a person (other than a party or a person who it is intended will be called as a witness to give expert evidence at the trial) who it is intended will be called to give evidence at the trial shall not attend that trial until he or she is called to give evidence.

[CLCA 2004, s.54]

(2) Where a Court gives a direction under *subsection (1)* concerning a witness, it may give such other directions as it considers necessary or expedient to secure that the witness does not—

(a) communicate with other witnesses who it is intended will be called to give evidence at the trial concerned, or

(b) receive information which might influence him or her when giving evidence.

Chapter 2: Juries

No effect on operation of *Juries Act 1976*⁹⁶

209.— Qualification and liability for selection for service as a juror, selection and service as a juror, and excusal of jurors continue to be determined in accordance with the *Juries Act 1976* and this Act does not affect the operation of the *Juries Act 1976*.

[New]

Trials on indictment

210.— (1) Criminal proceedings on indictment before the Central Criminal Court or Circuit Court shall be tried with a jury.

[CJA 1924, s.27]

(2) On any trial on indictment, the indictment shall be preferred directly to the jury which tries the accused.

(3) A majority verdict may be given by a jury in criminal proceedings in accordance with *section 25* of the *Criminal Justice Act 1984*.

Juries in civil proceedings in the High Court

211.— (1) Civil proceedings in the High Court may be tried with a jury only where:

[SCJIA 1877, s 33]

[CA 1988, s.1]

(a) the damages sought in the civil proceedings consist only of damages for any one or more of:

- (i) false imprisonment,
- (ii) intentional trespass to the person, or
- (iii) the tort of defamation, or

(b) the damages sought in the civil proceedings consist of damages for a cause of action mentioned in *paragraph (a)* and damages (whether sought in addition, or as an alternative, to the other damages sought) for another cause of action in respect of the same act or omission, or

(c) the cause, or a question or issue of fact in the proceedings could be tried with a jury at the commencement of this Act⁹⁷, or may be tried with a jury under another enactment.

⁹⁶ For transparency only: the draft does not intend to change the law as to jury service: in that regard see the Commission's *Consultation Paper on Jury Service* (LRC CP 61-2010).

⁹⁷ The intent is to describe the cases in which a jury is available in civil proceedings. Following the enactment of the *Courts Act 1988*, these comprise predominantly civil claims for defamation and false imprisonment, though it appears that a jury may in principle be available to decide other questions or issues under section 33 of the *Supreme Court of Judicature (Ireland) Act 1877*, captured by subsection (1)(c). Consideration might be given to abolishing the availability of a jury in these other cases, by deleting

(2) The jury shall decide a cause or a question of fact or an issue arising in civil proceedings referred to in *subsection (1)*.

(3) Where the Court determines, on the application of a party or of its own motion at the trial, that, having regard to the evidence likely to be given at the trial in support of the application, it is not reasonable to seek damages for a cause of action mentioned in *subsection (1)(a)*, in respect of that act or omission, the proceedings shall not be tried with a jury.

(4) An application referred to in *subsection (3)* shall be made not later than 7 days after the giving of notice of trial or at such later time as the Court allows.

(5) Any question of fact or issue to which *subsection (3)* relates shall be decided by the Judge.

(6) A question of fact or question as to the amount of damages to be decided by a jury or issue to be tried by a jury shall be reduced into writing in the form the Court directs. [CAA 1858, s.4]

No jury in civil proceedings in the Circuit Court

212.— No civil proceedings in either the Circuit Court or the District Court⁹⁸ and no question of fact or issue arising in any civil proceedings in either the Circuit Court or the District Court shall be tried with a jury. [SA 1965, s.44] [CA 1971, s.6]

Verdict of 9 members of jury in civil cases

213.— (1) In every trial in the High Court of civil proceedings before a Judge and jury, the jury shall, when empanelled, consist of 12 members. [CJA 1924, s 95]

(2) A majority vote of 9 of those 12 members shall be necessary and sufficient to decide the verdict.

(3) The Judge shall inform the jury of the majority necessary and the verdict of 9 or more members shall be taken and recorded as the verdict of the jury, without disclosure of any dissentients.

Right to make speeches to jury or Court

214.— (1) In criminal proceedings tried with a jury, the prosecution has the right to make an opening speech to the jury. [CJA 1984, s. 25]

(2) Where, at the close of the prosecution case, on inquiry by the Judge or presiding Judge, the accused (or his or her legal representative) indicates that he or she intends to adduce evidence of fact (other than the evidence of the accused or evidence of any witness as to character), the accused has the right to make an opening speech to the jury.

(3) The prosecution has the right to make a closing speech to the jury in all cases, except where the accused is not represented by a legal representative and does not call any witness (other than a witness to character only).

(4) The accused has the right to make a closing speech to the jury in all cases.

(5) The closing speech for the accused shall in every case be made after that for the prosecution.

(6) In civil proceedings, whether tried with or without a jury, the applicant has, subject to this section, the same rights as has the prosecutor in criminal [CLPAAI 1856, s 21]

subparagraph (c). A jury is available under the *Lunacy Regulation (Ireland) Act 1871*, though it is anticipated that this will be dealt with in the *Mental Capacity Bill*.

⁹⁸ A jury has never been available in the District Court and the reference here is for transparency.

proceedings to make an opening speech and a closing speech to the jury (or, as the case may be, to the Court), and the respondent has, subject to this section, the same rights as has the accused in criminal proceedings to make an opening speech and a closing speech to the jury (or, as the case may be, to the Court).

(7) Where two or more respondents in civil proceedings are represented by the same legal representative, that legal representative may make only one closing speech.

(8) The Court or presiding Judge in any civil proceedings may dispense with any opening or closing speech which, in the circumstances of the case and having regard to the case conduct principles specified in *section 75*, the Court or presiding Judge considers unnecessary.

Chapter 3: Summary criminal procedure

Interpretation: this Chapter

215. — In this Chapter:

[C(3) A 1986, s 1 and new definitions]

“application date” means, in relation to a summons, the date on which the application for the issue of the summons was received by the appropriate office;

“appropriate District Court Clerk” means, in relation to a summons, a District Court Clerk assigned to a District in which a Judge of the District Court has jurisdiction in relation to the offence to which the summons relates;

“appropriate office” means, in relation to a summons:

(a) the office of the District Court to which is assigned the criminal business of the District Court for the District in which a Judge of the District Court has jurisdiction in relation to the offence to which the summons relates or, where relevant, the office for the appropriate part of that District to which the summons relates (in this section, the “local office”), or

(b) any office of the Service designated by the Service for the purpose of receiving applications referred to in *section 218(1)* (in this section, the “processing office”);

“electronic means”, in relation to an application for a summons or the issue of a summons, includes the use of an information system (within the meaning of *section 2* of the *Electronic Commerce Act 2000*) under the control of a person other than—

(a) the person who applied for the summons or a person acting on his or her behalf, or

(b) the appropriate office;

“permitted prosecutor” means a person who has been given leave by the appropriate Judge under *section 219* to apply to the appropriate office for the issue of a summons;

“prosecutor”, when used without qualification, includes a qualified prosecutor and a permitted prosecutor, and a person acting on behalf of such a prosecutor;

“qualified prosecutor” means the Attorney General, the Director of Public Prosecutions, a member of the Garda Síochána or a person authorised by or under an enactment to bring and prosecute proceedings for the offence concerned (or a person authorised to act on behalf of any such person), each of whom may apply to the appropriate office for the issue of a summons as of right, and without leave

under *section 219*;

“summons” shall be construed in accordance with *section 217(1)*.

No effect on criminal procedure on indictment

216.— The pre-trial and trial procedures for criminal proceedings on indictment continue to be those prescribed by the Act of 1967 and other applicable law and those procedures are unaffected by this Act unless explicitly modified by a provision of this Act.

[New]

General⁹⁹

217.— (1) Without prejudice to the ability to commence criminal proceedings in respect of an offence in the District Court by charging a person who is before the Court with an offence or by accusing a person of an offence when he or she is before the Court, criminal proceedings in respect of an offence may be commenced in the District Court by:

[C3A 1986, s.1]
[CLCA 2004, s.49]
[CLMPA 2008, s.19]

(a) the issuing, as a matter of administrative procedure, by the appropriate office to a qualified prosecutor of the appropriate originating document (in this Chapter, a “summons”), following application by that qualified prosecutor for a summons in accordance with *section 218*, or

(b) the issuing, as a matter of administrative procedure, by the appropriate office to a permitted prosecutor who has been given leave by a Judge of the District Court, in an application made in accordance with *section 219*, of a summons, following application by that person for a summons in accordance with *section 218* and in accordance with an order made under *section 219*.

(2) Subject to *subsection (3)* and to any contrary provision in any other enactment, an application for a summons under *section 218*, or an application under *section 219* for leave to apply for a summons, shall be made for the purpose of commencing proceedings in the District Court in respect of an offence, within:

(a) two years from the date of the commission of the offence, where the proceedings are under regulations under the *European Communities Act 1972*, or

[ECAA 1993, s. 5(4)]

(b) 6 months from the date of the commission of the offence, in any other case.

[PSIA 1851, s 10(4)]

(3) *Subsection (2)* shall not apply to an application for a summons under *section 218*, or an application under *section 219* for leave to apply for a summons in respect of:

[CJA 1951, s. 7]

(a) a scheduled offence specified in the *First Schedule* to the *Criminal Justice Act 1951*, or

(b) an offence that is triable—

(i) at the election of the prosecution, either on indictment or summarily, or

(ii) either on indictment or, subject to certain conditions including the consent of the prosecution, summarily.

(4) Neither an application for a summons made under *section 218* nor an application for leave to issue a summons under *section 219* need specify or negative any exception, exemption, proviso, qualification, excuse or condition, whether it does or does not accompany the description of the offence complained of.

[CCOIA1877, s. 78]

⁹⁹ The intent is to integrate two methods of commencing summary criminal proceedings, the administrative summons procedure under the *Courts (No 3) Act 1986* and the complaint procedure under the *Petty Sessions (Ireland) Act 1851* into a single summons procedure, in effect replacing the complaint procedure with an application for leave to apply for the issue of a summons. See the Report, paragraph 2.88.

(5) Any provision made in or under any enactment passed before the passing of this Act relating to the time for making a complaint in relation to an offence shall apply, with any necessary modifications, in relation to an application under *section 218* or *section 219*.

(6) A summons referred to in *subsection (1)* shall—

(a) specify the name of the prosecutor or the person who applied for the issue of the summons,

(b) specify the date of the application for the summons,

(c) state shortly and in ordinary language particulars of the alleged offence (in this Chapter, the “offence alleged”), the name of the person alleged to have committed the offence and the address (if known) at which that person ordinarily resides (or, in the case of a corporate body, has its registered office or place of business),

(d) notify that person that he or she will be accused of that offence at a sitting of the District Court specified by reference to its date and venue and, so far as is practicable, the time during that sitting when the summons is scheduled to be heard,

(e) specify the name of an appropriate District Court Clerk (within the meaning of *section 216*), and

(f) where the summons is issued following an application for leave, specify the date of the application for leave to issue the summons and the name of the Judge of the District Court who gave leave.

(7) Particulars of the penalty to which a person guilty of the offence concerned would be liable are not required to be included in a summons referred to in *subsection (1)*.¹⁰⁰

(8) It is sufficient in any application for a summons or in any summons:

[PSIA 1851, s
38]

(a) to describe property belonging to or in the possession of several persons, whether as co-owners, partners, trustees or otherwise, as property belonging to or in the possession of one of those persons and others, without naming each of them;

(b) to describe property belonging to or in the possession of a person holding a public office or position as property belonging to the holder of that office or position or by any other general designation, without naming that person.

(9) The former procedure by which a person might lay information before or make a complaint to a Judge of the District Court and a Judge of the District Court might issue a summons directed to the person concerned in the information or against whom the complaint had been made, requiring the person to appear before the District Court on a date and at a place specified in the summons and answer to the complaint is abolished.

(10) References in any enactment to:

¹⁰⁰ Paragraphs 7.48 to 7.50 of the Commission’s *Consultation Paper on Search Warrants and Bench Warrants* [LRC CP 58-2009] invite submissions on allowing guilty pleas by post, by an arrangement analogous to that contained in section 12 of the *Magistrates’ Courts Act 1980* (England and Wales). Such a provision could be inserted here.

- (a) *section 10(4) of the Petty Sessions (Ireland) Act 1851*,
- (b) an application for a summons in relation to an offence, or
- (c) the laying of an information or making of a complaint to a Judge of the District Court in relation to an offence

shall be construed in accordance with *section 6*.

Application for summons

218.— (1) An application for the issue of a summons may be made to the appropriate office as of right, and without leave under *section 219*, by or on behalf of a qualified prosecutor.

[C3A 1986, s 1]
[CLCA 2004, s. 49]

(2) The making of an application referred to in *subsection (1)* may be effected by transmitting it to the appropriate office by electronic means, or by any other permitted means.

(3) The issue of a summons may be effected by transmitting it by electronic means to the prosecutor who applied for it or to a person acting on the prosecutor's behalf (in this section, "electronic issue"), or by any other permitted means.

(4) Where an application for the issue of a summons is made to—

(a) a local office, the summons may, instead of its being issued by that office, be issued by a processing office, or

(b) a processing office, the summons may, instead of its being issued by that office, be issued by the appropriate local office.

(5) In any proceedings—

(a) a document purporting to be a summons shall be deemed to be a summons duly applied for and issued, and

(b) the date specified in the summons as being the application date shall be deemed to be the application date,

unless the contrary is shown.

(6) In any proceedings in which the issue of a summons was by electronic means, a document that purports to be a reproduction in writing of the summons certified by the prosecutor as being a true copy of the summons shall, unless the contrary is shown, be evidence of the summons concerned.

(7) A summons duly issued under this Chapter is deemed for all purposes to be a summons duly issued pursuant to law.

Application for leave to issue summons

219.— (1) A person who is not a qualified prosecutor in relation to an offence may apply to a Judge of the District Court for leave to apply for a summons in relation to an offence and the appropriate Judge may make an order giving leave to that person to apply for the issue of a summons in accordance with *section 218* in relation to that offence, where the Judge is satisfied that there are reasonable grounds for believing:

[Replaces:
[PSIA 1851, ss.10, 11]
[DPA 1842, ss. 49 and 51]

(a) that another person has committed or is suspected to have committed an offence (whether triable on indictment, summarily or either on indictment or summarily) within the District to which that Judge of the District Court is assigned, or

(b) that another person has committed or is suspected to have committed an offence (whether triable on indictment, summarily or either on indictment or summarily) which is punishable by a Court in the State, and that other person is, or is residing, within the District to which that Judge of the District Court is assigned.

(2) An application under *subsection (1)* shall be supported by information given on oath and in writing by the applicant, and the Judge may, if he or she thinks fit, bind the applicant by Court bond to appear at the hearing of the proceedings on the alleged offence to prosecute the person or to give evidence, as the case may be.

(3) A person against whom a summons is issued pursuant to leave given in accordance with this section may obtain a copy of the application from the appropriate District Court Clerk.

(4) The appropriate District Court Clerk shall retain all original applications made in accordance with this section.

(5) A summons alleging an offence against a member of the *Gárda Síochána* acting in the course of his or her duty shall not be issued without an order under *subsection (1)*¹⁰¹.

Application for
warrant

220.— (1) A Judge of the District Court may issue a warrant in accordance with *section 138* (which, notwithstanding any other enactment, may be issued, executed or both issued and executed on a Sunday) to arrest a person and bring the person before the District Court in accordance with this section.

[Replaces:
PS(I)A 1851,
ss.11
DPA 1842, ss.
49 and 51]

(2) A warrant may be issued in accordance with *subsection (1)* on the application of a qualified prosecutor or a permitted prosecutor on whose application an order giving leave to apply for the issue of a summons has been made (and whether or not a summons has issued in relation to the offence in question) where the Judge is satisfied that there are reasonable¹⁰² grounds for believing that:

- (a) the person to whom the warrant relates has committed an indictable offence¹⁰³, and
- (b) it will not be sufficient or appropriate in the interests of justice for a summons to issue in the first instance to cause that person to attend before the District Court.

(3) An application under *subsection (2)* shall be supported by information given on oath and in writing by the applicant, and the Judge may, if he or she thinks fit, bind the applicant by Court bond to appear at the hearing of the proceedings on the alleged offence to prosecute the person or to give evidence, as the case may be.

(4) A person in respect of whom a warrant is issued pursuant to an application made in accordance with this section may obtain a copy of the application from the appropriate District Court Clerk.

(5) The appropriate District Court Clerk shall retain all original applications made in accordance with this section.

¹⁰¹ This may no longer be necessary as only a qualified prosecutor can issue a summons without leave.

¹⁰² Or “strong” or “substantial”.

¹⁰³ Or “an arrestable offence (within the meaning of section 2(1) of the *Criminal Law Act 1997*)”

Variations

221.— (1) A variance between a summons issued in accordance with this Chapter and the evidence adduced by the prosecutor on the hearing of the summons, as to the time when the offence is alleged to have been committed is not material, if the Judge is satisfied that the application for the summons or application for leave to apply for the summons was made within the time limited by *section 217(2)* or otherwise by law for that purpose.

[PSIA 1851, s 39]

[COCAI 1877, s 76]

(2) A variance between a summons issued in accordance with this Chapter and the evidence adduced by the prosecutor on the hearing of the summons, as to the place in which the offence is alleged to have been committed is not material, if the Judge hearing the summons is satisfied that the offence was committed within his or her District, or that the accused resides in his or her District or that the Judge otherwise has jurisdiction in relation to the offence by virtue of this Act or another enactment.

(3) If it appears to the Judge at the hearing of criminal proceedings in the District Court that the accused has been misled or disadvantaged in preparing his or her defence by any alleged defect in the substance or form of any Court document or document, or by any variance between a summons and the evidence adduced by the prosecutor on the hearing of the summons, the Judge may adjourn the hearing of the summons to another date, on such terms as he or she thinks fit.

Procedure on hearing of summons

222.— (1) The hearing of criminal proceedings being tried summarily in the District Court is subject to the provisions of this section.

[SJIA 1851, s 1]

[PSIA 1851, s 20]

[COCAI 1877, s 78]

(2) When the accused or his or her legal representative is present, the substance of the offence alleged (whether or not set out in a summons to which the proceedings relate) shall be put to him or her.

(3) If the accused pleads guilty to the offence (by admitting that the offence was committed as alleged), the Judge shall, if he or she is satisfied that the offence is a minor offence and sees no sufficient reason to the contrary, convict or make an order against the accused accordingly.

(4) If the accused does not plead guilty to the offence, the Judge shall hear any evidence adduced by the prosecutor in support of the complaint or accusation, then hear the defence and any evidence adduced on behalf of the defence, and then any evidence adduced by the prosecutor in reply, if the accused has given evidence other than as to character.

(5) On the conclusion of the evidence and any legal submission or argument, the prosecutor may make a closing submission and the defence may then make a closing submission.

(6) Where the description of the offence in an enactment which provides for the offence concerned contains any exception, exemption, proviso, qualification, excuse or condition, the prosecutor need not prove any such negative, but the accused may prove the affirmative, and the prosecutor may give evidence as to any such exception, exemption, proviso, qualification, excuse or condition, where evidence concerning it is given by the accused.

(7) When the accused or his legal representative either appears at the time and place appointed in the summons, or is brought before the Judge by virtue of a warrant, if the prosecutor (having in the case of a warrant had due notice of the arrest of the accused) does not appear, personally or by his legal representative, the Judge may either dismiss the summons, or may adjourn the hearing to a time and District Court venue fixed by him or her in accordance with this Act.

(8) The proper officer of the Court shall include in the Court's record any matter directed by the Judge or required by a party to be recorded.

(9) If proceedings on all of the summonses before the Court on any day have not been heard and determined, the Judge may adjourn the hearing of the remaining summonses in accordance with *section 169(2)*.

(10) On an adjournment, the Judge may, where permitted by law, remand the accused in custody or on bail by Court bond, with or without sureties, at the discretion of the Judge, conditioned for the accused's appearance at the time and District Court venue to which the hearing or further hearing is adjourned, or otherwise may release the accused unconditionally until the time to which the hearing or further hearing is adjourned.

Secondary offenders

223.— (1) Without prejudice to *section 7(1)* of the *Criminal Law Act 1997*, a person who aids, abets, counsels, or procures the commission of an offence which is punishable on summary conviction (in this section, a “secondary offender”), may be proceeded against and convicted, either together with the principal offender or before or after conviction of the principal offender.

[PSIA 1851,
proviso to s 22]

(2) A secondary offender shall be liable, on conviction, to the same punishment to which the principal offender is by law liable (unless by reason of his or her age, either the principal offender or the secondary offender is liable to a different punishment) and may be proceeded against and convicted either in the District where the principal offender has been or might be convicted, or in the District in which the offence of aiding, abetting, counselling, or procuring has been or is alleged to have been committed.

Hearing of summons
in *absentia* and
proceedings to set
aside

224.— (1) Where a summons has been issued under *section 218* and served on the person to whom it is directed by a means of service provided for in *section 240(1)* and that person does not appear at the time and place specified in the summons or at the hearing of the offence alleged to which the summons relates, the District Court may, if it considers it undesirable in the interests of justice, whether because of the gravity of the offence or otherwise, to continue the hearing in the absence of the person, adjourn the hearing to such time and District Court venue as the Court directs, to enable the person to be notified, in the manner the Court directs, of the adjourned hearing.

[CA 1991,
s.22(3)-(9)]

[CPA 2010, s.
36]

(2) Where the District Court has, under *subsection (1)*, adjourned the hearing of an offence alleged and the person to whom the summons is directed does not appear at the adjourned hearing, the District Court may, if the Court is satisfied that reasonable notice of the adjourned hearing was given to the person in accordance with *subsection (1)*,

(a) issue a warrant in accordance with *section 138(2)* for the arrest of the person to be brought before the District Court to answer the offence alleged, or

(b) proceed to hear the offence alleged in the absence of the person.

(3) Where, in accordance with *subsection (2)*, the District Court has proceeded to hear the offence alleged, to which a summons relates, and the person to whom the summons is directed (in this section, the “accused”) alleges that he or she did not receive notice of the summons or of the hearing to which the summons relates, the accused may apply to the District Court to have the proceedings set aside.

(4) An application under *subsection (3)* shall be made within 21 days after the summons or hearing comes to the notice of the accused or within any further period which the District Court, having regard to the circumstances, allows.

(5) Notice of an application under *subsection (3)* shall:

(a) be lodged with the District Court Clerk for the District in which the hearing to

which the summons relates has taken place,

(b) be in the form prescribed by rules of court, and

(c) be supported by evidence that the accused did not receive notice of the summons or of the hearing to which the summons relates until a time specified in his or her notice.

(6) The District Court may, on the hearing of an application under *subsection (3)*, grant or refuse the application and may direct that the offence alleged to which the application relates be heard again at a time and District Court venue directed by the Court.

Chapter 4: Fixed charge notices

Fixed charge
notices¹⁰⁴

225.— (1) In this section:

[New]

“fixed charge” means a charge (of whatever name) in money which, by or under any enactment, a public authority, or an officer or member of the staff of a public authority is empowered to require a person to pay (and in default of payment of which proceedings for an offence will be begun against the person), where the person has, in the opinion of that public authority, officer or member of staff, breached, or failed to comply with a requirement of:

(a) an enactment, or

(b) a licence, permission or authorisation given by a public authority to a person under or by virtue of an enactment (in this section, the “relevant breach”);

a “fixed charge system” means any system by or under an enactment authorising the imposition of a fixed charge in respect of a relevant breach;

(2) Where, under any fixed charge system, either:

(a) no appeal lies from a requirement to pay a fixed charge,

(b) an appeal lies from the fixed charge to an adjudicating body or person or other person from whose decision on the appeal no appeal lies to a Court,

then an appeal lies to a Court in accordance with this section.

(3) An appeal lies under *subsection (2)*:

(a) to the Judge of the District Court assigned to the District in which the person concerned was required to pay the fixed charge, where the amount of the fixed charge does not exceed €2,500, or

(b) to the Judge of the Circuit Court assigned to the Circuit in which the person concerned was required to pay the fixed charge, in any other case.

(4) Where there are before the same Court:

(a) criminal proceedings against a person concerning the matter which is the subject of a fixed charge which has not been paid, and

(b) an appeal by the person in accordance with *subsection (3)* against the fixed charge,

¹⁰⁴ See the Report, paragraphs 2.89-2.91.

the Court may hear and decide the appeal and the criminal proceedings on the same occasion, whether or not the appeal or, as the case may be, the criminal proceedings, falls within the class of business for which the Court is sitting on that occasion.

(5) Unless otherwise provided by the enactment pursuant to which a fixed charge is paid, a public authority, or officer or member of staff of a public authority shall account for and dispose of a fixed charge paid to it or to him or her in the manner provided in this Act for the accounting for and disposal of fines.

[FIA 1851, s. 7
(modified)]

Chapter 5: Information and Communications Technology

Interpretation: this
Chapter

226.—(1) In this Chapter:

[PA 2007, ss.
33, 34]
[CLMPA 2008,
s 26]

a “live television link” includes any communications technology facility which the Court is satisfied is of sufficient integrity and reliability to enable a person who is not present in the courtroom in which the hearing is taking place to see and hear the proceedings in that courtroom and to be seen and heard by persons present in that courtroom;

“prisoner” means a person accused in criminal proceedings or a person convicted of an offence, who is in a prison;

“specified application” means:

- (a) an application for bail or for free legal aid;
- (b) in relation to proceedings on indictment, any other application except
 - (i) an application made at the commencement of the trial,
 - (ii) an application relating to the arraignment or sentence of the prisoner,
 - (iii) an application relating to the capacity of the prisoner to stand trial,
 - (iv) an application to dismiss the charges against the prisoner on the ground that there is not sufficient evidence to put the prisoner on trial, or
 - (v) any other application that appears to the Court to require the presence of the prisoner at the hearing;
- (c) in relation to proceedings in the District Court, any other application to that Court before the date on which:
 - (i) a trial before the District Court begins or that Court accepts a plea of guilty, or
 - (ii) the accused is sent forward for trial or sentence, or
- (d) any application in appeal proceedings or any subsequent proceedings,

but does not include an application for a television link (participation) direction or an application to vary or revoke a television link (participation) direction;

“television link direction” means a television link (participation) direction or a television link (witness) direction;

“television link (participation) direction” means a direction by a Court authorising the participation of a party (including a prisoner) in a hearing by a live television link from a place other than the courtroom in which the hearing is taking place or will take place (including, where permitted by law, from a place outside the State);

“television link (witness) direction” means a direction by a Court authorising the participation of a witness in a hearing by a live television link from a place other than the courtroom in which the hearing is taking place or will take place

(including, where permitted by law, from a place outside the State).

Rules on use of information and communications technology

227.—Rules of court shall, where practicable and appropriate, support the efficient use of information and communications technology in the conduct of proceedings before Courts.

[New]

Use of television link: general conditions

228.—(1) A Court may only give a television link (participation) direction when the Court is satisfied that:

[PA 2007, ss. 33, 34]
[CLMPA 2008, s 26]

(a) facilities are or will be available to enable the party participating by television link to see and hear the proceedings at the hearing and to be seen and heard by those present in the courtroom in which the hearing is taking place;

(b) it is or will be possible for the party and his or her legal representative to communicate in confidence;

(c) it would not be unfair or prejudicial to a party or otherwise be contrary to the interests of justice to give such a direction, and

(d) where a prisoner is intended to participate by television link in an application in criminal proceedings, it would be appropriate to give such a direction having regard to —

- (i) the nature of the application,
- (ii) the complexity of the hearing, and
- (iii) the prisoner’s age, mental capacity and physical capacity.

(2) A Court may only give a television link (witness) direction when the Court is satisfied that facilities are or will be available to enable the witness participating by television link to see and hear the proceedings at the hearing and (save where the application of another enactment to the proceedings provides or requires otherwise) to be seen and heard by those present in the courtroom in which the hearing is taking place.

(3) A person may apply for a television link (participation) direction in criminal proceedings in accordance with *section 230* or any other enactment or may apply for a television link direction in civil proceedings in accordance with *section 229*.

(4) Where a Court gives a television link direction, then:

(a) in civil proceedings, any party or witness who participates in the proceedings by television link shall be deemed to be present in Court at the hearing concerned, and

(b) in criminal proceedings, where the provisions of this section and *section 230* are complied with in relation to the hearing of a specified application, the prisoner shall be deemed to be present in Court at the hearing of the specified application for the purpose of any enactment or rule of law or order of any Court requiring the presence in Court of an accused or convicted person during criminal proceedings against him.

(5) Where a Court refuses an application for a television link direction, or refuses an application to revoke a television link direction, it shall give its reasons for the refusal.

Use of television link: civil proceedings

229.— (1) A Court may, in any civil proceedings, give a television link direction of its own motion or on the application of a party, and having heard the parties.

[CLMPA 2008, s.26]

(2) Nothing in this Chapter limits the power of a Judge to transfer proceedings under *section 27* of the *Children Act 1997*.

Use of television link: applications involving prisoners

230.— (1) This section applies to applications to Court in criminal proceedings by or concerning a prisoner, but only where:

[PA 2007, ss 33 and 34]

- (a) the application is a specified application;
 - (b) the application is made or to be made by or on behalf of the Director of Public Prosecutions or the prisoner, and
 - (c) the prisoner is legally represented, has obtained legal advice, or has been given the opportunity of obtaining or being provided with legal advice.
- (3) An application for a television link (participation) direction in relation to any or all specified applications in the criminal proceedings involving the prisoner may be made *ex parte* to the Judge, or a Judge, of the Court concerned by or on behalf of the Director of Public Prosecutions or the prisoner and the Judge may give a television link direction in relation to any or all specified applications in those proceedings.
- (4) The Judge, if he or she considers it desirable in the interests of justice, may require notice of the application for a television link (participation) direction to be given to the other party.
- (5) The Court may, of its own motion or on application by or on behalf of the prisoner, at any time revoke a television link (participation) direction under *subsection (3)* where a condition in *section 228* for the giving of a television link (participation) direction is no longer met in the prisoner's case.
- (6) Nothing in this section affects the right of a prisoner to be present during any criminal proceedings other than the hearing of a specified application.
- (7) This section does not affect the making of any application for, or the giving of, a television link (witness) direction in any criminal proceedings under any provision of any enactment.
- (8) This section also applies to an application to a Court in criminal proceedings where the accused or person convicted of the offence concerned is in a remand centre, or a children detention school, within the meaning of the *Children Act 2001* or, where the Minister for Health and Children, after consultation with the Minister, by order so directs, a designated centre within the meaning of the *Criminal Law (Insanity) Act 2006* and has effect accordingly, with the necessary modifications.

No limitation of power to receive evidence by television link in criminal proceedings

231.— Nothing in this Chapter limits the power of a Court in criminal proceedings to receive evidence by live television link in accordance with the *Criminal Evidence Act 1992* or any other enactment.

[New]

Chapter 6: Service of Court documents

Interpretation: this Chapter

232.— (1) In this Chapter—

[New]

“Court document” means any application notice or other Court document;

“electronic communication” and “information system” each has the same meaning as in *section 2(1)* of the *Electronic Commerce Act 2000*;

“electronic service” means delivery by electronic communication in circumstances permitted by, and in accordance with any conditions imposed by, rules of court for the Court concerned;

“method” includes manner, means and mode;

“other Court document” means any document, other than an application notice, relating to civil proceedings which is required by any enactment or rules of court to be served on a party or person, and includes any notice, order or witness summons;

“personal service” of a document shall be effected when a person authorised on behalf of the party at whose instance the document is served:

Derived from:
[PSIA 1851, s 12(3)]
[CBCIA 1851, s 65]
[CLPAAI 1853, s 32]

- (a) delivers a copy of the document, at any place, to the person to be served, or
- (b) delivers a copy of the document, at the usual place of residence of the person to be served, to another person of full age, who is:
 - (i) the wife, husband, child, father, mother, brother, sister, or another relation of the person to be served,
 - (ii) the civil partner of the person to be served, or
 - (iii) also residing at that place, or

(c) delivers a copy of the document, at the place of business of the person to be served, to another person of full age, who is the employer or an employee of the person to be served, and

(d) in the case of service of an original document (other than an original to which *section 17* of the *Electronic Commerce Act 2000* applies), shows the original document to the person to be served (or, as the case may be, to the person to whom the copy is delivered) or gives that person an opportunity to see the original document¹⁰⁵;

“registered post service” of a document shall be effected by sending the document by registered prepaid post in an envelope addressed to the person to be served at his or her usual or last known residence or place of business in the State;

[CA 1971, s 23]

“service on a solicitor on record” of a document shall be effected by sending the document by a method permitted by rules of court to the place of business in the State of the solicitor on record for the person to be served in the proceedings to which the document relates;

“solicitor on record” for a person means a solicitor who has either:

- (a) notified the appropriate court office or court officer in the manner for the time being prescribed by rules of court that he or she is acting for the person in the proceedings concerned, and that notification has not been withdrawn or countermanded, or
- (b) notified the person or party intending to serve an originating document or other Court document (or that person’s or party’s solicitor) that he or she has the person’s authority to accept service of the originating document or other Court

¹⁰⁵ This provision deals with the rule of practice (see e.g. O. 9, rr. 2 and 3, Rules of the Superior Courts 1986) that a person served with a summons must be shown the original or duplicate. In practice, the “original” of an originating document, sealed with the seal of the court (High and Circuit Courts) is “issued” to the plaintiff or moving party, shown on service and ultimately (in principle) brought back into court at the trial. It might be said that there is no longer a practical imperative that the plaintiff be issued an original document under seal of the court (or that the original should always be retained by the moving party) because a copy endorsed by the court office as such should be sufficient for service. The intent here is therefore to facilitate the ultimate abandonment by rules of court of any requirement for a moving party to have possession of an “original” originating document, whether to enable valid service or for any other purpose.

document concerned, or such documents generally on behalf of the person, and that notification has not been withdrawn or countermanded.

Times at which service may be effected

233.— Save as otherwise directed or permitted by the Court before which the civil proceedings are brought, where any Court document is served on a Sunday, Good Friday, or Christmas Day or between the hours of midnight and 6 o'clock in the morning, the Court document shall be deemed to be served on the next working day.¹⁰⁶

Derived from:
[PSIA 1851, s 12(3)]
[CBCIA 1851, s 65]
[CLPAAI 1853, s 32]

Registered post service: presumptions

234.— (1) Where an envelope containing a Court document or a copy of a summons is addressed to the person to be served at his or her usual or last known residence or place of business in the State, registered and posted:

[CA 1991, s 22]

(a) the Court document or copy summons shall be deemed to have been received by the person to whom the envelope was addressed at the time at which the envelope would be delivered in the ordinary course of post, and

(b) where evidence is given in the form prescribed or permitted by rules of court that the envelope containing the Court document or copy summons was so addressed, registered and posted, the document shall be deemed to have been served by registered post service on the person concerned,

unless it is proved that the Court document or copy summons was not delivered.

(2) Notwithstanding *subsection (1)*, where an envelope containing a Court document or a copy of a summons which has been addressed, registered and posted in accordance with *subsection (1)* is returned to the sender, the Court document or copy summons shall be deemed conclusively not to have been served on the person to whom the envelope was addressed.

Electronic service: presumptions

235.— (1) Where an information system used by a person upon whom electronic service of a Court document which is, or which is contained in, an electronic communication has been effected sends an electronic communication to the sender confirming that the communication which is, or which contains, the Court document has been received, seen, opened or read by the person concerned, the Court document shall be deemed to have been served by electronic service on the person concerned, unless it is proved that the Court document was not received, seen, opened or read by the person concerned.

[Based on ECA 2000, s 21(2) and (3) and CA 1991, s 22]

(2) Where an information system used by a person upon whom electronic service of a Court document which is, or which is contained in, an electronic communication has been effected sends an electronic communication to the sender confirming that the communication which is, or which contains, the Court document has not been received, seen, opened or read by the person concerned, the Court document shall be deemed conclusively not to have been served on the person concerned by electronic service.

Powers of Court concerning service

236.— (1) A Court may, in any case in which it considers it appropriate, make an order authorising the service of a Court document otherwise than by an authorised method of service (in this Chapter, referred to as “substituted service”)

[Derived from:
[PSIA 1851, s 12(3)]

¹⁰⁶

At present, personal service of a Court document on a Sunday, Good Friday, or Christmas Day or between the hours of midnight and 6 o'clock in the morning is prohibited and purported personal service during any such period is void. Registered post documents are unlikely to be delivered during any such period, but documents served electronically may be so delivered. The revision proposes alignment of the provision with the position in England and Wales (Part 6 of the Civil Procedure Rules 1998) where there is no specific restriction on when a document may be served, but when the document is served after close of business on a non-business day (broadly equivalent to a “working day” in the *Interpretation Act 2005*) it is to be treated as served on the next business day.

or for the substitution for service of notice by advertisement or otherwise as it thinks proper.

[CBCIA 1851, s 65]
[CLPAAI 1853, s 32]]

(2) A Court in considering:

(a) an application relating to the service, or giving of notice, of any Court document, or

(b) an application or matter heard in the absence of a party, or

(c) an application to set aside any decision taken by a Court, or a judgment given in a court office in default of the taking of any step in proceedings,

shall have regard to the reasonableness of the efforts made by the moving party to serve any Court document or to notify any other party of the proceedings, application or matter, and to the opportunity afforded to the responding party to become aware of and respond to the proceedings, application or matter.

(3) A Court may:

(a) inquire into the circumstances in which a Court document was served or purportedly served,

(b) set aside service of a Court document,

(c) deem good any service effected of a Court document, or

(d) deem sufficient any notice given of the fact and content of a Court document.

Service of Court documents in the State: general

237.— (1) A Court document may be served at any place in the State.

[CLPAAI 1853, s 31]
[CA 1964, s. 7]

(2) Subject to the provisions of this section and of any enactment requiring service of any such document on a person by a particular method, a Court document in civil proceedings may be served in the State by any of the following methods (each in this Chapter referred to as an “authorised method of service”):

(a) by personal service on the person to be served;

(b) by registered post service on the person to be served;

(c) by electronic service on the person to be served;

(d) by service on the solicitor on record for the person to be served;

(e) where the person to be served is a company, by the method provided by *section 379* of the *Companies Act 1963*;

(f) where the person to be served is a public authority or other corporate body which is neither a company nor a natural person, by delivering the document to the secretary of the public authority or corporate body at its principal office or by registered post service on the secretary of the public authority or corporation at its principal office.

[CLPAAI 1853, s 33]

(3) Rules of court may not prohibit or restrict the use of an authorised method of service generally, but may require service of particular Court documents, service on particular persons (including any child or any adult who lacks sufficient capacity to conduct or defend proceedings on his or her own account, whether or not such capacity has been decided by a Court) on persons acting in a particular capacity (including, without limitation, on the trustees of a trust, the members of a partnership or the members of an unincorporated association), service in

particular classes of proceedings or service in particular circumstances to be effected by a particular authorised method of service.

(4) Nothing in this section prevents rules of court from permitting service of Court documents by a method other than an authorised method of service.

(5) Subject to the provisions of any enactment requiring service of a Court document on a person by particular means, and to the provisions of this section, where a person attempts unsuccessfully to serve a Court document in civil proceedings by any authorised means of service, the person may serve that Court document by any other authorised means of service.

(6) Service of a Court document may be proved in the manner permitted by rules of court or by a Court.

Giving notice outside
the State of Court
documents

238.— (1) A Court document may be served, or notice given of a Court document outside the State: [New]

(a) as of right, and in accordance with rules of court, where jurisdiction over the proceedings to which the Court document relates is conferred on a Court in the State under or by virtue of a European Union enactment or Convention;

(b) with the permission of the Court before which it is intended to begin proceedings, and in accordance with the order of the Court giving permission and with rules of court, in any other case.

(2) Notice of the issuing of a Court document may, subject to the permission of the Court before which those proceedings have been issued, where required, be served on a person outside the State:

(a) in the case of service to which the Service Regulation applies, by any method authorised in accordance with that Regulation or authorised by any enactment giving further effect in the State to that Regulation;

(b) in the case of a Court document for service in a place in which the Service Convention is in force, by any method for the time being permitted by any enactment giving further effect in the State to the Service Convention;

(c) by any other method directed by the Court which has given permission for such service, or

(d) by any other method permitted by the law of the place in which service is to be effected for the service of foreign Court documents.

Service of foreign
Court documents:
general

239.— A document in civil proceedings pending before a court outside the State may be served on a person within the State: [New]

(a) by personal service of the document effected by a person authorised on behalf of the party at whose instance the document is served;

(b) by registered post service from within the State on the person to be served;

(c) by electronic service from within the State on the person to be served;

(d) where the person to be served is a company, by the method provided by *section 379* of the *Companies Act 1963*;

(e) where the person to be served is a public authority or other corporation which is neither a company nor a natural person, by delivering the document to the secretary of the public authority or corporation at its principal office or by

registered post service on the secretary of the public authority or corporation at its principal office;

(f) in the case of a document to which the Service Regulation applies, by any other means authorised in accordance with that Regulation or with any enactment giving further effect in the State to that Regulation;

(g) by any other means for the time being permitted by the Rules of the Superior Courts (including such rules giving further effect in the State to the Service Convention) whether generally, or in the case of a particular category of originating documents or other Court documents, or in the case of service on a particular class of persons.

Service of summonses and other documents in criminal proceedings

240.— (1) Without prejudice to the provisions of any enactment authorising or requiring the service of summonses by a particular method in particular cases or on particular persons, a summons issued under *section 218* may be served upon the person to whom it is directed:

[PSIA 1851, s.12]
[CA 1991, s.22]

(a) by personal service of a copy of the summons;

(b) by registered post service of a copy of the summons, or

(c) by delivery of a copy of the summons to the person by any other method of delivery which provides a record of delivery specified in the District Court Rules (in this Chapter, “recorded delivery service”)¹⁰⁷.

(2) Service of a copy of a summons may be proved in the manner permitted by rules of court.

(3) The provisions concerning service of documents in criminal proceedings on indictment continue to be those prescribed by the Act of 1967 and other applicable law and those provisions are unaffected by this Act.

Chapter 7: Commencement of civil proceedings, pleadings and particular defences

Interpretation: this Chapter

241.— In this Chapter:

[New]

“next friend” means a person commencing proceedings in accordance with *section 242(7)*;

“pleadings” includes all documents, of whatever name, which rules of court require or permit a party to deliver to, or serve on, any other party or to deliver to the Court before any hearing in civil proceedings.

Commencement of civil proceedings

242.— (1) Civil proceedings shall be commenced before a Court:

[New]

(a) by issuing the document prescribed by the appropriate rules of court for civil proceedings of that kind and containing the information required by those rules, or

(b) where required or permitted by the appropriate rules of court, by the practice of the court or by an order of the Court, by making to the Court, without or before issuing any document, an application required or permitted by those rules of court or by the Court.

¹⁰⁷ This abolishes the “post box service” mandated by section 22 of the *Courts Act 1991*: see the Report, paragraph 2.97.

(2) A Court shall be seised for all purposes of civil proceedings which have been commenced in accordance with *subsection (1)*.

(3) The document referred to in *subsection (1)(a)* must, in every case, include:

[CLPAAI
1853, ss 9-12]

(a) the name and last known place of residence or place of business of each applicant and each respondent;

(b) the name and place of business of any solicitor who issued the application notice on behalf of an applicant;

(c) where the application is for a liquidated sum by way of damages, particulars of any demand made, particulars of any and every credit to which each respondent is entitled, and the amount of the balance sought, and

(d) any other information required by an Act of the Oireachtas or rules of court for the kind of application concerned.

(4) In *subsection (3)*, the place where the registered office of a company is situated shall be deemed to be the place of business of that company.

[CLPAAI
1853, s 16]

(5) No document referred to in *subsection (1)(a)* shall be invalid on account of a technical error or omission.

(6) Rules of court may provide:

[CLPAAI
1853, ss 28 and
29]

(a) that a document referred to in *subsection (1)(a)* ceases to have effect on the expiry of a specified period of time, or where a particular step (including service of that document) has not been taken within a specified period of time, and

[DIA 1840, s 7
(modified)]

(b) for the renewal of a document referred to in *subsection (1)(a)* before or after it ceases to have effect,

and no application shall be defeated by operation of any enactment concerning limitations where the document referred to in *subsection (1)(a)* (including such a document issued before the commencement of this section) is renewed in accordance with such rules.

(7) A person (in this section, a “next friend”) may commence proceedings on behalf of:

[INFA 1285]

(a) a child, or

(b) an adult party who lacks sufficient capacity to conduct proceedings on his or her own account (whether or not such capacity has been decided by a Court) and who does not otherwise have a person acting in relation to him or her who is responsible for performing that function,

[CLPAAI
1853, s 50]

but the Court may make an order removing a person as next friend or appointing another person as next friend.

(8) In all applications by a person interested or claiming to be interested in any question of the construction or interpretation of a will, deed or written instrument, the application may be made by way of a special case on a question for the decision of the Court, any and all persons (including the representative of any such person) interested in the decision of the question may join or concur in the application.

[CIA 1867, s
111]

(9) Nothing in this Act limits the particular provisions of any enactment which:

(a) make provision for the form, content or verification of a document referred to in *subsection (1)(a)* or of any pleading in particular proceedings, or

(b) contain requirements which must be met before particular proceedings may be commenced,

and any such provision which is neither repealed by this Act nor inconsistent with the provisions of this Act, remains in force and continues to apply to proceedings brought before or after the commencement of this Act.

Pleadings in civil proceedings

243.— (1) Rules of court may, subject to this Act, provide for the name, content and form of pleadings, and the time at which any pleading is required or permitted to be served or delivered.

[AJA 1707]

(2) An applicant's pleadings in civil proceedings in a Court other than the District Court should be sufficient to enable a respondent to understand the case that applicant makes against him or her and the material facts on which that applicant relies.

(3) A respondent's pleadings in civil proceedings in a Court other than the District Court should be sufficient to enable an applicant to understand the nature of that respondent's defence to the applicant's case and any counterapplication made by that respondent against that applicant and the material facts on which that respondent relies in each case.

(4) A pleading between or among parties other than an applicant and a respondent in civil proceedings in a Court other than the District Court should be sufficient to enable the party receiving the pleading to understand the case made, or indemnity, contribution or other remedy sought, by the party pleading against the party receiving the pleading.

(5) A Court may exercise powers of amendment referred to in *section 94(1)*, among other purposes, for the purpose of ensuring that the Court's decision reflects or will reflect the rights and obligations of the parties and that no right or obligation is defeated by any technical defect, deficiency or oversight, which would not mislead any other party, in any document referred to in *section 242(1)(a)* or in any pleading.

[CBCIA 1851, s 105]
[CLPAAI 1853, s 16]

(6) Where a party asserts that the ascertainment of the rights and obligations of the parties is contingent on some future event, the Court may, on the application of a party or of its own motion:

(a) adjourn the proceedings to a date after the occurrence of that event, or

(b) stay the proceedings pending the occurrence of that event.

Perpetuation of witness evidence where an application is contingent on a future event

244.— (1) Where a person (in this section, the "intending applicant") asserts a right to a benefit which is contingent on a future event and there is a real risk that the evidence of a person (in this section, the "witness") which is material to establishing the benefit will not be available after that event has occurred, a Court may take the evidence of the witness in accordance with this section.

[PTA 1842]

(2) Where *subsection (1)* applies, the intending applicant may begin proceedings in the appropriate Court to establish the right to the benefit, notwithstanding that the grounds of his or her application have not crystallised, and the Court may take or authorise the taking of the evidence of the witness either:

(a) orally in the presence of every other party to the proceedings and of any other person the Court directs should be present, and any party or person the Court directs may cross-examine the witness, or

(b) on affidavit, provided that the affidavit shall be served on every other party to the proceedings and on any other person the Court directs, each of whom may reply to the evidence given on affidavit in accordance with the directions of the Court.

(3) The Attorney General shall be a party to any proceedings issued in accordance with *subsection (1)* where the benefit claimed affects the State.

(4) The record of any evidence taken in accordance with *subsection (2)* shall be in the form the Court directs, and shall be delivered to and preserved by the proper officer of the Court.

Decision of true ownership in proceedings for possession of land

245.— In proceedings where possession of land is in issue, the High Court or the Circuit Court may, on such terms or conditions as to it seem just, inquire into and decide the true ownership of the land¹⁰⁸.

[CLPAAI 1856, s 89]

Indemnity where loss of instrument raised

246.— (1) In proceedings on an instrument, the Court may order that the loss of the instrument shall not be set up against any application without an indemnity, on such terms or conditions as to it seem just, against any claim of any other person on the instrument.

[CLPAAI 1856, s 90]

(2) In this section, “instrument” has the same meaning as in *section 3* of the *Land and Conveyancing Law Reform Act 2009*.

Non-abatement of proceedings on death or bankruptcy

247.— (1) The death of a party does not cause proceedings to abate, where the cause of action survives.

[CLPAAI 1853, ss 155-162]
[CCOIA 1877, s 64]

(2) Where there are two or more applicants or respondents, and one or more of them dies, if the cause of action survives to a surviving applicant, or against a surviving respondent, the proceedings may proceed by a surviving applicant against a surviving respondent.

(3) Where a sole applicant or sole surviving applicant dies, where the cause of action survives, the personal representative of that applicant may, by leave of the Court or a Judge, continue the proceedings as if he or she were originally the applicant.

(4) Where a sole respondent or sole surviving respondent dies, where the cause of action survives, the applicant may continue the proceedings against the personal representative of that respondent.

(5) The bankruptcy of the applicant in proceedings which might be maintained for the benefit of the creditors of the applicant does not cause the proceedings to abate, but the person responsible for the applicant’s estate on bankruptcy may elect to continue or to abandon the proceedings and, if he or she elects to continue the proceedings, the proceedings continue as if that person were originally the applicant.

Tender of amends

248.— (1)¹⁰⁹ Rules of court which provide for the making of a tender of amends in civil proceedings (other than civil proceedings for the tort of defamation) in accordance with *section 105(3)(b)* may require that to be permitted to make a

Derived from:
[TA 1634, s 16]

¹⁰⁸ Section 89 of the *Common Law Procedure Amendment Act Ireland 1856* provides that the Court can inquire into the true title in an action for ejectment on the title; the draft broadens and modernises this principle.

¹⁰⁹ The special defence of tender of amends appears to survive in trespass, under the *Trespass Act 1634*, section 16, though it seems to have fallen into disuse in practice. Such a defence is established in defamation cases by the *Defamation Act 2009*. The intent of this draft section is to support rules of court in making a tender of amends procedure available in other cases where it may be useful.

tender of amends, a respondent must, where appropriate:

(a) confirm that he or she disclaims any interest in any land or goods of the applicant to which the proceedings relate and acknowledges the applicant's interest in the land or goods in question,

(b) confirm that any interference by the respondent with any interest in any land or goods of the applicant was not intended to cause loss or damage to the applicant,

(c) offer to communicate any such acknowledgement to any third party,

(d) offer a specified amount of compensation, offer another specified remedy or offer other specified action by way of amends, or

(e) offer to pay the applicant's legal costs of the proceedings to date.

(2) Rules of court referred to in *subsection (1)* may permit a respondent who has made a tender of amends which has not been accepted to apply summarily to the Court for a decision in terms of the tender of amends.

(3) Where a Court considers that it was unreasonable of an applicant in the circumstances not to accept a tender of amends, it may make an order in terms of the tender of amends, order the applicant concerned to pay the respondent's legal costs of the summary application and order that any legal costs due to the applicant on foot of the order in terms of the tender of amends be set off against the legal costs due to the respondent.

Chapter 8: Appearances in Court

| | | |
|-------------------|---|--|
| Mode of address | 249. — When conducting judicial business, Judges shall be addressed in the manner provided by rules of court. | [CJA 1924, ss.10, 38] |
| Right of audience | 250. — (1) The following persons have a right, without application for the permission of the Court for that purpose, to appear and address the Court in proceedings on behalf of a party: (a) the party in person; (b) a practising barrister instructed by a solicitor on record for a party; (c) a practising solicitor on record for a party (including such a solicitor who is a member of a firm of solicitors or who is employed by a firm or by another solicitor); (d) a visiting lawyer, having the same right of audience as a lawyer established in the State by virtue of <i>Regulation 3</i> of the <i>European Communities (Freedom To Provide Services)(Lawyers) Regulations 1979</i> (S.I. No. 58 of 1979), who is acting for a party; (e) a registered lawyer, having the same right of audience as a practising barrister or a solicitor qualified to practise by virtue of <i>Regulation 10</i> of the <i>European Communities (Lawyers' Establishment) Regulations 2003</i> (S.I. No. 732 of 2003), who is acting for a party; (f) in summary proceedings at the suit of the Director of Public Prosecutions in respect of an offence, the Director of Public Prosecutions or a member of the Garda Síochána appearing on behalf of or prosecuting in the name of the Director of Public Prosecutions; | [CCOIA 1877, s 68 (modified)] [CA 1971, s 17] |

(g) in proceedings in the District Court to which the Revenue Commissioners are a party or an officer of the Revenue Commissioners is a party, an authorised officer of the Revenue Commissioners¹¹⁰;

(h) any other person whom rules of court prescribe shall have such a right in any case.

(2) In this section, “party” includes a person applying to be heard in the proceedings.

(3) In small claims proceedings (within the meaning of *section 269*):

(a) a company or other corporate body may be represented by a director, member or employee duly authorised in that regard,

(b) the trustees of a trust or members of a partnership may be represented by a trustee, member or employee duly authorised in that regard,

(c) an unincorporated association may be represented by a trustee, member or employee duly authorised in that regard,

who is not within a category of persons referred to in *subsection (1)*.

(4) Rules of court may regulate the exercise of a right of audience in proceedings in any Court conferred by this section or by the Court.

(5) Nothing in this section limits the power of a Court:

(a) to authorise a person to address the Court in proceedings on behalf of a party where necessary in the interests of justice,

(b) to require evidence that a person is within a category of persons referred to in *subsection (1)*, or

(c) to control proceedings before that Court.

Court attire

251.— (1) Subject to *subsection (3)*, Court attire for Judges shall be as provided in rules of court. [New]

(2) Rules of court may, subject to *subsection (4)*, prescribe the form of attire to be worn by other persons when appearing in a professional capacity before a court.

(3) Judges shall not wear wigs or gowns when sitting:

(a) in the High Court for the purpose of hearing and determining family proceedings, civil partnership law proceedings or cohabitancy proceedings,

[JSFLRA 1989,
ss. 33, 45]
[CPCROCA
2010, ss. 144,
198]

(b) when sitting in the Circuit Family Court,

(c) when sitting in the Circuit Court for the purpose of hearing and determining civil partnership law proceedings or cohabitancy proceedings, or

(d) when sitting in the District Court for the purpose of hearing and determining family proceedings, civil partnership law proceedings or cohabitancy proceedings.

¹¹⁰ O. 6, r. 1, District Court Rules 1997.

(4) No barrister, solicitor or person mentioned in *section 250(1)(d)* or *section 250(1)(e)* shall wear a wig or gown when appearing in a Court in any proceedings mentioned in *subsection (3)*.

(5) Neither barrister, or solicitors nor persons mentioned in *section 250(1)(d)* or *section 250(1)(e)* are required to wear any wig of a ceremonial type when appearing in any Court. [CCOA 1995, s.49]

Informality

252.— Family proceedings, civil partnership law proceedings and cohabitancy proceedings in any Court shall be as informal as is practicable and consistent with the administration of justice. [JSFLRA 1989, ss. 33, 45] [CPCROCA 2010, ss. 144, 198]

Chapter 9: Court fees and funds under Court control

Court fees

253.— (1) The Minister may, with the consent of the Minister for Finance, make an order (which may be referred to as a “Court fees order”) for the purposes of this section. [CJA 1936, ss. 65, 66] [LRIA 1871, ss. 109-114] [CLMPA 2008, s 9]

(2) In this section:

a “Court fee” means any fee mentioned in *paragraph (a)* or *paragraph (b)* of *subsection (3)* chargeable under a Court fees order, and

a “fund in Court” means any money or financial instrument for the time being lodged in, or under the control of, a Court, pursuant to any order of Court or enactment (including rule of court).

(3) A Court fees order may prescribe:

(a) fees to be charged in respect of any business in any court office or in connection with any business before any Court;

(b) fees to be charged, in every financial year commencing after the making of the order, in respect of the total value or income, or both, of any fund in Court during that year, including such a fund which is the property of a person who is a ward of Court¹¹¹ or otherwise under the personal care and protection of a Court, and

(c) the party or person by whom a Court fee is to be paid or against whose fund in Court a fee is to be charged, and the occasion on which a Court fee is to be paid.

(4) A Court fees order may prescribe general or special exemptions from the payment of Court fees.

(5) The Service shall collect or recover Court fees in accordance with the provisions of the Court fees order.

(6) All Court fees shall be paid into or disposed of for the benefit of the Exchequer in the manner the Minister for Finance directs.

(7) The Service may—

(a) determine permitted means of payment of any Court fees,

(b) determine the means by which Court fees chargeable against funds in Court

¹¹¹ This provision may require revision in the context of the published provisions of the *Mental Capacity Bill*: see note 1, above.

are recovered, and

[PSCIA 1858, s 19]

(c) determine the form in which payment or recovery of any Court fees shall be recorded or received.

(8) Where a Court, having regard to the circumstances of a person, is satisfied that the person's right of access to the Court would be unreasonably inhibited by the requirement to pay a Court fee, the Court may order that a fee paid by the person be remitted, or that the person be exempt from the payment of a Court fee that would otherwise be payable by him or her in the proceedings concerned¹¹².

Payments into and out of Court and by court officers¹¹³

254.— (1) A payment or lodgment of money in or into a Court which is required or authorised by any enactment or by an order or direction of a Court may be effected by payment to the Service for the account of the Court Funds Office accompanied by particulars of the proceedings or matter to which the payment relates and a receipt for any such payment or lodgment given by a member of the staff of the Service assigned to the Court Funds Office authorised in that behalf shall be valid for all purposes.

[New]
[COCAI 1877, s 39]

(2) The Service shall effect through the Court Funds Office any payment of money out of a Court ordered or directed by a Court or otherwise required or authorised by law.

(3) A lodgment or delivery in or into a Court of property other than money required or authorised by any enactment or order or direction of a Court may be effected by delivery of the property (if moveable) to the Service at the Court Funds Office or by delivery of the property to a member of the staff of the Service assigned to the Court Funds Office authorised in that behalf accompanied by:

(a) particulars of the proceedings or matter to which the payment relates and

(b) any document of title to the property and, where necessary, any instrument or document necessary and sufficient to transfer title to the property to the Service as agent of the Court,

and a receipt for any such lodgment or delivery given by a member of the staff of the Service assigned to the Court Funds Office authorised in that behalf shall be valid for all purposes.

(4) Where a Court determines an entitlement to ownership of any property mentioned in *subsection (3)* and the order of the Court is not sufficient to vest the property in the person entitled, a member of the staff of the Service assigned to the Court Funds Office authorised in that behalf may execute any document or instrument, or take any other action, necessary to give full effect to the Court's decision.

(5) Any money or other property lodged in Court which is required or authorised by any enactment or order or direction of a Court to be invested shall be invested in accordance with the enactment concerned or otherwise in accordance with law or, as the case may be, in accordance with the order or direction of the Court concerned.

¹¹² This provision arises from section 19 of the *Petty Sessions Clerk (Ireland) Act 1858* and is applied in the District Court by O 12, r 9, District Court Rules 1997. This rule could be applied in all jurisdictions: see also *MacGairbhith v Attorney General* [1991] 2 IR 412.

¹¹³ This provision is intended to address generally the arrangements for payment into and out of court offices and anticipates the establishment of a Court Funds Office, but would require adjustment on the publication of any relevant Bill.

(6) Any tax due on any money or other property lodged in Court or its proceeds shall be paid in accordance with law.

(7) A Court in which any money or other property has been lodged may, on the summary application of a person sufficiently interested, make an order restraining the payment or transfer of that money or other property, and may discharge or vary any such order as the Court thinks fit.

(8) A provision of any enactment or, unless the Court for special reason otherwise directs, a provision of an order of a Court requiring any payment to be made to, through or by a court officer in connection with civil proceedings shall be construed as including a provision that any such payment may also be made to, through or by a member of the staff of the Service assigned to the Court Funds Office authorised in that behalf.

(9) A provision of any enactment which authorises or requires the commencement of proceedings or the making of an application in existing proceedings before a Court by a court officer for the purpose of recovering any money in connection with civil proceedings shall be construed as including a provision that any such proceedings may be begun or application made by the Service or by a member of the staff of the Service assigned to the Court Funds Office authorised in that behalf.

Deposit of property
in Court¹¹⁴

255.— (1) In this section, the “appropriate Court” is:

[PDBA 1892]
[PDA 1846]
[COCAI 1877,
s 38]

(a) where the value of the property concerned does not exceed the District Court damages limit, the District Court for the District in which the property is located or, at the election of the holder, the District in which the holder resides or carries on business; or

(b) where the value of the property concerned does not exceed the Circuit Court damages limit, the Circuit Court for the Circuit in which the property is located or, at the election of the holder, the Circuit in which the holder resides or carries on business, or

(c) in any other case, the High Court.

(2) This section is without prejudice to

(a) any provision of another enactment which authorises the payment of any money into or out of a Court, and

(b) the law of interpleader, and

(c) any provision of an enactment concerning dormant funds.

(3) Where:

(i) a person (in this section, the “holder”) has custody or possession of any property (other than land) on behalf of another person, whether by virtue of any contract or fiduciary or other duty, and

(ii) the holder is required to, or desires to, transfer custody or possession of the property to the person entitled, but

(iii) the holder is unable, having made reasonable inquiries, to establish the

¹¹⁴ This provision is intended to clarify the existing law.

identity or whereabouts of the person so entitled,

the holder may, in accordance with rules of court, pay or deliver the property concerned into the appropriate Court.

(4) A person claiming to be the person entitled to all or any part of property paid or delivered into Court in accordance with *subsection (3)* may apply to the appropriate Court at any time while the property remains in Court, for the payment out or delivery to him or her of all or any part of that property.

(5) Where, under or by virtue of an enactment, any money or other security is required to be given as security for the completion of any public work or undertaking, and no other provision is made for the taking of that security, the money or security (in this section, the “deposit”) may be paid into the High Court by or on the application of the person required to give such security (in this section, the “depositor”) and, in the case of money, invested.

[PDBA 1892]

(6) Where *subsection (5)* applies, the High Court may:

(a) on the application of the depositor, authorise the repayment of the deposit (or of its proceeds), in whole or in part, on such terms, if any, as the Court considers appropriate;

(b) order that the deposit, or any part of the deposit, be applied towards compensating any landowner or other person whose property has been interfered with or otherwise rendered less valuable by the commencement, construction, or abandonment of the work or undertaking, or any part of either, or who has suffered injury or loss in consequence of the exercise of any compulsory powers in relation to property in connection with the work or undertaking, and who has not received adequate compensation for that injury or loss;

(c) subject to payment of any such compensation, if a receiver has been appointed over property of the depositor, or the depositor (if a company) has been ordered to be wound up, or the work or undertaking has been abandoned, order that the deposit or any part of the deposit be paid or transferred to the receiver or to the liquidator, or otherwise applied as part of the assets of the depositor for the benefit of the depositor’s creditors.

(7) Where, in any case to which neither *sections 141 to 144* nor *subsection (5)* applies, under or by virtue of any enactment or order of Court, any money has been, or is required to be, paid into Court as security for the doing of any thing, the person who has paid in the money may apply to the Court into which the payment has been made to authorise the payment out in whole or in part of the money concerned, or the release or discharge in whole or in part of the security given. The Court may direct that notice of the application be given to any person and having heard the applicant and any other person, the Court may grant the application to the extent and on any terms it considers appropriate, or may refuse the application if it is not satisfied that the thing for which security was given has been done.

(8) Without limiting the generality of *subsection (3)*, an undertaking authorised to carry on life assurance business may pay into the High Court any money payable by it under a policy of life assurance in respect of which, in its opinion, no sufficient discharge can otherwise be obtained. The receipt or certificate of a member of the staff of the Service assigned to the Court Funds Office authorised in that behalf shall be a sufficient discharge to the undertaking for the money so paid into Court, and the money may be dealt with according to the order of the High Court.

[LACA 1896]

(9) Notice may be published of the making of payments into Court in accordance

with *subsection (3), subsection (5) or subsection (8)* from time to time in the manner directed by the President of the Court concerned.

Application for disposal of certain property in possession of an Garda Síochána

256.— (1) Where property has come into the possession of an Garda Síochána in connection with any criminal proceedings or investigation, the District Court for: [PPA 1897, s 1]

(a) the District in which the property is situated or,

(b) at the election of that person, the District in which a person claiming to be entitled to the property (in this section, the “claimant”) resides or carries on business,

may, on the application either of a member of an Garda Síochána or of a claimant, make an order for the delivery of the property to the person who appears to the Court to be the owner of that property or, if the owner cannot be ascertained, make such order with respect to the property as the Court considers appropriate.

(2) A person may take proceedings against a person in possession of property delivered by virtue of an order under this section for the recovery of the property within 6 months from the date of the order, but no such proceedings may be taken on or after the expiration of that period of 6 months.

(3) An order may be made under this section for the disposal of property in the possession of the Garda Síochána although no person has been charged with an offence in connection with it. [CJA 1951, s 25]

Chapter 10: Rules of court

Interpretation: this Chapter

257.— In this Chapter: [New]

the “Circuit Court Rules Committee” means the Committee of that name constituted by *section 266* and referred to in *Part 2 of Schedule 13*;

“Circuit Court Rules” means rules of court made in accordance with *section 267* and for the time being in force;

a “Committee”, when used without qualification, means, as the case may be, the Superior Courts Rules Committee, the Circuit Court Rules Committee or the District Court Rules Committee;

the “District Court Rules Committee” means the Committee of that name constituted by *section 268* and referred to in *Part 3 of Schedule 13*;

“District Court Rules” means rules of court made in accordance with *section 269* and for the time being in force;

“Rules of the Superior Courts” means rules of court made in accordance with *section 265* and for the time being in force;

the “Superior Courts Rules Committee” means the Committee of that name constituted by *section 264* and referred to in *Part 1 of Schedule 13*.

Jurisdiction to be exercised in accordance with Rules of court

258.— (1) The jurisdiction vested in or exercisable by: [SCJAI 1877, s.26]

(a) the Supreme Court, [CSPA 1961, ss. 14, 27, 34]

(b) the High Court (including the Central Criminal Court),

- (c) the Chief Justice,
- (d) the President of the High Court,
- (e) the Court of Criminal Appeal, and
- (f) the Courts-Martial Appeal Court

shall be exercised in the manner provided by Rules of the Superior Courts so far as concerns matters for which provision is made in those rules.

(2) The jurisdiction which is by virtue of this Act vested in or exercisable by the Circuit Court shall be exercised in the manner provided by the Circuit Court Rules so far as concerns matters for which provision is made in those rules.

(3) The jurisdiction which is by virtue of this Act vested in or exercisable by the District Court shall be exercised in the manner provided by the District Court Rules so far as concerns matters for which provision is made in those rules.

(4) Where and so long as there is no provision in:

(a) the Rules of the Superior Courts concerning the exercise of a jurisdiction mentioned in *subsection (1)*,

(b) the Circuit Court Rules concerning the exercise of a particular jurisdiction of the Circuit Court, or

(c) the District Court Rules concerning the exercise of a particular jurisdiction of the District Court,

the jurisdiction concerned shall be exercised as nearly as possible in the same manner as it might have been exercised immediately before the commencement of this Act.

General
considerations ¹¹⁵

259.— (1) In preparing rules of court, each Committee shall have regard to the considerations that: [New]

(a) rules of court should, consistently with the requirements of justice, provide simple and efficient Court procedures;

(b) rules of court should use plain language, and differences among the procedures and terms used in different Courts for similar matters should be avoided if possible;

(c) rules of court should encourage the use of alternative dispute resolution procedures, where appropriate, and should encourage expeditious conduct of proceedings and discourage and, where appropriate and just, penalise delay by a party, so as to help minimise the cost of litigation;

(d) rules of court should provide for and support, where possible, the development of case management, in accordance with the principles specified in *section 81*, and

(e) where practicable, rules of court should regularly be reviewed.

(2) Each Committee shall take such steps as are practicable (in co-operation with the Service or such other persons as it thinks appropriate) to ensure that rules are

¹¹⁵ See the Report, paragraph 2.104.

simple, accessible to Court users and that such rules support the expeditious conduct of proceedings, consistently with the requirements of justice.

(3) A Committee may consult with another Committee for the purpose of any consideration specified in *subsection (1)*.

Rules of court concerning applications for particular orders

260.— Rules of court: [New]

(a) may specify conditions to be met and procedures to be followed before applying for particular orders, or before particular orders are made;

(b) may regulate how applications for particular orders are conducted, and

(c) shall support the conduct of civil proceedings in accordance with the principles specified in *section 81*.

Modification of rules of evidence¹¹⁶

261.— Rules of court may modify the rules of evidence as they apply to proceedings, or may prescribe new rules concerning the manner in which evidence may be adduced, in a Court in which those rules of court apply. [New]

Practice directions¹¹⁷

262.— (1) The President of a Court may make a general direction (provided that such direction is not inconsistent with any rules of court) on any matter of practice or procedure in that Court, entitled a “practice direction”. [New]

(2) Practice directions shall be published by the Service.

Approval of forms¹¹⁸

263.— A Committee may approve, and may authorise publication as approved of, forms of: [New]

(a) applications which may be made only by a public authority, or only by a member of the Garda Síochána, or

(b) Court instruments,

which may be used in proceedings in a Court in which the rules of court made by that Committee apply and which may, but are not required to, be included in those rules of court.

Constitution of Superior Courts Rules Committee

264.— (1) A Committee to be styled, and in this Act referred to, as the Superior Courts Rules Committee is constituted to fulfil the functions assigned to it by this Act.

[CJA 1936, s 67]
[CLMPA 2008, s 20]

(2) The committee constituted as the Superior Courts Rules Committee immediately before the commencement of this Part shall, immediately following that commencement, be deemed to have been constituted under and in accordance with this section.

(3) The provisions of *Part 1 of Schedule 13* apply to the membership and proceedings of the Superior Courts Rules Committee.

¹¹⁶ See the Report, paragraph 2.104.

¹¹⁷ This provides a statutory basis for practice directions by the President of a Court: see the Report, paragraph 2.104.

¹¹⁸ This new provision implements the recommendation in paragraph 2.104 of the Report to dispense with the requirement that all forms of order, warrant etc are included in the published version of the Rules of Court. The District Court Rules 1997 currently include upwards of 1,000 forms, though there is no reason why those forms could not continue to be accessible, as at present, on the Courts Service website.

265.— (1) The Superior Courts Rules Committee may at any time and from time to time, with the concurrence of the Minister, make, amend, modify, alter or revoke, rules entitled “Rules of the Superior Courts”.

(2) The Rules of the Superior Courts shall carry into effect the provisions of this Act which concern the Superior Courts, including, in relation to the Supreme Court, the provisions concerning the hearing of cases stated by the Circuit Court and, in relation to the High Court, the provisions concerning appeals from the Circuit Court, appeals from and references of questions of law by adjudicating bodies or persons, and cases stated by the District Court.

(3) The Rules of the Superior Courts may, in relation to civil proceedings (excluding proceedings relating to the liberty of the person) in the Supreme Court and High Court, authorise the Master of the High Court and other principal officers, within the meaning of *Part 6*, to exercise functions, powers and jurisdiction in uncontested cases and to take accounts, conduct inquiries and make orders of an interlocutory nature.

(4) In particular, Rules of the Superior Courts may be made, in relation to any proceedings which may be taken before the Superior Courts or any of them, for all or any of the following matters:—

(i) regulating any matter which it is provided in this Act, and in particular, *section 26, section 94, section 96, section 99, section 104, section 105, section 111, section 118, section 119, section 121, section 122, section 141, section 145, section 232, section 234, section 237, section 238, section 239, section 241, section 242, section 243, section 248, section 249, section 250, section 251, section 255, section 260, section 261, section 281, section 304, section 309, section 311, section 312, section 318, section 321, section 335, section 345, section 348, section 351, section 354, section 357, Schedule 7, Schedule 8, Schedule 9 and Schedule 14*, or in or by another enactment may be regulated by rules of court;

(ii) regulating pleading, practice and procedure generally (including liability of parties as to costs and the decision of proceedings or issues summarily in appropriate cases) in civil proceedings¹¹⁹, including such proceedings on appeal and on a reference of a question of law or case stated;

(iii) regulating pleading, practice and procedure generally in criminal proceedings, including such proceedings on appeal and on a reference of a question of law or case stated;

(iv) regulating the names, contents and forms of pleadings, and other Court documents;

(v) regulating the form of, and particulars to be entered in, the records of proceedings in, and decisions and orders of, the Superior Courts to be kept in the appropriate court offices;

(vi) regulating, in accordance with *section 251*, the official attire to be worn in the Superior Courts;

(vii) enabling *section 2* of the *European Communities Act 1972*, to have full effect;

¹¹⁹ The Commission understands that the *Civil Law (Miscellaneous Provisions) Bill 2010* may confer power on the rules committees to establish “pre-action protocols” and that power could be inserted here.

(viii) regulating the trial of election petitions (other than petitions to which *section 47(3)* applies) under any enactment, and

(ix) all subsidiary matters.

[CCOA 1995,
s. 45]

(5) Notwithstanding any enactment or rule of law by virtue of which documents prepared for the purpose of pending or contemplated civil proceedings (or in connection with the obtaining or giving of legal advice) are in certain circumstances privileged from disclosure, the Rules of the Superior Courts may include rules—

(a) requiring a party to a High Court personal injuries action (within the meaning of *section 2* of the Act of 2004), to disclose to any other party, without the necessity of any application to Court by either party to allow such disclosure, by such time or date as is specified in the rules, the following information, namely—

(i) any report or statement from any expert intended to be called to give evidence of medical or para-medical opinion in relation to an issue in the proceedings;

(ii) any report or statement from any other expert of the evidence intended to be given by that expert in relation to an issue in the proceedings;

(iii) the names and addresses of all witnesses intended to be called to give evidence as to facts in the proceedings;

(iv) a full statement of all items of special damage together with appropriate vouchers, or statements from witnesses by whose evidence such loss would be proved in the proceedings;

(v) a written statement from the Department of Social and Family Affairs showing all payments made to an applicant subsequent to an accident or an authorisation from the applicant to the respondent to apply for such information, and

(vi) such other relevant information or documentation as is provided for by those rules so as to facilitate the trial of personal injuries actions;

(b) providing for the imposition by the High Court of a sanction for non-compliance with a requirement under *paragraph (a)* including termination of proceedings, prohibition on a party from adducing evidence which has not been disclosed without leave of the Court, and penalties in the award of costs.

(6) Rules of court made for the purposes of *subsection (5)* may make different provisions for different classes of proceedings.

(7) References in this section to a report or statement from an expert are references to evidence in whatever form or a written report by a person dealing wholly or mainly with matters on which that person is qualified to give expert evidence.

(8) Notwithstanding the rule of law against the admission of hearsay evidence and the privilege attached to documents prepared for the purpose of pending or contemplated civil proceedings, rules of court may allow for the admission in evidence in personal injuries actions in the High Court of information, documentation, reports or statements disclosed pursuant to *subsection (5)*, subject to such conditions and procedures as may be necessary to protect the interests of the parties.

Constitution of
Circuit Court Rules
Committee

266.— (1) A Committee to be styled, and in this Act referred to, as the Circuit Court Rules Committee is constituted to fulfil the functions assigned to it by this Act.

[CJA 1936, s
69]
[CLMPA 2008,
s 21]

(2) The committee constituted as the Circuit Court Rules Committee immediately before the commencement of this Part shall, immediately following that

commencement, be deemed to have been constituted under and in accordance with this section.

(3) The provisions of *Part 2 of Schedule 13* apply to the membership and proceedings of the Circuit Court Rules Committee.

Functions and powers
of Circuit Court
Rules Committee

267.— (1) The Circuit Court Rules Committee may at any time and from time to time, with the concurrence of the Minister, make, amend, modify, alter or revoke, rules entitled “Circuit Court Rules”.

[CJA 1924,
s.66]

(2) The Circuit Court Rules shall carry into effect the provisions of this Act which concern the Circuit Court, including those provisions which concern the hearing of appeals from the District Court and from adjudicating bodies or persons, but not including those provisions which concern the hearing of appeals from the Circuit Court.

(3) The Circuit Court Rules may, in relation to civil proceedings, authorise County Registrars to exercise functions, powers and jurisdiction in uncontested cases and to take accounts, conduct inquiries and make orders of an interlocutory nature¹²⁰.

(4) In particular, Circuit Court Rules may be made, in relation to any proceedings which may be taken before the Circuit Court, for all or any of the following matters:—

(i) regulating any matter which it is provided in this Act, and in particular, *section 38, section 41, section 94, section 96, section 100, section 104, section 105, section 111, section 118, section 119, section 121, section 122, section 141, section 145, section 154, section 232, section 234, section 237, section 238, section 241, section 242, section 243, section 248, section 249, section 250, section 251, section 255, section 258, section 260, section 261, section 281, section 333, section 345, section 351, section 354, section 357, Schedule 7, Schedule 8, Schedule 9 and Schedule 14*, or in or by any other enactment may be regulated by rules of court;

(ii) regulating pleading, practice and procedure generally (including liability of parties as to costs and the decision of proceedings or issues summarily in appropriate cases) in civil proceedings¹²¹;

(iii) regulating pleading, practice and procedure generally in criminal proceedings;

(iv) regulating the names, contents and forms of pleadings and other Court documents;

(v) regulating the form of, and particulars to be entered in, the records of proceedings in, and decisions and orders of the Court to be kept in the Circuit Court Office;

(vi) regulating, in accordance with *section 251*, the official attire to be worn in the Circuit Court;

¹²⁰ This provision in particular might allow that the list of orders which may be made by a County Registrar (contained in the Second Schedule to the Courts and Court Officers 1995) could be excluded from the draft, so that the position is aligned with that of the Master of the High Court, i.e. the specific powers are set out in rules of court. However, that list is for the present included in Schedule 14.

¹²¹ The *Civil Law (Miscellaneous Provisions) Bill 2010* may confer on the rules committees power to establish “pre-action protocols” and that power could be inserted here.

(vii) enabling *section 2* of the *European Communities Act 1972*, to have full effect;

(viii) regulating the trial of election petitions which are within the Circuit Court's jurisdiction, and

(ix) all subsidiary matters.

(5) Notwithstanding any enactment or rule of law by virtue of which documents prepared for the purpose of pending or contemplated civil proceedings (or in connection with the obtaining or giving of legal advice) are in certain circumstances privileged from disclosure, Circuit Court Rules may include rules—

[CCOA 1995,
s. 45]

(a) requiring a party to a personal injuries action (within the meaning of *section 2* of the Act of 2004) before the Circuit Court, to disclose to any other party, without the necessity of any application to Court by either party to allow such disclosure, by such time or date as is specified in the rules, the following information, namely—

(i) any report or statement from any expert intended to be called to give evidence of medical or para-medical opinion in relation to an issue in the proceedings;

(ii) any report or statement from any other expert of the evidence intended to be given by that expert in relation to an issue in the proceedings;

(iii) the names and addresses of all witnesses intended to be called to give evidence as to facts in the proceedings;

(iv) a full statement of all items of special damage together with appropriate vouchers, or statements from witnesses by whose evidence such loss would be proved in the proceedings;

(v) a written statement from the Department of Social and Family Affairs showing all payments made to an applicant subsequent to an accident or an authorisation from the applicant to the respondent to apply for such information, and

(vi) such other relevant information or documentation as is provided for by those rules so as to facilitate the trial of personal injuries actions;

(b) providing for the imposition by the Court, of a sanction for non-compliance with a requirement under *paragraph (a)* including termination of proceedings, prohibition on a party from adducing evidence which has not been disclosed without leave of the Court, and penalties in the award of costs.

(6) Rules of court made for the purposes of *subsection (5)* may make different provisions for different classes of proceedings.

(7) References in this section to a report or statement from an expert are references to evidence in whatever form or a written report by a person dealing wholly or mainly with matters on which that person is qualified to give expert evidence.

(8) Notwithstanding the rule of law against the admission of hearsay evidence and the privilege attached to documents prepared for the purpose of pending or contemplated civil proceedings, the Circuit Court Rules may allow for the admission in evidence in personal injuries actions in the Circuit Court of information, documentation, reports or statements disclosed pursuant to *subsection (5)*, subject to such conditions and procedures as may be necessary to protect the interests of the parties.

| | | |
|--|---|--|
| District Court Rules Committee | <p>Court Rules Committee is constituted to fulfil the functions assigned to it by this Act.</p> <p>(2) The committee constituted as the District Court Rules Committee immediately before the commencement of this Part shall, immediately following that commencement, be deemed to have been constituted under and in accordance with this section.</p> <p>(3) The provisions of <i>Part 3 of Schedule 13</i> apply to the membership and proceedings of the District Court Rules Committee.</p> | <p>71] [CSPA 1961, s. 44] [CLMPA 2008, s 22]</p> |
| Functions and powers of District Court Rules Committee | <p>269.— (1) The District Court Rules Committee may at any time and from time to time, with the concurrence of the Minister, make, amend, modify, alter or revoke, rules entitled “District Court Rules”.</p> <p>(2) The District Court Rules shall carry into effect the provisions of this Act which concern the District Court.</p> <p>(3) In particular, District Court Rules may be made, in relation to any proceedings which may be taken before the District Court, for all or any of the following matters:—</p> <p>(i) regulating any matter which it is provided in this Act, and in particular, <i>section 58, section 63, section 68, section 94, section 96, section 101, section 104, section 105, section 111, section 120, section 121, section 122, section 134, section 141, section 145, section 224, section 232, section 234, section 237, section 238, section 240, section 241, section 242, section 243, section 248, section 249, section 250, section 251, section 255, section 258, section 260, section 261, section 281, section 335, section 345, section 354, section 357, Schedule 7, Schedule 8, Schedule 9 and Schedule 14</i>, or in or by any other enactment may be regulated by rules of court;</p> <p>(ii) regulating practice and procedure generally in civil proceedings, including liability of parties as to costs, the entering-up of judgment and the granting of summary judgment in appropriate cases¹²²;</p> <p>(iii) regulating practice and procedure generally in criminal proceedings;</p> <p>(iv) regulating the names, contents and forms of pleadings, Court documents and Court instruments;</p> <p>(v) regulating the form of, and particulars to be entered in, the Court’s record of proceedings, and decisions and orders of the Court to be kept in the District Court Office;</p> <p>(vi) regulating the conditions with which a party seeking a case stated or an appellant must comply, in civil (including licensing) or criminal proceedings;</p> <p>(vii) regulating, in accordance with <i>section 251</i>, the official attire to be worn in the District Court;</p> <p>(viii) enabling <i>section 2</i> of the <i>European Communities Act 1972</i>, to have full effect, and</p> <p>(ix) all subsidiary matters.</p> | <p>[CJA 1924, s. 91] [CJA 1936, s. 72]</p> |

¹²² The *Civil Law (Miscellaneous Provisions) Bill 2010* may confer power on the rules committees to establish “pre-action protocols” and that power could be inserted here.

(4) District Court Rules shall include a procedure, which is as informal as possible, for the conduct of proceedings in claims of a kind specified in those rules (in this section, “small claims proceedings”) where the monetary value of the remedy sought does not exceed 50 per cent of the District Court damages limit, and in which the parties to the proceedings are encouraged and supported, to the extent possible, to resolve the proceedings by negotiation or other means which avoid the necessity for the Court to hear and decide the proceedings¹²³.

(5) District Court Rules shall include a procedure, which is as informal as possible, for the conduct of proceedings to which the European Small Claims Procedure Regulation applies.

(6) Notwithstanding any enactment or rule of law by virtue of which documents prepared for the purpose of pending or contemplated civil proceedings (or in connection with the obtaining or giving of legal advice) are in certain circumstances privileged from disclosure, the District Court Rules may include rules¹²⁴—

(a) requiring a party to a personal injuries action (within the meaning of *section 2* of the Act of 2004) before the District Court, to disclose to any other party, without the necessity of any application to Court by either party to allow such disclosure, by such time or date as is specified in the rules, the following information, namely—

- (i) any report or statement from any expert intended to be called to give evidence of medical or para-medical opinion in relation to an issue in the proceedings;
- (ii) any report or statement from any other expert of the evidence intended to be given by that expert in relation to an issue in the proceedings;
- (iii) the names and addresses of all witnesses intended to be called to give evidence as to facts in the proceedings;
- (iv) a full statement of all items of special damage together with appropriate vouchers, or statements from witnesses by whose evidence such loss would be proved in the proceedings;
- (v) a written statement from the Department of Social and Family Affairs showing all payments made to an applicant subsequent to an accident or an authorisation from the applicant to the respondent to apply for such information, and
- (vi) such other relevant information or documentation as is provided for by those rules of court so as to facilitate the trial of personal injuries actions;

(b) providing for the imposition by the Court of a sanction for non-compliance with a requirement under *paragraph (a)* including termination of proceedings, prohibition on a party from adducing evidence which has not been disclosed without leave of the Court, and penalties in the award of costs.

(7) Rules of court made for the purposes of this section may make different provisions for different classes of proceedings.

(8) References in this section to a report or statement from an expert are references to evidence in whatever form or a written report by a person dealing wholly or mainly with matters on which that person is qualified to give expert

¹²³ The small claims procedure should be explicitly supported by primary legislation; this is necessary in relation to the European Small Claims Procedure for cross-border small claims, as provided in the next subparagraph.

¹²⁴ Section 45 of the *Courts and Court Officers Act 1995* (concerning disclosure of expert reports) does not currently apply to the District Court; however, it should be applied if the monetary jurisdiction of the District Court is increased so that personal injuries actions are more likely to be heard in the District Court.

evidence.

(9) Notwithstanding the rule of law against the admission of hearsay evidence and the privilege attached to documents prepared for the purpose of pending or contemplated civil proceedings, rules of court may allow for the admission in evidence in personal injuries actions in the District Court of information, documentation, reports or statements disclosed pursuant to *subsection (6)*, subject to such conditions and procedures as may be necessary to protect the interests of the parties.

Chapter 11: Offences and certain civil wrongs

Continuation of offences against the administration of justice

270.— (1) Nothing in this Act or any repeal effected by this Act affects any liability for, or punishment to which a person is liable on conviction of, any offence against the administration of justice, whether at common law¹²⁵, or under or by virtue of an enactment.

[New]

(2) Any person taking an oath (whether before a Court, a court officer or other person empowered by law to administer an oath) or making an affidavit, affirmation or declaration in any proceedings or examination to which any provision of this Act applies, who wilfully and corruptly swears, declares, or affirms falsely, is guilty of the offence of perjury, and is liable to be prosecuted and punished accordingly.

[CBCIA 1851, s 157]
[CTMIA 1845, s 5]
[CCLOIA 1867, s 17]

Offence of imitating Court instruments

271.— (1) It shall be unlawful for a person to issue, send, give, deliver to or serve on or cause to be issued, sent, given, delivered to or served on another person any document not issued under lawful authority of a Court which by its form, contents, or appearance is calculated or is reasonably likely to lead the person receiving it to believe that it is a Court instrument or is issued by lawful authority of a Court.

[CJA 1936, s.81]

(2) Every person who issues, sends, gives, delivers or serves or causes to be issued, sent, given, delivered, or served a document in contravention of this section is guilty of an offence and is liable on summary conviction to a class C fine within the meaning of *Part 2* of the Act of 2010.

(3) In this section, the expression “issued by lawful authority of a Court” means issued by, from, or by order of a Court or a Judge of a Court or by or from a court officer or court office.

Offence of demanding or receiving payment for execution or non-execution

272.— (1) A person who demands or receives from another person a payment (other than a payment authorised by law):

[SA 1707]

(a) for executing a warrant or execution order issued by a Court or

(b) for not executing a warrant or execution order issued by a Court,

is guilty of an offence and is liable on summary conviction to a class A fine within the meaning of *Part 2* of the Act of 2010.

(2) A person who is convicted of an offence under this section may be disqualified from being authorised to execute any warrant or execution order issued by a Court.

¹²⁵ For example, perjury or embracery.

Offence in connection with disobedience of certain orders under Guardianship of Infants Act

273.— (1) Without prejudice to the law of contempt of Court¹²⁶, where the District Court has made an order under *section 7, section 11* or *section 11B* of the *Guardianship of Infants Act 1964* containing a direction regarding—

[C2A 1986, s 5]

- (a) the custody of a child, or
- (b) the right of access to a child,

a person having the actual custody of the child who, having been given or shown a copy of the order and—

(i) having been required, by or on behalf of a person to whom the custody of the child is committed by the direction, to give up the child to that person, or

(ii) having been required, by or on behalf of a person entitled to access to the child in accordance with the direction, to allow that person to have such access,

fails or refuses to comply with the requirement, is guilty of an offence and is liable on summary conviction to a class C fine within the meaning of *Part 2* of the Act of 2010 or, at the discretion of the Court, to imprisonment for a term not exceeding 6 months or to both such fine and such imprisonment.

(2) For the purposes of this section, a person is deemed to have been given or shown a copy of an order made under *section 7, section 11* or *section 11B* of the *Guardianship of Infants Act 1964* if that person was present at the sitting of the Court at which that order was made.

Offence of obstructing execution of Court orders

274.— Every person who resists, obstructs, or impedes a sheriff, execution officer, or other person in the lawful execution of an execution order or resists, obstructs, or impedes a member of the *Gárda Síochána* in the lawful execution of a personal enforcement order or other order of a Court for the arrest, attachment of the person, or committal of a person is guilty of an offence and is liable on conviction of that offence to a class C fine within the meaning of *Part 2* of the Act of 2010 or, at the discretion of the Court, to imprisonment for any term not exceeding 12 months, or to both such fine and such imprisonment.

[ECO A 1926, s 24¹²⁷]

Other offences against execution of Court orders

275.— (1) Every person who rescues, removes, or conceals any seized goods which have been taken in execution of an execution order is guilty of an offence and is liable, on conviction of that offence, to a class C fine within the meaning of *Part 2* of the Act of 2010 or, at the discretion of the Court, to imprisonment for any term not exceeding 12 months or to both such fine and such imprisonment.

[ECO A 1926, s 25]

(2) Whenever a sheriff enters on and takes possession of land in execution of an execution order of possession and delivers possession of the land to the judgment creditor or other person named in the execution order of possession (in this paragraph, the “owner”), a person who, within one month after delivery by the sheriff of possession, without the consent of the owner, enters on that land, and takes possession of that land, is guilty of an offence and is liable on summary conviction of that offence, to a class C fine within the meaning of *Part 2* of the Act of 2010 or, at the discretion of the Court, to imprisonment for any term not exceeding 6 months or to both such fine and such imprisonment.

(3) A person may commit an offence under *subsection (2)* notwithstanding that he or she enters the land peaceably and without force.

Continuance of civil

276.— Nothing in this Act removes any civil right of action available to a person

[PA 1586]

¹²⁶ Because the draft extends the contempt jurisdiction of the District Court, this offence is arguably no longer necessary.

¹²⁷ Section 24(3) of the 1926 Act is no longer necessary.

liability for interference with the administration of justice

who has suffered any loss or damage arising from any unlawful interference by another person with the administration of justice including, without limitation, any such right of action in respect of perjury, embracery, malicious prosecution, the tort of maintenance or champerty, and the rules of law concerning any such right of action are unaffected by this Act.

[MEA 1634]

PART 5

Rights of appeal, appeals and references of questions of law

Purposes of Part 5

277.— This Part makes provision:

[New]

(a) in relation to appeals and references of questions of law generally [Chapter 1];

(b) for the reference of a question of law for determination, decision or opinion to a Superior Court by an inferior Court (or, where provided by law, by an adjudicating body or person), in particular for such a reference to the Supreme Court [Chapter 2] or to the High Court [Chapter 5], and

(c) for rights of appeal to Courts having appellate jurisdiction from the decisions of an inferior Court (and, where provided by law, from the decisions of an adjudicating body or person), in particular appeals to:

- the Supreme Court [Chapter 2];
- the Court of Criminal Appeal [Chapter 3];
- the Courts-Martial Appeal Court [Chapter 4];
- the High Court [Chapter 5];
- the Circuit Court [Chapter 6] and
- the District Court [Chapter 7].

Chapter 1: General

Interpretation: this Part

278.— In this Part, a “leave appeal” includes an appeal against a refusal of leave, an appeal against a condition subject to which leave is given, and an appeal against an extension of, or refusal to extend, the time permitted for an application for leave to appeal.

[New]

General rules in cases stated or references of questions of law¹²⁸

279.— (1) This section applies to any provision of an enactment (including this Act) which authorises the reference to the Supreme Court or the High Court of a question of law (whether any such reference is expressed to be by way of case stated or otherwise) by:

[New]
[SJA 1857, s. 2, and [C(SP)A 1961, ss. 51, 52 refer]

(a) the Circuit Court or a Judge of the Circuit Court, or

(b) the District Court or a Judge of the District Court¹²⁹.

(2) In this section, the “referring Court” means the Court or Judge referred to at *paragraph (a)* or *paragraph (b)* of *subsection (1)*.

(3) The referring Court may exercise a power conferred by any provision of an enactment to refer a question of law to the Superior Court mentioned in the enactment concerned for decision or decision by, or for the opinion of, that

¹²⁸ See the Report, paragraph 2.118.

¹²⁹ Note that draft section 304 below also applies this provision to references from the summary court-martial to the Courts-Martial Appeal Court under the *Defence Act 1954*.

Superior Court only:

(a) following a request, which the referring Court does not consider frivolous or vexatious, by a party to proceedings before the referring Court, or

(b) of the referring Court's own motion, but with the agreement of the parties to the proceedings before the referring Court, and

(c) where the referring Court is satisfied that the decision of the question of law concerned is necessary to the decision of the proceedings before the referring Court.

(4) The exercise of a power mentioned in *subsection (3)* to refer a question of law to a Superior Court shall be on such terms:

(a) as to costs, and

(b) as to the conduct of the reference by the parties to the proceedings before the referring Court,

and otherwise as the referring Court thinks fit.

(5) The referring Court shall, before referring a question of law in accordance with *subsection (3)*, hear all of the evidence offered which relates to the question of law at issue in the proceedings, and shall find such facts relative to that question as arise from that evidence. The referring Court shall not be obliged, before making a reference, to hear evidence (or to find facts) which relate to any matter at issue in the proceedings other than the matter from which the question of law arises.

(6) The referring Court may adjourn the proceedings before itself in which a reference has been made from time to time pending the delivery of the determination, decision or opinion of the Superior Court concerned on the question of law referred to that Superior Court.

(7) Where a second or subsequent question of law arises in the same proceedings before a referring Court, the referring Court shall, if practicable, refer both or all questions of law in the same reference.

(8) In this section, a "party" includes any person who has been heard in the proceedings before the referring Court.

(9) Every reference or case stated by the Circuit Court or the District Court to which this section applies shall be:

(a) in the form,

[CJA 1924, s
86]

(b) in the manner and

(c) subject to the conditions whether as to time or otherwise (including the lodgment of any money in any civil proceedings and the entry into any Court bond in any criminal proceedings)

as are prescribed in the Circuit Court Rules or, as the case may be, the District Court Rules.

(10) Unless the enactment concerned requires or provides otherwise, the provisions of *subsections (2) to (8)* inclusive shall apply in proceedings where an enactment authorises the reference to the High Court of a question of law (whether any such reference is expressed to be by way of case stated or

otherwise) by an adjudicating body or person, as if references in those subsections to a referring Court were references to the adjudicating body or person concerned, and with such other modifications as are necessary.

(11) An appeal lies, by leave of the High Court, to the Supreme Court from every determination, decision or opinion of the High Court on a question of law referred to the High Court in accordance with *subsection (3)*.

Reference of question of law to Court of Justice of the European Union

280.— Where a Court or adjudicating body or person has requested the Court of Justice of the European Union to give a preliminary ruling in exercise of the jurisdiction conferred on the Court of Justice of the European Union by Article 19(3)(b) of the Treaty on European Union and Article 267 of the Treaty on the Functioning of the European Union, the Court or adjudicating body or person may adjourn the proceedings before itself in which that request has been made from time to time pending the delivery of the preliminary ruling.

[New]

Appeals in civil proceedings where leave is required

281.— (1) This section applies where, under this Act or any other enactment, an appeal lies in any civil proceedings by leave of the Court whose decision is sought to be appealed.

[New]

(2) The Court whose decision is sought to be appealed shall give leave to appeal only where it is satisfied that there are substantial grounds justifying an appeal or that there is a reasonable prospect that an appeal will be allowed, in whole or in part.

(3) Leave to appeal may be given subject to any conditions as the Court giving leave considers just and appropriate in the circumstances of the case, which may, without limitation, include conditions as to matters such as security for costs of the appeal or entry into a Court bond to prosecute the appeal; payment of a specified part of any damages awarded or performance of part of the decision against which leave to appeal is not given, and expiry of the leave if conditions precedent to the leave are not satisfied within a period fixed by the Court.

(4) An appeal lies against a refusal of leave, against a condition subject to which leave is given, or against a refusal to extend the time permitted for an application for leave to appeal, to the Court which would have jurisdiction to hear and decide an appeal, or would, but for the refusal of leave or refusal to extend time, have jurisdiction to hear and decide an appeal.

(5) Unless otherwise expressly provided, and subject to *subsection (6)*, an appeal shall be heard and decided on:

(a) the Court's record (or any other record accepted by the appellate Court) of the proceedings which led to the decision which is appealed, and

(b) any written submissions of the parties to the appellate Court.

(6) An appellate Court may hear evidence (including new evidence) or re-hear evidence only where that Court considers:

(a) that the record of the proceedings appealed from is unsatisfactory in a material respect, or

(b) that it necessary in the interests of justice to do so.

(7) Nothing in *subsection (5)* prevents an appellate Court from conducting a hearing of the appeal.

(8) Rules of court may prescribe the time within which an application for leave to appeal must be made, and may provide for the circumstances in which that time

may be extended by the Court to which an application for leave may be made, or by an appellate court.

Common rules on appeals in civil proceedings¹³⁰

282.— (1) An appeal in civil proceedings may be limited to a specified part of the decision which is the subject of the appeal. [CJA 1936, s. 40]

(2) Where there are several applicants or several respondents, any applicant or any respondent may appeal although any other applicant or respondent does not appeal. [CBCIA 1851, ss 134, 135]

(3) Where there are several appellants or several respondents, and any (but not all) of the appellants or of the respondents dies before the appeal is determined, the appeal does not abate by reason of that death. [CBCIA 1851, s 136]

(4) Every notice in writing given by a party to another party for the purposes of the trial or hearing at first instance shall be good for the hearing of the appeal without renewal. [CBCIA 1851, s 137]

(5) Any bail given in proceedings in the admiralty jurisdiction for the release of any property under arrest for the purposes of the trial or hearing in the High Court shall be good for the hearing of any appeal from the decision of the High Court and any Court bond or security given for such bail is enforceable by the Supreme Court on any appeal as if it had originally been given before the Supreme Court. [CAIA 1867, s. 106]

No appeal from consent order

283.— No order made by a Court or a Judge by the consent of parties, may be subject to an appeal, unless by leave of the Court or Judge making the order. [SCJIA 1877, s. 52]

Directions and urgent orders in an appeal by a single Judge

284.— (1) Any direction incidental to a proceeding on appeal may be given: [SCJIA 1877, s. 56]

(a) in the case of the Supreme Court, by a single Judge of the Supreme Court;

(b) in the case of the Court of Criminal Appeal or the Courts-Martial Appeal Court, by the Chief Justice or a Judge for the time being nominated for that purpose under *section 187(1)* or, as the case may be, *section 187(2)*.

(2) During a period outside the scheduled sittings of the Supreme Court or when either the Court of Criminal Appeal or the Courts-Martial Appeal Court is not convened, an interim order to prevent prejudice to a party pending the hearing of an appeal or application to the Court may be made:

(a) in the case of the Supreme Court, by a single Judge of the Supreme Court;

(b) in the case of the Court of Criminal Appeal or the Courts-Martial Appeal Court, by the Chief Justice, by a Judge for the time being nominated for that purpose under *section 187(1)* or, as the case may be, *section 187(2)*, or in the absence of both, by another Judge of the High Court nominated by the Chief Justice to act,

but any such order made by a single Judge may be discharged or varied by the Court.

Chapter 2: Appeals to the Supreme Court

¹³⁰ As currently formulated, these provisions are only expressed in statute to apply in appeals from the Circuit Court to the High Court (see section 40, *Courts of Justice Act 1936*); however some of the rules are applied in rules of court to appeals as between other jurisdictions (see e.g. O. 58, r. 1, Rules of the Superior Courts 1986 as to appeal to the Supreme Court against part of a decision), and the Commission has concluded they be given general application in all civil appeals.

Interpretation

Interpretation: this Chapter

285.— In this Chapter:

[New]

reference to the “Director” in the context of criminal proceedings on indictment or proceedings before, or on appeal from, the Court of Criminal Appeal, shall be a reference to the Director of Public Prosecutions, and shall include a reference to the Attorney General;

reference to the “Director” in the context of proceedings before, or on appeal from, the Courts-Martial Appeal Court, shall be a reference to the Director of Military Prosecutions and shall include a reference to the Attorney General;

“legal aid (court-martial) certificate” has the same meaning as in *section 27* of the Act of 1983;

“legal aid (Supreme Court) certificate” and “legal aid (trial on indictment) certificate” each has the same meaning as in the Act of 1962.

Appeals in civil proceedings

Civil appeals to the Supreme Court: general

286.— (1) Except where otherwise provided in another enactment, an appeal lies to the Supreme Court under this Act in civil proceedings from all decisions of the High Court exercising its original jurisdiction in civil proceedings.

[New]

(2) Except where otherwise provided in another enactment, an appeal lies under this Act to the Supreme Court, by the leave of the High Court, in civil proceedings that do not involve the exercise by the High Court of its original jurisdiction.

(3) The requirement of leave in *subsection (2)* shall not apply to a decision of the High Court in so far as it relates to the validity of any law having regard to the provisions of the Constitution.

(4) An appeal lies from the High Court to the Supreme Court by the leave of the High Court against the grant or refusal of an application to remit proceedings from the High Court to the Circuit Court or to the District Court, and from the exercise of the discretion of the High Court or any Judge of the High Court in proceedings.

[CJA 1924, s.26]

Civil appeals to the Supreme Court in jury cases

287.— On the hearing of an appeal from the High Court in civil proceedings tried by a Judge and jury or from a decision of the High Court founded on the verdict of a jury, the Supreme Court may, in addition to any other order that it deems appropriate to make:

[CJA 1924, s.96, modified, see also Defamation Act 2009, s. 13]

(a) order a new trial, or

(b) set aside the verdict, findings, and decision appealed against and make such decision as the Supreme Court considers proper. In that decision, the Supreme Court may substitute for any amount of damages awarded to a party by the High Court the amount it considers appropriate.

Appeals and references of questions of law in criminal proceedings

Reference of question of law to the Supreme Court on verdict in favour of accused

288.— (1) Where a person tried on indictment is acquitted (whether in respect of the whole or part of the indictment) the Director may, without prejudice to the verdict or decision in favour of the accused person, refer a question of law arising during the trial to the Supreme Court for determination.

[CPA 1967, s.34]
[CJA 2006, s. 21]

(2) Where a question of law is referred to the Supreme Court under *subsection*

(1), the statement of the question shall be settled by the Attorney General or the Director, as may be appropriate, after consultation with the trial Judge concerned or, in the case of a Special Criminal Court, with the member of that Court who pronounced the decision of the Court in the trial concerned, following consultation by that member with the other members of the Court concerned, and shall include any observations which the Judge or that member, as may be appropriate, may wish to add.

(3) For the purpose of considering a question referred to it under this section, the Supreme Court shall hear argument—

(a) by, or by a legal representative on behalf of, the Director,

(b) if the acquitted person so wishes, by his or her legal representative or, with the leave of the Court, by the acquitted person himself or herself, and

(c) if a legal representative is assigned under *subsection (4)*, that legal representative.

(4) The Supreme Court shall assign a legal representative to argue in support of the decision if—

(a) the acquitted person waives his or her right to be represented or heard under *subsection(3)(b)*, or

(b) notwithstanding the fact that the acquitted person exercises his or her right to be represented or heard under *subsection (3)(b)*, the Court considers it desirable in the public interest to do so.

(5) The Supreme Court shall ensure, in so far as it is reasonably practicable to do so, that the identity of the acquitted person in proceedings under this section is not disclosed in connection with the proceedings, unless the person agrees to the use of his or her name in the proceedings.

Appeal to Supreme Court from the Court of Criminal Appeal

289.— (1) No appeal lies to the Supreme Court from a decision by the Court of Criminal Appeal in proceedings before the Court of Criminal Appeal, except in accordance with this section.

[CJA 1924, s.29]
[CJA 1993, s 3]
[CJA 2006, s 22]
[CJA 2007, s 59]
[CPA 2010, s 32]

(2) A convicted person who is the subject of proceedings decided by the Court of Criminal Appeal (including proceedings under *section 2* of the *Criminal Justice Act 1993*) may appeal the decision of that Court to the Supreme Court, if that Court or the Director certifies that the decision involves a point of law of exceptional public importance and that it is desirable in the public interest that the person should take an appeal to the Supreme Court.

(3) Subject to *subsection (4)*, a person who has appealed his or her conviction to the Court of Criminal Appeal and who has been granted a re-trial by that Court, may, without prejudice to the determination by the Court to grant a re-trial, appeal to the Supreme Court in respect of a matter raised by him or her in the Court of Criminal Appeal but upon which that Court did not make a determination.

(4) A person may only appeal to the Supreme Court in accordance with *subsection (3)* where—

(a) the matter which is the subject of the appeal is one that is relevant to the conduct of the person's defence in the re-trial, and

(b) the Court of Criminal Appeal or the Director certifies that the matter involves a point of law of exceptional public importance and that it is desirable in the

public interest that the person should take an appeal to the Supreme Court.

(5) The Supreme Court may, for the purposes of its decision on an appeal under *subsection (2)* or *subsection (3)*, either—

(a) remit the proceedings to the Court of Criminal Appeal to deal with, or

(b) deal with the proceedings itself, and for that purpose, exercise any powers of the Court of Criminal Appeal,

and the Court of Criminal Appeal or the Supreme Court, as appropriate, may, if necessary, quash any sentence imposed by the Court of Criminal Appeal and in place of that sentence impose on the convicted person the sentence it considers appropriate, being a sentence which could have been imposed by the trial Court.

(6) The Director may, in relation to proceedings decided by the Court of Criminal Appeal (including proceedings under *section 2* of the *Criminal Justice Act 1993*) and without prejudice to the decision in favour of the accused person, appeal the decision of the Court of Criminal Appeal to the Supreme Court if the Court of Criminal Appeal or the Director certifies that the decision involves a point of law of exceptional public importance and that it is desirable in the public interest that the Director should take an appeal to the Supreme Court.

(7) The Supreme Court shall, in an appeal under *subsection (6)*, hear argument—

(a) by, or by a legal representative on behalf of, the Director,

(b) if the accused person so wishes, by his or her legal representative or, with the leave of the Court, by the accused person himself, and

(c) if a legal representative is assigned under *subsection (8)*, by that legal representative.

(8) The Supreme Court shall, in an appeal under *subsection (6)*, assign a legal representative to argue in support of the decision if—

(a) the accused person waives the right to be represented or heard under *subsection (7)(b)*, or

(b) notwithstanding the fact that the accused person exercises the right to be represented or heard under *subsection (7)(b)*, the Court considers it desirable in the public interest to do so.

(9) The Supreme Court, in an appeal under *subsection (2)*, *subsection (3)* or *subsection (6)*, may, if it considers it appropriate to do so, hear argument and make a decision in relation to any part (not only the point of law of exceptional public importance which is the subject of the certificate issued under *subsection (2)*, *subsection (3)* or *subsection (6)*) of the decision of the Court of Criminal Appeal.

(10) The Supreme Court shall ensure, so far as is reasonably practicable, that the identity of the accused person in an appeal under *subsection (6)* is not disclosed in connection with the appeal, unless the person agrees to the use of his or her name in the appeal.

Appeal to Supreme Court from the Courts-Martial Appeal Court

290.— (1) No appeal lies to the Supreme Court from a decision by the Courts-Martial Appeal Court in proceedings before the Courts-Martial Appeal Court, except in accordance with this section.

[CMAA 1983, s.14, modified]

(2) A convicted person who is the subject of proceedings decided by the Courts-

Martial Appeal Court may appeal the decision of that Court to the Supreme Court, if that Court or the Director certifies that the decision involves a point of law of exceptional public importance and that it is desirable in the public interest that the person should take an appeal to the Supreme Court.

(3) Subject to *subsection (4)*, a person who has appealed his or her conviction to the Courts-Martial Appeal Court and who has been granted a re-trial by that Court, may, without prejudice to the determination by the Court to grant a re-trial, appeal to the Supreme Court in respect of a matter raised by him or her in the Courts-Martial Appeal Court but upon which that Court did not make a determination.

(4) A person may only appeal to the Supreme Court in accordance with *subsection (3)* where—

(a) the matter which is the subject of the appeal is one that is relevant to the conduct of the person's defence in the re-trial, and

(b) the Courts-Martial Appeal Court or the Director certifies that the matter involves a point of law of exceptional public importance and that it is desirable in the public interest that the person should take an appeal to the Supreme Court

(5) The Supreme Court may, for the purposes of its decision on an appeal under *subsection (2)* or *subsection (3)*, either—

(a) remit the proceedings to the Courts-Martial Appeal Court to deal with, or

(b) deal with the proceedings itself, and for that purpose, exercise any powers of the Courts-Martial Appeal Court,

and the Courts-Martial Appeal Court or the Supreme Court, as appropriate, may, if necessary, quash any sentence imposed by the Courts-Martial Appeal Court and in place of that sentence impose on the convicted person the sentence it considers appropriate, being a sentence which could have been imposed by the trial court-martial.

(6) The Director may, in relation to proceedings decided by the Courts-Martial Appeal Court and without prejudice to the decision in favour of the accused person, appeal the decision of the Courts-Martial Appeal Court to the Supreme Court if the Courts-Martial Appeal Court or the Director certifies that the decision involves a point of law of exceptional public importance and that it is desirable in the public interest that the Director should take an appeal to the Supreme Court and the statement of the question of law to be referred to the Supreme Court under this subsection shall be settled by the Attorney General.

(7) The Supreme Court shall, in an appeal under *subsection (6)*, hear argument—

(a) by, or by a legal representative on behalf of, the Director,

(b) if the accused person so wishes, by his or her legal representative or, with the leave of the Court, by the accused person himself, and

(c) if a legal representative is assigned under *subsection (8)*, by that legal representative.

(8) The Supreme Court shall, in an appeal under *subsection (6)*, assign a legal representative to argue in support of the decision if—

(a) the accused person waives the right to be represented or heard under *subsection (7)(b)*, or

(b) notwithstanding the fact that the accused person exercises the right to be represented or heard under *subsection (7)(b)*, the Court considers it desirable in the public interest to do so.

(9) The Supreme Court, in an appeal under *subsection (2)*, *subsection (3)* or *subsection (6)*, may, if it considers it appropriate to do so, hear argument and make a decision in relation to any part (not only the point of law of exceptional public importance which is the subject of the certificate issued under *subsection (2)*, *subsection (3)* or *subsection (6)*) of the decision of the Courts-Martial Appeal Court.

(10) The Supreme Court shall ensure, so far as is reasonably practicable, that the identity of the accused person in an appeal under *subsection (6)* is not disclosed in connection with the appeal, unless the person agrees to the use of his or her name in the appeal.

With prejudice
appeals to the
Supreme Court

291.—(1) Where—

[CPA 2010, ss.
23, 24]

(a) a person is acquitted on indictment (whether in respect of the whole or part of the indictment), or

(b) a person's conviction on indictment is quashed on appeal by the Court of Criminal Appeal and that Court makes no order for the re-trial of the person,

the Director may, subject to *subsections (2) and (12)*, appeal the verdict or, as the case may be, the decision in favour of the accused on a question of law (and only on a question of law) arising during the trial or, as the case may be, the appeal, to the Supreme Court for determination.

(2) An appeal under this section shall lie only where—

(a) a ruling was made by a court during the course of a trial or, as the case may be, the hearing of an appeal referred to in *subsection (1)*, which erroneously excluded compelling evidence, or

(b) a direction was given by a court during the course of a trial referred to in *subsection (1)*, directing the jury in the trial to find the person not guilty where—
(i) the direction was wrong in law, and
(ii) the evidence adduced in the proceedings was evidence upon which a jury might reasonably be satisfied beyond a reasonable doubt of the person's guilt in respect of the offence concerned.

(3) An appeal under this section shall be made, on notice to the person who is the subject of the appeal, within 28 days, or such longer period not exceeding 56 days as the Supreme Court may, on application to it in that behalf, determine, from the day on which the person was acquitted or the conviction was quashed, as the case may be.

(4) Where a person fails to appear before the Supreme Court in respect of the appeal, the Court, if it is satisfied that it is, in all the circumstances, in the interests of justice to do so, may proceed to hear and decide the appeal in the absence of the person concerned.

(5) For the purposes of considering an appeal under this section, the Supreme Court shall hear argument—

(a) by, or by a legal representative on behalf of, the Director,

(b) by the person who is the subject of the appeal or by his or her legal

representative, and

(c) if a legal representative is assigned under *subsection (6)*, by that legal representative.

(6) The Supreme Court shall assign a legal representative to argue in support of the verdict or decision referred to in *paragraph (a)* or *paragraph (b)* of *subsection (1)* if—

(a) the person who is the subject of the appeal does not wish to be represented or heard under *subsection (5)(b)*, or

(b) notwithstanding the fact that the person concerned exercises his or her right to be represented or heard under *subsection (5)(b)*, the Court considers it desirable in the public interest to do so.

(7) The Supreme Court, on hearing an appeal under this section, may—

(a) quash the acquittal or reverse the decision of the Court of Criminal Appeal, as the case may be, and order the person to be re-tried for the offence concerned if it is satisfied—

(i) that the requirements of *subsection (2)(a)* or *subsection (2)(b)*, as the case may be, are met, and

(ii) that, having regard to the matters referred to in *subsection (8)*, it is, in all the circumstances, in the interests of justice to do so, or

(b) if it is not so satisfied, affirm the acquittal or the decision of the Court of Criminal Appeal, as the case may be.

(8) In determining whether to make an order under *subsection (7)(a)*, the Supreme Court shall have regard to—

(a) whether or not it is likely that any re-trial could be conducted fairly,

(b) the amount of time that has passed since the act or omission that gave rise to the indictment,

(c) the interest of any victim of the offence concerned, and

(d) any other matter which it considers relevant to the appeal.

(9) The Supreme Court may make an order for a re-trial under this section subject to such conditions and directions as it considers necessary or expedient (including conditions and directions in relation to the staying of the re-trial) to ensure the fairness of the re-trial.

(10) Subject to *subsection (9)*, where the Supreme Court makes an order for a re-trial under this section, the re-trial shall take place as soon as practicable.

(11) In this section “compelling evidence”, in relation to a person, means evidence which—

(a) is reliable,

(b) is of significant probative value, and

(c) is such that when taken together with all the other evidence adduced in the proceedings concerned, a jury might reasonably be satisfied beyond a reasonable doubt of the person’s guilt in respect of the offence concerned.

(12) No appeal lies under this section from an acquittal following a re-trial ordered under *section 295* or *section 296*.

Appeals to the Supreme Court from decisions under *section 301* and *section 302*

292.—(1) An appeal lies to the Supreme Court by the acquitted person or the Director from a decision of the Court of Criminal Appeal under *section 301* or *section 302* if that Court or the Director certifies that the decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.

[CPA 2010, s 14]

(2) The Supreme Court may, for the purposes of its decision on such an appeal, either—

(a) remit the case to the Court of Criminal Appeal to deal with, or

(b) deal with the case itself and for that purpose exercise any powers of the Court of Criminal Appeal under this Act.

(3) *Section 12* of the *Criminal Procedure Act 2010* applies, with any necessary modifications, to an appeal under this section as it applies to an application under *section 301* or *section 302*.

Appeals from Central Criminal Court

293.—(1) No appeal lies to the Supreme Court from a decision of the Central Criminal Court, other than an appeal under *section 291* or a reference under *section 288*.

[CPA 1993, s 11]
[CCOA 1995, s. 44]

(2) This section does not apply to a decision of the Central Criminal Court in so far as it relates to the validity of any law having regard to the provisions of the Constitution.

Legal aid

294.—(1) If the person to whom the Supreme Court proceedings relate, mentioned in *subsection (2)*, wishes to be represented in proceedings before the Supreme Court to which *section 288*, *section 289*, *section 290*, *section 291* or, as the case may be, *section 292* relates, and a legal aid (Supreme Court) certificate is granted under *subsection (3)*, or is deemed to have been granted under *subsection (4)*, in respect of him or her, he or she shall be entitled to free legal aid in the preparation and presentation of any argument that he or she wishes to make to the Court and to have a legal representative assigned to him or her for that purpose in the manner prescribed by regulations under *section 10* of the Act of 1962 or, as the case may be, under *section 33* of the Act of 1983.

[CPA 1967, s.34(6)-(8)]
[CJA 1924, s.29(7)-(9)]
[CJA 2006, s 21, 22]
[CPA 2010, ss 14(3)-(5), 23(8)-(10)]

(2) The person to whom the Supreme Court proceedings relate is, for the purposes of this section:

(a) in proceedings on an appeal under *section 288*, the acquitted person;

(b) in proceedings on an appeal under *section 289(2)*, *section 289(3)* or *section 284(6)*, the accused person;

(c) in proceedings on an appeal under *section 290(2)*, *section 290(3)* or *section 290(6)*, the accused person;

(d) in proceedings on an appeal under *section 291*, the person acquitted or, as the case may be, the person whose conviction was quashed;

(e) in proceedings on an appeal under *section 292*, the person to whom the application for a re-trial order relates.

(3) The person to whom the Supreme Court proceedings relate may, in relation to the proceedings mentioned in *subsection (2)*, apply for a legal aid (Supreme Court) certificate to the Supreme Court either—

(a) by letter addressed to the Registrar of the Supreme Court setting out the facts of the case and the grounds of the application or appeal, or

(b) to the Supreme Court itself,

and the Court shall grant the certificate if (but only if) it appears to the Court that the means of that person are insufficient to enable him or her to obtain legal aid.

(4) A legal aid (Supreme Court) certificate shall be deemed to have been granted in respect of the person to whom the Supreme Court proceedings relate in relation to proceedings mentioned in *subsection (2)* if:

(a) in the case of proceedings under *section 288*, a legal aid (trial on indictment) certificate was granted under the Act of 1962 in respect of the acquitted person in relation to the trial on indictment concerned;

(b) in the case of an appeal under *section 289(2)*, *section 289(3)* or *section 289(6)*, a legal aid (trial on indictment) certificate was granted under the Act of 1962 in respect of the accused person in relation to the trial on indictment concerned;

(c) in the case of an appeal under *section 290(2)*, *section 290(3)* or *section 290(6)*, legal aid (court-martial) certificate was granted under the Act of 1983 in respect of the accused person in relation to the court-martial concerned;

(d) in the case of an appeal under *section 291*, a legal aid (trial on indictment) certificate was granted under the Act of 1962 in respect of the person concerned in relation to the earlier proceedings in respect of the offence concerned;

(e) in the case of an appeal under *section 292*, a legal aid (re-trial order) certificate was granted under the Act of 1962 in respect of the person to whom the application for a re-trial order relates in relation to the application for a re-trial order.

Reference of question of law to the Supreme Court

Reference of question
of law to the Supreme
Court

295.— (1) Provided that the conditions in *section 279* are met, the Circuit Court may, in accordance with that section, refer to the Supreme Court for decision by the Supreme Court a question of law the decision of which is necessary to the decision of the Circuit Court proceedings.

[CJA 1947, s
16]

(2) The Circuit Court may refer a question of law under *subsection (1)* in proceedings by way of appeal to the Circuit Court from a decision of an adjudicating body or person but where the adjudicating body or person whose decision is appealed from is empowered by any enactment to refer a question of law for decision by, or to state a case for the determination, decision or opinion of, the High Court, this section applies to a reference by the Circuit Court of a question of law in such proceedings on appeal to that Court, but with the modification that the question of law shall be referred to the High Court, and not to the Supreme Court.

(3) A Judge of the High Court hearing an appeal under *section 315* has the same powers in relation to reference of a question of law to the Supreme Court under *subsection (1)* as had the Judge of the Circuit Court whose decision is appealed.

(4) An appeal lies, by leave of the High Court, to the Supreme Court from a decision of the High Court on a question of law referred to the High Court under *subsection (2)*.

(5) Where an enactment (other than this Act) so permits¹³¹, a Judge of the High Court or of the District Court¹³² may refer of a question of law to the Supreme Court for decision in accordance with this Act.

Chapter 3: Appeals and applications to the Court of Criminal Appeal

Interpretation: this Chapter

296.— In this Chapter:

[New]

“Court”, when used without qualification, means the Court of Criminal Appeal;

“Director” means the Direction of Public Prosecutions, and includes a reference, where appropriate, to the Attorney General.

Appeal to Court of Criminal Appeal by person convicted

297.— (1) Subject to *subsection (2)*, an appeal under this Act lies to the Court by:

[CJA 1924, ss. 31, 32]
[CPAA 1973, s.1]
[CPA 2010, s. 31]

(a) a person convicted on indictment before the Central Criminal Court, the Circuit Court or a Special Criminal Court, or

(b) a person sent forward by the District Court to the Central Criminal Court or the Circuit Court for sentence under *section 13(2)* of the Act of 1967 or a person who has pleaded guilty to a charge before a Special Criminal Court, who wishes to appeal against the severity of the sentence imposed.

(2) No appeal to the Court shall proceed unless:—

(i) the trial Judge who tried the intending appellant, or the member of the Special Criminal Court who pronounced the decision of the Court in the trial concerned, has certified that the intending appellant’s notice of appeal sufficiently sets out the grounds intended to be raised on appeal and any proposition of law raised in support of those grounds, or

(ii) the Chief Justice or a Judge for the time being nominated for that purpose under *section 187(1)* dispenses with the need for such a certificate.

(3) The Court has power to make all interim, interlocutory and consequential orders it thinks fit in connection with any appeal or application to that Court, including an order admitting the appellant to bail pending the decision of his or her appeal or application.

Appeal against order for costs

298.— (1) Where a person tried on indictment is acquitted (whether in respect of the whole or part of the indictment) the Director may appeal to the Court against an order for costs made by the trial Court against the Director in favour of the accused person.

[CJA 2006, s. 24]

(2) An appeal under this section shall be made on notice to the accused person.

(3) An appeal under this section shall be made within 28 days, or such longer period not exceeding 56 days as the trial Court, on application to it in that behalf, determines, from the day on which the order is made.

Appeals under *Criminal Law (Insanity) Act 2006* in accordance with that Act

299.— The provisions of this Chapter are without prejudice to the appeals to the Court provided for in the Act of 2006, which are unaffected by this Act.

[CL(DA) 2006, s.8]

¹³¹ For example, *Garda Síochána (Compensation) Act 1941*, section 9; *Referendum Act 1994*, section 55.

¹³² For example, *Malicious Injuries Act 1981*, section 18.

300.— (1) In this section:

reference to a new fact is to a fact known to the convicted person at the time of the trial or appeal proceedings, the significance of which was appreciated by him, where he or she alleges that there is a reasonable explanation for his or her failure to adduce evidence of that fact, and

reference to a newly-discovered fact is to a fact discovered by or coming to the notice of the convicted person after the relevant appeal proceedings have been finally decided or a fact the significance of which was not appreciated by the convicted person or his or her advisers during the trial or appeal proceedings.

(2) A person—

(a) who has been convicted of an offence either—

(i) on indictment, or

(ii) after signing a plea of guilty and being sent forward for sentence under *section 13(2)(b)* of the Act of 1967, and

who, after appeal to the Court, and any subsequent re-trial, stands convicted of an offence, and

(b) who alleges that a new or newly-discovered fact shows that there has been a miscarriage of justice in relation to the conviction or that the sentence imposed is excessive,

may, if no further proceedings are pending in relation to the appeal, apply to the Court for an order quashing the conviction or reviewing the sentence.

(3) An application under *subsection (2)* shall be treated for all purposes as an appeal to the Court against the conviction or sentence, save that the intending applicant's notice of application need not be certified by the Judge who tried the intending applicant.

(4) Where—

(a) after an application by a convicted person under *subsection (2)* and any subsequent re-trial the person stands convicted of an offence, and

(b) the person alleges that a fact discovered by him or her or coming to his or her notice after the hearing of the application under *subsection (2)* and any subsequent re-trial, or a fact the significance of which was not appreciated by him or her or his or her advisers during the hearing of the application under *subsection (2)* and any subsequent re-trial, shows that there has been a miscarriage of justice in relation to the conviction, or that the sentence was excessive,

he or she may apply to the Court for an order quashing the conviction or reviewing the sentence and his or her application shall be treated as if it were an application under *subsection (2)*.

301.— (1) This section applies where a person has been:

(a) charged in the State with a relevant offence,

(b) tried on indictment in respect of the offence, and

(c) acquitted (whether at the trial, on appeal against conviction or on appeal from

such a decision on appeal) of that offence,

but does not apply where the person was the subject of a special verdict under *section 5* of the Act of 2006 in respect of that offence.

(2) For the purposes of this section, a person who has been acquitted of a relevant offence in proceedings referred to in *subsection (1)* is deemed to have also been acquitted of any relevant offence in respect of which he or she could have been convicted in the proceedings concerned by virtue of the first-mentioned offence charged in the indictment, other than an offence for which he or she has been convicted.

(3) The Director may apply to the Court for a re-trial order where it appears to him—

(a) that there is new and compelling evidence against a person referred to in *subsection (1)* in relation to the relevant offence concerned, and

(b) that it is in the public interest to do so.

(4) Only one application for a re-trial order may be made by the Director in respect of a person in relation to a relevant offence that was the subject of the application and no further application may be made, irrespective of whether the person concerned is subsequently acquitted of the offence concerned in a re-trial ordered pursuant to an application under this section.

(5) An application for a re-trial order under *subsection (3)* shall be made on notice to the person concerned.

(6) If a person fails to appear before the Court in respect of the hearing of the application, the Court, if it is satisfied that it is, in all the circumstances, in the interests of justice to do so, may proceed to hear and decide the application in the absence of the person.

(7) In this section:

“new and compelling evidence”, in relation to a person, means evidence—

(a) which was not adduced in the proceedings in respect of which the person was acquitted (nor in any appeal proceedings to which the original proceedings related), and

(b) which could not, with the exercise of due diligence, have been adduced during those proceedings, and

(c) which—

(i) is reliable,

(ii) is substantial, and

(iii) implicates the person concerned with a high degree of probability in the commission of the relevant offence concerned;

“relevant offence” means an offence specified in *Schedule 1* of the *Criminal Procedure Act 2010*.

trial: previous
acquittal tainted¹³³

(a) a person has been charged in the State with an offence, tried on indictment in respect of the offence, and acquitted (whether at the trial, on appeal against conviction or on appeal from such a decision on appeal) of that offence, and

(b) the person, or another person, has been convicted of an offence against the administration of justice relating to the proceedings which resulted in the acquittal referred to in *paragraph (a)*.

(2) For the purposes of this section, a person who has been acquitted of an offence in proceedings referred to in *subsection (1)(a)*, is deemed to have also been acquitted of any offence in respect of which he or she could have been convicted in the proceedings concerned by virtue of the first-mentioned offence charged in the indictment, other than an offence for which he or she has been convicted.

(3) The Director may apply to the Court for a re-trial order where it appears to him—

(a) that it is probable that the commission of the offence against the administration of justice concerned affected the result of the proceedings concerned, and

(b) that it is in the public interest to do so.

(4) No application for a re-trial order in respect of a person may be made by the Director under this section where proceedings relating to an offence against the administration of justice referred to in *subsection (1)(b)* are pending before any Court.

(5) Only one application for a re-trial order may be made by the Director in respect of a person in relation to an offence that was the subject of the application and no further application may be made, irrespective of whether the person concerned is subsequently acquitted of the offence concerned in a re-trial ordered pursuant to an application under this section.

(6) An application for a re-trial order under *subsection (3)* shall be made on notice to the person concerned.

(7) If a person fails to appear before the Court in respect of the hearing of the application, the Court, if it is satisfied that it is, in all the circumstances, in the interests of justice to do so, may proceed to hear and decide the application in the absence of the person.

(8) For the purposes of *subsection (1)(b)*, the reference to “convicted of an offence”, in relation to a person, includes a reference to the conviction of a person after signing a plea of guilty and being sent forward for sentence under *section 13(2)(b)* of the Act of 1967.

(9) In this section, “offence against the administration of justice” means—

(a) an offence under *section 1* of the *Prevention of Corruption Act 1906* in so far as the offence concerned relates to criminal proceedings,

(b) an offence under *section 41* of the *Criminal Justice Act 1999*¹³⁴,

¹³³ It is assumed that subsection (1) of each of section 8 and section 9 of the *Criminal Procedure Act 2010* would be redundant by the time the Oireachtas were to enact this Bill, so they are not reproduced.

¹³⁴ The offence of embracery might also be added.

- (c) attempting to pervert the course of justice,
- (d) perjury, or
- (e) conspiring or inciting another person to commit any of the offences referred to in *paragraphs (a) to (d)*.

Re-trial orders

303.—(1) If on hearing an application under *section 301*, the Court is satisfied— [CPA 2010, s 10]

(a) that there is new and compelling evidence against a person referred to in *section 301(1)*, and

(b) that, having had regard to the matters referred to in *subsection (3)*, it is, in all the circumstances, in the interests of justice to do so,

the Court shall make a re-trial order quashing the person’s acquittal and directing that the person be re-tried for the relevant offence, subject to such conditions and directions as the Court considers necessary or expedient to ensure the fairness of the re-trial ordered under this subsection.

(2) If on hearing an application under *section 302*, the Court is satisfied—

(a) that it is probable, having regard to all the circumstances, that the commission of an offence against the administration of justice affected the result of the proceedings referred to in *section 302(1)(a)*, and

(b) that, having had regard to the matters referred to in *subsection (3)*, it is, in all the circumstances, in the interests of justice to do so, the Court shall make a re-trial order quashing the person’s acquittal and directing that the person be re-tried for the offence concerned, subject to such conditions and directions as the Court considers necessary or expedient to ensure the fairness of the re-trial ordered under this subsection.

(3) In determining whether to make an order under *subsection (1)* or *subsection (2)*, the Court shall have regard to—

- (a) whether or not it is likely that any re-trial could be conducted fairly,
- (b) the amount of time that has passed since the act or omission that gave rise to the indictment,
- (c) the interests of any victim of the offence concerned, and
- (d) any other matter which the Court considers relevant to the application.

(4) For the purposes of determining whether to make an order under *subsection (1)* or *subsection (2)*, the Court may—

- (a) order the production of any document, exhibit or other thing connected with the proceedings to which the application relates,
- (b) order any person who would have been a compellable witness in the proceedings to which the application relates to attend for examination and be examined before the Court, whether or not the person was called in those proceedings,
- (c) receive the evidence of any witness, or
- (d) make any order necessary for doing justice in the application before the

Court.

(5) Evidence may be admitted in a hearing under this section, whether or not it would have been admissible in earlier proceedings against the person who is the subject of the application under *section 301 or section 302*.

(6) Where the Court makes a re-trial order, the re-trial shall take place as soon as practicable.

(7) In this section, “document”, in relation to an application by the Director under *section 302*, includes the trial Court’s record of the trial of any person referred to in *section 302(1)(b)*.

Conduct and disposal
of appeals and
applications

304.— (1) An appeal shall be heard and decided by the Court on the trial Court’s record of the trial, which in this Act means—

[CJA 1924, s
33]
[CJMPA 1997,
s 7
(modified)¹³⁵]

(a) where available, a transcript of the proceedings at the trial, certified to be a transcript of those proceedings by the Judge before whom the case was tried, or

(b) any other record of the proceedings at the trial, certified to be such record of those proceedings by the Judge before whom the case was tried, and

(c) where the trial Judge is of opinion that the transcript or record referred to in *paragraph (a) or paragraph (b)* does not fully reflect what took place during the trial, a report by the trial Judge as to the defects which he or she considers the transcript or record contains.

(2) Where the Court considers that the trial Court’s record mentioned in *subsection (1)* is defective in a material particular, it may decide the appeal in such manner as it considers, in all the circumstances, appropriate.

(3) The Court may hear new or additional evidence, and may call for the production of any other available record of the proceedings at the trial.

(4) In this section, a trial Court’s “record” includes, in addition to a record in writing—

[CJA 1924, s.
33(3)]

(a) shorthand notes, or a disc, tape, soundtrack, sound recording or other recording, or other device in which information, sounds or signals are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in legible or audible form,

(b) a film tape or other device in which visual images are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in visual form, and

(c) a photograph.

(5) On the hearing of an appeal against conviction or application under *section 300*, the Court may—

[CPA 1993, s.
3]

(a) affirm the conviction (and may do so, notwithstanding that it is of opinion that a point raised in the appeal or application might be decided in favour of the appellant or applicant, if it considers that no miscarriage of justice has actually occurred), or

¹³⁵ The modification is to give effect to a recommendation of the *Report of the Working Group on the Jurisdiction of the Courts: The Criminal Jurisdiction of the Courts* (Courts Service, 2003) (paragraph 64) that this provision be clarified to make clear that the trial Judge should only identify the transcript as the record of the trial and not verify its contents.

- (b) quash the conviction and make no further order, or
- (c) quash the conviction and order the appellant or applicant to be re-tried for the offence, or
- (d) quash the conviction and, if it appears to the Court that the appellant or applicant could have been found guilty of some other offence and that the jury (or, as the case may be, the Court of trial) must have been satisfied of facts which proved him or her guilty of the other offence—
 - (i) substitute for the verdict a verdict of guilty of the other offence, and
 - (ii) impose such sentence in substitution for the sentence imposed at the trial as may be authorised by law for the other offence, not being a sentence of greater severity.
- (6) On the hearing of an appeal against sentence the Court may quash the sentence and in place of it impose such sentence or make such order as it considers appropriate, being a sentence or order which could have been imposed on the convicted person for the offence at the Court of trial.
- (7) The Court, on the hearing of an appeal or application under *section 300*, may—
 - (a) where the appeal or application is based on new or additional evidence, direct the Commissioner of the Garda Síochána to have such inquiries carried out as the Court considers necessary or expedient for the purpose of determining whether further evidence ought to be adduced;
 - (b) order the production of any document, exhibit or other thing connected with the proceedings;
 - (c) order any person who would have been a compellable witness in the proceedings from which the appeal lies (or arising from which the application is made) to attend for examination and be examined before the Court, whether or not he or she was called in those proceedings;
 - (d) receive the evidence of any witness;
 - (e) make any order necessary for the purpose of doing justice in the proceedings before the Court.
- (8) The Court may order the examination of any witness whose attendance might be required under this section to be conducted, in a manner provided by rules of court, before a Judge or commissioner appointed by the Court for the purpose, and allow the admission of any depositions so taken as evidence before the Court.
- (9) A legal aid certificate which was granted in relation to the trial of an accused person who has been ordered by the Court under this section to be re-tried shall have effect as if it had been granted also in relation to his or her re-trial.
- (10) If it appears to the Chief Justice or a Judge for the time being nominated for that purpose under *section 187(1)* that a notice of appeal does not show any substantial ground of appeal or, in the case of an application under *section 300*, that the application does not disclose a *prima facie* case that a miscarriage of justice has occurred in relation to the conviction or that the sentence is excessive, he or she may, without requiring the production to the Court of the Court's record of the proceedings at the trial, refer the appeal or application to the Court for summary determination.
- (11) Where an appeal or application under *section 300* is referred for summary

[CPA 1993, s. 5]

determination, the Court may, if it considers that the appeal or application is frivolous or vexatious and can be decided without adjourning it for a full hearing, dismiss it summarily, without calling on anyone to attend the hearing or to appear on behalf of the prosecution.

(12) Any interlocutory application to the Court in relation to any appeal or application to the Court may be heard and decided by the Chief Justice, by a Judge for the time being nominated for that purpose under *section 187(1)*, or by any Judge of the Supreme Court nominated by the Chief Justice for that purpose.

[CJA 1928, s. 7, modified]

Chapter 4: Appeals, applications and references of questions of law to the Courts-Martial Appeal Court

Interpretation: this Chapter

305.— In this Chapter:

[New]

“Court”, when used without qualification, means the Courts-Martial Appeal Court;

“Director” means the Direction of Military Prosecutions, and includes a reference, where appropriate, to the Attorney General.

Appeals to Courts-Martial Appeal Court

306.— (1) A person convicted by a court-martial may appeal to the Court against the finding or sentence of the court-martial or against both the finding and the sentence.

[CMAA 1983, s.13]

(2) A person may appeal to the Court in the circumstances mentioned in *section 203B*, *section 203C*, and *section 203D* of the Act of 1954.

Appeal against special verdict; order or of committal or refusal of such order or decision that accused is unfit to take his or her trial

307.— The provisions of this Chapter are without prejudice to the appeals to the Court provided for in *section 19A*, *section 19B* and *section 19C* of the Act of 1983¹³⁶, which are unaffected by this Act.

[New]

Application to Courts-Martial Appeal Court: alleged miscarriage of justice

308.— (1) A person—

[CPA 1993, s 2 as applied to CMAC by s 6 of that Act]

(a) who has been convicted by a limited or general court-martial of an offence, and who, after appeal to the Court, and any subsequent re-trial, stands convicted of an offence to which this paragraph applies, and

(b) who alleges that a new or newly-discovered fact shows that there has been a miscarriage of justice in relation to the finding or that the sentence imposed is excessive,

may, if no further proceedings are pending in relation to the appeal, apply to the Court for an order quashing the finding or reviewing the sentence.

(2) An application under *subsection (1)* shall be treated for all purposes as an appeal to the Court against the finding or sentence of a court-martial.

(3) In *subsection (1)(b)*:

reference to a new fact is to a fact known to the convicted person at the time of the trial or appeal proceedings the significance of which was appreciated by him, where he or she alleges that there is a reasonable explanation for his or her failure to adduce evidence of that fact, and

¹³⁶ Each inserted by section 11 and Schedule 4, Part 1 of the *Defence (Amendment) Act 2007*.

reference to a newly-discovered fact is to a fact discovered by or coming to the notice of the convicted person after the relevant appeal proceedings have been finally decided or a fact the significance of which was not appreciated by the convicted person or his or her advisers during the trial or appeal proceedings.

309.— (1) An appeal or application under *section 308* shall be heard and decided by the Court on the court-martial's record of the trial, which in this Act means —

[CJA 1924, s 33]
[CJMPA 1997, s 7 (modified as above and applied to CMAC)]
[CMAA 1983, s. 17]

(a) the record of the proceedings at the trial by court-martial made by the Court-Martial Administrator, certified to be such record of those proceedings by the military Judge before whom the case was tried, and

(b) where the military Judge is of opinion that the transcript or record referred to in *paragraph (a)* does not reflect what took place during the trial by court-martial, a report by him or her as to the defects which he or she considers such record contains.

(2) Where the Court is of opinion that the record is defective in any material particular, it may decide the appeal in such manner as it considers, in all the circumstances, appropriate.

(3) The Court may hear new or additional evidence, and may call for the production of any other available record of the proceedings at the trial.

(4) In this section, “record” includes, in addition to a record in writing—

(a) shorthand notes, or a disc, tape, soundtrack, sound recording or other recording, or other device in which information, sounds or signals are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in legible or audible form,

(b) a film tape or other device in which visual images are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in visual form, and

(c) a photograph.

(5) On the hearing of an appeal against conviction or application under *section 308* the Court may—

[CPA 1993, s. 3, as applied to CMAC by s 6 of that Act]

(a) affirm the conviction (and may do so, notwithstanding that it is of opinion that a point raised in the appeal might be decided in favour of the appellant or applicant, if it considers that no miscarriage of justice has actually occurred), or

(b) quash the conviction and make no further order, or

(c) quash the conviction and order the appellant or applicant to be re-tried for the offence, or

(d) quash the conviction and, if it appears to the Court that the appellant or applicant could have been found guilty of some other offence and that the court-martial board (or, as the case may be, the court-martial) must have been satisfied of facts which proved him or her guilty of the other offence—

(i) substitute for the verdict a verdict of guilty of the other offence, and

(ii) impose such sentence in substitution for the sentence imposed at the trial as may be authorised by law for the other offence, not being a sentence of greater severity.

(6) On the hearing of an appeal against sentence the Court may quash the

sentence and in place of it impose the sentence or make such order as it considers appropriate, being a sentence or order which could have been imposed on the convicted person for the offence at his or her court-martial.

(7) The Court, on the hearing of an appeal or application under *section 308*, may—

(a) where the appeal or application is based on new or additional evidence, direct the Provost-Marshal to have such inquiries carried out as the Court considers necessary or expedient for the purpose of determining whether further evidence ought to be adduced;

(b) order the production of any document, exhibit or other thing connected with the proceedings;

(c) order any person who would have been a compellable witness in the proceedings from which the appeal lies (or arising from which the application is made) to attend for examination and be examined before the Court, whether or not he or she was called in those proceedings;

(d) receive the evidence of any witness;

(e) generally make such order as is necessary for the purpose of doing justice in the case before the Court.

(8) The Court may order the examination of any witness whose attendance might be required under this section to be conducted, in a manner provided by rules of court, before any Judge or a commissioner appointed by the Court for the purpose, and allow the admission of any depositions so taken as evidence before the Court.

(9) A legal aid certificate which was granted in relation to the trial by court-martial of an accused person who has been ordered by the Court under this section to be re-tried shall have effect as if it had been granted also in relation to his or her re-trial by court-martial.

(10) If it appears to the Chief Justice or a Judge for the time being nominated for that purpose under *section 187(2)* that a notice of appeal does not show any substantial ground of appeal or, in the case of an application under *section 308*, that the application does not disclose a *prima facie* case that a miscarriage of justice has occurred in relation to the conviction or that the sentence is excessive, he or she may, without requiring the production to the Court of the court-martial's record of the proceedings at the trial, refer the appeal or application to the Court for summary determination.

[CPA 1993, s. 5, as applied to CMAA by s 6 of that Act, modified]

(11) Where an appeal or application under *section 308* is referred for summary determination, the Court may, if it considers that the appeal or application is frivolous or vexatious and can be decided without adjourning it for a full hearing, dismiss it summarily, without calling on anyone to attend the hearing or to appear on behalf of the prosecution.

(12) Where a person convicted by a court-martial gives notice of appeal to the Court, the Court shall have power to make all consequential orders it may think fit, including—

[CMAA 1983, s. 16]

(a) in the case of an appellant who is a member of the Defence Forces, an order suspending the operation of a sentence of imprisonment or detention pending the determination of the appeal, and

(b) in the case of an appellant who is not a member of the Defence Forces, an

order admitting the appellant to bail on such terms as the Court thinks proper pending the determination of the appeal.

(13) Any interlocutory application to the Court in relation to any appeal or application to the Court may be heard and decided by the Chief Justice, by a Judge for the time being nominated for that purpose under *section 187(2)*, or by any Judge of the Supreme Court nominated by the Chief Justice for that purpose. [CMAA 1983, s. 15]

Reference of question of law to the Courts-Martial Appeal Court

Reference of question of law to Courts-Martial Appeal Court **310.**— *Section 279* applies to the hearing and decision of questions of law mentioned in *section 20(1)(d)* referred to the Court in accordance with *section 178G* of the Act of 1954 as if: [New]

(a) references in *section 279* to the “referring court” were references to the summary court-martial, and

(b) the reference in *section 279(9)* to the High Court were a reference to the Court.

Chapter 5: Appeals and references of question of law to the High Court

Appeal from decision of Master of the High Court¹³⁷ **311.**— (1) A party dissatisfied with or aggrieved by a decision of the Master of the High Court, except such a decision mentioned in *subsection (2)*, may, within the period prescribed in, and subject to compliance with, the Rules of the Superior Courts, appeal that decision to the High Court or apply to the High Court to vary or set aside that decision. [CCOA 1995, s.25(5)]

(2) No appeal lies to the High Court from a decision of the Master of the High Court which is:

(a) an order for the issuing of a European Enforcement Order certificate pursuant to Article 10.4 of the European Enforcement Order Regulation, or

(b) an order -

(i) For the rejection of an application for a European Order for Payment pursuant to Article 11.1 of the European Order for Payment Regulation,

(ii) for the issue of a European Order for Payment pursuant to Article 12.1 of the European Order for Payment Regulation, or

(iii) declaring a European Order for Payment enforceable pursuant to Article 18.1 of the European Order for Payment Regulation.

Appeal from decision of Taxing Master¹³⁸ **312.**— A party dissatisfied with or aggrieved by a decision of a Taxing Master may, within the period prescribed in, and subject to compliance with, the Rules of the Superior Courts, appeal that decision to the High Court or apply to the High Court to vary or set aside that decision. [New]

Cases where there is no right of appeal **313.**— No appeal lies to the High Court in civil proceedings from a decision of [CJA 1936, s.31]

¹³⁷ The form of words used in sections 311, 312 and 322 has been aligned.

¹³⁸ The Commission considers that as express provision is made for appeals from the Master as an officer of the High Court exercising quasi-judicial powers, similar provision should be made in respect of Taxing Masters: “reviews” by the High Court of Taxing Masters’ decisions are regulated by O. 99, r. 38, Rules of the Superior Courts 1986.

| | | |
|--|---|---|
| from a decision of the Circuit Court | the Circuit Court: | [CSPA 1961, s. 22(15)(a)] |
| | <p>(a) which is final and conclusive by virtue of an Act of the Oireachtas;</p> <p>(b) on a petition under the <i>Sixth Schedule</i> to the <i>Local Government Act 1925</i>;</p> <p>(c) on an appeal to the Circuit Court under an enactment relating to a tax or duty under the care and management of the Revenue Commissioners, save for any appeal (including an appeal by way of case stated) which lies under an enactment in force immediately before the commencement of <i>Part IV</i> of the Act of 1936;</p> <p>(d) on an appeal to the Circuit Court under any enactment concerning valuation;</p> <p>(e) if, before the decision of the Circuit Court is given, all of the parties to the proceedings agree, in writing signed by them, that the Circuit Court’s decision shall be final, or</p> <p>(f) for the issuing of a European Enforcement Order certificate pursuant to Article 10.4 of the European Enforcement Order Regulation.</p> | |
| Reference of question of law to the High Court in certain cases where no appeal lies | 314. — Provided that the conditions in <i>section 279</i> are met, the Circuit Court may refer a question of law to the High Court in accordance with <i>section 295(2)</i> in proceedings mentioned in <i>paragraph (c)</i> or <i>paragraph (d)</i> of <i>section 313</i> . | [New] |
| Appeals from the Circuit Court in civil proceedings | <p>315.— (1) Save where excluded by <i>section 313</i>, an appeal lies to the High Court from every decision of the Circuit Court in civil proceedings, including civil proceedings at the hearing or for the decision of which no oral evidence was given.</p> <p>(2) Every appeal under this section shall be heard and decided by one Judge of the High Court.</p> <p>(3) A Judge of the High Court hearing an appeal under this section has the same powers in relation to reference of a question of law to the Supreme Court under <i>section 279(1)</i> as had the Judge of the Circuit Court whose decision is appealed from.</p> <p>(4) <i>Section 281(5)</i> and <i>section 281(6)</i> do not apply to an appeal to the High Court from the Circuit Court mentioned in <i>subsection (1)</i> and, unless otherwise directed by the Judge of the High Court, such an appeal shall be by way of re-hearing.</p> <p>(5) Where, in a appeal mentioned in <i>subsection (1)</i>, the notice of appeal states that the appeal is against a specified part of the decision of the Circuit Court, then the High Court shall, on the hearing of the appeal, re-hear the proceedings only to the extent necessary to enable that Court to adjudicate on the appeal against that part of the Circuit Court’s decision which is the subject of the appeal¹³⁹.</p> | [CJA 1936, s.37, 38] |
| Venue for appeals from the Circuit Court in civil proceedings ¹⁴⁰ | 316. — (1) An appeal under <i>section 315</i> shall be heard by the High Court sitting in the High Court venue designated by the President of the High Court in accordance with <i>section 158</i> and <i>Schedule 11</i> or, where no such designation applies to the appeal, by the High Court sitting in Dublin. | [CJA 1936, s. 38 CCOA 1995, s 43 (modified)] |
| Finality of decisions on appeal | 317. — The decision of the High Court on an appeal from the Circuit Court under this Chapter shall be final and conclusive and not appealable. | [CJA 1936, s 39] |

¹³⁹ This implements the recommendation in paragraph 2.114 of the Report.

¹⁴⁰ This implements the recommendation in paragraph 2.125 of the Report.

Appeals from adjudicating bodies or persons

Appeals from adjudicating bodies or persons

318.— (1) Appeals to the High Court from adjudicating bodies or persons shall be heard and decided in accordance with the provisions of any enactment under or by virtue of which the right of appeal arises, and with the Rules of the Superior Courts. [New]

(2) Such appeals shall be heard and decided by one Judge of the High Court sitting in the High Court venue designated by the President of the High Court in accordance with *section 158* and *Schedule 11* or, where no such designation applies to the appeal, by the High Court sitting in Dublin.

Reference of question of law to the High Court

Reference of question of law to the High Court by District Court¹⁴¹

319.— (1) Provided that the conditions in *section 279* are met, a Judge of the District Court may, in accordance with that section¹⁴², refer any question of law arising in such proceedings to the High Court for determination. [CSPA 1961, ss. 51, 52]

(2) An appeal lies, by leave of the High Court, to the Supreme Court from a decision of the High Court on a question of law referred to the High Court under *subsection (1)*.

Abolition of appeal by way of case stated¹⁴³

320.— Following the repeal by this Act of the Act of 1857 and of *section 51* of the Act of 1961, no party or person who was heard in proceedings which have been heard and decided by a Judge of the District Court may apply to such Judge to state and sign a case under the Act of 1857 for the opinion of the High Court on such determination. [New]

Reference of question of law to the High Court by adjudicating body or person

321.— (1) An adjudicating body or person empowered in that behalf by an enactment may refer any question of law arising in proceedings before that adjudicating body or person to the High Court for determination provided, in any case in which *section 279(9)* applies, that the conditions in *section 279* are met. [New]

(2) An appeal lies, by leave of the High Court, to the Supreme Court from a decision of the High Court on a question of law referred to the High Court under *subsection (1)*.

(3) The jurisdiction of the High Court to decide any question of law referred to it shall be exercised in accordance with rules of court.

Chapter 6: Appeals to the Circuit Court

Appeals from the County Registrar

Appeal from decision of a County Registrar

322.— (1) A party dissatisfied with or aggrieved by a decision made by a County Registrar may, within the period prescribed in, and subject to compliance with, the Circuit Court Rules, appeal that decision to a Judge of the Circuit Court or apply to the Circuit Court to vary or set aside that decision. [CCOA 1995, Second Schedule, paragraph 8]

¹⁴¹ This implements the recommendation in paragraph 2.118 of the Report.

¹⁴² The language has been aligned with section 289.

¹⁴³ This follows from the implementation in *section 319* of the recommendation in paragraph 2.118 of the Report.

(2) A party dissatisfied with or aggrieved by a decision of a County Registrar acting as taxing officer of the Circuit Court may, within the period prescribed in, and subject to compliance with, the Circuit Court Rules, appeal that decision to a Judge of the Circuit Court or apply to the Circuit Court to vary or set aside that decision¹⁴⁴.

Appeals from the District Court

Appeals from the District Court in criminal proceedings

323.— (1) An appeal from a decision of a Judge of the District Court made in criminal proceedings may be brought by the person against whom the order is made against any order:

[CJA 1928, s. 18]

[CJA 1936, s. 58]

(a) for the payment of a fine or penal or other sum;

[CJA 1953, s. 33]

(b) for the doing of anything at any expense;

[CSPA 1961, s. 50]

(c) finding that there has been a breach of a Court bond, authorising the enforcement on a Court bond, ordering the forfeiture of any money or security paid into Court on foot of a Court bond or ordering the recovery of any money on foot of a Court bond;

[CJA 2006, s. 100(14)]

(d) for the undergoing of any term of imprisonment or detention,

(e) under *section 1(1) of the Probation of Offenders Act 1907*, or

(f) under *section 100(1) of the Criminal Justice Act 2006*.

(2) No appeal lies against an order of the District Court returning for trial or binding to the peace or good behaviour or to both the peace and good behaviour.

(3) An appeal from an order of a Judge of the District Court made in criminal proceedings may be brought by a prosecutor only where expressly provided by this Act or another enactment.

(4) Every appeal under this section from an order of a Judge of the District Court shall be brought:

(a) in the case of any order made under the *Licensing Acts 1833 to 2008*, or under the *Registration of Clubs Acts 1904 to 2008*, to the Judge of the Circuit Court assigned to the Circuit within which are situated the licensed premises or club premises in respect of which the offence the subject of the District Court's decision or order was committed or to which the District Court's decision or order otherwise relates, and

(b) in any other case, to the Judge of the Circuit Court assigned to the Circuit within which the decision or order of the District Court appealed from was made.

(5) The decision of the Judge of the Circuit Court on an appeal under this section shall be final and conclusive and not appealable.

(6) An appeal to the Circuit Court from the District Court in criminal proceedings shall be by way of re-hearing but where, in an appeal referred to in *subsection (1)*, the notice of appeal states that the appeal is against sentence only or the appellant, on the hearing of the appeal, indicates that he or she desires to appeal against sentence only, then the Circuit Court shall not, on the hearing of the appeal, re-hear the proceedings except to the extent necessary to enable that

¹⁴⁴ This is to make clear (consistently with draft section 312) that an appeal/review lies against a decision of a County Registrar as taxing officer.

Court to adjudicate on the question of sentence.

Appeals from the District Court in civil proceedings

324.— (1) Save where otherwise provided by an enactment, an appeal may be brought by any party to civil proceedings (other than licensing proceedings) from a decision of a Judge of the District Court to the Judge of the Circuit Court assigned to the Circuit within which the decision of the District Court appealed from was made.

[CJA 1924, s. 84, 87]

(2) Save where otherwise provided by an enactment, an appeal may be made in any civil licensing proceedings, by the applicant or by a person entitled by law to object, from a decision of a Judge of the District Court to the Judge of the Circuit Court assigned to the Circuit within which are situated the licensed premises or club premises the subject of the District Court's decision or order or to which the District Court's decision or order otherwise relates.

(3) No appeal lies from a decision of the District Court for the issuing of a European Enforcement Order certificate pursuant to Article 10.4 of the European Enforcement Order Regulation.

(4) *Section 281(5)* and *section 281(6)* do not apply to an appeal to the Circuit Court from the District Court mentioned in this section, and, unless otherwise directed by the Judge of the Circuit Court, such an appeal shall be by way of re-hearing.

(5) Where, in an appeal mentioned in this section, the notice of appeal states that the appeal is against a specified part only of the decision of the District Court, then the Circuit Court shall, on the hearing of the appeal, re-hear the proceedings only to the extent necessary to enable that Court to adjudicate on the appeal against that part of the District Court's decision which is the subject of the appeal¹⁴⁵.

(6) The decision of the Judge of the Circuit Court on an appeal mentioned in this section shall be final and conclusive and not appealable.

Appeals from adjudicating bodies or persons

Appeals from adjudicating bodies or persons to Circuit Court

325.— Appeals to the Circuit Court from adjudicating bodies or persons shall be heard and decided in accordance with the provisions of any enactment under or by virtue of which the right of appeal arises, and with the Circuit Court Rules.

[New]

Chapter 7: Appeals to the District Court

Appeals from adjudicating bodies or persons to District Court

326.— Appeals to the District Court from adjudicating bodies or persons shall be heard and decided in accordance with the provisions of any enactment under or by virtue of which the right of appeal arises, and with the District Court Rules.

[New]

PART 6

Court Offices and Court Officers

Purpose of Part 6

327.— This Part makes provision for the offices to be maintained to transact the business of the Courts which is not required by law to be transacted by or before a Judge or Judges of that Court, for certain records to be maintained in those offices, for the responsibilities of court officers and for certain of the responsibilities of the staff of the Service.

[New]

¹⁴⁵ This implements the recommendation in paragraph 2.114 of the Report.

Chapter 1: Court Offices

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| Interpretation: this Part | <p>328.— In this Chapter and in <i>Schedule 14</i>:</p> <p>“constituent court office” means—</p> <p>(a) a court office, mentioned in this Act, the business or some of the business of which shall be transacted in a Combined court office under <i>section 337</i> or <i>section 338</i>, or</p> <p>(b) a registrar or other person deemed to be a constituent court office under <i>section 339(2)</i>,</p> <p>and “constituent Court” shall be construed accordingly;</p> <p>“Combined court office” means an office established under <i>section 337</i>;</p> <p>“Combined court office manager”, in relation to a Combined court office, means a person appointed to be the manager of that office;</p> <p>“Court Funds Office” means the office mentioned in <i>section 331</i>.</p> | [CCOA 2009, s. 13] |
| Court offices to be maintained, and certain court officers assigned, by the Courts Service | <p>329.— (1) The Service shall maintain each of the court offices mentioned in this Act.</p> <p>(2) <i>Section 20</i> of the <i>Courts Service Act 1998</i> applies to the members of the staff of the Service, who are for the time being assigned to perform the duties of court officers, in the administration of the business of Courts which is not required by law to be transacted by or before a Judge or Judges of a Court or before a court officer exercising limited functions and powers of a judicial nature within the scope of Article 37 of the Constitution, and to the other members of the staff of the Service assigned to court offices, in the administration of such business transacted in court offices.</p> | [New] |
| Court offices: general | <p>330.— (1) The business of a Court mentioned in this Act or another enactment which is not required by law to be transacted by or before a Judge or Judges of that Court or before a court officer exercising limited functions and powers of a judicial nature within the scope of Article 37 of the Constitution shall be transacted in the appropriate court office mentioned in this Chapter.</p> <p>(2) The provisions of <i>Part 1</i> of <i>Schedule 14</i> apply to the court offices mentioned in this Chapter.</p> | [New] |
| Court Funds Office | <p>331.— Subject to the provisions of this Act, there shall be transacted in or through the Court Funds Office, or in the Irish language, “Oifig Cistí na gCúirteanna”, which shall be established on the date on which this section comes into force as a constituent part of the Service¹⁴⁶, the business of every Court specified in <i>paragraph 2</i> of <i>Part 1</i> of <i>Schedule 14</i>, and <i>section 329</i> applies to that office.</p> | [New] |
| Court offices serving the Superior Courts and their Presidents | <p>332.— (1) Subject to the provisions of this Act, there shall be transacted in or through the Office of the Registrar of the Supreme Court the business of the Supreme Court, of the Court of Criminal Appeal and of the Courts-Martial</p> | [CSPA 1961, Eighth Schedule, |

¹⁴⁶ The draft assumes the enactment of proposed legislation to establish a centralised Court Funds Office.

Appeal Court specified in *paragraph 6 of Part 1 of Schedule 14*¹⁴⁷.

paragraph 3]

(2) Subject to the provisions of this Act, there shall be transacted in or through:

(a) the Central Office, the business specified in *paragraph 7 of Part 1 of Schedule 14*;

(b) the Taxing Masters' Office, the business specified in *paragraph 8 of Part 1 of Schedule 14*;

(c) the Office of the Official Assignee in Bankruptcy, the business specified in *paragraph 10 of Part 1 of Schedule 14*;

(d) the Examiner's Office, the business specified in *paragraph 11 of Part 1 of Schedule 14*, and

(e) the Probate Office, the business specified in *paragraph 12 of Part 1 of Schedule 14*.

(3) Subject to the provisions of this Act, there shall be transacted in or through the Office of Wards of Court¹⁴⁸ the business specified in *paragraph 9 of Part 1 of Schedule 14*.

Circuit Court Offices

333.— (1) Subject to the provisions of this Act, there shall be transacted in or through the Circuit Court Office for every local government area the business specified in *paragraph 14 of Part 1 of Schedule 14* for that local government area.

[COA 1926, s.34]

(2) The Service may, at any time and for so long as it thinks proper, amalgamate two or more local government areas for the purposes of the Circuit Court. While any such amalgamation continues, there shall be only one Circuit Court Office for those amalgamated local government areas.

(3) The Service may at any time divide a local government area into two or more parts for the purposes of the Circuit Court. While a local government area is so divided, a separate Circuit Court Office may be established in and for every such part of that local government area.

District Court Offices¹⁴⁹

334.— (1) Subject to the provisions of this Act, there shall be transacted in or through the District Court Office for every District the business specified in *paragraph 15 of Part 1 of Schedule 14* for that District.

[New]

(2) Without limiting the power exercisable under *section 170*, the Service may, at any time and for so long as it thinks proper, amalgamate two or more Districts for the purposes of the District Court Offices. While any such amalgamation

¹⁴⁷ The Commission considered providing that there would be a separate registry and Registrar for the Court of Criminal Appeal and Courts-Martial Appeal Court; however it concluded that for the present, the current arrangement (under which the Office of the Registrar of the Supreme Court is the registry for the superior criminal appeal courts) should be maintained. If proposals for a unified court of appeal are advanced, it may be appropriate to merge the registry functions into a single appeal court registry serving both the civil and criminal side.

¹⁴⁸ This provision may require revision in the context of the *Mental Capacity Bill*: see note 1, above.

¹⁴⁹ There is not at present a statutory recognition of a "District Court Office" as such, though the expression has been used in legislation, but rather the "office of the District Court Clerk" being the place where the District Court Clerk conducts his or her business. This may reflect the historic position where the District Court Clerk conducted business at various places where the Court was sitting from time to time. In modern practice, there are fixed places of business provided by the Courts Service, so it seems appropriate to provide for the establishment of such places of business.

continues, there shall be only one District Court Office for those amalgamated Districts.

(3) Without limiting the power exercisable under *section 170*, the Service may at any time divide a District into two or more parts for the purposes of the District Court Offices. While a District is so divided, a separate District Court Office may be established in and for every such part of that District.

Saving for business transacted otherwise than in person and for shared facilities

335.— Nothing in *section 333* or *section 334* prevents:

[New]

(a) a requirement in rules of court or notified by the Service to Court users that particular business of the Circuit Court for a Circuit or for the District Court for a District be transacted:

- (i) in a court office (including a Combined court office) other than the Circuit Court Office for that Circuit or the District Court Office for that District, or
- (ii) by post or by means of electronic communication;

(b) the sharing of premises, facilities and staff by or among court offices, whether in a Combined court office or otherwise.

District probate registries

336.— (1) District probate registries shall be provided for such districts and at such places as the Minister, following consultation with the Service, by order appoints.

[SA 1965, ss 129, 130]
[COA 1951, s 5]

(2) For the purposes of *section 332*, a district probate registry shall be deemed to be an office attached to the High Court.

(3) For the purposes of *section 253*, a district probate registry shall be deemed to be a court office.

Combined Court Offices: establishment

337.— (1) Notwithstanding any other provision of this Act, the Service may establish a Combined court office in accordance with this section and *section 338*.

[CCOA 2009, ss 14, 15]

(2) In establishing a Combined court office under *subsection (1)*, the Service shall—

(a) designate two or more court offices to be constituent court offices of that Combined court office, and

(b) specify the business of the constituent court offices that is to be transacted in the Combined court office.

(3) The Service shall, as soon as may be after a Combined court office is established, publish notice of that fact and of the matters referred to in *subsection (2)* relating to that office in *Iris Oifigiúil*, but failure to so publish does not affect the validity of the establishment of the Combined court office concerned.

(4) The Service may vary the functions of a Combined court office, including by—

(a) varying the business of the constituent court offices which is to be transacted there, other than any business that is the subject of an order under *section 339(1)*,

(b) designating another court office to be a constituent court office of that Combined court office, and

(c) removing from the business of the Combined court office any business of a constituent court office, other than any business that is the subject of an order under *section 339(1)*.

(5) The power to establish a Combined court office conferred by *subsection (1)* includes the power to dissolve such an office, except where to dissolve the office would affect an order made under *section 339(1)*.

(6) *Subsection (3)* and *section 338* apply, with any necessary modifications, when the Service exercises its powers under *subsection (4)* or *subsection (5)*.

(7) The business of each Court specified in an order made by the Service establishing any Combined court office which is not required by law to be transacted by or before a Judge or Judges or before a court officer exercising limited functions and powers of a judicial nature within the scope of Article 37 of the Constitution and which is assigned to that office by such an order shall, subject to the provisions of this Act, be transacted in that Combined court office.

Combined Court
Offices: consultation

338.—Before establishing a Combined court office under *section 337*, the Service shall consult with—

[CCOA 2009, s
16]

(a) the Chief Justice, where a proposed constituent court office is an office attached to the Supreme Court, the Court of Criminal Appeal or the Courts-Martial Appeal Court,

(b) the President of the High Court, where a proposed constituent court office is an office attached to the High Court or the President of the High Court,

(c) the President of the Circuit Court, where a proposed constituent court office is an office of, or attached to, the Circuit Court,

(d) the President of the District Court, where a proposed constituent court office is an office of, or attached to, the District Court.

Combined Court
Offices: application
to Special Criminal
Courts

339.—(1) Notwithstanding any other enactment, the Government may, by order, provide that specified business of a Special Criminal Court, other than business that is required to be transacted by or before a Judge or Judges of such a Court, shall be transacted in a Combined court office.

[CCOA 2009, s
17]

(2) A registrar appointed for the purposes of a Special Criminal Court, or any person acting under the direction of such a registrar, in the transaction of the business that is the subject of an order under *subsection (1)*, shall be deemed to be a constituent court office for the purposes of this Part.

Combined Court
Office an office of
constituent Court

340.— Where, under *section 337* or *section 339*, the business of a constituent court office is transacted in a Combined court office, then for the purpose of the transaction of that business, the Combined court office shall be deemed to be an office of or attached to the constituent Court concerned.

[CCOA 2009, s
18]

Chapter 2: Court officers

Court officers

341.— (1) The persons mentioned in this section are the court officers responsible for the management and conduct of the business of the Courts which is not required by law to be transacted by or before a Judge or Judges or before a court officer exercising limited functions and powers of a judicial nature within the scope of Article 37 of the Constitution.

[CSPA 1961,
Eighth
Schedule,
paragraph 3]

(2) Court officers responsible for the management and conduct of business of the Courts mentioned in *subsection (1)* are subject, in regard to all matters of general administration, to the general directions of the Service, subject to *section 9(3)* of the *Courts Service Act 1998*.

(3) Each of the following shall be a court officer of the High Court:

the Master of the High Court;
two Taxing Masters;
the Probate Officer;
the Official Assignee in Bankruptcy;
the Examiner;
the officer for the time being managing the Central Office;
such and so many as the Service thinks proper of the officers for the time being serving in the Central Office as are nominated by the Service to be registrars of the High Court (each in this Act, a “High Court Registrar”).

(4) The Registrar of the Supreme Court shall be a court officer of the Supreme Court, the Court of Criminal Appeal and of the Courts-Martial Appeal Court.

(5) The Registrar of Wards of Court¹⁵⁰ shall be a court officer of the President of the High Court and of the High Court,

(6) Each County Registrar shall be a court officer of the Circuit Court.

(7) Each District Court Clerk shall be a court officer of the District Court.

[CCOA 2009, s
18]

(8) Where, under *section 337* or *section 339*, the business of a constituent court office is transacted in a Combined court office, then for the purpose of the transaction of that business, the Combined court office manager of that Combined court office and the members of staff of the Service employed in that office shall be deemed to be court officers attached to, or attached to an office of, that constituent Court.

(9) The officer in charge of the Court Funds Office shall be deemed to be an officer attached to, or attached to an office of, each Court to which this Act applies.

(10) The Courts Accountant shall be deemed to be an officer attached to, or attached to an office of, each Court to which this Act applies.

(11) This section is not exhaustive of persons who are officers of a Court.

(12) *Subsection (1)* does not modify or limit any provision of this Act or any other enactment which authorises a court officer to exercise limited functions and powers of a judicial nature within the scope of Article 37 of the Constitution.

Sheriffs

342.— (1) The office of sheriff continues to be an office of the State for each local government area. [New]

(2) Certain functions, powers and duties of the office of sheriff and certain functions, powers and duties of the former office of under-sheriff (which may be exercised by County Registrars) include functions, powers and duties in relation to Courts, including in particular, in the execution of decisions of Courts, and this Act extends only functions, powers and duties of a sheriff or under-sheriff in relation to Courts and does not affect any function, power or duty of a sheriff, or of a person performing the duties of the office of a sheriff or of former office of under-sheriff, other than a function, power or duty in relation to a Court.

(3) A person performing a duty of the office of sheriff or of the former office of under-sheriff, when executing a decision or order of a Court or performing another duty in relation to a Court shall, for that purpose but not otherwise, be

¹⁵⁰ This provision may require revision in the context of the *Mental Capacity Bill*: see note 1, above.

subject to the direction of that Court.

| | | |
|--|--|---|
| Principal officers | <p>343.— (1) The court officers and persons for the time being assigned to perform the duties of the court officers mentioned in <i>section 341(3)</i>, <i>section 341(4)</i>, <i>section 341(5)</i> and <i>section 341(10)</i> shall be principal officers of the Court concerned.</p> <p>(2) No officer mentioned in <i>subsection (1)</i> may be removed from his or her office and no nomination for the time being of a person to be a High Court Registrar may be revoked without the concurrence of the Chief Justice and the President of the High Court.</p> | [COA 1926, s 3 and CSPA 1961, Eighth Schedule] |
| Court officers appointed by the Government | <p>344.— (1) The Master of the High Court and the Taxing Masters shall be appointed by the Government and hold office at the pleasure of the Government.</p> <p>(2) Every County Registrar shall be appointed by the Government and hold office at the pleasure of the Government¹⁵¹.</p> <p>(3) Every sheriff shall be appointed by the Government and hold office at the pleasure of the Government.</p> | [New] |
| Court officers who are members of the staff of the Service assigned by the Service | <p>345.— (1) The following shall be appointed from among the staff of (and, where necessary, assigned by) the Service:</p> <p>every principal officer, within the meaning of <i>section 341</i>, other than the Master of the High Court and the Taxing Masters;</p> <p>every District Court Clerk.</p> <p>(2) Rules of court may provide for the assignment of a court officer to perform any duty under an enactment which is required to be performed or may suitably be performed by a court officer and which is not assigned by this Act to a particular court officer mentioned in this Part and, in the absence of any such rules, the Service may from time to time assign a member of the staff of the Service to perform any such duty¹⁵² and while any such member of staff is so assigned:</p> <p>(a) he or she shall be deemed to be a court officer of or attached to the Court to which the duty relates, and</p> <p>(b) <i>section 76(2)</i> applies to him or her accordingly.</p> | [New] |
| General duties of court officers | <p>346.— (1) A barrister or solicitor appointed to be a court officer or sheriff shall cease to practice as a barrister or solicitor prior to taking up his or her duties as a court officer or sheriff.</p> <p>(2) A court officer appointed or assigned under this Act, while holding such office or assignment, shall not:</p> <p>(a) practice as a barrister or solicitor,</p> | [CCLOIA 1867, s.45] [CIA 1867, ss.14, 15] [CBCPAAI 1864, s 61] [CCLOIA 1867, s 19] |

¹⁵¹ The Commission understands that the procedure for appointing County Registrars is now under the *Public Service Management (Recruitment and Appointments) Act 2004*, although this has not been explicitly provided.

¹⁵² For example, following repeal of the *Court of Admiralty (Ireland) Act 1867*, there is no other primary statutory basis for assigning the duties of the Admiralty Marshal, an office mentioned in Order 64, RSC, although O. 64, r. 61, RSC provides for the assignment of those duties; the registrar under the *Bills of Sale (Ireland) Act 1879*; the registrar under the *Deeds of Arrangement Act 1887*; the Bankruptcy Inspector under section 60 of the *Bankruptcy Act 1988*.

(b) hold any other office or employment, or

(c) directly or indirectly receive or secure any continuing benefit from any business or firm in which he or she was engaged prior to his or her appointment to be a court officer.

(3) A court officer shall keep and account to the Service for all money received by him or her in that capacity. [PSCIA 1858, s 8]

(4) Every court officer mentioned in this Part may attest the accuracy of any copy of any document filed in or delivered to the office of the Court of which he or she is an officer or is for the time being performing the duties of an officer. [CCLOIA 1867, s 15]

Powers to administer oaths

347.— (1) Every court officer mentioned in this Part, every member of the staff of the Service who is for the time being performing the duties of registrar or clerk in relation to any Court, and every commissioner directed to take an examination in proceedings, has authority to administer any oath or take any affidavit or statutory declaration required for any purpose connected with his or her duties. [CCLOIA 1867, s 16]

(2) No court officer mentioned in this Part or member of the staff of the Service who is for the time being authorised to administer any oath or take any affidavit or statutory declaration shall seek or accept any fee, charge, or payment of expenses for or in connection with administering any oath or taking any affidavit or statutory declaration. [CCLOIA 1867, s 16]

(3) Nothing in this section operates to remove or reduce any obligation of a person under the *Ethics in Public Office Acts 1995 and 2001*.

Registrars to the High Court sitting outside Dublin

348.— (1) In every local government area (other than the city and county of Dublin) the County Registrar for the local government area shall act as registrar to the High Court when the High Court is sitting at a regular High Court venue in that local government area. [CJA 1936, s. 42]

(2) The Service may, whenever it thinks proper so to do after consultation with the President of the High Court, direct one or more of the High Court Registrars to travel to a particular regular High Court venue or other place for a particular sitting of the High Court at that place and there act as registrar to the High Court.

(3) Notwithstanding *paragraph 22 of Part 2 of Schedule 14*, the Service may, whenever it thinks proper so to do after consultation with the President of the High Court, direct one or more of the High Court Registrars to travel to a particular regular High Court venue or other place for a particular sitting of the Central Criminal Court in that place and there act as registrar to the Central Criminal Court.

(4) In this section, to “act as registrar to the High Court” means to perform at a regular High Court venue or other place and fulfil such duties and functions in relation to the High Court as are assigned by this Act or rules of court to a registrar to the High Court.

(5) Every High Court Registrar who is directed under this section to travel to a regular High Court venue or other place for a sitting of the High Court or for a sitting of the Central Criminal Court shall travel to that place in accordance with those directions and act there as registrar (in addition to the County Registrar) to the High Court during the sitting of that Court at that place, and shall be and stay in that place as necessary for the proper discharge of his or her duties as registrar during that sitting.

(6) Every High Court Registrar travelling to and staying in a regular High Court venue or other place pursuant to this section shall receive, out of moneys

provided by the Oireachtas, such travelling expenses and subsistence allowance as the Service, with the sanction of the Minister for Finance, from time to time directs.

Abolition of requirement of giving of security by officers

349.— Without prejudice to the discretion of the Service in the establishment of the terms and conditions of any retainer to which *section 352* applies, no person appointed after the commencement of this section to be an officer of any Court or appointed to a post or situation in any court office shall be required to give any security for the discharge of the duties of the office, post or situation before entering on the duties of the office, post or situation.

[Abolishes requirement in COA 1926, s 61]

Further provisions concerning court officers, deputies and alternates

350.— (1) The provisions of *Part 2* of *Schedule 14* apply to the court officers mentioned in this Part.

[New]

(2) Deputies may be appointed for certain court officers in accordance with the provisions of *Part 3* of *Schedule 14*.

(3) A court officer may perform the duties of another court officer on a temporary basis in accordance with the provisions of *Part 3* of *Schedule 14*.

Court officers to be assisted by staff of the Service

351.— (1) Principal officers and County Registrars shall exercise and perform the powers, authorities, duties and functions conferred or imposed on them by this Part and by *Schedule 14* with the assistance of the officers and members of the staff of the Service employed in the offices under their management respectively.

[COA 1926, s.58]

(2) Every court officer mentioned in *subsection (1)* shall arrange for the exercise and performance by officers or members of the staff of the Service employed in the office under his or her management of such of his or her powers, authorities, duties and functions (other than those which he or she is for the time being expressly required by an Act of the Oireachtas or rules of court to exercise or perform in person) as he or she cannot conveniently exercise or perform himself or herself.

Procurement of service providers to support Courts

352.— (1) The Service may retain, on such terms and conditions, including as to expiry, revocation or termination of any retainer, any and all such persons as are from time to time required to be retained to render occasional services in or for any Court, any Judge or any court officer, as the Service (subject to the sanction of the Minister for Finance in respect of any payment of remuneration out of public moneys) thinks proper.

[COA 1926, s. 59]

(2) The persons referred to in *subsection (1)* shall include, without limitation, any interpreters, stockbrokers, receivers, auctioneers, assessors, and providers of such other services as the Service considers may be required.

(3) This section does not apply to the appointment in any proceedings by the Judge, or by the parties with the approval of the Judge, of:

(a) an assessor, or

(b) an approved person (within the meaning of *section 20* of the Act of 2004), or

(c) an auctioneer, receiver, assessor, liquidator, manager, agent or other like person to render services in relation to the subject matter of proceedings, where the appointment does not extend to any other proceedings and either:

(i) there is no person retained under this section available to render those services, or

(ii) the Judge is of opinion that it is not expedient in the circumstances of the case to appoint the person or any of the persons so retained.

(4) The President of the High Court and the President of the Circuit Court may each retain such barristers, solicitors, doctors, visitors and other persons as he or she considers necessary for the proper exercise of that Court's care and protection jurisdiction¹⁵³.

Summons-servers

353.— (1) After the commencement of this section, no person shall be appointed to be a summons-server.

[COA 1926, s. 44]

(2) The post of summons-server is abolished:

(i) in respect of any local government area served by a Circuit Court Office to which, on the commencement of this section, no summons-server is attached, with effect from such commencement, and

(ii) in respect of any local government area served by a Circuit Court Office to which, on the commencement of this section, a summons-server is attached, on the date following the date on which a summons-server ceases to be attached to that office.

Peace Commissioners

354.— (1) The Minister may from time to time by warrant under his or her hand appoint and remove such and so many fit and proper persons as he or she thinks expedient in each county or other local government area to be called "Peace Commissioners" or in the Irish language, "Feadhmannáigh Shíochána" to perform and exercise within a local government area and (if so expressed in his or her warrant of appointment) within the local government areas immediately adjoining that local government area, the duties and powers of Peace Commissioners appointed under this Act and under any other enactment.

[CJA 1924, s 88]

[CLMPA 2008, s 6]

(2) So far as practicable, a person appointed to be a Peace Commissioner under this section in a local government area which includes an area in which the Irish language is in general use shall have a knowledge of the Irish language adequate for the transaction of the business of a Peace Commissioner in the Irish language.

(3) A Peace Commissioner appointed under this section has and may exercise such powers and authorities as are conferred on a Peace Commissioner by any enactment, in accordance (where relevant) with rules of court:

(a) to sign any warrant or other document which he or she is authorised by law to sign;

(b) to administer any oath and take any declaration, affirmation, information, bond or Court bond he or she is authorised by law to administer or take;

(c) to sign a certificate required by *section 2 of the Registration of Clubs (Ireland) Act 1904*.

(4) For the purposes of this section (including any warrant under *subsection (1)*)—

(a) subject to *paragraphs (b) to (g) inclusive*, "county" means a county referred to in *section 10 of the Local Government Act 2001* as its boundaries are in force from time to time under *Part 8* of that Act,

(b) the city of Cork and the county of Cork shall be regarded as a single county, and a reference to the county of Cork includes the city of Cork,

¹⁵³ This provision previously only applied to the High Court but the draft assumes it will also apply to the Circuit Court having regard to the jurisdiction which it is understood will be conferred on that court by the *Mental Capacity Bill*: see note 1, above.

(c) the city of Dublin and the county of Dublin (within the meaning of this Act) shall be regarded as a single county, and a reference to the county of Dublin includes the city of Dublin,

(d) the city of Galway and the county of Galway shall be regarded as a single county, and a reference to the county of Galway includes the city of Galway,

(e) the city of Limerick and the county of Limerick shall be regarded as a single county, and a reference to the county of Limerick includes the city of Limerick,

(f) the city of Waterford and the county of Waterford shall be regarded as a single county, and a reference to the county of Waterford includes the city of Waterford, and

(g) the counties of North Tipperary and South Tipperary shall be regarded as a single county.

Commissioners for
Oaths and oaths and
affidavits taken
abroad

355.— (1) A commissioner for oaths may, by virtue of his or her commission: [CFOA 1889]

(a) administer an oath or take an affidavit for purposes of a Court or of proceedings before a Court in the State, including matters relating to applications for notarial faculties, and matters relating to the registration of any instrument, whether under an Act or otherwise;

(b) take an affidavit required or provided for under any enactment, including in particular, the *Merchant Shipping Acts 1894 to 2010* and the *Customs Consolidation Act 1876*; [CFOA 1891]

(c) take a Court bond in or for the purpose of any civil proceedings;

(d) exercise any other power which it is provided by an enactment may be exercised by a commissioner for oaths.

(2) A commissioner for oaths shall not exercise any power referred to in this section in any proceedings in which he or she is solicitor to a party to the proceedings, or clerk to any such solicitor, or in which he or she is interested.

(3) An oath or affidavit required for purposes of a Court or of proceedings before a Court in the State, or for the purpose of the registration of any instrument in the State, may be taken or made in a place outside the State in accordance with section 5 of the *Diplomatic and Consular Officers (Provision of Services) Act 1993* or otherwise before any person having authority to administer an oath in that place.

(4) In the case of a person having the authority mentioned in subsection (3) otherwise than by the law of a foreign country, judicial notice shall be taken of the seal or signature of that person affixed, impressed, or subscribed to or on any oath or affidavit.

(5) Every commissioner for oaths before whom any oath or affidavit is taken or made under this section shall state truly in the jurat or attestation the place at which and date on which the oath or affidavit is taken or made.

(6) A person who wilfully and corruptly swears falsely in an oath or affidavit taken or made in accordance with the provisions of this section shall be guilty of perjury where, if he or she had so sworn in proceedings before a Court, he or she would be guilty of perjury.

(7) Where an offence under this section is alleged to have been committed with respect to any affidavit, a Judge of a Court before which the affidavit is produced

may order the affidavit to be impounded and kept in such custody, for such time and on such conditions, as that Judge thinks fit.

(8) Any affidavit sworn before a commissioner for oaths which is intended to be used in a Court shall (unless the Court otherwise permits) be lodged with the appropriate court officer before being used in Court.

[COCAI 1877,
s.70]

(9) This section does not affect the application of *section 72* of the *Solicitors (Amendment) Act 1994*¹⁵⁴.

Tax clearance
certificate required
for certain
appointments¹⁵⁵

356.— (1) Subject to *subsection (2)*, a person in relation to whom a tax clearance certificate is not in force shall not be appointed a notary public or a commissioner for oaths.

[New]

(2) A person in relation to whom a tax clearance certificate is not in force may be appointed a notary public or a commissioner for oaths if—

(a) the person has, at least four months before applying for the appointment, applied for a tax clearance certificate and either—

(i) that application has not been determined, or

(ii) that application has been refused and an appeal against the refusal has been made under *section 1094(7)* of the *Taxes Consolidation Act 1997* but not determined, and

(b) but for *subsection (1)*, the application for appointment would have been granted.

(3) A person appointed to be a notary public or a commissioner for oaths shall notify the Collector-General of the appointment.

(4) In this section,

“Collector-General” means the Collector-General appointed under *section 851* of the *Taxes Consolidation Act 1997*;

“tax clearance certificate” means a certificate under *section 1095* (as substituted by *section 127(b)* of the *Finance Act 2002*) of the *Taxes Consolidation Act 1997*.

Chapter 3: Registers and other records

Registers and records
kept in court offices
and by sheriffs

357.— (1) Where an enactment requires any register or index to be maintained in a court office, the officer responsible for the management of that court office shall, subject to the provisions of that enactment and of *section 351*, have custody of, and be responsible for the maintenance of, that register or index.

[New]

(2) In addition to any register or index mentioned in *subsection (1)*, the officer mentioned in *subsection (1)* shall maintain the registers or records containing information about proceedings in Courts which are required by rules of court or otherwise appear to the Service to be requisite (including every such record or register maintained at the commencement of this Act), and may, subject to this Act and in accordance with any rules of court, allow access for the public to information about proceedings before the Courts at such places and times, or by such means and on such terms, including as to payment, as are provided by or specified in accordance with such rules.

¹⁵⁴ Which, so far as relevant, provides that “every solicitor who holds a practising certificate which is in force shall... have all the powers conferred by any enactment or statutory instrument... on a commissioner for oaths...”

¹⁵⁵ Consideration could also be given to extending the requirements of this section to appointment as a Peace Commissioner.

(3) Every sheriff shall keep, have custody of, and be responsible for the maintenance of, the necessary records of execution orders given to him or her for execution and of execution orders executed or returned.

[CBCPAIA
1864, ss 20, 22]

Reserved judgments

358.— (1) Where the decision in any civil proceedings is reserved, the proper officer of the Court concerned shall cause the proceedings to be listed before the Judge who reserved the decision or, in the case of a Court constituted of more than one Judge, the Judge entitled to preside among the Judges of which the Court was constituted:

[CCOA 2002,
s. 46]
[CLCA 2004, s.
55]

(a) on the expiration of two months from the date on which the decision was reserved, and

(b) on the expiration of each subsequent period of two months,

until the reserved decision has been delivered.

(2) Where proceedings are listed in accordance with *subsection (1)*, the Judge shall specify the date on which he or she proposes to deliver the decision.

(3) This section does not require proceedings to be listed:

(a) on a date when the Court is in vacation or is otherwise not required to sit, and where the listing of proceedings in accordance with this section would occur on such a date, the listing shall instead occur on the next available date of a scheduled sitting of that Court;

(b) where a Judge who reserved a decision is ill, and no listing of proceedings in accordance with this section shall occur for the duration of a Judge's illness, or

(c) where a Judge who reserved a decision dies.

(4) In this section, "reserved", in relation to a decision in proceedings, means where a decision in the proceedings or the reasons for such decision or both are not announced by the Court immediately on the conclusion of the hearing of the proceedings but instead are postponed —

(a) without a date for that announcement being specified at the time, or

(b) for a period of not less than 14 days after the conclusion of the hearing.

Register of personal injuries actions

359.— (1) The Service shall maintain a register of personal injuries actions (in this section, referred to as the "register").

[CLCA 2004,
s.30]

(2) The Service shall enter in the register—

(a) the name and address of the solicitor for each party to a personal injuries action,

(b) the name and occupation of each party to a personal injuries action, and

(c) the address at which each party to a personal injuries action ordinarily resides,

as specified in the originating document and pleadings relating to the personal injuries action.

(3) The register shall be made available to such persons as establish to the satisfaction of the Service a sufficient interest in seeking access to it.

(4) In this section, “personal injuries action” has the same meaning as in *section 2* of the Act of 2004.

Section 7

SCHEDULE 1

Part 1

Supplementary provisions for the continuity of the administration and enforcement of justice

Continuity provisions: general

1.— Neither the enactment of any provision of this Act nor any repeal effected by this Act affects:

(i) the appointment of any person to be a Judge of any Court;

(ii) any assignment of any Judge to any Circuit and, for the avoidance of doubt, any Judge who was, on the commencement of this Part of this Schedule, so assigned under or by virtue of any repealed provision shall be deemed to have been assigned, and continues to be so assigned, following such commencement, in accordance with *section 163* or *section 164*, as the case may be;

(iii) any assignment of any Judge to any District and, for the avoidance of doubt, any Judge who was, on the commencement of this Part of this Schedule, so assigned under or by virtue of any repealed provision shall be deemed to have been assigned, and continues to be so assigned, following such commencement, in accordance with *section 171* or *section 172*, as the case may be;

(iv) any nomination of any Judge to sit on any Court or to perform any function or duty under or in accordance with any enactment or rule of court;

(v) the composition or delineation of any Circuit (mentioned in *Part 3* of *Schedule 11*), unless and until modified in accordance with *section 161*;

(vi) the continuity of the establishment of any Circuit Court Office standing established on the commencement of *section 333*, and each such office shall, following such commencement, be deemed to have been established under *section 333(1)*, and continues to be the Circuit Court Office for the local government area or areas for which it was the Circuit Court Office immediately before such commencement;

(vii) the continuity of the establishment of any Combined court office standing established on the commencement of *section 337*, and each such office shall, following such commencement, be deemed to have been established under *section 337*, and shall continue to be a Combined court office in respect of the business of the constituent court offices of that Combined court office to which the establishment of that Combined court office relates;

(viii) the composition or delineation of the Dublin Metropolitan District, and the Dublin Metropolitan District established in accordance with *section 47* of the Act of 1926, declared to be the Dublin Metropolitan District in accordance with *section 47* of the Act of 1936 and defined by the *District Court Districts (Dublin) Order 1945* (S.R. & O. No. 279 of 1945) and in being on the commencement of this Part of this Schedule continues, following such commencement, to be the Dublin Metropolitan District for the purposes of the District Court, for the purposes of different classes of business transacted in the District Court, and for the purposes of this Act, unless modified in accordance with *section 170*;

(ix) the composition or delineation of any District other than the Dublin Metropolitan District, and the Districts formed in accordance with *section 22* and

section 26 of the Act of 1953 and *section 32* of the Act of 1961 and in being on the commencement of this Part of this Schedule and the Dublin Metropolitan District continue, following such commencement, to be the Districts for the purposes of the District Court and for the purposes of this Act, unless and until modified in accordance with *section 170*;

(x) the scheduled sittings of the District Court, and:

(I) the District Court areas (other than the Dublin Metropolitan District) established in accordance with *section 21* and *section 26* of the Act of 1953 and *section 32* of the Act of 1961 and in being on the commencement of this Part of this Schedule and the Dublin Metropolitan District shall be deemed to be subdivisions of Districts made in accordance with *section 168(5)* and may be modified or discontinued from time to time in accordance with that section;

(II) each place standing appointed on the commencement of this Part of this Schedule at which the District Court shall be held in accordance with *section 21* of the Act of 1953 and *section 32* of the Act of 1961 shall, following such commencement, be deemed to be a District Court venue appointed in accordance with *section 167* for scheduled sittings of the District Court for particular judicial business of that Court, unless and until modified or otherwise determined in accordance with that section;

(III) each place standing appointed on the commencement of this Part of this Schedule in the Dublin Metropolitan District for the transaction of the business of the District Court in that District shall, following such commencement, be deemed to be a District Court venue appointed in accordance with *section 167*, for scheduled sittings of the District Court for particular judicial business of that Court, unless and until modified or otherwise determined in accordance with that section;

(IV) the days and hours appointed on the commencement of this Part of this Schedule in accordance with *section 26* of the Act of 1953 and *section 32* of the Act of 1961 for the purposes of the District Court and for the purposes of different classes of business transacted in the District Court shall, following such commencement, be deemed to be days and hours appointed in a determination made in accordance with *section 168* for scheduled sittings of the District Court for particular judicial business of that Court, unless and until modified or otherwise determined in accordance with that section;

(xi) the validity or effectiveness of any order made under *section 15(1)* of the *Courts Act 1971* and in force on the commencement of this Part of this Schedule, and every such order shall, following such commencement, be deemed to have been made under *section 176(1)* and shall continue in force as if it had been made under *section 176(1)*;

[CSPA 1961, s
55(6)]

(xii) the validity or effectiveness of any order made under *section 40* of the Act of 2004 and in force on the commencement of this Part of this Schedule, and every such order shall, following such commencement, be deemed to have been made under *section 201* and shall continue in force as if it had been made under *section 201*;

(xiii) the validity or effectiveness of any order made under *section 65* of the Act of 1936 and in force immediately before the commencement of this Part of this Schedule, and every such order shall, following such commencement, be deemed to be a Court fees order made under, and accordingly liable to amendment or revocation by another Court fees order made under, *section 253*;

(xiv) the validity or effectiveness of any regulations under *section 10* of the Act

of 1962 or under *section 33* of the Act of 1983 and in force immediately before the commencement of this Part of this Schedule, and any reference in any such regulations to any repealed provision shall, following such commencement, be deemed, following such commencement, to be a reference to the provision of this Act which corresponds to the repealed provision concerned;

(xv) the appointment or assignment of any person to be a court officer, or to be a deputy for any court officer or the assignment (which includes requisition or authorisation) of any person to perform the duties of any court officer, or to perform duties in any court office, and any person who was, on the commencement of this Part of this Schedule, so appointed or assigned under or by virtue of any repealed provision shall be deemed, following such commencement, to have been appointed or assigned, and shall continue to be so appointed or assigned, under or by virtue of the provision of this Act which corresponds to the repealed provision under or by virtue of which he or she was originally so appointed or assigned;

(xvi) the terms and conditions on and subject to which any person who held any office or employment as any court officer immediately before the commencement of this Part of this Schedule holds such office or employment;

(xvii) the terms and conditions on and subject to which any person who held any employment or position in any office of any Court immediately before the commencement of this Part holds such employment or position or the terms and conditions on and subject to any person who held any employment or position as a member of the staff of the Service immediately before the commencement of this Part holds such employment or position;

(xviii) the nomination of a person to have the management of the Central Office and the person who, immediately before the commencement of this Part, had, by virtue of a nomination under *paragraph 5(1)* of the *Eighth Schedule* to the Act of 1961, the management of the Central Office shall, following such commencement, continue to have the management and control of the Central Office and shall be deemed to have been nominated under *paragraph 7* of *Part 1* of *Schedule 14*;

(xix) the nomination of any person to be a High Court Registrar, and every person, who immediately before the commencement of *section 341(2)*, was, by virtue of a nomination under *paragraph 6(1)* of the *Eighth Schedule* to the Act of 1961, a Registrar of the High Court shall, following such commencement, continue to be a Registrar of the High Court and shall be deemed to have been so nominated under *section 341(2)*;

(xx) the vesting of any security, money, real or personal property (including any chose in action) whatsoever in the Service, or any court officer or the right or entitlement of the Service or any court officer to custody or possession of any chattel, document or other thing;

(xxi) the retainer or nomination of any barrister, solicitor, doctor, visitor or other person who was, immediately before the commencement of *section 352*, retained or nominated in relation to the exercise of any jurisdiction referred to in *section 9* of the Act of 1961 and every such person shall, following such commencement, be deemed to have been so retained or nominated under or by virtue of *section 352(4)*;

(xxii) the retainer or nomination of any person mentioned in *section 59* of the Act of 1926 who was, immediately before the commencement of *section 352*, so retained or nominated and every such person shall, following such commencement, be deemed to have been so retained or nominated under or by virtue of *section 352(1)* and such retainer or nomination continues in force

according to its terms, unless or until it expires, is revoked or is terminated in accordance with *section 352*;

(xxiii) save where, and then only to the extent, inconsistent with a provision of this Act, the validity or effectiveness of any rule of court made under a power conferred by any repealed provision and in force immediately before the commencement of this Part of this Schedule, and all such rules of court shall be deemed, following such commencement, to be rules of court made under the power conferred by the provision of this Act which corresponds to the repealed provision concerned, and accordingly such rules of court may be amended or revoked by later rules of court made under the power conferred by this Act;

(xxiv) the status of any solicitor as a solicitor of any Court and:

(I) all persons who, immediately before the coming into force of the repeal by this Act of *section 61* of the Act of 1961 were solicitors of the courts mentioned in column (3) of Part I of the Seventh Schedule to that Act shall, following such coming into force, be solicitors of each of the Courts mentioned in *Part 2* of this Act;

(II) every solicitor admitted to practice in the State following the coming into force of the repeal by this Act of *section 61* of the Act of 1961 shall, following such coming into force, be a solicitor of each of the Courts mentioned in *Part 2* of this Act, and

(III) every solicitor mentioned in *subparagraphs (I) and (II)* may be described as a “solicitor of the Courts of Ireland”;

(xxv) the validity and effectiveness of the appointment of any person to be a Notary Public or the validity and effectiveness of any thing done by such a person or document notarised before any such person in that capacity, and any person standing appointed to be a Notary Public immediately before the commencement of this Part of this Schedule shall, following such commencement, be deemed to be so appointed in accordance with *section 16* (and such appointment is subject to revocation in accordance with *section 16*) and shall be empowered to perform any functions and exercise any powers of a Notary Public;

(xxvi) the validity and effectiveness of the appointment of any person to be a Commissioner for Oaths or the validity and effectiveness of any document sworn before, or thing done by, any Commissioner for Oaths in that capacity (or by any practising solicitor by virtue of *section 72* of the *Solicitors (Amendment) Act 1994*) prior to the commencement of this Schedule, and:

(I) any person standing appointed to be a Commissioner for Oaths immediately before the commencement of this Part of this Schedule, shall, following such commencement, be deemed to be so appointed in accordance with *section 16* (and such appointment is subject to revocation in accordance with *section 16*) and shall be empowered to perform any functions and exercise any powers of a Commissioner for Oaths under any enactment, including *section 355*, in accordance within that enactment, and

(II) a solicitor who holds a practising certificate which is in force, subject to any relevant condition (within the meaning of *section 72* of the *Solicitors (Amendment) Act 1994*) shall be empowered to perform any functions and exercise any powers of a Commissioner for Oaths under any enactment, including *section 355*, in accordance with that enactment;

(xxvii) the validity and effectiveness of the appointment of any person to be a Peace Commissioner or the validity and effectiveness of any thing done by such a person or document sworn before any such person in that capacity, and any

person standing appointed to be a Peace Commissioner immediately before the commencement of this Part of this Schedule, shall, following such commencement, be deemed to be so appointed in accordance with *section 354* and shall be empowered to perform any functions and exercise any powers of a Peace Commissioner under any enactment, including *section 354*, in accordance within that enactment;

(xxviii) the validity and effectiveness of the appointment of any person to be a sheriff or the validity and effectiveness of the nomination of any person to perform the duties of the office of under-sheriff and any thing done by such a sheriff or person before the commencement of this Part of this Schedule continues, following such commencement, to be valid and effective as if done under and in accordance with this Act¹⁵⁶;

[SCJIA 1877, s 65]

(xxix) the validity and effectiveness of the appointment of any person to be a summons-server or the validity and effectiveness of any thing done by such a person or document served by such a person, and every summons-server who, on the commencement of this Part of this Schedule, stands appointed by a County Registrar under *section 44(2)* of the Act of 1926, shall, following such commencement, continue to hold that appointment in accordance with its terms, shall continue to be assigned to the area served by the Circuit Court Office to which that summons-server is attached, and shall continue to be competent to serve such documents as are specified by the County Registrar within the area to which he or she is so assigned;

[SCJIA 1877, s 66]

(xxx) the validity or effectiveness of any order made under *section 14* of the *Enforcement of Court Orders Act 1926* and in force immediately before the commencement of this Part of this Schedule, and every such order shall, following such commencement, be deemed to be an order made under, and accordingly liable to amendment or revocation by another such order made under, *paragraph 5* of *Part 2* of *Schedule 8*;

(xxxi) any matter of practice or procedure in any criminal proceedings on indictment, or

(xxxii) the mode applicable at the commencement of this Act of giving evidence or (without limiting *section 261*) the rules of evidence.

Continuity of existing principles, rules etc

2.— Unless (and then only to the extent) expressly modified by this Act, no existing principle or rule of law or equity, or established jurisdiction, form or course of pleading, or practice or procedure in any civil proceedings or in any criminal proceedings shall be affected by this Act, notwithstanding that it may have been in any manner derived from, affirmed or recognised by any repealed provision.

[SLRA 2007, s 9(1)]
[SCJIA 1877, s 65]

Continuity of forms of procedure

3.— Unless (and then only to the extent) expressly modified or abolished by this Act or by rules of court made after the commencement of this Act, any form or method of procedure which was in force in any Court (whether under of by virtue of any enactment or custom) on the commencement of this Part of this Schedule, which is not inconsistent with this Act or with any rules of court, may continue to be used and practised in that Court, unless and until modified or abolished by rules of court.

[SCJIA 1877, s 67]

Continuity of effectiveness of instruments and other documents

4.— Any :
(a) petition, summons, civil bill, originating notice of motion, originating motion or other originating document of whatever name, or

[based on BA 1988, s 6(2)]

¹⁵⁶ See paragraph 30 of Schedule 14, Part 2 for continuity of appointment/nomination.

- (b) pleading or other Court document prepared by a party, or
- (c) order, subpoena, direction, warrant, notice or other Court instrument

which was presented, served, delivered, made or issued under or by virtue of any repealed provision and which was in force at the commencement of this Act continues in full force and effect and shall, following such commencement, be treated as if it had been presented, served, delivered, made or issued under this Act.

No revival of former offices, procedures etc **5.**— Nothing in this Act or in any repeal effected by this Act operates to revive any former Court, court office, position in any Court or court office, or rule of law or procedure which was extinguished by or by virtue of any repealed provision before the commencement of this Part of this Schedule, including without limitation: [New]

- (a) the former Divisions of the justices permanently assigned to the Dublin Metropolitan District;
- (b) the former office of Principal Justice of the Dublin Metropolitan District;
- (c) the former office of high sheriff for any county or other local government area or other area;
- (d) any former rule of law which required the summoning of a grand jury for any purpose connected with business of a Court.

[CJA 1924, s 27]

No limitation of operation of Interpretation Act 2005 **6.**— Nothing in this Schedule limits the operation of *Part 6* of the *Interpretation Act 2005*. [New]

Section 7

SCHEDULE 1
Part 2
Transitional Provisions

Pending proceedings before High Court Circuit **1.**— Any appeal or other business initiated before the High Court on Circuit and not completed before the coming into force of the repeal by this Act of *section 34* of the Act of 1936 shall, following such coming into force, be continued and completed as if that repeal had not come into force until immediately following the completion of that appeal or other business. [New]

Pending appeals by case stated **2.**— (1) Any case stated and signed by a Judge of the District Court in accordance with the Act of 1857 or *section 51* of the Act of 1961 in any proceedings before that Judge of the District Court which were begun before the coming into force of the repeal by this Act of the Act of 1857 and of *section 51* of the Act of 1961 remains or is valid and effective notwithstanding that repeal. [New]

(2) In any proceedings mentioned in *subparagraph (1)* before a Judge of the District Court, a case may be stated and signed, and proceedings taken in the High Court, continued and completed on that case stated as if that repeal had not come into force until immediately following the completion of the proceedings in which that case is stated.

Application to pending proceedings **3.**— (1) Proceedings before any Court which were initiated and not completed on the coming into force of a provision of this Act shall, unless the parties otherwise consent in accordance with this paragraph, be continued, conducted, heard, determined and completed as if the provision concerned of this Act had not come into force until the completion of those proceedings. [New]

(2) In *subparagraph (1)*, the completion of proceedings includes the decision of those proceedings, the decision of any appeal (or further appeal) from the decision of those proceedings and the execution or enforcement of any such decision.

(3) All of the parties to proceedings mentioned in *subparagraph (1)* may sign a consent in writing to the application to and in those proceedings of any provision of this Act (specified in that consent) which was not in force when those proceedings were initiated and a Court may apply any such provision in those proceedings, if satisfied that a consent in accordance with this paragraph has been given by every party to the proceedings, provided that no such consent is effective to apply a Circuit Court money limit or District Court money limit to or in proceedings which differs from the money limit which applied when the proceedings were initiated.

| Section 8 | | | |
|---|--|-------------------------------------|-------------------------|
| SCHEDULE 2 Repeals Part 1 Enactments repealed or revoked in their entirety | | | |
| Chapter 1 Pre-Union Irish Statutes, 1169 – 1800 | | | |
| | Session and chapter (1) | Short title (2) | Extent of repeal (3) |
| | 1293 (21 Edw. 1) c. 1 [P.R.O. vol. 1] | Sheriffs Act 1293 | the entire Act |
| | 1410 (11 Hen. 4) c. 15 [P.R.O. vol. 1] | False Imprisonment Act 1410 | the entire Act |
| | 1428 (7 Hen. 6) c. 8 [P.R.O. vol. 2] | Indictments and Pleadings Act 1428 | the entire Act |
| | 1476-77 (16 & 17 Edw. 4) c. 22 [P.R.O. vol. 4] | Courts Act 1476 | the entire Act |
| | 1493 (9 Hen. 7) [Analecta Hibernica No. 10] | Distress Act 1493 | the entire Act |
| | 1586 (28 Eliz.) c. 1 | Perjury Act 1586 | the entire Act |
| | 1634 (10 Chas. 1 sess. 2) c. 6 | Trespass Act 1634 | the entire Act |
| | 1634 (10 Chas. 1 sess. 3) c. 15 | Maintenance and Embracery Act 1634 | the entire Act |
| | 1634 (10 Chas. 1 sess. 3) c. 18 | Sheriffs Act 1634 | the entire Act |
| | 1695 (7 Will. 3) c. 22 | Distress for Rent Act 1695 | the entire Act |
| | 1781-82 (21 & 22 Geo. 3) c. 11 | Habeas Corpus Act 1781 | the entire Act |
| | 1783-84 (23 & 24 Geo. 3) c. 14 | Admiralty Act 1783 | the entire Act |
| | 1785 (25 Geo. 3) c. 36 | Sheriffs Act 1785 | the entire Act |
| | 1788 (28 Geo. 3) c. 38 | Courthouses and Gaols Act 1788 | the entire Act |
| | 1791 (31 Geo. 3) c. 18 | Perjury Act 1791 | the entire Act |
| | 1795 (35 Geo. 3) c. 25 | Courts of Justice (Dublin) Act 1795 | the entire Act |
| | 1796 (36 Geo. 3) c. 38 | Distress Act 1796 | the entire Act |
| | 1798 (38 Geo. 3) c. 2 | Quo Warranto Act 1798 | the entire Act |
| Chapter 2 Statutes of England, 1066 to 1706 | | | |
| | Session and chapter (1) | Short title (2) | Extent of repeal (3) |

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|--|------------------------------------|----------------|
| 1215 (17 John) Magna Carta [45] | Sheriffs Act 1215 | the entire Act |
| 1285 (13 Edw. 1) Stat. Westm. sec. c. 15 | Infants (Next Friend) Act 1285 | the entire Act |
| 1531 (23 Hen. 8) c. 15 | Costs Act 1531 | the entire Act |
| 1540 (32 Hen. 8) c. 9 | Maintenance and Embracery Act 1540 | the entire Act |

Chapter 3
Statutes of Great Britain, 1707 to 1800

| Session and chapter (1) | Short title (2) | Extent of repeal (3) |
|----------------------------|--------------------------------------|-------------------------|
| 1707 (6 Ann.) c. 7. | Sheriffs Act 1707 | the entire Act |
| 1708 (7 Ann.) c. 21 | Treason Act 1708 | the entire Act |
| 1712 (11 Ann.) c. 8 | Sheriffs Act 1712 | the entire Act |
| 1725 (12 Geo. 1) c. 4 | Sheriffs Act 1725 | the entire Act |
| 1729 (3 Geo. 2) c. 9 | Sheriffs Act 1729 | the entire Act |
| 1751 (25 Geo. 2) c. 12 | Enforcement of Court Orders Act 1751 | the entire Act |
| 1755 (29 Geo. 2) c. 15 | Sheriffs Act 1755 | the entire Act |

Chapter 4
Statutes of the United Kingdom of Great Britain and Ireland, 1801 to 1922

| Session and chapter (1) | Short title (2) | Extent of repeal (3) |
|----------------------------------|---|-------------------------|
| 1802 (42 Geo. 3) c. 85 | Criminal Jurisdiction Act 1802 | the entire Act |
| 1803 (43 Geo. 3) c. 143 | Public Officers Protection (Ireland) Act 1803 | the entire Act |
| 1804 (44 Geo. 3) c. 102 | Habeas Corpus Act 1804 | the entire Act |
| 1808 (48 Geo. 3) c. 140 | Dublin Police Magistrates Act 1808 | the entire Act |
| 1815 (55 Geo. 3) c. 157 | Evidence (Ireland) Act 1815 | the entire Act |
| 1817 (57 Geo. 3) c. 53 | Murders Abroad Act 1817 | the entire Act |
| 1817 (57 Geo. 3) c. 56 | Recognisances (Ireland) Act 1817 | the entire Act |
| 1817 (57 Geo. 3) c. 68 | Sheriffs (Ireland) Act 1817 | the entire Act |
| 1817 (57 Geo. 3) c. 93 | Distress (Costs) Act 1817 | the entire Act |
| 1821 (1 & 2 Geo. 4) c. 53 | Common Law Procedure (Ireland) Act 1821 | the entire Act |
| 1823 (4 Geo. 4) c. 37 | Levy of Fines Act 1823 | the entire Act |
| 1823 (4 Geo. 4) c. 61 | Chancery (Ireland) Act 1823 | the entire Act |
| 1823 (4 Geo. 4) c. 87 | Unlawful Oaths (Ireland) Act 1823 | the entire Act |
| 1824 (5 Geo. 4) c. 102 | Dublin Justices Act 1824 | the entire Act |
| 1826 (7 Geo. 4) c. 21 | Mandamus (Ireland) Act 1826 | the entire Act |
| 1831 (1 Will. 4) c. 22 | Evidence on Commission Act 1831 | the entire Act |
| 1833 (3 & 4 Will. 4) c. 42 | Civil Procedure Act 1833 | the entire Act |
| 1834 (4 & 5 Will. 4) c. 78 | Chancery (Ireland) Act 1834 | the entire Act |
| 1835 (5 & 6 Will. 4) c. 18 | Chancery (Ireland) Act 1835 | the entire Act |
| 1836 (6 & 7 Will. 4) c. 13 | Constabulary (Ireland) Act 1836 | the entire Act |
| 1837 (7 Will. 4 & 1 Vict.) c. 83 | Parliamentary Documents Deposit Act 1837 | the entire Act |
| 1839 (2 & 3 Vict.) c. 78 | Dublin Police Act 1839 | the entire Act |
| 1840 (3 & 4 Vict.) c. 102 | Court Houses (Ireland) Act 1840 | the entire Act |
| 1840 (3 & 4 Vict.) c. 105 | Debtors Act (Ireland) 1840 | the entire Act |
| 1842 (5 & 6 Vict.) c. 69 | Perpetuation of Testimony Act 1842 | the entire Act |
| 1843 (6 & 7 Vict.) c. 82 | Evidence by Commission Act 1843 | the entire Act |
| 1844 (7 & 8 Vict.) c. 82 | Judgments (Ireland) Act 1844 | the entire Act |
| 1845 (8 & 9 Vict.) c. 115 | Chancery Taxing Master (Ireland) Act 1845 | the entire Act |
| 1846 (9 & 10 Vict.) c. 20 | Parliamentary Deposits Act 1846 | the entire Act |
| 1848 (11 & 12 Vict.) c. 28 | Execution (Ireland) Act 1848 | the entire Act |
| 1848 (11 & 12 Vict.) c. 42 | Indictable Offences Act 1848 | the entire Act |
| 1848 (11 & 12 Vict.) c. 43 | Summary Jurisdiction Act 1848 | the entire Act |

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|-----------------------------|--|----------------|
| 1848 (11 & 12 Vict.) c. 78 | Crown Cases Act 1848 | the entire Act |
| 1848 (11 & 12 Vict.) c. 113 | Dublin Police Act 1848 | the entire Act |
| 1848 (11 & 12 Vict.) c. 132 | Taxing Masters (Ireland) Act 1848 | the entire Act |
| 1849 (12 & 13 Vict.) c. 95 | Judgments (Ireland) Act 1849 | the entire Act |
| 1850 (13 & 14 Vict.) c. 73 | Attachment of Goods (Ireland) Act 1850 | the entire Act |
| 1850 (13 & 14 Vict.) c. 74 | Judgments Registry (Ireland) Act 1850 | the entire Act |
| 1851 (14 & 15 Vict.) c. 47 | Civil Bill Courts (Ireland) Act 1851 | the entire Act |
| 1851 (14 & 15 Vict.) c. 90 | Fines Act (Ireland) 1851 | the entire Act |
| 1851 (14 & 15 Vict.) c. 93 | Petty Sessions (Ireland) Act 1851 | the entire Act |
| 1853 (16 & 17 Vict.) c. 113 | Common Law Procedure Amendment Act (Ireland) 1853 | the entire Act |
| 1854 (17 & 18 Vict.) c. 26 | Treason (Ireland) Act 1854 | the entire Act |
| 1854 (17 & 18 Vict.) c. 34 | Attendance of Witnesses Act 1854 | the entire Act |
| 1855 (18 & 19 Vict.) c. 90 | Crown Suits Act 1855 | the entire Act |
| 1856 (19 & 20 Vict.) c. 77 | Chancery Receivers (Ireland) Act 1856 | the entire Act |
| 1856 (19 & 20 Vict.) c. 102 | Common Law Procedure Amendment Act (Ireland) 1856 | the entire Act |
| 1856 (19 & 20 Vict.) c. 113 | Foreign Tribunals Evidence Act 1856 | the entire Act |
| 1857 (20 & 21 Vict.) c. 43 | Summary Jurisdiction Act 1857 | the entire Act |
| 1858 (21 & 22 Vict.) c. 93 | Legitimacy Declaration Act 1858 | the entire Act |
| 1858 (21 & 22 Vict.) c. 27 | Chancery Amendment Act 1858 | the entire Act |
| 1858 (21 & 22 Vict.) c. 100 | Petty Sessions Clerk (Ireland) Act 1858 | the entire Act |
| 1859 (22 Vict.) c. 20 | Evidence by Commission Act 1859 | the entire Act |
| 1859 (22 & 23 Vict.) c. 52 | Dublin Police Act 1859 | the entire Act |
| 1860 (23 & 24 Vict.) c. 32 | Ecclesiastical Courts Jurisdiction Act 1860 | the entire Act |
| 1860 (23 & 24 Vict.) c. 82 | Common Law Procedure (Ireland) Act 1860 | the entire Act |
| 1861 (24 & 25 Vict.) c. 11 | Foreign Law Ascertainment Act 1861 | the entire Act |
| 1861 (24 & 25 Vict.) c. 49 | Petty Sessions (Ireland) Amendment Act 1861 | the entire Act |
| 1861 (24 & 25 Vict.) c. 62 | Crown Suits Act 1861 | the entire Act |
| 1861 (24 & 25 Vict.) c. 111 | Court of Probate (Ireland) Act 1861 | the entire Act |
| 1862 (25 & 26 Vict.) c. 50 | Summary Jurisdiction (Ireland) Act 1862 | the entire Act |
| 1863 (26 & 27 Vict.) c. 96 | Petty Sessions (Ireland) Amendment Act 1863 | the entire Act |
| 1864 (27 & 28 Vict.) c. 99 | Civil Bill Courts Procedure Amendment Act (Ireland) 1864 | the entire Act |
| 1865 (28 & 29 Vict.) c. 1 | Civil Bill Court (Ireland) Act 1865 | the entire Act |
| 1867 (30 & 31 Vict.) c. 19 | Petty Sessions (Ireland) Act 1867 | the entire Act |
| 1867 (30 & 31 Vict.) c. 44 | Chancery (Ireland) Act 1867 | the entire Act |
| 1867 (30 & 31 Vict.) c. 114 | Court of Admiralty (Ireland) Act 1867 | the entire Act |
| 1867 (30 & 31 Vict.) c. 129 | Chancery and Common Law Offices (Ireland) Act 1867 | the entire Act |
| 1868 (31 & 32 Vict.) c. 20 | Legitimacy Declaration Act (Ireland) 1868 | the entire Act |
| 1868 (31 & 32 Vict.) c. 72 | Promissory Oaths Act 1868 | the entire Act |
| 1870 (33 & 34 Vict.) c. 64 | Petty Sessions Clerk (Ireland) Act 1858, Amendment Act 1870 | the entire Act |
| 1870 (33 & 34 Vict.) c. 109 | Common Law Procedure Amendment Act Ireland 1870 | the entire Act |
| 1870 (33 & 34 Vict.) c. 110 | Matrimonial Causes and Marriage Law (Ireland) Act 1870 | the entire Act |
| 1871 (34 & 35 Vict.) c. 48 | Promissory Oaths Act 1871 | the entire Act |
| 1871 (34 & 35 Vict.) c. 49 | Matrimonial Causes and Marriage Law (Ireland) Amendment Act 1871 | the entire Act |
| 1871 (34 & 35 Vict.) c. 72 | Judgments Registry (Ireland) Act 1871 | the entire Act |
| 1871 (34 & 35 Vict.) c. 76 | Summary Jurisdiction (Ireland) Amendment Act 1871 | the entire Act |
| 1871 (34 & 35 Vict.) c. 99 | Civil Bill Courts Procedure Amendment Act (Ireland) 1871 | the entire Act |
| 1872 (35 & 36 Vict.) c. 57 | Debtors Act (Ireland) 1872 | the entire Act |
| 1872 (35 & 36 Vict.) c. 75 | Commissioners for Oaths (Ireland) Act 1872 | the entire Act |
| 1874 (37 & 38 Vict.) c. 66 | Civil Bill Courts (Ireland) Act 1874 | the entire Act |
| 1874 (37 & 38 Vict.) c. 72 | Fines Act (Ireland) 1851, Amendment Act 1874 | the entire Act |
| 1876 (39 & 40 Vict.) c. 18 | Treasury Solicitor Act 1876 | the entire Act |
| 1876 (39 & 40 Vict.) c. 28 | Court of Admiralty (Ireland) Amendment Act 1876 | the entire Act |
| 1876 (39 & 40 Vict.) c. 44 | Legal Practitioners (Ireland) Act 1876 | the entire Act |
| 1876 (40 & 41 Vict.) c. 56 | County Officers and Courts (Ireland) Act 1877 | the entire Act |
| 1876 (40 & 41 Vict.) c. 57 | Supreme Court of Judicature Act (Ireland) 1877 | the entire Act |
| 1878 (41 & 42 Vict.) c. 54 | Debtors Act 1878 | the entire Act |
| 1878 (41 & 42 Vict.) c. 69 | Petty Sessions Clerks and Fines (Ireland) Act 1878 | the entire Act |

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| 1882 (45 & 46 Vict.) c. 24 | Petty Sessions (Ireland) Act 1882 | the entire Act |
| 1882 (45 & 46 Vict.) c. 29 | County Court Amendment (Ireland) Act 1882 | the entire Act |
| 1882 (45 & 46 Vict.) c. 70 | Supreme Court of Judicature (Ireland) Act 1882 | the entire Act |
| 1885 (48 & 49 Vict.) c. 71 | County Officers and Courts (Ireland) Amendment Act 1885 | the entire Act |
| 1885 (48 & 49 Vict.) c. 74 | Evidence by Commission Act 1885 | the entire Act |
| 1887 (50 Vict., Sess 2) c. 6 | Supreme Court of Judicature (Ireland) Act 1887 | the entire Act |
| 1888 (51 & 52 Vict.) c. 47 | Law of Distress and Small Debts (Ireland) Act 1888 | the entire Act |
| 1889 (52 & 53 Vict.) c. 10 | Commissioners for Oaths Act 1889 | the entire Act |
| 1889 (52 & 53 Vict.) c. 48 | County Court Appeals (Ireland) Act 1889 | the entire Act |
| 1891 (54 & 55 Vict.) c. 50 | Commissioners for Oaths Act 1891 | the entire Act |
| 1891 (54 & 55 Vict.) c. 69 | Penal Servitude Act 1891 | the entire Act |
| 1892 (55 & 56 Vict.) c. 27 | Parliamentary Deposits and Bonds Act 1892 | the entire Act |
| 1892 (55 & 56 Vict.) c. 64 | Witnesses (Public Inquiries) Protection Act 1892 | the entire Act |
| 1893 (56 & 57 Vict.) c. 36 | Law of Distress and Small Debts (Ireland) Act 1893 | the entire Act |
| 1896 (59 & 60 Vict.) c. 8 | Life Assurance Companies (Payment into Court) Act 1896 | the entire Act |
| 1897 (60 Vict.) c. 17 | Supreme Court of Judicature (Ireland) Act 1897 | the entire Act |
| 1907 (7 Edw. 7) c. 16 | Evidence (Colonial Statutes) Act 1907 | the entire Act |
| 1907 (7 Edw. 7) c. 19 | Prisons (Ireland) Act 1907 | the entire Act |
| 1907 (7 Edw. 7) c. 22 | Petty Sessions Clerk (Ireland) Amendment Act 1907 | the entire Act |
| 1918 (8 & 9 Geo. 5) c. 19 | Summary Jurisdiction (Ireland) Act 1918 | the entire Act |
| 1919 (9 & 10 Geo. 5) c. 4 | Summons and Process Servers' Fees (Ireland) Act 1919 | the entire Act |
| 1920 (10 & 11 Geo. 5) c. 33 | Maintenance Orders (Facilities for Enforcement) Act 1920 | the entire Act |

Chapter 5
Acts of the Oireachtas

| Number and year (1) | Enactment (2) | Extent of repeal (3) |
|------------------------|---|-------------------------|
| 1923 No. 4 | Enforcement of Law (Occasional Powers) Act 1923 | the entire Act |
| 1923 No. 6 | District Justices (Temporary Provisions) Act 1923 | the entire Act |
| 1923 No. 15 | Damage To Property (Compensation) Act 1923 | the entire Act |
| 1923 No. 36 | Dáil Eireann Courts (Winding-Up) Act 1923 | the entire Act |
| 1923 No. 45 | County Courts (Amendment) Act 1923 | the entire Act |
| 1924 No. 2 | Court Officers (Temporary Appointments) Act 1924 | the entire Act |
| 1924 No. 4 | Coroners (Qualification) Act 1924 | the entire Act |
| 1924 No. 15 | Public Safety (Punishment Of Offences) Temporary Act 1924 | the entire Act |
| 1924 No. 20 | Enforcement of Law (Occasional Powers) Act 1924 | the entire Act |
| 1924 No. 32 | Dáil Eireann Courts (Winding Up) Act 1923, Amendment Act 1924 | the entire Act |
| 1924 No. 57 | County Courts (Appeals) Act 1924 | the entire Act |
| 1925 No. 9 | Dáil Eireann Courts (Winding Up) Act 1925 | the entire Act |
| 1925 No. 13 | Dáil Supreme Court (Pensions) Act 1925 | the entire Act |
| 1925 No. 16 | Enforcement of Law (Occasional Powers)(Continuance) Act 1925 | the entire Act |
| 1926 No. 1 | Courts of Justice Act 1926 | the entire Act |
| 1926 No. 18 | Enforcement of Court Orders Act 1926 | the entire Act |
| 1926 No. 23 | Deputy Registrar in Bankruptcy (Cork) Act 1926 | the entire Act |
| 1927 No. 10 | Circuit Courts (Appeals) Act 1927 | the entire Act |
| 1927 No. 34 | County Courts (Appeals) Act 1927 | the entire Act |
| 1928 No. 15 | Courts of Justice Act 1928 | the entire Act |
| 1929 No. 33 | Juries (Protection) Act 1929 | the entire Act |
| 1929 No. 36 | Civil Service (Transferred Officers) Compensation Act 1929 | the entire Act |
| 1931 No. 18 | Juries (Protection) Act 1931 | the entire Act |
| 1933 No. 35 | Damage To Property (Compensation) (Amendment) Act 1933 | the entire Act |
| 1936 No. 48 | Courts of Justice Act 1936 | the entire Act |
| 1937 No. 3 | Circuit Court (Registration of Judgments) Act 1937 | the entire Act |
| 1940 No. 23 | Enforcement of Court Orders Act 1940 | the entire Act |
| 1940 No. 27 | Offences Against the State (Forfeiture) Act 1940 | the entire Act |
| 1941 No. 24 | Neutrality (War Damage To Property) Act 1941 | the entire Act |

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| 1945 No. 19 | Garda Síochána (Compensation)(Amendment) Act 1945 | the entire Act |
| 1945 No. 11 | Military Service Pensions (Amendment) Act 1945 | the entire Act |
| 1945 No. 25 | Court Officers Act 1945 | the entire Act |
| 1946 No. 22 | Supplies and Services (Temporary Provisions) Act 1946 | the entire Act |
| 1951 No. 8 | Court Officers Act 1951 | the entire Act |
| 1959 No. 32 | Funds of Suitors Act 1959 | the entire Act |
| 1962 No. 18 | Courts (Supplemental Provisions) (Amendment) Act 1962 | the entire Act |
| 1963 No. 35 | Funds of Suitors Act 1963 | the entire Act |
| 1964 No. 9 | Courts (Supplemental Provisions) (Amendment) Act 1964 | the entire Act |
| 1966 No. 25 | Funds of Suitors Act 1966 | the entire Act |
| 1968 No. 3 | Courts (Supplemental Provisions) (Amendment) Act 1968 | the entire Act |
| 1971 No. 36 | Courts Act 1971 | the entire Act |
| 1977 No. 11 | Courts Act 1977 | the entire Act |
| 1979 No. 15 | Courts Act 1979 | the entire Act |
| 1981 No. 11 | Courts Act 1981 | the entire Act |
| 1984 No. 17 | Funds of Suitors Act 1984 | the entire Act |
| 1985 No. 23 | Courts Act 1985 | the entire Act |
| 1986 No. 1 | Courts Act 1986 | the entire Act |
| 1986 No. 33 | Courts (No. 3) Act 1986 | the entire Act |
| 1988 No. 14 | Courts Act 1988 | the entire Act |
| 1988 No. 34 | Courts (No. 2) Act 1988 | the entire Act |
| 1991 No. 20 | Courts Act 1991 | the entire Act |
| 1991 No. 21 | Courts (No. 2) Act 1991 | the entire Act |
| 1996 No. 20 | Courts Act 1996 | the entire Act |
| 1997 No. 6 | Courts Act 1997 | the entire Act |
| 2003 No. 36 | Courts and Court Officers (Amendment) Act 2003 | the entire Act |
| 2007 No. 4 | Courts and Court Officers (Amendment) Act 2007 | the entire Act |
| 2009 No. 21 | Enforcement of Court Orders (Amendment) Act 2009 | the entire Act |

Chapter 6: Statutory Instruments

| Number and year (1) | Statutory Instrument (2) | Extent of revocation (3) |
|------------------------|--|-----------------------------|
| S.I. No. 320 of 1972 | European Communities (Rules of Court) Regulations 1972 | the entire Regulations |
| S.I. No. 52 of 2002 | European Communities (Civil and Commercial Judgments) Regulations 2002 | the entire Regulations |
| S.I. No. 648 of 2005 | European Communities (European Enforcement Order) Regulations 2005 | the entire Regulations |
| S.I. No. 121 of 2007 | European Communities (Enforcement of Community Judgments, Orders and Decisions) Regulations 2007 | the entire Regulations |
| S.I. No. 102 of 2008 | European Communities (Evidence in Civil or Commercial Matters) Regulations 2008 | the entire Regulations |
| S.I. No. 525 of 2008 | European Communities (European Order for Payment) Regulations 2008 | the entire Regulations |

Section 8

SCHEDULE 2
Part 2
Enactments repealed or revoked in part only

Chapter 1
Pre-Union Irish Statutes, 1169 – 1800

| Number and year (1) | Short title (2) | Extent of repeal (3) |
|------------------------|--------------------|-------------------------|
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|------------------------|------------------------------------|--------------------|
| 1707 (6 Ann.) c. 10 | Administration of Justice Act 1707 | sections 12 and 13 |
| 1751 (25 Geo. 2) c. 13 | Distress for Rent Act 1751 | section 4 |

| Chapter 2 Statutes of the United Kingdom of Great Britain and Ireland, 1801 to 1922 | | |
|--|---|---|
| Number and year (1) | Short title (2) | Extent of repeal (3) |
| (60 Geo. 3 & 1 Geo. 4) c. 4 | Pleading in Misdemeanour Act 1819 | section 10 |
| 1832 (2 & 3 Will. 4) c. 40 | Admiralty Act 1832 | section 5, so far as still in force |
| 1836 (6 & 7 Will. 4) c. 29 | Dublin Police Act 1836 | the entire Act, except sections 6, 7 and 8 |
| 1836 (6 & 7 Will. 4) c. 116 | Grand Jury (Ireland) Act 1836 | section 87 ¹⁵⁷ |
| 1842 (5 & 6 Vict.) c. 24 | Dublin Police Act 1842 | sections 2-4 inclusive, 25, 32, 38, 39, 48-52 inclusive, 54-57 inclusive, 59, 63, 64-67 inclusive, 70, 71, 78, 79, Schedule B |
| 1844 (7 & 8 Vict, c. 106) | County Dublin Grand Jury Act 1844 | sections 110 ¹⁵⁸ and 147 |
| 1851 (14 & 15 Vict.) c. 92 | Summary Jurisdiction (Ireland) Act 1851 | sections 1, 6, 14, 21, 22, 23, 24, 25 and 28 |
| 1851 (14 & 15 Vict, c. 99) | Evidence Act 1851 | section 6 |
| 1856 (19 & 20 Vict, c. 63) | Grand Jury (Ireland) Act 1856 | section 17 |
| 1860 (23 & 24 Vict.) c. 115 | Crown Debts and Judgments Act 1860 | section 2 |
| 1871 (34 & 35 Vict.) c. 22 | Lunacy Regulation (Ireland) Act 1871 ¹⁵⁹ | sections 16, 26, 27, 40, 47, 106, 108, 115 to 118 inclusive and Schedule 2 |

| Chapter 3 Acts of the Oireachtas | | |
|-------------------------------------|--|--|
| Number and year (1) | Short title (2) | Extent of repeal (3) |
| 1922 No. 2 | Adaptation of Enactments Act 1922 | section 6 |
| 1924 No. 10 | The Courts of Justice Act 1924 | the entire Act, except sections 1 and 39 |
| 1926 No. 27 | Court Officers Act 1926 | the entire Act, except sections 1(1) and 43(3) |
| 1931 No. 13 | Legitimacy Act 1931 | section 2 |
| 1935 No. 18 | Courthouses (Provision and Maintenance) Act 1935 | section 8 |
| 1946 No. 21 | Courts of Justice (District Court) Act 1946 | the entire Act, except sections 1(1), 20 and 21 ¹⁶⁰ |
| 1946 No. 24 | Local Government Act 1946 | section 94 |
| 1947 No. 13 | Sinn Fein Funds Act 1947 | sections 11 and 12 |
| 1947 No. 20 | Courts of Justice Act 1947 | the entire Act, except sections 1(1) and 19 |
| 1948 No. 23 | Workmen's Compensation (Amendment) Act 1948 | section 7 |

¹⁵⁷ Section 87 could also be repealed as the purpose is now captured by the *Prevention of Corruption Acts*.

¹⁵⁸ Section 110 could also be repealed as the purpose is now captured by the *Prevention of Corruption Acts*.

¹⁵⁹ All or most of the remaining provisions could probably be repealed by the *Mental Capacity Bill*: see note 1, above.

¹⁶⁰ Head 34 of the *General Scheme of the Judicial Council Bill* (published August 2010) proposes to repeal section 21.

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| 1951 No. 2 | Criminal Justice Act 1951 | sections 7, 17 and 25 |
| 1953 No. 10 | Local Government (Dublin) (Amendment) Act 1953 | section 3 |
| 1953 No. 32 | Courts of Justice Act 1953 | the entire Act, except sections 1(1) and 5 |
| 1961 No. 38 | Courts (Establishment and Constitution) Act 1961 | section 3(2), section 6A and section 7 |
| 1961 No. 39 | Courts (Supplemental Provisions) Act 1961 | the entire Act, except sections 1, 5, 6, 17, 18, 19, 29, 30, 31, 35(1), 46 and 46A |
| 1964 No. 11 | Courts Act 1964 | the entire Act, except sections 1 and 5 |
| 1973 No. 16 | Criminal Procedure (Amendment) Act 1973 | section 1 |
| 1973 No. 26 | Courts Act 1973 | section 1 |
| 1983 No. 19 | Courts-Martial Appeals Act 1983 | sections 9(2), 10 to 17 inclusive, and 23 |
| 1984 No. 22 | Criminal Justice Act 1984 | section 24 |
| 1986 No. 26 | Courts (No. 2) Act 1986 | the entire Act, except sections 9, 10 and the Schedules |
| 1989 No. 18 | Children Act 1989 | section 6 |
| 1993 No. 25 | European Communities (Amendment) Act 1993 | section 5(4) |
| 1995 No. 31 | Court and Court Officers Act 1995 | the entire Act, except section 1(1), Part IV, section 31, section 47 and section 48 |
| 1997 No. 43 | Courts (No. 2) Act 1997 | the entire Act, except sections 4, 6, 7, 8 and section 13(1) |
| 2002 No. 15 | Courts and Court Officers Act 2002 | sections 3, 7 and 12, Part 4, sections 28, 30, 35, 36 and 46 and Schedules 1 and 2 |
| 2004 No. 31 | Civil Liability and Courts Act 2004 | section 30 and Part 3 |
| 2006 No. 26 | Criminal Justice Act 2006 | sections 21, 22, 24, 100(14), 178, 179, 180, 181, 193 and 194 |
| 2007 No. 10 | Prisons Act 2007 | sections 33 and 34 |
| 2007 No. 29 | Criminal Justice Act 2007 | section 59 |
| 2008 No. 7 | Criminal Justice (Mutual Assistance) Act 2008 | section 108 |
| 2008 No. 14 | Civil Law (Miscellaneous Provisions) Act 2008 | sections 5 to 10 inclusive, 14 to 16 inclusive and 19 to 32 inclusive |
| 2009 No. 15 | Nursing Homes Support Scheme Act 2009 | section 22 |
| 2009 No. 19 | Criminal Justice (Surveillance) Act 2009 | section 18 |
| 2009 No. 27 | Land and Conveyancing Law Reform Act 2009 | section 126 |
| 2009 No. 28 | Criminal Justice (Miscellaneous Provisions) Act 2009 | sections 45 and 46 |
| 2009 No. 31 | Defamation Act 2009 | sections 7(1) and 41 |
| 2009 No. 32 | Criminal Justice (Amendment) Act 2009 | section 26 |
| 2009 No. 36 | Courts and Court Officers Act 2009 | sections 13 to 23 inclusive and section 25 |
| 2010 No. 6 | Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 | section 115 |

Chapter 4
Statutory Instruments

| Number and year (1) | Short title (2) | Extent of revocation (3) |
|------------------------|--|-----------------------------|
| S.I. No. 333 of 2002 | European Communities (Corporate Insolvency) Regulations 2002 | regulations 6 and 9 |
| S.I. No. 334 of 2002 | European Communities (Personal Insolvency) Regulations 2002 | regulations 5 and 8 |
| S.I. No. 112 of 2005 | European Communities (Judgments in | regulations 4, 5, 6 and 9 |

Section 9

SCHEDULE 3
Amendments
Part 1
Minor and consequential amendments (*section 9*)

| Enactment (1) | Provision (2) | Nature of amendment (3) |
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| Probate and Legacy Duties (Ireland) Act 1814 (54 Geo. 3, c. 92.) | section 7 | The substitution of the words “the High Court, on application for that purpose by the Revenue Commissioners” for the words “his Majesty’s Court of Exchequer in Ireland, upon application for that purpose on behalf of the said commissioners of stamp duties”. |
| | sections 33 and 34 | <p>The substitution for those sections of the following sections:</p> <p>“33.(1) Where a person, who has been granted probate or administration of an estate, has money or other property chargeable with any duty under this Act and cannot pay any legacy or residue to the person entitled because the person entitled cannot be identified or cannot be found, or because of any doubt as to the construction of any will, the executor or administrator may pay:</p> <p>(a) the legacy or residue, or (b) any part of the legacy or residue, or (c) any sum on account of the legacy or residue (or part of either)</p> <p>after deducting the duty chargeable thereon, into the Court Funds Office, to be placed to the account of the person who is beneficially entitled to it. The receipt of a member of the staff of the Service assigned to the Court Funds Office authorised in that behalf is a sufficient discharge for the money so paid in, provided that the duty has been paid thereon. That money shall be invested for the benefit of person who is beneficially entitled to it without formal request for that purpose.</p> <p>(2) That money and any produce of its investment shall be paid to the person who is beneficially entitled to it, or otherwise applied for the benefit of that person, on summary application to the appropriate court by that person.</p> <p>(3) If it appears that any money has been improperly paid into the Court Funds Office under this section, the appropriate court may, on summary application to that court, make an order for the payment out or other disposal of the money and any produce of its investment in such manner as justice requires.</p> <p>(4) Where any duty on any money to which this section applies exceeds the amount properly payable, the Revenue Commissioners may repay any excess into the appropriate account in the Court Funds Office or to the person beneficially entitled to the money.</p> <p>(5) Where any duty on any money to which this section applies is less than the amount properly payable, the Revenue Commissioners may apply summarily to the appropriate court for an order for the payment of the deficit and any penalty out of the money lodged in the Court Funds Office in connected with the estate concerned.</p> <p>(6) In this section, the “appropriate court” means:</p> |

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| | | <p>(i) the Circuit Court for the Circuit in which the deceased had a permanent place of residence when he or she died, where the amount proposed to be paid in does not exceed the Circuit Court damages limit, or</p> <p>(ii) the High Court in any other case.</p> <p>34. Appropriate accounts of all money paid into the Court Funds Office under this section and their produce and of transactions involving such money shall be kept in Court Funds Office.”.</p> |
| | section 35 | The substitution for each reference in that section to “Court of Exchequer” of a reference to the “High Court”. |
| Criminal Law (Ireland) Act 1828 (9 Geo. 4, c. 54) | sections 26, 27 and 34 | The deletion of those sections. |
| | sections 28 and 29 | <p>The substitution for those sections of the following sections:</p> <p>“28. In any indictment or summons concerning any offence, in which it is necessary or requisite to state the ownership of any property, whether real or personal, which belongs to or is in the possession of more than one person, whether as trustees, partners, joint tenants or tenants in common, it shall be sufficient to name one of those persons, and to state that the property belongs to the person so named and another or others, and it shall be sufficient to mention any trustees, partners, joint tenants or tenants in common in any indictment or summons in the like manner.</p> <p>29. In any indictment or summons concerning any offence, which it is alleged was committed in, upon, or with respect to any church, chapel, or place of religious worship, or any public structure or building, erected or maintained in whole or in part at the expense of any state authority, public authority or local authority, or on or with respect to any goods or chattels, provided for or at expense of any state authority, public authority or local authority, to be used for making, altering, or repairing any bridge, road, or public structure or building, or to be used in or with any public structure or building, it shall not be necessary to state that the church, chapel, or place of religious worship or such church, chapel, or place of religious worship, public structure or building, or goods or chattels, is or are the property of any person.”.</p> |
| Sheriffs (Ireland) Act 1835 | section 2 | <p>The substitution for that section of the following section:</p> <p>“2.(1) A person nominated to be a sheriff shall be appointed by warrant in writing signed by a member of the Government. Notice of the appointment of a sheriff shall be published in Iris Oifigiúil.</p> <p>(2) For the avoidance of doubt, the requirements of subsection (1) do not apply where a County Registrar performs the functions and exercises the powers of an under-sheriff or sheriff.”.</p> |
| | section 3 | <p>The substitution for that section of the following section:</p> <p>“3. A duplicate of a warrant of appointment mentioned in section 2 shall be lodged with the County Registrar for the county or other local government area to which the appointment relates and a copy of that duplicate may be taken by any person who applies to the County Registrar for that purpose.”.</p> |
| | sections 4, 5, and 7 to 16 inclusive | The deletion of those sections. |
| | section 17 | <p>The substitution for that section of the following section:</p> <p>“17. Nothing in this Act limits the jurisdiction or power of any court.”</p> |
| | sections 23 to 25 inclusive | <p>The substitution for those sections of the following section:</p> <p>“23.(1) Records of all warrants issued to recover by distress against the goods of a person the amount of any fine, penalty or forfeited recognisance shall be</p> |

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| | | <p>kept in the proper office of the court which imposed the fine or penalty or forfeited the recognisance concerned.</p> <p>(2) Records of all sums recovered by distress in respect of any fine, penalty or forfeited recognisance shall be kept in the Court Funds Office.</p> <p>(3) Information from the records mentioned in subsections (1) and (2) shall be provided by the proper officer or the Court Funds Office, as the case may be, to:</p> <ul style="list-style-type: none"> (a) the Director of Public Prosecutions, in the case of records mentioned in subsection (1), on his or her request; (b) the Minister for Finance, in the case of records mentioned in subsection (2), on his or her request, or (c) the prosecutor (where the prosecutor is not the Director of Public Prosecutions and is not acting on behalf of, or authorised by, the Director of Public Prosecutions) in the case of records mentioned in subsections (1) and (2) concerning only proceedings prosecuted by that prosecutor, on the request of that prosecutor.”. |
| | sections 31 and 39 to 41 inclusive | The deletion of those sections. |
| County Dublin Grand Jury Act 1844 (7 & 8 Vict, c. 106) | section 147 | The deletion of that section. |
| Companies Clauses Consolidation Act 1845 (8 & 9 Vict, c. 16) | section 18 | <p>The substitution for the words:</p> <p>“shall be authenticated by a Declaration in Writing as herein-after mentioned, or in such other Manner as the Directors shall require; and every such Declaration shall state the Manner in which and the Party to whom such Share shall have been so transmitted, and shall be made and signed by some credible Person before a Justice, or before a Master or Master Extraordinary of the High Court of Chancery”</p> <p>of the words:</p> <p>“shall be authenticated by an affidavit of an appropriate deponent, stating the manner in which and the party to whom such share was so transmitted”.</p> |
| | section 54 | <p>The substitution for the words:</p> <p>“Every Application for a Receiver in the Cases aforesaid shall be made to Two Justices, and on any such Application it shall be lawful for such Justices”</p> <p>of the words:</p> <p>“Every application for a receiver mentioned in section 53 shall be made to the Judge of Circuit Court for the Circuit in which the company has its registered office or principal place of business, and on any such application it shall be lawful for that Judge”.</p> |
| | sections 111, 112 and 113 | <p>The substitution for those sections of the following section:</p> <p>“111. If any such officer fails to account in accordance with section 110 for any money, or fails to pay any money due to the company, or fails to produce any voucher, receipt or document in his or her possession or power concerning money received by him or her on behalf of a company to which this Act or the special Act, or any Act incorporated therewith relates, the company may bring proceedings before a Judge of the District Court assigned to the District Court</p> |

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| | | District in which the company has its registered office or principal place of business for an order requiring that officer to give an account under section 110, or declaring the amount owing by such officer, and for the payment by that officer of any amount found to be owing by him or her to the company, and any such order declaring a sum to be owing may be executed as a decision of the District Court for the payment by that officer to the company of the sum of money concerned.”. |
| | section 142 | (i) the substitution for the words “two justices” of the words “the Judge of District Court assigned to the District Court District in which the company has its registered office or principal place of business”, and (ii) the deletion of the remainder of the section from the words “and if the amount so ascertained” to the end of the section. |
| | section 143 | The deletion of that section. |
| | section 144 | The substitution for that section of the following section: “144. Where, under this Act or the special Act, or any Act incorporated therewith, any question of compensation, expenses, charges or damages is referred to any Judge, that question may be decided by the Judge of District Court assigned to the District Court District in which the company has its registered office or principal place of business; the question may be referred by the party seeking decision by the commencement of proceedings before that Judge in accordance with rules of court, and the Judge may exercise every power available to him or her in civil proceedings in the proceedings for the decision of the question.”. |
| | section 147 | The substitution for the words “two justices” of the words “the Judge of District Court assigned to the District Court District in which the company has its registered office or principal place of business”. |
| | section 152 | The deletion of that section. |
| | section 154 | The substitution for the words “be decided by the Justices by whom the Party incurring such Penalty shall have been convicted; and on Nonpayment of such Damages, on Demand, the same shall be levied by Distress, and such Justices, or One of them, shall issue their or his Warrant accordingly” of the words “by the Judge”. |
| | section 155 | The deletion of that section. |
| | sections 159 and 160 | The substitution for that section of the following section: “159. A party aggrieved by a decision of a Judge of the District Court in proceedings under any provision of this Act or the special Act, or any Act incorporated therewith, may appeal to the Circuit Court subject to and in the manner permitted by the Courts (Consolidation and Reform) Act 2010 and the Circuit Court shall hear and decide every such appeal in accordance with that Act.”. |
| Lands Clauses Consolidation Act 1845 (8 & 9 Vict, c. 18) | sections 58, 59 and 60 | The substitution for the words “two justices” and “such justices” on each occasion those words appear of the words “a Judge of District Court assigned to the District Court District in which the place is located”. |
| | section 69 | (i) the substitution for the words “paid into the Bank, in the name and with the privity of the Accountant General of the Court of Exchequer in Ireland, to be placed to the account there of such Accountant General” of the words “lodged in the High Court”, and (ii) the substitution for the words “the Court of Chancery” of the words “the High Court”. |
| | section 70 | The substitution for the words “an order of the Court of Exchequer in Ireland, made on the petition of the party” of the words “an order of the High Court, made on the application of the party”. |
| | section 73 | The substitution for the words “the Court of Exchequer in Ireland” of the words “the High Court”. |
| | section 74 | The substitution for the words “it shall be lawful for the Court of Exchequer in |

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| | | Ireland, on the petition of any party” of the words “the High Court may, on the application of any party”. |
| | section 76 | The substitution for the words “paid into the Bank, in the name and with the privity of the Accountant General of the Court of Exchequer in Ireland” of the words “lodged in the High Court”. |
| | section 78 | The substitution for the words “the Court of Exchequer in Ireland may, in a summary way, as to such court shall seem fit” of the words “the High Court may”. |
| | section 80 | <p>The substitution for that section of the following section:</p> <p>“80. Where any money is lodged in the High Court under this Act or the special Act, or an Act incorporated with this Act, then unless:</p> <p>(a) that money was so deposited by reason of the wilful refusal of a person entitled to that money to receive it, or to convey or release land in respect of which that money is payable, or</p> <p>(b) that money was so deposited by reason of the wilful neglect of a party to make out a good title to land required,</p> <p>the High Court may order the following costs (including all reasonable charges and incidental expenses) to be paid by the promoters of the undertaking:</p> <p>(i) the costs of the purchase or taking of the land, or which were incurred in consequence of the purchase or taking of the land, other than any costs otherwise provided for in this Act, and</p> <p>(ii) the costs of the investment of the money in Government or other securities, and of the reinvestment of the proceeds in the purchase of other land, and</p> <p>(iii) the costs of obtaining the proper order for any of the foregoing purposes and of obtaining any order for the payment of the dividend or interest of any security in which the money was invested, and</p> <p>(iv) the costs of obtaining the proper order for the payment out of Court of the principal of the money, or of the securities in which the money was invested, and</p> <p>(v) the costs of all proceedings relating to the matters mentioned in subparagraphs (i) to (iv), except such costs as were occasioned by litigation between adverse applicants.”.</p> |
| | section 83 | The substitution for the words “such Costs shall be taxed by one of the Taxing Masters of the Court of Chancery, or by a Master in Chancery in Ireland, upon an Order of the same Court, to be obtained upon Petition in a summary Way by either of the Parties” of the words “the costs shall be measured by a Taxing Master of the High Court, on application by either of the parties”. |
| | section 85 | The substitution for the words “two justices”, on each occasion those words appear, of the words “a Judge of District Court assigned to the District Court District in which the place is located”. |
| | section 86 | The substitution for the words “paid into the Bank, in the name and with the privity of the Accountant General of the Court of Exchequer in Ireland” of the words “lodged in the High Court”. |
| | section 87 | The substitution for the words “it shall be lawful for the Court of Exchequer in Ireland, upon a like application, to order” of the words “the High Court may order”. |
| | section 89 | The deletion of that section. |
| | section 107 | The substitution for the words “it shall be lawful for the Court of Exchequer in Ireland, by an order to be made upon petition, to order” of the words “the |

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| | | High Court may order”. |
| | section 136 | The substitution for that section of the following section: “136. Proceedings under this Act for the recovery of any penalty or forfeiture may be begun, heard and decided in the manner permitted by law for summary criminal proceedings and the provisions of the Courts (Consolidation and Reform) Act 2010 apply to the execution of any decision of the District Court in such proceedings, to the right to appeal, and to the conduct of any appeal, from a decision in any such proceedings.”. |
| | sections 137 to 148 inclusive | The deletion of those sections, so far as still in force. |
| Trustee Act 1850 (13 & 14 Vict, c. 60) | section 20 | The substitution for that section of the following section: “20.(1) Where a court may make an order having the effect of a conveyance or assignment of any estate or interest in land, or having the effect of a release or disposition of the contingent right of any person, born or unborn, that court may instead make an order appointing a person to convey or assign that estate or interest in land, or to release or dispose of that contingent right. (2) An instrument executed by a person appointed by a court, when in conformity with the terms of the order of the court by which the person is appointed, has the same effect as an order of the court. (3) Where a court may make an order vesting in any person the right to transfer any stock in any company, that court may instead make an order directing the secretary of the company to register a transfer of the stock, share or other security concerned in that company to the person named in the order; and no action shall lie against any company or any officer of any company for anything done in compliance with an order made in accordance with this section.”. |
| | section 26 | The substitution for that section of the following section: “26.(1) Where a court has made an order vesting in any person the right to transfer any stock in any company, the legal right shall vest in the person appointed accordingly, and thereupon that person is authorised and empowered, to the extent permitted by the order, to execute any instrument and to perform any act relating to the transfer of the stock into his or her own name or otherwise and relating to the receipt of the dividends of that stock. (2) When, and provided that, a copy of the court’s order has been delivered to that company, (a) a company shall be bound and compellable to comply with an instruction (provided that it is not inconsistent with the court’s order) of a person so appointed to the same extent as it was bound and compellable to comply with the instruction of the person in whose place the appointment was made, (b) a company may not comply with any instruction of the person in whose place the appointment was made concerning the transfer of stock or the payment of dividends, and (c) no action shall lie against a company or any officer of a company for anything done in compliance with an instruction (which is not inconsistent with the court’s order) of a person so appointed if and to the extent that no such action would have lain for anything done in compliance with an instruction of the person in whose place the appointment was made.”. |
| | section 27 | The substitution for that section of the following section: “27. Where a court has made an order vesting in any person the legal right to sue for or recover any chose in action or any interest in respect thereof, that |

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| | | legal right shall vest accordingly, and thereupon the person may carry on, commence, and prosecute, in his or her own name, any civil proceedings for the recovery of the chose in action, in the same manner in all respects as the person in whose place the appointment was made could previously have.”. |
| | section 28 | The deletion of that section. |
| | section 30 | The substitution for that section of the following section: “30. Where a court exercising equitable jurisdiction makes an order of specific performance of a contract concerning any land, or for the partition or exchange of any land, or for the conveyance or assignment of any land (whether in a case arising out of the doctrine of election or otherwise), the court may declare that any party to the proceedings shall be a trustee of the land or any part of the land, or may declare concerning the interests of unborn persons who might claim under any party to those proceedings, or under the will or voluntary settlement of any deceased person who was during his or her lifetime a party to the contract or to any transaction with which the proceedings are concerned, that the interests of unborn persons are the interests of persons who, upon coming into existence, would be trustees within the meaning of this Act, and the court may thereupon make such further order as to the estates, rights, and interests of such persons, born or unborn, it might under this Act make concerning the estates, rights, and interests of trustees, born or unborn.”. |
| | section 31 | The substitution for that section of the following section: “31. Where a court may make made an order vesting in any person the right to transfer any stock in any company, or the right to any chose in action, the court may also make a declaration and give directions concerning the manner in which that right may be exercised and the person appointed shall comply with any such declaration or direction.”. |
| | sections 40 to 42 inclusive | The substitution for those sections of the following section: “40. A person entitled to apply for an order under this Act may apply to the High Court in the manner permitted by rules of court. The Court may direct an inquiry into any matter raised in the proceedings on that application which it considers requires investigation.”. |
| | section 45 | The substitution for that section of the following section: “45. A court may exercise the powers conferred by this Act for the purpose of vesting any land, stock, or chose in action in a trustee of any charity.”. |
| | section 48 | The substitution for that section of the following section: “48.(1) Where a person of unsound mind or a child is entitled to any money payable in discharge of any land, stock, or chose in action conveyed, assigned, or transferred under this Act, the person by whom such money is payable may pay that money into the appropriate court, in trust in any proceedings then pending concerning that money or, if there are no such proceedings, to the credit of that person of unsound mind or child, subject to the order of the court, and a receipt given by a member of its staff so authorised on behalf of the Courts Service for such a payment shall be an effectual discharge for the money expressed in that receipt to have been received. (2) The appropriate court may, on application to it in a summary manner, make such order as it considers reasonable for the payment or distribution of the money, or of any proceeds of investment of the money. (3) The appropriate court may direct an inquiry into any matter raised in the proceedings on that application which it considers requires investigation, including an inquiry as to whether a person alleged to be a person of unsound |

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| | | <p>mind ought to be made a ward of court or whether any other proceedings should be brought in respect of that person¹⁶¹.</p> <p>(4) In this section, the “appropriate court” means:</p> <p>(a) where the amount of money proposed to be paid into court does not exceed the Circuit Court damages limit (within the meaning of the Courts (Consolidation and Reform) Act 2010), the Circuit Court for the Circuit in which the person of unsound mind or child ordinarily resides or, where proceedings are pending in the Circuit Court concerning that money, the Circuit Court for the Circuit in which those proceedings are pending, and</p> <p>(b) in any other case, the High Court.”.</p> |
| | sections 51 to 55 inclusive and section 57 | The deletion of those sections. |
| Landlord and Tenant Law Amendment Act Ireland 1860 (23 & 24 Vict, c. 154) | sections 30 and 31 | <p>The substitution in each of those sections for the words:</p> <p>“by Civil Bill Action in the County in which the Tenant usually resides, or in the County in which the Lands or any Part of them are situate, at the Election of the Landlord”</p> <p>of the words:</p> <p>“by proceedings in the Circuit Court before a Judge assigned to the Circuit in which the tenant usually resides or, at the election of the landlord, in which the land or any part of it is situated”.</p> |
| | section 32 | <p>The substitution in that section for the words:</p> <p>“then such Compensation or Allowance as shall be ascertained by the Chairman of the County upon a Civil Bill Action brought for that Purpose with the same Incidents as in ordinary Civil Bill Process”</p> <p>of the words:</p> <p>“then the compensation or allowance shall be fixed by the Circuit Court for the Circuit in which the land or part of the land is situated”.</p> |
| | section 33 | <p>The substitution for that section of the following section:</p> <p>“33. Where the parties do not agree the amount of compensation to be paid for injury sustained by the entry on or use of land for the purpose of mining in the manner provided by this Act, then the compensation shall be fixed by the Circuit Court for the Circuit in which the land or part of the land is situated.”.</p> |
| | sections 35, 36 and 37 | <p>The substitution for those sections of the following section:</p> <p>“35.(1) In this section:</p> <p>“interference” by an occupier or other person with land or premises means the occupier or person:</p> <p>(a) committing or permitting any unlawful waste, injury or alteration to, destruction on, or removal from, land or premises, or</p> <p>(b) unlawfully removing, burning or breaking up any part of the soil, surface or subsoil of land, or unlawfully cutting down, topping, lopping, or grubbing any trees, woods, or underwoods growing on land, or</p> |

¹⁶¹ This provision may require revision in the context of the *Mental Capacity Bill*: see note 1, above.

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| | | <p>(c) using or misusing premises, contrary to an agreement;</p> <p>“occupier” means a person in possession of land or premises, as a tenant, or as a servant or caretaker of any owner, or having obtained the possession of that land or those premises from any such tenant, servant, or caretaker;</p> <p>“owner” includes any landlord or other person sufficiently interested in the land or premises;</p> <p>every reference to “land” or “premises” includes a reference to any part of land or, as the case may be, any part of premises.</p> <p>(2) Where the owner of land or premises believes that reasonable grounds exist to suspect that an occupier is engaging in or intends to commit any interference with the land or premises, the owner may apply to a Judge of the District Court assigned to the District in which the land or premises is situated for an order under this section.</p> <p>(3) Where the Judge is satisfied by the evidence on affidavit of the owner or his or her agent in an application under this section that an occupier is engaging in or intends to commit any interference with land or premises, the Judge may make an order requiring the occupier to desist from interference, and not to continue any interference without the permission of the District Court or until further order of that Court, and the application shall be listed before the District Court again not later than 21 days after the making of the order.</p> <p>(4) The occupier or any other person having notice of the making of the order may apply to the District Court to set aside, vary or discharge an order made under subsection (3).</p> <p>(5) An order made under subsection (3) shall be served on the occupier, personally or by affixing a copy of the order on the principal door or another conspicuous part of the premises, and on any other person by whom the owner suspects any interference is intended to be or is being committed.</p> <p>(6) The District Court may, having heard the occupier, permit any interference, or permit any other activity in connection with the land or premises specified in the order, intended to be carried out by the occupier, on such terms or conditions, if any, as the Court considers reasonable, and the occupier shall not be liable for any interference or other activity in connection with the land or premises carried out in accordance with such an order.</p> <p>(7) A person who has been served with a copy of an order made under subsection (3) and who disobeys that order may be punished for contempt of court.”.</p> |
| | section 38 | The deletion of the words “to be recovered by Civil Bill Action in the same Manner and with the like Appeal as in ordinary Cases of Civil Bill Actions”. |
| | section 45 | <p>The substitution for that section of the following section:</p> <p>“45.(1) A person entitled to any rent in arrear, whether in his or her own right or in any other capacity, under any lease or other contract of tenancy, may, whether the lease or other contract is or is not continuing, recover the arrear from the tenant at the time of the accrual of that rent, or from the tenant’s executor or administrator, by civil proceedings:</p> <p>(a) in the District Court for the District in which the land or premises (or any part of either) is situated, where the amount of the arrear does not exceed the District Court damages limit (within the meaning of the Courts Consolidation and Reform Act 2010), or</p> |

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| | | <p>(b) in the Circuit Court for the Circuit in which the land or premises (or any part of either) is situated, where the amount of the arrear exceeds the District Court damages limit but does not exceed the Circuit Court damages limit (within the meaning of the Courts Consolidation and Reform Act 2010), or</p> <p>(c) in any other case, in the High Court.</p> <p>(2) Nothing in this section prevents the resolution of any claim for arrears of rent by any other means.</p> <p>(3) Where the entire rent due and payable from the occupying tenant to his or her immediate landlord (in this section, “sub-rent”) has been paid or satisfied, if, in consequence of the failure of that landlord to pay and satisfy the rent due and owing by him or her to any superior landlord (in this section, “head-rent”), the land in the hands of the occupying tenant are distrained for any head-rent, or the occupying tenant is compelled to pay any money to any superior landlord, to avoid a distress for head-rent due to the superior landlord, the occupying tenant may proceed against his or her immediate landlord through whose failure to pay head-rent the land was distrained or threatened to be distrained, to recover the costs and damages sustained by the occupying tenant. Such proceedings shall be heard and decided by the Circuit Court for the Circuit within which the land is situated.</p> <p>(4) If, in any proceedings mentioned in subsection (3), the occupying tenant proves payment of the sub-rent due to his or her immediate landlord, and the subsequent seizure of his or her goods under distress by a superior landlord, or his or her being compelled to pay any sum of money in or towards satisfaction of head-rent due to a superior landlord, to avoid distress, he or she may recover in damages, without any other or further proof of damage sustained, 10 per cent of the head-rent distrained for, in addition to the whole sum paid to the superior landlord, but is not precluded from proving other more aggravated or special damage¹⁶².”.</p> |
| | section 46 | <p>The substitution for the words:</p> <p>“in an Action in any of the Superior Courts of Law at Dublin, or where the Amount shall not exceed the Sum of One hundred Pounds, by Civil Bill Action in the Court of the Chairman of the County in which the Lands or any Part of them shall be situated”</p> <p>of the words:</p> <p>“in proceedings in the Circuit Court for the Circuit in which the land (or any part of it) is situated”.</p> |
| | section 52 | <p>The substitution for the words:</p> <p>“Ejectment for the Recovery of the Possession of the said Lands in any of the Superior Courts of Law at Dublin , or, where the Rent shall not exceed One hundred Pounds by the Year, in the Court of the Chairman of the County in which the Lands or any Part thereof are situated”</p> <p>of the words:</p> <p>“ejectment for the recovery of possession of the lands in the High Court or, where the annual rent does not exceed the Circuit Court damages limit (within the meaning of the Courts Consolidation and Reform Act 2010), in the Circuit Court for the Circuit within which the land (or any part of it) is situated”.</p> |

¹⁶² Moved from sections 38 and 39 of the *Civil Bill Courts (Ireland) Act 1851*.

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| | section 54 | <p>The substitution for that section of the following section:</p> <p>“54. On proof of service of the originating document in proceedings for ejection for non-payment of rent under this Act, and proof that an amount not less than one full year’s rent was due when the proceedings were commenced, and still remains due to the landlord, a court may make an order that the landlord be put into possession of the premises, and that the amount of rent then due be ascertained in the proceedings.”.</p> |
| | sections 55 to 64 inclusive | <p>The substitution for those sections of the following section:</p> <p>“55. (1) In proceedings for ejection for non-payment of rent under this Act, the originating document:</p> <p>(a) shall state the amount of rent alleged to be due, after deduction of all just and fair allowances, the times at which that rent accrued due, and that if that amount, together with a specified sum for costs is paid to the plaintiff or his or her solicitor within 10 days from the service of that document, all further proceedings will be stayed; and on payment or tender within that period of the sum claimed and costs to the plaintiff or his or her solicitor, all further proceedings in respect of the rent claimed shall cease and be stayed accordingly, and</p> <p>(b) shall be served personally on any person in actual possession of the land or premises as tenant or under-tenant, and</p> <p>(c) where there is no person in actual possession of the land or premises as tenant or under-tenant, shall be served personally on any person actually in possession and by affixing a copy of the order on the principal door or another conspicuous part of the premises, or conspicuously on or at a point of entry to the land.</p> <p>(2) Where the tenant does not appear to, or defend, the proceedings, judgment in default may be given on an affidavit by or on behalf of the landlord stating the amount of rent then due, and when that amount is not less than one full year’s rent, judgment for possession of the land or premises may be given in default, provided an affidavit of service of the originating document has been filed.</p> <p>(3) Where an order of possession in proceedings for ejection for non-payment of rent has been made but not executed, the defendant may, at any time before the order of possession has been executed:</p> <p>(a) pay to the plaintiff or his or her agent all rent and arrears then due, together with the costs incurred by the plaintiff in the proceedings, or a sum sufficient to cover those costs, or</p> <p>(b) tender the same, or if such a tender is refused, the defendant may deposit that amount in the court which made the order of possession.</p> <p>(4) Where a payment or tender mentioned in subsection (3) is accepted, the proceedings shall be stayed.</p> <p>(5) Where a tender mentioned in subsection (3) is not accepted and the amount is deposited in court, the court may, on application by the defendant, order all further proceedings to be stayed, and direct payment out to the plaintiff of the amount of rent and arrears due at the date of the tender and such amount for the costs incurred by the plaintiff in the proceedings as the court considers reasonable, or as are measured by a taxing officer.”.</p> |
| | section 65 | <p>The substitution for that section of the following section:</p> |

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| | | <p>“65. The amount of rent then due shall be stated on every order of possession issued in proceedings in ejectment for non-payment of rent, and if at any time before execution is effected the defendant pays that amount to the sheriff, the sheriff shall stay execution, and shall account for that receipt.”.</p> |
| sections 68 and 69 | | <p>The substitution for those sections of the following section:</p> <p>“68.(1) An appeal lies from the District Court to the Circuit Court against the making or refusal by the District Court of any order under this Act and the decision of the Circuit Court on such an appeal is final and unappealable.</p> <p>(2) An appeal lies from the Circuit Court to the High Court against the making or refusal by the Circuit Court of any order under this Act (other than an order made or refused by the Circuit Court on appeal) and the decision of the High Court on such an appeal is final and unappealable.</p> <p>(3) In proceedings for ejectment for non-payment of rent, execution of an order of possession is not stayed by reason of an appeal, unless the defendant deposits in the court whose order is appealed the amount of rent found due by that court, and on such deposit being made, the order of possession shall be stayed, and the deposit shall be disposed of as directed by the court hearing the appeal.”.</p> |
| sections 70, 71, 72 and 73 | | <p>The substitution for those sections of the following sections:</p> <p>“70. A court which has made an order of possession for non-payment of rent which has been executed may, on the application of the defendant or of any other person having a specific interest in the lease or other contract of tenancy, made within 6 months after the order of possession has been executed, after payment or lodgment in court of the rent, arrears, and the costs of the proceedings (or a sum sufficient to cover those costs), make an order restoring the defendant to possession of the premises recovered, on such terms as seem just.</p> <p>71.(1) Where any tenant neglects or refuses to give possession of any land or premises following determination of his or her interest (whether by notice to quit or otherwise), the landlord may bring civil proceedings for ejectment for overholding against the tenant and any other person who appears to be in actual possession of the land or premises, to be put into possession of the land or premises and for any rent in arrear:</p> <p>(a) in the District Court for the District in which the land or premises (or any part of either) is situated, where the amount of the arrear does not exceed the District Court damages limit (within the meaning of the Courts Consolidation and Reform Act 2010), or</p> <p>(b) in the Circuit Court for the Circuit in which the land or premises (or any part of either) is situated, where the amount of the arrear exceeds the District Court damages limit but does not exceed the Circuit Court damages limit (within the meaning of the Courts Consolidation and Reform Act 2010), or</p> <p>(c) in any other case, in the High Court.</p> <p>(2) The originating document in proceedings mentioned in subsection (1) shall be served in the manner and on the persons mentioned in section 55.</p> <p>(3) Nothing in this section prevents the resolution of any claim for ejectment by any other means.”.</p> |
| sections 78, 79 and 80 | | <p>The substitution for those sections of the following sections:</p> <p>“78.(1) Where 6 months’ rent of any land or premises held under a lease or contract of tenancy, or from year to year, is in arrear, and the tenant deserts or</p> |

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| | | <p>abandons the land or premises, leaving the land uncultivated or the premises unoccupied, the landlord may bring proceedings in ejectment in the court mentioned in section 72(1), having first obtained a certificate of desertion under section 79, and served a copy of that certificate and the originating document in his or her proceedings on the tenant in the manner mentioned in section 55.</p> <p>(2) Where the court is satisfied of the content of the certificate, and that 6 months' rent was due to the landlord when the certificate was granted, and that the certificate and originating document were duly served on the tenant, it may, having heard the tenant, if he or she appears, and any evidence he or she adduces, order the landlord to be put into possession of the land or premises.</p> <p>79. A Judge of the District Court for the time being assigned to the District in which the land or premises is situated may certify that land or premises (or any part of either) have been deserted or abandoned by the tenant, and the premises left unoccupied, or the land left uncultivated or unemployed, on application by or on behalf of the landlord, on such evidence as that Judge considers satisfactory, or on inspection by that Judge or a court officer appointed by him or her for that purpose.</p> <p>80. The Judge of Circuit Court for the Circuit in which land or premises is situated may hear and decide any dispute relating to the possession of land or premises held under any acknowledgment made on execution of any execution order of possession, between the plaintiff in any proceedings and any occupier, or any person claiming under either, and may make an order for the delivery of possession of the land or premises to the party entitled.”.</p> |
| | sections 81, 82 and 83 | The deletion of those sections. |
| | sections 84 to 91 inclusive | <p>The substitution for those sections of the following section:</p> <p>“84.(1) A Judge of the District Court assigned to the District in which premises are situated may, if satisfied, having heard the landlord and the tenant, that it is appropriate to do so, order that possession of the premises be delivered to the landlord or owner, and such order may be executed by a sheriff, where:</p> <p>(a) the Judge is satisfied that a tenant for a shorter period of time than one month, or at will, or by sufferance, or any other permissive occupant, has maliciously or wilfully injured or destroyed, or permitted to be injured or destroyed, any part of the premises held by him, and which the landlord is bound to keep in repair, or</p> <p>(b) the Judge is satisfied that a gale of rent or compensation reserved or payable (over and above all just credits and allowances, and any valid set-off claimed by the tenant) by such a tenant or other permissive occupant, is in arrear for at least forty days, or</p> <p>(c) the Judge is satisfied that the term or interest of such a tenant or other permissive occupant has ended, or has been duly determined by a notice to quit, and such tenant or other permissive occupant or any person actually in occupation has neglected or refused to deliver up possession of the premises.</p> <p>(2) The originating document in proceedings under this section shall be served on the tenant in the manner mentioned in section 55.</p> <p>(3) Where a tenant in proceedings under this section gives an undertaking to the Court (to be given in writing before the proper officer) quietly and peaceably to deliver up, within 14 days from the date of that undertaking, possession of the premises, in good order and repair, to the landlord, and in</p> |

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| | | <p>the meantime to pay all rent and arrears claimed by the landlord, no execution order of possession shall issue until after the expiration of the period of 14 days, but an execution order may issue without further notice to the tenant on the expiration of that period.</p> <p>(4) Neither a landlord who has a right to possession of premises nor any person acting on his or her behalf or with his or her authority, shall be deemed to be a trespasser by reason merely of any irregularity or informality in the mode of proceeding for obtaining possession under the authority of this Act.”.</p> |
| | sections 94 to 97 inclusive | <p>The substitution for those sections of the following section:</p> <p>“94.(1) An execution order of possession in proceedings under this Act may, with the consent of a plaintiff, be executed without disturbing the possession of premises by any under-tenant or other occupier who acknowledges in writing the plaintiff’s entitlement as against the defendant and that his or her obligations as under-tenant or other occupier are in future owed to the plaintiff and not to the defendant.</p> <p>(2) An execution order of possession in proceedings under this Act may be renewed as permitted by rules of court, or executed again following partial execution or, where there is an unauthorised re-entry onto the land or premises, re-executed by order of the court.</p> <p>(3) The proper officer shall, on the application of any person interested, enter, and keep a record in the appropriate court office of, particulars of any order for ejectment, restitution or delivery of possession of any land or premises made by the court under this Act, and of the return of any sheriff of the execution of any such order.”.</p> |
| | sections 98 and 99 | The deletion of those sections. |
| | sections 100 and 101 | <p>The substitution for those sections of the following sections:</p> <p>“100. No action shall lie against any person authorised by this Act for the issue of any summons, warrant or certificate, or against any person executing any order of a court under and by virtue of this Act, where the person on whose application that instrument was issued or order made did not have a right to recover the rent or possession of the land or premises concerned, or to prohibit the act prohibited by that order.</p> <p>101. The title to any land or premises shall not be drawn into question in any proceedings under this Act.”.</p> |
| | sections 102 and 103 | The deletion of those sections. |
| | immediately following section 105 ¹⁶³ | <p>The insertion of the following section:</p> <p>“106.— (1) The common law remedy of distress for rent (in this section, “distress for rent”) of the goods of a debtor before judgment in civil proceedings shall only be available to a landlord, and shall only be exercisable against the goods of a tenant from whom rent is due to that landlord.</p> <p>(2) Distress for rent shall not be available where it is excluded by the terms of the lease or tenancy agreement under which the rent falls due.</p> <p>(3) Where a person levies distress for rent and the value of the goods distrained exceeds the amount due, that person shall, promptly upon the</p> |

¹⁶³ This insertion is to facilitate repeal and replacement of each of the *Distress Act 1493*, section 15; *Distress for Rent Act 1695*; *Distress (Costs) Act 1817*; *Dublin Police Act 1842*, section 67; *Law of Distress and Small Debts (Ireland) Act 1888*; *Distress and Small Debts (Ireland) Amendment Act 1893*.

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| | <p>excess being discovered, account for the excess to the person against whose goods distress for rent was levied.</p> <p>(4) Nothing in this section operates to prevent a second or subsequent distress for rent in respect of any balance remaining due of the debt for which distress for rent was originally levied, where a person has levied distress for rent and the value of the goods distrained is less than the amount due and owing.</p> <p>(5) Where any dispute arises between any landlord and any tenant concerning the value of any goods taken in distress for rent, or the amount of any arrears of rent in respect of which distress for rent has been, or has purportedly been, levied, then that dispute shall:</p> <p>(a) if the difference between the value or alleged value of the goods taken in distress for rent and the amount of the arrears of rent alleged or acknowledged to be due does not exceed the District Court damages limit (within the meaning of the Courts (Consolidation and Reform) Act 2010), be heard and decided in the District Court by the Judge of the District Court for the time being assigned to the District in which the land or premises concerned or any part of either is situated;</p> <p>(b) if the difference between the value or alleged value of the goods taken in distress for rent and the amount of the arrears of rent alleged or acknowledged to be due does not exceed the Circuit Court damages limit (within the meaning of the Courts (Consolidation and Reform Act) 2010), be heard and decided in the Circuit Court by the Judge of the Circuit Court for the time being assigned to the Circuit in which the land or premises concerned or any part of either is situated;</p> <p>(c) in any other case, be heard and decided by the High Court.</p> <p>(6) Where a person claims that his or her goods have been taken in purported distress for rent, but that person alleges that no rent is owed by him, and the landlord who has distrained the goods has refused or failed, following a written demand by that person to do so, to return the goods concerned, the person may bring proceedings for the return of the goods concerned, or for damages in the amount of the value of the goods taken:</p> <p>(a) where the value or alleged value of the goods taken does not exceed the District Court damages limit, in the District Court before the Judge of the District Court for the time being assigned to the District in which the goods were taken;</p> <p>(b) where the value or alleged value of the goods taken does not exceed the Circuit Court damages limit, in the Circuit Court before the Judge of the Circuit Court for the time being assigned to the Circuit in which the goods were taken;</p> <p>(c) in any other case, in the High Court¹⁶⁴.</p> <p>(7) The clothing, household furniture, bedding, tools or equipment of his or her trade or occupation or other like necessaries of a tenant debtor, his or her spouse, children and dependant relatives residing with him or her as he or she selects, not exceeding in value €1,500 are excepted from seizure under a distress for rent in the same manner as those articles would be excepted from seizure under an execution order.</p> |
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¹⁶⁴ That is, an action in replevin, though not actually referred to as such.

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| | | <p>(8) This section does not affect:</p> <p>(a) any power to levy distress against the goods of a person arising from any unpaid fine or penalty, or any estreated recognisance,</p> <p>(b) any remedy at common law other than distress for rent,</p> <p>(c) any right or remedy provided by any contract.”.</p> |
| Offences Against the Person Act 1861 (24 & 25 Vict, c. 100) | sections 44 and 45 | The deletion of those sections. |
| | sections 74 to 78 inclusive | The deletion of those sections. |
| Attorneys and Solicitors Act 1870 (33 & 34 Vict, c. 28) | section 8 | <p>The substitution for that section of the following section :</p> <p>“8.(1) Every question concerning the validity or effect of any agreement mentioned in section 4 may be examined and determined, and the agreement may be enforced or set aside, on application by any party to such an agreement or his or her representative, or a person alleged to be liable to pay, or claiming to be entitled to be paid, the costs, fees, charges, or disbursements in respect of which the agreement is made.</p> <p>(2) An application mentioned in subsection (1) may be heard and decided by the court in which any part of the business which is the subject of the agreement was done, or a judge of that court, or if the business was not done in any court, then where the amount payable under the agreement:</p> <p>(a) exceeds 30 per cent of the Circuit Court damages limit, by the High Court, or</p> <p>(b) in any other case, by a Judge of the Circuit Court who would have jurisdiction in proceedings on the agreement.”.</p> |
| Landlord and Tenant (Ireland) Act 1870 (33 & 34 Vict, c. 46) | section 19 | The deletion of the words “before the Civil Bill Court”. |
| | section 22 | <p>The substitution for that section of the following section:</p> <p>“22. For the purposes of this Part of this Act, the “Court” means the Circuit Court for the Circuit in which the holding or any part of the holding is situated.”.</p> |
| | section 23 | The deletion of that section. |
| | section 25 | <p>The substitution for that section of the following section:</p> <p>“25. The parties to any dispute mentioned in this Act concerning any holding may refer the dispute to an arbitrator and the arbitrator shall apply the provisions of this Act in determining the reference.”.</p> |
| | sections 32, 45 and 46 | The substitution in each of those sections for the words “Landed Estates Court” of the words “High Court” wherever they appear. |
| | sections 42, 43, 44, 45, 46, 47, 56 and 61 | The substitution in each of those sections for the words “Civil Bill Court”, wherever they appear, of the words “Circuit Court”. |
| | section 62 | <p>The substitution for that section of the following section:</p> <p>“62. References in this Act to the “Circuit Court” are references to the Circuit Court for the Circuit in which the holding or any part of the holding is situated.”</p> |
| | sections 60 and | The deletion of those sections. |

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| Lunacy Regulation (Ireland) Act 1871 (34 & 35 Vict.) c. 22 | 64 section 68 ¹⁶⁵ | The substitution for that section of the following section: “68. Where it is established to the satisfaction of the Judge of the High Court for the time being exercising the jurisdiction mentioned in section 25 of the Courts (Consolidation and Reform) Act 2010 that any person is of unsound mind and incapable of managing his affairs, and that his property does not exceed the District Court damages limit (within the meaning of the Courts (Consolidation and Reform) Act 2010) in value, or that the income thereof does not exceed €400 per annum, that Judge may, without directing any inquiry under a commission of lunacy, make such order as he may consider expedient for the purpose of rendering the property of such person, or the income thereof, available for his maintenance or benefit, or for carrying on his trade or business; provided nevertheless, that the alleged insane person shall have such personal notice of the application for such order as aforesaid as that Judge shall by general order to be made as after mentioned direct.” |
| Employers and Workmen Act 1875 (38 & 39 Vict, c. 90) | section 3 | The substitution in that section for the words “a county court” of the words “the Circuit Court”. |
| | sections 4, 5, 6 and 7 | The substitution for sections 4, 5, 6 and 7 of the following sections: “4. (1) A dispute under this Act between an employer and a workman may be heard and decided by the District Court. (2) In proceedings under this Act, the District Court may order payment of any sum it finds due as wages, damages or otherwise and may, in any such case, exercise the powers conferred by this Act on the Circuit Court. (3) Notwithstanding subsection (1) and subsection (2), the District Court may not: (a) exercise jurisdiction where the amount claimed exceeds 50 per cent of the District Court damages limit; (b) make an order for the payment of any sum which exceeds 50 per cent of the District Court damages limit, exclusive of any costs awarded; (c) require security in an amount which exceeds 50 per cent of the District Court damages limit from any defendant or his surety. 5. Any dispute between an apprentice to whom this Act applies and his or her master arising out of or incidental to their relationship as such may be heard and decided by the District Court. 6. In proceedings under this Act between an apprentice and his or her master, the District Court has and may exercise the powers conferred by this Act on the Circuit Court in proceedings between employer and workman, as if the master were the employer, the apprentice the workman and the instrument of apprenticeship a contract between the master and the apprentice. (2) In addition to any other power it may exercise, the District Court may, in proceedings under subsection (1), rescind the instrument of apprenticeship and, if it thinks it just to do so, order the whole or any part of any premium paid on the engagement of the apprentice to be repaid. |

¹⁶⁵ This amendment is only necessary (to facilitate complete repeal of the *Courts Act 1971*) if section 68 is not any event repealed by the *Mental Capacity Bill*: see note 1, above.

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| | | 7. A person liable under an instrument of apprenticeship for the good conduct of the apprentice may be joined to the proceedings under this Act between a master and an apprentice and the Court may, in addition to, or in substitution for, any other order which it might make on the decision of the proceedings, order that person to pay any damages for any breach of the contract of apprenticeship for which he or she is liable under the instrument of apprenticeship. The court may accept any security it considers appropriate from such a person, or from another person willing to give it, for the performance by the apprentice of his contract of apprenticeship.”. |
| | section 8 | The substitution in that section for the words “a county court or court of summary jurisdiction” of the words “the Circuit Court or District Court”, and the deletion of the final sentence of that section. |
| | section 9 | The substitution for section 9 of the following section: “9. Proceedings in the District Court under this Act are civil proceedings and the Court may exercise any power it has in civil proceedings in proceedings under this Act or proceedings for the enforcement of a decision of the court under this Act.”. |
| Customs Consolidation Act 1876 (39 & 40 Vict, c. 36.) | section 284 | The substitution in section 284 for the definition of “Justice” of the following definition: ““Justice” means: in relation to proceedings tried in the Central Criminal Court, a Judge of that Court; in relation to proceedings tried in the Circuit Court, a Judge of that Court; in relation to proceedings tried in the District Court, a Judge of that Court, and includes a Judge of a Court which has jurisdiction to hear and decide any appeal in any such proceedings.”. |
| Public Health (Ireland) Act, 1878 (41 & 42 Vict, c. 52) | section 58 | The substitution in that section for the words “a court of summary jurisdiction” of the words “the District Court”. |
| | section 79 | The substitution in that section for the words “a court of summary jurisdiction” of the words “the District Court”. |
| | sections 111 and 112 | The substitution for sections 111 and 112 of the following sections respectively: “111. If a person, on whom a notice to abate a nuisance has been served, defaults in complying with a requirement of that notice within the time specified, or if the nuisance, though abated since the service of the notice is, in the opinion of the sanitary authority, likely to recur on the same premises, the sanitary authority may bring proceedings against the person on whom the notice was served before a Judge of the District Court assigned to the District in which the premises or place to which the notice relates is situated. 112.(1) If the District Court is satisfied that the alleged nuisance exists, or that, though abated since the service of the notice, the alleged nuisance is likely to recur on the same premises, the Court may make an order directed to the person on whom the notice was served: (a) requiring that person to comply with the notice or otherwise to abate the nuisance within a period specified in the order, and to do any works necessary for that purpose, or (b) prohibiting the recurrence of the nuisance and directing the execution of any works necessary to prevent a recurrence of the nuisance, or |

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| | | <p>(c) both requiring abatement and prohibiting recurrence.</p> <p>(2) The District Court may, in proceedings under this section, make an order for the payment of the costs of abating or prohibiting the nuisance incurred up to the time of the hearing.”.</p> |
| | section 115 | <p>The substitution for that section of the following section:</p> <p>“115. Where a person appeals against an order of the District Court to the Circuit Court in the manner provided by this Act, no liability to any penalty arises, nor is the person required to take any proceedings or undertake any work under the order of the District Court until the decision of the appeal, unless the appeal ceases to be prosecuted.”.</p> |
| | section 116 | <p>The substitution in that section for the words “a court of summary jurisdiction” of the words “the District Court”.</p> |
| | section 118 | <p>The substitution in that section for the words “any justice” of the words “a Judge of the District Court assigned to the District within which the premises are situated”.</p> |
| | section 119 | <p>The substitution in that section for the words “of a justice” of the words “made in accordance with section 118”.</p> |
| | section 120 | <p>the substitution in that section for the words “of the court or any justice” of the words “of a court or judge”, and</p> <p>the substitution in that section for the words “in a summary manner or in the Civil Bill Court or any superior court” of the words “by civil proceedings:</p> <p>(a) in the District Court for the District in which the nuisance (or any part of it) occurred, where the amount of costs and expenses does not exceed the District Court damages limit (within the meaning of the Courts (Consolidation and Reform) Act 2010), or</p> <p>(b) in the Circuit Court for the Circuit in which the nuisance (or any part of it) occurred, where the amount of the costs and expenses exceeds the District Court damages limit but does not exceed the Circuit Court damages limit (within the meaning of the Courts (Consolidation and Reform) Act 2010), or</p> <p>(c) in any other case, in the High Court;”.</p> |
| | section 121 | <p>The substitution in that section for the words “a justice” in each place where it appears of the words “a Judge of the District Court assigned to the District within which the nuisance is alleged to be occurring”.</p> |
| | section 122 | <p>The substitution in that section for the words “in a summary manner or in the civil bill or any superior court” of the words “by civil proceedings:</p> <p>(a) in the District Court for the District in which the nuisance (or any part of it) occurred, where the amount of costs and expenses does not exceed the District Court damages limit (within the meaning of the Courts (Consolidation and Reform) Act 2010), or</p> <p>(b) in the Circuit Court for the Circuit in which the nuisance (or any part of it) occurred, where the amount of the costs and expenses exceeds the District Court damages limit but does not exceed the Circuit Court damages limit (within the meaning of the Courts (Consolidation and Reform) Act 2010), or</p> <p>(c) in any other case, in the High Court;”.</p> |
| | section 125 | <p>The substitution in that section for the words “a court of summary jurisdiction” of the words “the District Court”.</p> |
| | section 130 | <p>The substitution in that section for the words:</p> |

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| | | <p>“Such urban authority shall direct complaint to be made before a justice, who may summon the person by or on whose behalf the trade so complained of is carried on to appear before a court of summary jurisdiction”</p> <p>of the words:</p> <p>“The local authority may bring proceedings against the person by or on whose behalf the trade so complained of is carried on before a Judge of the District Court assigned to the District in which the premises or place to which the complaint relates is situated”.</p> |
| | section 249 | <p>The substitution for that section of the following section:</p> <p>“249. All offences under this Act, and all penalties, forfeitures, costs and expenses directed under this Act to be recovered in a summary manner, or the recovery of which is not otherwise provided for, may be prosecuted and recovered before the District Court for the District in which the cause of complaint arose.”.</p> |
| | section 256 | <p>The substitution for that section of the following section:</p> <p>“256. No Judge shall be disqualified from hearing and deciding proceedings under this Act by reason only of being a ratepayer.”.</p> |
| | section 260 | <p>The substitution for that section of the following section:</p> <p>“260. Proceedings under this Act for the recovery of an amount which a sanitary authority is authorised to recover in a summary manner may, at the election of the sanitary authority, be brought before, heard and decided by, a Judge of the Circuit Court assigned to the Circuit in which the defendant resides or carries on any business.”.</p> |
| | section 269 | <p>The substitution for that section of the following section :</p> <p>“269.(1) An appeal lies from a decision of the District Court in civil proceedings or from a conviction in criminal proceedings under this Act to a Judge of the Circuit Court assigned to the Circuit within which the cause of appeal arose.</p> <p>(2) Where a person</p> <p>(a) is aggrieved by a rate made under this Act, or</p> <p>(b) has a material objection to:</p> <p>(i) a person being put in or left out of the rate, or</p> <p>(ii) to the sum charged on any person in the rate,</p> <p>the person may apply to a Judge of the Circuit Court assigned to the Circuit within which the rate was made, within four calendar months after the cause of complaint arose, and that Judge may hear and decide the application and make such order on the application as seems fit, which order shall be final and conclusive and shall bind all of the parties.</p> <p>(3) In an application under subsection (2), the Circuit Court may order the name of a person interested or concerned, who has received notice of the application:</p> <p>(a) to be inserted in the rate and to be rated at such sum of money as the Court thinks right, or</p> <p>(b) to be struck out of the rate, or</p> <p>(c) to be rated at such altered sum as the Court orders.</p> |

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| | | <p>(4) In an application under subsection (2), the Circuit Court shall neither inquire into any matter not set out in the application notice, nor alter a rate with respect to any person not mentioned in the application notice, but if on such an application, the Court considers it necessary to quash or set aside the rate entirely, the Court may do so.</p> <p>(5) Where, in an application under subsection (2), the Circuit Court orders the name of a person to be struck out of a rate, or the rate on the person to be decreased, and the Court is satisfied that the person has paid money in consequence of the rate with which he or she ought not to have been charged, the Court may order the repayment of any excess payment to the person, together with any reasonable costs, charges and expenses occasioned to the person by having been required to make an overpayment.</p> <p>(6) Proceedings on an application under subsection (2) shall be on notice to every person named in the application notice and to any other person the Court directs.</p> <p>(7) The making of an application under subsection (2) does not operate to suspend the obligation to pay a rate struck, pending decision of the application.”.</p> |
| Bankers’ Books Evidence Act 1879 (42 & 43 Vict, c. 11) | section 10 | <p>The substitution for that section of the following section:</p> <p>“10. In this Act—</p> <p>The expression ‘legal proceeding’ means any civil or criminal proceeding or inquiry in which evidence is or may be given, and includes an arbitration;</p> <p>The expression ‘the court’ means the court, judge, arbitrator, persons or person before whom a legal proceeding is held or taken.”.</p> |
| Bills of Sale (Ireland) Act 1879 (42 & 43 Vict, c. 50) | section 10 | <p>In paragraph (1), the substitution for the words “a solicitor of the court of Judicature in Ireland” of the words “a solicitor”.</p> |
| | sections 12 and 13 | <p>The substitution for those sections of the following sections:</p> <p>“12.(1) The registrar shall keep a record (in this Act called ‘the register’) for the purposes of this Act, and shall, on the filing of any bill of sale or copy under this Act, enter in the register the name, place of residence, and occupation of the person by whom the bill was made or given (or, where the bill was made or given by a person under or in the execution of process, then the name, place of residence, and occupation of the person against whom the process was issued), and also the name of the person to whom or in whose favour the bill was given, and the other particulars shown in the Second Schedule or prescribed by rules of court, and shall number all such bills registered in each year consecutively, according to the respective dates of their registration.</p> <p>(2) On the registration of an affidavit of renewal, the registrar shall enter the like particulars of renewal, with the addition of the date and number of the last previous entry relating to the same bill, and the bill of sale or copy originally filed shall be marked with the number affixed or assigned to the affidavit of renewal.</p> <p>(3) The registrar shall keep an index of the names of the grantors of registered bills of sale with reference to entries in the register of the bills of sale given by each such grantor.</p> <p>13. The member of the staff of the Courts Service for the time being so assigned shall be the registrar for the purposes of this Act.”.</p> |

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| | section 16 | <p>The substitution for that section of the following section:</p> <p>“16.(1) Any person may have an office copy or extract of:</p> <p>(a) any registered bill of sale,</p> <p>(b) any affidavit of execution or other affidavit filed with any bill of sale, or</p> <p>(c) any registered affidavit of renewal,</p> <p>on payment of the prescribed fee.</p> <p>(2) Any person may, during the registrar’s office hours, search the register or may be provided with a certificate of the registrar of the dates of execution, registration, renewal of registration, and satisfaction; of the names, addresses, and occupations of the parties; of the amount of the consideration, and of any further prescribed particulars of a registered bill of sale, on paying the prescribed fee.</p> <p>(3) Fees under this Act may be prescribed in a Court fees order made under section 253 of the Courts (Consolidation and Reform) Act 2010.</p> <p>(4) Any copy of a registered bill of sale, and any office copy of any affidavit of execution or other affidavit filed with any bill of sale or of any affidavit of renewal, is, in any court and before any arbitral tribunal or other person, <i>prima facie</i> evidence of its contents, and of the fact and date of registration or renewal.</p> <p>(5) Rules for the purposes of this Act may be made in accordance with section 265 of the Courts (Consolidation and Reform) Act 2010.”.</p> |
| | sections 17, 18 and 19 | The deletion of those sections. |
| | section 20 | <p>The substitution for that section of the following section:</p> <p>“20. Chattels comprised in a bill of sale which has been and continues to be duly registered under this Act are not property belonging to the grantor of the bill of sale for the purposes of section 44 of the Bankruptcy Act 1988.”.</p> |
| | sections 21, 23 and 24 | The deletion of those sections. |
| | sections 11 and 16 | The deletion of those sections. |
| Police (Property) Act 1897 (60 & 61 Vict, c. 30) | section 3 | The deletion from that section of subsections (1) and (2). |
| Probation of Offenders Act 1907 (7 Edw 7, c. 17) | section 3 | <p>The substitution for that section of the following section:</p> <p>“3.—(1) The Minister shall appoint probation officers and children’s probation officers (who shall act when a probation order is made in the case of an offender who is a child), and such officers shall be assigned to every District Court District.</p> <p>(2) The Minister may make such rules or other arrangements as he or she considers necessary for carrying this Act into effect, and in particular for prescribing matters incidental to the appointment, resignation, and removal of probation officers and children’s probation officers, and the performance of their duties, and the reports to be made by them.</p> <p>(3) A probation officer or children’s probation officer when acting under a probation order shall be subject to the control and direction of the Judge of the</p> |

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| | | District Court for the time being assigned to the District in which the order was made.”. |
| | section 6 | The substitution for subsection (5) of that section of the following subsection: “(5) A court before which a person is bound by his or her recognisance to appear for conviction and sentence, on being satisfied that he or she has failed to observe any condition of that recognisance, may forthwith, without further proof of his or her guilt, convict the person for the original offence and sentence him or her or make such other order as the court may make on conviction of the person for that offence.”. |
| | sections 7, 8 and 9 | The deletion of those sections. |
| Summary Jurisdiction (Ireland) Act 1908 (8 Edw 7, c. 24) | section 7 | The deletion of that section. |
| Criminal Justice Administration Act 1914 (4 & 5 Geo. 5), c. 58 | sections 1 to 4 inclusive, 24, 25(2), 27 and 42 | The deletion of those sections and that subsection. |
| | section 10 | The substitution for the caption preceding section 10 and that section of the following caption and section: “Committals to St Patrick’s Institution Power to send young offenders to St Patrick’s Institution 10.—(1) Where a person is summarily convicted of an offence for which the District Court has power to impose a sentence of imprisonment for one month or upwards, and— (a) it appears to the District Court that the offender is not less than 18 nor more than 21 years of age; and (b) it is proved that the offender has previously been convicted of any offence or, that having been previously discharged on probation, he failed to observe a condition of a recognisance or Court bond; and (c) it appears to the District Court that it is expedient that the offender should be subject to detention for such term and under such instruction and discipline as appears conducive to his reformation, the District Court may, in lieu of passing sentence, commit the offender in custody to St Patrick’s Institution (within the meaning of section 1 of the Criminal Justice Act 1960) or to prison for sentence until the next sitting of the Circuit Court, and if it appears to the Circuit Court, having inquired into the circumstances of the case, that the offender is of the age mentioned in paragraph (a) and that for any reason it is expedient that the offender should be subject to such detention as aforesaid, that Court shall pass sentence of detention in St Patrick’s Institution; otherwise that Court may deal with the case in any other way in which the District Court might have dealt with it. (2) Before dealing with any case under this section, the District Court or Circuit Court shall consider any report or representations made to it as to the suitability of the offender for detention in St Patrick’s Institution, and the District Court shall, where necessary, adjourn the case for the purpose of giving an opportunity for such a report or representations to be made. (3) Where a person is committed to prison under this section, his treatment in |

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| | | <p>prison shall, so far as practicable, be similar to that in St Patrick’s Institution, or he may, if the Minister for Justice and Law Reform so directs, be transferred to St Patrick’s Institution.</p> <p>(4) A person sentenced by the Circuit Court under this section to detention in St Patrick’s Institution may appeal against the sentence to the Court of Criminal Appeal as if he had been convicted on indictment.”.</p> |
| Sheriffs (Ireland) Act 1920 (10 & 11 Geo 5, c. 26) | section 1 | <p>The substitution for that section of the following section:</p> <p>“1.—(1) Any appointment to an office of sheriff (which office includes the former office of under-sheriff) shall be made by the Government, and every sheriff appointed under this Act shall hold office during the Government’s pleasure.</p> <p>(2) The office of sheriff is non-pensionable.</p> <p>(3) The age of retirement from the office of sheriff is 70 years.</p> <p>(4) A person shall be qualified to be appointed to the office of sheriff under this Act if he or she is qualified to hold the office of County Registrar, or has for not less than five years, acted as manager, chief clerk, or assistant of a sheriff.”.</p> |
| | section 2 | The deletion from that section of subsection (2). |
| | sections 3 and 4 | <p>The substitution for those sections of the following sections:</p> <p>“3. A sheriff shall (in addition to any other disqualifications) be disqualified for being a member of any local authority (within the meaning of section 2 of the Local Government Act 2001).</p> <p>4. Every sheriff shall, before entering into the execution of his or her office, take the oath by law required to be taken by sheriffs and give any security for the due performance of the duties of his or her office to such amount and in such manner as may be required by the Minister for Justice and Law Reform.”.</p> |
| | sections 5 and 6 | The deletion of those sections. |
| | sections 7 and 8 | <p>The substitution for those sections of the following sections:</p> <p>“7.—(1) Where a claim to or in respect of any goods or chattels taken in execution of the process of a court is made by any person other than a person against whom the process is issued, the sheriff may, subject to rules of court, begin civil proceedings in that court (where relevant, for the Circuit or District where the seizure was made), by way of interpleader, to be served upon the claimant and the execution creditor (in this section, referred to as the “parties”) calling upon them to appear before the court and to maintain or relinquish their respective claims.</p> <p>(2) A judge has power in interpleader proceedings under this section:—</p> <p>(a) to adjudicate on the claim and to make such order between the parties as he or she thinks fit;</p> <p>(b) if the claim of any party is withdrawn or if any party fails to appear, to make such order as between the parties and as between any party and the sheriff, as he or she thinks just;</p> <p>(c) to adjudicate on any claim of any party against the sheriff arising or capable of arising out of the execution of the process, and to make such order in respect of that claim as he or she thinks fit;</p> <p>(d) to order the sale of all or any of the goods and chattels, and to direct the</p> |

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| | | <p>application of the proceeds in the manner and on the conditions he or she thinks proper;</p> <p>(e) to give directions as to the disposal of any money deposited with the sheriff or the realisation of any security given to him or her;</p> <p>(f) to hear and decide any claim of the sheriff for fees and expenses and order them or any part of them as he or she thinks just to be paid by the claimant or by the applicant for execution; and</p> <p>(g) to make such provision as he or she thinks proper for the payment of the costs of the proceedings and for any other matters arising in connection therewith, whether as between the parties or any of them or as between the sheriff and the parties or any of them.</p> <p>(4) On the service of interpleader proceedings under this section, any proceedings brought in any court in respect of the claim or of any damage arising out of the execution of the process is stayed.</p> <p>(5) If the claimant deposits with the sheriff the amount for which the process was issued or, if the value of the goods and chattels as decided by the sheriff or by an appraiser appointed by the sheriff was less than that amount, a sum equal to the value as so determined, the sheriff shall withdraw from the possession of the goods and chattels and the sum deposited shall be disposed of in the manner directed by the judge.</p> <p>(6) If the claimant does not make a deposit as mentioned in subsection (5), the court may, at any time after the service of the interpleader proceedings, on application by the execution creditor on notice to the claimant and the sheriff or by the sheriff on notice to the parties, make an order for the sale of all or any of the goods and chattels by the sheriff, on such conditions as to the giving of security by the execution creditor or otherwise as the court thinks proper.</p> <p>(7) An appeal lies in accordance with the Courts (Consolidation and Reform) Act 2010 against an order made in interpleader proceedings under this section.</p> <p>(8) The Master of the High Court (in the case of the High Court) or the County Registrar (in the case of the Circuit Court) may exercise the powers of the court mentioned in subsection (6) and, on consent of the parties and the sheriff, may exercise any other power or jurisdiction of the relevant court under this section.</p> <p>8.— Subject to rules of court, a judge may make an order requiring a sheriff to return within the period specified in the order any process of that court which has been delivered to him or her for execution, with the appropriate statement as to the execution or non-execution endorsed thereon and may exercise any power of the court in proceedings for that purpose and for the purpose of punishing any disobedience of such an order.”</p> |
| | sections 9 and 10 ¹⁶⁶ | <p>The substitution for those sections of the following sections:</p> <p>“9.— (1) The same person may be appointed to be sheriff for a local government area and one or more adjoining local government areas or for two or more adjoining local government areas.</p> <p>(2) The conditions of employment of any sheriff are, subject to the provisions</p> |

¹⁶⁶ This amendment re-locates the existing provisions of sections 39 to 41 of the *Sheriffs (Ireland) Act 1835* in modernised and modified form. It is noted that there is a case for a single consolidated *Sheriffs Act*.

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| | | <p>of this section, such as the Minister for Finance, after consultation with the Minister, from time to time determines.</p> <p>(3) The Minister may by regulations provide for any matter referred to as prescribed or to be prescribed by the Minister.</p> <p>10.— (1) Every sheriff shall furnish to the Minister such annual or other returns and such accounts as the Minister from time to time directs, either generally or in any particular case.</p> <p>(2) Any officer of the Minister authorised in that behalf by the Minister may at all reasonable times:</p> <p>(i) enter the offices of any sheriff, (ii) inspect the offices, (iii) inquire into the work done by the sheriff, (iv) examine the accounts of the sheriff, and (v) require the sheriff to furnish him or her with any information in regard to those offices, work, or accounts which he or she requires.</p> <p>(3) The Minister may, where he or she deems it necessary, request the production to the Comptroller and Auditor General of a report of an audit undertaken of any accounts submitted in accordance with <i>subsection (1)</i>.”</p> |
| | section 11 | <p>The substitution for that section of the following section:</p> <p>“11. In this Act, unless the context otherwise requires:—</p> <p>the expression ‘process’ includes any execution order or other order made by a court, whether in exercise of its original jurisdiction or on appeal;</p> <p>the expression ‘powers’ includes rights, jurisdiction, capacities, privileges, and immunities;</p> <p>the expression ‘duties’ includes responsibilities, obligations, and liabilities.”.</p> |
| Court Officers Act 1926 | section 43 | <p>The deletion from subsection (4) of that section of the words “under the foregoing sub-section”.</p> |
| Wireless Telegraphy Act 1926 | section 14 | <p>The substitution for subsection (1) of that section of the following subsection:</p> <p>“(1) For the purposes of section 52 and section 71 of the Courts (Consolidation and Reform) Act 2010, any act which is by virtue of this Act or any regulation made thereunder an offence is:</p> <p>(a) if committed in a ship, vessel, or aircraft, deemed to have been committed in the place where the accused person is, and</p> <p>(b) if committed in a ship or vessel which was within the territorial waters of the State when the act was committed or when the accused person was arrested, deemed to have been committed in the court circuit or district, as the case may be, abutting on that portion of the waters in which the ship was when the act was committed or the accused person was arrested, as the case requires.”.</p> |
| Censorship of Publications Act 1929 | section 14 | <p>The substitution for that section of the following section:</p> <p>“14.—(1) It shall be lawful to publish or cause or procure to be published a report, statement or commentary of or in relation to any family proceedings, civil partnership law proceedings or cohabitancy proceedings (each within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010) which comprises only the following:—</p> <p>(a) the court in which and the Judge before whom the proceedings were decided and the names of the barristers, solicitors or persons mentioned in</p> |

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| | | <p><i>section 250(1)(d)</i> or <i>section 250(1)(e)</i> of the Courts (Consolidation and Reform) Act 2010 professionally engaged in the proceedings,</p> <p>(b) a concise statement of the claims and defences in support of which evidence was given,</p> <p>(c) particulars of any point of law raised and discussed in the proceedings and the decision of the court on that point,</p> <p>(d) the decision of the court and the observations of the Judge when pronouncing his or her decision.</p> <p>(2) It shall not be lawful to include in any report, statement or commentary mentioned in subsection (1) the name or addresses of any party to the proceedings or child to whom the proceedings relate, or other particulars of a party or child which would reasonably be expected to permit identification of that party or child.</p> <p>(3) Nothing in this section applies—</p> <p>(a) to the printing of any pleading, transcript of evidence, or other document for use in connection with any proceedings before a court or the communication thereof to a person concerned in the proceedings, or</p> <p>(b) to the printing and publishing of any order, notice, or report pursuant to a direction of the court, or</p> <p>(c) to the printing or publishing of any matter in any volume or part of any <i>bona fide</i> series of law reports which does not form part of any other publication and consists solely of reports of proceedings in courts of law, or in any publication of a technical character <i>bona fide</i> intended for circulation among members of the legal profession.”.</p> |
| Approved Investments Act 1933 | section 12 | <p>The substitution for that section of the following section:</p> <p>“12. Any money for the time being under the control or subject to the order of any court or judge acting in exercise of a judicial power may be invested by the Courts Service in any investment which is for the time being an approved investment.”.</p> |
| Air Navigation and Transport Act 1936 | section 18(2) | <p>The substitution for that subsection of the following subsection:</p> <p>“(2) Any liability to pay damages imposed by Article 17 of the Warsaw Convention or the Guadalajara Convention on a carrier in respect of the death of a passenger shall be in substitution for any liability of the carrier in respect of the death of that passenger under any statute (including Part IV of the Civil Liability Act 1961) or at common law, and the following provisions shall have effect in relation to the action to enforce the liability so imposed—</p> <p>(a) the liability shall be enforceable for the benefit of the dependants of the passenger;</p> <p>(b) only one action for damages may be brought in the State against the same person in respect of the death;</p> <p>(c) the action may be brought by the personal representative of the passenger or, if at the expiration of 6 months from the death there is no personal representative or no action has been brought by the personal representative, by all or any of the dependants;</p> <p>(d) the action, by whomsoever brought, shall be for the benefit of all the dependants who are either resident in the State or, not being resident there,</p> |

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| | | <p>express a desire to take the benefit of the action;</p> <p>(e) the plaintiff shall furnish the defendant with particulars of the persons for whom and on whose behalf the action is brought;</p> <p>(f) subject to paragraph (m)—</p> <p>(i) the damages shall be the total of such amounts (if any) as the judge shall consider proportioned to the injury resulting from the death to each of the dependants, respectively, for whom or on whose behalf the action is brought, and</p> <p>(ii) subject to paragraph (g), the total of such amounts (if any) as the judge shall consider reasonable compensation for mental distress resulting from the death to each of such dependants;</p> <p>(g) the total of any amounts awarded by virtue of subparagraph (ii) of paragraph (f) shall not exceed the Circuit Court damages limit in a personal injuries action mentioned in section 40(2)(b) of the Courts (Consolidation and Reform) Act 2010);</p> <p>(h) each amount awarded by virtue of paragraph (f) shall be indicated separately in the award;</p> <p>(i) in addition, damages may be awarded in respect of funeral and other expenses actually incurred by the passenger, the dependants or the personal representative as a result of the accident which caused the death of the passenger;</p> <p>(j) it shall be sufficient for the defendant in paying money into court in the action to pay it in one sum as damages for all the dependants without apportioning it between them;</p> <p>(k) the amount recovered in the action shall, after deducting the costs not recovered from the defendant, be divided among the persons entitled in such shares as the judge determines;</p> <p>(l) in assessing the damages account shall not be taken of any sum payable on the death of the passenger under any contract of insurance, or of any pension, gratuity or other like benefit payable under statute or otherwise in consequence of the death of the deceased;</p> <p>(m) the court before which the action is brought may at any stage of the proceedings make such order as appears to the court to be just and equitable in view of the provisions of the First Schedule limiting the liability of the carrier and of any proceedings which have been, or are likely to be, commenced outside the State in respect of the death of the passenger.”.</p> |
| | section 18(2A) and (2B) | The deletion of those subsections |
| | section 30 | <p>The substitution for subsections (1) to (4) inclusive of that section of the following subsections:</p> <p>“(1) Any person who is the owner of not more than two aircraft and who desires to become an exempted person may deposit and keep deposited in the Court Funds Office a sum equal to the maximum sum determined in relation to such aircraft by subsection (1) of section 24 (which relates to limitation of liability for damage caused by aircraft to persons and property on land or water) of this Act.</p> <p>(2) Any person who is the owner of three or more aircraft and who desires to become an exempted person may deposit and keep deposited in the Court</p> |

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| | | <p>Funds Office a sum equal to the aggregate of the two greatest of the several maximum sums determined under subsection (1) of section 24 of this Act in relation to those aircraft respectively.</p> <p>(3) The Courts Service shall invest every sum deposited with it under this section in such of the securities authorised by law for the investment of funds in the High Court as the person making or maintaining such deposit shall request, and the income accruing on such securities shall be paid to that person.</p> <p>(4) The Courts Service shall not accept a deposit under this section save on a warrant of the Minister.”.</p> |
| | section 31 | <p>The substitution for subsections (1) to (5) inclusive of that section of the following subsections:</p> <p>“(1) In this section and section 32—</p> <p>the word “deposit” means a deposit of money, or securities in lieu of money, made in the Court Funds Office under this Chapter by way of qualification for being an exempted person;</p> <p>the word “depositor” means a person who has made a deposit.</p> <p>(2) Where a person (in this section, referred to as a “judgment creditor”) has recovered judgment in any court against a depositor for a sum to which this section applies, the High Court may, on the application in a summary manner of the judgment creditor and if satisfied that the depositor has no goods which can be taken in execution to satisfy that judgment, order the amount of that judgment together with the costs of that order, the application for that order and the proceedings on that application, to be paid to the judgment creditor out of the deposit maintained by the depositor.</p> <p>(3) Whenever the High Court makes an order under subsection (2) in respect of a deposit, the Courts Service shall pay the money stated in that order to the judgment creditor specified in that order out of that deposit and shall for that purpose sell so much of the investments representing that deposit as is necessary (after defraying the costs of such sale) to enable such money to be paid.</p> <p>(4) Whenever the Courts Service, in pursuance of an order made by a court under this section, pays any money out of or sells any of the investments representing a deposit maintained with it by a depositor in pursuance of this Part, it shall forthwith calculate and ascertain the market value of so much of the investments representing that deposit as remain unsold and, if such market value, together with any uninvested money included in the deposit, falls short of the full proper amount of the deposit, it shall give the Minister and the depositor notice in writing of the fact and of the amount of the deficiency.</p> <p>(5) If, when a notice of deficiency of deposit is given to a depositor by the Courts Service in pursuance of subsection (4), the depositor, not more than 14 days after receiving the notice of deficiency, deposits in the Court Funds Office a sum not less than the amount of the deficiency stated in the notice, the sum so deposited shall be added to and treated as part of the said deposit and the depositor shall be deemed to have maintained such deposit at its full proper amount.”.</p> |
| | section 32 | <p>The substitution for that section of the following section:</p> <p>“32.—Whenever the High Court is satisfied, on the application made in a summary manner by a depositor or by a person claiming through or under a depositor, and after notice to the Minister and after such publication of</p> |

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| | | <p>advertisements as the High Court directs, that it is just and expedient that the deposit or part of the deposit made by such depositor should be paid out to the person making such application, the High Court shall order the deposit or such part thereof as may be specified in the Court's order to be paid out to such person, either unconditionally or subject to such conditions as the High Court thinks proper to specify in its order, and shall direct the Courts Service to do all such things (including the sale of the investments representing such deposit or part of such investments) as appear to the High Court to be necessary or expedient for giving effect to the Court's order."</p> |
| Insurance Act 1936 | section 3 | <p>The deletion from that section of the definition of the expression "Saorstát Eireann company".</p> |
| | section 22 | <p>The substitution for that section of the following section:</p> <p>"22.—(1) Subject to the provisions of this section, every assurance company which carries on or proposes to carry on assurance business in the State shall deposit and shall (while such company so carries on the class of assurance business to which any sum deposited under this section relates) keep deposited in the Court Funds Office such one or more of the following sums as is or are applicable to the class or classes of assurance business so carried on by such company, that is to say:—</p> <p>(a) the sum of €125,000 in respect of one or both of the following classes of assurance business, that is to say, life assurance business and industrial assurance business, and</p> <p>(b) the sum of €125,000 in respect of any one or more than one class of assurance business other than life assurance business, industrial assurance business and glass insurance business.</p> <p>(2) Section 2 (which relates to deposits) of the Act of 1909, as amended or varied by this section, shall apply to every sum which an assurance company is required by this section to deposit and keep deposited in like manner as the said section 2 applies to the sum which an assurance company is required to deposit and keep deposited under that section.</p> <p>(3) This section shall not apply to any of the following, that is to say:—</p> <p>(a) a company incorporated in the State which is an association of employers and in respect of which the Bank is satisfied that the business which such company carries on or is about to carry on is, wholly or substantially, the mutual insurance of its members against liability to pay compensation or damages to workmen employed by such members, either alone or in conjunction with insurance against any other risk incidental to the trade, industry or business carried on by such members, or</p> <p>(b) a company incorporated in the State which is an association of owners or occupiers of buildings or other property and in respect of which the Bank is satisfied that the business which such company carries on or is about to carry on is, wholly or substantially, the mutual insurance of its members against damage by, or incidental to, fire caused to the buildings or other property owned or occupied by them, or</p> <p>(c) a company which the Bank is satisfied complies with the provisions of section 2 of the Local Authorities (Mutual Assurance) Act 1926 (No. 34 of 1926), or</p> <p>(d) an assurance company which on the 31st day of October, 1935, carried on in the State assurance business other than life assurance business or industrial assurance business and which is not required by the Act of 1909 to make a deposit and in respect of which the Bank is satisfied that the business which</p> |

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| | | <p>such company carries on is wholly or substantially the effecting of insurances against loss of or damage to or in respect of property belonging to, or held in trust for, or used or occupied by or on behalf of a religious organisation or body, including liability to pay compensation or damages to workmen employed by trustees, committees, stewards or other officers or holders of such property, or</p> <p>(e) an assurance company which carries on glass insurance business and which the Bank is satisfied carries on no other class of assurance business.”.</p> |
| | section 23 | <p>The substitution for subsections (1) to (3) inclusive of that section of the following subsections:</p> <p>“(1) Whenever and so long as there is or are a syndicate or two or more syndicates carrying on in the State any assurance business other than life assurance business, industrial assurance business, bond investment business and glass insurance business, the Committee of Lloyd’s shall deposit and keep deposited in the Court Funds Office the sum of €125,000.</p> <p>(2) Every sum deposited under this section shall be invested by the Courts Service in such securities for the time being authorised by law for the investment of money under the control or subject to the order of the High Court as the Committee of Lloyd’s may select, and the Courts Service shall pay the interest on such securities to the said Committee.”.</p> |
| | sections 24 to 27 | <p>The substitution for those sections of the following sections:</p> <p>“24.—(1) All deposits maintained in pursuance of the Act of 1909 with the Accountant of the Courts of Justice and by an assurance company in respect of a particular class of assurance business required by this Part of this Act, and the investments representing the same, shall be retained by the Courts Service and be deemed to be a deposit made in pursuance of this Part of this Act by such assurance company in respect of the said particular class of assurance business.</p> <p>(2) The Courts Service shall, in respect of every deposit retained by it in pursuance of the subsection (1), from time to time calculate and ascertain the market value of the investments then representing such deposit, and shall from time to time give to each assurance company by which a deposit is so maintained notice in writing stating the amount of such market value so ascertained and the amount (if any) by which such market value falls short of or exceeds (as the case may be) the full proper amount of the deposit and thereupon the following provisions shall have effect, that is to say:—</p> <p>(a) where the market value falls short of the full proper amount and the assurance company, not more than one month after receiving the said notice, deposits with the Courts Service a sum not less than the difference between the market value and the said full proper amount, the sum so deposited shall be added to and treated as part of the deposit represented by the said investments and the said deposit shall be deemed to have been of the said full proper amount;</p> <p>where the market value exceeds the said full proper amount, the assurance company may at any time within three months after receiving the said notice, apply in a summary manner to the High Court on notice to the Bank for payment of such excess and thereupon the High Court may either direct the Courts Service to sell so much (if any) of the said investments as will leave the market value of the residue of such investments on the day of such sale not less than the full proper amount and to pay the proceeds of such sale (after providing thereout for the costs of sale) to the assurance company or, if requested by such assurance company so to do, direct the Courts Service to transfer to the assurance company or a person nominated by it so much (if any)</p> |

of the said investments as will leave the market value of the residue of such investments on the day of such transfer not less than the said full proper amount.

25.—(1) Whenever a Court gives a decision or judgment for the payment of money by an assurance company or by a syndicate to any person in respect of a claim under a policy issued by such assurance company or syndicate (as the case may be), the High Court may, on the application in a summary manner of the person, order such money (with or without the costs of the application) to be paid to the person out of the deposit or out of any particular deposit maintained by the assurance company or by the Committee of Lloyd's (as the case may be) in pursuance of this Act.

(2) Whenever the High Court makes an order under subsection (1), the Courts Service shall pay the money stated in such order to the person, out of the deposit specified in the Court's order and shall for that purpose sell so much of the investments representing the said deposit as is necessary (after defraying the costs of sale) to enable that money to be so paid.

(3) Whenever the Courts Service, in pursuance of an order made by a Court under this section, pays any money out of or sells any of the investments representing a deposit maintained with it by an assurance company or by the Committee of Lloyd's in pursuance of this Part, it shall forthwith calculate and ascertain the market value of so much of the investments representing the deposit as remain unsold and, if the market value together with any uninvested money included in the deposit fall short of the full proper amount of the deposit, it shall give to the assurance company or Committee (as the case requires) notice in writing of the fact and amount of the deficiency.

(4) If, when a notice of deficiency of deposit is given to an assurance company or to the Committee of Lloyd's by the Courts Service pursuant to subsection (3), the assurance company or the Committee of Lloyd's not more than 14 days after receiving such notice, deposits with in the Court Funds Office a sum not less than the amount of the deficiency stated in the notice, the sum so deposited shall be added to and treated as part of the deposit to which the notice applies and the assurance company or the Committee of Lloyd's (as the case may be) shall be deemed to have maintained such deposit at its full proper amount.

26.—(1) Whenever an assurance company ceases to carry on a particular class of assurance business in respect of which that assurance company maintains a deposit pursuant to this Part, the assurance company may apply in a summary manner to the High Court, on notice to the Bank, for an order mentioned in subsection (2).

(2) If, on an application to the High Court under this section by an assurance company, the High Court is satisfied that the deposit to which the application relates is not required to be maintained in respect of any other class of assurance business carried on by the assurance company, and that either the liabilities of the applicant assurance company within the State in respect of the class of assurance business which the assurance company has so ceased to carry on have been met and discharged, or security for the payment of such liabilities has been given to the Courts Service to its satisfaction, the High Court shall order the Courts Service to pay such costs (if any) as the High Court directs out of the investments and money representing the deposit and, if the said money is not sufficient to meet such costs, to sell so much of the said investments as is sufficient (after paying the costs of sale) for that purpose and to transfer the investments or the residue thereof (as the case may be) to the assurance company and to pay the said money or the residue (if any) thereof (as the case may be) to the assurance company.

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| | | <p>27.—(1) If, at any time while the Committee of Lloyd’s maintains in pursuance of this Part a deposit of €125,000 in the Court Funds Office, there is no syndicate carrying on in the State any assurance business other than life assurance business, industrial assurance business, bond investment business or glass insurance business, the Committee of Lloyd’s may apply in a summary manner to the High Court on notice to the Bank for an order mentioned in subsection (2) in relation to the deposit.</p> <p>(2) If, on an application to the High Court under this section by the Committee of Lloyd’s, the High Court is satisfied that there is no syndicate carrying on in the State any relevant assurance business (as defined in subsection (3)) and that either the liabilities within the State of every syndicate which formerly carried on in the State any relevant assurance business have been met or discharged, or security for the payment of such liabilities has been given to the Courts Service to its satisfaction, the High Court shall order the Courts Service to pay such costs (if any) as the High Court directs out of the investments and money representing the deposit to which the application relates and, if the said money is not sufficient to meet those costs, to sell so much of the investments as is sufficient (after paying the costs of such sale) for that purpose and to transfer the investments or the residue thereof (as the case may be) to the Committee of Lloyd’s and to pay the said money or the residue (if any) thereof to the said Committee.</p> <p>(3) In this section, “relevant assurance business” means any assurance business other than life assurance business, industrial assurance business, bond investment business and glass insurance business.”.</p> |
| Offences Against the State Act 1939 | section 44 | <p>The substitution for that section of the following section:</p> <p>“44.— A person convicted by a Special Criminal Court of any offence or sentenced by a Special Criminal Court to suffer any punishment may appeal to the Court of Criminal Appeal from such conviction or sentence in accordance with section 297 of the Courts (Consolidation and Reform) Act 2010.”.</p> |
| Trade Union Act 1941 | paragraph (a) of section 14 | The substitution in that paragraph for the reference to the Accountant of the Courts of Justice of a reference to the Court Funds Office. |
| Central Bank Act 1942 | section 57CJ(8)(inserted by Central Bank and Financial Services Authority of Ireland Act 2004, section 16) | The substitution in that subsection for the words “section 22 of the Courts Act, 1981” of the words “section 110 of the Courts (Consolidation and Reform) Act 2010”. |
| Auctioneers and House Agents Act 1947 | paragraph (c) and paragraph (h) of section 14; paragraph (a) and paragraph (b) of section 15(3); | The substitution in each of those paragraphs for the reference to the Accountant of the Courts of Justice of a reference to the Court Funds Office. |
| | section 17 | <p>The substitution for that section of the following section:</p> <p>“17.—(1) The Courts Service shall keep a register (in this section, referred to as the register of depositors) of persons maintaining deposits.</p> <p>(2) The register of depositors shall contain in respect of each person maintaining a deposit—</p> <p>(a) the name of the depositor and the name under which he or she carries on or proposes to carry on the business of auctioneer or house agent,</p> |

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| | | <p>(b) the address of his or her principal or proposed principal place of business in the State,</p> <p>(c) if the deposit is being maintained by means of a guarantee bond, the name and address of the assurance company concerned.</p> <p>(3) The register of depositors shall be kept in the Court Funds Office and may be inspected by any person, on payment of such fee (if any) as may be prescribed in an order made under section 253 of the Courts (Consolidation and Reform) Act 2010 at any time at which the said office is open for the transaction of public business.</p> <p>(4) A certificate, purporting to be signed by a member of the staff of the Service assigned to the Court Funds Office authorised in that behalf, that on a particular day a named person was not registered in the register of depositors or that he or she was so registered and was maintaining a specified deposit, shall be <i>prima facie</i> evidence of the facts so certified and it shall not be necessary to prove the signature of the authorised officer.</p> <p>(5) The Courts Service may issue to any person a certificate mentioned in subsection (4), on payment of such fee (if any) as is prescribed in an order made under section 253 of the Courts (Consolidation and Reform) Act 2010.”.</p> |
| Criminal Justice Act 1951 | section 23 | <p>The insertion immediately following subsection (5) of that section of the following subsection:</p> <p>“(6) This section shall not apply to or in relation to a person to the extent that any punishment imposed on the person relates to a European Union Institutional judgment, order or decision which has been entered in accordance with the Courts (Consolidation and Reform) Act 2010.”.</p> |
| Defence Act 1954 | section 2(1) | <p>The substitution in that subsection for the definition of “civil court” of the following definition:</p> <p>“the expression “civil court” means any court established under Article 34 of the Constitution, and includes the courts established under the Courts (Establishment and Constitution) Act 1961 (No. 38 of 1961), and any Special Criminal Court established under the Offences against the State Act 1939 (No. 13 of 1939);”.</p> |
| State Property Act 1954 | section 17(1) | <p>The substitution in that subsection for the definition of “the proper officer” of the following definition:</p> <p>““the proper officer” means, as respects premises situate in any county or other local government area, the sheriff or person (including a County Registrar) for the time being authorised by law to perform functions and exercise powers of a sheriff or of the former office of under-sheriff for that county or other local government area;”.</p> |
| Prisoners of War and Enemy Aliens Act 1956 | section 7(1) | The substitution in that subsection for the words “the Courts of Justice Acts, 1924 to 1953” of the words “the Courts (Consolidation and Reform) Act 2010”. |
| Civil Service Regulation Act 1956 | section 8(5) | The deletion of paragraph (f). |
| | section 20(3)(b) | The substitution in that paragraph for the words “subsection (4) of section 3 of the Court Officers Act 1926 (No. 27 of 1926)” of the words “section 343(2) of the Courts (Consolidation and Reform) Act 2010”. |
| Statute of Limitations 1957 | section 11 | <p>The substitution for subsection (6) of that section of the following subsection:</p> <p>“(6)(a) No action or other proceedings shall be brought on a judgment or other decision of the High Court, Circuit Court or District Court in civil proceedings after the expiration of 12 years from the date on which the judgment became</p> |

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| | | <p>enforceable.</p> <p>(b) No arrears of interest in respect of any judgment debt in civil proceedings decided by the High Court, Circuit Court or District Court shall be recovered after the expiration of 6 years from the date on which the interest became due.</p> <p>(c) Rules of court may provide a summary procedure for renewal of an unsatisfied judgment or other decision of the High Court, Circuit Court or District Court in civil proceedings.”.</p> |
| Trustee (Authorised Investments) Act 1958 | section 3 | <p>The substitution for that section of the following section:</p> <p>“3.—(1) Money under the control or subject to the order of any Court (including such money held by the Courts Service) may be invested in—</p> <p>(a) any of the investments specified in section 1 of the Trustee Act 1893, as amended by section 1 of this Act, or</p> <p>(b) where those investments have been varied by order under section 2 of this Act, any of those investments as so varied,</p> <p>including any such investments held through any collective investment management arrangement for the time being operated on behalf of the Courts Service, and shall not be invested in any other manner.”.</p> |
| Solicitors (Amendment) Act 1960 | section 21(4)(b) | <p>The substitution in that paragraph for the words “(at the rate per annum standing specified for the time being in section 26 of the Debtors (Ireland) Act, 1840, as varied from time to time pursuant to section 20 of the Courts Act, 1981)” of the words “(at the judgment interest rate specified by or in accordance with section 109 of the Courts (Consolidation and Reform) Act 2010)”.</p> |
| Road Traffic Act 1961 | section 61 | <p>The substitution for subsections (1), (2) and (3) of that section of the following subsections:</p> <p>“61. (1) The Minister may from time to time require the deposit in the Court Funds Office by a person desiring to become an exempted person of such sum as the Minister shall specify in such requirement.</p> <p>(2) The Courts Service shall invest a sum deposited under this section in such of the securities authorised by law for the investment of funds in the High Court as the depositor directs, and the income accruing on the securities shall be paid to the depositor.</p> <p>(3) The Courts Service shall not accept a deposit under this section save on a warrant of the Minister.”.</p> |
| | section 77 | <p>The substitution for subsections (2) and (3) of that section of the following subsections:</p> <p>“(2) Where a person has recovered judgment in any court against the depositor of a deposit for a sum to which this section applies the High Court may, on the application of that person and if satisfied that the depositor has no goods which can be taken in execution to satisfy the judgment, order the amount of the judgment, together with the costs of the order, the application therefor and the proceedings thereunder, to be paid by the Courts Service out of the deposit.</p> <p>(3) Where the amount of a judgment is paid under this section out of a deposit, the depositor may deposit in the Court Funds Office a sum equal to the sum paid out, and until he does so, he shall be deemed not to comply with the provisions of this Part of this Act relating to the making of deposits.”.</p> |

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| Charities Act 1961 | section 29 | The deletion from that section of subsections (9) and (10) ¹⁶⁷ . |
| Courts (Establishment and Constitution) Act 1961 | section 1 | The substitution for paragraph (b) of subsection (2) of that section of the following paragraph: “(b) the number prescribed by Act of the Oireachtas of ordinary judges (each of whom shall be styled “Breitheamh den Chúirt Uachtarach” (“Judge of the Supreme Court”))”. |
| | section 3(2) | The deletion of that subsection. |
| | section 4 | The insertion immediately following subsection (2) of that section of the following subsection ¹⁶⁸ : “(3) The President of the District Court shall be an <i>ex-officio</i> judge of the Circuit Court.”. |
| Criminal Justice (Legal Aid) Act 1962 | section 5 | The substitution for paragraph (b) of subsection (2) of that section of the following paragraph: “(b) the number prescribed by Act of the Oireachtas of ordinary judges (each of whom shall be styled “Breitheamh den Chúirt Dúiche” (“Judge of the District Court”))”. |
| | section 6C ¹⁶⁹ | The substitution for subsections (1) and (2) of that section of the following subsections: “(1) Where— (a) an application for a re-trial order has been made in relation to a person, and (b) a certificate for free legal aid (in this Act referred to as a ‘legal aid (re-trial order) certificate’) is granted in respect of him or her by the Court of Criminal Appeal, the person shall be entitled to free legal aid in the preparation and conduct of his or her case in relation to an application under section 301 or section 302 of the Courts (Consolidation and Reform) Act 2010 and to have a legal representative (within the meaning of the Courts (Consolidation and Reform) Act 2010) assigned to him or her for that purpose in such manner as may be prescribed by regulations under section 10. (2) A legal aid (re-trial order) certificate shall be granted in relation to a person in respect of whom an application under section 301 or section 302 of the Courts (Consolidation and Reform) Act 2010 has been made if (but only if)— (a) an application is made therefor, (b) it appears to the Court of Criminal Appeal that— (i) the means of the person are insufficient to enable him or her to obtain legal aid, and (ii) it is essential in the interests of justice that the person should have legal aid in the preparation and conduct of his or her case in relation to the application for a re-trial order.”. |
| | section 8 | The substitution that section of the following section: |

¹⁶⁷ These subsections, inserted by the *Courts and Court Officers Act 1995*, are redundant because there is no longer any monetary limit, by virtue of the amendment effected by section 16 and the *Schedule of the Social Welfare (Miscellaneous Provisions) Act 2002*.

¹⁶⁸ This provision is relocated, for consistency, from section 33 of the *Courts and Court Officers Act 1995*.

¹⁶⁹ Inserted by section 11 of the *Criminal Procedure Act 2010*.

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| | | <p>“8.—(1) Where a legal aid (trial on indictment) certificate is granted in respect of a person, a Court shall not have jurisdiction under section 134 of the Courts (Consolidation and Reform) Act 2010, to award costs to the person in respect of court proceedings in relation to which the certificate applies.</p> <p>(2) Where, as the case may be, a legal aid (appeal) certificate or a legal aid (Supreme Court) certificate is granted or is deemed to be granted in respect of a person, the Court of Criminal Appeal or, as the case may be, the Supreme Court shall not have jurisdiction under sections 84, 85 and 134 of the Courts (Consolidation and Reform) Act 2010 to award costs to the person in respect of court proceedings in relation to which the certificate applies.”.</p> |
| Street and House To House Collections Act 1962 | section 13(6) | <p>The substitution for that section of the following section:</p> <p>“(6) Notwithstanding anything contained in Part 5 of the Courts (Consolidation and Reform) Act 2010, the decision of the District Court on an appeal under this section shall be final and unappealable.”.</p> |
| Hotel Proprietors Act 1963 | section 10 | <p>The substitution for that section of the following section:</p> <p>“10.—(1) The Circuit Court shall, concurrently with the High Court, have jurisdiction to hear and determine all civil actions arising under this Act subject, in the case of a claim for an amount exceeding the Circuit Court damages limit (within the meaning of the Courts (Consolidation and Reform) Act 2010), to the like consents as are required for the purposes of section 41 of the Courts (Consolidation and Reform) Act 2010).</p> <p>(2) The District Court shall have jurisdiction to hear and determine claims for damages under this Act where the amount claimed does not exceed the District Court damages limit (within the meaning of the Courts (Consolidation and Reform) Act 2010).</p> <p>(3) The jurisdiction of the Circuit Court or, as the case may be, the District Court, in an action under this Act shall be exercised by a Judge assigned to the Circuit, or, as the case may be, the District within which the hotel is situated.”</p> |
| Companies Act 1963 | section 312 | <p>The substitution in that section for the words “Section 68 of the Courts of Justice Act, 1936” of the words “Section 265 of the Courts (Consolidation and Reform) Act 2010”.</p> |
| Registration of Title Act 1964 | section 18 | <p>The substitution for subsection (2) of that section of the following subsection:</p> <p>“(2) Unless the necessary parties to the proceedings sign, either before or at any time during the hearing, the form of consent prescribed by rules of court, the Circuit Court shall not have jurisdiction in relation to land where the valuation or value of the land exceeds the Circuit Court land valuation limit, within the meaning of section 40 of the Courts (Consolidation and Reform) Act 2010.”.</p> |
| Insurance Act 1964 | section 10 | <p>The substitution in that section for each reference to the Accountant of a reference to the Court Funds Office.</p> |
| Succession Act 1965 | section 6(3) | <p>The substitution for that subsection of the following subsection:</p> <p>“(3) Unless the necessary parties to the proceedings in a cause sign, either before or at any time during the hearing, the form of consent prescribed by rules of court, the Circuit Court shall not, by virtue of subsection (2), have jurisdiction where the estate of the deceased person, in so far as it consists of real estate of which, at the time of his death, he was beneficially seised or possessed, exceeds the Circuit Court land valuation limit, within the meaning of section 40 of the Courts (Consolidation and Reform) Act 2010.”.</p> |
| | sections 129, 130 and 131 | <p>The deletion of those sections.</p> |
| Auctioneers and House Agents Act 1967 | sections 7(2), 8(2) and 11(3) | <p>The substitution in each of those subsections for each reference to the Accountant of a reference to the Court Funds Office.</p> |

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| Criminal Procedure Act 1967 | section 4N (inserted by Criminal Justice Act 1999, section 9) | The substitution in that section for the words “section 25(3) of the Courts (Supplemental Provisions) Act, 1961” of the words “section 38(3) of the Courts (Consolidation and Reform) Act 2010”. |
| | sections 4P, 4Q and 34 | The deletion of those sections. |
| Value-Added Tax Act 1972 | section 29(1) | The substitution for that subsection of the following subsection: “(1) Without prejudice to any other mode of recovery of a penalty under this Act, an officer of the Revenue Commissioners, authorised by them for the purposes of this subsection, may sue in his own name by civil proceedings for the recovery of the penalty in the High Court as a liquidated sum and any such proceedings shall be heard and decided without a jury in accordance with section 211 of the Courts (Consolidation and Reform) Act 2010.”. |
| Maintenance Orders Act 1974 | section 6(6) | The substitution for paragraph (b) of that subsection of the following paragraph: “(b) Service of the notice may be effected in any manner permitted by section 237(2) of the Courts (Consolidation and Reform) Act 2010.”. |
| | section 14(8) | The substitution for paragraph (b) of that subsection of the following paragraph: “(b) Where any sum payable by virtue of an enforceable maintenance order is not duly paid and the maintenance creditor so requests in writing, the District Court Clerk or a member of the staff of the Courts Service assigned to the Court Funds Office authorised in that behalf may make an application under paragraph 9 of Part 3 of Schedule 8 to the Courts (Consolidation and Reform) Act 2010, and for that purpose the references in that paragraph to the applicant shall, where the context so admits, be construed as including references to the District Court Clerk or member of staff of the Service so assigned and authorised.”. |
| | section 14(10) | The substitution for that subsection of the following subsection: “(10) In this section, a reference to a District Court Clerk: (a) shall, where there are two or more District Court Clerks for the District Court District concerned, be construed as a reference to any of those Clerks; (b) includes reference to the successor of that person in the office of District Court Clerk; (c) includes reference to any person acting on behalf of the District Court Clerk concerned, and (d) where the context so admits, be construed as including a reference to a member of the staff of the Courts Service assigned to the Court Funds Office authorised in that behalf.”. |
| | section 14(11) | The deletion of that subsection. |
| | section 15 | The substitution for that section of the following section: “15.—Service of a document relating to maintenance proceedings in a reciprocating jurisdiction which is received by the Master of the High Court from an appropriate authority for service on the person against whom the proceedings have been instituted may be effected in any manner permitted by section 237(2) of the Courts (Consolidation and Reform) Act 2010.”. |
| Prosecution of Offences Act 1974 | section 1 | The substitution in that section for the definition of “criminal matters” of the following definition: |

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| | | <p>““criminal matters” includes criminal proceedings and proceedings on a judicial review application (within the meaning of section 27 of the Courts (Consolidation and Reform) Act 2010) or for any injunction with respect to criminal proceedings or any other proceedings connected with criminal proceedings or any matter arising thereout and also includes cases stated, proceedings under Chapter 2 and Chapter 3 of Part 5 of the Courts (Consolidation and Reform) Act 2010, and applications and other proceedings arising out of criminal proceedings;”.</p> |
| | section 3(4) | The deletion of that subsection. |
| Law Reform Commission Act 1975 | section 14 | <p>The substitution for that section of the following section:</p> <p>“14.—(1) Where a person who holds judicial office is appointed to be a Commissioner, the following provisions shall have effect:</p> <p>(a) where, on being so appointed, such person is a judge of the Supreme Court, other than the Chief Justice or a judge who is <i>ex-officio</i> an additional judge of that Court, then for so long as that person continues to hold that judicial office, the number of ordinary judges of the Supreme Court otherwise provided for may be exceeded by one:</p> <p>Provided that, in the case of a former Chief Justice to whom section 4(2) of the Courts (No. 2) Act 1997 relates, for so long as that person continues to hold the judicial office held on being so appointed, the person shall not be taken into account for the purposes of subsection (1) of section 6 of the Courts (No. 2) Act 1997 and any vacancy consequent on the application of that subsection to such person may be filled, but without prejudice to the application of that subsection to that person upon his or her ceasing to be so appointed but remaining a former Chief Justice to whom section 4(2) of the Courts (No. 2) Act 1997 applies,</p> <p>(b) where, on being so appointed, the person is the President of the High Court or another judge of the High Court, other than a judge who is <i>ex-officio</i> an additional judge of that Court, then for so long as that person continues to hold the judicial office held by that person on so being appointed, the number of ordinary judges of the High Court otherwise provided for may be exceeded by one:</p> <p>Provided that, in the case of a former President of the High Court to whom section 4(2) of the Courts (No. 2) Act 1997 relates, for so long as that person continues to hold the judicial office held on being so appointed, that person shall not be taken into account for the purposes of subsection (2) of section 6 of the Courts (No. 2) Act 1997 and any vacancy consequent on the application of that subsection to that person may be filled, but without prejudice to the application of that subsection to that person upon his or her ceasing to be so appointed but remaining a former President of the High Court to whom section 4(2) of the Courts (No. 2) Act 1997 applies,</p> <p>(c) where that Judge is the President of the High Court he or she may, for so long as he or she continues to be a Commissioner, from time to time appoint an ordinary judge of the High Court to exercise on his or her behalf (and which judge is hereby empowered to exercise) all the jurisdiction exercisable by the President of the High Court under section 23 or section 25 of the Courts (Consolidation and Reform) Act 2010.</p> <p>(2) Subject to subsection (3), when a person who is a barrister or a solicitor is appointed to be either—</p> <p>(a) a Commissioner in a whole-time capacity, or</p> <p>(b) a whole-time officer of the Commission,</p> |

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| | | <p>then, for the purpose of qualification for appointment—</p> <p>(c) under section 5(2)(a) of the Courts (Supplemental Provisions) Act 1961, as a judge of the Supreme Court or the High Court,</p> <p>(d) under section 17(2)(a) of the Courts (Supplemental Provisions) Act 1961, as a judge of the Circuit Court,</p> <p>(e) under section 29(2) of the Courts (Supplemental Provisions) Act 1961, as a judge of the District Court,</p> <p>service by him or her as such a Commissioner or as such an officer of the Commission, as may be appropriate, shall be deemed to be practice as a barrister or a solicitor, as may be appropriate.</p> <p>(3) Service as a Commissioner in a whole-time capacity or a whole-time officer of the Commission shall not be deemed to be practice as a barrister or a solicitor to satisfy the requirement in subsection (2)(a) of section 5 of the Courts (Supplemental Provisions) Act 1961 of a continuous period of not less than 2 years practice by a person as a barrister or a solicitor immediately before the appointment of the person as a judge of the Supreme Court or the High Court.”.</p> |
| Family Law (Maintenance of Spouses and Children) Act 1976 | section 3 | <p>The substitution for subsection (3) of that section of the following subsection:</p> <p>“(3) In this Act, a reference to a District Court Clerk:</p> <p>(a) shall, where there are two or more District Court Clerks for the District Court District concerned, be construed as a reference to any of those Clerks;</p> <p>(b) includes reference to the successor of that person in the office of District Court Clerk;</p> <p>(c) includes reference to any person acting on behalf of the District Court Clerk concerned, and</p> <p>(d) where the context so admits, shall be construed as including a reference to a member of the staff of the Courts Service assigned to the Court Funds Office authorised in that behalf, within the meaning of the Courts (Consolidation and Reform) Act 2010.”.</p> |
| | section 9B (inserted by the <i>Civil Law (Miscellaneous Provisions) Bill 2010</i> , section 22) ¹⁷⁰ | <p>The substitution in that section for the words “the Enforcement of Court Orders Acts 1926 to 2009” of the words “Schedule 7 of the Courts (Consolidation and Reform) Act 2010.”.</p> |
| | section 19 | <p>The substitution for that section of the following section:</p> <p>“19.—(1) Where an attachment of earnings order has been made, any proceedings commenced under paragraph 9 of Part 3 of Schedule 8 to the Courts (Consolidation and Reform) Act 2010 for the enforcement of the relevant antecedent order shall lapse and any warrant or order issued or made under that section in any such proceedings shall cease to have effect.</p> <p>(2) An attachment of earnings order shall cease to have effect upon the making of an order under paragraph 9 of Part 3 of Schedule 8 to the Courts</p> |

¹⁷⁰ The draft assumes that the *Civil Law (Miscellaneous Provisions) Bill 2010* is enacted.

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| | | (Consolidation and Reform) Act 2010 for the enforcement of the relevant antecedent order.”. |
| | section 21A | <p>The substitution for that section of the following section:</p> <p>“21A.—(1) The Court may make an order (in this Act referred to as a lump sum order) where it appears to the Court on application by—</p> <p>(a) in relation to a dependent child of the family, a spouse, or</p> <p>(b) in relation to a dependent child whose parents are not married to each other, a parent,</p> <p>that the other spouse or parent, as the case may be, has failed to make such contribution as is proper in the circumstances towards the expenses incidental to either or both—</p> <p>(i) the birth of a child who is a dependent child or who would have been a dependent child were he alive at the time of the application for a lump sum order,</p> <p>(ii) the funeral of a child who was a dependent child or who would have been a dependent child had he been born alive,</p> <p>and any lump sum order shall direct the respondent spouse or parent, as the case may be, to pay to the applicant a lump sum not exceeding €4,000, but no such order shall direct the payment of an amount exceeding €2,000 in respect of the birth of a child to whom this section relates or €2,000 in respect of the funeral of such a child.</p> <p>(2) Section 5(4) (as amended by the Status of Children Act 1987) or 5A(3) (inserted by the said Act) of this Act, as may be appropriate, shall apply for the purpose of determining the amount of any lump sum under this section as it applies for the purpose of determining the amount of any payment under section 5 or 5A of this Act, as appropriate.</p> <p>(3)(a) Nothing in this section, apart from this subsection, shall prejudice any right of a person otherwise to recover moneys expended in relation to the birth or funeral of a child.</p> <p>(b) Where an application for a lump sum order has been determined, the applicant shall not be entitled otherwise to recover from the respondent moneys in relation to matters so determined.”.</p> |
| | section 23 | <p>The substitution for that section of the following section:</p> <p>“23.— (1) Subject to subsection (2), the Circuit Court and the District Court each has jurisdiction to hear and decide proceedings under sections 5, 5A, 6, 7, 9 and 21A.</p> <p>(2)(a) The District Court and the Circuit Court, on appeal from the District Court, does not have jurisdiction to make an order under this Act for the payment of a periodical sum at a rate greater than €500 per week for the support of a spouse or €150 per week for the support of a child.</p> <p>(b) Nothing in subsection (1) shall be construed as conferring on the District Court or the Circuit Court jurisdiction to make an order or direction under section 5, 6, 7 or 9 in any matter in relation to which the High Court has made an order or direction under any of those sections.</p> <p>(c) Nothing in subsection (1) shall be construed as conferring on the District Court jurisdiction to make an order or direction under section 5, 6, 7, or 9 in</p> |

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| | | <p>any matter in relation to which the Circuit Court (except on appeal from the District Court) has made an order or direction under any of those sections.</p> <p>(3) The jurisdiction conferred on the Circuit Court by section 8 may be exercised by the Judge of the Circuit where either of the parties to the proceedings ordinarily resides or carries on any profession, business or occupation and proceedings under this Act may be brought, heard and decided before and by a Judge of the District Court for the time being assigned to the District Court District where either party to the proceedings ordinarily resides or carries on any profession, business or occupation.</p> <p>(4) In proceedings under this Act—</p> <p>(a) each of the spouses concerned shall give to the other spouse and to, or to a person acting on behalf of, any dependent member of the family concerned, and</p> <p>(b) any dependent member of the family concerned shall give to, or to a person acting on behalf of, any other such member and to each of the spouses concerned,</p> <p>such particulars of his or her property and income as may reasonably be required for the purpose of the proceedings.</p> <p>(5) Where a person fails or refuses to comply with subsection (4), the Court, on application to it in that behalf by a person having an interest in the matter, may direct the person to comply with that subsection.”.</p> |
| <p>Family Home Protection Act 1976</p> | <p>section 29 section 10</p> | <p>The deletion of that section.</p> <p>The substitution for that section of the following section:</p> <p>“10.—(1) The jurisdiction conferred on a court by this Act may be exercised by the High Court.</p> <p>(2) Subject to subsections (3) to (7) inclusive, the Circuit Court shall concurrently with the High Court have all the jurisdiction of the High Court to hear and determine proceedings under this Act.</p> <p>(3) Where either spouse is a person of unsound mind and there is a committee of the spouse’s estate¹⁷¹, the jurisdiction conferred by this Act may, subject to subsection (4), be exercised by the court that has appointed the committee.</p> <p>(4) Where the value of the land to which the proceedings relate exceeds the Circuit Court land valuation limit (within the meaning of the Courts (Consolidation and Reform) Act 2010) or the value of the personal property to which the proceedings relate exceeds the Circuit Court land damages limit (within the meaning of the Courts (Consolidation and Reform) Act 2010) and the proceedings are brought in the Circuit Court, that Court shall, if a defendant so requires, transfer the proceedings to the High Court, but any order made or act done in the course of such proceedings before such transfer shall be valid unless discharged or varied by order of the High Court.</p> <p>(5) The District Court shall, subject to subsection (3), have jurisdiction to deal with a question arising under section 9 where the value of the household chattels intended to be disposed of or removed or actually disposed of or removed, as the case may be, does not exceed the District Court damages limit (within the meaning of the Courts (Consolidation and Reform) Act 2010).</p> |

¹⁷¹ The language of this amendment might be revised in light of the published provisions of the *Mental Capacity Bill*.

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| | | <p>(6) Proceedings under or referred to in this Act in which each spouse is a party (whether by joinder or otherwise) shall be conducted in a summary manner and shall be heard otherwise than in public.</p> <p>(7) Proceedings under or referred to in this Act in which each spouse is a party (whether by joinder or otherwise) shall be heard in chambers.”</p> |
| Local Government (Water Pollution) Act 1977 | section 10(1)(b) and (c) | <p>The substitution for those paragraphs of the following paragraphs:</p> <p>“(b) In this subsection, “appropriate court”, in relation to an application under paragraph (a) means—</p> <p>(i) where the estimated cost of complying with the order to which the application relates does not exceed the District Court damages limit (within the meaning of the Courts (Consolidation and Reform) Act 2010), the District Court,</p> <p>(ii) where the estimated cost aforesaid does not exceed the Circuit Court damages limit (within the meaning of the Courts (Consolidation and Reform) Act 2010), the Circuit Court, and</p> <p>(iii) in any other case, the High Court.</p> <p>(c)(i) If, in relation to an application under this section to the District Court, that court becomes of opinion during the hearing of the application that the estimated cost aforesaid will exceed the District Court damages limit, it may, if it so thinks fit, transfer the application to the Circuit Court or the High Court, whichever it considers appropriate having regard to the estimated cost aforesaid.</p> <p>(ii) If, in relation to an application under this section to the Circuit Court, that court becomes of opinion during the hearing of the application that the estimated cost aforesaid will exceed the Circuit Court damages limit, it may, if it so thinks fit, by order transfer the application to the High Court.</p> <p>(iii) This paragraph is without prejudice to the jurisdiction of a court (being either the District Court or the Circuit Court) to determine an application under this section in relation to which it was, at the time of the making of the application, the appropriate court.”.</p> |
| Agricultural Credit Act 1978 | section 23(1) | <p>The deletion from that subsection of the definition of “the Act of 1926” and the substitution in that subsection for the definition of “execution order” of the following definition:</p> <p>““execution order” means an execution order within the meaning of section 113 of the Courts (Consolidation and Reform) Act 2010;”.</p> |
| Fisheries Act 1980 | section 47(2) | <p>The substitution in that subsection for the words “section 25(1) of the Courts (Supplemental Provisions) Act 1961” of the words “section 52 of the Courts (Consolidation and Reform) Act 2010.”.</p> |
| Intoxicating Liquor Act 1981 | section 1 | <p>The substitution for that section of the following section:</p> <p>“1.— Any references in the Licensing Acts 1833 to 2008, or the Registration of Clubs Acts 1904 to 2008, to the Dublin Metropolitan District shall be deemed to be references to the District Court District referred to in section 166 of the Courts (Consolidation and Reform) Act 2010.”.</p> |
| Malicious Injuries Act 1981 | section 13(1) | <p>The substitution for that subsection of the following subsection:</p> <p>“(1) Subject to subsections (2) and (3), every application for compensation under this Act shall be brought—</p> <p>(a) if the amount claimed does not exceed the District Court damages limit (within the meaning of the Courts (Consolidation and Reform) Act 2010), in</p> |

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| | | <p>the District in which the damage or loss to which the application relates was caused, and</p> <p>(b) if the amount claimed exceeds the District Court damages limit, in the Circuit Court in the Circuit in which the damage or loss to which the application relates was caused.”.</p> |
| | section 17(1) | <p>The substitution for that subsection of the following subsection:</p> <p>“(1) An appeal shall lie in accordance with the Courts (Consolidation and Reform) Act 2010 against a decision of the District Court to the Circuit Court and against a decision of the Circuit Court to the High Court on an application for compensation under this Act.”.</p> |
| | section 18 | The deletion from that section of subsection (4). |
| Family Law Act 1981 | section 8 | <p>The substitution for that section of the following section:</p> <p>“8.—(1) The Circuit Court has, concurrently with the High Court, jurisdiction to hear and decide proceedings under section 6 or 7 subject, in the case of a claim exceeding the Circuit Court damages limit (within the meaning of the Courts (Consolidation and Reform) Act 2010), to the consents required for the purposes of section 41 of the Courts (Consolidation and Reform) Act 2010.</p> <p>(2) The District Court has jurisdiction to hear and decide proceedings under section 6 or section 7 where the amount claimed does not exceed the District Court damages limit (within the meaning of the Courts (Consolidation and Reform) Act 2010).”.</p> |
| Courts-Martial Appeals Act 1983 | section 22 | <p>The substitution for that section of the following section:</p> <p>“22.—The defence of an appeal to the Court in accordance with the Courts (Consolidation and Reform) Act 2010 by a person convicted shall be undertaken by the Director of Military Prosecutions.”.</p> |
| Criminal Justice (Community Service) Act 1983 | section 1(1) | <p>The substitution in subsection (1) of that section for the definition of “fine” of the following definition:</p> <p>‘fine’ has the same meaning as it has in paragraph 1 of Schedule 11 of the Courts (Consolidation and Reform) Act 2010;”.</p> |
| Labour Services Act 1987 | Paragraph 4(3) of Schedule 2 (inserted by section 11 of the Labour Services (Amendment) Act 2009) | <p>The substitution for that subparagraph of the following subparagraph:</p> <p>“(3) In an order under this paragraph providing for the payment of compensation, the Circuit Court may, if in all the circumstances it considers it appropriate to do so, direct the employer concerned to pay to the employee concerned interest on the compensation at the judgment interest rate (within the meaning of the Courts (Consolidation and Reform) Act 2010), in respect of the whole or any part of the period beginning 6 weeks after the date on which the determination of the Labour Court is communicated to the parties and ending on the date of the order.”.</p> |
| Oil Pollution of the Sea (Civil Liability and Compensation) Act 1988 | section 29A(2), (inserted by Oil Pollution of the Sea (Civil Liability and Compensation) (Amendment) Act 2003, section 11) | <p>The substitution for that subsection of the following subsection</p> <p>“(2) The Council Regulation and sections 126 and 127 and Schedule 9 of the Courts (Consolidation and Reform) Act 2010 apply in respect of a judgment of a Member State other than a court or tribunal of a territory of a Member State to which the Council Regulation does not apply.”.</p> |
| Bankruptcy Act 1988 | section 26 | The substitution in that section for the words “section 6 of the Enforcement of Court Orders Act 1940” of the words “paragraph 6 of Part 3 of Schedule 8 to the Courts (Consolidation and Reform) Act 2010”. |
| | section 60 | <p>The substitution for subsection (2) of that section of the following subsection:</p> <p>“(2) The Courts Service shall assign a member of the staff of the Service</p> |

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| | | employed in the Office of the Official Assignee to perform the functions and duties of the Bankruptcy Inspector under this Act.”. |
| | section 87(6) | The substitution in that subsection for the words “section 6 of the Enforcement of Court Orders Act 1940” of the words “paragraph 6 of Part 3 of Schedule 8 to the Courts (Consolidation and Reform) Act 2010”. |
| Judicial Separation and Family Law Reform Act 1989 | section 28 | The deletion of that section. |
| | sections 30 and 31 | <p>The substitution for those sections of the following sections:</p> <p>“30.—In this Part “family law proceedings”, in relation to a court, means proceedings before a court of competent jurisdiction under—</p> <p>(a) this Act,</p> <p>(b) the Adoption Act 2010¹⁷²,</p> <p>(c) the Family Home Protection Act 1976,</p> <p>(d) the Family Law (Maintenance of Spouses and Children) Act 1976,</p> <p>(e) the Family Law (Protection of Spouses and Children) Act 1981,</p> <p>(f) the Family Law Act 1981,</p> <p>(g) the Guardianship of Infants Act 1964,</p> <p>(h) the Married Women’s Status Act 1957, or</p> <p>(j) the Status of Children Act 1987,</p> <p>and includes proceedings relating to nullity of marriage or proceedings between spouses, where the fact that they are married to each other is of relevance to the proceedings.</p> <p>31.—(1) Subject to the other provisions of this section, the Circuit Family Court has, concurrently with the High Court, jurisdiction to hear and decide proceedings under this Act for a decree of judicial separation.</p> <p>(2) The jurisdiction referred to in subsection (1) shall only be exercisable where either of the spouses is domiciled in the State on the date on which proceedings are commenced or is or has been ordinarily resident in the State throughout the period of one year ending on that date.</p> <p>(3) The jurisdiction referred to in subsection (1) shall, in the Circuit Family Court, be exercised by the judge of the Circuit where either spouse to the proceedings ordinarily resides or carries on any profession, business or occupation.”.</p> |
| | sections 32, 33 and 45 | The deletion of those sections. |
| Building Societies Act 1989 | section 32(2)(b)(ii) | The substitution in that subparagraph for the reference to the Accountant of a reference to the Courts Service. |
| Pensions Act 1990 | section 81H(5)(inserted) | The substitution in that subsection for the words “section 22(1) of the Courts Act, 1981” of the words “section 110 of the Courts (Consolidation and |

¹⁷² The draft assumes that the *Adoption Act 2010* is fully in force.

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| | by Social Welfare (Miscellaneous Provisions) Act 2004, section 22) | Reform) Act 2010”. |
| | section 140(3)(inserted by Pensions (Amendment) Act 2002, section 5) | The substitution in that subsection for the words “section 22(1) of the Courts Act, 1981” of the words “section 110 of the Courts (Consolidation and Reform) Act 2010”. |
| Companies Act 1990 | section 18(c) | The substitution in that paragraph for the words “Section 68 of the Courts of Justice Act, 1936” of the words “Section 265 of the Courts (Consolidation and Reform) Act 2010”. |
| | section 78(1)(f) | The substitution for that paragraph of the following paragraph: “(f) an interest in shares held by the Courts Service in the Court Funds Office in accordance with rules of court;”. |
| | section 240A(d) (inserted by Company Law Enforcement Act 2001, section 105) | The substitution for that paragraph of the following paragraph: “(d) in the court area specified by order made pursuant to section 176 of the Courts (Consolidation and Reform) Act 2010, or” |
| Child Care Act 1991 | section 29(2) and section 29(4) | The deletion of those subsections. |
| | section 33(1) | The substitution for that subsection of the following subsection: “(1) For the purpose of ensuring the expeditious hearing of applications under Part III, Part IV, Part IVA or Part VI, rules of court may make provision for the service of documents otherwise than by an authorised method of service referred to in section 237 of the Courts (Consolidation and Reform) Act 2010.”. |
| | section 33(1A) ¹⁷³ | The substitution for that subsection of the following subsection: “(1A) For the purposes of ensuring the expeditious hearing of applications and proceedings under, and in relation to, Part IVA (as amended by the Child Care (Amendment) Act 2010), rules of court may make provision for the service of superior court documents otherwise than by an authorised method of service referred to in section 237 of the Courts (Consolidation and Reform) Act 2010.”. |
| Liability For Defective Products Act 1991 | section 12 | The substitution for that section of the following section: “Neither any civil proceedings in which damages are claimed under this Act nor any a question of fact or issue arising in any such proceedings shall be tried with a jury.”. |
| Criminal Damage Act 1991 | section 9(8) | The deletion of that subsection. |
| Patents Act 1992 | section 130 | The substitution for that section of the following section: “130.—(1) Section 125 of the Courts (Consolidation and Reform) Act 2010 (in this section subsequently referred to as “section 125 of the Act of 2010”), shall apply in relation to any competent authority constituted under the European Patent Convention as it applies in relation to any court or tribunal of competent jurisdiction in a foreign country and accordingly the reference in section 125 of the Act of 2010 to a court or tribunal of competent jurisdiction |

¹⁷³ This amendment assumes that the *Child Care (Amendment) Bill 2010* has been enacted.

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| | | <p>in a foreign country shall be construed as including a reference to a competent authority so constituted.</p> <p>(2) In the application of section 125 of the Act of 2010, the Court may order the examination upon oath of any witness before the Controller.</p> <p>(3) Any person who, being examined on oath before the Controller pursuant to section 125 of the Act of 2010, as extended by this section, wilfully gives false evidence shall be liable to the penalties of perjury.”.</p> |
| Foreshore (Amendment) Act 1992 | section 6(1)(b) and (c) | <p>The substitution for those paragraphs of the following paragraphs:</p> <p>“(b) In this subsection, “appropriate court”, in relation to an application under paragraph (a) means—</p> <p>(i) where the estimated cost of complying with the order to which the application relates does not exceed the District Court damages limit (within the meaning of the Courts (Consolidation and Reform) Act 2010), the District Court,</p> <p>(ii) where the estimated cost aforesaid does not exceed the Circuit Court damages limit (within the meaning of the Courts (Consolidation and Reform) Act 2010), the Circuit Court, and</p> <p>(iii) in any other case, the High Court.</p> <p>(c)(i) If, in relation to an application under this section to the District Court, that court becomes of opinion during the hearing of the application that the estimated cost aforesaid will exceed the District Court damages limit, it may, if it so thinks fit, transfer the application to the Circuit Court or the High Court, whichever it considers appropriate having regard to the estimated cost aforesaid.</p> <p>(ii) If, in relation to an application under this section to the Circuit Court, that court becomes of opinion during the hearing of the application that the estimated cost aforesaid will exceed the Circuit Court damages limit, it may, if it so thinks fit, by order transfer the application to the High Court.</p> <p>(iii) This paragraph is without prejudice to the jurisdiction of a court (being either the District Court or the Circuit Court) to determine an application under this section in relation to which it was, at the time of the making of the application, the appropriate court.”.</p> |
| Electoral Act 1992 | section 22 | The deletion of that section. |
| Criminal Justice Act 1993 | section 3 | The deletion of that section. |
| | section 7(2) | The deletion from that subsection of the words “and (c) section 29 (which amends the Enforcement of Court Orders Act, 1940)”, the substitution of “.” for “, and” in subparagraph (ii), and the deletion of subparagraph (iii). |
| Finance Act 1993 | section 115 | The substitution in that section for the expression “€100,000” of the words “the lesser of €100,000 or the Circuit Court damages limit (within the meaning of the Courts (Consolidation and Reform) Act 2010)” |
| Unfair Dismissals (Amendment) Act 1993 | section 11(4)(a) | The substitution in that section for the words “section 22 of the Courts Act, 1981” of the words “section 110 of the Courts (Consolidation and Reform) Act 2010”. |
| Animal Remedies Act 1993 | section 26(1) | <p>The substitution for that subsection of the following subsection:</p> <p>“(1) Where in the course of exercising any powers under this Act a person, being an authorised officer, a member of the Garda Síochána or an officer of Customs and Excise, finds or comes into possession of any thing which that</p> |

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| | | person believes to be evidence of any offence or suspected offence under this Act, it may be seized and retained for use in evidence in any criminal proceedings, for such period from the date of seizure as is reasonable or, if proceedings are commenced in which the thing so seized is required for use in evidence, until the conclusion of the proceedings, and thereafter section 256 of the Courts (Consolidation and Reform) Act 2010 shall apply to the thing so seized in the same manner as those said sections respectively apply to property which has come into the possession of the Garda Síochána in the circumstances mentioned in those said sections.”. |
| Local Government (Dublin) Act 1993 | sections 25, 26 and 27 | The deletion of those sections. |
| Criminal Procedure Act 1993 | section 4(1) | The substitution for that subsection of the following subsection: “(1) Where a person is ordered under the Courts (Consolidation and Reform) Act 2010 to be re-tried for an offence, he or she may, notwithstanding any rule of law, be again indicted and tried and, if found guilty, sentenced for that offence.”. |
| | section 7(2)(a)(i) | The substitution for that subparagraph of the following subparagraph: “(i) that the matters dealt with in the petition could appropriately be dealt with by way of an application to the Court of Criminal Appeal pursuant to section 300 of the Courts (Consolidation and Reform) Act 2010 or, as the case may be, by way of an application to the Courts-Martial Appeal Court pursuant to section 308 of the Courts (Consolidation and Reform) Act 2010”. |
| | sections 2, 3, 5, 6 and 11 | The deletion of those sections. |
| Terms of Employment (Information) Act 1994 | section 9(2) | The substitution in that section for the words “section 22 of the Courts Act, 1981” of the words “section 110 of the Courts (Consolidation and Reform) Act 2010”. |
| Criminal Justice Act 1994 | section 3(16)(f)(i) (as substituted by section 27 of the Criminal Procedure Act 2010) | The substitution for that subparagraph of the following subparagraph: “(i) (I) when the defendant is acquitted on all counts, or (II) where the provisions of section 291 of the Courts (Consolidation and Reform) Act 2010 apply to the proceedings— (A) when the time period for an appeal under that section has expired and no appeal has been made, (B) where an appeal has been made but no re-trial is ordered, at the conclusion of the appeal proceedings under the section, or (C) where a re-trial has been ordered, at the conclusion of the re-trial;”. |
| National Monuments (Amendment) Act 1994 | section 7(6) | The substitution for that subsection of the following subsection: “(6) Section 256 of the Courts (Consolidation and Reform) Act 2010 shall apply to any detection device or equipment to which this section applies.”. |
| Maintenance Act 1994 | section 3(1) | The substitution for that subsection of the following subsection: “3.—(1) In this Act, unless the context otherwise requires— “the Act of 1976” means the Family Law (Maintenance of Spouses and Children) Act 1976; “the Act of 1998” means the Jurisdiction of Courts and Enforcement of Judgments Act 1998; |

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| | <p>“the Act of 2010” means the Courts (Consolidation and Reform) Act 2010;</p> <p>“the 2009 Council Decision” means Council Decision 2009/430/EC of 27 November 2008;</p> <p>“the Brussels Convention” has the same meaning as has the “1968 Convention” in the Jurisdiction of Courts and Enforcement of Judgments Act 1998, and a reference to an Article of that Convention shall be construed as including a reference to the corresponding Article of the Lugano Convention;</p> <p>“the Brussels I Regulation” means Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, and a reference to an Article of that Regulation shall be construed as including a reference to the corresponding Article of the Lugano Convention 2007”;</p> <p>“Central Authority” has the meaning assigned to it by section 4;</p> <p>“Contracting State” means, as the case may be, either:</p> <p>(a) a Member State, within the meaning of the Brussels I Regulation, or</p> <p>(b) a Contracting State, within the meaning of section 4 of the Act of 1998;</p> <p>“court”, in relation to a jurisdiction other than the State, means any authority competent under the law of that jurisdiction to make an order for the recovery of maintenance;</p> <p>“designated jurisdiction” has the meaning assigned to it by section 13;</p> <p>“2007 Hague Convention” means the Convention on the International Recovery of Child Support and other Forms of Family Maintenance, done at the Hague on the 23rd day of November 2007¹⁷⁴;</p> <p>“the Lugano Convention 1988” has the meaning assigned to it by the Act of 1998;</p> <p>“the Lugano Convention 2007” means the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, done at Lugano on the 30th day of October 2007, as approved on behalf of the European Community by Council Decision 2009/430/EC of 27 November 2008, and includes the Protocols and Annexes;</p> <p>“Maintenance Regulation” means Council Regulation (EC) No. 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations;</p> <p>“the Minister” means the Minister for Justice and Law Reform;</p> <p>“the New York Convention” has the meaning assigned to it by section 13;</p> <p>“reciprocating jurisdiction” has the meaning assigned by section 6;</p> <p>“the Rome Convention” means the Convention between the member states of the European Communities on the simplification of procedures for the</p> |
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¹⁷⁴ The draft does not produce the text of the 2007 Hague Convention, though it is suggested that it should be scheduled to the 1994 Act, consistently with the Rome and New York Conventions.

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| | | recovery of maintenance payments done at Rome on the 6th day of November, 1990, the text of which in the English language is set out, for convenience of reference, in the First Schedule to this Act.”. |
| | section 4(2) | <p>The substitution for that subsection of the following subsections:</p> <p>“(2) For the purposes of paragraph 9 of Part 3 of Schedule 8 of the Act of 2010, the Acts of 1976, 1995, 1996 and 1998, the Brussels I Regulation, the Lugano Convention 2007, the Maintenance Regulation and this Act, the Central Authority shall have authority to act on behalf of a maintenance creditor or of a claimant (as defined in section 13(1)), and references therein to a maintenance creditor or to such a claimant shall be construed as including references to that Authority.”</p> <p>(3) In subsection (2) “maintenance creditor” means:</p> <p>(a) in the context of the Brussels I Regulation, a maintenance creditor referred to in Article 5(2) of that Regulation;</p> <p>(b) in the context of the Lugano Convention 2007, a maintenance creditor referred to in Article 5(2) of that Convention;</p> <p>(c) in the context of the Maintenance Regulation, a creditor referred to in Article 2.1.10 of that Regulation.</p> <p>(4) Where the Central Authority so acts, payments of maintenance shall be made directly to the maintenance creditor or claimant unless the Central Authority requests that they be made to a public authority in the jurisdiction where the maintenance creditor or claimant resides.”.</p> |
| | section 5 | <p>The substitution for that section of the following section:</p> <p>“5.— This Part shall be construed as one with the Jurisdiction of Courts and Enforcement of Judgments Act 1998, the Brussels I Regulation, the Maintenance Regulation and the 2009 Council Decision.”.</p> |
| | sections 6(1), (2) and (3) | <p>The substitution for those subsections of the following subsections:</p> <p>“6.— (1) In this Part—</p> <p>“central authority of a reciprocating jurisdiction” means—</p> <p>(a) the central authority of such a jurisdiction which has been designated pursuant to paragraph 1 or, where appropriate, paragraph 2 of Article 2 of the Rome Convention, or</p> <p>(b) an authority of such a jurisdiction with functions corresponding to those exercisable by the Central Authority within the State;</p> <p>“maintenance creditor” includes any body which, under the law of a reciprocating jurisdiction, is entitled to exercise the rights of redress of, or to represent, the creditor;</p> <p>“reciprocating jurisdiction” means a Contracting State, within the meaning of the Act of 1998, or, as appropriate, a Member State, within the meaning of the Brussels I Regulation.</p> <p>(2)(a) The Minister for Foreign Affairs may by order declare that any Contracting State specified in the order is a reciprocating jurisdiction.</p> <p>(b) An order that is in force under this subsection shall be evidence that any state specified in the order is a reciprocating jurisdiction.</p> |

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| | <p>(c) The Minister for Foreign Affairs may by order amend or revoke an order under this subsection.</p> <p>(3) If a judgment or an instrument or settlement referred to in:</p> <p>(a) Article 50 or 51 of either the Brussels Convention or the Lugano Convention 1988, or</p> <p>(b) Article 57 or 58 of either the Brussels I Regulation or the Lugano Convention 2007,</p> <p>does not relate solely to maintenance, this Part shall apply only to those parts that relate to maintenance.”.</p> |
| <p>section 7</p> | <p>The substitution for that section of the following section:</p> <p>“7.—(1) The Central Authority may, on receipt of an application for the recognition or enforcement in the State of a maintenance order which has been transmitted by a central authority of a reciprocating jurisdiction, send the application to the Master of the High Court for determination in accordance with section 7 of the Act of 1998.</p> <p>(2) In the case of an application under the Brussels Convention or the Lugano Convention 1988, the Master shall consider it privately and shall make an enforcement order unless it appears to the Master from the application and accompanying documents or from the Master's own knowledge that its recognition and enforcement are prohibited by the Brussels Convention or the Lugano Convention 1988.</p> <p>(3) In the case of an application under the Brussels I Regulation, the Lugano Convention 2007 or the Maintenance Regulation, the Master shall determine it in accordance with section 127 and Schedule 9 of the Act of 2010.</p> <p>(4) The Master shall cause the decision on the request to be brought to the notice of the Central Authority and, if an enforcement order has been made, shall cause notice thereof to be served on the maintenance debtor.</p> <p>(5) The notice to be served on a maintenance debtor under subsection (4) shall include a statement, where relevant, of the provisions of:</p> <p>(i) Article 36 (right of appeal against enforcement order) of the Brussels Convention or, as the case may be, the Lugano Convention 1988, or</p> <p>(ii) Article 43 (right of appeal against declaration of enforceability) of the Brussels I Regulation or, as the case may be, the Lugano Convention 2007, or</p> <p>(iii) Article 32 (appeal against the decision on the application for a declaration) of the Maintenance Regulation.</p> <p>(6) Service of the notice to be served on a maintenance debtor under subsection (4) may be effected personally or in any other manner in which service of a court document may be effected in accordance with section 237(2) of the Act of 2010.</p> <p>(7) The Master may—</p> <p>(a) accept an application under subsection (1), (2) or (3) as having been transmitted by the central authority of the reciprocating jurisdiction concerned, and</p> <p>(b) accept the documents accompanying the application, namely—</p> |

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| | | <p>(i) a request that the application be processed in accordance with the provisions of the Rome Convention,</p> <p>(ii) a letter delegating to the Central Authority to act, or cause action to be taken, on behalf of the maintenance creditor, including specific authority to enable enforcement proceedings to be taken,</p> <p>(iii) a document containing the name, date of birth, nationality and description of the maintenance debtor and all other relevant information regarding the identity, whereabouts or location of the assets, of the maintenance debtor,</p> <p>(iv) a document required under: (I) Article 46 or Article 47 of either the Brussels Convention or the Lugano Convention 1988; (II) Article 53, Article 54 or Article 57 of either the Brussels I Regulation or the Lugano Convention 2007, or (III) Article 28 of the Maintenance Regulation,</p> <p>as appropriate, to be produced by a party seeking recognition or applying for enforcement of a judgment, and</p> <p>(v) any translation of such a document,</p> <p>as being such request, letter, document or translation, as the case may be.</p> <p>(8) If any of the documents mentioned in subsection (7)(b) are not produced, the Master may allow time for their production, accept equivalent documents or, if the Master considers that there is sufficient information available, dispense with their production.</p> <p>(9) The Central Authority may, on receipt of an application for the recognition or enforcement of an instrument or settlement referred to in:</p> <p>(a) Article 50 or Article 51 of either the Brussels Convention or the Lugano Convention 1988, or</p> <p>(b) Article 57 or Article 58 of either the Brussels I Regulation or the Lugano Convention 2007, or</p> <p>(c) Article 48 of the Maintenance Regulation (provided that it is an instrument or settlement to which Section 2 of Chapter IV of the Maintenance Regulation applies),</p> <p>which provides for the payment of maintenance and has been transmitted by a central authority of a reciprocating jurisdiction, apply to the High Court under:</p> <p>(i) Article 31 of either the Brussels Convention or the Lugano Convention 1988 for the recognition or enforcement, or</p> <p>(ii) Article 31 of either the Brussels I Regulation or the Lugano Convention 2007 for a declaration of enforceability, or</p> <p>(iii) Article 26 of the Maintenance Regulation for a declaration of enforceability,</p> <p>of the whole or part of the instrument or settlement concerned.</p> <p>(10) Nothing in this section requires an application to be made to a Court in respect of a decision given in a member state which is enforceable in the State by virtue of Section 1 of Chapter IV of the Maintenance Regulation.”.</p> |
| | sections 13 and 14 | The substitution for those sections of the following sections: |

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| | <p>“13.—(1) In this Part, unless the context otherwise requires—</p> <p>“central authority of a designated jurisdiction” means—</p> <p>(a) a transmitting agency or receiving agency in a state which is a contracting party to the New York Convention, or</p> <p>(b) the central authority of such a jurisdiction which has been designated pursuant to Article 4.1 of the 2007 Hague Convention, or</p> <p>(c) an authority of a designated jurisdiction with functions corresponding to those exercisable by the Central Authority within the State;</p> <p>“claimant” means, according to the context, either—</p> <p>(a) a person residing in a designated jurisdiction (including any body which under the law of that jurisdiction is entitled to exercise the rights of redress of, or to represent, that person) and claiming pursuant to this Part to be entitled to receive maintenance from a person residing in the State, or</p> <p>(b) a person residing in the State (including a competent authority within the meaning of Part 12 (Liability to Maintain Family) of the Social Welfare Consolidation Act 2005) and claiming pursuant to this Part to be entitled to recover maintenance from a person residing in a designated jurisdiction;</p> <p>“designated jurisdiction” means—</p> <p>(a) any state which is a contracting party to the New York Convention, or</p> <p>(b) any state (other than a Contracting State within the meaning of section 6) which is a contracting party to the 2007 Hague Convention, to the extent that the 2007 Hague Convention applies between the European Union and that State, and which is declared by order of the Minister for Foreign Affairs to be a designated jurisdiction for the purposes of this Part, or</p> <p>(c) any other state or jurisdiction which is declared by order of the Minister for Foreign Affairs to be a designated jurisdiction for the purposes of this Part;</p> <p>“the New York Convention” means the Convention on the recovery abroad of maintenance done at New York on the 20th day of June, 1956, the text of which in the English language is set out, for convenience of reference, in the Second Schedule to this Act;</p> <p>“respondent” means, according to the context, either—</p> <p>(a) a person residing in the State from whom maintenance is sought to be recovered pursuant to this Part by a person residing in a designated jurisdiction, or</p> <p>(b) a person residing in a designated jurisdiction from whom maintenance is sought to be recovered pursuant to this Part by a person residing in the State.</p> <p>(2)(a) The Minister for Foreign Affairs may by order declare that any state or jurisdiction specified in the order is a designated jurisdiction.</p> <p>(b) An order that is in force under this subsection shall be evidence that any state or jurisdiction specified in the order is a designated jurisdiction.</p> <p>(c) The Minister for Foreign Affairs may by order amend or revoke an order under this subsection.</p> |
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(3) Subject to subsection (1), a word or expression in this Part which is used in the New York Convention has the same meaning as it has in that Convention.

14.—(1) On receipt of a request by the Central Authority from a central authority of a designated jurisdiction on behalf of a claimant for the recovery of maintenance from a person for the time being residing in the State (“the respondent”) the Central Authority may—

(a) if the request is accompanied by an order of a court in a Contracting State, transmit the request to the Master of the High Court for determination in accordance with section 7 of the Act of 1998 and Part II of this Act, and the other provisions of the Act of 1998 shall apply accordingly, with any necessary modifications,

(b) if the request is accompanied by an order of a court of a Member State (within the meaning of the Brussels I Regulation), transmit the request to the Master of the High Court for determination in accordance with section 127 and Schedule 9 of the Courts (Consolidation and Reform) Act 2010 and with that Regulation, and the other provisions of the Act of 2010 shall apply accordingly, with any necessary modifications,

(c) if the request is accompanied by an order made by any other court and the Central Authority is of opinion that the order may be enforceable in the State, apply to the District Court for the enforcement of the order, or

(d) if either the request is not accompanied by such an order or enforcement of the order is refused—

(i) if the amount of maintenance sought to be recovered exceeds the maximum amount which the District Court has jurisdiction to award under the Act of 1976, make an application to the Circuit Court,

(ii) in any other case, make an application to the District Court,

for the recovery of maintenance in accordance with the request.

(2) The District Court, on an application to it under subsection (1)(c), may, if it considers that the order of the court in the designated jurisdiction for the recovery of maintenance is enforceable in the State, make an order for its enforcement and thereupon—

(a) the order of the District Court shall be deemed to be an enforceable maintenance order, within the meaning of section 123 of the Courts (Consolidation and Reform) Act 2010, and

(b) sections 8, 9 and 10 of the Act of 1998 shall apply in relation to that order, with any necessary modifications.

(3) An application referred to in subsection (1)(d) shall be deemed to be an application for a maintenance order under section 5 or section 5A or section 21A (inserted by the Status of Children Act 1987) of the Act of 1976, and to have been made on the date on which the request of the claimant for the recovery of maintenance was received by the central authority of the designated jurisdiction concerned.

(4) The court, on an application to it under subsection (1)(d) may, subject to subsection (5)—

(a) take evidence from the respondent by way of affidavit or on sworn deposition,

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| | <p>(b) cause a copy of the affidavit or deposition to be sent to the Central Authority for transmission to the central authority of the designated jurisdiction with a request that the claimant provide an answering affidavit,</p> <p>(c) send letters of request pursuant to section 17 for the taking of further evidence in a designated jurisdiction,</p> <p>(d) take the evidence of the claimant or of any witness residing in a designated jurisdiction through a live television link,</p> <p>(e) pending the final determination of the application, make an interim maintenance order under section 7 of the Act of 1976.</p> <p>(5) Where it appears to the court that the claimant or respondent <i>bona fide</i> desires to cross-examine a witness and the witness is available for the cross-examination, whether through a live television link or otherwise, the court shall decline to permit the evidence of the witness to be given by affidavit.</p> <p>(6) Notice of an application under subsection (1)(c) or (d) shall be given to the respondent by the Central Authority and shall be accompanied by a copy of the documents proposed to be given in evidence by the Central Authority at the hearing of the application.</p> <p>(7) Where—</p> <p>(a) on an application pursuant to subsection (1)(d) it is necessary to take the evidence of the claimant or of any witness through a live television link, and</p> <p>(b) facilities for doing so are not available in the Circuit or District Court District concerned,</p> <p>the court may by order transfer the proceedings to a Circuit or District Court District where those facilities are available.</p> <p>(8) The provisions of this section shall also apply as appropriate to a request made to the Central Authority to vary or discharge an order made on an application under subsection (1)(d).</p> <p>(9) Where an order of a court which accompanies a request referred to in subsection (1) includes provision for matters other than those relating to maintenance, this section shall apply to the order only in so far as it relates to maintenance.</p> <p>(10) In subsections (1)(a) and (9) a reference to an order of, or made by, a court shall be construed as including a reference to—</p> <p>(a) an instrument of a kind referred to in either:</p> <p>(i) Article 50 of either the Brussels Convention or the Lugano Convention 1988, or</p> <p>(ii) Article 57 of either the Brussels I Regulation or the Lugano Convention 2007;</p> <p>(b) a settlement of a kind referred to in either:</p> <p>(i) Article 51 of either the Brussels Convention or the Lugano Convention 1988, or</p> <p>(ii) Article 58 of either the Brussels I Regulation or the Lugano Convention 2007;</p> <p>(c) an instrument or settlement of a kind referred to in the definition of “maintenance arrangement” in Article 19 of the 2007 Hague Convention;</p> |
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| | | <p>(d) an arrangement relating to maintenance obligations concluded with or authenticated by an administrative authority, as referred to in either:</p> <p>(i) Article 10 of the 1996 Accession Convention (within the meaning of section 2 of the Act of 1998), or</p> <p>(ii) Article 19 of the 2007 Hague Convention.</p> <p>(11) Section 8 and section 8A (inserted by the Status of Children Act 1987) of the Act of 1976 shall apply and have effect in relation to any agreement in writing which contains a provision mentioned in paragraph (a) of either section and is made—</p> <p>(a) between a claimant and respondent, notwithstanding that one of them may, at the time of the making of the agreement, be resident outside the State, and</p> <p>(b) between a respondent and a person or body in the State, where such a person or body has been authorised to enter into such an agreement on behalf of the claimant,</p> <p>and an application may be made by the Central Authority to the Circuit Court under paragraph (b) of either section for an order making such an agreement a rule of court.</p> <p>(12) The jurisdiction conferred by this section may be exercised—</p> <p>(a) in the case of the Circuit Court, by a judge of the Circuit, and</p> <p>(b) in the case of the District Court, by a judge of the District Court assigned to the District,</p> <p>in which the respondent resides or carries on any profession, business or occupation or, as the case may be, to which proceedings have been transferred under subsection (7).”.</p> |
| Maternity Protection Act 1994 | section 37(5) | The substitution in that subsection for the words “section 22 of the Courts Act, 1981” of the words “section 110 of the Courts (Consolidation and Reform) Act 2010”. |
| Adoptive Leave Act 1995 | section 39(3) | The substitution in that subsection for the words “section 22 of the Courts Act, 1981” of the words “section 110 of the Courts (Consolidation and Reform) Act 2010”. |
| Finance Act 1995 | section 93(1) | The substitution for that subsection of the following subsection: “(1) Proceedings under section 92 shall be civil proceedings and may be instituted either in the High Court or (if, in the opinion of the Commissioners, the value of the thing the subject of the proceedings does not exceed the District Court damages limit (within the meaning of the Courts (Consolidation and Reform) Act 2010)) the District Court.”. |
| Local Government (Delimitation of Water Supply Disconnection Powers) Act 1995 | section 3(2)(b) | The substitution for that paragraph of the following paragraph: “(b) there has been default on payment due under an instalment order made pursuant to paragraph 4 of Part 3 of Schedule 8 of the Courts (Consolidation and Reform) Act 2010”. |
| Family Law Act 1995 | section 22 | The deletion of that section. |
| | sections 38(3) and 38(5) | The deletion of those subsections. |
| | section 38(6) | The substitution in that subsection for the words “sections 33 to 36 of that Act” of the words “sections 34 to 36 of that Act”. |
| Domestic | section 15(1) | The substitution for that subsection of the following subsection: |

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| Violence Act 1996 | | “(1) For the purpose of ensuring the expeditious hearing of applications under this Act, rules of court may make provision for the service of documents otherwise than by an authorised method of service referred to in section 237 of the Courts (Consolidation and Reform) Act 2010.”. |
| Protection of Young Persons (Employment) Act 1996 | section 20(2) | The substitution in that subsection for the words “section 22 of the Courts Act, 1981” of the words “section 110 of the Courts (Consolidation and Reform) Act 2010”. |
| Family Law (Divorce) Act 1996 | section 30 | The deletion of that section. |
| | sections 38(2) and 38(4) | The deletion of those subsections. |
| | section 38(5) | The substitution in that subsection for the words “sections 33 to 36 of that Act” of the words “sections 34 to 36 of that Act”. |
| Criminal Justice (Miscellaneous Provisions) Act 1997 | sections 5(1) to 5(5) inclusive and section 7 | The deletion of those subsections and of that section. |
| Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act 1997 | section 16(1) | The substitution for that subsection of the following subsection: “(1) Section 3 is without prejudice to section 76 of the Courts (Consolidation and Reform) Act 2010”. |
| Organisation of Working Time Act 1997 | section 29(3) | The substitution in that subsection for the words “section 22 of the Courts Act, 1981” of the words “section 110 of the Courts (Consolidation and Reform) Act 2010”. |
| Taxes Consolidation Act 1997 | section 572 | The substitution for that section of the following section: “572.—(1) In this section — the “Service” means the Courts Service established by section 4 of the Courts Service Act 1998; “court” includes the High Court, the Circuit Court and the District Court and, where the context so admits, any court exercising appellate jurisdiction in civil proceedings; “funds in court” means any moneys (and investments representing such moneys), annuities, stocks, shares or other securities standing or to be placed to the account of the Service, any officer of the Service or any court officer, in the books of any bank or company, and includes boxes and other effects. (2) For the purposes of section 567(2), funds in court shall be regarded as held by the Service or by any such court officer as nominee for the persons entitled to or interested in the funds or, as the case may be, for their trustees. (3) Where funds in court standing to an account in the books of the Service are invested or after investment are realised, the method by which the Service effects the investment or the realisation of investments shall not affect the question as to whether there is for the purposes of the Capital Gains Tax Acts an acquisition or, as the case may be, a disposal of an asset representing funds in court standing to that account, and in particular there shall for those purposes be an acquisition or disposal of assets notwithstanding that the investment of funds in court standing to an account in the books of the Service, or the realisation of funds which have been so invested, shall be |

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| | | effected by setting off in the Service’s accounts investment in one account against realisation of investments in another.”. |
| | section 817O(3)(b)(as inserted by section 149 of the Finance Act 2010) | The substitution for that paragraph of the following paragraph: “(b) In paragraph (a) ‘relevant court’ means the District Court, the Circuit Court or the High Court, as appropriate, by reference to the jurisdictional limits for civil matters laid down in the Courts (Consolidation and Reform) Act 2010.”. |
| | section 960L(4)(a)(as inserted by section 97 and Schedule 4 of the Finance (No. 2) Act 2008) | The substitution for that paragraph of the following paragraph: “(a) if the sum certified in the certificate is in excess of €19,050, to charge and (where appropriate) to add to that sum and (in any case) to levy under the certificate such fees and expenses, calculated in accordance to the scales appointed by the Minister for Justice and Law Reform under paragraph 6 of Part 2 of Schedule 8 to the Courts (Consolidation and Reform) Act 2010 and for the time being in force, as the county registrar or sheriff would be entitled so to charge or add and to levy if the certificate were an execution order, within the meaning of the Courts (Consolidation and Reform) Act 2010 (in this section referred to as an ‘execution order’), of the High Court,”. |
| | sections 963(1) and 963(2) | The substitution for those subsections of the following subsections respectively: “(1) Where the amount due in respect of income tax does not exceed the Circuit Court money limit (within the meaning of the Courts (Consolidation and Reform) Act 2010) provided for in proceedings in the contract jurisdiction, comprised within reference number 3 of the Table to section 45 of the Courts (Consolidation and Reform) Act 2010, the Collector-General or other officer of the Revenue Commissioners duly authorised to collect the tax may sue in that officer's own name in the Circuit Court for the amount so due as a debt due to the Minister for Finance. (2) Where the amount so due does not exceed the Circuit Court money limit (within the meaning of the Courts (Consolidation and Reform) Act 2010) provided for in proceedings in the contract jurisdiction, comprised within reference number 1 of the Table to section 68 of the Courts (Consolidation and Reform) Act 2010, the Collector-General or other officer of the Revenue Commissioners duly authorised to collect the tax may sue in that officer's own name in the District Court for the amount so due as a debt due to the Minister for Finance.”. |
| | section 1006(1) | The substitution in that subsection for the definitions of “county registrar”, “execution order” and “fees” of the following definitions respectively: ““County Registrar” means a person appointed to be a County Registrar under section 344 of the Courts (Consolidation and Reform) Act 2010;”; ““execution order” has the same meaning as in section 113 of the of the Courts (Consolidation and Reform) Act 2010;”, and ““fees” means the fees known as poundage fees payable under paragraph 6 of Part 2 of Schedule 8 of the of the Courts (Consolidation and Reform) Act 2010, and orders made under that paragraph for services in or about the execution of an execution order directing or authorising the execution of an order of a court by the seizure and sale of a person's property or, as may be appropriate, the fees corresponding to those fees payable under section 962 for the execution of a certificate;”. |
| | section 1061(1) | The substitution for that subsection of the following subsection: “(1) Without prejudice to any other mode of recovery of a penalty under the preceding provisions of this Part or under section 305, 783, 789 or 886, an officer of the Revenue Commissioners authorised by them for the purposes of |

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| | | this subsection may sue in his or her own name by civil proceedings for the recovery of the penalty in the High Court as a liquidated sum, and any such proceedings shall be heard and decided without a jury in accordance with section 211 of the Courts (Consolidation and Reform) Act 2010.”. |
| | section 1077A (as inserted by section 98 and Schedule 5 of the Finance (No. 2) Act 2008) | The substitution in that section for the definition of ‘relevant court’ of the following definition: “‘ relevant court’ means the District Court, the Circuit Court or the High Court, as appropriate, by reference to the jurisdictional limits for civil matters laid down in the Courts (Consolidation and Reform) Act 2010;”. |
| Courts Service Act 1998 | section 6(2)(k) | The substitution for that paragraph of the following paragraph: “(k) establish, vary the functions of, or dissolve, a combined court office under sections 337 and 339 of the Courts (Consolidation and Reform) Act 2010.”. |
| | section 29 | The substitution for that section of the following section: “29.—(1)(a) The Minister may by order transfer (with or without a condition or restriction) any function of the Minister under a provision of any enactment which also relates to a function of the Service to be a function of the Service to the exclusion of the Minister, and when any such order comes into operation, the provision shall be construed accordingly. (b) An order under paragraph (a) may be amended or revoked by the Minister. (2)(a) Without prejudice to subsection (1), the Government may, by order, provide that a function of a Minister or any other function under a provision of an enactment relating to a function of the Service shall, subject to such conditions as may be specified in the order, be a function of the Service. (b) An order under paragraph (a) may be amended or revoked by the Government. (3) Subject to any condition or restriction provided for in this Act, any subsisting instrument made under an enactment that relates to a matter to which a function of the Service relates shall, on and after the day the Service has the function, continue in force, and may be amended or revoked by the Service, as if it had been made pursuant to the powers conferred on the Service by this Act.”. |
| | section 36 ¹⁷⁵ | The substitution for that section of the following section: “36.— (1) When the High Court is sitting at a scheduled High Court venue (within the meaning of Schedule 11 of the Courts (Consolidation and Reform) Act 2010, the Service shall arrange suitable accommodation for the Judges constituting the High Court and, where necessary, for any staff of the Service assigned to attend for the purposes of their duties. (2) All expenses incurred in providing accommodation pursuant to subsection (1) shall, to such extent as the Minister, with the sanction of the Minister for Finance, determines, be paid out of moneys provided by the Oireachtas. (3) The expenses otherwise incurred in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.”. |
| | Schedule 2 | The deletion of that Schedule. |
| Employment | section 82(5) | The substitution in that subsection for the words “section 22(1) of the Courts |

¹⁷⁵ The new subsections (1) and (2) re-enact in modified form section 44 of the *Courts of Justice Act 1936*, which is not otherwise included in the draft Bill.

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| Equality Act 1998 | | Act, 1981” of the words “section 110 of the Courts (Consolidation and Reform) Act 2010”. |
| | section 92(2) | The substitution in that subsection for the words “section 22 of the Courts Act, 1981” of the words “section 110 of the Courts (Consolidation and Reform) Act 2010”. |
| Parental Leave Act 1998 | section 22(3) | The substitution in that subsection for the words “section 22 of the Courts Act, 1981” of the words “section 110 of the Courts (Consolidation and Reform) Act 2010”. |
| Jurisdiction of Courts and Enforcement of Judgments Act 1998 | sections 9(9) and 9(10) | The substitution for those subsections of the following subsections: “(9) If a sum payable under an enforceable maintenance order is not duly paid and if the maintenance creditor under the order so requests in writing, the District Court Clerk concerned shall make an application respecting that sum under— (a) section 10 (which relates to the attachment of certain earnings) of the Family Law (Maintenance of Spouses and Children) Act 1976 , or (b) paragraphs 6 and 9 of Part 3 of Schedule 8 to the Courts (Consolidation and Reform) Act 2010 (which relate to the enforcement of certain periodic payment orders). (10) For the purposes of subsection (9)(b), a reference in paragraph 6 or paragraph 9 of Part 3 of Schedule 8 to the Courts (Consolidation and Reform) Act 2010 to an applicant shall be construed as including a reference to the District Court Clerk.”. |
| | sections 9(12) and 9(16) | The deletion of those subsections. |
| | section 9(15) | The substitution for that subsection of the following subsection: “(15) In this Act, a reference to a District Court Clerk: (a) shall, where there are two or more District Court Clerks for the District Court District concerned, be construed as a reference to any of those Clerks; (b) includes reference to the successor of that person in the office of District Court Clerk; (c) includes reference to any person acting on behalf of the District Court Clerk concerned, and (d) where the context so admits, be construed as including a reference to a member of the staff of the Courts Service assigned to the Court Funds Office authorised in that behalf, referred to in section 254(1) of the Courts (Consolidation and Reform) Act 2010.”. |
| Electricity Regulation Act 1999 | Schedule, paragraph 23 | The substitution in that paragraph for the words “that fixed by an order under section 20 of the Courts Act, 1981” of the words “the judgment interest rate specified by or in accordance with section 109 of the Courts (Consolidation and Reform) Act 2010”. |
| Stamp Duties Consolidation Act 1999 | Schedule 1, | The substitution in that Schedule for the reference to the Accountant of the Courts of Justice of a reference to the Courts Service, on an account maintained in the Court Funds Office. |
| National Minimum Wage Act 2000 | section 32(5) | The substitution in that subsection for the words “section 22 of the Courts Act, 1981” of the words “section 110 of the Courts (Consolidation and Reform) Act 2010”. |
| Equal Status Act 2000 | section 32(2) | The substitution in that subsection for the words “section 22 of the Courts Act, 1981” of the words “section 110 of the Courts (Consolidation and Reform) Act 2010”. |
| Human Rights Commission Act | section 5(6) | The substitution for that subsection of the following subsection: |

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| 2000 | | <p>“(6) Where a person who holds judicial office in the Superior Courts is appointed to be the President of the Commission, the following provisions shall have effect:</p> <p>(a) where, on being so appointed, he or she is an ordinary judge of the Supreme Court, then, for so long as he or she continues to hold that judicial office, the number of ordinary judges of the Supreme Court otherwise provided for under any enactment for the time being in force may be exceeded by one and, if the said person so appointed is a former Chief Justice, the proviso to paragraph (a) (substituted the Courts (Consolidation and Reform) Act 2010) of section 14(1) of the Law Reform Commission Act 1975, shall apply to him or her in respect of his or her appointment as President of the Commission to the like extent as it applies to a former Chief Justice who is appointed to be a member of the Law Reform Commission,</p> <p>(b) where, on being so appointed, he or she is the President of the High Court or an ordinary judge of the High Court, then, for so long as he or she continues to hold the judicial office held by him or her on so being appointed, the number of ordinary judges of the High Court otherwise provided for under any enactment for the time being in force may be exceeded by one and, if the said person so appointed is a former President of the High Court, the proviso to paragraph (b) (substituted the Courts (Consolidation and Reform) Act 2010) of section 14(1) of the Law Reform Commission Act 1975, shall apply to him or her in respect of his or her appointment as President of the Commission to the like extent as it applies to a former President of the High Court who is appointed to be a member of the Law Reform Commission,</p> <p>(c) in case he or she is the President of the High Court, he or she may, for so long as he or she continues to be President of the Commission, from time to time appoint an ordinary judge of the High Court to exercise on his or her behalf (and which judge is hereby empowered to exercise) all the jurisdiction exercisable by the President of the High Court under section 23 or section 25 of the Courts (Consolidation and Reform) Act 2010.”.</p> |
| Planning and Development Act 2000 | section 90(5) | <p>The substitution for that subsection of the following subsection:</p> <p>“(5)(a) An application under subsection (1) to the Circuit Court shall be made to the judge of the Circuit Court for the Circuit in which the land the subject of the application is situated.</p> <p>(b) The Circuit Court shall have jurisdiction to hear and determine an application under this section where the valuation of the land the subject of the application does not exceed the Circuit Court land valuation limit, within the meaning of section 40 of the Courts (Consolidation and Reform) Act 2010.</p> <p>(c) The Circuit Court may, for the purposes of paragraph (b), in relation to land that has not been given a rateable valuation or is the subject with other land of a rateable valuation, determine that its rateable valuation would exceed, or would not exceed, the Circuit Court land valuation limit.</p> <p>(d) Where the rateable valuation of any land the subject of the application under this section exceeds the Circuit Court land valuation limit, the Circuit Court shall, if an application is made to it in that behalf by any person having an interest in the proceedings, transfer the proceedings to the High Court, but any order made or act done in the course of such proceedings before the transfer shall be valid unless discharged or varied by the High Court.”.</p> |
| | section 160(5) | <p>The substitution for that subsection of the following subsection:</p> <p>“(5)(a) An application under this section to the Circuit Court shall be made to the judge of the Circuit Court for the Circuit in which the land which is the subject of the application is situated.</p> |

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| | | <p>(b) The Circuit Court shall have jurisdiction to hear and determine an application under this section where the valuation of the land which is the subject of the application does not exceed the Circuit Court land valuation limit, within the meaning of section 40 of the Courts (Consolidation and Reform) Act 2010.</p> <p>(c) The Circuit Court may, for the purposes of paragraph (b), in relation to land that has not been given a rateable valuation or is the subject with other land of a rateable valuation, determine that its rateable valuation would exceed, or would not exceed, the Circuit Court land valuation limit.</p> <p>(d) Where the rateable valuation of any land which is the subject of an application under this section exceeds the Circuit Court land valuation limit, the Circuit Court shall, if an application is made to it in that behalf by any person having an interest in the proceedings, transfer the proceedings to the High Court, but any order made or act done in the course of such proceedings before the transfer shall be valid unless discharged or varied by the High Court.”.</p> |
| Aviation Regulation Act 2001 | section 24(3) | The substitution in that subsection for the words “section 22 of the Courts Act, 1981” of the words “section 110 of the Courts (Consolidation and Reform) Act 2010”. |
| Finance Act 2001 | section 128(1) | The substitution for that subsection of the following subsection: “(1) Proceedings under section 127 are civil proceedings and may be instituted either in the High Court or, if, in the opinion of the Commissioners, the value of the thing which is the subject of the proceedings does not exceed the District Court damages limit (within the meaning of the Courts (Consolidation and Reform) Act 2010), the District Court.”. |
| Sex Offenders Act 2001 | section 23(1) | The substitution for that subsection of the following subsection: “(1) For the purpose of ensuring the expeditious hearing of applications under this Part, rules of court may make provision for the service of documents otherwise than by an authorised method of service referred to in section 237 of the Courts (Consolidation and Reform) Act 2010.”. |
| Carer’s Leave Act 2001 | section 22(3) | The substitution in that subsection for the words “section 22 of the Courts Act, 1981” of the words “section 110 of the Courts (Consolidation and Reform) Act 2010”. |
| Children Act 2001 | section 3(1) | The substitution in that subsection for the definition of the expression “summons” of the following definition: ““summons” has the meaning assigned to it by section 216 of the Courts (Consolidation and Reform) Act 2010;”. |
| | section 71(1) | The substitution for that subsection of the following subsection: “(1) The Children Court (within the meaning of section 67 of the Courts (Consolidation and Reform) Act 2010) is referred to as “the Court” in this Part and Part 8.”. |
| Prevention of Corruption (Amendment) Act 2001 ¹⁷⁶ | paragraph 4(3) of Schedule 1 (inserted by the <i>Prevention of Corruption (Amendment) Bill 2008</i> , section 6) | The substitution in that subparagraph for the words “section 22 of the Courts Act, 1981” of the words “section 110 of the Courts (Consolidation and Reform) Act 2010”. |

¹⁷⁶ This amendment assumes that the *Prevention of Corruption (Amendment) Bill 2008* has been enacted.

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| Local Government Act 2001 ¹⁷⁷ | paragraph 4(3) of Schedule 16 (inserted by the <i>Local Government (Mayor and Regional Authority of Dublin) Bill 2010</i> , section 79) | The substitution in that subparagraph for the words “section 22 of the Courts Act, 1981” of the words “section 110 of the Courts (Consolidation and Reform) Act 2010”. |
| Protection of Employees (Part-Time Work) Act 2001 | section 18(3) | The substitution in that subsection for the words “section 22 of the Courts Act, 1981” of the words “section 110 of the Courts (Consolidation and Reform) Act 2010”. |
| Communications Regulation Act 2002 | section 28(3) | The substitution in that subsection for the words “section 22 of the Courts Act, 1981” of the words “section 110 of the Courts (Consolidation and Reform) Act 2010”. |
| Ombudsman For Children Act 2002 | Schedule 1 Part 2 | The substitution in that Schedule for the words “Courts or court officers (other than those who were transferred to the Courts Service) mentioned in the Court Officers Acts, 1926 to 1999, or in the Courts (Supplemental Provisions) Act, 1961” of the words “Courts or court officers (other than those who were transferred to the Courts Service) mentioned in the Courts (Consolidation and Reform) Act 2010”. |
| Protection of Employees (Fixed-Term Work) Act 2003 | section 16(3) | The substitution in that subsection for the words “section 22 of the Courts Act, 1981” of the words “section 110 of the Courts (Consolidation and Reform) Act 2010”. |
| Intoxicating Liquor Act 2003 | section 19(10) | The substitution for that subsection of the following subsection: “(10) Where an order has been made under subsection (3), any person may make an objection, related to the prohibited conduct concerned, to the renewal of the licence of the licensed premises, and section 17A of the Intoxicating Liquor Act 2008 shall be construed accordingly.”. |
| Personal Injuries Assessment Board Act 2003 | section 40(2) | The substitution for that subsection of the following subsection: “(2) Accordingly the provisions of every enactment (and in particular section 109 of the Courts (Consolidation and Reform) Act 2010 but not section 110 of that Act) and every instrument under an enactment shall, with any adaptations of them that may be made under subsection (3), apply to an order to pay as they apply to a judgment of a court.”. |
| Health Act 2004 | Section 55O(2)(inserted by Health Act 2007, section 103) | The substitution in that subsection for the words “section 22 of the Courts Act, 1981” of the words “section 110 of the Courts (Consolidation and Reform) Act 2010”. |
| Sea Pollution (Hazardous Substances) (Compensation) Act 2005 | section 22 | The substitution for that section of the following section: “22.— The Council Regulation and sections 126 and 127 and Schedule 9 of the Courts (Consolidation and Reform) Act 2010 shall apply in respect of a judgment of a court or tribunal of a Member State (other than a court or tribunal of a territory of a Member State to which the Council Regulation does not apply).”. |
| Safety, Health and Welfare at Work Act 2005 | section 30(3) | The substitution in that subsection for the words “section 22 of the Courts Act, 1981” of the words “section 110 of the Courts (Consolidation and Reform) Act 2010”. |
| Social Welfare Consolidation | section 344(1) | (a) the substitution in that subsection for the definition of “antecedent order” of the following definition: |

¹⁷⁷ This amendment assumes that the 2010 Bill has been enacted.

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| Act 2005 | | <p>““antecedent order” means—</p> <p>(a) an order under section 346(5),</p> <p>(b) an order under section 346(6) (insofar as it is deemed to be an order under paragraph 4 of Part 3 of Schedule 8 of the Courts (Consolidation and Reform) Act 2010), or</p> <p>(c) an order under section 346(6) (insofar as it is deemed to be an order under paragraph 5 of Part 3 of Schedule 8 of the Courts (Consolidation and Reform) Act 2010);” and</p> <p>(b) the insertion in that subsection immediately following the definition of the expression “competent authority” of the following paragraph:</p> <p>“a reference to a District Court Clerk:</p> <p>(a) shall, where there are two or more District Court Clerks for the District Court District concerned, be construed as a reference to any of those Clerks;</p> <p>(b) includes reference to the successor of that person in the office of District Court Clerk;</p> <p>(c) includes reference to any person acting on behalf of the District Court Clerk concerned, and</p> <p>(d) where the context so admits, be construed as including a reference to a member of the staff of the Courts Service assigned to the Court Funds Office authorised in that behalf, referred to in section 254(1) of the Courts (Consolidation and Reform) Act 2010.”.</p> |
| | sections 346(6) to 346(9) inclusive | <p>The substitution for those subsections of the following subsections:</p> <p>“(6) An order made by the District Court under subsection (5) is, for the purposes of its variation or enforcement, deemed to be an order for payment by instalments made under paragraph 4 of Part 3 of Schedule 8 to the Courts (Consolidation and Reform) Act 2010, and that paragraph shall be read accordingly.</p> <p>(7) The District Court may, on the application of either the liable relative or the competent authority, vary in accordance with paragraph 5 of Part 3 of Schedule 8 to the Courts (Consolidation and Reform) Act 2010, an order made by it under subsection (5) and that paragraph shall, with any necessary modifications, be read accordingly, but any such application made by either party shall be notified to the other party in advance.</p> <p>(8) The District Court may, on application by the competent authority in whose favour an order was made under subsection (5) for an order under paragraph 6 of Part 3 of Schedule 8 to the Courts (Consolidation and Reform) Act 2010, proceed in accordance with that paragraph.</p> <p>(9) The following provisions shall not apply to orders made under subsection (5):</p> <p>(a) paragraph 4(3) of Part 3 of Schedule 8 to the Courts (Consolidation and Reform) Act 2010 (duration of instalment orders); and</p> <p>(b) paragraph 5(4) of Part 3 of Schedule 8 to the Courts (Consolidation and Reform) Act 2010 (duration of variation orders).”.</p> |
| Sea-Fisheries | section 23(3) | The substitution for that subsection of the following subsection: |

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| and Maritime Jurisdiction Act 2006 | | “(3) Subsection (1) shall not be read as affecting section 72 of the Courts (Consolidation and Reform) Act 2010.”. |
| Employees (Provision of Information and Consultation) Act 2006 | section 17(3) | The substitution in that subsection for the words “section 22 of the Courts Act, 1981” of the words “section 110 of the Courts (Consolidation and Reform) Act 2010”. |
| Employment Permits Act 2006 | Schedule 2, paragraph 4(3) | The substitution in that subparagraph for the words “section 22 of the Courts Act, 1981” of the words “section 110 of the Courts (Consolidation and Reform) Act 2010”. |
| Sea Pollution (Miscellaneous Provisions) Act 2006 | section 11 | The substitution for that section of the following section: “11.— The Council Regulation and sections 126 and 127 and Schedule 9 of the Courts (Consolidation and Reform) Act 2010 apply in respect of a judgment of a court or tribunal of a Member State other than a court or tribunal of a territory of a Member State to which the Council Regulation does not apply.”. |
| Chemicals Act 2008 | section 34 | The substitution for that section of the following section: “34.— For the avoidance of doubt, an order of the District Court confirming, varying or cancelling a notice under section 15(6), 16(6) or 27(3) shall be a decision of a judge of the District Court for the purposes of section 324 of the Courts (Consolidation and Reform) Act 2010.”. |
| Intoxicating Liquor Act 2008 | section 8 | The substitution in paragraph (a) of that section for the words “section 77 of the Courts of Justice Act 1924” of the words “section 69 of the Courts (Consolidation and Reform) Act 2010.”. |
| | immediately following section 17 | The insertion immediately following section 17 of the following section ¹⁷⁸ : “Grant of renewal of intoxicating liquor licences without court certificates. 17A.—(1) In this section — “the Act of 1902” means the Licensing (Ireland) Act 1902; “the Act of 1910” means the Finance (1909-10) Act 1910; “the Act of 1927” means the Intoxicating Liquor Act 1927; “the Act of 1952” means the Tourist Traffic Act 1952; “the Act of 1960” means the Intoxicating Liquor Act 1960; “the Act of 1988” means the Intoxicating Liquor Act 1988; “the Act of 1997” means the Licensing (Combating Drug Abuse) Act 1997; “licence” means a licence for the sale of intoxicating liquor for the grant of which the production of a certificate of the District Court or the Circuit Court (as the case may be) is required and includes a licence granted under section 13 of the Refreshment Houses (Ireland) Act 1860 or a wine retailer's off-licence granted under section 49 of the Act of 1910. (2) Subject to subsection (5), where a renewal is required of a licence for premises which have been licensed in the immediately preceding year or of a licence which has been suspended pursuant to an order under section 18(1) of Act of 1997, it shall be not necessary to produce a certificate of the District |

¹⁷⁸ Relocated from section 4 of the *Courts (No 2) Act 1986*, to facilitate the complete repeal of that Act.

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| | <p>Court to an officer of the Revenue Commissioners empowered to grant a renewal of such a licence.</p> <p>(3) Where a renewal of a licence is granted by an officer of the Revenue Commissioners and false or misleading information was given to the Commissioners in support of the application for such grant, the applicant shall be guilty of an offence and shall be liable on summary conviction to a class C fine within the meaning of Part 2 of the Fines Act 2010.</p> <p>(4) Where the applicant is convicted of an offence under subsection (3) or where there was a failure to comply with subsection (10), the District Court may order that the licence be forfeited.</p> <p>(5) Notwithstanding subsection (2), a licence shall not be renewable on expiry without the production of a certificate of the District Court for the District Court District within which the premises concerned are situate where—</p> <p>(a) a notice of objection to such renewal has been lodged with the Court within the time prescribed in rules of court, or</p> <p>(b) the licence is one which is renewable by virtue of the provisions of section 30(1)(b) of the Act of 1960, or</p> <p>(c) it is proposed to insert a condition in the licence in pursuance of section 8 or section 9 of the Act of 1927.</p> <p>(6) An objection to the renewal of a licence may be made by any person who, but for the passing of this Act, would have been authorised to object to the grant of a certificate required for the renewal of a licence in respect of the premises; and any such objection shall be deemed to be an objection to the grant of the certificate required by subsection (5).</p> <p>(7) Subject to subsection (8), the certificate required by subsection (5) shall be as to—</p> <p>(a) the good character of the licensee,</p> <p>(b) the peaceable and orderly manner in which the licensed premises were conducted in the year ending on the expiry of the licence, and</p> <p>(c) in the case of premises licensed by virtue of Chapter III of Part VI of the Act of 1952, the orderly manner in which the holiday camp (within the meaning of that Chapter) in which the premises are situate was conducted in the year ending on the expiry of the licence.</p> <p>(8) In the case of a renewal of a licence pursuant to the provisions of section 30(1)(b) of the Act of 1960, the certificate required by subsection (5) shall be as to—</p> <p>(a) the good character of the applicant, and</p> <p>(b) where business has been conducted in the premises concerned at any time during the year ending on the expiry of the licence, the peaceable and orderly manner in which the premises were conducted.</p> <p>(9) Notwithstanding subsection (2), a licence for an hotel, being a licence—</p> <p>(a) in respect of which effect was given to section 42(1) of the Act of 1952, or</p> <p>(b) which was granted after the passing of the Act of 1960, by virtue of</p> |
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| | | <p>paragraph (2) of section 2 of the Act of 1902,</p> <p>shall not be renewable on expiry without the production to the Revenue Commissioners of a certificate that the hotel in respect of which the licence was granted is registered in the register of hotels kept in accordance with section 24(1) of the Tourist Traffic Act 1939.</p> <p>(10) In applying for a renewal of a licence, the applicant shall inform the Revenue Commissioners of the following, where applicable:</p> <p>(a) that section 30 of the Act of 1960 applies;</p> <p>(b) that he proposes to apply to the District Court for the insertion of a condition in his licence in pursuance of section 8 or section 9 of the Act of 1927;</p> <p>(c) that the licence is one in respect of which effect was given to section 42(1) of the Act of 1952, or which was granted after the passing of the Act of 1960 by virtue of paragraph (2) of section 2 of the Act of 1902;</p> <p>(d) that the licence is a special restaurant licence granted pursuant to the Act of 1988;</p> <p>(e) that the licence has been suspended pursuant to an order under section 18(1) of the Act of 1997.</p> <p>(11) A reference in any enactment to the grant or renewal of a licence under the Courts (No. 2) Act shall be deemed to be a reference to the grant or renewal of a licence under this section.”.</p> |
| Land And Conveyancing Law Reform Act 2009 | section 3 | <p>The substitution in that section for the definition of “the court” of the following definition:</p> <p>““the court ” means—</p> <p>(a) the High Court, or</p> <p>(b) the Circuit Court when exercising the jurisdiction conferred on it by section 45 of the Courts (Consolidation and Reform) Act 2010;”.</p> |
| | section 126 | The deletion of that section. |
| National Asset Management Agency Act 2009 | Schedule 2, paragraph 4(3) | <p>The substitution for that subparagraph of the following subparagraph:</p> <p>“(3) In an order under this paragraph providing for the payment of compensation, the Circuit Court may, if in all the circumstances it considers it appropriate to do so, direct the employer concerned to pay to the employee concerned interest on the compensation at the rate referred to in section 109 of the Courts (Consolidation and Reform) Act 2010, in respect of the whole or any part of the period beginning 6 weeks after the date on which the determination of the Labour Court is communicated to the parties and ending on the date of the order.”.</p> |
| Fines Act 2010 | section 17 | <p>The substitution for that section of the following section:</p> <p>“17.— Monies paid into the court or otherwise received by it as a result of the appointment of a receiver under section 16 shall be applied in accordance with paragraph 10 of Schedule 10 to the Courts (Consolidation and Reform) Act 2010.”.</p> |
| | sections 19 and 22 | The deletion of those sections. |
| Inland Fisheries Act 2010 | section 76(2) | <p>The substitution for that subsection of the following subsection:</p> <p>“(2) Where a person is sent forward for trial on indictment by the Circuit</p> |

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| | | Court for an offence under section 65, 69, 97, 127, 140, 176, 182 or 285A (inserted by section 24 of the Act of 1962) of the Principal Act or section 29 of the Act of 1962 or for any offence against a bye-law described in section 57(4) and, apart from this subsection, a judge of that court would, as regards the proceedings, not have power to exercise the jurisdiction vested in that court by section 52(1) of the Courts (Consolidation and Reform) Act 2010 then for the purpose of enabling that judge to exercise such jurisdiction the offence may be treated as having been committed in the Circuit to which such judge is assigned.”. |
| | Schedule 4, paragraph 4(3) | The substitution in that subparagraph for the words “section 22 of the Courts Act, 1981” of the words “section 110 of the Courts (Consolidation and Reform) Act 2010”. |
| Criminal Justice (Psychoactive Substances) Act 2010 | section 19 | The substitution in subsection (1) of that section for the words “the Police (Property) Act 1897 and, where appropriate, section 25 of the Criminal Justice Act 1951” of the words “section 256 of the Courts (Consolidation and Reform) Act 2010”. |
| Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 | section 28 | The substitution for subsection (7) of that section of the following subsection: “(7) For the purposes of this section, section 86 of the Land And Conveyancing Law Reform Act 2009 shall be read as if the words “as such” wherever they appear in paragraph (b) of subsection (1) of that section were omitted.”, and the substitution for subsection (13) of that section of the following subsection: “(13) A person who institutes proceedings to have a conveyance declared void by reason of subsection (1) shall, as soon as may be, cause relevant particulars of the proceedings to be entered as a lis pendens under and in accordance with Part 12 of the Land And Conveyancing Law Reform Act 2009 in any form that the rules of court may provide.”. |
| | section 43(3) | The substitution for that subsection of the following subsection: “(3) References in this Part to a District Court Clerk include references: (a) to his or her successor in the office of District Court Clerk, (b) to any person acting on his or her behalf, and (c) to a member of the staff of the Courts Service assigned to the Court Funds Office authorised in that behalf.”. |
| | section 62 | The substitution for that section of the following section: “62.—(1) Where an attachment of earnings order has been made, any proceedings commenced under paragraph 9 of Part 3 of Schedule 8 to the Courts (Consolidation and Reform) Act 2010 for the enforcement of the relevant antecedent order lapses and any warrant or order issued or made under that paragraph ceases to have effect. (2) An attachment of earnings order ceases to have effect on the making of an order under paragraph 9 of Part 3 of Schedule 8 to the Courts (Consolidation and Reform) Act 2010 for the enforcement of the relevant antecedent order.”. |
| | sections 65, 136, 140(5), 143, 144 and 145 | The deletion of those sections and that subsection. |
| | section 185 | The substitution for that section of the following section: “185.—(1) Where an attachment of earnings order has been made, any proceedings commenced under paragraph 9 of Part 3 of Schedule 8 to the Courts (Consolidation and Reform) Act 2010 for the enforcement of the relevant antecedent order lapses and any warrant or order issued or made |

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| | | under that subsection ceases to have effect. (2) An attachment of earnings order ceases to have effect on the making of an order under paragraph 9 of Part 3 of Schedule 8 to the Courts (Consolidation and Reform) Act 2010 for the enforcement of the relevant antecedent order.”. |
| | sections 196(6), 198 and 199 | The deletion of that subsection and those sections. |
| Criminal Procedure Act 2010 | section 7 | The substitution in that section for the definition of “application for a re-trial order” of the following definition: ““application for a re-trial order” means an application under section 301 or section 302 of the Courts (Consolidation and Reform) Act 2010;” |
| | sections 8, 9, 10, 14, 23, 24, 31, 32 and 36 | The deletion of sections 8, 9, 10, 14, 23, 24, 31, 32 and 36. |
| | section 12(2) | The substitution for that subsection of the following subsection: “(2) Where the Court is hearing an application for a re-trial order and is satisfied that it is in the interests of justice to do so, it may exclude from the Court during the proceeding— (a) the public or any portion of the public, or (b) any particular person or persons, other than <i>bona fide</i> representatives of the press.”. |
| | section 13 | (i) the substitution for subsection (1) of that section of the following subsection: “(1) Where a person is ordered under section 301 or section 302 of the Courts (Consolidation and Reform) Act 2010 to be re-tried for an offence, he or she may, notwithstanding any rule of law, be again indicted and tried and, if found guilty, sentenced for that offence.”, and (ii) the substitution for subsection (3) of that section of the following subsection: “(3) A legal aid (re-trial order) certificate which was granted in relation to the proceedings under section 301 or section 302 of the Courts (Consolidation and Reform) Act 2010 shall have effect as if it had been granted also in relation to the re-trial ordered in respect of that person.”. |
| | sections 25, 26 and 29 | The substitution in each of those sections for each reference to “section 23” of a reference to “section 291 of the Courts (Consolidation and Reform) Act 2010”. |
| Civil Law (Miscellaneous Provisions) Bill 2010 ¹⁷⁹ | section 14(1) | The deletion from that subsection of the definition of “the Act of 1986”. |
| | sections 14(8) and 14(9) | The substitution in each of those subsections for the reference to “the Act of 1986” of a reference to “section 17A of the Intoxicating Liquor Act 2008 (inserted by the Courts (Consolidation and Reform) Act 2010)”. |
| Property Services (Regulation) Bill 2009 | section 78(2) | The substitution in that subsection for the words “(at the rate per annum standing specified for the time being in section 26 of the Debtors (Ireland) Act 1840, as varied from time to time pursuant to section 20 of the Courts Act 1981)” of the words “(at the judgment interest rate fixed for the time in |

¹⁷⁹ The amendments to published but unenacted Government Bills (which it is assumed for the purpose of the draft will all be enacted in their present form) appear in the sequence in which those Bills appear in the Order Papers for Dáil Éireann and Seanad Éireann as shown in the Government’s Legislative Programme for the Dáil Session commencing on 29 September 2010.

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| | | accordance with section 110 of the Courts (Consolidation and Reform) Act 2010)". |
| <i>Privacy Bill 2006</i> ¹⁸⁰ | section 7 | The deletion from that section of subsection (2). |
| <p><i>Section 48</i></p> <p style="text-align: center;">SCHEDULE 3 Part 2 Amendments necessitated to confirm Circuit Court jurisdiction (<i>section 48</i>)</p> | | |
| Poor Relief (Ireland) Act 1838 (1 & 2 Vic. c. 56) | section 78 | <p>The substitution for that section of the following section:</p> <p>“78.— Where the rate in respect of any rateable property is not fully paid within two calendar months after the rate made, a person authorised by or in accordance with law to collect rate for the place in which the rateable property is situated may bring proceedings for the recovery of the unpaid rate before a Judge of the Circuit Court assigned to the Circuit where the person liable to pay the rate resides or carries on business.”.</p> |
| | sections 106 to 109 inclusive | <p>The substitution for those sections inclusive of the following section:</p> <p>“106.— (1) An appeal lies from a decision of the District Court in civil or criminal proceedings under this Act to a Judge of the Circuit Court assigned to the Circuit within which the rate was made.</p> <p>(2) Where a person</p> <p>(a) is aggrieved by a rate made under this Act, or</p> <p>(b) has a material objection to:</p> <p>(i) a person being put in or left out of the rate, or</p> <p>(ii) to the sum charged on any person in the rate,</p> <p>the person aggrieved may apply to a Judge of the Circuit Court assigned to the Circuit within which the rate was made, within four calendar months after the cause of complaint arose, and that Judge may hear and decide the application and make such order on the application as seems fit, which order shall be final and conclusive and shall bind all of the parties.</p> <p>(3) In an application under subsection (2), the Circuit Court may order the name of a person interested or concerned, who has received notice of the application:</p> <p>(a) to be inserted in the rate and to be rated at such sum of money as the Court thinks right, or</p> <p>(b) to be struck out of the rate, or</p> <p>(c) to be rated at such altered sum as the Court orders.</p> <p>(4) In an application under subsection (2), the Circuit Court shall neither inquire into any matter not set out in the application notice, nor alter a rate with respect to any person not mentioned in the application notice, but if on such an application, the Court considers it necessary to quash or set aside the rate entirely, the Court may do so.</p> <p>(5) Where, in an application under subsection (2), the Circuit Court orders the name of a person to be struck out of a rate, or the rate on the person to be</p> |

¹⁸⁰ If the *Privacy Bill 2006* is enacted so as to make this amendment necessary, the modification noted in the footnote to section 40(2)(b) should be made to the language of that section.

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| | | <p>decreased, and the Court is satisfied that the person has paid money in consequence of the rate with which he or she ought not to have been charged, the Court may order the repayment of any excess payment to the person, together with any reasonable costs, charges and expenses occasioned to the person by having been required to make an overpayment.</p> <p>(6) Proceedings on an application under subsection (2) shall be on notice to every person named in the application notice.</p> <p>(7) The making of an application under subsection (2) does not operate to suspend the obligation to pay a rate struck, pending decision of the application.”.</p> |
| Poor Relief (Ireland) Act 1843 (6 & 7 Vict, c. 92) | sections 2 and 3 | <p>The substitution for those sections of the following sections respectively:</p> <p>“2.— A rate made in accordance with this Act on any lessor in respect of any property, whether occupied by one or more occupiers, may be recovered by a person empowered by law to do so as a contract debt by civil proceedings:</p> <p>(a) where the amount due does not exceed the District Court damages limit (within the meaning of the Courts (Consolidation and Reform) Act 2010), in the District Court before a Judge of the District Court assigned to the District in which the rate was made;</p> <p>(b) where the amount due exceeds the District Court damages limit but does not exceed the Circuit Court damages limit (within the meaning of the Courts (Consolidation and Reform) Act 2010), in the Circuit Court before a Judge of the Circuit Court assigned to the Circuit within which the rate was made, or</p> <p>(c) in any other case, in the High Court.</p> <p>3.—(1) If any rate mentioned in section 2 is not paid by the lessor within four calendar months after the making of the rate, a person authorised by or in accordance with law to recover the rate may serve notice in writing in a manner permitted by the Courts (Consolidation and Reform Act) 2010 on each or any occupier of the property to pay the rate due in respect of the property in his or her occupation and, after the expiry of one calendar month from the giving of such notice, may recover the rate from every and any such occupier (or, on his or her default, from any subsequent occupier), in accordance with the Poor Relief (Ireland) Act 1838.</p> <p>(2) Every occupier who pays a rate in accordance with subsection (1) may deduct from the rent for he or she is then liable, or later becomes liable, to pay in respect of the property, the amount of any rate he or she has paid in respect of that property. If rent at least equal to the amount of the rate is not then due, or does not subsequently become due, from that occupier, the occupier may recover the rate paid, or any balance of the rate paid and not deducted from rent due, in civil proceedings against the landlord in the court mentioned in section 2.</p> <p>(3) A covenant or agreement by which an occupier covenants or agrees to forego the deduction of any rate is, so far as the rate is concerned, void and of no effect.”.</p> |
| Ejectment and Distress (Ireland) Act 1846 (9 & 10 Vict, c. 111) ¹⁸¹ | section 8 | <p>The substitution for section 8 of the following section:</p> <p>“8.— (1) A sheriff may, with the consent in writing of the plaintiff or his solicitor, execute an execution order of possession in proceedings for</p> |

¹⁸¹ Section 104 of the *Landlord and Tenant Law Amendment Act Ireland 1860*, repeals section 8 “so far as the same refers to the relation of landlord and tenant in Ireland”. However, section 8 (as amended) is listed in the Fourth Schedule to *Courts (Supplemental*

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| | | <p>ejectment or a judgment for the recovery of possession of land, without removing from the land or disturbing the possession or occupation of land by an under-tenant or occupier who, at the time of execution of the execution order, signs before the sheriff an acknowledgement attested by the sheriff and endorsed on or attached to the execution order, which acknowledges, as the case may be, that the under-tenant attorns and holds as tenant from, or that the occupier holds and occupies by license and at the will of, the person entitled to execution of the execution order of possession.</p> <p>(2) An acknowledgement under this section may be in a form approved by the sheriff, and is not be subject to any stamp duty, court fee or other fee.</p> <p>(3) The sheriff shall deliver a copy of every acknowledgement given in accordance with this section to the person entitled to execution of the execution order of possession.</p> <p>(4) Execution of an execution order of possession by acknowledgment in accordance with this section is as valid and effectual to all intents as if the execution order had been executed by removal from possession and vacant possession delivered.”.</p> |
| Poor Relief (Ireland) Act 1849 (12 & 13 Vict, c. 104) | section 18 | <p>The substitution in that section for the words:</p> <p>“every judgment obtained in any action or suit in any superior court of law against any person or persons for poor rates, and every civil bill decree for poor rates filed in a superior court as hereinbefore provided”</p> <p>of the words:</p> <p>“every judgment in civil proceedings against a person for poor rates”.</p> |
| | section 29 | <p>The substitution for that section of the following section:</p> <p>“29.— For the avoidance of doubt, a Judge of the Circuit Court before whom proceedings are pending relating to the collection or recovery of rate may correct or amend any variance, clerical error or irregularity, not affecting the substantial merits of the question to be determined, in any notice, recognisance, or other document or instrument brought before him or her in proceedings to which this Act or any the Acts previously recited in this Act applies.”.</p> |
| Succession Duty Act 1853 (16 & 17 Vict, c. 51) | section 50 | <p>The substitution for that section of the following section:</p> <p>“50.— (1) An accountable party dissatisfied with the assessment of the Commissioners may appeal to the High Court in accordance with this section.</p> <p>(2) An accountable party wishing to appeal an assessment shall give notice in writing to the Commissioners of his intention to appeal within 21 days after the date of receipt by him or her of notice of the assessment.</p> <p>(3) The notice shall include or attach a statement of the grounds of appeal.</p> <p>(4) Where the sum of duty on the assessment in dispute does not exceed the Circuit Court damages limit (within the meaning of the Courts (Consolidation and Reform) Act 2010), the appeal against the assessment may be heard and decided by a Judge of the Circuit Court assigned to the Circuit in which the accountable party resides or (at the election of the appellant) the Circuit in which the property concerned is situated, but in any other case the appeal shall be heard and decided by the High Court.</p> |

Provisions) Act 1961 as conferring jurisdiction on the judge of the circuit in which is situate the courthouse in which the order or decree for recovery of possession was made, so it is assumed that it remains in force to some limited extent.

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| | | (5) On the hearing of an appeal, the Court may direct any inquiry, valuation or report to be made by an officer of the Court or by another person nominated for that purpose by the Court or Judge.”. |
| Boundary Survey (Ireland) Act 1854 (17 & 18 Vict, c. 17) | sections 8 and 9 | The substitution for those sections of the following sections respectively: “8.— A penalty imposed by this Act may be recovered by proceedings in the District Court before a Judge assigned to the District in which the person obliged to pay the penalty resides or carries on any business. 9.—(1) A person interested in a boundary to which this Act applies who is dissatisfied with, or objects to, a boundary line or part of a boundary line marked out by a surveyor under the provisions of this Act may appeal to the Circuit Court, on notice to the boundary surveyor and to any other person the Court directs, against the marking of the boundary. (2) A Judge of the Circuit Court assigned to the Circuit in which the boundary line or part of the boundary line is situated may hear and decide the application and make such order on the application as that Judge thinks fit.”. |
| Literary and Scientific Institutions Act 1854 (17 & 18 Vict, c. 112) | sections 29 and 30 | The substitution for those sections of the following sections respectively: “29.—(1) Not fewer than three fifths of the members of an institution may decide that the institution shall be dissolved. (2) On such a determination, the institution shall be dissolved either forthwith, or at the time specified in the determination, and all necessary steps for the disposal and settlement of the property of the institution and of its claims and liabilities, shall be taken according to the rules of the institution, or where there are no such rules, as the governing body of the institution determines expedient. (3) If a dispute arises among the governing body or the members of the institution concerning the determination of its affairs, a member of the governing body or member may apply to a Judge of the Circuit Court assigned to the Circuit in which the principal building of the institution is situated and that Judge may make such order for the determination of the institution’s affairs as he or she considers appropriate. 30.—(1) If, on the dissolution of an institution, any property remains after the satisfaction of all of its debts and liabilities, that property shall not be paid to or distributed among the members of the institution or any of them, but shall be given to another institution, as determined by the members at the time of dissolution or in default of such determination by the members, by a Judge of the Circuit Court mentioned in section 29, on the application of any interested person. (2) This section does not apply to an institution which is a company.”. |
| Land Law (Ireland) Act 1881 (44 & 45 Vict, c. 49) | section 37(1) | The substitution in that subsection 37 for the words “the civil bill court of the county where the requiring the cognizance of the court arises” of the words “the Judge of the Circuit Court assigned to the Circuit in which the matter requiring the cognizance of the Court arises”. |
| Public Health Acts Amendment Act 1890 (53 & 54 Vict, c. 59) | section 7 | The substitution for that section of the following section: “7.—(1) A person aggrieved – (a) by any order, judgment, decision or requirement of a local authority under this Act; (b) by the withholding of any order, certificate, licence, consent or approval which may be made, granted or given by a local authority under this Act; |

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| | | <p>(c) by any order of the District Court in civil proceedings under any provision of this Act;</p> <p>may appeal to a Judge of the Circuit Court assigned to the Circuit in which any part of the functional area of the local authority is situated.</p> <p>(2) A person convicted by the District Court under any provision of this Act may appeal to the Circuit Court in the manner provided by the Courts (Consolidation and Reform) Act 2010.”.</p> |
| Industrial and Provident Societies Act 1893 (56 & 57 Vict, c. 39) | section 23(1) | <p>The substitution for that subsection of the following subsection:</p> <p>“(1) Any money payable by a member to a registered society shall be a debt due from that member to the society, and shall be recoverable as such in civil proceedings:</p> <p>(a) where the amount due does not exceed the District Court damages limit (within the meaning of the Courts (Consolidation and Reform) Act 2010), in the District Court before a Judge of the District Court assigned to the District in which the registered office of the society is situated or (at the election of the society) in which the member resides;</p> <p>(b) where the amount due exceeds the District Court damages limit but does not exceed the Circuit Court damages limit (within the meaning of the Courts (Consolidation and Reform) Act 2010), in the Circuit Court before a Judge of the Circuit Court assigned to the Circuit in which the registered office of the society is situated or (at the election of the society) in which the member resides, or</p> <p>(c) in any other case in the High Court”.</p> |
| | section 48(1) | <p>The substitution for that subsection of the following subsections:</p> <p>“(1) Every officer of a registered society who has receipt or charge of money (or the executors or administrators of any such officer) shall, at the times provided by the rules of the society, or on demand in writing by the committee of the society given or left at the officer’s last or usual place of residence, give any account required by the society, or by its committee, to be examined and allowed or disallowed by the society or committee.</p> <p>(1A) Every officer mentioned in subsection (1) shall, at the times provided or on demand in accordance with subsection (1), pay over all money and deliver all property for the time being in his hands or custody to a person appointed by the society or committee.</p> <p>(1B) Where an officer, executor or administrator neglects or refuses to deliver an account or to pay over money or to deliver property, the society may bring proceedings on the bond or security mentioned in section 47, or may apply to a Judge of the Circuit Court assigned to the Circuit in which the society has its registered office or (at the election of the society) in which the officer ordinarily resides, who may hear and decide the application summarily.</p> <p>(1C) An application mentioned in subsection (1B) may, where the amount of any money or the value of any property concerned does not appear to exceed the District Court damages limit, be made to a Judge of the District Court assigned to the District in which the society has its registered office or (at the election of the society) in which the officer ordinarily resides.</p> <p>(1D) The order of the Court in an application under this section shall be final and conclusive.”.</p> |
| | section 49 | <p>The substitution in that section for the words “and application for the</p> |

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| | | enforcement thereof may be made to the County Court.” of the words “and application for the enforcement of such a decision may be made to the Judge of the Circuit Court assigned to the Circuit in which the registered office of the Society is situated, but this section does not apply in any case to which the provisions of the Credit Union Act 1997 apply.”. |
| | paragraph (e) of section 61 | In paragraph (e) of section 61, The substitution in that paragraph for the words: “the county court of the district where the registered office of the society is situated” of the words: “the Judge of the Circuit Court assigned to the Circuit in which the registered office of the society is situated”. |
| Finance Act 1894 (57 & 58 Vict, c. 30) | section 10(5) | The substitution for that subsection of the following subsection: “(5) Where the value of the property in respect of which the dispute arises as alleged by the Commissioners does not exceed the Circuit Court damages limit (within the meaning of the Courts (Consolidation and Reform) Act 2010), the appeal under this section may be made, at the option of the appellant – (a) to a Judge of the Circuit Court assigned to the Circuit in which the appellant resides or (b) to a Judge of the Circuit Court assigned to the Circuit in which the property in respect of which the dispute arises is situated, and this section applies in the case of any such appeal as if the Circuit Court were the High Court.”. |
| Merchant Shipping Act 1894 (57 & 58 Vict, c. 60) | section 547(4)(c) | The substitution for that paragraph of the following paragraph: “(c) it shall be referred to the arbitration of and decided by a Judge of the Circuit Court or County Registrar nominated by the President of the Circuit Court, and any Judge or County Registrar so acting shall be included within any reference to “arbitrators” elsewhere in this Act.”. |
| Friendly Societies Act 1896 (59 & 60 Vict, c. 25) | section 31(2) | The substitution for that subsection of the following subsection: “(2) Any money payable by a member to a society or branch shall be a debt due from that member to the society or branch, and shall be recoverable as such in civil proceedings: (a) where the amount due does not exceed the District Court damages limit (within the meaning of the Courts (Consolidation and Reform) Act 2010), in the District Court before a Judge of the District Court assigned to the District in which the registered office of the society is situated or (at the election of the society) in which the member resides; (b) where the amount due exceeds the District Court damages limit but does not exceed the Circuit Court damages limit (within the meaning of the Courts (Consolidation and Reform) Act 2010), in the Circuit Court before a Judge of the Circuit Court assigned to the Circuit in which the registered office of the society is situated or (at the election of the society) in which the member resides, or (c) in any other case in the High Court.”. |
| | section 55(2) | The substitution for that subsection of the following subsections: “(2) Where an officer, executor or administrator neglects or refuses to deliver |

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| | | <p>an account or to pay over money or to deliver property, the trustees or authorised officers of the society or branch may bring proceedings on the bond or security, or may apply to a Judge of the Circuit Court assigned to the Circuit in which the society has its registered office or (at the election of the society) in which the officer ordinarily resides, who may hear and decide the application summarily.</p> <p>(2A) An application mentioned in subsection (2) may, where the amount of any money or the value of any property concerned does not appear to exceed the District Court damages limit, be made to a Judge of the District Court assigned to the District in which the society has its registered office or (at the election of the society) in which the officer ordinarily resides.</p> <p>(2B) The order of the Court in an application under this section shall be final and conclusive.”.</p> |
| | section 68(1) | The substitution in that section for the words “and application for the enforcement thereof may be made to the County Court” of the words “and application for the enforcement of such a decision may be made to the Judge of the Circuit Court assigned to the Circuit in which the registered office of the society is situated, but this section does not apply in any case to which the provisions of the Credit Union Act 1997 apply”. |
| | sections 68(5) and 68(6) | <p>The substitution for those subsections of the following subsections respectively:</p> <p>“(5) Where the rules of a registered society or branch direct or require that disputes shall be referred to a court, a dispute shall be heard and decided by a Judge of the District Court assigned to the District in which the registered office of the society is situated or, where any amount in dispute exceeds the District Court damages limit, by a Judge of the Circuit Court assigned to the Circuit in which the registered office of the society is situated.</p> <p>(6) Where the rules contain no direction or requirement concerning disputes, or where no decision is made on a dispute within 40 days after application to the society or branch for a reference under its rules, the member or person aggrieved may apply to a Judge of the District Court assigned to the District in which the registered office of the society is situated or, where any amount in dispute exceeds the District Court damages limit, to a Judge of the Circuit Court assigned to the Circuit in which the registered office of the society is situated, and that Judge may hear and decide the dispute.</p> <p>(6A) In the case of a society with branches, the period of 40 days does not begin to run until application has been made in succession to all of the bodies entitled to decide the dispute under the rules of the society or branch, provided that no such rules may require a greater delay than three months between each successive determination.”.</p> |
| | section 106 | <p>The insertion in that section immediately following the definition of the expression “Treasury regulations” of the following paragraph:</p> <p>“Any dispute or proceedings to which this Act relates and not otherwise provided for in this Act may be heard and decided by a Judge of the Circuit Court assigned to the Circuit in which the registered office of the society is situated.”.</p> |
| Open Spaces Act 1906 (6 Edw. 7, c. 25) | section 4(2) | <p>The substitution for that subsection of the following subsection:</p> <p>“(2) The Court for the purposes of this section shall be either the High Court or the Circuit Court for the Circuit in which the whole or any part of the open space is situated.”.</p> |
| Public Health Acts Amendment Act 1907 (7 Edw. 7, c. | section 7(1) | <p>The substitution for that subsection of the following subsection:</p> <p>“7.—(1) A person aggrieved –</p> |

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| 53) | | <p>(a) by any order, judgment, decision or requirement of a local authority under this Act;</p> <p>(b) by the withholding of any order, certificate, licence, consent or approval which may be made, granted or given by a local authority under this Act;</p> <p>(c) by any order of the District Court in civil proceedings under any provision of this Act;</p> <p>may appeal to a Judge of the Circuit Court assigned to the Circuit in which any part of the functional area of the local authority is situated.</p> <p>(2) A person convicted by the District Court under any provision of this Act may appeal to the Circuit Court in the manner provided by the Courts (Consolidation and Reform) Act 2010.”.</p> |
| Finance (1909-10) Act 1910 (10 Edw. 7 & 1 Geo. 5, c. 8) | proviso to section 33(4) | <p>The substitution for the proviso to that subsection of the following proviso:</p> <p>“Provided that where the total or site value of the property in respect of which the dispute arises, as alleged by the Commissioners, does not exceed €60,000, the appeal under this section may be made, at the election of the appellant –</p> <p>(a) to a Judge of the Circuit Court assigned to the Circuit in which the appellant resides, or</p> <p>(b) to a Judge of the Circuit Court assigned to the Circuit in which the property the subject of the appeal is situated,</p> <p>and this section applies in the case of any such appeal as if the Circuit Court were the High Court.”.</p> |
| Trade Union Act 1913 (2 & 3 Geo. 5. c. 10.) | section 3(2) | <p>The substitution in that subsection for the words “and on being recorded in the county court, may be enforced as if it had been an order of the county court” of the words “may be enforced as if it were an order of the Circuit Court made in civil proceedings by the judge of the Circuit Court for the Circuit in which the person in whose favour the decision or decision was made ordinarily resides.”.</p> |
| <p><i>Section 61</i></p> <p>SCHEDULE 3</p> <p>Part 3</p> <p>Amendments necessitated to confirm District Court jurisdiction (<i>section 61</i>)¹⁸²</p> | | |
| Cemeteries Clauses Act 1847 (10 & 11 Vict.) c. 65 | section 2 | The deletion from that section of the definition of a “justice”. |

¹⁸² The Commission decided, having regard to the proposed *Sale of Alcohol Bill* (included in Section B of the Government’s Legislation Programme, September 2010), that it was unnecessary to make the detailed textual amendments which could be made to the pre-1902 Intoxicating Liquor Licensing Acts, because it will be clear (as is currently the case) from the conferral on the District Court of its current intoxicating liquor licensing jurisdiction and the interpretational rules on references to predecessors of the District Court and its judges, as to where this jurisdiction resides and how it is exercised. (This is why section 9 and the Schedule of the Courts (No. 2) Act 1986, which make various amendments to the pre-1902 Intoxicating Liquor/Licensing Acts, are excluded from the consolidation). The Acts affected by this decision appear to be the following: *Excise Licences Act 1825*; *Beer Licences Act 1830*; *Illicit Distillation (Ireland) Act 1831*; *Licensing (Ireland) Act 1833*; *Licensing (Ireland) Act 1836*; *Spirits (Ireland) Act 1854*; *Licensing (Ireland) Act 1855*; *Public Houses (Ireland) Act 1855*; *Licensing (Ireland) Act 1860*; *Refreshment Houses (Ireland) Act 1860*; *Sale of Spirits Act 1862*; *Beerhouses (Ireland) Act 1864*; *Beerhouses (Ireland) Act 1864 Amendment Act 1871*; *Licensing Act 1872*; *Licensing (Ireland) Act 1874*; *Beer Licences Regulation (Ireland) 1877*; *Public Health Acts Amendment Act 1891*, section 51; *Beer Retailers and Spirits Grocers Retail Licences (Ireland) Act 1900*; and *Licensing (Ireland) Act 1902*.

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| | section 64 | The substitution for that section of the following section: “64. All things herein or in the special Act, or any Act incorporated therewith, authorised or required to be done by two justices may and shall be done by a Judge of the District Court assigned to the District in which the matter requiring the cognisance of the Judge arises, and if such a matter arises in respect of land situated not wholly in one District, shall be done by a Judge assigned to the District in which any part of the land is situated.”. |
| Town Police Clauses Act 1847 (10 & 11 Vict, c. 89) | section 8 | The deletion of that section. |
| | section 26 | The substitution for the words “two justices” of the words “a Judge of District Court assigned to the District Court District in which the pound or place is located”. |
| | sections 28 and 29 | The substitution in each of those sections for the word “justice” of the words “Judge of District Court assigned to the District Court District in which that place is located”. |
| | section 48 | The substitution for the words “a justice”, wherever they appear, of the words “a Judge of the District Court”. |
| | section 49 | The substitution for the word “justice” of the words “Judge of the District Court assigned to the District in which the licence was issued”. |
| | section 65 | The substitution for the word “justice”, wherever it appears, of the words “Judge of the District Court”. |
| | section 66 | The substitution for the words “one justice” of the words “a Judge of the District Court assigned to the District in which the fare was incurred”. |
| | section 67 | The substitution for the words “the justices” of the words “a Judge of the District Court”. |
| | section 73 | The substitution for the word “justices” of the words “Judge of the District Court”. |
| | section 75 | The substitution for that section of the following section: “75. Anything in a special Act, or any Act incorporated with this Act, authorised or required to be done by two justices, may and shall be done by a Judge of the District Court.”. |
| Registration of Clubs (Ireland) Act 1904 (4 Edw 7, c. 9) | sections 1 and 2 | The substitution for those sections of the following sections respectively: “1.—(1) A District Court Clerk, or other member of the staff of the Courts Service for the time being so designated by the Service (in this Act, ‘the registrar’) shall keep a register, in the form prescribed by the District Court Rules, for every District Court District, containing the particulars set out in this section, for each club situated within that District to which a certificate of registration is granted under the provisions of this Act. (2) The particulars for each club are: (a) the name of the club; (b) the date of the certificate; (c) whether the certificate is granted for the first time or on renewal; (d) the address of the premises to which the certificate is applicable; (e) the names and addresses of the officials and the committee of management or governing body of the club, and |

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| | | <p>(f) whether the club is tenant or proprietor and occupier of the premises.</p> <p>(3) The register and copies of rules lodged with the registrar may be inspected during the hours of business of the District Court Office, without fee, by a member of the Garda Síochána or an officer of the Revenue Commissioners and, on payment of any fee prescribed, by any other person.</p> <p>(4) The registration of a club under this Act does not constitute the club licensed premises or authorise any sale in those premises of exciseable liquor which would otherwise be illegal.</p> <p>(5) Fees prescribed under this Act may be prescribed in a Court fees order made under section 253 of the Courts (Consolidation and Reform) Act 2010.</p> <p>2.—(1) The secretary of a club desiring a certificate of registration shall lodge with the registrar an application signed by the chairman or secretary of the club, stating the name and object of the club and the address of the premises occupied by the club, and shall publish the notice of such application once in a newspaper circulating in the District.</p> <p>(2) The application shall be accompanied by:</p> <p>(a) two copies of the rules of the club,</p> <p>(b) a list of the names and addresses of the officials and committee of management or governing body and the names of the members and</p> <p>(c) a certificate signed by the owner of the premises or his or her or its legal representative, certifying that to the best of the owner’s knowledge and belief, the premises occupied (or to be occupied) by the club applying is to be (or, where the application is by an existing club, has been and is to be) conducted as a <i>bona fide</i> club, and not mainly for the supply of exciseable liquor, and providing for countersignature of that certificate by the Judge of the District Court assigned to the District following decision of the application.</p> <p>(3) The secretary of a club desiring a renewal of the certificate shall, not later than 21 days prior to its expiry, apply to the registrar for renewal in the same manner and subject to the same incidents and publication as in the case of an original application for registration.</p> <p>(4) Every application for an original certificate or for a renewal shall, as a condition of registration, be accompanied by the prescribed fee.”</p> |
| | section 3 | <p>(i) the substitution for subsections (1) and (2) of that section of the following subsections respectively:</p> <p>“(1) The registrar shall forthwith give notice of every application to the Superintendent of the Garda Síochána for the district and, if no objection is taken as provided in this Act, the court shall, if satisfied that the application has been duly made and that the rules of the club conform with the provisions of this Act, grant the application.</p> <p>(2) The Superintendent and any person resident in the parish in which the club premises are situated may lodge objections to the grant or renewal of the certificate on any of the grounds of objection specified in this Act. Such objections shall be lodged by the objectors with the</p> |

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| | | <p>registrar within 10 days of the receipt or publication of the notice of application, and at the same time a copy of the objections shall be sent by them to the secretary of the club applying for the grant or renewal of a certificate.”, and</p> <p>(ii) the deletion from that section of subsection (7).</p> |
| | section 7 | <p>(i) the substitution in subsection (1) of that section for the words “a justice of the peace of any county or borough or divisional justice of the Dublin Metropolitan Police District” of the words “a Judge of the District Court”, and</p> <p>(ii) the substitution in subsections (1) and (2) of that section for the words “constable or constables” of the words “member of the Garda Síochána”.</p> |
| | section 8 | <p>(i) the substitution in subsection (2) of that section for the words “a justice of the peace or divisional justice of the Dublin Metropolitan Police District” of the words “a Judge of the District Court”, and</p> <p>(ii) the substitution in subsection (2) of that section for the words “a penal sum under the Fines Act (Ireland), 1851” of the words “a fine”.</p> |
| | section 11 | <p>The substitution for that section of the following section:</p> <p>“11.—(1) The decision of the court in dealing with an application for an original certificate, or for the renewal of a certificate, or in cancelling a certificate, may be appealed in accordance with section 324 of the Courts (Consolidation and Reform) Act 2010.</p> <p>(2) A Judge shall not adjudicate on the hearing of any application or complaint affecting a club of which he or she is a member.</p> <p>(3) A summons addressed to a club shall be validly served if served on the secretary of the club, and the Court may direct service of the summons on any other person.”.</p> |
| | section 13 | <p>(i) the substitution in that section for the definition of the “Court” of the following definition:</p> <p>““Court” means the District Court”, and</p> <p>(ii) the deletion from that section of the definition of ‘Clerk of petty sessions’.</p> |
| Law of Distress Amendment Act 1908 (8 Edw 7, c. 53) | section 2 | <p>The substitution for that section of the following section:</p> <p>“2.(1) This section applies where a superior landlord, or any agent employed by him or her, has been served with the declaration and inventory mentioned in section 1 and, in the case of an under-tenant or lodger, the undertaking mentioned in section 1 has been given and the amount of rent (if any) then due has been paid or tendered in accordance with that undertaking.</p> <p>(2) If any such superior landlord or agent, levies or proceeds with a distress on the furniture, goods or chattels of the under-tenant, lodger, or other person, that superior landlord or agent shall be guilty of an illegal distress, and the under-tenant, lodger, or other person may apply to the District Court for an order for the restoration to him or her of such goods.</p> <p>(3) The application shall be heard by a Judge of the District Court assigned to the District in which the distress was levied, and the Judge, having heard evidence of the declaration and inventory and such other evidence as is offered, may make such order for the recovery of the</p> |

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| | | goods, or other order, including for the payment of compensation, as seems just.”. |
| Hotel Proprietors Act 1963 | section 10 | See <i>Schedule 3, Part 1</i> |

Section 9

SCHEDULE 4
Restatements

| Provision affected | Source provision | Restatement of provision affected |
|---|---|---|
| Lunacy Regulation (Ireland) Act 1871, section 68 ¹⁸³ | Courts Act 1971, section 4 | See <i>Schedule 3, Part 1</i> |
| Intoxicating Liquor Act 1927, sections 25(1) and 27 | Courts (No. 2) Act 1986, sections 6 and 7 | <p>25.—(1) Subject to the provisions of subsection (1A) of this section, whenever the holder of any licence for the sale of intoxicating liquor by retail is convicted of an offence to which this Part of this Act applies the conviction shall, if the person so convicted is the holder of one such licence only, be recorded on such licence or, if such person is the holder of two or more such licences in respect of the same premises, be recorded on all such licences or, if such person is the holder of two or more such licences which do not all relate to the same premises, be recorded on such one or more of those licences as relate to the premises in respect of which the offence was committed.</p> <p>27.—(1) Whenever the holder of any licence for the sale of intoxicating liquor is convicted by a Judge of the District Court of an offence to which this Part of this Act applies, an appeal shall lie from such conviction to the Judge of the Circuit Court within whose Circuit the District or any part of the District of such Judge of the District Court is situate, and the decision of such Judge of the Circuit Court shall be final and not appealable.</p> <p>(2) On the hearing of an appeal under subsection (1) of this section from a conviction for an offence relating to prohibited hours, the Judge of the Circuit Court may, although affirming the conviction, make, if in his discretion he so thinks proper, an order declaring that such conviction shall not be recorded on such licence and, whenever such an order is so made, such conviction shall not be so recorded and shall for all purposes be deemed never to have been so recorded and, accordingly, any forfeiture occasioned by the recording of such conviction shall be deemed to be cancelled.</p> |
| Air Navigation and Transport Act 1936 | Courts Act 1988, section 3 | See <i>Schedule 3, Part 1</i> |
| Charities Act 1961, section 29 | Court and Court Officers Act 1995, section 52 | See <i>Schedule 3, Part 1</i> |
| Courts (Establishment and Constitution) Act 1961, section 5(2)(b) | Courts Act 1991, section 21 | See <i>Schedule 3, Part 1</i> |
| Courts | Courts Act 1991, section | (b) the office of President of the District Court or Judge of the |

¹⁸³ The amendment concerned is only necessary (to facilitate complete repeal of the 1971 Act) if section 68 of the 1871 Act has not previously been repealed by the *Mental Capacity Bill*: see note 1, above.

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| (Establishment and Constitution) Act 1961, section 6(1)(b) | 21 | District Court. |
| Civil Liability Act 1961, section 49(1)(a) (i) | Courts Act 1988, section 4 | (i) the total of such amounts (if any) as the judge shall consider proportioned to the injury resulting from the death to each of the dependants, respectively, for whom on whose behalf the action is brought |
| Guardianship of Infants Act 1964, section 5 | Courts Act 1981, section 15 and Courts and Court Officers Act 2002, section 21 | 5.—(1) Subject to subsection (2) of this section, the jurisdiction conferred on a court by this Part may be exercised by the Circuit Court or the District Court. (2) The District Court and the Circuit Court, on appeal from the District Court, shall not have jurisdiction to make an order under this Act for the payment of a periodical sum at a rate greater than €150 per week towards the maintenance of an infant. (3) The jurisdiction conferred by this Part is in addition to any other jurisdiction to appoint or remove guardians or as to the wardship of minors or the care of minors' estates. |
| Registration of Title Act 1964, section 18 | Courts Act 1991, section 3 | See <i>Schedule 3, Part 1</i> |
| Family Law (Maintenance of Spouses and Children) Act 1976, sections 21A and 23 | Courts and Court Officers Act 2002, sections 19 and 20 | See <i>Schedule 3, Part 1</i> |
| Judicial Separation and Family Law Reform Act 1989, section 30 | Court and Court Officers Act 1995, section 53 | See <i>Schedule 3, Part 1</i> |
| Judicial Separation and Family Law Reform Act 1989, section 32 | Court and Court Officers Act 1995, section 54 | See <i>section 48(2)</i> |

| <i>Section 9</i> | | | |
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| SCHEDULE 5 Preserved provisions | | | |
| | Enactment (1) | Provisions preserved (2) | |
| 1849 (12 & 13 Vict.) c. 16 | Justices Protection (Ireland) Act 1849 | the entire Act, so far as it remains in force | |
| 1872 (35 & 36 Vict.) c. 51 | Judges' Salaries Act 1872 | the entire Act, so far as it remains in force | |
| No. 10 of 1924 | The Courts of Justice Act 1924 | section 39 | |
| No. 27 of 1926 | Court Officers Act 1926 | section 43(3), as amended by this Act | |
| No. 21 of 1946 | Courts of Justice (District Court) Act 1946 | sections 20 and 21 ¹⁸⁴ | |
| No. 20 of 1947 | Courts of Justice Act 1947 | section 19 | |
| No. 8 of 1949 | Courts of Justice (District Court) Act 1949 | section 2 | |

¹⁸⁴ Head 34 of the *General Scheme of the Judicial Council Bill* (published August 2010) proposes to repeal section 21.

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| No. 32 of 1953 | Courts of Justice Act 1953 | section 5 | |
| No. 16 of 1961 | Courts of Justice and Court Officers (Superannuation) Act 1961 | the entire Act | |
| No. 38 of 1961 | Courts (Establishment and Constitution) Act 1961 | the entire Act (as amended or restated by this Act), except section 3(2) and section 6A | |
| No. 39 of 1961 | Courts (Supplemental Provisions) Act 1961 | sections 5, 6, 10(4), 17, 18, 19, 29, 30, 31, 35(1), 46 and 46A | |
| No. 11 of 1964 | Courts Act 1964 | section 5 | |
| No. 21 of 1968 | Courts (Supplemental Provisions)(Amendment) (No. 2) Act 1968 | the entire Act | |
| No. 26 of 1973 | Courts Act 1973 | section 2 | |
| No. 23 of 1991 | Courts (Supplemental Provisions)(Amendment) Act 1991 | the entire Act | |
| No. 19 of 1983 | Courts-Martial Appeals Act 1983 | section 9(1) | |
| No. 31 of 1995 | Courts and Court Officers Act 1995 | Part IV, sections 31, 47 and 48 | |
| No. 43 of 1997 | Courts (No. 2) Act 1997 | sections 4, 6, 7 and 8 | |
| No. 25 of 1999 | Courts (Supplemental Provisions)(Amendment) Act 1999 | the entire Act | |
| No. 15 of 2000 | Courts (Supplemental Provisions)(Amendment) Act 2000 | the entire Act | |
| No. 15 of 2002 | Courts and Court Officers Act 2002 | sections 4 to 6 inclusive, sections 8 to 11 inclusive, section 29 and section 31 | |

Section 13

SCHEDULE 6
Provisions supplemental to *section 13*

Admiralty jurisdiction

1.—(1) The “admiralty jurisdiction” of the High Court includes in particular, and without limitation, any jurisdiction formerly exercisable by any Court of Admiralty, Prize Court or court of survey and jurisdiction under any law to decide any proceedings, or question or request for any remedy, and exercise any power as heretofore, in any proceedings-

[CAIA 1867, ss. 27-34, 37]

- (I) in relation to salvage;
- (II) in relation to towage;
- (III) arising from any claim for damage received or done by any ship;
- (IV) arising from any claim for necessaries supplied to any ship elsewhere than in the port to which the ship belongs;
- (V) arising between the co-owners or any of them touching the title to or the ownership, possession, employment and earnings of any ship registered in the State or any share of any such ship, including jurisdiction to determine all accounts outstanding and unsettled between the parties in relation thereto and power to direct that the ship concerned or any share of that ship be sold;
- (VI) arising from any claim for the building, equipping or repair of any ship;
- (VII) arising from any claim by a seaman of any ship for wages or any claim by a master of any ship for wages or for disbursements made by him on account of the ship;
- (VIII) arising from any claim by the owner, consignee or assignee of any bill of lading of any goods carried into any port in the State or shipped upon or carried or about to be shipped upon or carried by any ship from any port in the State, for damage by the negligence, misconduct or breach of duty or breach of contract by the owner, master or crew of a ship;
- (IX) concerning the sale of a ship or any share in a ship;
- (X) to prohibit any dealing with a ship or any share in a ship;
- (XI) in respect of a mortgage of, or charge on, a ship or any share in a ship, whether the ship or its proceeds is under arrest of the Court or not;
- (XII) arising out of bottomry;
- (XIII) for the forfeiture of any ship or her tackle, apparel or furniture, or the restoration thereof after seizure, or for costs or damages in respect of the seizure or

[CAIA 1876, s. 15]

detention thereof;
 (XIV) in the nature, or arising out, of pilotage;
 (XV) arising out of a general average act;
 (XVI) arising out of any agreement made for or in relation to the use or hire of a ship, or for or in relation to the carriage of goods in any ship, and any application in tort in respect of goods carried in any ship;
 (XVII) otherwise brought under or by virtue of:
 (i) the *Merchant Shipping Acts 1894 to 2010*;
 (ii) the *Mercantile Marine Act 1955*;
 (iii) the *Jurisdiction of Courts (Maritime Conventions) Act 1989*;
 (iv) the *Oil Pollution of the Sea (Civil Liability and Compensation) Acts 1988 to 2005*;
 (v) the *Merchant Shipping (Liability of Shipowners and Others) Act 1996*;
 (vi) the *Sea Pollution Acts 1991 to 2006*;
 (vii) the *Sea Pollution (Hazardous Substances) (Compensation) Act 2005*, or
 (viii) any other enactment (including any enactment giving effect in the law of the State to any international convention or giving further effect in the State to any European Union enactment) conferring on a Court jurisdiction to grant any remedy which is cognate or related to a remedy which may be granted under or by virtue of a provision of any Act mentioned in *subparagraphs (i) to (vii)* inclusive, or to grant any other remedy in connection with any incident, loss or damage at sea, or any pollution of the sea.

[CAIAA 1876, s. 16]

[CAIA 1867, s. 38]

(2) The admiralty jurisdiction may be exercised *in rem* or *in personam*.

[CAIA 1867, s. 47]

(3) A party at whose instance property is arrested under a warrant issued in exercise of the admiralty jurisdiction is liable for the costs and expenses arising from the arrest and is liable in damages for detention of the property concerned, unless he or she shows to the satisfaction of the Court that he or she could not, without such arrest, have obtained bail or other security for the sum in respect of which the application was begun, or otherwise had good and sufficient reason for having caused the issue and execution of a warrant of arrest.

(4) In this paragraph, “ship” has the same meaning as in *section 742* of the *Merchant Shipping Act 1894*.

Care and protection
 jurisdiction¹⁸⁵

2.— (1) The “care and protection jurisdiction” of a Court means the jurisdiction, arising:

[LRIA1871, ss. 1, 4, 5, 6, 11-15 incl, 17-19 incl, 21-24 incl, 28-31 incl, 33, 34, 51-105 incl, 107]

(a) under or by virtue of the *Mental Capacity Bill*¹⁸⁶, or

(b) under or by virtue of any other law:

(i) to cause an inquiry (on application or otherwise) into whether a person is of unsound mind and incapable of managing himself or herself or his or her property, or ought be placed under the personal protection of the Court and to order that such person (in this Act, a “ward of Court”) be placed under the personal protection of the Court;

(ii) to provide for the protection of the person, property and assets of wards of Court for their benefit and for the benefit of any of their dependants;

¹⁸⁵ This provision assumes that the proposed *Mental Capacity Bill* (see note 1, above) is enacted, with the consequent repeal of the *Lunacy Regulation (Ireland) Act 1871* and related legislation and that therefore (a) certain original jurisdiction is conferred on the Circuit Court by the *Mental Capacity Bill* (in addition to its existing jurisdiction) but (b) descriptions of the existing jurisdictions of the High Court and Circuit Court will need to be maintained, at least on a transitional basis. This provision will require review in the context of the published provisions of the *Mental Capacity Bill*.

¹⁸⁶ This also assumes enactment of the *Mental Capacity Bill*: see note 1, above.

(iii) to decide any issue relating to the person or property of a ward of Court, and

includes any jurisdiction ancillary to, or dependant on, the jurisdiction described at *subparagraphs (i), (ii) and (iii)*.

(2) The exercise of the jurisdiction referred to in *subparagraphs (ii) and (iii) of paragraph 2(1)(b)* in relation to a person who was made a ward of Court before the *Mental Capacity Bill* came into force and to whom the provisions of the *Mental Capacity Bill* do not for the time being apply is referred to as the exercise of jurisdiction in continuing wardship cases.

(3) References in this Act to “care and protection” shall be construed in accordance with this paragraph.

Competition
jurisdiction

3.— The “competition jurisdiction” of a Court includes, where the context so admits or requires, reference to the jurisdiction exercisable by a Court pursuant to the *European Communities (Implementation of the Rules on Competition Laid Down in Articles 81 and 82 of the Treaty) Regulations 2004*¹⁸⁷ (SI No. 195 of 2004), the *European Communities (Implementation of the Rules on Competition Laid Down in Articles 81 and 82 of the Treaty)(Amendment) Regulations 2007* (SI No. 525 of 2007) and all such jurisdiction under or by virtue of any other enactment (including, without limitation, the *Competition Acts 2002 to 2010*) or other law.

[New]

Contract jurisdiction

4.— The “contract jurisdiction” of a Court includes, where the context so admits or requires, reference to jurisdiction in civil proceedings in contract and quasi-contract and includes all such jurisdiction under or by virtue of any enactment or other law.

[New]

Family jurisdiction

5.— The “family jurisdiction” of a Court includes, where the context so admits or requires, reference to such jurisdiction in civil proceedings under or by virtue of any family law enactment, other enactment or other law, including, without limitation:

[MCMLIA
1870, s 7]

(a) any jurisdiction formerly vested in or exercisable by any ecclesiastical Court or person in Ireland in respect of proceedings of nullity of marriage,

[LDIA 1868,
ss 1, 2, 8]

(b) jurisdiction in all matrimonial proceedings,

[LA 1931, s
2]

(c) jurisdiction to declare the validity of any marriage,

(d) jurisdiction to declare the parentage of any person (without limiting the jurisdiction of the Circuit Court under *section 35* of the *Status of Children Act 1987*), and

(e) jurisdiction to declare that a person is a citizen of the State.

Judicial review
jurisdiction

6.— The “judicial review jurisdiction” of the High Court includes the jurisdiction referred to in *section 27* and *section 29*, the jurisdiction of that Court in proceedings on a judicial review application in accordance with the procedure mentioned in *section 26(1)* or in accordance with that procedure as modified by any provision of another enactment, including, without limitation, the following provisions:

[New]

(a) *Foyle Fisheries Act 1952, section 73A*;

(b) *Roads Act 1993, section 55A*;

(c) *Waste Management Act 1996, section 43*;

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The references in this SI will change by virtue of the coming into force of the Lisbon Treaty, which amended the EC Treaty and renamed it the Treaty on the Functioning of the European Union (TFEU).

- (d) *Transport (Dublin Light Rail) Act 1996, section 12*;
- (e) *Irish Takeover Panel Act 1997, section 13*;
- (f) *Fisheries (Amendment) Act 1997, section 73*;
- (g) *Electricity Regulation Act 1999, section 32*;
- (h) *Commission To Inquire Into Child Abuse Act 2000, section 26A*¹⁸⁸;
- (i) *Illegal Immigrants (Trafficking) Act 2000, section 5*¹⁸⁹;
- (j) *Planning and Development Act 2000, section 50*;
- (k) *Aviation Regulation Act 2001, section 38*;
- (l) *Transport (Railway Infrastructure) Act 2001, section 47*;
- (m) *Fisheries (Amendment) Act 2003, section 19*;
- (n) *Anglo Irish Bank Corporation Act 2009, section 32*;
- (o) *National Asset Management Agency Act 2009, section 193*¹⁹⁰.

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| Land jurisdiction | 7.— The “land jurisdiction” of a Court includes, where the context so admits or requires, reference to such jurisdiction in civil proceedings in connection with the decision of any question concerning title to any land or any estate or interest in land, or for any remedy under or by virtue of the <i>Land and Conveyancing Law Reform Act 2009</i> or any other enactment or law relating to the decision of any question concerning title to any land or any estate or interest in land, including for the recovery of possession of any land. | [New] |
| Licensing jurisdiction | 8.— (1) The “licensing jurisdiction” of a Court includes, where the context so admits or requires, reference to all jurisdiction exercisable by a Court or Judge under any enactment concerning intoxicating liquor (including, without limitation, beer, spirits, ales, wines or cider), to hear and decide any application or proceedings for the grant, renewal, transfer, revocation or extinguishment of any licence or certificate, or otherwise in connection with any such licence or certificate. (2) The enactments mentioned in <i>subparagraph (1)</i> include, without limitation, the <i>Licensing Acts 1833 to 2010</i> and the <i>Registration of Clubs Acts 1904 to 2008</i> ¹⁹¹ . | [New] |
| Partnership jurisdiction | 9.— The “partnership jurisdiction” of a Court includes, where the context so admits or requires, reference to such jurisdiction in civil proceedings under or by virtue of any enactment or other law in connection with the constitution and legal acts of partnerships, including in proceedings for the dissolution of a partnership or for the taking of partnership or other accounts. | [New] |
| Probate jurisdiction | 10.— (1) The “probate jurisdiction” of a Court includes, where the context so admits or requires, reference to such jurisdiction in civil proceedings under or by | [New] |

¹⁸⁸ This Act may be spent, as the Commission published its final Report in 2009.

¹⁸⁹ This Act is to be repealed by the *Immigration, Residence and Protection Bill 2010* and references to applications under section 5 are to be deemed to be references to section 133, *Immigration, Residence and Protection Bill 2010* (see section 167 of that Bill).

¹⁹⁰ Section 33, *Tribunals of Inquiry Bill 2005*, section 62, *Coroners Bill 2007* and section 133, *Immigration, Residence and Protection Bill 2010* would also appear here if and when those Bills are enacted.

¹⁹¹ It may be appropriate to refer here to the *Sale of Alcohol Bill* if enacted.

virtue of any enactment or other law, including, without limitation:

(a) all jurisdiction in testamentary proceedings, or proceedings by persons interested or claiming to be interested in any question of the construction or interpretation of any will,

(b) all jurisdiction in relation to the grant, amendment or revocation of probates and letters of administration, and

(c) all jurisdiction in proceedings concerning the real and personal estate of deceased persons.

(2) In exercising its probate jurisdiction, the High Court shall perform all duties with respect to the estates of deceased persons as fell to be performed by it immediately before the commencement of this Act.

Tort jurisdiction

11.—The “tort jurisdiction” of a Court includes, where the context so admits or requires, reference to such jurisdiction in civil proceedings under or by virtue of any enactment or other law, including, without limitation, the following enactments: [New]

(a) the *Civil Liability Acts 1961 and 1964*;

(b) the *Liability For Defective Products Act 1991*;

(c) the *Occupiers Liability Act 1995*;

(d) *Part 2 of the Civil Liability and Courts Act 2004*;

(e) the *Defamation Act 2009*¹⁹².

Trusts and instruments jurisdiction

12.— The “trusts and instruments jurisdiction” of a Court includes, where the context so admits or requires, reference to such jurisdiction in civil proceedings under or by virtue of any enactment or other law, including, without limitation, in connection with the execution of the trusts of any written instrument which ought to be executed according to the law of the State, or which instrument confers jurisdiction on the Courts of the State, for the rectification or setting aside or cancellation of deeds or other written instruments or in proceedings by persons interested or claiming to be interested in any question of the construction or interpretation of any enactment, any deed or any other written instrument. [New]

Section 105

SCHEDULE 7

Part 1

Supplementary rules on legal costs in civil proceedings

General rules

1.— (1) Nothing in this Act deprives a trustee, mortgagee, or other person of a right to costs out of a particular estate or fund to which he or she would be entitled according to any rule of law or equity existing at the commencement of this Act. [New]

(2) Any decision of a Judge or court officer concerning costs may be discharged or varied on appeal.

(3) Where, in any civil proceedings, the costs of a party are ordered to be paid or borne by another party, or by a fund or estate, those costs include, unless the Court otherwise directs, all or any costs, charges, and expenses reasonably incurred for the purposes of the proceedings.

¹⁹² If the *Privacy Bill 2006* is enacted, it would also be referenced here.

Liability of applicant or unsuccessful respondent for costs of successful respondent

2.— Where, in civil proceedings, there are two or more respondents and an applicant succeeds against one or more of the respondents and fails against the others or other, the Court may, if having regard to the circumstances it thinks proper so to do, order:

[DIA 1840, s 57]
[CBCIA 185, s 113]
[CJA 1936, s 78]

(a) that the applicant pay the costs of a respondent against whom he or she has failed, and

(b) that a respondent against whom the applicant has succeeded pay (in addition to the applicant's costs) to the applicant by way of recoupment the costs which the applicant is liable to pay and pays to a respondent against whom he or she has failed.

Limitation on amount of applicant's costs in certain proceedings

3.— (1) Subject to the specific rules in *subparagraphs* (2) and (3), where a Court decides proceedings in favour of an applicant and awards a remedy (which may include damages) to the applicant, but a lower Court would have had jurisdiction (had the proceedings been before it) to decide those proceedings and award the same remedy, the applicant may not recover a greater amount of costs than he or she would have been entitled to recover if the proceedings had been conducted and decided in the lowest Court having jurisdiction to decide those proceedings and award that remedy.

[CA 1981, s 17]
[CA 1991, s 14]
[CCOA 2002, s. 17 (not commenced)]

(2) In proceedings conducted and decided in the High Court, where the amount of damages awarded to the applicant exceeds 80 per cent of the Circuit Court damages limit but does not exceed the Circuit Court damages limit, the applicant may not recover a greater amount of costs than he or she would have been entitled to recover if the proceedings had been conducted and decided in the Circuit Court, unless the Judge of the High Court, for reasons stated in his or her decision on costs, certifies that in his or her opinion, it was reasonable in the interests of justice, due to the exceptional nature of the proceedings or any question of law in the proceedings, that the proceedings should have been conducted and decided in the High Court.

(3) In proceedings conducted and decided in the High Court, where the amount of the damages awarded to the applicant exceeds the District Court damages limit, but does not exceed 50 per cent of the Circuit Court damages limit, the applicant may not recover a greater amount of costs than the lesser of.—

(a) the amount of the damages awarded to him or her, or

(b) the amount of costs which he or she would have been entitled to recover if the proceedings had been conducted and decided in the Circuit Court.

(4) Rules of court may fix the amount recoverable by any person as and for the costs incurred by him or her in taking a specified step or doing a specified thing in particular proceedings.

(5) Where a Court decides in favour of the applicant in proceedings (not being an appeal) and the Court is not the lowest Court having jurisdiction to make a decision awarding that remedy (including damages), the Judge may, if in all the circumstances he or she thinks it appropriate, make either of the following decisions on costs:

(a) that the applicant pay the respondent an amount, measured by the Judge, representing the additional costs reasonably incurred in the proceedings by the respondent by reason of the fact that the proceedings were not conducted and decided in the lowest Court having jurisdiction to make a decision awarding that remedy, or

(b) that the applicant pay to the respondent an amount equal to X minus Y, where—

X is the amount of the costs reasonably incurred in the proceedings by the respondent, measured by the appropriate taxing officer, and

Y is the amount of the costs which, in the opinion of the appropriate taxing officer, would have been reasonably incurred in the proceedings by the respondent measured according to any scale or criteria that would have been appropriate if the proceedings had been heard and decided in the lowest Court having jurisdiction to make a decision awarding that remedy.

(6) Where a respondent has been awarded costs under *subparagraph (5)*, he or she may, without prejudice to his or her right to recover the costs from the applicant, set off the whole or part of those costs against any costs in the proceedings awarded to the applicant against him.

Regulation of number of legal representatives appearing in certain proceedings

4.— (1) Notwithstanding any provision made by or under any enactment, or any rule of law or practice, the Minister may specify by regulations the maximum number of legal representatives in respect of whom costs may be allowed, on taxation by a taxing officer, for payment by another party or other parties to civil proceedings tried without a jury in the High Court, or a question of fact or an issue arising in such proceedings, or an appeal from a decision in such proceedings or on such a question or issue.

[CA 1988, s 5]

(2) Regulations under this paragraph may—

(a) specify different numbers of legal representatives (of any professional designation) in relation to different classes (designated in such manner and by reference to such matters as the Minister considers appropriate) of such proceedings, questions, issues or appeals, and

(b) provide for the allowance, on taxation by a taxing officer, for payment by another party or other parties to such proceedings, questions, issues or appeals, of the costs in respect of different legal representatives or different numbers of legal representatives engaged in relation to different stages of such proceedings, questions, issues or appeals.

(3) Where it is proposed to make regulations under this section, a draft of the regulations shall be laid before each House of them Oireachtas and the regulations shall not be made unless a resolution approving of the draft is passed by each such House.

Scales of costs

5.— The Minister may, with the consent of the Minister for Enterprise, Trade and Employment, by regulation, prescribe scales of costs or fees for legal representatives for particular proceedings or particular things done in proceedings, and may prescribe the maximum fees which may be paid to persons, or which may be allowed on a taxation of costs, for the service of an originating document or other document.

[SPSFIA 1919]
[CCOA 1995, s. 46
(modified)]

Section 106

SCHEDULE 7

Part 2

Rules on measurement of legal costs

Interpretation – this Part

1.— In this Part:

[New]

“contentious business” means business done by a solicitor in or for the purposes of, or in contemplation of, proceedings before a Court or

adjudicating body or person or before an arbitrator appointed under or in accordance with the *Arbitration Act 2010*;

“contentious Circuit Court business” means business done by a solicitor in or for the purposes of or in contemplation of Circuit Court proceedings;

“contentious District Court business” means business done by a solicitor in or for the purposes of or in contemplation of District Court proceedings;

“non-contentious business” means any business done by a solicitor which is not contentious business;

“delivered” means delivered to a person, or sent by post to a person or left for the person at his or her place of business, dwelling house or last known place of residence;

“fees” includes charges and disbursements;

“taxation”, in relation to costs, includes assessment, ascertainment of the amount, measurement, and settlement of any costs, and cognate words shall be construed accordingly;

“solicitor” includes any executor, administrator or assignee of any solicitor;

“taxing officer” means:

(a) a Taxing Master or,

(b) when performing any function concerning the measurement of any costs in relation to the Circuit Court, a County Registrar, or,

(c) in any case where any function concerning the measurement of any costs requires to be exercised in relation to the District Court, a Judge of the District Court, but:

(i) when used in relation to contentious business in or before any Superior Court, means a Taxing Master;

(ii) when used in relation to contentious Circuit Court business, means the County Registrar assigned to the Circuit Court Office in the county in which proceedings before the Circuit Court were brought or could have been brought, and

(iii) when used in relation to contentious District Court business, means a Judge of the District Court assigned to the District in which District Court proceedings were brought or could have been brought.

Duties of taxing officers

2.— (1) In the taxation of any costs, every taxing officer, whether he or she is required to do so by any enactment or not, and whether an objection has been made or not, shall take due care of the interest of the person to be charged with any costs.

[CLPIA 1821, s 49]
[CCIA 1823, s 19,
modified]

(2) For the purpose mentioned in *subparagraph (1)*, a taxing officer shall examine and ascertain by all reasonable methods each and every charge contained in a bill of costs, whether for:

[CIA 1867, ss 165-169]

(i) a solicitor,

(ii) a barrister,

(iii) a person mentioned in *section 250(1)(d)* or *section 250(1)(e)*;

(iv) any other person, or

(v) any disbursement,

to establish the proper charge which in the circumstances ought to have been made, and to satisfy himself or herself that every attendance or other

transaction or business, matter or thing, for which a charge is made in any bill of costs, actually took place or was actually performed, and whether that attendance or other transaction or business, matter or thing was proper in the circumstances and ought to be charged for in the bill of costs or not.

(3) Where a Court or court officer orders costs to be paid by or to a person, and the person to or by whom those costs are to be paid dies before the costs have been taxed, a taxing officer may proceed to tax those costs, on the application of the personal representative of a deceased person to whom costs are payable or on the service on the personal representative of a deceased person by whom costs are payable of the document by which the application for taxation of the costs concerned is commenced, as the case may be.

(4) In a case mentioned in *subparagraph (3)*, any document commencing the application for taxation must, unless the taxing officer otherwise directs, be served in the like manner as any other document commencing an application for taxation of costs, and any costs taxed may be recovered as if the death of the person to or by whom those costs are to be paid had not occurred.

Powers of taxing officer on taxation of costs

3.— (1) On a taxation of costs as between party and party by a taxing officer, the taxing officer may examine the nature and extent of any work done, or services rendered or provided by:

[CCOA 1995, s 27(1)-(7)]

- (i) a barrister (whether senior counsel or junior counsel), or
- (ii) a solicitor, or
- (iii) a person mentioned in *section 250(1)(d)* or *section 250(1)(e)*, or
- (iv) an expert witness appearing in proceedings, or
- (v) any expert engaged by a party,

and may assess and decide the value of the work done or service rendered or provided in connection with the measurement, allowance or disallowance of any costs included in a bill of costs.

(2) On a taxation of costs as between party and party by a taxing officer, the taxing officer may allow in whole or in part, any costs included in a bill of costs in respect of:

- (i) a barrister (whether senior counsel or junior counsel), or
- (ii) a solicitor, or
- (iii) a person mentioned in *section 250(1)(d)* or *section 250(1)(e)*, or
- (iv) an expert witness appearing in proceedings, or
- (v) any expert engaged by a party,

as the taxing officer considers in his or her discretion to be fair and reasonable in the circumstances of the case, and the taxing officer may, in the exercise of that discretion, disallow any such costs, in whole or in part.

(3) On the hearing by the High Court of an appeal from or review of a decision of a Taxing Master made in the exercise of his or her powers under this Part, to allow or disallow any costs, the High Court shall not vary or discharge the decision of the Taxing Master unless it is satisfied that the Taxing Master has erred as to the amount of the allowance or disallowance so that the decision of the Taxing Master is unjust.

(4) On the hearing by the Circuit Court of an appeal from or review of a decision of a County Registrar exercising the powers of a taxing officer under this Part, to allow or disallow any costs, the Circuit Court shall not vary or discharge the decision of the County Registrar unless it is satisfied that the County Registrar has erred as to the amount of the allowance or disallowance so that the decision of the County Registrar is unjust.

(5) No standby or retainer fee is payable to any:

- (i) solicitor,
- (ii) barrister (whether senior counsel or junior counsel),
- (iii) person mentioned in *section 250(1)(d)* or *section 250(1)(e)*,
- (iv) witness, whether professional or otherwise,

on either a taxation of costs as between party and party, or a taxation of a solicitor and client bill of costs, where the taxing officer deems the payment of such a fee to be unreasonable in the circumstances.

(6) On a taxation of costs as between solicitor and client it shall not be necessary to produce vouchers or receipts for the payment of any disbursement (including any fees to a barrister or a person mentioned in *section 250(1)(d)* or *section 250(1)(e)*), but a taxing officer shall not certify a disbursement in the amount of costs taxed until either:

a proper voucher or receipt for that disbursement has been produced and vouched, and accepted by the taxing officer, or

the parties agree, or the taxing officer decides, that a voucher or receipt for that disbursement need not be provided.

(7) Without prejudice to the provisions of any enactment or rule of court regulating the charging of fees payable in the Taxing Master's Office on the taking up of a certificate of taxation, on the taxation of a bill of costs (whether on a solicitor and client or party and party basis) no:

- (i) solicitor, or
- (ii) legal costs accountant or other cost drawer,

is entitled to any fee, disbursement, charge or expense in relation to the measurement of costs as against the opposing party, but only against the party who incurred that fee, disbursement, charge or expense.

(8) On a review of taxation or appeal from a decision of a taxing officer (whether on a solicitor and client or party and party basis) by the High Court, or by the Circuit Court, no:

- (i) solicitor, or
- (ii) legal costs accountant or other cost drawer,

retained to present the bill of costs to the taxing officer shall be entitled to any fee, disbursement, charge or expense for his or her attendance to give evidence in relation to the bill of costs, save as against the party who incurred that fee, disbursement, charge or expense.

Partial taxation

4.— (1) A taxing officer may, at the request of the parties involved in a taxation of costs, tax part of a bill of costs where that part of the bill of costs only is in dispute, including any item of cost which is in dispute between the parties.

[CCOA 1995, s 27(8)-(10)]

(2) Where a taxing officer undertakes a partial taxation of costs under *subparagraph (9)*, the taxing officer may request a party to the taxation to provide to him or her such information or further information as the taxing officer requires in connection with the taxation, and to submit to him or her for consideration in connection with the taxation any document in the possession of that party relating to the proceedings.

(3) Where part of a bill of costs has been taxed, the costs of taxation, including any duty payable, shall be based on the items in the bill of costs that were taxed.

Taxation of costs of inquiries and investigations

5.— Legal costs arising from any inquiry, investigation or other proceeding conducted under or by virtue of an enactment may, at the request of the Minister or the Minister for Finance, be taxed by a Taxing Master, and every decision of a Taxing Master on such a taxation shall be treated for all purposes as if it were a taxation pursuant to a decision of the High Court¹⁹³.

[CCOA 1995, s 27(11)]

Contentious business: general rules on solicitors' costs

6.— (1) The provisions of this paragraph, *paragraph 7* and *paragraph 8* apply to the recovery by a solicitor of any fee, charge or disbursement for any contentious business done by that solicitor.

[ASIA 1849, in relation to contentious business]

(2) A solicitor may not commence or maintain any proceedings for the recovery of his or her fees for any contentious business until the expiry of one month after the solicitor has delivered to the party to be charged with those fees an invoice (in this paragraph, the “bill of costs”), which is:

(a) signed by that solicitor, or

(b) in the case of a partnership, signed by any of the partners, either in his or her own name or in the name or style of the partnership, or

(c) enclosed in, or accompanied by, a letter so signed by the solicitor or signed by any partner in a partnership, either in his or her own name or in the name or style of the partnership, which refers to the bill of costs enclosed in or accompanied by that letter.

(3) The party chargeable with the bill of costs may apply, within one month after delivery of the bill of costs to him, her or it, to the appropriate taxing officer to have the bill of costs (and the solicitor’s demand for payment of it) taxed by the taxing officer, without any money being brought into Court.

(4) Where an application mentioned in *subparagraph (3)* has been made, the Circuit Court (where a bill of costs relates to contentious Circuit Court business), or the High Court in any other case, may, on the application of a party, restrain the solicitor from commencing proceedings on a demand for payment of the bill of costs pending the taxation of the bill of costs by the appropriate taxing officer.

(5) No such application to the appropriate taxing officer may be made by the party to be charged:

(a) where a judgment has been given by a Court in a proceedings for the recovery of the demand of the solicitor, or

(b) after the expiration of the period of 12 months after the bill of costs has been delivered,

except where the High Court or (where a bill of costs relates to contentious Circuit Court business) the Circuit Court for special reason so permits.

(6) A solicitor may, on the expiry of the period of one month following the delivery to the party chargeable with the bill of costs referred to in *subparagraph (3)*, apply to the appropriate taxing officer for taxation of the bill of costs. Where a solicitor makes such an application, he or she may not commence or prosecute any proceedings on the demand for payment of the bill of costs pending the taxation of the bill of costs by the appropriate taxing

¹⁹³ The existing provision relating to the power to tax costs incurred on an investigation under the *Merchant Shipping Act 1894* has been updated to become a general power to tax costs of any inquiry, investigation or other proceeding under an enactment at the request of the Minister for Justice and Law Reform or the Minister for Finance.

officer and the High Court or (where a bill of costs relates to contentious Circuit Court business) the Circuit Court may restrain the commencement or stay the prosecution of any such proceedings.

(7) If either the solicitor or the party chargeable with the bill of costs, having due notice, fails to attend the taxation, the taxing officer may proceed to tax the bill of costs (and the solicitor's demand) in the absence of that person or party.

(8) Where the respondent to the application for taxation attends the taxation, the costs of the reference to taxation, except as provided in this section, shall:

(i) if the bill of costs when taxed is less by a sixth part than the bill of costs delivered, be paid by the solicitor, and

(ii) if the bill of costs when taxed is not less by a sixth part than the bill of costs delivered, be paid by the party chargeable.

(9) The taxing officer shall tax the costs of the reference to taxation to be paid as prescribed in *subparagraph (8)* and certify the amount on the reference which is found to be due to or from the solicitor in respect of his or her bill of costs and demand, and the costs of the reference, if payable.

(10) The taxing officer may certify specifically any circumstances relating to a bill of costs or taxation referred to in this paragraph and the Court concerned may, on the application of a party to the taxation, make any order it thinks right concerning the payment of the costs of the taxation.

(11) Where an application is made to a taxing officer for the taxation of a bill of costs in accordance with this paragraph, the taxing officer may order the solicitor to deliver any deeds, documents or papers in his or her possession, custody or power, or otherwise touching on the business to which the bill of costs relates, in the same manner as the Court or Judge might do where that business had been transacted in the Court concerned.

Contentious
business: rights of
paying party who is
not the party
chargeable

7.— (1) Where a person who is not the party chargeable with a bill of costs is liable to pay (or has paid) a bill of costs, either to the solicitor or to the party chargeable, the person who has paid (including his or her executor, administrator or assignee) may make an application referred to in *paragraph 6(4)* and the taxation of the bill of costs may be pursued and proceed in all respects as if that application had been made by the party chargeable.

(2) Where a trustee, executor or administrator has become chargeable with a bill of costs, the Court before which the contentious business concerned was, or might have been, transacted may, in its discretion, authorise a party interested in the property out of which the trustee, executor or administrator has paid or is entitled to pay the bill of costs, to make an application referred to in *paragraph 6(4)* and the taxation of the bill of costs may, in such a case, be pursued and proceed in all respects as if that application had been made by the party chargeable.

(3) In a case referred to in *subparagraph (2)*, where money is directed to be paid by a solicitor, that money shall be paid to the trustee, executor or administrator chargeable with the bill of costs, provided that the person who has made the application referred to in *paragraph 6(4)* may apply to the Court concerned for the payment of that amount to him. When the party who has made the application referred to in *paragraph 6(4)* pays or has paid any money to the solicitor in respect of the bill of costs, he or she has the same right to be paid by the trustee, executor or administrator chargeable with the bill of costs as the solicitor had, prior to such payment.

(4) A Court or taxing officer may order the delivery by a solicitor of a copy of

a bill of costs to a person who has made an application referred to in *paragraph 6(4)*, provided that no bill of costs which has been previously taxed may be the subject of such an application unless, in the special circumstances of the case, the Court or Judge thinks fit to direct a re-taxation of that bill of costs.

Contentious
business:
presumptions
further rules
and

8.— (1) A solicitor need not in the first instance prove the contents of a bill of costs referred to in *paragraph 6* or *paragraph 7* which has been delivered, but it shall be sufficient to prove that a bill of costs was signed and delivered in the manner referred to in *paragraph 6(3)*.

(2) Where a solicitor gives evidence of the delivery of a bill of costs in the manner referred to in *paragraph 6(3)*, it shall be presumed that the delivery of the bill of costs was in compliance with *paragraph 6*, until the contrary is shown.

(3) The payment of a bill of costs in no case precludes a Court from referring a bill of costs for taxation if, in the opinion of the Court or Judge, the special circumstances of the case appear to require such a reference, on such terms and conditions and subject to such directions, as seem appropriate to the Court or Judge, provided that any application for such a reference is made within 12 months after payment.

(4) Applications made under *paragraph 6* or *paragraph 7* shall, where they relate to proceedings which have been before a Court, be entitled as in the proceedings, and in all other cases shall be entitled in the matter of the solicitor.

(5) On the taxation of any bill of costs referred to in *paragraph 6* or *paragraph 7*, the certificate of the taxing officer by whom that bill of costs was taxed, unless set aside or varied by a decision of the Court concerned, shall be final and conclusive as to the amount of that bill of costs and payment of the amount certified to be due and directed to be paid may be enforced as a judgment of the Court concerned.

(6) On and from the commencement of this paragraph, the *Attorneys and Solicitors (Ireland) Act 1849* ceases to apply to contentious business.

General rules in
taxation of costs in
contentious business
pursuant to written
agreement

9.— (1) Without limiting any obligation under the *Solicitors Acts 1954 to 2008*, a solicitor may make an agreement in writing with his or her client concerning the amount, and manner of payment, of the whole or any part of any past or future fees in respect of contentious business done or to be done by that solicitor (whether as a solicitor or as an advocate), either by a gross sum or otherwise.

[ASA 1870, s 4,
proviso to s 5 and s
10, in relation to
contentious
business]

(2) When an agreement referred to in *subparagraph (1)* is made, the client may, within 12 months of delivery to him or her of the bill of costs, apply to the Court before which the contentious business concerned was, or might have been, transacted, for a declaration that the agreement is not fair and reasonable, and the Court or Judge may reduce the amount payable under the agreement or may order the agreement to be cancelled and fees in respect of the business done to be taxed in the same manner as if no such agreement had been made.

(3) When the amount agreed under any an agreement referred to in *subparagraph (1)* has been paid by or on behalf of the client, or by any person chargeable with or entitled to pay that amount, a Court or Judge having jurisdiction to examine and enforce the agreement may, on application by the person who has paid the amount or any part of the amount, within 12 months after payment, if it appears to that Court or Judge that the special

circumstances of the case requires the agreement to be re-opened, re-open the agreement and order the fees to be taxed and the whole or any portion of the amount received by the solicitor to be repaid by him or her on such terms and conditions as the Court or Judge considers just.

(4) Where an agreement referred to in *subparagraph (1)* is made by a client in the capacity of guardian, trustee, or by virtue of any capacity of protection of any person whose estate or property will be chargeable with the amount payable under the agreement, or with any part of that amount, the agreement shall, before payment, be submitted to the appropriate taxing officer, who shall examine it, and may disallow any part of it, or may require the direction of the appropriate Court or Judge to be taken on it by application.

(5) If, in any case mentioned in *subparagraph (4)*, the client pays the whole or any part of the amount payable under the agreement, without having submitted it to the appropriate taxing officer, he or she is liable at any time to account to the person whose estate or property is charged with the amount paid, or with any part of that amount, for the amount so charged. If, in any such case, the solicitor accepts payment before the bill of costs has been submitted to the appropriate taxing officer, any Court which would have jurisdiction to enforce the agreement may, if it thinks fit, order the solicitor to refund the amount so received by him or her under the agreement.

(6) A client shall not be entitled to recover from any other person under any order for the payment of any costs which are the subject of an agreement referred to in *subparagraph (1)* more than the amount payable by the client to his own solicitor.

(7) From the commencement of this paragraph, *section 4* and *section 10* of the *Attorneys and Solicitors Act 1870* cease to apply to contentious business.

(8) Nothing in the modifications effected by *paragraphs 4* to *8* or this paragraph modifies, or requires the modification of, any practice in the office of any taxing officer.

Section 121

SCHEDULE 8

Supplementary rules on execution and enforcement of Court decisions in civil proceedings Part 1 General

Availability of execution and enforcement orders and resolution of disputes

1.— (1) Subject to the provisions of this Act, and to compliance with relevant rules of court, a judgment creditor or other person having the benefit of a judgment may apply for one or several of the execution orders or orders of enforcement mentioned in *Chapter 10* of *Part 2* or this Schedule, or for any other execution order or order of enforcement for the time being available, provided that no judgment creditor may use several execution orders or orders of enforcement to secure or recover more than the amount then due pursuant to the money judgment concerned.

[New]

(2) A Court has jurisdiction to hear and decide any dispute concerning the meaning, effect or execution of any execution order or order of enforcement issued by or out of that Court, on the application of any person affected by, or having responsibility for execution of, that order.

(3) Where a dispute arises concerning the execution or priority of execution of any execution orders or orders of enforcement, issued against the same judgment debtor or property, by or out of more than one Court, or by the Circuit Court for more than one Circuit or the District Court for more than one District:

(a) the higher Court by or out of which any such order issued has jurisdiction to

hear and decide that dispute or, as the case may be,

(b) the Judge of the Circuit Court assigned to the Circuit or the Judge of the District Court assigned to the District in which the first such order was issued has jurisdiction to hear and decide that dispute,

on the application of a person affected by, or having responsibility for execution of, any of the orders concerned.

When application may be made for an execution order

2.— (1) A judgment creditor or other person having the benefit of a judgment may apply for any execution order or enforcement order: [New]

(a) where a period of time is fixed in a judgment for the judgment debtor or other person bound by the judgment to comply with that judgment, on the expiry of that period of time, if the judgment debtor or other person bound by the judgment has not then complied with the judgment;

(b) where a period of time is fixed in a judgment for the judgment debtor to take steps to secure a stay of execution pending an appeal, on the expiry of that period of time, if the judgment debtor or other person bound by the judgment has not then taken the steps to secure a stay of execution pending an appeal;

(c) in any other case, at any time after the judgment, while action on the judgment is permitted by law and the judgment is not subject to a stay.

(2) Nothing in this paragraph prevents the imposition by rules of court of a requirement to apply for a particular execution order within a specified period following the judgment.

Certificate of sum due on lodgment of order for seizure and sale

3.— A person who lodges an order of seizure and sale with a sheriff shall certify to the sheriff the sum asserted to be due by the judgment debtor under the judgment concerned at the time of lodgment, after all equitable deductions, and execution shall be for no more than that sum and the expenses mentioned in *section 113(3)*.

[CLPAAI 1853, s 129]
[CBCPAIA 1864, s 12, 13]

Execution order may be executed at any place in the State

4.— Without limiting any right of a person to seek the assistance of any court or other authority outside the State to execute a decision of a Court, an execution order may be executed at any place in the State.

[CLPAAI 1853, s 128]

Priority of orders for seizure and sale

5.— The priority of right to goods seized under several orders of seizure and sale shall be by the priority of the delivery of those orders to the sheriff.

[CBCPAIA 1864, s 24]

Stay on money judgment

6.— (1) When a Court gives a money judgment, and the Court is satisfied when giving that money judgment—

[ECO 1926, s 21]

(a) that the judgment debtor is unable to discharge by immediate payment in full the amount of the money judgment, and all costs payable by him or her under the money judgment; and

(b) that the judgment debtor's inability is not occasioned by the judgment debtor's own conduct, act or default, and

(c) that there are reasonable grounds for allowing the judgment debtor time in which to pay the amount of the money judgment and costs,

the Court may stay execution of the money judgment for such time and on such conditions as appear reasonable.

(2) The conditions on which a stay of execution may be granted under *subparagraph (1)* may include a condition that the judgment debtor pay the amount of the money judgment and costs by such instalments and at such times as the Court

appoints, and that on failure by the judgment debtor to pay an instalment the stay ceases to have effect.

Suspension of execution on later stay

7.— (1) Where a stay of execution is given by a Court or takes effect after:

[New]

(a) an execution order has been applied for, or

(b) an execution order or a warrant for the arrest of the judgment debtor on non-compliance with an order of enforcement has issued,

then the application, execution order or warrant is suspended, and the provisions of *subparagraphs (2) to (6)* apply.

(2) The judgment creditor shall, immediately on being notified of, or becoming aware of, the stay, notify any court officer to whom he or she has applied for the issue of an execution order.

(3) The judgment creditor shall, immediately on being notified of, or becoming aware of, the stay, notify any sheriff or other person with whom he or she has lodged, or to whom he or she has sent or given, an execution order, and that sheriff or person shall, on such notification, treat the execution order (if unexecuted) as suspended, and return the execution order to the court officer who issued it.

[CBCPAIA
1864, s 32]

(4) Where goods of a judgment debtor have been seized, but not sold, under an execution order which has been stayed or suspended, the goods seized shall be returned, as soon as practicable, to the judgment debtor.

(5) The proper officer of any Court out of which a warrant for the arrest of the judgment debtor on non-compliance with an order of enforcement has issued shall, immediately on being notified of, or becoming aware of, the stay, notify the member of the Garda Síochána to whom that warrant has been sent or given, and that member shall, on such notification, treat the warrant (if unexecuted) as suspended, and return the warrant to the court officer concerned.

(6) A judgment debtor who is in custody, or has been committed to prison on non-compliance with an order of enforcement of a judgment which has been stayed or suspended, shall be released immediately, and an application may, if necessary, be made to the Court which gave the judgment to direct his or her release.

(7) In every case where the full amount due under any money judgment is paid:

(a) any execution order or

[CBCPAIA
1864, s 32]

(b) any application for an execution order or

(c) any warrant for the arrest of a judgment debtor on non-compliance with an order of enforcement

is suspended and in every such case:

(i) the judgment creditor shall notify the proper officer of the Court to whom any application for an execution order has been made or out of which any execution order or warrant has issued,

(ii) the judgment creditor shall notify any sheriff to whom any execution order has been sent or given, and

(iii) the proper officer of any Court out of which a warrant for the arrest of the judgment debtor on non-compliance with an order of enforcement has issued shall, immediately on being notified of, or becoming aware of, the suspension, notify the member of the Garda Síochána to whom that warrant has been sent or given.

(8) A sheriff, member of the Garda Síochána or other person in possession of any unexecuted execution order or warrant which has been suspended shall return it to the proper officer of the Court out of which it was issued.

Execution of execution orders

8.— (1) Subject to the provisions of this Act and of rules of court, an execution order of the Supreme Court, High Court, Circuit Court or District Court may be executed by the sheriff for the local government area in which execution is directed or authorised.

[ECO A 1926, s 3]

(2) An execution order remains effective for the period specified in that execution order, or prescribed by rules of court, and may be renewed for any further period in the manner permitted by rules of court.

(3) Every personal enforcement order or other order of a Court for the arrest, attachment, or committal of a person may be executed only by a member of the Garda Síochána.

[ECO A 1926, s 23]

(4) A person to whom an execution order is addressed shall take all reasonable steps to execute that execution order within the time permitted by law or specified in that execution order.

(5) Where an execution order has not been executed within the time specified in that execution order or otherwise provided in rules of court, the order shall be returned to the person from whom it was received with a brief statement of the reasons for its non-execution.

[CBCPAIA 1864, s 16]

Effect of execution order of possession

9.— Where an attempt has been made to execute an order of possession but execution has been resisted, and possession of land is held after that resistance, every person who has the benefit of the order of possession or the right to be restored to possession shall be deemed, from the time of that resistance, to be in actual possession as fully and completely as if he, she or it had been put into possession and shall be entitled to rents, issues and profits of the land concerned from the time of the judgment concerned, and payment of any such rent, issue or profit to any other person shall be void and of no effect.

[ECO A 1751, s 4]

Lodgment of authority to enter judgment

10.— (1) An authority to enter judgment shall be void if, within 6 months after the execution of the authority to enter judgment, proceedings are begun for the bankruptcy or the liquidation of the debtor and in those proceedings, the debtor is adjudicated bankrupt or an order is made appointing a liquidator to the debtor unless, within 21 days after the execution of the authority to enter judgment:

[DIA 1840, ss 13-18]

[DIA 1872, ss 23-24 (subs (3) and (4))]

(a) the authority to enter judgment was filed in the court office of a Court entitled to award the money judgment concerned, and

(b) application was made in that court office to have a judgment entered under the authority to enter judgment.

(2) If any authority to enter judgment is given subject to a condition precedent or subsequent, the condition shall be specified in writing in the document comprising the authority to enter judgment when the authority to enter judgment is executed, and if any such condition is not so specified, the authority to enter judgment shall be null and void.

(3) An authority to enter judgment given by a debtor shall be void and of no force or effect unless, when the authority to enter judgment is executed by the debtor, a solicitor is present on behalf of the debtor who has attended at the debtor's request and who has informed the debtor before the execution of the authority to enter judgment of its nature and effect. That solicitor shall subscribe his or her name as a witness to the due execution of the authority to enter judgment, describing himself or herself to be the solicitor for the debtor executing it, and stating that he or she

subscribes in that capacity.

(4) An authority to enter judgment which is not executed in accordance with *subparagraph (3)* shall not be rendered valid by proof that the person executing the authority to enter judgment did in fact understand its nature and effect, or was fully informed of its nature and effect.

(5) Particulars of every authority to enter judgment filed in any Court shall be kept by the proper officer in the manner provided by rules of court, for the time being directed by the President of the Court or otherwise in accordance with the practice of the Court.

(6) Any person who appears to the proper officer to be interested may obtain a copy of any authority to enter judgment by application to the proper officer on payment of any fee prescribed in a Court fees order.

(7) Where it appears to a Court or Judge that a debt for which an authority to enter judgment was given as security has been satisfied or discharged, the Court or Judge may direct the proper officer to endorse the satisfaction of that debt on the authority to enter judgment concerned.

Section 121

SCHEDULE 8

Part 2

Execution of execution orders by sheriffs

Persons retained by sheriff

1.— (1) A sheriff may retain persons (in this Part, “execution officers”) to act for and assist him or her in the execution of execution orders under this Act, for such period and on such terms and conditions as the sheriff considers appropriate, provided that, if any execution officer is to be paid out of moneys provided by the Oireachtas, that execution officer may be retained only with the consent of the Minister and of the Minister for Finance.

[ECO A
1926, s 4]

(2) Every execution officer for the time being retained by a sheriff shall be provided with a written authority (including a photograph of the person to whom the authority is addressed) signed by the sheriff, and referred to in this Part as a “warrant card”.

(3) An execution officer shall produce his or her warrant card on demand by any person occupying or in apparent possession of any land entered by him or her for the purpose of executing any execution order.

(4) A warrant card does not lapse and shall not be prejudiced where the sheriff who issued it ceases to hold office or to perform functions or exercise powers of a sheriff, but every warrant card lapses and terminates on the termination or expiry of the retainer of the execution officer to whom it relates.

(5) Every sheriff under whose authority an execution order is executed against goods seized shall:

(a) prepare an itemised inventory of the goods seized, within 24 hours of their seizure and, if practicable before their removal,

[ECO A
1926, s 5]

(b) give the judgment debtor (or other person in apparent possession of the goods seized) a duplicate of that inventory, signed by the sheriff or by an execution officer.

[ECO A
1926, s 6]

(6) This paragraph does not affect the appointment or terms and conditions of employment of any person appointed to be a court messenger before the commencement of this Schedule.

| | | | |
|--|---------|--|------------------------|
| Exclusions from execution ¹⁹⁴ | from | <p>2.— Execution of an execution order may not extend to the clothing, household furniture and bedding, tools or equipment of a trade or occupation and other like items, as the judgment debtor selects, necessary for the judgment debtor, his or her spouse, children and any dependant relative or civil partner residing in the judgment debtor’s household, not exceeding in total value €1,500, and those items are entirely excepted and excluded from seizure under any execution order.</p> | [ECO A 1926, s 7] |
| Sale by sheriff and powers pending sale | | <p>3.— (1) A sheriff who takes any goods seized in execution of an execution order may sell those goods seized at arms’ length by such means as he or she considers will achieve the best price reasonably available¹⁹⁵ at any time following the expiry of 48 hours after that sheriff has taken those goods in execution.</p> <p>(2) A sheriff may sell goods seized notwithstanding that:</p> <p>(a) the goods seized have been out of his or her custody, or</p> <p>(b) his or her custody of those goods has been interrupted by any means,</p> <p>at any time between the time of the seizure and the time of the sale.</p> <p>(3) A sheriff shall not delay unreasonably the sale of goods seized.</p> <p>(4) A sheriff shall not be obliged to publish or announce that a sale is a sale by a sheriff or is a sale of goods seized.</p> <p>(5) A sheriff may:</p> <p>(a) remove goods seized, or any of them, or cause them to be removed, from the place where they were seized;</p> <p>(b) pending sale, impound, store and keep goods seized in any place he or she thinks fit, and arrange as he or she thinks fit to preserve and secure goods seized;</p> <p>(c) sell goods seized at arms’ length at any place, within or outside the local government area for which he or she is appointed or acting, at or in which in his or her opinion those goods can be sold to the best advantage.</p> <p>(6) No action lies against a sheriff arising from his or her having sold goods seized outside of the local government area for which he or she is appointed or acting.</p> | [ECO A 1926, ss 8, 11] |
| Protection of purchaser sheriff | of from | <p>4.— A person who purchases goods seized in good faith at a sale held by or under the authority of a sheriff acquires a good title, valid against all persons, to the goods seized so purchased, notwithstanding any invalidity or irregularity in or about the seizure or sale of those goods, and whether or not that person knows, or could or ought to have known, or is affected with any kind of notice, that the sale was by or under the authority of a sheriff.</p> | [ECO A 1926, s 10] |
| Immunities of sheriff | | <p>5.— (1) No action lies against a sheriff who complies with the conditions in this paragraph arising from his or her having entered or broken into any land (including a building which is a dwelling) to take in execution any seizeable goods which were, or might be, on or in that land, or arising from any damage occasioned to that land by or in the course of entry or breaking in.</p> <p>(2) The conditions mentioned in <i>subparagraph (1)</i> are that:—</p> <p>(a) before breaking into any building which is a dwelling, the sheriff makes</p> | [ECO A 1926, s 12] |

¹⁹⁴ See the Commission’s *Report on Debt Collection: (1) The Law Relating to Sheriffs* (LRC 27–1988), page 36.

¹⁹⁵ The Commission considers that a sheriff should not be confined to sale by public auction.

reasonable efforts to enter peaceably and without violence, and

(b) where the sheriff breaks and enters a building which is a dwelling of a person other than the judgment debtor, he or she either has reasonable grounds for believing that there are some seizeable goods of the judgment debtor in that building or he or she finds some seizeable goods of the judgment debtor in that building.

(3) No action lies against a sheriff who takes in execution under any execution order any seized goods found:

[ECOA
1926, s 13]

(a) in a building of which the judgment debtor is the occupier, either alone or jointly with another, or

(b) on other land of the judgment debtor,

and alleged to be the property of a relative or civil partner of the judgment debtor, or of some other occupier of the same building.

(4) In lieu of any action against the sheriff, the person to whom seized goods mentioned in *subparagraph (3)* belonged is entitled to recover from the judgment debtor the value of the seized goods (if the seized goods are proved not to have been the property of the judgment debtor), and any damages that person has suffered arising from the seized goods having been so taken in execution.

(5) A sheriff shall not be obliged to take in execution under an execution order any goods referred to in *subparagraph (4)*.

(6) A sheriff or execution officer, in executing an execution order, is not a trespasser by reason only of any irregularity or informality in the form of any execution order, or in the means of executing it, but a party aggrieved may claim against the sheriff for any special damage actually sustained by reason of such irregularity or informality.

[CBCPAIA
1864, s 25]

Fees to sheriffs

6.— (1) The Minister may, with the consent of the Minister for Finance, by order appoint and from time to time revise—

[ECOA
1926, s 14]

(a) scales of fees and expenses to be charged by and paid to sheriffs for their services in or concerning the execution of execution orders, and

(b) scales of fees to be charged by and paid to the Service in specified court offices for the account of a sheriff, and

(c) scales of fees and expenses to be charged by and paid to members of the Garda Síochána in respect of the execution of any execution or enforcement order.

(2) Fees appointed in a scale made under this Act to be charged by and paid to the Service in a specified court office for the account of a sheriff shall be charged and paid at the times appointed in the scale and, subject to *paragraph 30(5)* of *Part 2* of *Schedule 14*, the Service shall pay or account for those fees to the sheriff.

Execution money etc against

7.— (1) A sheriff may, in executing an execution order, seize and take money, or a cheque, bill of exchange, promissory note, bond or other security for money (in this paragraph, an “instrument”), belonging to a judgment debtor, and may:

[DIA 1840, s
20]
[CLPAAI
1853, s 131]

(a) pay any money seized to the judgment creditor;

(b) hold any instrument seized as security for the amount directed by the execution order to be executed against the judgment debtor’s property, or

(c) bring proceedings in his or her own name to recover any sum secured by an instrument, when the sum has become due,

and payment to a sheriff by the party liable on an instrument (whether or not proceedings have been issued) operates to discharge that party's liability on the instrument to the extent of that payment.

(2) After satisfaction of the amount directed to be executed, and any costs, any surplus remaining in the hands of a sheriff shall be paid to the judgment debtor or other person against whom the execution order was issued.

(3) No sheriff shall be bound to bring proceedings in accordance with *subparagraph (1)(c)* unless the party who applied for the execution order concerned indemnifies the sheriff, in a form satisfactory to the sheriff, against all costs to be incurred in the proceedings, or to which the sheriff may become liable in the proceedings.

(4) Any money being the proceeds of the execution of any execution order belonging to any judgment creditor may, while in the hands of a sheriff, be taken in execution of any execution order against the judgment creditor, provided that:

(a) nothing in this paragraph affects the right of any person who has previously obtained a third party creditor order in respect of that money, and

(b) the sheriff shall be entitled to the fees and expenses chargeable on the execution of each execution order concerned.

[COCAI
1877, s 62]

Section 121

SCHEDULE 8

Part 3

Arrest and imprisonment for non-compliance

Examination and instalment orders

Periodic payment orders

Restriction on
imprisonment
for contract
generally

1.— (1) A Court may only exercise a jurisdiction or power (including under *paragraph 6*) to cause a person to be arrested or imprisoned to coerce the payment of a money judgment in accordance with this paragraph.

[DIA 1872,
ss 5-8]
[DA 1878, s
1]

(2) A Court exercising the jurisdiction or power mentioned in *subparagraph (1)* shall act in accordance with the principle that no one shall be deprived of his or her liberty merely on the ground of inability to fulfil a contractual obligation.

(3) A Court may only make an order for a person to be arrested or imprisoned to coerce the payment of a money judgment, on the application of a judgment creditor, where:

(a) the judgment debtor is present before the Court, unless the Court is satisfied that the judgment debtor has consciously, that is to say, with full knowledge and understanding that arrest and imprisonment is a possible outcome of the application, absented himself or herself;

(b) the judgment debtor has been apprised by the Judge of his or her entitlement to legal representation and is provided by the Court with the means of obtaining legal aid at the expense of the State, if the judgment debtor is impecunious and incapable of representing himself or herself;

(c) the Court is satisfied that fair procedures have been applied in the hearing of the judgment creditor's application;

(d) having heard such evidence or caused to be made such inquiries as it considers appropriate, the Court is satisfied that the judgment debtor has, or has had since the date on which the judgment was given, the means to pay the sum in respect of

which he or she has made default and that his or her failure to pay is due to wilful refusal or culpable neglect, and

(e) the order is made by a Judge, in open Court, and the reasons for the making of the order are explained to the judgment debtor in open Court.

(4) Any person imprisoned in accordance with an order to which this paragraph applies shall be discharged out of custody upon a certificate of the proper officer of the Court which made the order, or the governor of the prison, that the person has satisfied the debt or instalment of a debt in respect of which he or she was imprisoned, together with the prescribed costs (if any).

(5) An order for a person to be imprisoned to coerce the payment of a money judgment in accordance with this paragraph may not order imprisonment for a period exceeding three months.

(6) This paragraph does not apply to any:

(a) default in the payment of a fine or penalty, or any sum in the nature of a penalty, other than a penalty provided for under a contract;

(b) default by a trustee or person acting in a fiduciary capacity, who has been ordered by a Court to pay any sum in his or her possession or under his or her control;

(c) default by a solicitor in payment of costs when ordered to pay costs for misconduct as such, or in payment of a sum of money when ordered to pay the same in his or her character of an officer of the Court making the order;

(d) default in payment for the benefit of creditors of any portion of a salary or other income in respect of the payment of which any Court having jurisdiction in bankruptcy or insolvency is authorised to make an order.

(7) This paragraph does not affect the availability of a temporary seizure order.

Examination order

2.— (1) A Judge of the District Court may make an order called an examination order where a judgment creditor produces *prima facie* evidence—

[ECOA
1926, s 15]

(a) that a debt is due to the judgment creditor under a judgment (in this Part, the “relevant judgment”), and

(b) that the judgment debtor by whom the judgment debt is payable is ordinarily resident in the District to which the Judge is assigned, and

(c) that the judgment debtor has no seizeable goods which could be taken in execution under any execution order of the Court by which the judgment was given.

(2) An examination order shall require the judgment debtor to attend before the Judge of the District Court on a specified date to be examined as to his or her means, and shall require the judgment debtor not less than one week before the specified date to lodge with the District Court Clerk for that District a written statement of means, setting out his or her assets and liabilities, his or her income, earned and unearned, and the means by which it is earned or the source from which it is derived, and the persons for whose support he or she is legally or morally liable.

(3) The judgment creditor may inspect and obtain copies of the statement of means at any time after it is lodged.

(4) An application for an examination order may be made at any time not more than

[ECOA

payment of the debt and costs by such instalments and at such times as the Judge of the District Court thinks in all the circumstances reasonable;

(b) where the instalment order requires the debt and costs to be paid by instalments, vary the instalment order in such manner as the Judge of the District Court thinks proper in respect of any two or all three of:

- (i) the number of instalments,
- (ii) the amount of each instalment, or
- (iii) the times at which the instalments are to be paid.

(2) When a Judge of the District Court makes an order varying an instalment order, the Judge may, if he or she thinks proper:—

(a) direct that the costs of the judgment creditor in respect of the application for the variation order be part of the costs of the proceedings in the District Court mentioned on *paragraph 4*;

(b) direct that the variation order applies and has effect as from a specified date prior to the date of the making of the variation order.

(3) Save as provided by *subparagraphs (1) and (2)*, a variation order under this paragraph has effect from the date on which it is made.

(4) An order under this paragraph varying an instalment order shall not operate so as to make the instalment order enforceable after the expiration of 12 years from the date of the relevant judgment.

Non-compliance
with instalment order

6.— (1) Where a judgment debtor is liable, by virtue of an instalment order, to pay a debt and costs, either in one payment or by instalments, and the judgment debtor fails to make the payment or fails to pay any one or more of the instalments due while that instalment order is in force at the time or times appointed by it, the judgment creditor may, at any time while the instalment order is in force or within 12 months after it has ceased to be in force, apply to a District Court Clerk for the District where the judgment debtor resides for a summons directing the judgment debtor to appear before the District Court.

[ECOAA
1940, s 6]
[ECOAA
2009, s 2]

(2) A summons referred to in *subparagraph (1)* shall—

- (a) be issued by the District Court Clerk concerned,
- (b) contain details of the consequences, under this paragraph, of a failure to comply with an instalment order, and in particular the possibility of imprisonment,
- (c) provide information in ordinary language of the options available to the Judge of the District Court under *subparagraph (7)* at the hearing of the summons,
- (d) state that the judgment debtor may be arrested if he or she fails to appear before the District Court as directed, and
- (e) be served on the judgment debtor by personal service, unless the Judge of the District Court directs otherwise.

(3) If a judgment debtor fails, without reasonable excuse, to appear before the Court in answer to the summons, on the application of the judgment creditor, the Judge of the District Court, if satisfied that the judgment debtor was served in accordance with *subparagraph (2)*, shall—

- (a) issue a warrant for the arrest of the judgment debtor, or
- (b) if the Judge thinks it appropriate in all the circumstances, fix a new date for the

hearing, at which the judgment debtor will be required to attend, and direct that the judgment debtor be notified of that date.

(4) A judgment debtor arrested under *subparagraph (3)(a)* shall be brought as soon as practicable before the District Court.

(5) Where a judgment debtor is arrested under *subparagraph (3)(a)* and brought before the District Court under *subparagraph (4)*, the Judge shall fix a new date for the hearing of the summons and direct that the judgment creditor be informed by the District Court Clerk by notice in writing of the date so fixed, and shall explain to the judgment debtor in ordinary language—

(a) that he or she—

(i) is entitled to apply to the Court for a certificate of legal aid under *paragraph 7*, and

(ii) must attend before the Court at the date next fixed for the hearing of the summons, and

(b) the consequences, under this paragraph, which may follow a failure—

(i) to comply with an instalment order and in particular the possibility of imprisonment, or

(ii) to attend before the Court as required under *subparagraph (5)(a)(ii)*.

(6) At the hearing of the summons, where both the judgment creditor and the judgment debtor are present in Court, before hearing their evidence, the Judge shall explain to the judgment debtor in ordinary language—

(a) that he or she is entitled to apply to the Court for a certificate of legal aid under *paragraph 7*, and

(b) the consequences, under this paragraph, which may follow a failure to comply with an instalment order, and in particular the possibility of imprisonment.

(7) On hearing the judgment creditor and the judgment debtor and such evidence, if any, as they may respectively adduce, a Judge may, if he or she is satisfied that the judgment debtor has failed to comply with the instalment order—

(a) treat the proceedings on the summons as an application under *paragraph 5* for a variation of the instalment order, in which case that paragraph applies as if the proceedings were such an application;

(b) if he or she considers it appropriate, request the judgment creditor and the judgment debtor to seek resolution by mediation, within such period as the Judge may specify and, if not resolved by that method and within the period so specified, the judgment creditor may apply to the District Court Clerk concerned to re-enter the proceedings;

(c) if he or she considers it appropriate, and subject to *subparagraph (8)*, make an order (which order shall specify the amount of the outstanding debt and costs, including the costs of that order), fixing a term of imprisonment for a period not exceeding three months and postponing the execution of that order until such time and on such conditions, if any, as to the payment of the outstanding debt and costs, as the Judge thinks just, or

(d) if he or she considers it appropriate, and subject to *subparagraph (8)*, make an order (which order shall specify the amount of the outstanding debt and costs, including the costs of that order) for the arrest and imprisonment of the judgment debtor for a period not exceeding three months, and the judgment debtor shall be arrested and imprisoned accordingly.

(8) A Judge shall not make an order under *subparagraph (7)(c)* or *(d)* unless he or she is satisfied, beyond reasonable doubt, on the evidence presented, that the judgment creditor has established that—

(a) the failure to pay the sum in respect of which the judgment debtor has made default is not due to the judgment debtor's mere inability to pay, but is due to his or her wilful refusal or culpable neglect, and

(b) the judgment debtor has no goods which could be taken in execution under any execution order of the Court by which the judgment for the debt was given, or of the High Court.

(9) Where an order fixing and postponing a term of imprisonment has been made under *subparagraph (7)(c)* with a condition as to payment of the debt and costs by the judgment debtor, the judgment debtor may, if his or her ability to comply with the terms of the order has changed, apply to the District Court Clerk concerned to re-enter the matter, on notice to the judgment creditor, and the Judge of the District Court shall deal with the matter as if it was an application under *paragraph 5* for a variation of an instalment order.

(10) Where a judgment debtor is imprisoned on foot of an order made under *subparagraph (7)(c)* or *(d)*, he or she—

(a) may, if his or her ability to repay the outstanding debt and costs as specified in that order has changed, apply to the District Court Clerk concerned to re-enter the matter, on notice to the judgment creditor, and the Judge of the District Court shall deal with the matter as if it was a re-hearing of the summons referred to in *subparagraph (1)*, and

(b) is entitled to be released immediately upon payment by him or her or on his or her behalf to the District Court Clerk concerned or to a member of the staff of the Service assigned to the Court Funds Office authorised in that behalf or to the governor of the prison for that District Court Clerk or authorised member of the staff of the Service, of the sum of money consisting of the amount of all instalments of the debt and costs which have accrued before, and are unpaid at, the date of the order.

(11) A District Court Clerk or authorised member of the staff of the Service shall transmit all moneys paid to him or her under this paragraph by or on behalf of a judgment debtor to the judgment creditor, without request.

(12) Failure by a judgment debtor to comply with *subparagraph (5)(a)(ii)*, without reasonable excuse, constitutes contempt of Court, and the Judge of the District Court may deal with the matter accordingly.

Entitlement to legal aid.

7.— (1) If it appears to a Judge of the District Court in proceedings on a summons under *paragraph 4* or *paragraph 6* that the means of a judgment debtor are insufficient to enable him or her to obtain legal aid, the Judge shall, on application being made by the judgment debtor in that behalf, grant to the judgment debtor—

[ECOAA 1940, s 6A]
[ECOAA 2009, s 2]

(a) a certificate for free legal aid (in this paragraph referred to as a 'judgment debtor's legal aid certificate'),

(b) where the judgment debtor appeals an order for his or her imprisonment made under *subparagraph (7)(c)* or *(d)* of *paragraph 6* and applies to the Judge for legal aid in connection with the appeal, a certificate for free legal aid in respect of the appeal (in this paragraph referred to as a 'judgment debtor's legal aid (appeal) certificate'), or

(c) where the Judge refers a question of law arising in the proceedings to the High

Court and the judgment debtor applies to the Judge for legal aid in connection with that reference, a certificate for free legal aid in respect of the reference (in this paragraph referred to as a ‘judgment debtor’s legal aid (case stated) certificate’).

(2) Where a certificate has been granted under *subparagraph (1)*, the judgment debtor concerned is entitled to legal aid and to have legal representation assigned to him or her for that purpose.

(3) Where a judgment debtor, in respect of whom an order for imprisonment is made, is refused a judgment debtor’s legal aid (appeal) certificate, he or she may apply for the certificate to the Court to which an appeal from imprisonment lies either—

- (i) by letter addressed to the registrar of that Court setting out the facts of the case and the grounds of the application, or
- (ii) to the Court itself.

(4) The Act of 1962 and regulations made under *section 10* of that Act apply, where appropriate and with such modifications as may be necessary, to a certificate granted under *subparagraph (1)* and to such legal aid.

(5) The Minister may make such regulations as are necessary for the purpose of this paragraph to prescribe all or any of the following:

- (a) the form of judgment debtors’ legal aid certificates,
- (b) the rate of payment of any fee, costs or other expenses payable,
- (c) the manner in which legal representatives may be assigned pursuant to such certificates, or
- (d) anything that by this Part of this Schedule is required or permitted to be prescribed.

Periodic
orders

payment

8.— In *paragraph 9*, a “periodic payment order” means:

(a) a maintenance order made under *section 7(6)* or *section 11(2)(b)* of the *Guardianship of Infants Act 1964* or a variation order made under *section 12* of that Act;

(b) an order made by the District Court under *section 5*, *section 5A* or *section 21A* (inserted by the *Status of Children Act 1987*) of the *Family Law (Maintenance of Spouses and Children) Act 1976*;

(c) an order for payment of maintenance pending suit or a periodical payments order under the *Judicial Separation and Family Law Reform Act 1989*;

(d) a maintenance pending suit order and a periodical payments order under the *Family Law Act 1995*;

(e) a maintenance pending suit order and a periodical payments order under the *Family Law (Divorce) Act 1996*;

(f) an enforceable maintenance order within the meaning of *section 14* of the *Maintenance Orders Act 1974*, *section 4* of the *Jurisdiction of Courts and Enforcement of Judgments Act 1998* or *section 114*, or a maintenance order which is enforceable in the State under or by virtue of *Section 1* of *Chapter IV* of the *Maintenance Regulation*;

(g) a compensation order (within the meaning of *section 6(1)* of the *Criminal Justice Act 1993*) or an order under *section 6(8)* of the *Criminal Justice Act 1993*;

[EOA
1940, s 8]
[CPCROCA
2010, ss, 65,
136]

(h) a maintenance order, a variation order, a maintenance pending suit order or a periodical payments order made under the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*;

(i) any order as to costs that is made in conjunction with any order referred to in *subparagraphs 8(1)(a) to 8(1)(e) inclusive, 8(1)(g) or 8(1)(h)*, and

(j) any order as to costs made by a Court in:

(I) a reciprocating jurisdiction or a designated jurisdiction (each within the meaning of the *Maintenance Orders Act 1974*), or

(II) a Contracting State (within the meaning of the *Jurisdiction of Courts and Enforcement of Judgments Act 1998*), or

(III) a member state

and made by such a Court in connection with an order of that Court that has become an enforceable maintenance order.

Failure to comply with periodic payment order¹⁹⁶

9.— (1)

Where a sum payable by virtue of a periodic payment order is not duly paid, a Judge of the District Court may, on the application by or on behalf of the person to whom such sum is payable under the District Court periodic payment order (in this paragraph, the “payee”):

[ECOAA 1940, s 8]
[ECOAA 2009, s 2]
[CPCROCA 2010, ss. 65, 136]

by warrant cause the person by whom such sum is payable under the District Court periodic payment order (in this paragraph, the “defaulter”) to be brought before him or her and the Judge, after hearing the payee and the defaulter and such evidence (if any) as they may respectively adduce, may, if he or she thinks proper, either:

(a) direct that sum together with the costs of the application under this paragraph to be executed by order of seizure and sale of the seizeable goods of the defaulter, or

(b) treat the application as an application for a summons under *paragraph 6*, in which case *paragraph 6* applies as if the application was made under that paragraph¹⁹⁷.

(2) Where a Judge of the District Court directs, under *subparagraph (1)*, that an amount (in this paragraph, the “amount”) be executed by order of seizure and sale of the seizeable goods of the defaulter, the Judge of the District Court may require the defaulter to enter into a Court bond with sureties to the satisfaction of the Judge of the District Court to appear before that Judge on a specified day (in this paragraph, the “specified day”) if the amount is not previously discharged in full, either as a result of such execution or otherwise.

(3) If the defaulter, on being required to enter into a Court bond under *subparagraph (2)*, does not comply with that requirement, the Judge of the District Court may, if he or she thinks proper, direct the defaulter to be detained in custody and brought before him or her on the specified day unless the defaulter is previously released from custody pursuant to *paragraph 6* or this paragraph.

(4) If, while the defaulter is in custody in accordance with *subparagraph (3)*, either—

(i) the defaulter enters into a Court bond before a peace commissioner with sureties to the satisfaction of that peace commissioner to appear before the Judge of the

¹⁹⁶ The original section 8(7) of the 1940 Act has been deleted because the Acts of 1886 and 1930 referred to in that subsection have been repealed.

District Court on the specified day if the amount is not previously discharged as a result of such execution or otherwise, or
(ii) the amount is discharged in full either as a result of such execution or otherwise, the defaulter shall be released from custody forthwith.

(5) If, on the specified day, the amount has not been discharged in full, either as a result of such execution or otherwise, the Judge of the District Court shall treat the failure to discharge the amount as a failure to appear before the Court in answer to a summons issued under *paragraph 6(2)*, in which case *paragraph 6* applies accordingly.

(6) Whenever a defaulter is sentenced to a term of imprisonment under *paragraph 6* for failing to pay the sum or sums due under a periodic payment order, the defaulter is entitled to be released immediately upon payment by him or her or on his or her behalf to the District Court Clerk concerned or to a member of the staff of the Service assigned to the Court Funds Office authorised in that behalf or to the governor of the prison for the District Court Clerk or authorised member of the staff of the Service concerned the sum of money specified in that behalf in the order for his or her imprisonment and consisting of the sum or the total of the sums on account of the non-payment of which the application under *paragraph 5* for failing to pay the sum or sums due under the periodic payment order was made, and the costs of the application for that order.

(7) A District Court Clerk or authorised member of the staff of the Service shall pay all moneys paid under *subparagraph (6)* to him or her by or on behalf of the defaulter to the payee, without demand.

(8) Every seizure and sale made in pursuance of a direction given under this paragraph by a Judge of the District Court shall be carried out by a sheriff.

Imprisonment does not extinguish debt

10.— The imprisonment of:

[ECO A
1926, s 20]

(a) a judgment debtor, or

(b) a defaulter

under this Part does not operate:

(i) as a satisfaction or extinguishment of the debt or any part of that debt or, as the case may be,

(ii) as a satisfaction or extinguishment of the defaulter's liability for payment of any money on account of the non-payment of which he or she was sentenced to such imprisonment, or

(iii) deprive the judgment creditor of any other right or remedy for the recovery of that debt or, as the case may be, deprive the applicant of any other right or remedy for enforcing or recovering payment of such money.

Release of person imprisoned for non-payment of money.

11.— (1) Where a person is in prison under an order of a Court made on account of the failure of the person to pay a sum of money, the Minister may, at any time and for any reason which appears to him or her sufficient, direct that the person be released either (as the Minister thinks proper) immediately or after payment of a specified part of that sum of money.

[ECO A
1940, s 9]
[ECOAA
2009, s 2]
[SI 121 of
2007, Reg 7]

(2) The Minister may, before releasing a person under this paragraph, if he or she considers it appropriate and proper in all the circumstances, consult with the Judge who made the order for imprisonment of the person.

(3) Where the Minister directs that a person be released from prison, the person

shall be released in accordance with the direction.

(4) This paragraph does not apply to or in relation to a person in prison to the extent that the person is in prison on account of the failure to pay a sum of money under a European Union Institutional judgment which has been entered in accordance with *section 127(1)(g)*.

Section 121

SCHEDULE 8

Part 4

Third party creditor orders

Third party creditor procedure

1.— (1) A Judge of the High Court or a Judge of the Circuit Court may, on the *ex parte* application of a judgment creditor, and on affidavit by or on behalf of the judgment creditor which states:

[CLPAI
1856, ss 53-
59, 69]

(a) that the judgment creditor has the benefit of a money judgment which is unsatisfied;

(b) the amount of the money judgment or, as the case may be, the amount remaining unsatisfied in respect of the money judgment;

(c) that another person is indebted to the judgment debtor, and is within the jurisdiction of the Court,

make an order (in this Part, a “third party creditor order”, which expression includes any order for the attachment of a debt), on a conditional or interim basis, that all debts owing or accruing from that other person (in this paragraph, the “third party creditor”) to the judgment debtor shall be attached to answer the money judgment.

(2) The Judge may order the third party creditor to appear before:

(a) the Judge, or

(b) where the order is made by a Judge of the High Court, the Master of the High Court, or

(c) where the order is made by a Judge of the Circuit Court, a County Registrar,

to show any cause why the third party creditor should not pay the judgment creditor the debt due from the third party creditor to the judgment debtor, or so much of that debt as is sufficient to satisfy the money judgment.

(3) Service of a third party creditor order, or the giving of notice to the third party creditor of the making of a third party creditor order, in the manner the Judge directs, binds the debt in the hands of the third party creditor.

(4) If, the third party creditor does not appear on an application for the making of an unconditional third party creditor order, or on the making of such an order:

(a) the third party creditor does not immediately or at such time as the Court directs pay into Court the amount due from the third party creditor to the judgment debtor, or an amount equal to the money judgment, and

(b) the third party creditor does not dispute the debt due or claimed to be due from the third party creditor to the judgment debtor,

then the Court or a Judge may order an execution order to issue, without application for that purpose, to recover the amount due from the third party creditor towards satisfaction of the money judgment.

(5) If the third party creditor disputes his, her or its liability, the Court or a Judge, instead of ordering an execution order to issue, may order that the judgment creditor be at liberty to begin proceedings against the third party creditor, calling upon the third party creditor to show cause why there should not be execution against the third party creditor for the alleged debt, or for the amount due to the judgment debtor (if less than the money judgment) and for the costs of those proceedings.

(6) Payment made by, or execution executed against, a third party creditor in accordance with this paragraph is a valid discharge to the third party creditor against the judgment debtor to the amount paid or executed.

(7) There shall be maintained in the Central Office and in every Circuit Court Office a record of every order made under this paragraph and of the proceedings on every such order, which shall include in each case the name of every party, the date of the order, and a statement of the amount recovered, and copies or extracts of those records may be taken by any person, on application to the proper officer and on payment of any fee prescribed in a Court fees order.

Section 128

SCHEDULE 9

Supplementary provisions on proceedings under relevant European Union enactments

Applications for recognition and enforcement of Brussels I judgments

1.— (1) The Master of the High Court shall decide an application to which *section 127(1)(d)* relates in accordance with the Brussels I Regulation.

[SI 52 of 2002, Reg 5]

(2) If an application mentioned in *subparagraph (1)* is for the enforcement of the European Union judgment, the Master shall declare the European Union judgment enforceable immediately on completion of the formalities provided for in Article 53 of the Brussels I Regulation without any review under Articles 34 and 35 of the Brussels I Regulation and shall make a Brussels I enforcement order in relation to the European Union judgment.

(3) An order under *subparagraph (2)* may provide for the recognition or enforcement of only part of the European Union judgment concerned.

(4) Subject to *paragraph 4*, and the restrictions on enforcement contained in Article 47.3 of the Brussels I Regulation, if a Brussels I enforcement order has been made concerning an European Union judgment, the European Union judgment-

(a) is, to the extent to which its enforcement is authorised by the Brussels I enforcement order, of the same force and effect as a judgment of the High Court, and

(b) may be enforced by the High Court, and proceedings taken on it, as if it were a judgment of that Court.

Applications for recognition and enforcement of Lugano Convention 2007 judgments

2.— (1) The Master of the High Court shall decide an application to which *section 127(1)(e)* relates in accordance with the Lugano Convention 2007.

[SI 52 of 2002, Reg 5 extended to Lugano Convention 2007]

(2) If an application mentioned in *subparagraph (1)* is for the enforcement of the Lugano Convention 2007 judgment, the Master shall declare the Lugano Convention 2007 judgment enforceable immediately on completion of the formalities provided for in Article 53 of the Lugano Convention 2007 without any review under Articles 34 and 35 of the Lugano Convention 2007 and shall make a Lugano Convention 2007 enforcement order in relation to the Lugano Convention 2007 judgment.

(3) An order under *subparagraph (2)* may provide for the recognition or enforcement of only part of the Lugano Convention 2007 judgment concerned.

(4) Subject to *paragraph 4*, and the restrictions on enforcement contained in Article 47.3 of the Lugano Convention 2007, if a Lugano Convention 2007 enforcement order has been made concerning a Lugano Convention 2007 judgment, the Lugano Convention 2007 judgment -

(a) is, to the extent to which its enforcement is authorised by the Lugano Convention 2007 enforcement order, of the same force and effect as a judgment of the High Court, and

(b) may be enforced by the High Court, and proceedings taken on it, as if it were a judgment of that Court.

Applications for enforcement of maintenance decisions

3.— (1) The Master of the High Court shall decide an application to which *section 127(1)(f)* relates in accordance with the Maintenance Regulation¹⁹⁸.

(2) If an application mentioned in *subparagraph (1)* is for a declaration of enforceability, the Master shall declare the decision to which the application relates enforceable immediately on completion of the formalities provided for in Article 28 of the Maintenance Regulation without any review under Article 24 of the Maintenance Regulation and shall make an enforcement order in relation to the decision to which the application relates.

Special provision for enforceable maintenance orders

4.— (1) Subject to *subparagraphs (2)* and *(4)*:

(a) *subparagraph (4)* of *paragraph 1* applies only to a European Union judgment other than a European maintenance order, and

(b) *subparagraph (4)* of *paragraph 2* applies only to a Lugano Convention 2007 judgment other than a European maintenance order.

(2) On application by the maintenance creditor under an enforceable maintenance order, the Master of the High Court may by order declare that the following shall be regarded as being payable under an European Union judgment referred to in *paragraph 1(4)* or, as the case may be, a Lugano Convention 2007 judgment referred to in *paragraph 2(4)*:

(a) any sum payable under the enforceable maintenance order as a periodic payment but not paid before the relevant Brussels I enforcement order or Lugano Convention 2007 enforcement order was made,

(b) a lump sum (not being a sum referred to in *subparagraph (a)*) which is payable under the enforceable maintenance order.

(3) A declaration shall only be made under *subparagraph (2)* where the Master considers that by doing so the enforceable maintenance order would be more effectively enforced respecting any sum referred to in that subparagraph.

(4) If a declaration is made under *subparagraph (2)*, the sum to which it relates is deemed for the purposes of this section to be payable under a European Union judgment referred to in *paragraph 1(4)* or, as the case may be, a Lugano Convention 2007 judgment referred to in *paragraph 2(4)*, and not otherwise.

Interest and legal costs

5.— (1) Where, on an application for a Brussels I enforcement order or a 2007 Lugano Convention enforcement order respecting a judgment, or for a declaration of enforceability in respect of a decision to which the Maintenance

[SI 52 of 2002, Reg 7 extended to Lugano Convention

¹⁹⁸ The draft anticipates that domestic legislation giving further effect in the State to the Maintenance Regulation would confer this jurisdiction on the Master of the High Court.

Regulation applies, it is shown -

2007 and
Maintenance
Regulation]

(a) that the judgment or decision provides for the payment of a sum of money, and

(b) that, in accordance with the law of the member state or Contracting State in which the judgment or decision was given, interest on the sum is recoverable under the judgment or decision at a particular rate or rates and from a particular date or time,

the enforcement order or declaration of enforceability, if made, shall provide that the person liable to pay the sum shall also be liable to pay the interest, apart from any interest on costs recoverable under *subparagraph (2)*, in accordance with the particulars noted in the order, and the interest shall be recoverable by the applicant as though it were part of the sum.

(2) An order or declaration mentioned in *subparagraph (1)* may provide for the payment to the applicant by the respondent of the reasonable legal costs of or incidental to the application for that order.

(3) A person required by an order or declaration mentioned in *subparagraph (1)* to pay legal costs shall be liable to pay interest on the costs as if they were the subject of an order for the payment of legal costs made by the High Court on the date on which the order or declaration mentioned in *subparagraph (1)* was made.

(4) Interest shall be payable on a sum referred to in *subparagraph (1)(a)* only as provided for in this paragraph.

Enforcement of
enforceable
maintenance orders

6.— (1) Subject to *paragraph 5* and the restrictions on enforcement contained in Article 47.3 of the Brussels I Regulation and Article 47.3 of the Lugano Convention 2007, the District Court has jurisdiction to enforce an enforceable maintenance order.

[SI 52 of 2002,
Reg 6, extended
to Lugano
Convention
2007 and
Maintenance
Regulation]

(2) An enforceable maintenance order shall, from the date on which the European maintenance order was made, be deemed for the purposes of -

(a) this Act,

(b) *section 98(1)* of the *Defence Act 1954*, and

(c) subject to the Brussels I Regulation, the Lugano Convention 2007 or, as the case may be, the Maintenance Regulation, the variation or discharge of that order under *section 6* of the Act of 1976,

to be an order made by the District Court under *section 5*, *section 5A* or *section 21A* of the Act of 1976, as may be appropriate.

(3) *Subparagraphs (1)* and *(2)* apply even though an amount payable under the enforceable maintenance order exceeds the District Court periodic payment limit.

(4) Where an enforceable maintenance order is varied by a court in a member state or, as the case may be, in a Contracting State of the Lugano Convention 2007 in which that Convention is in force, and an enforcement order has been made respecting all or part of the enforceable maintenance order as so varied, or respecting all or part of the order effecting the variation, the enforceable maintenance order shall, from the date on which the variation takes effect, be enforceable in the State only as so varied.

(5) Where an enforceable maintenance order is revoked by a court in a member state or, as the case may be, in a Contracting State of the Lugano Convention

2007 in which that Convention is in force, and an enforcement order has been made respecting the order effecting the revocation, the enforceable maintenance order shall, from the date on which the revocation takes effect, cease to be enforceable in the State except in relation to any sums under the order that were payable, but not paid, on or before that date.

(6) Subject to the making of a declaration under *paragraph 4(2)* and to *paragraph 4(2)* and *paragraph 4(4)*, the following shall be regarded as being payable pursuant to an order made under *section 5*, *section 5A* or *section 21A* of the Act of 1976:

(a) any sum payable under an enforceable maintenance order but not paid before the relevant enforcement order was made;

(b) any legal costs of or incidental to the application for the enforcement order that are payable.

(7) The jurisdiction vested in the District Court by this paragraph shall be exercisable by a Judge of the District Court for the time being assigned to -

(a) if the maintenance debtor under an enforceable maintenance order resides in the State, the District in which the maintenance debtor resides or carries on any profession, business or occupation, or

(b) if the maintenance debtor under an enforceable maintenance order does not reside in the State but is employed by an individual residing or having a place of business in the State or by a corporation or association having its seat in the State, the District in which the individual resides or the corporation or association has its seat.

Payment and other obligations of maintenance debtor

7.— (1) Despite anything to the contrary in an enforceable maintenance order, the maintenance debtor shall pay any sum payable under that order to -

(a) in a case referred to in *paragraph 6(7)(a)*, a District Court Clerk for the District in which the maintenance debtor for the time being resides or a member of the staff of the Service assigned to the Court Funds Office authorised to receive and make payments referable to that District Court Clerk, or

(b) in a case referred to in *paragraph 6(7)(b)*, a District Court Clerk specified by the District Court or a member of the staff of the Service assigned to the Court Funds Office specified by the District Court or authorised to receive and make payments referable to that District Court Clerk,

for transmission to the maintenance creditor or, if a public authority has been authorised by the maintenance creditor to receive the sum, to the public authority.

(2) If a sum payable under an enforceable maintenance order is not duly paid and if the maintenance creditor so requests in writing, the District Court Clerk concerned or the Service shall make an application respecting that sum under -

(a) *paragraph 9* of *Part 3* of *Schedule 8* (which relates to the enforcement of certain maintenance orders), or

(b) *section 10* (which relates to the attachment of certain earnings) of the Act of 1976.

(3) For the purposes of *subparagraph (2)(a)*, a reference to an applicant in *paragraph 9* of *Part 3* of *Schedule 8* shall be construed as including a reference to the District Court Clerk and a reference to the Service.

[SI 52 of 2002, Reg 6, extended to Lugano Convention 2007 and Maintenance Regulation]

(4) Nothing in this paragraph affects the right of a maintenance creditor under an enforceable maintenance order to institute proceedings for the recovery of a sum payable to a District Court Clerk or to the Service under *subparagraph (1)*.

(5) The maintenance debtor shall give notice of any change of address to the District Court Clerk for the District in which the maintenance debtor has been residing.

(6) A person who, without reasonable excuse, contravenes *subparagraph (5)* is guilty of an offence and liable on summary conviction to a class C fine within the meaning of Part 2 of the Act of 2010.

Maintenance payments

8.— (1) A European maintenance order shall be regarded as a European Union judgment referred to in *paragraph 1(4)* or, as the case may be, a Lugano Convention judgment referred to in *paragraph 2(4)*, if the District Court does not have jurisdiction to enforce it under *paragraph 6*.

[SI 52 of 2002, Reg 8, extended to Lugano Convention 2007 and Maintenance Regulation]

(2) An amount payable in the State under a European maintenance order by virtue of a Brussels I enforcement order or a Lugano Convention 2007 enforcement order shall be payable in the currency of the State.

(3) If the amount is stated in a European maintenance order mentioned in *subparagraph (2)* in any currency other than the currency of the State, payment shall be made on the basis of the exchange rate prevailing, on the date the Brussels I enforcement order or, as the case may be, the Lugano Convention 2007 enforcement order is made, between the currency of the State and the other currency.

Provisions as to evidence

9.— (1) For the purposes of this Schedule, a certificate purporting to be signed by an officer of an authorised institution and to state the exchange rate prevailing on a specified date between a specified currency and the currency of the State shall be admissible as evidence of the facts stated in the certificate.

[SI 52 of 2002, Reg 9, extended to Lugano Convention 2007 and Maintenance Regulation]
[SI 112 of 2005, Reg 6]

(2) For the purposes of the Brussels I Regulation, a document that is duly authenticated and purports to be a copy of a European Union judgment is, without further proof, deemed to be such a copy, unless the contrary is shown.

(3) A document purporting to be a copy of a European Union judgment shall be regarded for those purposes as being duly authenticated if it purports -

(a) to bear the seal of the court or authority concerned, or

(b) to be certified by a judge or officer of the court or authority to be a true copy of the European Union judgment.

(4) For the purposes of the Lugano Convention 2007, a document that is duly authenticated and purports to be a copy of a Lugano Convention 2007 judgment is, without further proof, deemed to be such a copy, unless the contrary is shown.

(5) A document purporting to be a copy of a Lugano Convention 2007 judgment shall be regarded for those purposes as being duly authenticated if it purports -

(a) to bear the seal of the court or authority concerned, or

(b) to be certified by a judge or officer of the court or authority to be a true copy of the Lugano Convention 2007 judgment.

(6) For the purposes of the Maintenance Regulation, a document that is duly authenticated and purports to be a copy of a decision to which the Maintenance Regulation relates, without further proof, deemed to be such a copy, unless the

contrary is shown.

(7) A document purporting to be a copy of a decision to which the Maintenance Regulation relates shall be regarded for the purposes mentioned in *subsection (6)* as being duly authenticated if it purports -

(a) to bear the seal of the court concerned, or

(b) to be certified by a judge or officer of the court to be a true copy of the decision to which the Maintenance Regulation relates.

(8) A document which -

(a) purports to be a translation of -

(i) a European Union judgment given by a court of a member state, a Lugano Convention 2007 judgment given by a court in a Contracting State of the Lugano Convention 2007 in which that convention is in force or a decision to which the Maintenance Regulation relates given by a court of a member state,

(ii) an authentic instrument within the meaning of Article 57.1 of the Brussels I Regulation, Article 57.1 of the Lugano Convention 2007 or, as the case may be, Article 48 of the Maintenance Regulation,

(iii) a settlement within the meaning of Article 58 of the Brussels I Regulation or Article 58 of the Lugano Convention 2007 or, as the case may be, Article 48 of the Maintenance Regulation, or

(iv) a certificate mentioned in Article 54, 57.4 or 58 of the Brussels I Regulation or Article 54, 57.4 or 58 of the Lugano Convention 2007 or, as the case may be, an extract referred to in Article 48 of the Maintenance Regulation, and

(b) is certified as correct by a person competent to do so,

shall be admissible as evidence of the document of which it purports to be a translation.

(9) For the purposes of the Matrimonial and Parental Regulation, a document that is duly authenticated and purports to be a copy of a judgment or a certificate in accordance with Annex I, II, III or IV to the Matrimonial and Parental Regulation shall without further proof be deemed to be such a copy unless the contrary is shown.

(10) A document purporting to be a copy of a judgment shall be regarded for the purposes mentioned in *subparagraph (9)* as being duly authenticated if it purports—

(a) to bear the seal or stamp of the court or authority concerned, or

(b) to be certified by a judge, or an official having powers equivalent to those of a judge, to be a true copy of the judgment.

(11) A document that—

(a) purports to be a translation of—

(i) a judgment given by a court of a member state, or

(ii) a certificate within the meaning of Article 39, 41.1 or 42.1 of the Matrimonial and Parental Regulation, and

(b) is certified as correct by a person qualified to do so in a member state,

shall be admissible as evidence of the document of which it purports to be a translation.

Provisional or protective measures

10.— (1) On an application for provisional or protective measures in accordance with Article 31 of the Brussels I Regulation, Article 31 of the Lugano Convention 2007 or, as the case may be, Article 14 of the Maintenance Regulation, the High Court may grant any such measures that the Court has power to grant in proceedings that, apart from this section, are within its jurisdiction if -

[SI 52 of 2002, Reg 10, extended to Lugano Convention 2007 and Maintenance Regulation]

(a) proceedings have been or are to be commenced in a member state or, as the case may be, in a Contracting State of the Lugano Convention 2007 in which that convention is in force, and

(b) the subject matter of the proceedings is within the scope of the Brussels I Regulation, the Lugano Convention 2007 or, as the case may be, the Maintenance Regulation (whether or not that European Union enactment or Convention has effect in relation to the proceedings).

(2) On an application for provisional or protective measures, the High Court may refuse to grant the measures sought if, in its opinion, the fact that, apart from this section, the Court does not have jurisdiction in relation to the subject matter of the proceedings makes it inexpedient for it to grant the measures.

(3) Subject, as the case may be, to

(a) Article 47.3 of the Brussels I Regulation, or

(b) Article 47.3 of the Lugano Convention 2007, or

(c) Article 36.3 of the Maintenance Regulation,

an application to the Master of the High Court for, as the case may be,

(i) a Brussels I enforcement order in respect of a European Union judgment, or

(ii) a Lugano Convention 2007 enforcement order in respect of a Lugano Convention 2007 judgment, or

(iii) a declaration of enforceability

may include an application for any protective measures the High Court has power to grant in proceedings that, apart from this section, are within its jurisdiction.

(4) Where a Brussels I enforcement order, a Lugano Convention 2007 enforcement order or a declaration of enforceability of a decision to which the Maintenance Regulation applies is made, the Master shall grant any such protective measures so applied for.

Applications to enforce or enter a European Union Institutional judgment

11.— (1) In this section:

[S.I. No. 121 of 2007]

the “Minister” means the Minister for Foreign Affairs;

“order for enforcement”, in relation to a European Union Institutional judgment, means an order which -

(a) is made by or on the behalf of the Minister,

(b) verifies the authenticity of the European Union Institutional judgment, and

(c) enables the party concerned by the European Union Institutional judgment to proceed to enforcement of the European Union Institutional judgment in accordance with the law of the State.

(2) The Minister shall be the national authority for the purpose of carrying out the formalities specified in -

(a) Article 299 of the Treaty on the Functioning of the European Union,

(b) Article 164 of the Euratom Treaty, or

(c) Article 92 of the ECSC Treaty.

(3) Subject to *subparagraphs (4) to (13) inclusive*, where an application to enforce a European Union Institutional judgment to which is appended an order for enforcement is duly made to the High Court under *section 127(1)(g)* by the person entitled to enforce the European Union Institutional judgment, the High Court shall order that the European Union Institutional judgment be entered pursuant to the order of enforcement as if the European Union Institutional judgment were a judgment or order of the High Court.

(4) An application under *section 127(1)(g)* -

(a) shall be made *ex parte*,

(b) shall be grounded on an affidavit sworn by the applicant, and

(c) shall exhibit -

(i) the European Union Institutional judgment and the order for enforcement the subject of the application or authenticated copies thereof, and

(ii) if the European Union Institutional judgment is not in one of the official languages of the State, a translation thereof certified by a notary public or other person qualified to do so.

(5) Where the European Union Institutional judgment the subject of an application under *section 127(1)(g)* is for a sum of money, the affidavit referred to in *subparagraph (4)(b)* shall state -

(a) the name of the judgment creditor and an address for service, within the State, of the judgment creditor,

(b) the name of the judgment debtor and an address or place of business, if known, of the judgment debtor,

(c) the amount in respect of which the European Union Institutional judgment is unsatisfied, and

(d) that the Court of Justice of the European Union has not suspended the enforcement of the European Union Institutional judgment.

(6) Where a sum of money is payable under a European Union Institutional judgment which is to be entered, the High Court may, if it considers it necessary to do so, order that that the amount payable shall be such sum in the currency of the State as, on the basis of the rate of exchange prevailing at the date on which the European Union Institutional judgment was originally given, is equivalent to the sum payable.

(7) Where it appears that a sum of money payable under a European Union Institutional judgment or decision the subject of an application under *section 127(1)(g)* has been partly satisfied at the date of the application, the High Court shall order that the European Union Institutional judgment shall be entered only in respect of the balance remaining payable at that date.

(8) Notwithstanding *subparagraph (5)(c)*, the High Court may inquire of its own motion as to whether or not a European Union Institutional judgment the subject of an application under *section 127(1)(g)* has been wholly or partly satisfied at

the date of the application.

(9) A copy of an order under *section 127(1)(g)* granting leave to enter a European Union Institutional judgment -

(a) shall be served on every person against whom the European Union Institutional judgment was given, and

(b) shall be accompanied by -

(i) a copy of the European Union Institutional judgment,

(ii) a copy of the order for enforcement appended to the European Union Institutional judgment, and

(iii) if *subparagraph (4)(c)(ii)* applies to the European Union Institutional judgment, a copy of the translation referred to in that subsection of the European Union Institutional judgment.

(10) After the date on which a European Union Institutional judgment under which a sum of money is payable has been entered pursuant to an order under *section 127(1)(g)*, an application, grounded on an affidavit sworn by the applicant, may be made to the High Court by motion on notice for an order that the entry in respect of the European Union Institutional judgment be varied or cancelled on the grounds that at that date the European Union Institutional judgment had been partly or wholly satisfied.

(11) Where the High Court grants an application under *subparagraph (10)* in relation to a European Union Institutional judgment, the entry in respect of the European Union Institutional judgment shall be varied or cancelled, as the case requires, with effect from the date on which the entry was made.

(12) The High Court shall have jurisdiction over complaints that the enforcement of European Union Institutional judgments, orders or decisions is being carried out in an irregular manner.

Entry of European Union Institutional judgments: evidence and effects

12.— (1) An order for enforcement appended to a European Union Institutional judgment and purporting to be signed by -

[S.I. No. 121 of 2007]

(a) the Minister as the national authority specified in *paragraph 11(2)*, or

(b) a person, or a person belonging to a class of persons, authorised in writing by the Minister to sign orders for enforcement on behalf of the Minister,

shall, without proof of the signature of the person purporting to sign the order for enforcement or that the Minister was the national authority, a person so authorised or a person belonging to a class of persons so authorised, as the case may be, be evidence, unless the contrary is proved, of the matters stated in the order for enforcement in relation to that European Union Institutional judgment.

(2) Subject to -

(a) Article 299 of the Treaty on the Functioning of the European Union,

(b) Article 164 of the Euratom Treaty, or

(c) Article 92 of the ECSC Treaty,

where a European Union Institutional judgment has been entered pursuant to an order under *section 127(1)(g)*-

(i) the European Union Institutional judgment may be registered under this Act in the same manner as a judgment of the High Court,

(ii) the European Union Institutional judgment shall, for all purposes of

execution, be of the same force and effect as if it had been a judgment or order of the High Court on the date of entry,

(iii) proceedings may be taken on the European Union Institutional judgment as if it had been a judgment or order of the High Court on the date of entry, and

(iv) unless otherwise provided in the European Union Institutional judgment or by Community law, any sum payable under the European Union Institutional judgment shall carry interest from the date on which the European Union Institutional judgment was made, and at such rate, as if the European Union Institutional judgment had been a judgment or order of the High Court.

(3) An order of the Court of Justice of the European Union suspending the enforcement of a European Union Institutional judgment shall, upon production in the High Court, operate to suspend the enforcement of the European Union Institutional judgment for the period and on the conditions, if any, stated in the order.

Supplementary provisions on European Enforcement Orders

13.— (1) In this paragraph,

[S.I. No. 648 of 2005]

“European Enforcement Order” has the same meaning as in the European Enforcement Order Regulation, and

words and expressions defined in the European Enforcement Order Regulation have the same meaning as in the European Enforcement Order Regulation.

(2) Where a judgment, Court settlement or authentic instrument on an uncontested claim has been certified as a European Enforcement Order in a member state of origin, that judgment, Court settlement or authentic instrument, as the case may be-

(a) shall be of the same force and effect as a judgment of the High Court, and

(b) may be enforced by the High Court, and proceedings taken on it, as if it were a judgment of that Court.

(3) An application referred to in Article 6.1 of the European Enforcement Order Regulation shall be made to the Court which delivered the judgment on the uncontested claim.

(4) An application referred to in Article 6.2 or Article 10 of the European Enforcement Order Regulation shall be made to the Court which delivered the judgment certified as a European Enforcement Order.

(5) An application referred to in Article 6.3 of the European Enforcement Order Regulation shall be made to the Court which delivered the decision following a challenge to a judgment certified as a European Enforcement Order.

(6) The High Court has sole jurisdiction in relation to any application referred to in Article 21 or Article 23 of the European Enforcement Order Regulation.

(7) No other provision of this Act operates to prejudice the generality of Article 10.4 of the European Enforcement Order Regulation.

Application for European Order for Payment

14.— (1) Subject to *subparagraph* (2), an application for a European Order for Payment in accordance with Article 7.1 of the European Order for Payment Regulation shall be made to and decided by the High Court.

[S.I. No. 525 of 2008]

(2) The functions of the High Court under Articles 8, 9, 10, 11, 12 and 18 of the European Order for Payment Regulation shall be performed by the Master of the High Court.

(3) A respondent wishing to lodge a statement of opposition to a European Order for Payment in accordance with Article 16 of the European Order for Payment Regulation shall lodge that statement with the Central Office.

(4) Where an applicant has pursued his or her claim through the European Order for Payment procedure prescribed by the European Order for Payment Regulation, no rule of law or statutory provision prejudices his or her position in subsequent civil proceedings.

(5) Without prejudice to *subparagraph (4)*, in reckoning any period of time for the purposes of any limitation period specified by the *Statutes of Limitations*, the period beginning on the day of the receipt by the High Court of an application for a European Order for Payment and ending on the day which is 30 days after—

(a) in a case where the applicant has requested that the European Order for Payment proceedings be terminated in the event of a statement of opposition being lodged, the day on which a notice is issued by the High Court informing the applicant that the European Order for Payment proceedings have been terminated, or

(b) in a case where the applicant has accepted the proposal of the High Court that the application for a European Order for Payment should proceed only as respects that part of the claim specified by the High Court, as respects the remaining part of the claim, the day on which the applicant accepts the proposal of the Court, or

(c) in the case of a claim which is rejected by the Court pursuant to Article 11.1 of the European Order for Payment Regulation, the day on which a notice is issued by the High Court informing the applicant that the application for a European Order for Payment has been rejected,

shall be disregarded.

(6) Where a statement of opposition to a European Order for Payment is lodged with the Central Office in accordance with *subparagraph (3)* and the proceedings are remitted for hearing in accordance with *subparagraph (8)*, then, for the purposes of the *Statutes of Limitations*, as respects the subject matter of the claim under the European Order for Payment procedure, proceedings shall be deemed to have been instituted in the Court to which they have been remitted for hearing on the day on which the application for a European Order for Payment was made to the High Court.

(7) Where a statement of opposition to a European Order for Payment has not been lodged with the Central Office in accordance with *subparagraph (3)* and the European Order for Payment has been declared enforceable pursuant to Article 18.1 of the European Order for Payment Regulation, then, for the purposes of the *Statutes of Limitations*, as respects the subject matter of the claim under the European Order for Payment procedure, proceedings shall be deemed to have been instituted in the High Court on the day on which the application for a European Order for Payment was made to that Court.

(8) Where a statement of opposition is lodged in accordance with Article 16 of the European Order for Payment Regulation, and the applicant has not explicitly requested that the proceedings be terminated in that event:

(a) the Master of the High Court shall—

(i) where the claim to which the European Order for Payment relates could have been prosecuted by way of proceedings in the Circuit Court, remit the proceedings to the Circuit Court, to be heard and decided by the Judge assigned to the Circuit as to the Master appears suitable or convenient,

(ii) where the claim could have been prosecuted by way of proceedings in the

District Court, remit the proceedings to the District Court, to be heard and decided by the Judge assigned to the District as to the Master appears suitable or convenient,

(iii) where neither *subparagraph (8)(a)(i)* nor *subparagraph (8)(a)(ii)* applies to the claim, remit the matter for plenary hearing by the High Court,

(b) the application for the European Order for Payment concerned shall be treated for the purposes of the proceedings as the appropriate originating document (and, where necessary, statement of claim or equivalent pleading) for proceedings before the Court concerned, and the respondent shall be treated as having entered an appearance and a defence (or, where necessary, having notified his or her intention to defend the proceedings), and

(c) the proceedings shall be conducted in accordance with the procedure prescribed by rules of court for proceedings in the Court concerned, with such modifications as are necessary to give effect to the European Order for Payment Regulation.

(9) Where an applicant has accepted a proposal under Article 10 of the European Order for Payment Regulation for a European Order for Payment for a specified amount which relates to part only of the initial claim, the applicant is not, by virtue solely of that acceptance, precluded from bringing proceedings in relation to the remaining part of the claim, otherwise than by way of an application for a European Order for Payment, to the extent that the other part of the claim is otherwise enforceable.

Section 135

SCHEDULE 10

Detailed provisions on execution and enforcement of fines and breached Court bonds¹⁹⁹

Interpretation: this Schedule 1.— (1) In this Schedule, unless the context requires otherwise:

[C2A 1986, s. 2(4) modified]

“fine” includes:

any fine, amerciamment, or penalty imposed, levied or ordered to be paid by a Court following the conviction of a person,

any compensation, costs or expenses ordered to be paid in addition to a fine, amerciamment, or penalty,

where, under an enactment giving effect in the State to a European Union enactment, a fine or financial penalty levied or ordered to be paid by a Court in a member state is or may be treated as of the same force and effect as a fine mentioned in *paragraph (a)* or *paragraph (b)*, such a fine or financial penalty²⁰⁰,

¹⁹⁹ This Schedule, which includes detailed provisions on the execution and enforcement of fines, includes some provisions of the *Fines Act 2010*, and would permit the repeal of certain older legislation. The provisions of section 4 of the *Criminal Justice Administration Act 1914* permit a search of a person convicted of a summary offence and the application of money found on the person in court or on apprehension or in prison to be applied to payment of the fine. There is doubt about the constitutionality of this provision and it is not applied in practice, therefore the Commission considers that it should be explicitly removed. Similarly, having regard to practice, the Commission proposes that section 32(1) to (5) of the *Petty Sessions Ireland Act 1851*, which allow for a warrant of distress to issue on non-payment, should also be repealed. This provision is again not applied in practice. The schedule otherwise maintains the provisions on issuing of warrants, though it seeks to integrate them with the provisions included from the *Fines Act 2010*.

²⁰⁰ This is to future-proof the draft Bill to deal with mutual recognition of fines etc, under Council Framework Decision (2005/214/JHA) of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ L 76 of 22 March 2005, page 16) or subsequent European Union legislation.

but does not include the fees of, or expenses incurred by, a receiver appointed under *section 16* of the Act of 2010;

“fine order” means an order by a Court imposing or levying a fine on a person or ordering payment by a person of a fine;

reference to the “Service” includes reference to:

the proper officer of the Court concerned and to any member of the staff of the Service authorised by that proper officer;

the officer in charge of the Court Funds Office and any member of the staff of the Service assigned to the Court Funds Office authorised in that behalf, and

any agent of the Service for the time being authorised by the Service, on such terms as the Service considers appropriate, to perform duties of the Service under this Schedule;

“summary conviction” includes a conviction imposed on foot of a trial of a summary offence and of a trial of an indictable offence tried summarily;

“warrant of seizure and sale” is a warrant signed by a Judge which has the like effect as an order of seizure and sale in civil proceedings, save that such a warrant is addressed to, and may be executed by, a member of the Garda Síochána.

Imprisonment in default of payment of fine: summary conviction

2.— (1) Where a court is satisfied—

[C2A 1986, s 2]
[FA 2010, s 19]

(a) that a receiver appointed under *section 16* of the Act of 2010 has been unable to recover—

(i) a fine imposed on a person consequent upon his or her summary conviction of an offence, or

(ii) a sum or sums from the proceeds of the sale of property belonging to that person sufficient to pay that fine, and

(b) that, in relation to the person, the provisions of *section 4* of the *Criminal Justice (Community Service) Act 1983* have not been complied with,

it may make an order committing the person to prison for a term not exceeding the appropriate period of imprisonment specified in the Table to this paragraph.

(2) Where a court has made a community service order within the meaning of *subsection (1A)* (inserted by *section 18(1)(c)* of the Act of 2010) of *section 3* of the *Criminal Justice (Community Service) Act 1983* consequent upon the summary conviction of a person of an offence, it shall, if satisfied that the person in respect of whom it made the order fails to comply with a requirement specified in *section 7(1)(b)* of that Act, make an order committing the person to prison for a term not exceeding the appropriate period specified in the Table to this paragraph.

(3) For the purposes of determining the appropriate period of imprisonment specified in the Table to this paragraph, the amount of the fine shall be the fine less—

(a) any sum or sums paid by the person on whom the fine was imposed in satisfaction of part of the fine, and

(b) any sum or sums recovered (whether from the proceeds of the sale of property belonging to the person or otherwise) by the receiver appointed under *section 16* of the Act of 2010.

Table to *paragraph 2*

| Amount of Fine | Period of Imprisonment |
|---|------------------------|
| Not exceeding €500 | 5 days |
| Exceeding €500 but not exceeding €1,500 | 10 days |
| Exceeding €1,500 but not exceeding €3,000 | 20 days |
| Exceeding €3,000 | 30 days |

Imprisonment in default of payment of fine: conviction on indictment

3.— (1) Where a court is satisfied—

[C2A 1986, s 2A]
[FA 2010, s 19]

(a) that a receiver appointed under *section 16* of the Act of 2010 has been unable to recover—

- (i) a fine imposed on a person consequent upon his or her conviction on indictment of an offence, or
- (ii) a sum or sums from the proceeds of the sale of property belonging to that person sufficient to pay that fine, and

(b) that, in relation to the person, the provisions of *section 4* of the *Criminal Justice (Community Service) Act 1983* have not been complied with,

it may make an order committing the person to prison for a term not exceeding 12 months.

(2) Where a court has made a community service order within the meaning of *section 3(1A)* of the *Criminal Justice (Community Service) Act 1983* consequent upon the conviction of a person on indictment of an offence, it shall, if satisfied that the person in respect of whom it made the order fails to comply with a requirement specified in *section 7(1)(b)* of that Act, make an order committing the person to prison for a term not exceeding 12 months.

(3) A court shall, for the purpose of determining the term for which a person shall be committed to prison under this paragraph, take account of—

- (a) any sum or sums paid by the person in satisfaction of part of the fine, and
- (b) any sum or sums recovered (whether from the proceeds of the sale of property belonging to the person or otherwise) by the receiver appointed under *section 16* of the Act of 2010.

Effect of subsequent payment

4.— (1) Subject to *subparagraph (2)*, where a Court has imposed a term of imprisonment in default of payment of a fine under *paragraph 2* or *paragraph 3*, that term shall, on subsequent payment of a part of the fine then outstanding to any person authorised to receive it, be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days in the term as the sum paid bears to the total of the fine.

[CJAA 1914, s 3]

(2) In reckoning the number of days by which a term of imprisonment would be reduced under *subparagraph (1)*, the first day of imprisonment shall not be taken into account, and, in reckoning the sum which will secure the reduction of a term of imprisonment, fractions of a euro shall be omitted.

Payment and receipt of fines and remissions

5.— (1) Where an enactment provides for or requires the payment of a fine or payment on foot of a Court bond to be made to any court officer or at or into an office of or attached to any Court, that payment may be made to the Service (at such place or by such means as the Service permits) and the Service may give a valid receipt for such payment.

[New]

(2) Where an enactment provides for or requires the repayment or remission of the payment of a fine or repayment of a payment made on foot of a Court bond, to be paid out by or through any court officer or office of or attached to any Court, any such repayment or remission may be made by the Service (at such place or by such means as the Service permits), and repayment or remission by the Service fully discharges the obligation to make any such remission or repayment.

(3) Save where a Court has authorised the payment of a fine by instalments, the Service shall be not obliged to receive any payment tendered towards a fine which is less than the full amount then due in respect of that fine.

Records and notices of fines

6.— (1) The Service shall maintain a record for each Court containing particulars of every fine order (in this Schedule, the “fines record”), which may be maintained in electronic form.

[FIA 1851, ss 1, 2, 6]

(2) When a Court makes a fine order, the Service shall cause the entry in the fines record for that Court of particulars of the fine order.

(3) The Service shall, on request, provide a copy of any entry in, or extract from, the fines record in connection with any fine order or fine to the Court which made the fine order or to a Court to which an appeal is brought against a fine order, in such form and manner (including electronically) as the Service determines.

(4) The Service shall from time to time cause such further entries to be made in the fines record in relation to each fine order as are necessary for the purpose of recording the outcome of any appeal against the fine order or against the amount of the fine, and accounting for the receipt and disposal of any fine.

(5) Notwithstanding any provision of any other enactment, the Service shall, in relation to every fine order, be responsible for issuing on behalf of the Court which made the fine order any notice, instruction or demand for the payment by any person of any fine.

(6) Unless the fine has previously been paid, the Service shall, promptly after the making of a fine order, issue a notice addressed to the person against whom the fine order was made, setting out the amount ordered to be paid, the period within which payment is to be made and a place or places at which, or method by which, payment may be made, but the omission to issue such a notice does not affect the effectiveness or enforceability of a fine order.

Issue of warrants on non-compliance with fine order

7.— (1) The proper officer of the Court concerned shall be responsible for issuing (or re-issuing) out of the Court which made the fine order any warrant for the execution of an order committing a person to prison following his or her failure to pay a fine.

[FIA 1851, s 3]

(2) When a Court has made an order, on the conviction of a person for an offence, for the performance of a condition and the condition has not been performed, a warrant of committal to imprisonment for the non-performance of the condition may be issued not later than 6 months from the expiration of the time fixed by the order for the performance of the condition.

[C2A 1991, s 1, modified]
[CJAA 1914, ss 1 and 2]

(3) When a Court has made an order under *paragraph 2* or *paragraph 3*, on the non-payment of a fine, a warrant of committal to imprisonment for the period specified in *paragraph 2* or *paragraph 3*, as the case may be, shall be issued promptly following the making of the order and in any event not later than 6 months after the making of the order.

[C2A 1991, s 1, modified having regard to FA 2010]

(4) Any warrant issued to the Garda Síochána in execution of any order under *paragraph 2* or *paragraph 3*, and any other warrant mentioned in *subparagraph (3)* shall be addressed to the Superintendent or an Inspector of the Garda Síochána acting in a district which includes all or part of the District (in the case of the District Court) or local government area (in the case of any other Court) in which the Court sat when making the order concerned or in which the person to whom the warrant relates resides or carries on any trade or business.

(5) Nothing in this Schedule affects the validity of any warrant for the non-payment of a fine or the non-performance of a condition issued under *section 23* of the Act of 1851 or *section 1* of the Act (No. 2) of 1991:

(a) before the coming into force of this Schedule, or

(b) where the time for the payment of the fine or the performance of the condition expired or expires not earlier than the date which is 6 months before the coming into force of this Schedule, and not later than the day before the coming into force of this Schedule, not later than 6 months after the coming into force of this Schedule.

Receipt of fines by Garda Síochána and in prisons

8.— (1) Payment of a fine may be received by a member of the Garda Síochána executing a warrant for the execution of an order under *paragraph 2* or *paragraph 3*. That member, or the member to whom the warrant was addressed, transmitted or endorsed for execution shall promptly transmit the payment received, and the original warrant which relates to that fine, to the proper officer of the Court which made the order under *paragraph 2* or *paragraph 3* or to a member of the staff of the Service assigned to the Court Funds Office authorised in that behalf.

[FIA 1851, s 5]

(2) Any fine, or part of any fine, may be received the governor of a prison. The governor shall endorse on the warrant of committal the amount paid and the date and time of payment and shall promptly transmit that amount, and the original warrant which relates to the fine concerned as so endorsed, to the proper officer of the Court which made the fine order or to a member of the staff of the Service assigned to the Court Funds Office authorised in that behalf.

(3) A person who, without lawful authority, takes or receives any fine or any part of any fine from the person by whom that fine has been ordered to be paid, commits an offence.

[FIA 1851, s 8]

(4) A person who receives payment of a fine or part of a fine, and who fails or neglects to pay such fine or part of fine to the proper officer of the Court which made the fine order or to a member of the staff of the Service assigned to the Court Funds Office authorised in that behalf within a reasonable time, commits an offence.

(5) A person who is guilty of an offence mentioned in *subparagraph (3)* or *subparagraph (4)* shall be liable on summary conviction of that offence to a class C fine within the meaning of *Part 2* of the Act of 2010 or, at the discretion of the Court, to imprisonment for any term not exceeding 12 months, or to both such fine and such imprisonment.

Effect of appeal

9.— (1) Where every condition required for the stay of a fine order appealed against is satisfied: [New]

(a) execution of the fine order appealed against is stayed, and if any warrant of execution of that fine order has issued, the proper officer of the Court which made the fine order shall notify the Superintendent or Inspector of the Garda Síochána to whom the warrant has been addressed and:

(i) if the appellant is in custody, or has been committed to a prison under the warrant, the appellant may be released without further order, and
(ii) the Court by which the fine order was made or the officer by whom the warrant was signed shall, upon application being made to it or to him or her for that purpose, immediately order the person's release or discharge, and

(b) if no warrant to execute the order has been issued, no such warrant shall be issued until the appeal has been decided or any condition required for the stay of the fine order appealed against is no longer satisfied.

(2) Where an order is made by a Court on appeal against a fine order, the proper officer of the appellate Court shall notify the proper officer of the Court by which the original fine order was made of that order by such means (including electronic means) as the first-mentioned officer considers appropriate.

(3) Where, on an appeal against a fine order (or against the amount of a fine),

(a) the appellate Court dismisses the appeal, or

(b) the appeal is otherwise concluded without the appeal being allowed in any part, or

(c) the appellate Court varies the fine order, but a fine remains payable,

the Court which made the original fine order and the proper officer of that Court shall, following the decision of the appellate Court, proceed in accordance with the fine order or, as the case may be, with the fine order as varied by the appellate Court, as if the fine order had been made on the date of the appellate Court's decision or the conclusion of the appeal.

Disposal of fines

10.— (1) Where, in addition to making a fine order, a Court orders a person to pay an amount by way of compensation to a person or orders a person to pay an amount by way of costs or expenses incurred in the proceedings in which the fine order was made- [New]

(a) any payment made under the fine order shall be applied:

(i) first, to discharging all or part of any compensation ordered to be paid;
(ii) second, to discharging all or part of any expenses ordered to be paid;
(iii) third, to discharging all or part of any costs ordered to be paid; and
(iv) fourth, to discharging the fine;

(b) the Service shall pay the amount of compensation ordered to be paid and the amount of any costs and expenses ordered to be paid to the prosecutor, for transmission to the person entitled to receive them, or to the person entitled to receive them, and shall account for such payments in the fines record.

(2) Save where an enactment, (including an order made under *subparagraph* (5)), otherwise requires (or authorises a Court to direct otherwise, and a Court so directs in any case), the proceeds of every fine received by the Service shall be lodged into an account for the time being maintained for that purpose by the Service or its authorised agent. The total amount credited to each such [COA 1926, s 51]

account shall from time to time be paid into or disposed for the benefit of the Exchequer in the manner the Minister for Finance directs.

(3) When a fine is remitted, in whole or in part, after it has been paid into or disposed for the benefit of the Exchequer under this paragraph, that fine or the portion of that fine so remitted (as the case may be) shall be repaid out of the Exchequer in the manner the Minister for Finance directs.

(4) When a fine is remitted, the Minister shall cause the proper officer of the Court which imposed the fine to be notified promptly of the remittal, and that officer shall take the steps necessary to suspend execution of the fine including, where necessary, the recall of any warrant issued.

(5) The Minister may, with the concurrence of the Minister for Finance, by order direct that the whole or any specified portion of every fine belonging to any particular class or classes of fines specified in the order shall not be paid into the Exchequer under this paragraph and that, instead of being so paid, the whole or such specified portion (as the case may be) of every such fine shall be paid to such prosecutor or other person or into such fund and on such terms and conditions as is specified in the order in respect of each particular class or classes of fines.

(6) Where an enactment, (including an order under *subparagraph (5)*), requires the disposal of a fine otherwise than in accordance with *subparagraph (3)* to another person (or authorises a Court to direct otherwise, and a Court so directs in any case), the Service shall pay the proceeds of such fines received by the Service to the person entitled to receive them, and shall account for such payments in the fines record.

Breached
bonds

Court

11.— (1) Where a Court exercising criminal jurisdiction has convicted a person of an offence which amounts to a breach of the condition of any Court bond (other than any Court bond to which *section 9* of the *Bail Act 1997* applies) entered into by that person, or where a Court is otherwise satisfied that a person has failed to perform the condition of a Court bond, the Court may proceed in accordance with *section 144*.

[FIA 1851, s 10]

(2) Where a Court, in a case to which *subparagraph (1)* applies makes an order finding that a Court bond has been breached, notice shall be given to the party (or each of the parties) against whom it is sought to enforce that Court bond of the making of that order, and any party concerned may apply to the Court to vary or discharge such order.

(3) A Court may issue a warrant of seizure and sale to execute the outstanding amount of a forfeited Court bond²⁰¹.

Section 158

SCHEDULE 11

Part 1

Regular High Court sittings outside Dublin

Sittings at scheduled
High Court venues

1.— Subject to this Part, the President of the High Court shall schedule a sitting of the High Court at each scheduled High Court venue not less frequently than once every year and the Court shall sit in accordance with that direction.

[New]

²⁰¹

The other alternative for execution of forfeited bonds would be to treat them in same way as fines, i.e. allow appointment of a receiver, and imprisonment on non-recovery; however, this might require that the procedure for giving bonds and the form of bonds be modified to include provision for the giving of warnings about the consequences of breach and for summoning a defaulter before the Court.

- Directions **2.**— The President of the High Court may, in respect of individual proceedings or any category or categories of proceedings, direct that proceedings be heard and determined at a sitting of the High Court at a scheduled High Court venue, and the Court shall sit to hear and determine such proceedings in accordance with that direction.
- Criteria which may be considered **3.**— In making a direction under *paragraph 2*, or in fixing the duration of a sitting at a scheduled High Court venue, the President of the High Court may have regard to:
 (i) the availability of facilities for the transaction of High Court judicial business at a scheduled High Court venue and the periods during which those facilities are available, and
 (ii) the desirability of providing a trial date as soon as possible once proceedings are ready for trial.
- Appeal towns to become scheduled High Court venues **4.**— Each city and town specified in *column 1 of Part 2* of this Schedule which was an appeal town (within the meaning of *section 32* of the Act of 1936) for the county or county borough specified in *column 3* of that Part shall be a scheduled High Court venue, for the purposes of this Schedule, for the local government area or areas specified in *column 2* of that Part, opposite the mention of that city or town, and for any borough or town within the external boundary of the local government area or areas specified in *column 2*.
- Variation of scheduled High Court venues **5.**— The Service may by order, made after consultation with the President of the High Court, either—
 (a) establish a new or additional scheduled High Court venue for any local government area (other than the local government areas comprising the city and county of Dublin) as it thinks proper, or
 (b) vary, as it thinks proper, the assignment of any local government area (other than the local government areas comprising the city and county of Dublin) to any scheduled High Court venue.
- Appeals from the Circuit Court **6.**— Unless and until otherwise directed by President of the High Court, an appeal to the High Court from a decision of the Circuit Court which was heard and determined in the local government area mentioned in *column 2 of Part 2* of this Schedule shall be heard and determined by the High Court sitting at the scheduled High Court venue mentioned in *column 1 of Part 2* of this Schedule opposite the reference to that local government area.
- Judges sitting at scheduled High Court venues **7.**— Without limiting any other power or provision in that regard, a Judge of the Supreme Court may, when requested by the President of the High Court and with the consent of the Chief Justice, sit as an additional Judge of the High Court when the High Court sits at any scheduled High Court venue.
- No limitation of power to distribute Court business **8.**— Nothing in this Schedule limits the power of the President of the High Court to direct that any judicial business of the High Court be conducted at any place, or the power of any Judge of the High Court, in accordance with *section 158(5)*, to conduct the judicial business of the High Court at any place.

| | | |
|---|------------------------------|-------------------------------------|
| <i>Section 158</i> | | |
| SCHEDULE 11 Part 2 Scheduled High Court venues | | |
| Scheduled High Court venue (former appeal towns) (1) | Local government area (2) | Counties and County Boroughs (3) |

| | | |
|--------------------|------------------------------------|--|
| Carlow | Carlow county | Carlow county |
| Cavan | Cavan county | Cavan county |
| Ennis | Clare county | Clare county |
| Cork | Cork county Cork city | Cork county Cork County Borough |
| Letterkenny | Donegal county | Donegal county |
| Galway | Galway county Galway city | Galway county Galway County Borough |
| Tralee | Kerry county | Kerry county |
| Naas | Kildare county | Kildare county |
| Kilkenny | Kilkenny county | Kilkenny county |
| Carrick-on-Shannon | Leitrim county | Leitrim county |
| Portlaoise | Laois county | Leix county |
| Limerick | Limerick county Limerick city | Limerick county Limerick county borough |
| Longford | Longford county | Longford county |
| Dundalk | Louth county | Louth county |
| Castlebar | Mayo county | Mayo county |
| Trim | Meath county | Meath county |
| Monaghan | Monaghan county | Monaghan county |
| Tullamore | Offaly county | Offaly county |
| Roscommon | Roscommon county | Roscommon county |
| Sligo | Sligo county | Sligo county |
| Nenagh | North Tipperary county | Tipperary county (North Riding) |
| Clonmel | South Tipperary county | Tipperary county (South Riding) |
| Waterford | Waterford county Waterford city | Waterford county borough Waterford county |
| Mullingar | Westmeath county | Westmeath county |
| Wexford | Wexford county | Wexford county |

| Wicklow | Wicklow county | Wicklow county |
|--|---|---|
| <i>Section 159</i> SCHEDULE 11 Part 3 Circuit Court Circuits | | |
| Name of Circuit (1) | Local government areas comprised in Circuit (2) | Corresponding circuit prior to commencement of <i>section 153</i> (3) |
| Dublin Circuit | Counties of South Dublin, Fingal and Dun Laoghaire-Rathdown; Dublin City | Dublin Circuit |
| Cork Circuit | Cork County Cork City | Cork Circuit |
| Northern Circuit | Counties of Cavan, Donegal, Leitrim and Monaghan | Northern Circuit |
| Midland Circuit | Counties of Laois, Longford, Offaly, Roscommon, Sligo and Westmeath | Midland Circuit |
| Eastern Circuit | Counties of Kildare, Louth, Meath and Wicklow | Eastern Circuit |
| South-Western Circuit | Counties of Clare, Kerry and Limerick; Limerick City | South-Western Circuit |
| South-Eastern Circuit | Counties of Carlow, Kilkenny, North Tipperary, South Tipperary; Waterford and Wexford; Waterford City | South-Eastern Circuit |
| Western Circuit | Counties of Galway and Mayo; Galway City | Western Circuit |

Section 182

SCHEDULE 12
Prescribed number of ordinary Judges of each Court

| | | |
|----------------|--|---|
| Supreme Court | <p>1.—The prescribed number of ordinary Judges of the Supreme Court shall be not more than seven, but where a former Chief Justice to whom <i>section 4(2)</i> of the Act of 1997 applies continues as a Judge of that Court, the prescribed number may, unless there is a vacancy in the Supreme Court when that Judge ceases to be the Chief Justice, be exceeded by one, subject to the provisions of <i>section 6</i> of the Act of 1997.</p> | [CCOA 1995, s.6(1)] |
| High Court | <p>2.— The prescribed number of ordinary Judges of the High Court shall be not more than 35, but where a former President of the High Court to whom <i>section 4(2)</i> of the Act of 1997 applies continues as a Judge of that Court, the prescribed number may, unless there is a vacancy in the High Court when that Judge ceases to be the President of the High Court, be exceeded by one, subject to the provisions of <i>section 6</i> of the Act of 1997.</p> | [CCOA 1995, s.9(1)] [CCOAA 2007, s.2] |
| Circuit Court | <p>3.— The prescribed number of ordinary Judges of the Circuit Court shall be not more than 37, but where a former President of the Circuit Court to whom <i>section 4(2)</i> of the Act of 1997 applies continues as a Judge of that Court, the prescribed number may, unless there is a vacancy in the Circuit Court when that Judge ceases to be the President of the Circuit Court, be exceeded by one, subject to the provisions of <i>section 6</i> of the Act of 1997.</p> | [CCOA 1995, s.10] [CCOAA 2007, s.3] |
| District Court | <p>4.— The prescribed number of ordinary Judges of the District Court shall be not more than 63, but where a former President of the District Court to whom <i>section 4(2)</i> of the Act of 1997 applies continues as a Judge of that Court, the</p> | [CCOA 1995, s.11(1)] [CCOAA 2007, s.4] |

prescribed number may, unless there is a vacancy in the District Court when that Judge ceases to be the President of the District Court, be exceeded by one, subject to the provisions of *section 6* of the Act of 1997. [CLMPA 2008, s 32]

Section 264

SCHEDULE 13

Part 1

Composition and proceedings of the Superior Courts Rules Committee

| | | |
|---|---|--|
| Membership | 1. — The Superior Courts Rules Committee (in this Part, “the Committee”) consists of 6 <i>ex-officio</i> members and 8 nominated members. | [CJA 1936, s 67] [CLMPA 2008, s 20] |
| <i>Ex-officio</i> members | 2. — The <i>ex-officio</i> members of the Committee are — (a) the Chief Justice, who shall be the chairperson of the Committee; (b) the President of the High Court, who shall be the vice-chairperson of the Committee; (c) the Chief Executive Officer of the Service; (d) the Attorney General; (e) the Registrar of the Supreme Court, and (f) the Master of the High Court. | |
| Nominated members | 3. — The nominated members of the Committee shall be: (a) two ordinary Judges of the Supreme Court nominated by the Chief Justice; (b) two ordinary Judges of the High Court nominated by the President of the High Court; (c) two practising barristers nominated by the General Council of the Bar of Ireland, of whom one shall be a member of the Senior Bar and the other a member of the Junior Bar, and (d) two practising solicitors nominated by the Council of the Law Society of Ireland. | |
| Period of membership of nominated members | 4. — Every nominated member of the Committee holds office as such member until— (a) the fifth anniversary of the date of his or her nomination, or (b) he or she dies, resigns as a member, or ceases to be of the capacity referred to in <i>paragraph 3</i> by virtue of which he or she held office as a member, whichever is the earlier. | |
| Re-nomination | 5. — A nominated member of the Committee whose membership of the Committee expires under <i>paragraph 4(a)</i> shall be eligible for re-nomination. | |
| Quorum | 6. — The quorum of the Committee shall be 6 members. | |
| Vacancy | 7. — The Committee may act notwithstanding any vacancy in its membership. | |
| Appointment of substitute members | 8. — Each of the <i>ex-officio</i> members of the Committee specified in <i>subparagraphs (a) to (d)</i> of <i>paragraph 2</i> may appoint in writing a person to act in his or her place as a member of the Committee, provided that the person so | |

appointed is—

- (a) in the case of the Chief Justice, an ordinary Judge of the Supreme Court;
- (b) in the case of the President of the High Court, an ordinary Judge of the High Court;
- (c) in the case of the Chief Executive Officer of the Service, a member of the staff of the Service;
- (d) in the case of the Attorney General, an officer of the Attorney General.

Secretary **9.**— Following consultation with the Chief Justice as chairperson of the Committee, the Chief Executive Officer of the Service shall appoint a member of the staff of the Service in writing to be the secretary to the Committee.

Revocation of appointments **10.**— A person who has made an appointment under *paragraph 8* or *paragraph 9* may revoke that appointment at any time.

Section 266

SCHEDULE 13

Part 2

Composition and proceedings of the Circuit Court Rules Committee

Membership **1.**— The Circuit Court Rules Committee (in this Part, “the Committee”) consists of four *ex-officio* members and 7 nominated members. [CJA 1936, s 69]
[CLMPA 2008, s 21]

Ex-officio members **2.**— The *ex-officio* members of the Committee are —

- (a) the President of the Circuit Court, who shall be the chairperson of the Committee;
- (b) the Chief Executive Officer of the Service;
- (c) the Attorney General, and
- (d) the County Registrar for the county and city of Dublin.

Nominated members **3.**— The nominated members of the Committee shall be:

- (a) two Judges of the Circuit Court nominated by the Judges of the Circuit Court;
- (b) two practising barristers nominated by the General Council of the Bar of Ireland;
- (c) two practising solicitors nominated by the Council of the Law Society of Ireland, and
- (d) a County Registrar (not being the County Registrar referred to in *paragraph 2(d)*), nominated by the Chief Executive Officer of the Service.

Period of membership of nominated members **4.**— Every nominated member of the Committee holds office as such member until—

- (a) the fifth anniversary of the date of his or her nomination, or
- (b) he or she dies, resigns as a member, or ceases to be a Judge of the Circuit Court, a practising barrister, a practising solicitor or a County Registrar, as the case may be, whichever is the earlier.

| | |
|-----------------------------------|--|
| Re-nomination | 5.— A nominated member of the Committee whose membership expires under <i>paragraph 4(a)</i> shall be eligible for re-nomination. |
| Quorum | 6.— The quorum of the Committee shall be four members. |
| Vacancy | 7.— The Committee may act notwithstanding any vacancy in its membership. |
| Appointment of substitute members | 8.— Each of the <i>ex-officio</i> members of the Committee specified in <i>subparagraphs (a) to (c)</i> of <i>paragraph 2</i> may appoint in writing a person to act in his or her place as a member of the Committee, provided that the person so appointed is— <ul style="list-style-type: none"> (a) in the case of the President of the Circuit Court, an ordinary Judge of the Circuit Court; (b) in the case of the Chief Executive Officer of the Service, a member of the staff of the Service; (c) in the case of the Attorney General, an officer of the Attorney General. |
| Secretary | 9.— Following consultation with the President of the Circuit Court as chairperson of the Committee, the Chief Executive Officer of the Service shall appoint a member of the staff of the Service in writing to be the secretary to the Committee. |
| Revocation of appointments | 10.— A person who has made an appointment under <i>paragraph 8</i> or <i>paragraph 9</i> may revoke the appointment at any time. |

Section 268

SCHEDULE 13

Part 3

Composition and proceedings of the District Court Rules Committee

| | | |
|---------------------------|---|--|
| Membership | 1.— The District Court Rules Committee (in this Part, “the Committee”) Committee consists of four <i>ex-officio</i> members and 7 nominated members. | [CJA 1936, s 71] [CLMPA 2008, s 22] |
| <i>Ex-officio</i> members | 2.— The <i>ex-officio</i> members of the Committee are — <ul style="list-style-type: none"> (a) the President of the District Court, who shall be the chairperson of the Committee; (b) the Chief Executive Officer of the Service; (c) the Attorney General, and (d) one of the District Court Clerks assigned to the Dublin Metropolitan District nominated by the Chief Executive Officer of the Service. | |
| Nominated members | 3.— The nominated members of the Committee shall be: <ul style="list-style-type: none"> (a) four Judges of the District Court nominated by the Minister; (b) a practising barrister nominated by the General Council of the Bar of Ireland, and (c) two practising solicitors nominated by the Council of the Law Society of Ireland. | |
| Period of membership | 4.— Every nominated member of the Committee holds office as a member until— | |

| | |
|-----------------------------------|--|
| nominated members | <p>(a) the fifth anniversary of the date of his or her nomination, or</p> <p>(b) he or she dies, resigns as a member, or ceases to be a Judge of the District Court, a practising barrister or a practising solicitor, as the case may be, whichever is the earlier.</p> |
| Re-nomination | 5. — A nominated member of the Committee whose membership expires under <i>paragraph 4(a)</i> shall be eligible for re-nomination. |
| Quorum | 6. — The quorum of the Committee shall be four members. |
| Vacancy | 7. — The Committee may act notwithstanding any vacancy in its membership. |
| Appointment of substitute members | <p>8.— Each of the <i>ex-officio</i> members of the Committee specified in <i>subparagraphs (a) to (c)</i> of <i>paragraph 2</i> may appoint in writing a person to act in his or her place as a member of the Committee, provided that the person so appointed is—</p> <p>(a) in the case of the President of the District Court, an ordinary Judge of the District Court;</p> <p>(b) in the case of the Chief Executive Officer of the Service, a member of the staff of the Service;</p> <p>(c) in the case of the Attorney General, an officer of the Attorney General.</p> |
| Secretary | 9. — Following consultation with the President of the District Court as chairperson of the Committee, the Chief Executive Officer of the Service shall appoint a member of the staff of the Service in writing to be the secretary to the Committee. |
| Revocation of appointments | 10. — A person who has made an appointment under <i>paragraph 8</i> or <i>paragraph 9</i> may revoke that appointment at any time. |

Section 330

SCHEDULE 14
Part 1: Business transacted in court offices

Interpretation: this Part

1.— In this Part:

“dormant Court fund” means a fund in Court for the time being lodged in, or under the control of, a Court, pursuant to any order of a Court, statute or rules of court, where no transaction has been effected on that fund for a period of not less than 15 years ending on the accounting date prescribed in accordance with *paragraph 4(3)* or *paragraph 4(4)*, and includes any fund in Court forming part of the former dormant account of the funds of suitors of the High Court;

“fully indemnified” means, in relation to a person—

(a) that, in the case of funds in the form of money, the person has been paid the amount standing to his or her credit on the date that the funds were paid into the dormant account concerned and any interest accruing on those funds or return yielded by those funds from that date, and

(b) that, in the case of funds other than in the form of money, the person has been paid the amount standing to his or her credit on the date of their realisation and any interest accruing on those funds or return yielded by those funds from that date;

[CLCA 2004, s. 33 and new provisions]

“investments” means, in relation to dormant Court funds, assets other than money;

“relevant enactment” means

- (a) this Act or another Act of the Oireachtas, or
- (b) regulations under *section 3* of the *European Communities Act 1972*, or
- (c) rules of court, and

“transaction”, in relation to a dormant Court fund, means a lodgment or transfer into that fund or payment or transfer out of that fund (other than the payment out or deduction of any charge levied or applied on funds in Court or classes of funds in Court generally, under a Court fees order) or a step in any proceedings before the Court to which that fund relates.

Court Funds Office

2.— (1) The business of the Court Funds Office²⁰² comprises all business from time to time assigned to the Court Funds Office by a relevant enactment²⁰³ and in particular (unless and until otherwise provided by a relevant enactment): [New]

- (a) all business assigned to that Office by this Act²⁰⁴;
- (b) all business in relation to the Supreme Court, the High Court, the Court of Criminal Appeal, the Courts-Martial Appeal Court, the Circuit Court and the District Court as was formerly transacted, or authorised by a relevant enactment to be transacted, in the Accountant’s Office;
- (c) all business in relation to any Court, Judge or court officer as involves receiving, have custody of, managing, investing and keeping accounts of funds in Court, processing the lodgment or transfer of funds into Court, the payment or transfer of funds out of Court and, where required by an order of a Court or otherwise by law, discharging from funds in Court any liability arising in respect of such funds;
- (d) any other business as is from time to time assigned to the Court Funds Office by a relevant enactment.

(2) The Service has and may exercise in the Court Funds Office all powers and authorities and perform and fulfil in the Court Funds Office all duties and functions from time to time conferred on or assigned to it by an enactment and in particular (unless and until otherwise provided by a relevant enactment), shall perform and fulfil in the Court Funds Office:

- (a) in relation to the High Court, the Supreme Court, and the Chief Justice all such duties and functions as were formerly performed and fulfilled by the Accountant-General of the Supreme Court of Judicature in Ireland in relation to that Court and in relation to the Lord Chancellor for Ireland, and
- (b) in relation to every Court, all such duties and functions as were at the passing of this Act transacted, or authorised by statute or rules of court to be performed and fulfilled, by the Accountant.

²⁰² Paragraphs 1 to 3 in particular of this Part anticipate what may be included in legislation to establish a proposed Court Funds Office, and will require review when the Bill dealing with this is published.

²⁰³ The amendment proposed to the *Family Law (Maintenance of Spouses and Children) Act 1976* anticipates that the Court Funds Office may take over processing of maintenance payments from District Court Clerks.

²⁰⁴ See for example Schedule 10.

(3) There shall be employed in the Court Funds Office such and so many members of the staff of the Service as the Service from time to time determines.

Custody and
management of funds
in Court

3. — (1) On the commencement of *section 331*:

[New]

(a) all funds in Court held (i) in the Accountant's Office, (ii) in every Circuit Court Office (iii) by every District Court Clerk, shall be transferred to and received by and come into the custody of the Service in the Court Funds Office;

(b) all accounts, instruments or documents recording title or ownership of any property which is or which represents any funds in Court held in the name or title of (i) the Accountant, (ii) any County Registrar (iii) any District Court Clerk, whether solely or jointly with any other person, shall, without the necessity for any further instrument of transfer, assignment or conveyance, be held in the name of the Service in lieu of the Accountant, County Registrar or District Court Clerk, solely or jointly with the other person referred to, as appropriate;

(c) all funds in Court transferred or paid to or coming into the custody of the Service under *subparagraph (1)(a)* or becoming held in the name of the Service under *subparagraph (1)(b)* shall be held in the name of the Service subject to the terms of any order of any Court under which such funds in Court came, prior to such transfer, to be held in the Accountant's Office, in a Circuit Court Office or by a District Court Clerk (as the case may be) for the benefit of the person entitled to those funds, or for any other purpose specified in any relevant order of a Court, or for which the said funds were lodged in Court;

(d) unless a Court for special reason orders otherwise, in any proceedings in any Court in which it is ordered that money be paid or transferred into Court for a child or for a ward of Court²⁰⁵, that money shall be paid or transferred to the Service in the Court Funds Office in accordance with procedures for the time being prescribed in any relevant enactment (and in compliance with the decision of that Court) to be held by the Service in the Court Funds Office (subject to and in compliance with the terms of any decision on behalf of the child or person in wardship²⁰⁶);

(e) where any money is paid or transferred into any Court

(I) in connection with any proceedings in Court, or
(II) otherwise under any provision of any relevant enactment (other than the *Insurance Acts 1909 to 2009*),

that money shall be paid or transferred to the Service in the Court Funds Office in accordance with procedures for the time being prescribed in the relevant enactment concerned or under this Act, to be held in the Court Funds Office,

subject, in a case to which *subparagraph (1)(e)(I)* applies, to the terms of any decision of that Court in or in connection with those proceedings.

(2) A Court, Judge, or court officer so authorised by a relevant enactment or Court's order, may give a direction in any proceedings addressed to the Court Funds Office, directing the investment, on behalf of and for the benefit of any person, of the proceeds of any award, settlement or other funds.

²⁰⁵ This provision may require revision in the context of the published provisions of the *Mental Capacity Bill*: see note 1, above.

²⁰⁶ This provision may also require revision in the context of the published provisions of the *Mental Capacity Bill*.

(3) A Court, Judge, court officer so authorised by a relevant enactment or Court order or member of the staff of the Service assigned to the Court Funds Office authorised in that behalf may request from a party to proceedings, or from a representative of a party, any information considered necessary for the purposes of investing any proceeds, and any person so requested shall comply with any such request, so far as is practicable.

(4) A Court, Judge, or court officer so authorised by a relevant enactment or by a Court's order may, for the purposes of any application in proceedings before that Court, Judge or court officer, request the Court Funds Office to provide information or a report concerning the current value of the funds in Court held for the benefit of a party to, or person concerned in, those proceedings, and the Service shall comply with any such request.

(5) In this paragraph, "fund in Court" has the same meaning as in *section 253*.

Dormant funds in Court

4.— (1) There shall be maintained, in accordance with rules of court, in the Court Funds Office, for each Court:

[CLCA 2004, s. 33-38]

(a) a dormant funds account, to which shall be transferred all funds in Court for the time being lodged in, or under the control of, that Court, pursuant to any order of that Court or enactment, where no transaction has been effected on that fund for a period of not less than 15 years ending on the accounting date prescribed in accordance with *subparagraph (3)* or *subparagraph (4)*, and for the avoidance of doubt, the dormant funds account for the High Court is the former dormant account of the funds of suitors of the High Court;

(b) a small balances account, to which shall be transferred any money as, in accordance with rules of court, are carried over to any special account for small balances.

(2) There shall be maintained, in accordance with rules of court, in the Court Funds Office, for each Court, a register of dormant funds of that Court, which shall contain the following information—

(a) the title and any other record or reference of the proceedings to which the dormant funds relate;

(b) the names of the parties to those proceedings and the addresses at which they ordinarily reside (or in the case of a company or other corporate body, the address of its registered office or, as the case may be, principal place of business), where known;

(c) the dates on which those funds were paid into the dormant funds account concerned;

(d) the value of any realisation in accordance with *subparagraph (3)* or *subparagraph (4)*, on the date of their realisation;

(e) where those funds are repaid to the account from which they were transferred, the date on which they were so repaid, and the amount repaid;

(f) details of amounts paid into the small balances account, and the sources of those payments, and

(g) any other matter provided for by rules of court or which the President of the Court directs be included in the case of that Court.

(3) The Chief Justice shall, as soon as convenient after the commencement of

this Part, order the officer in charge of the Court Funds Office to realise all of the investments of each dormant Court fund.

(4) The Chief Justice shall, not later than three months after—

(a) the expiration of five years from the making of an order under *subparagraph (3)*, and

(b) the expiration of each subsequent period of five years from the date on which an order under this subparagraph is made, order the officer in charge of the Court Funds Office to realise all of the investments of each dormant Court fund.

(5) The officer in charge of the Court Funds Office shall comply with an order of the Chief Justice under this paragraph.

(6) Any financial institution for the time being holding the proceeds of:

(a) the realisation of dormant Court funds to which an order under *subparagraph (3)* or *subparagraph (4)*, relates, and

(b) the small balances account of a Court,

shall pay out of those proceeds to the Exchequer such sums as the Chief Justice from time to time directs, not exceeding 97.5 per cent of the aggregate of the amounts in the form of money realised from the realisation of dormant Court funds in accordance with such an order.

(7) The sums paid to the Exchequer pursuant to a direction under *subparagraph (6)* may be applied from time to time, by the Minister, with the consent of the Minister for Finance, for the purposes of defraying the costs of providing, managing and maintaining Court buildings under *section 5(d)* of the *Courts Service Act 1998*.

(8) Where, by virtue of the compliance by a financial institution with a direction under *subparagraph (6)*, the dormant Court funds of a Court are not sufficient to enable parties to proceedings in that Court to which those dormant funds relate to be fully indemnified, the Minister for Finance shall, for the purpose of enabling them to be so indemnified, advance out of the Central Fund or the growing produce thereof such sum as he or she considers necessary.

(9) The officer in charge of the Court Funds Office shall cause notice of the payment of sums to the Exchequer pursuant to any direction under *subparagraph (6)* to be published in *Iris Oifigiúil*, the *Law Society Gazette*, two national daily newspapers and by any other means he or she considers appropriate.

(10) The expenses incurred by the officer in charge of the Court Funds Office in complying with this paragraph may, where the Chief Justice so consents, be paid proportionately out of the dormant Court funds standing for the time being in the dormant funds account of each Court.

Combined Court
Office

5.— (1) Notwithstanding any other provision of this Act, where a Combined court office is established under *section 337*, the Service shall appoint—

[CCOA 2009, ss
19, 20, 21, 22, 23]

(a) a member of its staff, or

(b) a County Registrar,

to be the manager of that Combined court office.

(2) Notwithstanding any other provision of this Act, including a provision conferring such powers on an officer of a constituent Court, a Combined court office manager has, subject to *section 351(1)*, the management and control of the Combined court office of which he or she is manager.

(3) There shall be employed in a Combined court office such and so many members of the staff of the Service as the Service from time to time determines.

(4) The Service may, notwithstanding any other provision of this Act, appoint any member of staff of the Service employed in a Combined court office under *subparagraph (3)* as one or more of the following:

(a) a District Court Clerk;

(b) a principal officer, within the meaning of *section 341*, of any office attached to the High Court or the President of the High Court.

(5) A Combined court office manager may, notwithstanding any other provision of this Act, direct any member of staff of the Service employed in a Combined court office under *subparagraph (3)* to act as registrar to any of the following constituent Courts:

(a) the Central Criminal Court;

(b) the Court of Criminal Appeal;

(c) the Courts-Martial Appeal Court;

(d) the Circuit Court.

(6) Where, under *subparagraph (5)*, a person is directed to act as registrar to a Court mentioned in *subparagraphs (5)(a) to (d)*, a reference in an enactment to a registrar of the Court concerned is deemed to include reference to such a person.

(7) The continuity of the administration of justice shall not be interrupted by—

(a) the establishment of a combined court office under *section 337*

(b) the variation of the functions, or the dissolution, of a combined Courts office under *section 338*, or

(c) the making of an order under *section 339*.

(8) Without prejudice to the generality of *subparagraph (7)*—

(a) on the establishment of a Combined court office under *section 337*, the variation of the functions of a Combined court office under *section 338*, or the making of an order under *section 339*, the business of a constituent court office shall continue in the Combined court office;

(b) where business has begun to be transacted in a Combined court office which, by virtue of the variation of the functions, or dissolution, of that office under *section 338*, is subsequently required to be transacted in another court office, that business shall continue in that other court office, and

(c) where the Government make an order under *section 339*, the business

concerned that was transacted in a Combined court office shall continue by or before the registrar, or any person acting under the direction of such a registrar, of the Special Criminal Court concerned.

| | | |
|---|---|---|
| Office of Registrar of the Supreme Court | <p>6.— (1) The Registrar of the Supreme Court shall manage the Office of the Registrar of the Supreme Court.</p> <p>(2) In addition to any other business required by law to be transacted in that office²⁰⁷, all business of the Supreme Court, the Court of Criminal Appeal and the Courts-Martial Appeal Court which is not required by law to be transacted by or before a Judge or Judges of any of those Courts shall be transacted in the Office of the Registrar of the Supreme Court.</p> <p>(3) All business in relation to the jurisdictions exercisable by the Chief Justice under <i>section 16</i> which is not required by law to be transacted by or before the Chief Justice shall be transacted in the Office of the Registrar of the Supreme Court.</p> | <p>[COA 1926, s 17]</p> <p>[CSPA 1961, Eighth Schedule, paragraph 13]</p> |
| Central Office | <p>7.— (1) The Service, after consultation with the President of the High Court, may from time to time nominate a principal officer (who may be referred to as the Registrar of the Central Office) serving in the Central Office, who shall manage and control the Central Office.</p> <p>(2) The following business shall be transacted in the Central Office:</p> <p>(a) all business from time to time directed by any relevant enactment to be transacted in the Central Office;</p> <p>(b) all other business of the High Court which is not required by law to be transacted by or before a Judge or Judges or the Master of the High Court, except such business as is for the time being assigned by law either to another office of the High Court or to the Office of Wards of Court²⁰⁸.</p> <p>(3) Where, in proceedings in the High Court for a debt or a liquidated sum, an application is made for judgment in default of appearance, the officer having for the time being the management and control of the Central Office may exercise the discretion to award interest conferred on a Judge by <i>section 110</i>.</p> | <p>[CSPA 1961, Eighth Schedule, paragraph 5]</p> <p>[CCOA 1995, s 50]</p> |
| Taxing Masters' Office | <p>8.— (1) The senior Taxing Master shall manage the Taxing Masters' Office.</p> <p>(2) All of the business of the Taxing Masters, other than such business as is required by law to be transacted by a Taxing Master in person, shall be transacted in the Taxing Masters' Office.</p> | <p>[CSPA 1961, Eighth Schedule, paragraph 8]</p> |
| Office of Wards of Court ²⁰⁹ | <p>9.— (1) The Registrar of Wards of Court shall manage the Office of Wards of Court.</p> <p>(2) All business as is from time to time assigned to the Office of Wards of Court by a relevant enactment and in particular all such business in relation to the exercise of the care and protection jurisdiction vested in the High Court shall be transacted in the Office of Wards of Court.</p> | <p>[CSPA 1961, Eighth Schedule, paragraph 15]</p> |
| Office of the Official Assignee in Bankruptcy | <p>10.— (1) The Official Assignee in Bankruptcy shall manage the Office of the Official Assignee in Bankruptcy.</p> | <p>[CSPA 1961, Eighth Schedule, paragraph 9]</p> |

²⁰⁷ For example, business prescribed by the Constitution.

²⁰⁸ This provision may require revision in the context of the published provisions of the *Mental Capacity Bill*: see note 1, above.

²⁰⁹ This provision may require revision in the context of the published provisions of the *Mental Capacity Bill*: see note 1, above.

(2) All business as is from time to time assigned to the Office of the Official Assignee in Bankruptcy by any enactment (including, without limitation, the *Bankruptcy Act 1988*) shall be transacted in the Office of the Official Assignee in Bankruptcy.

(3) Nothing in this Act (including in any repeal effected by this Act) operates to remove from the Office of the Official Assignee in Bankruptcy any business conducted in that office immediately before the commencement of this Act or, as the case may be, the taking effect of any such repeal.

The Examiner's Office

11.— (1) The Examiner shall manage the Examiner's Office.

[CSPA 1961, Eighth Schedule, paragraph 10, modified]

(2) All business as is from time to time assigned to the Examiner's Office by a relevant enactment and in particular (unless and until otherwise provided by a relevant enactment) all business which is not required by law to be transacted by or before a Judge or Judges in relation to the exercise of the jurisdiction in insolvency (other than in bankruptcy matters) and in matters of company law vested in the High Court shall be transacted in the Examiner's Office.

The Probate Office

12.— (1) The Probate Officer shall manage the Probate Office.

[COA 1926, s 8]

(2) All business which is not required by law to be transacted by or before a Judge or Judges as is from time to time assigned to the Probate Office by a relevant enactment and in particular (unless and until otherwise provided by a relevant enactment) all the business in relation to the probate jurisdiction vested in the High Court and in the President of the High Court shall be transacted in the Probate Office.

District Probate Registries

13.— (1) There shall be transacted in every District Probate Registry all such business which is not required by law to be transacted by or before a Judge or Judges as is from time to time assigned to District Probate Registries by a relevant enactment and in particular (unless and until otherwise provided by a relevant enactment):

[SA 1965, ss 129 and 130]

(a) all such business as was on the commencement of this Schedule capable of being transacted in a District Probate Registry and,

(b) the business of issuing grants on applications for representation, in cases in which the deceased, at the time of his or her death, had a fixed place of abode within the district served by that District Probate Registry, and the transmission of the grants (if and when issued) to the person entitled to the grant.

(2) The Minister may by order—

(a) alter the district served by a District Probate Registry;

(b) add to or reduce the number of such districts;

(c) direct that any District Probate Registry may be at such place within the district as he or she thinks fit;

(d) close any District Probate Registry.

(3) When the Minister makes an order closing a District Probate Registry, the Minister may, by that order, make provision for enabling applications for representation, in cases in which the deceased, at the time of his or her death, had a fixed place of abode within the district previously served by that District Probate Registry, to be lodged with the County Registrar for the local

government area in which that place of abode was situated, and for the transmission of the applications by the County Registrar to the Probate Office and the transmission of the grants (if and when issued) from the Probate Office to that County Registrar for delivery to the person entitled to the grant.

(4) Until provision is otherwise made under this paragraph, the District Probate Registries existing at the commencement of this Act continue to function for the districts and at the places theretofore appointed by law.

Circuit Court Offices **14.—** (1) The County Registrar assigned to that office shall manage each Circuit Court Office. [COA 1926, s 37]

(2) All business:

(a) from time to time directed by a relevant enactment to be transacted in the Circuit Court Office, and

(b) unless and until otherwise provided by an Act of the Oireachtas or rules of court, all other business of the Circuit Court which is not required by law to be transacted by or before a Judge or before a County Registrar exercising limited functions and powers of a judicial nature within the scope of Article 37 of the Constitution in the local government area served by that Circuit Court Office,

shall be transacted in each Circuit Court Office.

District Court Offices **15.—** (1) The District Court Clerk assigned to the District served by that office (or, where there is more than one District Court Clerk assigned to that District, the Clerk nominated by the Service to be the Chief or Senior Clerk) shall manage each District Court Office. [New]

(2) All business:

(a) from time to time directed by a relevant enactment to be transacted in a District Court Office, and

(b) unless and until otherwise provided by an Act of the Oireachtas or rules of court, all other business of the District Court which is not required by law to be transacted by or before a Judge in the District served by that District Court Office,

shall be transacted in the District Court Office for each District.

Section 350

SCHEDULE 14

Part 2: Functions, powers and duties of, and supplemental provisions concerning, court officers

Interpretation: this Part **1.—** In this Part: [New]

“relevant enactment” means

- (a) this Act or another Act of the Oireachtas, or
- (b) regulations under *section 3* of the *European Communities Act 1972*, or
- (c) rules of court, and

“sheriff” includes, where the context so admits, former office of under-sheriff.

The Master of the High Court

Functions, powers and jurisdiction of Master of the High **2.—** (1) The Master of the High Court is authorised by law to exercise limited functions and powers of a judicial nature within the scope of Article 37 of the [CSPA 1961, Eighth Schedule, paragraph 4]

(2) The Master of the High Court has and may exercise such powers and authorities and perform such duties and functions as are from time to time conferred on or assigned to him or her by a relevant enactment, provided that the same are not inconsistent with the exceptions mentioned in *subparagraph (4)*.

(3) Subject to *subparagraph (4)* and *paragraph 5*, the Master of the High Court may exercise all the functions, powers and jurisdiction which a Judge of the High Court exercises from time to time:

(a) in all applications made *ex parte* or by motion on notice, whether interlocutory or otherwise, and

(b) in all applications for judgment by consent or in default of appearance or defence,

as are time to time allocated for hearing by the Master of the High Court by the President of the High Court.

(4) Without prejudice to the powers of the Master of the High Court under *Schedule 9* and the *Jurisdiction of Courts and Enforcement of Judgments (European Communities) Act 1998*, the Master of the High Court shall not exercise any function, power or jurisdiction in respect of any of the following:

(a) matters relating to criminal proceedings;

(b) matters concerning the liberty of the person, including personal enforcement orders or attachment of a person;

(c) the granting of injunctions;

(d) bail;

(e) the trial of any issue before the trial of proceedings;

(f) proceedings on an application for judicial review, save orders for enlargement or abridgement of time;

(g) any proceedings concerning a ward of Court²¹⁰, save an application under the Matrimonial and Parental Regulation;

(h) any proceedings relating to custody of children, save an application under the Matrimonial and Parental Regulation;

(i) approval of settlements in cases in which damages are sought on behalf of children;

(j) applications under *section 63* of the *Civil Liability Act 1961*.

(5) The Master of the High Court continues to have and may exercise and perform the powers, authorities, duties, and functions, so far as they remain capable of being exercised or performed, of the holder of any former post abolished by a provision of the Act of 1926, unless and until otherwise provided by a relevant enactment, and any enactment referring to the holder of such abolished post (other than any enactment relating to the appointment to,

²¹⁰ This provision may require revision in the context of the published provisions of the *Mental Capacity Bill*: see note 1, above.

qualification for, or remuneration or tenure of such post) shall, if and so far as the same continues in force and capable of taking effect, be construed and have effect as referring to the Master of the High Court in lieu of such holder. [CCOA 1995, s 25(4)]

(6) Provided that the same are not inconsistent with the exceptions mentioned in *subparagraph (4)*, the Master of the High Court may exercise such further or other functions and powers in relation to matters arising before the trial of civil proceedings as are from time to time conferred on the Master of the High Court by the Rules of the Superior Courts. [CCOA 1995, s. 50]

(7) Rules of the Superior Courts may be made in relation to any function, power or jurisdiction conferred on the Master of the High Court under this Act.

(8) Where, in proceedings in the High Court for a debt or a liquidated sum, an application is made for judgment in default of defence, the Master of the High Court may exercise the discretion to award interest conferred on a Judge by *section 110*.

(9) A decision of the Master of the High Court under *subparagraph (8)* may be appealed to a Judge of the High Court.

Qualification of Master of the High Court **3.**— A person may not be appointed to be Master of the High Court unless, at the time of his or her appointment, he or she is a practising barrister or a practising solicitor of not less than 10 years' standing, who has practised as a barrister or a solicitor for a continuous period of not less than two years immediately before appointment. [CSPA 1961, Eighth Schedule, paragraph 17]

Retirement age of Master of the High Court **4.**— The Master of the High Court shall retire from office on attaining the age of 70 years. [COA 1926, s 3(6)]

Sittings of Master of the High Court **5.**—The President of the High Court shall arrange the sittings of the Master of the High Court and the allocation of business of the High Court to the Master of the High Court for the purposes of *paragraph 2*. [CCOA 1995, s 26]

General direction²¹¹ **6.**— The Master of the High Court shall, in respect of the discharge generally of his or her functions and exercise generally of his or her powers of a judicial nature be subject to the general direction of the President of the High Court. [New]

The Taxing Masters

Functions, powers, duties and authorities of Taxing Masters of the High Court **7.**— Each Taxing Master has and may exercise the following powers and authorities and perform and fulfil the following duties and functions— [CSPA 1961, Eighth Schedule, paragraph 19]

(a) the function of taxing and ascertaining the amount of any legal costs awarded by judgment or order of a Superior Court, by award of an arbitrator, or awarded in exercise of a power under any enactment, and

(b) other powers, authorities, duties and functions for the time being conferred on or assigned to a Taxing Master or taxing officer by a relevant enactment (including, without limitation, *Part 2 of Schedule 7*).

Qualification of Taxing Masters **8.**— A person may not be appointed to be a Taxing Master unless at the time of his or her appointment he or she is a barrister or solicitor of not less than 10 [CSPA 1961, Eighth Schedule,

²¹¹ As the Master of the High Court, Taxing Masters and County Registrars are appointed by (and presumably removable only by) the Government, there is arguably a weak governance arrangement, particularly in a context where the *Scheme of the Judicial Council Bill* (published August 2010) envisages enhanced governance arrangements concerning judicial conduct. This draft therefore proposes that they are subject to the general direction of the President of the High Court (or, in the case of County Registrars, of the relevant Circuit Court Judge) in matters of organisation of quasi-judicial business.

years' standing who either is then actually practising or has previously practised for not less than 10 years. paragraph 18.]

Retirement age of Taxing Masters **9.**— Every Taxing Master shall retire from office on attaining the age of 70 years. [COA 1926, s 3(6)]

General direction **10.**— Each Taxing Master shall, in respect of the discharge generally of his or her functions and exercise generally of his or her powers of a judicial nature be subject to the general direction of the President of the High Court. [New]

The Probate Officer

Functions, powers, duties and authorities of Probate Officer **11.**— The Probate Officer has and may exercise all powers and authorities and perform and fulfil all duties and functions as are from time to time conferred on or assigned to him or her by a relevant enactment and in particular (unless and until otherwise provided by a relevant enactment), has and may exercise all such powers and authorities and shall perform and fulfil such duties and functions: [COA 1926, s 9]

- (a) in relation to the proving of wills and the issuing of representation to estates (testate or intestate) as are provided by any relevant enactment, and
- (b) in relation to the jurisdiction in the administration of estates of deceased persons in the High Court and in the President of the High Court that do not require to be exercised, performed or fulfilled by the Court or by a Judge.

The Examiner

Functions, powers, duties and authorities of Examiner **12.**— In addition to the management of the Examiner's Office, the Examiner has and may exercise all powers and authorities and perform and fulfil all duties and functions in relation to the exercise of the jurisdiction in insolvency (other than in bankruptcy matters) and in matters of company law vested in the High Court as are from time to time conferred on or assigned to him or her by any relevant enactment and in particular (unless and until otherwise provided by a relevant enactment), has and may exercise all such powers and authorities and shall perform and fulfil all such functions and duties in relation to the jurisdiction in insolvency (other than in bankruptcy matters) and in matters of company law vested in the High Court that do not require to be exercised, performed or fulfilled by the Court or by a Judge. [COA 1945, s 6] [CSPA 1961, Eighth Schedule, paragraph 11, 20]

Appointment of the Probate Officer or the Examiner

Appointment of Probate Officer or Examiner **13.**— (1) An appointment of a person to be the Probate Officer or, as the case may be, the Examiner, shall be made as follows:— [COA 1945, s 6] [CLMPA 2008, s 29, with minor modifications]

- (a) the Service, after consultation with the President of the High Court, may appoint a person who at the time of the appointment is a member of staff of the Service and who—
 - (i) is a barrister or solicitor,
 - (ii) at any time prior to appointment, has been employed for a period of not less than 9 years, or for periods together totalling not less than 9 years, in a Court office, or
 - (iii) holds such other qualification or qualifications as the Service, with the consent of the President of the High Court, determines to be appropriate for appointment to be the Probate Officer or, as the case may be, the Examiner;
- (b) if the Service, after consultation with the President of the High Court, is satisfied that none of the persons qualified to be appointed under *subparagraph (1)(a)* is suitable to be appointed, it may appoint a person who at the time of

the appointment is a barrister or solicitor of not less than 6 years' standing who either is then actually practising as such or has previously practised as such for not less than 6 years.

(2) In determining for the purposes of *subparagraph (1)(b)* the period during which a person has practised as a barrister or solicitor, any period during which he or she served in a situation in the Civil Service for which previous practice as a barrister or solicitor was specified (whether by an enactment or otherwise) as an essential qualification shall be regarded as a period of such practice.

Officer in charge of the Court Funds Office and the Courts Accountant

The officer in charge of the Court Funds Office and the Courts Accountant

14.— (1) The officer in charge of the Court Funds Office shall be responsible for the management of the Court Funds Office and for the superintendence of the performance of the functions of the Service to be performed in the Court Funds Office.

[New]

(2) The Courts Accountant (who may also be, but is not required to be, the officer in charge of the Court Funds Office) shall be responsible for preparing and maintaining all necessary records, accounts, vouchers and the like in respect of funds in Court.

(3) The officer in charge of the Court Funds Office may nominate such and so many members of the staff of the Service for the time being assigned to the Court Funds Office to be authorised for purposes specified in this Act or in any relevant enactment, and each member of the staff for the time being so nominated is authorised to perform any function or duty and exercise any power conferred by this Act or another enactment on a member of the staff of the Service assigned to the Court Funds Office authorised in that behalf.

The Registrar of Wards of Court²¹²

Duties, powers and authorities of Registrar of Wards of Court

15.— (1) The Registrar of Wards of Court shall manage and control the Office of Wards of Court. In the exercise of that management and control, he or she is subject, in regard to all matters relating to the care and protection jurisdiction, to the directions of the Judge of the High Court for the time being exercising the care and protection jurisdiction.

[CSPA 1961, Eighth Schedule, paragraph 16]

(2) The Registrar of Wards of Court has and may exercise all powers and authorities and perform and fulfil all duties and functions in relation to the exercise of the care and protection jurisdiction vested in the High Court by *section 25* as are from time to time conferred on or assigned to him or her by a relevant enactment. In particular (unless and until otherwise provided by a relevant enactment), he or she has and may exercise all such powers and authorities and perform and fulfil all such functions and duties in relation to the care and protection jurisdiction, other than the powers, authorities, functions and duties in relation to the care and protection jurisdiction that require to be exercised, performed or fulfilled by the Court or a Judge.

(3) The Registrar of Wards of Court is deemed to be an officer attached to the High Court.

Qualifications of Registrar of Wards of Court

16.— A person may not be appointed to be Registrar of Wards of Court unless at the time of his or her appointment he or she—

[CSPA 1961, Eighth Schedule, paragraph 21]
[CLMPA 2008, s 15]

(a) is a practising barrister or a practising solicitor of not less than 10 years' standing, who has practised as a barrister or a solicitor for a continuous period

²¹² These provisions may require revision in the context of the published provisions of the *Mental Capacity Bill*: see note 1, above.

of not less than two years immediately before such appointment, or

(b) is a barrister employed in an office mentioned in *section 332* who, at any time prior to such appointment, has been so employed for a period of not less than 9 years, or for periods together totalling not less than 9 years, or

(c) is a person who, at the time of the appointment, is a member of staff of the Service and holds such qualification or qualifications as the Service, with the consent of the President of the High Court, determines to be appropriate for appointment as Registrar of Wards of Court.

The Official Assignee in Bankruptcy

The Official Assignee
in Bankruptcy

17.— *Section 60* of the *Bankruptcy Act 1988* continues to apply to the powers, authorities, duties and functions of the Official Assignee in Bankruptcy.

[New]

The Registrar of the Supreme Court

The Registrar of the
Supreme Court

18.— (1) The Registrar of the Supreme Court shall manage the Office of the Registrar of the Supreme Court, subject to the directions of the Chief Justice in regard to all matters relating to the conduct of the judicial business of the Supreme Court and of the business relating to the functions of the Chief Justice.

[COA 1926, s 18,
modified]

(2) The Registrar of the Supreme Court shall act (or shall nominate a member of the staff of the Service assigned to the Office of the Registrar of the Supreme Court to act) as registrar to each of:

(a) the Supreme Court,

(b) the Court of Criminal Appeal, and

(c) the Courts-Martial Appeal Court,

[CSPA 1961,
Eighth Schedule,
paragraph 14]

and perform and fulfil in relation to each such Court all such duties and functions as are usually performed and fulfilled by the registrar of a Court.

(3) The Registrar of the Supreme Court has and may exercise such powers and authorities and perform and fulfil such duties and functions as are from time to time assigned to him or her by any relevant enactment.

(4) The Registrar of the Supreme Court shall act as registrar to the Chief Justice in relation to the exercise by the Chief Justice of the jurisdiction exercisable by him or her under *section 16*.

The officer managing the Central Office

The officer managing
the Central Office

19.— The officer for the time being managing the Central Office shall manage the Central Office, subject to the directions of the President of the High Court in regard to all matters relating to the conduct of the judicial business of the High Court.

[CSPA 1961,
Eighth Schedule,
paragraph 7]

High Court Registrars

High Court Registrars

20.— (1) Each High Court Registrar who stands nominated to act as registrar to the High Court under *section 341* shall act as registrar to the High Court and shall:

[CSPA 1961,
Eighth Schedule,
paragraph 6]
[CLCA 2004, s
42]

(a) perform and fulfil in relation to that Court all such duties and functions as are usually performed and fulfilled by the registrar of a Court;

(b) make and retain any record of proceedings before the Court or a Judge, in such form as is prescribed by rules of court or directed by the Judge, and

(c) prepare and (where authorised by law) sign, authenticate and issue any Court instruments and any certificates or notifications required by any enactment.

(2) Each High Court Registrar who stands nominated to act as registrar to the High Court under *section 341* shall (in addition to the duties mentioned in *subparagraph (1)* and any other duties which may be assigned to him or her by the officer for the time being managing the Central Office) act as registrar to the Central Criminal Court as and when directed to so act by the officer for the time being managing the Central Office.

(3) Where practicable, a High Court Registrar who stands nominated to act as registrar to the High Court for the purpose of proceedings in which both or all parties conduct the proceedings in the national language shall possess sufficient knowledge of, or shall have sufficient experience of practising in, the Irish language as enables him or her to dispense with the assistance of an interpreter when performing that function in such proceedings.

County Registrars

Functions, powers and jurisdiction of County Registrars

21.— (1) Every County Registrar has and may exercise such powers and authorities and shall perform and fulfil such duties and functions as are from time to time conferred or imposed on him or her by a relevant enactment. In particular, he or she shall perform and fulfil the duties and have and exercise the powers and authorities expressly imposed or conferred on him or her by this Act and (unless and until otherwise provided by a relevant enactment) shall also perform and fulfil all the duties in relation to the exercise of the jurisdiction of the Circuit Court for the local government area served by the Circuit Court Office to which he or she is assigned that do not require to be transacted before the Court or before a Judge of the Circuit Court.

[COA 1926, s 38]

(2) Subject to this Act, rules of court may provide for the hearing and decision by the County Registrar of all or any class or classes of interlocutory applications and unopposed final applications in, or in relation to, civil proceedings in the Circuit Court and for the taking or making of all or any class or classes of accounts and inquiries in such civil proceedings.

(3) The number of County Registrars shall be such number as the Minister, with the sanction of the Minister for Finance, from time to time directs.

Duty of County Registrar as registrar to Court

22.— (1) The County Registrar in and for the local government area (other than the local government areas comprised in the county of Dublin) in which the Central Criminal Court is, for the time being, sitting shall perform the following functions:

[CLCA 2004, s 44]
[CLMPA 2008, s 7, modified]

(a) the function of acting as registrar to the Central Criminal Court when so sitting, and

(b) the function of performing such powers and carrying out of such duties in relation to that Court as are assigned to the registrar of the Central Criminal Court by rules of court,

when requested to so do by the officer for the time being managing the Central Office.

(2) Every County Registrar shall, in and for the local government area to which

[CBCIA 1851, s

he or she is assigned, in relation to the Circuit Court:

10, modified]

(a) perform all such duties and functions as are usually performed and fulfilled by the registrar of a Court;

(b) make and retain any record of proceedings before the Court or a Judge, in such form as is prescribed by rules of court or directed by the Judge;

(c) enter proceedings before the Court or a Judge;

(d) prepare and (where authorised by law) sign, authenticate and issue any Court instruments and any certificates or notifications required by an enactment.

(3) The functions and duties performable by a County Registrar pursuant to a request under *subparagraph (1)* or pursuant to *subparagraph (2)* may be performed by a member of the staff of the Circuit Court Office in the local government area concerned to whom those functions have been delegated by that County Registrar.

(4) Where practicable, the person performing the duties and functions of registrar in the Circuit Court for the purpose of proceedings mentioned in *section 165(1)* shall possess sufficient knowledge of, or shall have sufficient experience of practising in, the Irish language as enables him or her to dispense with the assistance of an interpreter when performing that function in such proceedings.

Orders which may be made by a County Registrar²¹³

23.— (1) A County Registrar may make any of the orders set out in *Part 1* of the table to this paragraph, and may make any of the side-bar orders set out in *Part 2* of the table to this paragraph.

[CCOA 1995, s. 34 and Schedule 2, paragraphs 1, 10] [CCOA 2002, s 22]

(2) In the table to this paragraph, “execution order” has the meaning assigned by *section 113*.

Table to paragraph 23

Part 1: Orders which may be made by a County Registrar

1 Any order which may be made as of course.

2 An order for a statement of the names of persons who may be co-partners in any firm, suing or being sued in any civil proceedings.

3 An order for the enlargement of the time for doing any act or taking any step in any civil proceedings.

4 An order for discovery, limited or general, or inspection of documents or real or personal property, or delivery of interrogatories.

5 A conditional order for the appointment of a receiver by way of equitable execution and, if that appointment is consented to, or is uncontested, an order

²¹³ The following items which appear in the current list (by reference to current numbering) have been deleted as they are either obsolete or go to a level of procedural detail that it is safe to allow them be regulated by rules of court: *Part 1*: 18 An order for the issue, for service outside the jurisdiction, of a citation to issue proceedings in contentious probate matters; 19 An order for the issue of a citation to lodge in court a grant of probate or letters of administration in contentious probate matters; 20 An order giving liberty to file a supplemental affidavit of scripts; 21 An order for the lodgement of scripts by any party. *Part 2*: 4 To proceed by or against a new Attorney General; 5 That a party furnish a rental; 10 To confirm sale absolutely; 13 To proceed compromise off.

for the appointment of the receiver, and an order for the discharge of a receiver.

6 An interim or conditional third party creditor order and, if the order is consented to, or is uncontested, an unconditional third party creditor order.

7 An order to dismiss any civil proceedings with costs for want of prosecution or for failure to make an affidavit of discovery or to answer interrogatories.

8 An order to strike out a defence with costs for failure to make an affidavit of discovery or to answer interrogatories.

9 An order for the taking of evidence on commission.

10 An order on an application for directions as to—
(I) service of an originating document not *inter partes*, or
(II) any other procedure in an action or matter.

11 An order adding or substituting a party in any civil proceedings.

12 An order giving liberty to intervene and appear.

13 An order for the amendment of pleadings on consent.

14 An order to receive a consent and make the consent a rule of court where the parties are *sui juris*.

15 An order under the *Bankers' Books Evidence Acts 1879 and 1959*.

16 An order for payment out of court of funds standing to the credit of a minor on attaining majority, or (if so authorised by order of a Judge) for his or her benefit during minority.

17 An order in an uncontested case to have an account taken or inquiry made.

18 An order appointing a receiver in a place of a receiver who has died or been discharged, including any necessary consequential directions as to the accounts of the deceased or discharged receiver.

19 An order pursuant to *section 254(5)* in relation to any stock, security or money in the Circuit Court.

20 An order for the issue of a witness summons for the production of any record in the custody of any officer of the State or of a public authority.

21 An order under *section 123* of the *Land and Conveyancing Law Reform Act 2009*.

22 An order on consent, settling the issues to be tried.

23 An order giving liberty to issue an execution order in the name of or against the personal representative of a deceased party.

24 An order giving liberty to issue an execution order to replace an execution order that is lost or mislaid.

25 An order giving liberty to issue an execution order at any time during the period of 12 years from the date of the relevant judgment of the Court whose execution is directed or authorised by the execution order.

26 An order giving liberty to amend the identity of the parties to an execution order in accordance with any amendment made by the Court to the identity of the parties to the relevant judgment of the Court whose execution is directed or authorised by the execution order, following the death of any party entitled or liable to execution under that order or the assignment of the debt due under that order.

27 An order for the transfer of proceedings to the High Court or the District Court, including all ancillary orders for the transfer of moneys lodged in the Circuit Court.

28 An order giving liberty to—

(I) serve a third party notice to civil proceedings on notice to the applicant in the civil proceedings,

(II) join a party as a co-respondent to civil proceedings on notice to the applicant in the civil proceedings, or

(III) join a party as a co-applicant to civil proceedings on notice to the respondent in the civil proceedings.

29 An order for the recovery of—

(I) a liquidated amount, or

(II) a specific chattel or chattels,

or both, in any civil proceedings in which an appearance has not been entered or a defence has not been delivered and, in the case of a claim for a liquidated amount, the County Registrar may exercise the discretion to award interest conferred on a Judge by *section 110*.

30 An order entering judgment in any civil proceedings for unliquidated damages, and for interest and legal costs, in any civil application or proceedings which an appearance has not been entered or a defence has not been delivered.

31 An order of possession of any land in ejectment civil proceedings in which an appearance has not been entered or a defence has not been delivered.

32 An order of possession of any land within the meaning of *section 3* of the *Registration of Title Act 1964*, in civil proceedings on an application under *section 62(7)* of that Act in which an appearance has not been entered or a defence has not been delivered.

33 An order of possession of any land on foot of a legal mortgage or charge in civil proceedings in which no other relief is claimed and an appearance has not been entered or a defence has not been delivered.

34 An order that—

(I) A judgment debtor, liable under a judgment of the Circuit Court to pay an amount of money, or, where the debtor is a corporate body, an officer, employee or member of the corporate body, and

(II) any other person who a County Registrar considers appropriate, may be examined orally on oath by the County Registrar to ascertain what (if any) debts are owing to the judgment debtor and what (if any) property or other means the judgment debtor has to satisfy the judgment.

35 An order for the appointment of a care representative under *section 21* of the *Nursing Homes Support Scheme Act 2009* if no objection is made to the Court relating to that appointment by any notice party to the application.

Part 2: Side-bar orders which may be made by a County Registrar

1 For an applicant, lately a minor, who has attained majority, to proceed in his

or her own name.

2 To proceed against a respondent, lately a minor, who has attained majority, in his or her own name.

3 To proceed notwithstanding the death of a party, his or her rights surviving.

4 That tenants pay their rents to a receiver, to a person named for that purpose in a temporary seizure order, to a guardian or to an administrator *pendente lite*.

5 That persons indebted to a personal estate pay the sums due by them to a receiver or administrator *pendente lite*.

6 For an injunction to a sheriff to put a purchaser into possession (in the case of a County Registrar who is not for the time being exercising the powers of the office of under-sheriff)²¹⁴.

7 For an injunction to a sheriff to put tenant into possession (in the case of a County Registrar who is not for the time being exercising the powers of the office of under-sheriff).

8 To receive a consent and make the same a rule of court, where the parties are *sui juris*.

9 To make a conditional order absolute on a certificate of no cause, and to make an order directing payment of such costs (if any) as were reserved on the making of the conditional order²¹⁵.

Further powers of
County Registrars

24.— In addition to any order which, pursuant to *paragraph 23* or rules of court, he or she may make, a County Registrar may:

[CCOA 1995,
Second Schedule,
paragraphs 2-6]

(a) in any case, either on consent of all parties concerned or by order of the Court, assess any damages to which a party is entitled, or take any account;

(b) with the consent of all parties concerned, try any issue of fact,

(c) in any case in which he or she may make an order:—

(i) make any supplementary or ancillary order;

(ii) place a stay, subject to such conditions as he or she thinks just, on any order made;

(iii) give any necessary directions;

(iv) make an order for the costs of the application, which shall be in his or her discretion, and may direct payment of a sum in gross in lieu of payment of costs to be taxed;

(v) in his or her discretion, transfer any case to the Court list for hearing, or

(vi) at the request of a party to proceedings, enter judgment in the proceedings for the amount that is agreed by the parties and remains unpaid, and in respect of the costs, charges and expenses of the proceedings.

Witnesses and
hearings before
County Registrars

25.— (1) A County Registrar has, for the purpose of any proceedings before him, power to summon parties and witnesses, to administer oaths, to require the production of documents, to take affidavits, affirmations and acknowledgements; and to examine parties and witnesses either on

[CCOA 1995,
Second Schedule,
paragraphs 7, 9]

²¹⁴ The language of this and the next item have been modified for future-proofing to remove the explicit reference to Dublin and Cork.

²¹⁵ Reference to judgment of ouster on a disclaimer has been deleted, as judgment of ouster on a disclaimer relates to a disclaimer to quo warranto, which is itself being abolished in the draft Bill, although, in any event, so far as such a judgment might now be given, it is exclusively for the High Court.

interrogatories or *viva voce*.

(2) Parties and witnesses summoned to attend before a County Registrar are bound to attend and:

(a) are liable to an order under *section 88(2)* on non-appearance, or

(b) may be punished for contempt in the like manner as a party or witness who disobeys an order of the Circuit Court.

(3) Any legal representative may appear and be heard on behalf of a party in any case before a County Registrar, but the costs of retaining a barrister for the purposes of that hearing shall not be allowed unless certified for by the County Registrar.

Qualifications and retirement age of County Registrars

26.— (1) A person may not be appointed to be a County Registrar unless at the time of his or her appointment he or she is either—

[COA 1926, s 35]
[CCOA 1995, s. 51]

(a) a barrister or solicitor of not less than 8 years' standing who is then actually practising or has previously practised for not less than 8 years, or

(b) a person who has been a County Registrar.

(2) Service as a Judge of the District Court is, for the purposes of *subparagraph (1)(a)*, deemed to be practice as a barrister or solicitor.

(3) Subject to *paragraph 27*, every County Registrar shall retire on attaining the age of 65 years.

Power to continue County Registrars in office after reaching the age of 65

27.— (1) In this paragraph the "Committee" means a committee consisting of the Chief Justice, the President of the High Court and the Attorney General.

[CSPA 1961, s 56]

(2) The Committee may act by a majority of its members and a warrant under this paragraph shall be sufficiently authenticated if signed by two members of the Committee.

(3) Notwithstanding the provisions of *paragraph 26(3)*, where—

(a) a County Registrar is about to reach the age of 65 years, and

(b) he or she satisfies the Committee that he or she is not suffering from any disability which would render him or her unfit to discharge efficiently the duties of the office of County Registrar,

the Committee may, if they so think proper, after consultation with the Minister and with the Service, by warrant made before that County Registrar attains the age of 65 years, continue him or her in office for one year commencing on the date on which he or she will attain the age of 65 years.

(4) Notwithstanding the provisions of *paragraph 26(3)*, where —

(a) a County Registrar to whom a warrant under *subparagraph (3)* or under this subparagraph relates, or to whom a warrant under this subparagraph is deemed to relate, is about to reach the age of (as the case may be) 66, 67, 68 or 69 years, and

(b) he or she satisfies the Committee that he or she is not suffering from any disability which would render him or her unfit to continue to discharge efficiently the duties of the office of County Registrar,

the Committee may, if they so think proper, after consultation with the Minister and with the Service, by warrant, made before such County Registrar attains that age, continue him or her in office for one year commencing on the date on which he or she will attain that age.

(5) Where, immediately before the commencement of this paragraph, there is any County Registrar who has been continued in office by warrant, that County Registrar is deemed to have been continued in office by warrant under *subparagraph (3)* or, as the case may be, *subparagraph (4)* and to be a County Registrar to whom that subparagraph relates.

Assignment of
County Registrars to
Circuit Court Offices

28.— (1) Every County Registrar appointed or deemed to be appointed under this Act shall be assigned to the Circuit Court Office the Government²¹⁶ from time to time directs.

[COA 1926, s 36]
[COA 1945, s 10]

(2) Every County Registrar shall be known and is in this Act referred to as the County Registrar for the local government area served by the Circuit Court Office to which he or she is for the time being assigned.

(3) All references in this Act to a County Registrar in relation to a Circuit Court Office shall be construed as references to the County Registrar for the time being assigned or deemed to be assigned under this paragraph to that Circuit Court Office and all references in this Act to a County Registrar in relation to a local government area shall be construed as references to the County Registrar for the time being assigned to the Circuit Court Office for that local government area.

General direction

29.— Every County Registrar shall, in respect of the discharge generally of his or her functions and the exercise generally of his or her powers of a judicial nature, be subject to the general direction of the Judge of the Circuit Court permanently assigned to the Circuit within which is situated the Circuit Court Office to which that County Registrar is assigned (or, if there is more than one Judge permanently assigned to that Circuit, of the senior such Judge).

[New]

Sheriffs and County Registrars performing the office of sheriff

County Registrars
performing the office
of sheriff

30.— (1) Every County Registrar who immediately before the passing of this Act had vested in him or her the powers, duties, authorities, rights and obligations of any office of under-sheriff continues to have vested in him or her such powers, duties, authorities, rights and obligations.

[COA 1926, s 54,
modified]
[COA 1945, s 12,
modified]

(2) Every person other than a County Registrar who immediately before the passing of this Act had vested in him or her the powers, duties, authorities, rights and obligations of any sheriff continues to have vested in him or her such powers, duties, authorities, rights and obligations.

(3) The Minister, whenever he or she so thinks proper, following consultation with the Service, may, by order made with the consent of the Minister for Finance in respect of any local government area in which the powers, duties, authorities, rights, and obligations of any under-sheriff or sheriff are for the time vested in the County Registrar, declare either (as shall be specified in such order) that all, or that certain specified, of the said powers, duties, authorities, rights, and obligations shall cease to be imposed on or to be vested in that County Registrar.

(4) On the making of an order referred to in *subparagraph (3)*:—

²¹⁶ It is arguable that this should now be the Courts Service, or the Government following consultation with the Courts Service.

(a) the Government may, as and when occasion requires, appoint a person to be the sheriff of the county or other local government area;

(b) such of the powers, duties, authorities, rights, and obligations of the under-sheriff or sheriff as by virtue of the order cease to be imposed on or vested in the County Registrar shall become and be powers, duties, authorities, rights, and obligations (as the case may be) of the sheriff;

(c) the Minister, whenever he or she so thinks proper, may, by order made with the consent of the Minister for Finance, transfer from the County Registrar to the sheriff such further or other powers, duties, authorities, rights, or obligations as he or she thinks proper;

(d) on the occasion of a vacancy in the office of sheriff, the Minister, if he or she so thinks proper, may, by order made with the consent of the Minister for Finance, revoke the order under *subparagraph (3)*;

(e) where the Minister makes an order under *subparagraph (4)(d)*, all the powers, duties, authorities, rights, and obligations of the sheriff shall become and be, with effect from the occurrence of the vacancy in the office of sheriff, powers, duties, authorities, rights, and obligations (as the case may be) of the County Registrar;

(f) where any power, duty, authority, right or obligation under any enactment of the County Registrar is for the time being imposed by virtue of this paragraph on the sheriff, every reference in that enactment to the County Registrar shall be construed and have effect as a reference to the sheriff.

(5) Where the powers, duties, authorities, rights and obligations of an under-sheriff or sheriff are for the time being vested in a County Registrar, then all fees received by that County Registrar in the exercise of the powers or rights or the performance or fulfilment of the duties or obligations of an under-sheriff or sheriff shall be surrendered by him or her to the Exchequer.

[COA 1951, s 2, modified]

District Probate Registrars

District Registrars

Probate

31.— The Service may, from time to time, require, authorise and assign a member of its staff serving in the Circuit Court to perform the duties of District Probate Registrar for the district served by a particular District Probate Registry.

[SA 1965, s 131]

District Court Clerks

Appointment and assignment of District Court Clerks

32.— (1) Subject to the provisions of *paragraph 33*, every District Court Clerk shall be appointed and assigned by the Service and may be re-assigned by the Service.

[New]

(2) The number of District Court Clerks shall be such number as the Service, with the sanction of the Minister for Finance, from time to time directs.

Functions, powers duties and authorities of District Court Clerks

33.— (1) Every District Court Clerk shall be assigned to such District Court Office or District Court Offices serving such District or Districts as the Service from time to time directs.

[COA 1926, s 48, modified]

(2) Every District Court Clerk so assigned shall have and may exercise all powers and authorities and perform and fulfil all duties and functions in relation to the District Court in the District served by that District Court Office or Districts served by those District Court Offices as are from time to time conferred or imposed on him or her by this Act or a relevant enactment. In particular (unless and until otherwise provided by a relevant enactment) a

District Court Clerk shall have and may exercise all powers and authorities and perform and fulfil all duties and functions in the District served by that District Court Office or Districts served by those District Court Offices in relation to the exercise of the jurisdiction of the District Court in and for that District or those Districts or of the District Court Judge or Judges for the time being assigned to the District or those Districts that does not require to be transacted before the Court or before that Judge or one of those Judges.

(3) Where there is for the time being more than one District Court Clerk assigned to any District Court Office, the exercise of the powers and authorities and the performance and fulfilment of the duties and functions of a District Court Clerk in the District served by that District Court Office shall be distributed among those District Court Clerks or otherwise regulated as the Service shall see fit. [CLMPA 2008, s 8]

(4) An assignment under *subparagraph (1)* of a District Court Clerk to a District Court Office may be—

(a) a permanent assignment,

(b) a temporary assignment, or

(c) a temporary assignment in addition to any permanent assignment.

(5) Where *subparagraph (4)(c)* applies to a District Court Clerk, the temporary assignment concerned shall be without prejudice to the exercise of all powers and authorities and the performance of all duties and functions for the time being conferred or imposed on him or her by law in relation to any District Court Office to which he or she is permanently assigned.

(6) Where a temporary assignment under *subparagraph (1)* of a District Court Clerk to a District Court Office is made pursuant to a direction given orally under that subparagraph, the Service shall cause a record in writing to be made and kept, in such manner as the Service thinks fit, of the direction.

(7) A record in writing referred to in *subparagraph (6)* is, in any proceedings, evidence that the District Court Clerk to whom the record relates was temporarily assigned to the District Court Office to which the record relates until the contrary is shown.

(8) Every District Court Clerk shall, in particular be responsible, in each District served by the District Court Office to which he or she is assigned, in relation to the District Court, for: [PSIA 1851, s 5(1), modified]

(a) performing all duties and functions as are usually performed and fulfilled by the registrar of a Court [PSIA 1851, s 5(5), modified]

(b) making and retaining, whether in the form of a minute book, order book or otherwise, any record of proceedings before the Court or a Judge, in such form as is prescribed by rules of court or directed by the Judge; [PSIA 1851, s 5(3), modified]

(c) entering proceedings before the Court or a Judge;

(d) preparing and (where authorised by law) signing, authenticating and issuing any summonses, other Court instruments and any certificates or notifications required by an enactment.

(9) Where practicable, the person performing the duties and functions of registrar in the District Court for the purpose of proceedings mentioned in *section 175(1)* shall possess sufficient knowledge of, or shall have sufficient

experience of practising in, the Irish language as enables him or her to dispense with the assistance of an interpreter when performing that function in such proceedings.

Section 350

SCHEDULE 14

Part 3: Deputies and alternates for certain court officers

Interpretation: this Part **1.**— In this Part, “temporary absence” means: [New]

(a) any period during which the officer to whom the absence relates is temporarily absent from his or her office, or is temporarily incapacitated through illness, and

(b) where relevant, any period during which the office of that officer is vacant.

Deputy Master of the High Court **2.**— (1) In the case of the temporary absence of the Master of the High Court, the Service may appoint a deputy to execute the office of the Master of the High Court. [COA 1926, s 27] [CLCA 2004, s 43]

(2) In any other case in which the Service considers it desirable that the power be exercised, the Service may, after consultation with the President of the High Court, appoint a deputy to execute the office of the Master of the High Court concurrently with the Master of the High Court.

(3) A deputy appointed under *subparagraph (1)* has, while his or her appointment continues, and may exercise, all the powers and authorities and perform and fulfil all the duties and functions of the Master of the High Court in place of their being exercised, performed and fulfilled by the Master of the High Court.

(4) A deputy appointed under *subparagraph (2)* has, while his or her appointment continues, and may exercise, all the powers and authorities and perform and fulfil all the duties and functions of the Master of the High Court concurrently with their being exercised, performed and fulfilled by the Master of the High Court, subject to the provisions of that appointment.

(5) A person may not be appointed under this paragraph to be a Deputy Master of the High Court unless at the time of his or her appointment he or she either possesses the qualifications prescribed for appointment as Master of the High Court or is an officer employed in the Central Office who has during the next preceding 12 years been employed in a court office or within the staff of the Service.

Deputy Master Taxing **3.**— (1) In the event of the temporary absence of a Taxing Master, the Service may appoint a deputy to execute the office of that Taxing Master during such absence. [COA 1926, s 27] [CLCA 2004, s 43]

(2) A deputy appointed under this paragraph has, while his or her appointment continues, and may exercise all the powers and authorities and perform and fulfil all the duties and functions of the Taxing Master whose deputy he or she is in place of their being exercised, performed and fulfilled by that Taxing Master.

(3) A person may not be appointed under this paragraph to be a Deputy Taxing Master unless at the time of his or her appointment he or she possesses the qualifications prescribed for appointment as a Taxing Master.

Deputies and alternates for other principal officers **4.**— (1) The Service may in the case of each of the offices mentioned in *section 332* (other than the Taxing Masters’ Office) nominate one of the [COA 1926, s 28, modified] [COA 1945, s 9]

officers for the time being serving in the office to be the deputy for the principal officer responsible under this Act for managing that office or for the other functions vested in that principal officer. Every officer so nominated has, during every temporary absence of that principal officer occurring while his or her nomination remains unrevoked, and may exercise the powers and authorities and perform and fulfil the duties and functions for the time being vested by law in that principal officer.

(2) The Service may, whenever it considers it appropriate, require and authorise a principal officer to whom this paragraph applies to perform—

(i) the duties (in addition to his or her own duties) of any other principal officer to whom this paragraph applies, during a specified period or until otherwise directed by the Service, or

(ii) any duty or duties (in addition to his or her own duties) of any other principal officer to whom this paragraph applies in a particular case or in particular circumstances.

(3) Whenever a principal officer is required under *subparagraph (2)* to perform the duties, or any duty or duties, of the office of any other principal officer, he or she—

(i) has, while the requirement remains in force, all the powers of the holder of that office in respect of the duty or duties concerned as fully as if he or she held that office, and

(ii) may exercise such powers concurrently with their being exercised by the other principal officer.

Deputies and
alternates for County
Registrars

5.— (1) In the event of the temporary absence of the County Registrar assigned to a Circuit Court Office, the Service may appoint a deputy to execute the office of that County Registrar.

[COA 1926, s 40]
[COA 1945, s 9]
[CCOA 1995, s
35]

(2) A deputy appointed under this paragraph has, while his or her appointment continues, and may exercise, all the powers and authorities and perform and fulfil all the duties and functions of the County Registrar whose deputy he or she is.

(3) Except in the case of the temporary incapacity of a County Registrar through illness, no office shall be executed by a deputy appointed under this paragraph for any period or periods exceeding in all three months in any year.

(4) A person may not be appointed to be a deputy for a County Registrar unless he or she possesses the qualifications prescribed for appointment as a County Registrar.

(5) Where, in accordance with *subparagraph (1)*, the Service may appoint a deputy, unless and until the Service appoints such deputy, the senior officer in the Circuit Court Office concerned shall be responsible for the control and management of that office.

(6) The Service may, whenever it considers it appropriate, require and authorise a County Registrar to perform—

[CCOA 2002, s
23]

(i) the duties (in addition to his or her own duties) of any other County Registrar, during a specified period or until otherwise directed by the Service, or

(ii) any duty or duties (in addition to his or her own duties) of any other County Registrar in a particular case or in particular circumstances.

(7) Whenever a County Registrar is required under *subparagraph (6)* to perform the duties, or any duty or duties, of the office of any other County Registrar, he or she—

(i) has, while the requirement remains in force, all the powers of the holder of that office in respect of the duty or duties concerned as fully as if he or she held that office, and

(ii) may exercise such powers concurrently with their being exercised by the other County Registrar.

(8) This paragraph does not operate to authorise the senior officer in a Circuit Court Office to exercise any power or authority or perform any duty or function of a County Registrar.

Deputy District
Probate Registrar

6.— Where a person is for the time being required and authorised by the Service under *paragraph 31 of Part 2* of this Schedule to perform the duties of District Probate Registrar for the district served by a particular District Probate Registry, the Service may authorise a specified officer serving in that District Probate Registry or in the Circuit Court Office which serves the local government area within which that District Probate Registry is located to execute, during the temporary absence of the person acting as District Probate Registrar, the office of District Probate Registrar for that district. If the Service does so, then that officer has, during any such temporary absence, and may exercise all the powers and fulfil all the duties of the District Probate Registrar for that district unless and until the Service otherwise directs.

[SA 1965, s 131]

Deputy District Court
Clerk

7.— (1) In the event of the temporary absence of a District Court Clerk, the Service may appoint a deputy to execute the office of that District Court Clerk during such temporary absence, on such terms as Service determines.

[COA 1951, s 4]

(2) A deputy appointed under this paragraph has, while his or her appointment continues, and may exercise all powers and authorities and fulfil all the duties and functions of the District Court Clerk whose deputy he or she is.

APPENDIX B **EXPLANATORY MEMORANDUM TO DRAFT COURTS (CONSOLIDATION
AND REFORM) BILL**

GENERAL INTRODUCTION TO THE BILL

A key purpose of this Bill is to set out in a single piece of legislation the main provisions concerning the role and essential jurisdiction of the courts in Ireland, and related matters concerning court offices. The Bill brings together provisions that are currently contained in 240 separate Acts, in the process repealing in full 192 of them, of which 135 predate the foundation of the State in 1922. The Bill also includes many new reforms aimed at enhancing the effectiveness of the administration of justice in the courts.

OVERVIEW OF THE WORK OF THE COURTS

The *Courts Service Annual Report 2009*, available at www.courts.ie, provides a detailed analysis of the work of the courts, from which the following general figures are derived. In recent years, the courts in Ireland have dealt with more than 500,000 criminal matters annually. In addition, over 150,000 civil cases have been initiated each year, as well as over 20,000 family law cases and more than 1,000 judicial review cases. Of the 500,000 criminal matters, about 450,000 are summary criminal cases dealt with in the District Court (over 300,000 being road traffic offences). The Circuit Criminal Court deals with 6,000 trials on indictment (for example, theft and drugs offences) and the High Court (Central Criminal Court) deals with 100 trials on indictment (primarily, murder and rape cases). Of the 150,000 civil cases initiated annually (other than family law cases), in the region of 80,000 are issued in the District Court (almost 30,000 involving enforcement of contract debt, and just under 4,000 involving the small claims procedure). The Circuit Court deals annually with over 40,000 civil claims (of which over 13,000 have involved enforcement of contract debt, and just under 7,000 concerned personal injuries claims). The High Court deals annually with up to 27,000 civil claims (of which over 5,500 involve enforcement of contract debt, and just over 7,000 concern personal injuries claims).

Family law cases total 20,000 annually. Cases concerning custody, access and domestic violence are dealt with in the District Court and involve about 15,000 annually (almost 10,000 concern domestic violence). Divorce and judicial separation cases, dealt with in the Circuit Court and High Court, total in the region of 5,000 annually. The High Court also deals each year with many constitutional cases, as well as over 1,000 judicial review cases, which concern challenges to decisions of courts and adjudicative bodies (in recent years, over 60% of these have involved immigration and asylum cases). In terms of the courts dealing exclusively with appeals, the Court of Criminal Appeal deals with over 300 appeals annually. The Supreme Court, which is the final court of appeal in the State and deals with many complex cases (including constitutional cases), disposes of almost 350 appeals each year.

PURPOSE OF BILL: CONSOLIDATION AND REFORM

As already indicated, the Bill brings together provisions that are currently contained in 240 separate Acts, which contain over 1,500 sections. The 359 sections in this Bill incorporate not only all the provisions from those Acts that remain relevant, but also contain the new reform elements proposed in the Bill. Of the 240 Acts that were examined in preparing this Bill, 146 predate the foundation of the State in 1922 (over 100 Acts are from the 19th Century, but three Acts date back to the 13th Century), and since 1922 the Oireachtas has also enacted 94 Acts concerning the courts. The Bill proposes to repeal in full 192 of these Acts, of which 135 are pre-1922 Acts. The Bill also proposes to repeal many elements of the other 48 Acts.

Among the many reform elements in the Bill aimed at enhancing the effectiveness of the administration of justice are the following.

1. New terms are included in the Bill to assist in simplifying and standardising, to the greatest extent possible, court procedures and forms in civil proceedings. Notably,

four connected terms — “applicant”, “application,” “application notice” and “respondent” — are intended to replace a plethora of existing terms (*section 5*).

2. Those involved in civil proceedings must comply with “case conduct principles,” and must accept the general function of the court and judge to control the conduct of proceedings, which includes using its resources appropriately and proportionately. This means that: (a) issues between parties should, at as early a stage as possible, be identified, defined, narrowed (where possible) and prioritised or sequenced; (b) proceedings should be conducted in a manner that is just, expeditious and likely to minimise the costs of those proceedings; and (c) the parties should be encouraged to use alternative dispute resolution procedures where appropriate, to settle the whole or part of the proceedings where practicable, and be facilitated in doing so (*sections 75 to 77*).
3. The Bill includes enhanced arrangements concerning the Irish language knowledge of judges of the Circuit Court and District Court in Gaeltacht areas (*sections 165 and 175*).
4. The courts would be authorised to protect the identity of a party to civil proceedings in exceptional cases currently outside the ambit of the in camera rule where the needs of justice so dictate (*section 206*).
5. The Bill includes a single, integrated, procedure to commence summary criminal cases in the District Court, of which there are between 450,000 to 500,000 every year (over 300,000 of these, more than 60%, involve road traffic offences) (*sections 217 to 219*);
6. Detailed provisions are included in the Bill on the use of Information and Communications Technology (ICT), which will assist existing initiatives on ICT within the Courts Service (*sections 226 to 231*).
7. The Bill provides that the statutory rules of court should be drafted using plain language, should help minimise the cost of litigation, support the development of case management principles and encourage (as provided for in *sections 75 to 77*), where appropriate, the use of alternative dispute resolution, such as mediation and conciliation (*section 259*). The provisions of the Bill on alternative dispute resolution complement the Commission’s *Report on Alternative Dispute Resolution: Mediation and Conciliation* (LRC 98-2010), which proposes a general legislative framework for mediation and conciliation.
8. The Bill proposes to remove the requirement that approved court forms must always be included in the statutory rules of court, and allowing for them to be published separately, for example, on the Courts Service website, www.courts.ie. The current *District Court Rules 1997* contain almost 1,000 forms (*section 263*);
9. A uniform approach would be applied by judges of the District, Circuit and High Courts in determining whether to accede to an application to refer a question of law to a higher court by consultative case stated (*section 274*).
10. In appeals from convictions in the most serious criminal trials, that is, trials on indictment, the current requirement to obtain leave to appeal would be removed. Under the current law, where the trial judge refuses leave to appeal, which is usually done, this is really no more than a formality and does not prevent an appeal (or application for leave to appeal) from actually proceeding. The Bill proposes that, instead, the trial judge ensures in advance that the grounds of appeal are sufficiently clear, and a single judge of the Court of Criminal Appeal may refer frivolous or

vexatious appeals for summary determination by that Court without a full hearing (*sections 297 and 304*).

11. The Bill proposes that sittings of the High Court to deal with appeals from the Circuit Court in civil cases would be based on the volume of actual appeals at any given time, and this flexibility would replace the current system that requires High Court judges to be sent to deal with these appeals even where the number involved would not justify this inefficient use of judicial resources (*section 316*).

OUTLINE OF THE MAIN ELEMENTS IN THE BILL

The Bill is divided into 6 Parts, which are supplemented by 14 Schedules.

Part 1 of the Bill, *Preliminary and General (sections 1 to 11)*, contains a statement of the main purposes of the Bill, key definitions used throughout the Bill, and provisions to ensure the continuity of the current court system.

Part 2, Jurisdiction (sections 12 to 177), which comprises half the total number of sections in the Bill, sets out the key elements concerning the role and essential jurisdiction of the principal courts in Ireland established under Article 34 of the Constitution. These are: the Supreme Court (the highest court in the State), the Court of Criminal Appeal and Courts-Martial Appeal Court, the High Court, the Circuit Court, and the District Court. *Part 2* of the Bill deals with the general powers of each court, both in civil and criminal proceedings. It also deals with how cases are distributed between the different courts.

In the context of civil proceedings, *Part 2* of the Bill requires that parties must comply with “case conduct principles” and must accept the general function of the court and judge to control the conduct of proceedings, which includes using its resources appropriately and proportionately. This means that: (a) issues between parties should, at as early a stage as possible, be identified, defined, narrowed (where possible) and prioritised or sequenced; (b) proceedings should be conducted in a manner that is just, expeditious and likely to minimise the costs of those proceedings; and (c) the parties should be encouraged to use alternative dispute resolution procedures where appropriate, to settle the whole or part of the proceedings where practicable, and should be facilitated in doing so.

Part 2 also contains a modern framework for important procedural matters, including how evidence is taken in civil and criminal proceedings, how evidence may be taken abroad and how evidence may be given in Ireland in respect of proceedings begun outside the State.

The detailed provisions of *Part 2* are linked to *Schedules 1 to 11* of the Bill. *Schedule 1* of the Bill contains supplementary provisions to ensure the continuity of the administration and enforcement of justice as well as some transitional provisions. *Schedule 2* contains a list of 192 Acts repealed in their entirety and 48 Acts repealed in part. *Schedule 3* of the Bill contains some minor and consequential amendments to Acts, as well as amendments necessary to confirm Circuit Court and District Court jurisdiction in certain cases. *Schedule 4* contains updated text of certain pre-1922 Acts in order to ensure that they refer to the correct provisions of the Bill. *Schedule 5* contains a list of preserved statutory provisions from existing Courts Acts that do not fall within the scope of the Bill and so have not been incorporated into the consolidation and reform involved in this Bill. *Schedule 6* provides an indicative and non-exhaustive list of what is intended by the use of certain terms to indicate the extent of the courts’ civil jurisdiction in certain areas. *Schedule 7* deals with the detailed rules on legal costs in civil proceedings and the specific rules on measurement of legal costs. *Schedule 8* of the Bill contains detailed rules on the enforcement of Court decisions in civil proceedings. *Schedule 9* deals with the detailed rules on the enforcement of EU-related

civil proceedings. *Schedule 10* of the Bill sets out the detailed provisions on the execution and enforcement of fines and breached Court bonds. *Schedule 11* deals with regular sittings of the High Court outside Dublin.

Part 3 of the Bill, *Judges and Presiding Judges (sections 178 to 192)*, contains provisions concerning the role and functions of judges in general, as well as specific provisions as to the role of the presiding judges, the Chief Justice (who is also presiding judge of the Supreme Court), the President of the High Court, the President of the Circuit Court and the President of the District Court. *Part 3* is linked to *Schedule 12* of the Bill, which contains a list of the prescribed number of ordinary judges of each Court.

Part 4 of the Bill, *Special Rules in Particular Proceedings and Matters of Procedure (sections 193 to 276)*, contains detailed provisions about court procedure and is linked to *Schedule 13* of the Bill. *Part 4* deals with the constitutional requirement that, subject to limited exceptions, the courts must administer justice in public. It also deals with some aspects of the role of juries (although much of this is dealt with in the *Juries Act 1976*, as amended). *Part 4* also deals with, for example, the use of Information and Communications Technology (ICT) in the courts and how proceedings in the courts are commenced. This will assist existing initiatives within the Courts Service on ICT. *Part 4* also describes the general basis on which the detailed statutory Rules of Court are drawn up. *Schedule 13* sets out the composition and related proceedings of the different Court Rules Committees, the Superior Courts Rules Committee, the Circuit Court Rules Committee and the District Court Rules Committee. *Part 4* also deals with offences related to the operation of the courts, notably, perjury and contempt of court.

Part 5 of the Bill, *Rights of Appeal, Appeals and References of Questions of Law (sections 277 to 326)*, describes the different ways in which decisions of a court may be appealed to a higher court, notably by way of appeal on points of law. This follows the same sequence as in *Part 2*, beginning with appeals to the Supreme Court. This is followed by the process for appeals to the Court of Criminal Appeal, the Courts-Martial Appeal Court, to the High Court, and to the Circuit Court. It also deals with appeals to the District Court from statutory bodies other than the courts, particularly bodies and officers who are empowered to issue directions and notices to operators in certain regulated sectors and industries.

Part 6 of the Bill, *Court Offices and Court Officers (sections 327 to 359)*, sets out the general powers and functions of the many court offices and court officers involved in the courts and is linked to *Schedule 14* of the Bill. *Schedule 14* sets out the detailed functions, powers and duties of, and supplemental provisions concerning, court officers. *Schedule 14* deals with: the Master of the High Court; the Taxing Masters; the Probate Officer; the Examiner; the Officer in charge of the Court Funds Office and Courts Accountant; the Registrar of Wards of Court; the Official Assignee in Bankruptcy; the Registrar of the Supreme Court; the officer managing the Central Office of the High Court; High Court Registrars; County Registrars; Sheriffs and County Registrars performing the office of sheriff; and District Court Clerks.

GENERAL NOTE ON THE ORIGINS OF SECTIONS IN THE BILL

The Explanatory Notes for this Bill refer, where relevant, to any existing Act from which a specific section is drawn. For example, the Explanatory Note to *section 15* of the Bill points out that *section 15* confirms that the Supreme Court has the original and appellate jurisdiction prescribed by the Constitution of Ireland, as well as all other appellate jurisdiction in civil and criminal proceedings conferred under any enactment. The Explanatory Note ends with the following: “[C(SP)A 1961, s7(1) and (2)].” This abbreviation, which is also found in the marginal notes to the Bill itself, means that *section 15* of the Bill is primarily derived from *section 7(1) and (2)* of the *Courts (Supplemental Provisions) Act 1961*. The full list of

abbreviations for Acts referred to in the Explanatory Notes is set out in the Schedule to this Explanatory Memorandum.

Where the existing provision is from a pre-1922 Act, the relevant section in the Bill has, at a minimum, updated the existing provision to reflect, as far as possible, current statutory drafting standards and related matters (such as replacing references to pre-1922 courts with references to the current courts). Where, in addition, the section in the Bill is intended to alter the substance of the existing provision, this is referred to in the Explanatory Note. Where the existing provision is from a post-1922 Act, relatively little updating is required to reflect current statutory drafting standards.

Where a section in the Bill does not correspond to any existing statutory provision, the marginal note to the Bill itself (Appendix A of this Report) reads: “[New].” The Explanatory Notes below point out that, in some instances, this indicates that while the section in the Bill has not appeared in any existing Courts Act, it is not entirely new but, rather, may involve the first statutory statement of an existing jurisdiction or power of the courts.

EXPLANATORY NOTES TO PART 1 OF THE BILL: PRELIMINARY AND GENERAL

Part 1 of the Bill, *Preliminary and General (sections 1 to 11)*, contains a statement of the main purposes of the Bill, key definitions used throughout the Bill, and provisions to ensure the continuity of the current court system.

Section 1 is a standard provision setting out the short title, the *Courts (Consolidation and Reform) Bill*.

Section 2 is also a standard provision setting out commencement arrangements by Ministerial Order or Orders, either on a single date or on different dates.

Section 3 sets out the general purposes of the Bill, which is new in a Courts Bill but is an approach adopted in, for example, the *Education Act 1998*. It also implements the recommendation in paragraph 1.38 of the Report. The purposes of the Bill are: (a) in part, to consolidate provisions formerly contained in various enactments, which would be repealed by the Bill, concerning courts (but not including special courts referred to in Article 38.3 of the Constitution or military tribunals referred to in Article 38.4 of the Constitution); (b) in part, to modernise and, where appropriate, to reform, provisions concerning courts and proceedings before courts; (c) to re-state the jurisdiction and powers of the Circuit Court and of the District Court as courts of limited and local jurisdiction in accordance with Article 34.3.4^o of the Constitution and, in relation to those Courts, to regulate certain matters specified in Article 36 of the Constitution, in particular the organisation of those courts, and the distribution of jurisdiction and business among those courts and their judges; (d) to re-state the jurisdiction and powers of the Court of Criminal Appeal and of the Courts-Martial Appeal Court and, in relation to those courts, to regulate certain matters specified in Article 36 of the Constitution; (e) to regulate certain matters of procedure; (f) to provide for the exercise in accordance with Article 37 of the Constitution of limited functions and powers of a judicial nature by certain court officers and to provide generally for the conduct of the non-judicial business of Courts by court officers; and (g) to give effect to certain European Union enactments.

Section 4 is new in a Courts Bill and provides, for the purpose of clarification, that nothing in this Bill is to be taken to limit the jurisdiction of the Supreme Court or the High Court conferred under or by virtue of the Constitution, or reduces or modifies any obligation to exercise any jurisdiction or power in conformity with the Constitution.

Section 5 is a standard provision containing definitions of words and phrases used in the Bill. It also implements the recommendation in paragraph 2.05 of the Report. These include new general terms intended to allow for the eventual simplification of existing court terminology. Notably, four connected definitions in *section 5* — “applicant”, “application,” “application notice” and “respondent” — are intended to assist in simplifying and standardising, to the greatest extent possible, court procedures and forms in civil proceedings. *Section 5* provides that the word “applicant” could be used generally to describe any person bringing civil proceedings in a Court. At present, many different terms are used, including “plaintiff” (in many proceedings for money compensation), “petitioner” (in company law and family proceedings) and “applicant” (in judicial review cases). *Section 5* also provides that the word “application” could be used generally to describe the process for bringing civil proceedings in a Court and that “application notice” could be used in the appropriate rules of court to describe any document involved in commencing civil proceedings. At present, depending on the specific context and court, various terms such as “civil process,” “civil bill”, “petition,” “summons” and “writ” are used. *Section 5* provides that the word “respondent” could be used generally to describe any person served with a claim form application in civil proceedings. At present, a number of different terms are used, including “defendant” which is also used in criminal cases.

Section 5 also contains definitions of terms that are in regular use but which would benefit from a definition that clarifies this for those not familiar with a particular term. For example, *section 5* provides that any reference to an order of a Court made “*ex parte*” refers to an order made where the Court has not heard, or given an opportunity to be heard to, a party or person affected by the making of that order. This often occurs in urgent cases where a court may make a temporary order, such as injunction to freeze a bank account, which will apply for a short period until the other side has had an opportunity to present their side of the case in court.

Section 6 is new in a Courts Bill and reflects the comprehensive consolidation involved in the Bill. *Section 6* ensures that where certain terms have been used in existing legislation they can be connected to the relevant provisions in this Bill. This includes the simplification of terms used in civil proceedings, as proposed in *section 5* of the Bill.

Section 7, which is linked to *Schedule 1* of the Bill, provides for the continuity of the administration and enforcement of justice, ensuring that the Bill does not involve the creation of any “new” courts. The question of whether the courts established by the *Courts (Establishment and Constitution) Act 1961* had involved the creation of “new” courts had given rise to some difficulties, which the Commission discussed in the *Consultation Paper on Consolidation and Reform of the Courts Acts* (LRC CP 46-2007), paras 2.40-2.71. Accordingly, and to avoid any doubt on this matter, *section 7* provides that the courts referred to in the Bill are those already established by the *Courts (Establishment and Constitution) Act 1961*. [SCJIA 1877, ss.65, 66, 67; CJA 1924, s.27; C(SP)A 1961, s.55(6); BA 1988, s 6(2); SLRA 2007, s.9(1)]

Section 8, which is connected to *Schedule 2* of the Bill, provides for the repeal in full of 192 Acts, of which 135 are pre-1922 Acts (*Schedule 2, Part 1*). *Section 8* also provides for the partial repeal of 48 Acts (*Schedule 2, Part 2*).

Section 9, which is connected to *Schedules 3, 4 and 5* of the Bill, provides for three related matters. First, amendments are made to certain Acts to conform to the changes made by this Bill (*Schedule 3*). Second, amendments are made to certain Acts to allow for the repeal in full by this Bill of certain post-1922 Courts Acts (*Schedule 4*). Third, and to avoid any doubt, certain provisions concerning qualification, appointment, remuneration and superannuation of judges and related matters, which are outside the scope of this Bill are

continue to have effect (*Schedule 5*). This also implements the recommendation in paragraph 1.15 of the Report.

Section 10 is a standard provision, which empowers the Minister to make Regulations, including to consult with relevant persons and to publish draft Regulations. This does not apply to making rules of court.

Section 11 is a standard provision, and provides that any expenses incurred by the Minister in administering this Act shall, to the extent sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

EXPLANATORY NOTES TO PART 2 OF THE BILL: JURISDICTION

Part 2 of the Bill, *Jurisdiction (sections 12 to 177)*, which comprises half the total number of sections in the Bill, sets out the key elements concerning the role and jurisdiction of the courts in Ireland established under Article 34 of the Constitution. These are: the Supreme Court (the highest court in the State), the Court of Criminal Appeal and Courts-Martial Appeal Court, the High Court, the Circuit Court, and the District Court (it should be noted that the Bill does not refer to Special Criminal Courts, which are established under Article 38 of the Constitution). *Part 2* of the Bill deals with the general powers of each court, both in civil and criminal proceedings. It also deals with how cases are distributed between the different courts. The detailed provisions of *Part 2* are linked to *Schedules 1 to 11* of the Bill. *Schedule 1* of the Bill contains supplementary provisions to ensure the continuity of the administration and enforcement of justice as well as some transitional provisions. *Schedule 2* contains a list of 192 Acts repealed in their entirety and 48 Acts repealed in part. *Schedule 3* of the Bill contains some minor and consequential amendments to Acts, as well as amendments necessary to confirm Circuit Court and District Court jurisdiction in certain cases. *Schedule 4* contains updated text of certain pre-1922 Acts in order to ensure that they refer to the correct provisions of the Bill. *Schedule 5* contains a list of preserved statutory provisions that have not been consolidated in the Bill. *Schedule 6* provides an indicative and non-exhaustive list of what is intended by the use of certain terms to indicate the extent of the courts' jurisdiction in certain areas of civil liability. *Schedule 7* deals with the detailed rules on legal costs in civil proceedings and the specific rules on measurement of legal costs. *Schedule 8* of the Bill contains detailed rules on the enforcement of court decisions in civil proceedings. *Schedule 9* deals with the detailed rules on the enforcement of EU-related civil proceedings. *Schedule 10* of the Bill sets out the detailed provisions on the execution and enforcement of fines and breached Court bonds. *Schedule 11* deals with regular sittings of the High Court outside Dublin.

Section 12 sets out the purposes of the 16 Chapters in *Part 2* of the Bill. As with *section 3* of the Bill, this is new in a Courts Bill but is an approach adopted in, for example, the *Education Act 1998*.

Section 13, connected to *Schedule 6*, is new and provides an indicative and non-exhaustive list of what is intended by the use of certain terms to indicate the extent of certain civil jurisdictions of the courts. This includes what is generally included in terms such as: competition jurisdiction, contract jurisdiction, family jurisdiction, land jurisdiction and tort jurisdiction.

Section 14 provides that: the Supreme Court, the High Court, the Court of Criminal Appeal and the Courts-Martial Appeal Court each continues to be a Superior Court of record; and that the Circuit Court and the District Court each continues to be a Court of record. A court of record is required to keep records of its proceedings for an indefinite period. [C(SP)A 1961, ss.7(1), 8(1), 12(1), 21; CA 1971, s.13; and CMAA 1983, s.10]

Part 2, Chapter 1 (sections 15 to 17) deals with the Supreme Court.

Section 15 confirms that the Supreme Court is vested with the original and appellate jurisdiction prescribed by the Constitution of Ireland, as well as all other appellate jurisdiction, in civil and criminal proceedings, vested in or capable of being exercised by the Supreme Court under or by virtue of any enactment. The Supreme Court also has all the power, authority, and jurisdiction vested in the High Court for the purposes of hearing and deciding any appeal. [C(SP)A 1961, s.7(1) and (2)]

Section 16 confirms the specific jurisdiction and functions of the Chief Justice as conferred by existing legislation. This includes certain functions concerning solicitors and registered foreign lawyers. In addition, the Chief Justice may appoint a person to be a notary public or a commissioner for oaths. [C(SP)A 1961, s.10(1)]

Section 17 empowers the Supreme Court to sit in two or more panels of five or three judges of the Supreme Court. In a constitutional case, at least five judges must sit. [C(SP)A 1961, s.7(3), (4) and (5)]

Part 2, Chapter 2 (sections 18 to 21) deals with the Court of Criminal Appeal and the Courts-Martial Appeal Court. It also implements the recommendation in paragraph 2.13 of the Report.

Section 18 provides that the Court of Criminal Appeal and the Courts-Martial Appeal Court both consist of three judges, one of whom is the Chief Justice or another judge of the Supreme Court and the other two are judges of the High Court. [C(E&C)A 1961, s.3(2); CMAA 1983, s.9(2)]

Section 19 provides that the Court of Criminal Appeal may hear and decide any appeal or application which may be brought or made to that Court under this Bill or another enactment, and may decide any question necessary to be decided for the purpose of doing justice in the proceedings before it. [CJA 1924, s.30; C(SP)A 1961, s.12(1)]

Section 20 provides that the Courts-Martial Appeal Court may hear and determine any appeal or application which may be brought or made to that Court under this Bill or the Defence Acts 1954 to 2009. [CMAA 1983, s.13]

Section 21 provides that every decision of the Court of Criminal Appeal or the Courts-Martial Appeal Court is to be decided by a majority of the members present. It also provides that, unless the Court otherwise directs, either Court's decision is to be given by one judge only (usually the presiding judge), with no separate opinion to be given by any other member of the Court. [CJA 1924, s.28; CMAA 1983, s.12(2)]

Part 2, Chapter 3 (sections 22 to 35) deals with the High Court.

Section 22 confirms that the High Court is vested with the original and other jurisdiction prescribed by the Constitution, as well as such jurisdiction, in civil and criminal proceedings, as is conferred on, vested in, or capable of being exercised by, the High Court by any enactment. It also provides that, usually, the High Court comprises a single judge of the Court (sitting with or without a jury), all of whom have equal standing. The President of the High Court may direct in some cases that two or more judges should sit together for the purpose of particular civil or criminal proceedings (traditionally known as a Divisional Court, which referred to the different Divisions of the High Court prior to 1922). [C(SP)A 1961, s.8(1), (2) and (3); SCJIA 1877, s.45; C(SP)A 1961, s.11(2) (b)]

Section 23 confirms the specific jurisdiction and functions of the President of the High Court as conferred by existing legislation. This includes certain functions concerning solicitors under the *Solicitors Acts*. [C(SP)A 1961, s.10(5)]

Section 24 is new in a Courts Bill and contains an indicative but non-exhaustive list of the High Court's jurisdiction in civil proceedings: contract, tort and other breach of duty; family law; bankruptcy and insolvency; companies; partnership; intellectual property (such as copyright and trade marks); professional practice and disciplinary matters; electoral matters; extradition; proceeds of crime; enforcement of orders; arbitration; revenue; probate; trusts and instruments; land law and conveyancing; mortgages; admiralty; disputed or uncertain funds; care and protection jurisdiction (currently known as wardship); competition jurisdiction; and equity jurisdiction. It also implements the recommendation in paragraph 2.20 of the Report.

Section 25 provides that the High Court's care and protection jurisdiction is exercisable by the President of the High Court or another judge of the High Court for the time being assigned for this purpose by the President of the High Court. The use of the term "care and protection," rather than "wardship," assumes that the Oireachtas will enact legislation along the lines proposed in the *Scheme of the Mental Capacity Bill 2008*. [C(SP)A1961, s.9(2)]

Sections 26 to 30 are new in a Courts Bill and describe the general scope of the jurisdiction of the High Court in judicial review proceedings, which is an important part of the full jurisdiction of the High Court under the Constitution. Judicial review involves a review by the High Court of whether fundamental procedures were adhered to in the District Court, the Circuit Court and in any other adjudicative decision-making bodies (such as in planning matters).

Section 26 reiterates the current position that judicial review is a matter exclusively for the High Court. The procedure involved in this aspect of the work of the High Court is currently set out in Order 84 of the *Rules of the Superior Courts 1986*.

Section 27 reiterates the current position that, in judicial review proceedings, the High Court may make an order of mandamus (ordering a court or body to do a certain thing), an order of prohibition (prohibiting a certain thing) or an order of certiorari (quashing a decision). *Section 27* also confirms the current position that there is a right of appeal to the Supreme Court from the making of any such order.

Section 28 is new in a Courts Bill and provides for a modern process by which the High Court may prevent an unauthorised person from carrying out any office of a public nature. This process would replace the ancient common writs and orders of *quo warranto* (which translates as "on what warrant or authorisation"). This implements a previous recommendation of the Commission to abolish *quo warranto* on the basis that it was obsolete: *Report on Judicial Review Procedure* (LRC 71-2004).

Section 29 is new in a Courts Bill and provides that an application to the High Court for the review of the detention of any person is to be based on the procedure provided for in Article 40.4.2^o of the Constitution. In effect, Article 40.4.2^o is a constitutional version of the historic remedy of *habeas corpus*, although Article 40.4.2^o does not use the phrase *habeas corpus* (although the official Index to the printed version of the Constitution *does* use the phrase *habeas corpus* when referring to Article 40.4.2^o). Considerable doubts have been expressed about whether the pre-1922 legislation concerning *habeas corpus* could continue to exist side by side with the procedure in Article 40.4.2^o: see the discussion in *JM Kelly: The Irish Constitution* (4th ed, 2003), paragraphs 7.3.342-7.4.358. For this reason, *section 29* provides that any references to *habeas corpus* should be taken to be references to the procedure under Article 40.4.2^o of the Constitution. *Schedule 2* (which contains the Acts proposed for

repeal by this Bill) also provides for the consequent repeal of the *Habeas Corpus Act 1781* (sometimes referred to as the *Habeas Corpus Act 1782*, but the *Statute Law Revision Act 2007* provides that 1781 is the correct year for the Act) and the *Habeas Corpus Act 1804*. The repeal of these Acts reinforces the approach that Article 40.4.2^o of the Constitution contains the definitive form of *habeas corpus* in Irish law.

Section 30 is new in a Courts Bill and provides that where the Circuit Court or the District Court has concurrent jurisdiction to hear and decide particular civil proceedings, such as in family law proceedings, the High Court may decline to exercise its original jurisdiction in those civil proceedings by remitting those proceedings to the Circuit Court or to the District Court, as appropriate, of its own motion or on application by party to the proceedings. This provision reflects current practice in many instances and applies one of the general principles behind this Bill, to support the efficiency of the administration of justice in the courts.

Section 31 is new in a Courts Bill and provides that the High Court has all jurisdiction conferred by this Bill or any other enactment to hear and decide appeals in accordance with Part 5 of the Bill. This includes appeals from the Circuit Court in civil proceedings as well as from an adjudicating body in respect of certain of its decisions, such as, the Commission for Communications Regulation, the Competition Authority, the Environmental Protection Agency, the Financial Services Ombudsman, the Pensions Ombudsman, various professional bodies and appeal boards.

Section 32 provides that the High Court when exercising its criminal jurisdiction (for example, in murder and rape cases) shall continue to be known as the Central Criminal Court (an Phríomh-Chúirt Choiriúil). [C(SP)A 1961, s.11]

Section 33 provides that the criminal jurisdiction exercisable by the Central Criminal Court (comprising a judge with a jury) includes any offence triable on indictment. It also reiterates that the Central Criminal Court has exclusive jurisdiction to try a number of offences, including: treason, murder, attempt to murder or conspiracy to murder, rape, aggravated sexual assault, genocide, torture, and certain offences under the Competition Act 2002. The effect is that these are “reserved” offences that may only be tried in the Central Criminal Court. All other trials on indictment, such as (armed) robbery and possession of drugs with intent to supply others, are therefore dealt with in the Circuit Criminal Court. This distribution of trials on indictment between the Central Criminal Court and the Circuit Criminal Court is subject to the jurisdiction of a Special Criminal Court established under the Offences against the State Act 1939, which may try any such offences. [C(SP)A 1961, s.25(2); CL(R)(A)1990, s.10; ICCA 2006, Pt 2; CJ (UNCAT)A 2000, s.5(4); CA 2002, s 11; ICCA 2006, ss.6, 7]

Section 34 provides that applications to the Central Criminal Court in relation to proceedings pending or formerly pending in that Court may be made to a judge of the High Court. [CJA 1926, s.5(2)]

Section 35 is new in a Courts Bill and reiterates the current position that, in general (and by contrast with the position in civil proceedings), no appeal lies to the High Court from a decision in criminal proceedings. This is subject to the High Court’s jurisdiction in judicial review under *section 26* of the Bill, or the appeal by case stated under *section 314* or *section 319*.

Part 2, Chapter 4 (sections 36 to 55) deals with the Circuit Court.

Section 36 sets out definitions used in *Part 2, Chapter 4*.

Section 37 provides that the Circuit Court is limited to the jurisdiction conferred on it by statute. This contrasts with the full and original jurisdiction conferred on the High Court by the Constitution. It also confirms that, to avoid any doubt, the Circuit Court continues to retain any surviving jurisdiction which applied to its pre-1924 equivalents, a Recorder, a County Court or County Court Judge, or a Chairman or Court of Quarter Sessions.

Section 38 is, in part, new in a Courts Bill and provides that the jurisdiction of the Circuit Court in civil proceedings is exercisable severally by the judges of the Circuit Court, that is, by each of them, but only by a judge of the Circuit Court assigned to the Circuit in which civil proceedings must be brought or decided in accordance with this Bill or with another enactment. Similarly, the jurisdiction vested in the Circuit Court by *section 50* in criminal cases is exercisable by the judge of the Circuit in which the offence charged has been committed or in which the accused person has been arrested or resides. This section ensures that the Circuit Court is a local court within the meaning of the Constitution. By contrast, a High Court judge may decide any case arising in any part of the State. [CSPA 1961, s.25(3)]

Section 39 provides that, in urgent applications, a judge of the Circuit Court may, outside his or her Circuit, hear and decide any application which: (a) he or she may hear and decide within that Circuit, and (b) in his or her opinion, should be dealt with as a matter of urgency. [C(SP)A 1961, s.22(11) and (14)]

Section 40 is, in part, new in a Courts Bill and provides that the general money limit of the Circuit Court in civil cases is: in a personal injuries or defamation action, €50,000; and in any other case, €100,000. These figures implement the recommendation in paragraph 2.28 of the Report, and would also implement the recommendations in the 2007 *Report of the Legal Costs Implementation Advisory Group*. At present the general money limit in the Circuit Court is €38,092 (£30,000), which has been in place since it was set out in the *Courts Act 1991* (in defamation cases, the €50,000 limit is already provided for under the *Defamation Act 2009*). The *Courts and Court Officers Act 2002* provides for a general increase, including in personal injuries actions, to €100,000 but no Commencement Order has been made for this increase. The 2007 *Report of the Legal Costs Implementation Advisory Group* recommended that the increase could be implemented for civil proceedings other than personal injuries actions. In view of inflation since 1991, the increase to €50,000 for personal injuries actions amounts to a “stand-still” provision. In proceedings involving land, the section provides the Circuit Court land valuation limit is either (a) a maximum rateable valuation of €254 or (b) a maximum market value of €3,000,000. [COCAI 1877, ss.31, 32; C(SP)A 1961, s.22(1)(a) and (c) and Schedule 3; CLCA 2004, s.45]

Section 41 provides for two exceptions to the limits under *section 40*. First, the general money limit can be exceeded where all of the parties consent to this. Second, the Circuit Court may also award damages in excess of the general money limit where the High Court has transferred to the Circuit Court civil proceedings in which unliquidated damages are sought (that is, where the amount of compensation cannot be ascertained in advance, as in a personal injuries action; as opposed to liquidated damages, where the amount of compensation can be ascertained in advance, as in a loan/debt case). [CJA 1936, s.20; C(SP)A 1961, s.22(1)(b)]

Section 42 provides that the Circuit Court general money limit may be altered by a Government statutory Order, taking account of inflation. [CA 1991, s.16]

Section 43 provides that where a judge of the Circuit Court becomes aware that the Court does not have jurisdiction to hear and determine a case, he or she may either transfer the proceedings to the High Court or else strike out the proceedings. The judge may also make

an order for costs on the basis as would happen if the applicant in the case had failed to prove his or her claim. [CJA 1936, s.21 modified]

Section 44 provides that a claim over the money limit cannot be split in two to bring it within the limit, but a person can decide to limit their claim to the money limit and thus abandon the right to claim the excess over the money limit. [CJA 1936, s.23]

Section 45 provides that, in general and subject to the money limits, the Circuit Court has, concurrently with the High Court, all the jurisdiction of the High Court to hear and decide civil proceedings listed in the Table set out immediately after the section. The proceedings listed in the Table include: contract; tort; family law; partnership; some trusts and instruments; some land law and conveyancing; care and protection jurisdiction (currently known as wardship); and competition jurisdiction. The matters not listed in this Table and in respect of which the High Court has, therefore, exclusive jurisdiction (even where the amount involved would be less than the general money limit of the Circuit Court) include: bankruptcy and insolvency; companies; intellectual property (such as copyright and trade marks); professional practice and disciplinary matters; extradition; and proceeds of crime. [COCAI 1877, ss.33, 34, 40; C(SP)A 1961, s.22]

Section 46 provides that, in addition to the areas listed in *section 43*, the Circuit Court has jurisdiction in all cases of applications for new on-licences for the sale of alcohol and for “exemption” certificates under section 8 of the *Intoxicating Liquor Act 1988*. [C(SP)A 1961, s.24]

Section 47 is, in part, new in a Courts Bill and provides for four other specific areas of the Circuit Court’s jurisdiction: (a) where the Court has jurisdiction conferred by an enactment in connection with the fixing of the terms of any lease or licence; (b) where the Court has jurisdiction conferred by an enactment to enforce a decision of any adjudicating tribunal; (c) to deal with local election petitions, including challenges to the validity of local elections and such other jurisdiction in connection with electoral matters as is conferred by any enactment; and (d) in ejectment proceedings for the recovery of possession against tenants at will or permissive occupants (which is, subject to the limitation in the table to *section 69*, shared with the District Court) [CBCIA 1851, s.82]

Section 48, which is linked to *Schedule 3, Part 2*, provides for consequential amendments to various Acts, both pre-1922 and post-1922, to ensure that those Acts refer to the relevant provisions of this Bill concerning the jurisdiction of the Circuit Court. [C(SP)A 1961, Schedules 4 and 5]

Section 49 provides that a judge of the Circuit Court may change the venue for civil proceedings pending before the Court in that Circuit from one venue to any other venue within that Circuit, and for related procedural matters. [C(SP)A 1961, s.22]

Section 50 provides that, where relevant, the Circuit Court shall continue to be known as the “Circuit Family Court” when exercising its jurisdiction to hear and decide family proceedings, and as the “Circuit Court of Care and Protection” when exercising its care and protection jurisdiction. This assumes the Oireachtas will enact legislation along the lines of the *Scheme of the Mental Capacity Bill 2008*. [JSFLRA 1989, s.32]

Section 51 is new in a Courts Bill and provides that the Circuit Court has all jurisdiction conferred by this Bill to hear and decide appeals from the District Court in civil proceedings in accordance with *Part 5*, and that the Court has jurisdiction where conferred by an enactment to hear and decide appeals from adjudicating tribunals (for example, the Employment Appeals Tribunal).

Section 52 provides that, subject to the indictable offences “reserved” for the Central Criminal Court (such as murder and rape and which are listed in *section 33(2)* of the Bill), the Circuit Court has jurisdiction in respect of all indictable offences. This includes offences such as (armed) robbery, possession of drugs with intent to supply to others, aggravated assault, riot and other major offences against property. [CSPA 1961, s.25(1), (2)]

Section 53 provides that where an offence is committed in part in one and in part in another Circuit, or on the boundary between two Circuits, the trial may be heard in either Circuit. [FA 1819; CLIA 1828, s.26]

Section 54 provides that where, in respect of an offence committed in the State, the accused person does not reside in the State and he or she was not arrested for and charged with the offence in the State, and the offence was committed in more than one Circuit, the offence may be tried in any of those Circuits or, in some instances, in the Dublin Circuit. [CSPA 1961, s.25A, inserted by CJA 2006, s.179]

Section 55 is new in a Courts Bill and confirms that the Circuit Court may hear and decide appeals from decisions of the District Court in criminal proceedings in accordance with *Part 5* of the Bill.

Part 2, Chapter 5 (sections 56 to 74) deals with the District Court.

Section 56 sets out definitions used in *Part 2, Chapter 5*.

Section 57 (which mirrors *section 37* of the Bill concerning the Circuit Court) provides that the District Court is limited to the jurisdiction conferred on it by statute. This contrasts with the full original jurisdiction conferred on the High Court by the Constitution. It also confirms that, to avoid any doubt, the District Court continues to retain any surviving jurisdiction which applied to its pre-1924 equivalents, notably a Justice of the Peace, whether sitting in or out of Petty Sessions. [CJA 1924, ss.77, 78; C(SP)A1961, ss.32, 48]

Section 58 (which broadly mirrors *section 38* of the Bill concerning the Circuit Court) provides that the jurisdiction of the District Court in general is exercisable severally by the judges of the District Court, that is, by each of them, but only by a judge of the District Court assigned to the District in which proceedings must be brought or decided in accordance with this Bill or with another enactment. This section ensures that the District Court is a local court within the meaning of the Constitution. By contrast, a High Court judge may decide any case arising in any part of the State. [C(SP)A1961, ss.32, 48]

Section 59 contains specific provisions about how the jurisdiction of the District Court is exercisable severally by the judges of the District Court in civil proceedings, including family proceedings, and in licensing proceedings. [CJA 1924, s.79]

Section 60 provides that, where needed as a matter of urgency, a judge of the District Court may make an order under the Guardianship of Infants Act 1964 or the Child Care Acts 1991 to 2007 outside his or her District, or outside of Court. [CJA 1924, s.79(5); CCOA 1995, s.41]

Section 61, which is linked to *Schedule 3, Part 3*, is new in a Courts Bill (but mirrors *section 48* concerning the Circuit Court) and provides for consequential amendments to various Acts, both pre-1922 and post-1922, to ensure that those Acts refer to the relevant provisions of this Bill concerning the jurisdiction of the District Court.

Section 62 (which broadly mirrors *section 40* of the Bill concerning the Circuit Court) is, in part, new in a Courts Bill and provides that the general money limit of the District Court in

civil cases is €7,500. At present the general money limit in the District Court is €6,348 (£5,000), which has been in place since it was set out in the *Courts Act 1991*. The *Courts and Court Officers Act 2002* provides for a general increase to €20,000 but no Commencement Order has been made for this increase. In view of inflation since 1991, the increase to €7,500 amounts to a “stand-still” provision. These figures implement the recommendation in paragraph 2.34 of the Report. The section also refers to the relevant money limits in the limited family cases, notably maintenance, dealt with in the District Court. [CJA 1924, s.77]

Section 63 (which broadly mirrors *section 41* of the Bill concerning the Circuit Court) provides for two exceptions to the limits under *section 62*. First, the general money limit can be exceeded where all of the parties consent to this. Second, the District Court may also award damages in excess of the general money limit where the High Court or Circuit Court has transferred to the District Court civil proceedings in which unliquidated damages are sought (that is, where the amount of compensation cannot be ascertained in advance, as in a personal injuries action; as opposed to liquidated damages, where the amount of compensation can be ascertained in advance, as in a loan/debt case). This is subject to a limit of double the District Court damages limit. [CA 1991, s.15(2); CCOA 2002, s.18]

Section 64 (which broadly mirrors *section 42* of the Bill concerning the Circuit Court) provides that the District Court general money limit may be altered by a Government statutory Order, taking account of inflation. [CA 1991, s.16]

Section 65 (which broadly mirrors *section 43* of the Bill concerning the Circuit Court) provides that where a judge of the District Court becomes aware that the Court does not have jurisdiction to hear and determine a case, he or she may either transfer the proceedings to either the Circuit Court or the High Court, or else strike out the proceedings. The judge may also make an order for costs on the basis as would happen if the applicant in the case had failed to prove his or her claim. [CJA 1936, s.60]

Section 66 (which broadly mirrors *section 44* of the Bill concerning the Circuit Court) is new in a Courts Bill and provides that a claim over the District Court money limit cannot be split in two to bring it within the limit, but a person can decide to limit their claim to the money limit and thus abandon the right to claim the excess over the money limit.

Section 67 provides that the District Court, when hearing civil or criminal cases involving children, shall continue to be known as the Children Court. It also provides that, as at present, the Children Court must sit in a separate building or courtroom or on different days or at different times from sittings of any other Court. [CA 2001, s.71]

Section 68 provides that, subject to the money limits, the District Court has jurisdiction to decide the types of civil proceedings listed in the Table set out immediately after the section. This civil jurisdiction, while relatively wide, is (as at present) much narrower in scope than the comparable jurisdiction exercised by the Circuit Court (see *section 45* of the Bill). The proceedings listed in the Table include: contract (excluding any case where an equitable remedy, such as an injunction, is sought); tort (including personal injuries cases but excluding, for example, defamation); family law (currently limited to, for example, maintenance and excluding, for example, divorce) and some landlord and tenant cases.

Section 69 provides that, in addition to the areas listed in *section 68*, the District Court has jurisdiction in all cases concerning the grant, renewal, transfer, revocation or extinguishment of any licence or certificate for the sale of alcohol. The only exception to this is the power to grant new on-licences, which is, as at present, a power conferred on the Circuit Court only (see *section 46* of the Bill). The section also provides that the District Court has jurisdiction under any enactment to grant any other permit, licence or certificate. [CJA 1924, s.77C]

Section 70 (which mirrors *section 51(2)* of the Bill concerning the Circuit Court) is new in a Courts Bill and provides that the District Court has jurisdiction where conferred by another enactment to hear and decide an appeal from an adjudicating tribunal in accordance with *Part 5* of the Bill.

Section 71 turns to the criminal jurisdiction of the District Court, and provides that, in general, the District Court has jurisdiction concerning any offence triable summarily. This must be seen against the general background of Article 38.2 of the Constitution, which provides that “[m]inor offences may be tried by courts of summary jurisdiction.” The District Court is the only court of summary jurisdiction in the State. *Section 71* reaffirms the current position that where an offence is triable summarily, it is tried by a judge of the District Court sitting alone, without a jury. This also reflects Article 38.5 of the Constitution which allows minor offences to be tried without a jury.

The term “offence triable summarily” in *section 71* of the Bill includes, in effect, three types of offences. The first type are offences triable summarily only, which means that the offence, while serious enough to be a criminal matter, is to be dealt with in the District Court only. Such offences currently include, for example, a number of offences under the Road Traffic Acts, such as parking offences, speeding and drink/drugs driving offences. Each year, the District Court deals with between 450,000 to 500,000 summary offences, and over 300,000 of these, more than 60%, involve road traffic offences. The next highest category, prosecutions for public order offences and assault, have, in recent years, accounted for over 60,000 cases annually. The category “offences triable summarily” also includes two other types of offences that could, depending on the circumstances, also be tried on indictment and which could, therefore, be dealt with in the Circuit Criminal Court (see *section 52* of the Bill). One of these is the “either way” offence, meaning it could be tried either summarily or on indictment. These types of offences include offences in the Schedule to the *Criminal Justice Act 1951*, such as perjury, and most offences in the *Criminal Justice (Theft and Fraud Offences) Act 2001* (see section 53 of the 2001 Act). *Section 71* of the Bill provides that the District Court may deal with these offences if: (a) the Court is of the opinion that the facts proved or alleged constitute a minor offence fit to be tried summarily and (b) the accused, having been informed by the Court of his or her right to be tried with a jury, does not object to being tried summarily. The third type of offence covered by *section 72* of the Bill is often referred to as the “hybrid” offence. Examples include assault causing harm under section 3 of the *Non-Fatal Offences Against the Person Act 1997* and virtually all offences under the *Safety, Health and Welfare at Work Act 2005*. This category of offences provide, simply, that it can be tried summarily or on indictment without any specific reference to whether, if the case is brought in the District Court, the judge of the District Court must be of opinion that it is fit to be tried summarily. In practice, a judge of the District Court will, in any event, do this and will, from time to time, decline to deal with a “hybrid” offence because of the particular circumstances and will order that it must be sent forward for trial on indictment.

Finally, it should also be noted that some offences can never be regarded as minor and are, therefore, automatically triable on indictment only. This includes murder, manslaughter, rape and some other offences against the person such as causing serious harm under section 3 of the *Non-Fatal Offences Against the Person Act 1997*. [SJ(I)A 1851, s.51; OAPA 1861, s.76 (revised); FAIAA 1874, s.5; CJA 1951, s.2(2) and (3); CJ(TFO)A 2001, s.53]

Section 72 contains specific provisions about how the jurisdiction of the District Court is exercisable severally by the judges of the District Court in criminal proceedings. [CJA 1924, s.79(2)-(4); CCOA 1995, s.41; CCOA 2002, s.24]

Section 73 (which broadly mirrors *section 53* of the Bill concerning the Circuit Court) provides that where an offence is committed in part in one and in part in another District, or

on the boundary between two Districts, the trial may be heard in either District. [FA 1819; CLIA 1828, s.26]

Section 74 (which broadly mirrors *section 54* of the Bill concerning the Circuit Court) provides that where, in respect of an offence committed in the State, the accused person does not reside in the State and he or she was not arrested for and charged with the offence in the State, and the offence was committed in more than one District, the offence may be tried in any of those Districts or, in some instances, in the Dublin Metropolitan District. [CJA 1924, s.79A, inserted by CJA 2006, s.178]

Part 2, Chapter 6 (sections 75 to 90) of the Bill deals with the general powers and functions of courts as to the conduct of proceedings. This includes matters such as: requiring parties to have regard to the need to conduct civil proceedings as efficiently as possible (case conduct principles); the control by a judge of the judicial business of a Court; the power to punish contempt of court; to require that persons bringing repeated and frivolous proceedings may need to obtain permission before bringing more proceedings (currently called an *Isaac Wunder Order*); and the procedure for issuing a witness summons. This Chapter, and succeeding Chapters of Part 2, also implement the recommendation in paragraph 2.49 of the Report.

Section 75 requires parties in civil proceedings to comply with “case conduct principles.” This means that in civil proceedings: (a) issues between parties should, at as early a stage as possible, be identified, defined, narrowed (where possible) and prioritised or sequenced; (b) that proceedings should be conducted in a manner which is just, expeditious and likely to minimise the costs of those proceedings; and (c) that the parties should use alternative dispute resolution procedures where appropriate, to settle the whole or part of the proceedings where practicable, and should be facilitated in doing so. This section (which is linked to *section 76*) is an important part of one of the Commission’s general principles underlying the consolidation and reform of the Courts Acts, to facilitate the effective administration of justice in the courts, and implements the recommendation in paragraph 2.40 of the Report.

Section 76 is new in a Courts Bill and provides that, in civil proceedings, a function of a court in civil proceedings is, so far as is practicable, to ensure that the parties conduct the proceedings in accordance with the case conduct principles, which are defined in *section 75* of the Bill. As already mentioned, this is an important part of one of the Commission’s general principles underlying the consolidation and reform of the Courts Acts to facilitate the effective administration of justice in the courts, and also implements the recommendation in paragraph 2.39 of the Report. *Section 76* also requires parties involved in civil proceedings to deal with the proceedings in ways which are proportionate to the amount of money or value at stake, the importance and complexity of the issues and the resources of each party.

Section 77 reiterates the current position that the judge has control of the conduct of the judicial business of a Court, which also reinforces its function under *section 76* of the Bill. This does not in any way affect the role and function of the Courts Service, established under the *Courts Service Act 1998*, which deals with the administration of the courts. [COA 1926, s.65 (modified)]

Section 78 provides that every Court has the power in accordance with law to punish contempt of Court, whether by contempt in the face of the Court or by wilful disobedience of the Court’s order. This reflects the current position for the Supreme Court, the High Court and the Circuit Court. To avoid any doubt, it clarifies that the District Court should be conferred with a contempt of court power, subject to a maximum power to imprison for 7

days. This implements a general recommendation of the Commission in its *Report on Contempt of Court* (LRC 46-1994), paragraph 3.3. [PSIA 1851, s.9; SJIAA 1871, s.6]

Section 79 provides that, in general, a judge may adjourn the hearing of proceedings before that judge to another time or place. The section also provides for specific administrative matters in connection with adjournments, including in unforeseen circumstances such as where a judge has been prevented from being in court, has become ill or where a courthouse has been flooded. [CBCIA 1851, ss.8, 109; CLPAAI 1856, s.22; C(SP)A 1961, s.22(13)]

Section 80 is new in a Courts Bill and places on a statutory footing the existing power of the High Court and the Supreme Court to provide that any person who, without any reasonable ground, has repeatedly instituted vexatious legal proceedings in any Court, may not commence, or continue, proceedings in any Court without the leave of the High Court. Such a restriction is currently commonly referred to as an *Isaac Wunder Order*: see Delany and McGrath, *Civil Procedure in the Superior Courts* (2nd ed, 2005), paras 14.34-14.38.

Section 81 is new in a Courts Bill and confirms that, in the case of an *ex parte* order, a Court may set aside, discharge or vary any such order mentioned. An *ex parte* order is one applied for by one party without notifying any other party, and usually arises in urgent cases; an example would be where an application is made to freeze a bank account to prevent a person from withdrawing money where it is suggested that the money was obtained by fraud.

Section 82 is new in a Courts Bill and confirms that any order mentioned in *Chapter 6*, *Chapter 7* or *Chapter 8* may be absolute in terms, that is, subject to no specific conditions; or may be made subject to any condition the Court imposes (which may include the giving of any undertaking to the Court).

Section 83 is new in a Courts Bill and confirms that, in connection with intended proceedings, the High Court may (and another Court may where permitted by law) hear and decide an application (including for any urgent or protective remedy or for permission to begin proceedings) which is related to proceedings intended to be begun before that Court, before those proceedings are begun, subject to any condition the Court imposes. This is an important aspect of the type of urgent proceedings mentioned in connection with *section 80* of the Bill.

Section 84 provides that, without limiting any other provision of this Bill, a Court hearing an appeal may exercise any jurisdiction or power in the proceedings on appeal as might have been exercised in those proceedings by the Court or adjudicating tribunal whose decision is appealed. [COCAI 1877, s.80]

Section 85 provides that where an appeal from a Court or adjudicating tribunal is decided, the Court which has decided the appeal may, unless otherwise provided by law: (a) discharge, vary or amend an order or other Court instrument of a Court appealed from; (b) discharge, vary or amend an order or instrument of an adjudicating tribunal appealed from; or (c) make or issue any order, warrant or other Court instrument authorised by law necessary or requisite to execute or enforce the decision on appeal. [CBCPAAI 1864, s.48; COCAI 1877, s.72; CJDCA 1946, s.23]

Section 86 is new in a Courts Bill and confirms that, in general, a court may stay (that is, stop or postpone) the execution or enforcement of its decision pending any appeal or further decision by a Court to which an appeal may be made or by the Court itself.

Section 87 deals with a number of important procedural matters to ensure that persons or documents are made available for court proceedings. The section provides that a Court or judge may: (a) order a person in the State to attend before the Court or judge to answer, or to give evidence in, proceedings before that Court or judge; (b) order a person in the State to produce before the Court or judge any document concerning any proceedings before that Court or judge; (c) order the production before the Court of a person in the State who is serving a term of imprisonment or detention, or who is otherwise in custody, to give evidence in proceedings before that Court or Judge and issue any warrant necessary for that purpose; (d) order a person in the State to attend and give evidence (called “evidence on commission”) in proceedings, before a judge, court officer or other person (called a “commissioner”) in connection with proceedings (see also *section 90* of the Bill); or (e) request a Court or judicial authority in another State to require a person within the jurisdiction of that Court or judicial authority to give evidence in proceedings prior to the hearing or trial of the proceedings concerned, on such terms and in such circumstances as it requests. [HCA 1804; FTEA 1856, ss.1-6 (modified); CBCPAIA 1864, s.43; CJA 1924, s.58; SI No.102 of 2008 (modified)]

Section 88 deals with the procedure for a witness summons (often currently called a *subpoena ad testificandum* or *subpoena duces tecum*). The section provides that the appropriate court officer may, on the application of a party to civil or criminal proceedings seeking to secure the attendance of a witness at the hearing of those proceedings, issue a written order, called a witness summons, directed to a person in the State, requiring that person to attend and give evidence at the hearing of the proceedings. The section also provides that the person may be required (where requested by the party applying for the summons) to bring with him or her and produce any, or any specified, documents or other things relevant to the matters at issue in the proceedings in the possession or power of the witness. The section provides that it is an offence not to comply with a witness summons without sufficient cause, and it also sets out that a class D fine could be imposed on conviction for this offence (currently, under section 3 of the *Fines Act 2010*, this means a fine not exceeding €1,000). The section also proposes to abolish the rule that allows a person to refuse to answer a witness summons unless paid a fee or expenses. [DPA 1842, s.49; PSIA 1851, s.13; CJA 1924, s.58; CPA 1967, s.4L]

Section 89 is, in part, new in a Courts Bill and provides that *section 88* does not limit: (a) the power of a Court to order a person to attend and give evidence or produce any document or thing at the hearing of proceedings, or (b) any provision of another enactment which requires an order of a Court for the production by a particular officer or person of any document or thing, whether at the hearing of proceedings or otherwise. The section also reiterates that the reasonable expenses of attendance and loss of time of a witness may be allowed as part of the costs in proceedings. [CBCPAIA 1864, s.52]

Section 90 deals with the procedure for taking evidence on commission. It provides in particular that where a person is summoned to appear before a commissioner (defined in *section 87(1)(d)* of the Bill to mean a judge, court officer or other person appointed by a court to take evidence on commission) the person is entitled to the same privileges, immunities, rights and incidents as if he or she were a witness in court proceedings. [EBCA 1853]

Part 2, Chapter 7 (sections 91 to 103) of the Bill deals with the specific court orders and remedial measures which may be made in civil proceedings. This includes orders at the initial stages of proceedings, such as orders for discovery of documents and to provide more detailed particulars of a claim. It also deals with the general approach of the courts to the use of alternative dispute resolution, notably mediation and conciliation. *Chapter 7* also lists the most common remedial measures available in civil proceedings, including damages (money awards), a declaration of rights (including in a constitutional case), an injunction and

an order for specific performance (that is, ordering a person to carry out the terms of a contract). These measures were developed by the historical courts of common law and equity over many centuries – and sometimes were available in some courts and not others – but *Chapter 7* confirms that, in general, they may be used by the current courts in any civil claim.

Section 91 deals with the appointment by the High Court and the Supreme Court of an assessor or an *amicus curiae* in civil proceedings. The section provides, firstly, that the High Court and the Supreme Court may appoint a specially qualified assessor, and may try or hear civil proceedings wholly or partially with the assistance of such an assessor. This is a long-standing power of the courts which may be of use in specific cases requiring detailed technical knowledge, such as specialist engineering knowledge. The section also provides that the High Court and the Supreme Court may hear a person as *amicus curiae*. An *amicus curiae* – literally “friend of the court” – is not a party to a dispute but may have a specialised knowledge or interest in a particular case and may therefore provide additional insights on points of law or on wider aspects of the case. For example, section 21 the *Civil Liability and Courts Act 2004* already provides that the Supreme Court may invite a person to make submissions to it in relation to any matter concerning either liability or damages that it considers to be of exceptional public importance: see also Delany and McGrath, *Civil Procedure in the Superior Courts* (2nd ed, 2005), paras 6.49-6.51. [CAIA 1867, s.73; SCJIA 1877, s 59; CLCA 2004, s.21]

Section 92 provides that the High Court may make an order restraining a company from permitting the transfer of any stock in the company, and may discharge or vary any such order as the Court thinks fit. [CIA 1867, s.170]

Section 93 provides that a Court that is empowered to order equitable remedies may make any of the following orders before and in connection with the hearing and decision (or where appropriate, during the hearing) of civil proceedings: (a) an interim or interlocutory order granting an injunction, subject to such undertaking, if any, as the Court considers appropriate, including an order for the preservation of property or restraining a person from leaving the State (a so-called *Bayer* injunction: see Delany, *Equity and the Law of Trusts in Ireland* (4th ed, 2007), pp.610-613); (b) an interim or interlocutory order appointing a receiver; or (c) an order for the sale of any land which is the subject-matter of any proceedings. [CRJA 1856, ss.2, 4; DIA 1872, s.7; SCJIA 1877, s.40]

Section 94 reiterates a number of long-standing provisions concerning the orders which may be made by a court before or during civil proceedings. Thus, in connection with evidence, these include: an order for discovery of documents or to require a witness to answer interrogatories, to preserve evidence, and to direct the manner in which evidence is given. In relation to property, the orders may include directing the sale of land or requiring money to be lodged in court. In connection with the efficient conduct of proceedings generally, the orders may include: an order permitting service or the giving of notice outside the State of a civil claim; an order directing a party to provide further or more detailed particulars of, or information concerning, any claim; an order staying (stopping or postponing) proceedings; an order referring any proceedings to arbitration (such as under the *Arbitration Act 2010*); an order (which may provide for the costs of the proceedings) dismissing proceedings; an order appointing or approving a person (as guardian *ad litem*) to act in proceedings in the interests of a child or an adult party who, in the opinion of the Court, lacks sufficient capacity to conduct the proceedings on his or her own account; an order amending proceedings; an order for the giving of security for costs. The section also provides that rules of court may prescribe circumstances in which an order dismissing proceedings for want of prosecution, or deciding proceedings against a respondent for default of appearance or defence. It also provides that these orders may be made by the Master of the High Court in proceedings before the High Court, or by a County Registrar in proceedings before the Circuit Court. [EA

1851, s.6; CLPAAI 1853, ss.46, 47, 51, 52, 83, 92, 96, 100, 101; CLPAAI 1856, s.4; CIA 1867, s.116; CCOIA 1877, s.66; SCJIA 1877, s.33; CCAIA 1889, s.15]

Section 95 is new in a Courts Bill and provides that, to avoid any doubt, the orders mentioned in *sections 91 to 94* are in addition to any other order which the Court concerned may make before and in connection with the hearing of civil proceedings.

Section 96 is new in a Courts Bill and provides that, in civil proceedings, a Court may, when appropriate and having regard to all the circumstances of the case, on the application of a party or of its own motion, invite the parties to use mediation or conciliation in order to settle the dispute to which the proceedings relate. The section also provides that this does not limit or affect any provision of any other enactment which concerns mediation. In this respect, the Commission has also published a *Report on Alternative Dispute Resolution: Mediation and Conciliation* (LRC 98-2010), which proposes a general legislative framework for mediation and conciliation, as well as for cross-border mediation under the 2008 EU Mediation Directive, 2008/52/EC.

Section 97 reiterates a long-standing provision to the effect that, in civil proceedings, a Court is to apply all rules of common law and all rules of equity on the basis that, wherever there is any conflict or variance between any rule of equity and any rule of common law with reference to the same matter, the rule of equity prevails. Briefly, the courts developed rules of equity to ensure a degree of flexibility and judicial discretion in the application of common law rules of procedure and to develop new procedures. For example, the remedy of the injunction was developed by the courts of equity to add to the common law remedy of damages (money compensation). At one point in history, the rules and remedies of equity were applied only in the courts of equity (which dealt largely with claims concerning land and trusts) and not in the common law courts (which dealt with commercial law civil claims, such as those involving contracts or personal injuries claims). *Section 27 of the Supreme Court of Judicature (Ireland) Act 1877* provided that all courts were to apply both rules of equity and common law rules and that, in the event of a conflict, the rules of equity were to be applied. *Section 97* of the Bill reiterates this provision in the 1877 Act. For a more detailed discussion, see Delany, *Equity and the Law of Trusts in Ireland* (4th ed, 2007), pp.7-12.

Section 97 also reiterates that every Court shall, to the extent permitted by the jurisdiction vested in it, give the same effect as would have been given immediately prior to the coming into force of this Bill: (a) to all equitable estates, interests, rights, entitlements, remedies, defences and counterclaims, and to all equitable duties and liabilities, and (b) to all legal claims and demands and all estates, interests, rights, entitlements, duties, obligations and liabilities existing by the common law or by any custom or created by any enactment.

Section 97 also provides that, subject to the provisions of this Bill and of any other enactment, every court is to exercise its jurisdiction in civil proceedings so as to secure that, as far as possible, every matter in dispute between or among the parties is completely and finally decided, and further legal proceedings concerning any such matter are avoided. It also confirms the existing position that only the Supreme Court (in an appeal from the High Court), the High Court and the Circuit Court (to the extent permitted by the jurisdiction vested in it by this Bill) may grant equitable remedies. [SCJIA 1877, ss.27, 28(11)]

Section 98 complements the general approach to the rules of law and equity in *section 97* of the Bill and also reiterates the effect of a number of long-standing specific rules developed by the historical courts. Thus, *section 98* confirms that an absolute assignment in writing under seal of any debt is, in general, effective to pass transfer, from the date when notice of the assignment is given, all applicable legal remedies. *Section 98* also provides that stipulations in a contract concerning the time within which an event is to occur (for example, requiring a landlord to give a specified amount of advance notice to a tenant that the

landlord wishes to trigger a rent review) which, according to rules of equity are not to be deemed to be of the essence of the contract (that is, whether if the specified notice is not given the rent review can occur) are also construed and have effect at law in accordance with the same rules. [SCJIA 1877, s.28]

Section 99 is new in a Courts Bill but reiterates the main remedies which the High Court currently applies in civil proceedings. The section provides that the remedies available include: (1) any remedy available at law or in equity, including damages in addition to, or in substitution for, an injunction or specific performance; (2) a declaration of unconstitutionality as provided for by the Constitution (3) a binding declaration of right in any proceedings; (4) any judicial review order mentioned in *section 27*; and (5) an order that any specified property with which the proceedings are concerned be charged, mortgaged or sold. This is not an exhaustive list and is stated to be in addition to any other remedy currently available.

Section 100 is, in part, new in a Courts Bill and reiterates the main remedies which the Circuit Court currently applies in civil proceedings. The section provides that the Circuit Court may, within its jurisdictional limits, grant any one or more of the following remedies: (1) any remedy available at law or in equity, including damages in addition to, or in substitution for, an injunction or specific performance; (2) a binding declaration of right in any proceedings; and (3) an order that any specified property with which the proceedings are concerned be charged, mortgaged or sold. Thus, *section 97* makes clear that the Circuit Court cannot make a declaration of unconstitutionality or make any judicial review order mentioned in *section 21*. [COCAI 1877, s 44]

Section 101 is new in a Courts Bill and reiterates the main remedies which the District Court currently applies in civil proceedings. The section provides that the District Court may, within its jurisdictional limits, grant a number of remedies, the most significant being an award of damages. As at present, therefore, the section does not confer any jurisdiction on the District Court to grant, for example, an injunction, one of the equitable remedies developed over the centuries by the courts: see *section 97* of the Bill, above.

Section 102 provides that a Court may, in reaching its decision in civil proceedings, allow any set-off between or among parties, for example, deducting an award of damages from one party because of an award of damages to another party. [CCOIA 1877, s.63]

Section 103 provides that, in general, a Court's decision takes effect immediately, unless the Court itself or another competent Court otherwise provides. [CLPAAI 1853, s.127]

Part 2, Chapter 8 (sections 104 to 106) of the Bill, which is linked to *Schedule 7*, deals with legal costs in civil proceedings. This also implements the recommendation in paragraph 2.53 of the Report.

Section 104 provides for the general power to award legal costs in civil proceedings and the general principles applicable to costs. It provides that, in general, any court may, in its discretion, award to any party against any other party any costs of any civil proceedings. Where proceedings concern the estate of a deceased person, this can include an award of costs out of the estate. The section also reiterates that the general principle applicable is that "costs follow the event," that is, that where a party succeeds entirely in his or her application, or in his or her defence against another party, he or she should be entitled to an award of costs against that other party. The section allows for exceptions to this general principle, which are also dealt with in *section 105*, below. *Section 104* also provides that nothing in this Bill removes any right of action for the tort of maintenance, which prohibits a person who has no legitimate involvement in litigation from financially supporting litigation without just cause. [CLPAAI 1853, s.60]

Section 105 is linked to *Schedule 7* of the Bill and provides for specific rules concerning legal costs in particular cases, including those involving a trust. The section also provides for the procedures involved in paying money into Court by way of, for example, making an offer of compensation, often referred to as a “lodgement” or “tender”. The effect of paying money into court in civil proceedings is that, if the other party refuses the amount offered and proceeds to a hearing of the case, and wins the case but is awarded less than the amount paid into court - referred to as “failing to beat the lodgement,” the court will not usually apply the general rule for costs and may award costs against the person who failed to beat the lodgement. This exception to the rule that “costs follow the event” is intended to avoid the expense of a court hearing where a reasonable amount has been paid into court to meet the civil claim. [*Section 105*: CLPAAI 1853, s.75; CBCPAAI 1864, s.51] [*Schedule 7*: CLPIA 1821, s.49; CCIA 1823, s.19 (modified); DIA 1840, s.57; ASIA 1849 (in relation to contentious business); CBCIA 1851, s.113; CIA 1867, ss.165-169; ASA 1870, s.4, proviso to s.5 and s.10 (in relation to contentious business); SPSFIA 1919; CJA 1936, s.78; CA 1981, s.17; CCOA 1995, ss.27, 46 (modified); CA 1988, s.5; CA 1991, s.14; CCOA 2002, s.17 (not yet commenced)]

Section 106 which is also linked to *Schedule 7* of the Bill, provides that the amount of any costs awarded by a Court: (a) may be fixed (in lieu of measured costs) or measured by the Court; (b) may be agreed by the parties affected, or (c) if neither (a) nor (b) applies, shall be measured by the taxing officer of the Court concerned in accordance with the rules set out in *Schedule 7, Part 2*. [CLPAAI 1853, s.193]

Part 2, Chapter 9 (sections 107 to 111) of the Bill deals with interest payable on awards in civil proceedings.

Section 107 provides that a Court may award interest on any damages, in respect of any period before the Court’s decision, or after the Court’s decision and before payment. It also provides that interest awarded by the Circuit Court or by the District Court in respect of any period before the Court’s decision may not cause the total amount awarded to exceed the Circuit Court damages limit or, as the case may be, the District Court damages limit. [CBCIA 1851, proviso to s.35]

Section 108 provides that, in general, any money due and unpaid pursuant to a money judgment carries interest (referred to as “judgment interest”) at the “judgment interest rate” (provided for in *section 109*, below) from the judgment date, until payment or recovery. It also provides that neither a money judgment for an amount which is less in value than 10% of the District Court damages limit nor any costs awarded to the party who obtained or is entitled to such a money judgment carries interest. [C(SP)A 1961, s.47; CA 1981, ss.20, 23]

Section 109 provides that the judgment interest rate may be fixed by the Minister for Justice and Law Reform by statutory order, and it also reiterates that the current rate is 8% per annum. [CA 1981, s.20]

Section 110 provides that where a Court gives a money judgment it may also order interest at the judgment interest rate on the entire sum, including for the “pre-judgment” period, that is, between the date when the cause of action accrued and the judgment date. It also provides that this does not authorise the giving of interest on interest. [CA 1981, s.22]

Section 111 provides that interest on costs becomes payable only on the earlier of the dates when (a) if the amount of costs is agreed by the parties to the proceedings, that agreement is made, or (b) in default of such agreement, the taxing officer of the Court concerned certifies the amount of costs to be due. [CA 1981, s.21; CCOA 2002, s.30; CLCA 2004, s.41]

Part 2, Chapter 10 (sections 112 to 122) of the Bill, which is linked to *Schedule 8*, deals with the execution and enforcement of judgments in civil proceedings. This includes matters such as the procedure for registering money judgements, attachment of earnings and other detailed matters of enforcement. *Schedule 8* contains a detailed description of the procedural steps involved within the courts for enforcement. This includes the powers of the relevant court officers, the execution of orders by sheriffs and the current arrangements under legislation such as the *Debtors (Ireland) Act 1872* and the *Enforcement of Court Orders Act 1926 to 2009* for the enforcement of court orders, including the use of instalment orders and imprisonment for non-payment of debts. *Schedule 8* thus brings together provisions currently contained in 26 Acts, 16 of which are pre-1922 Acts, and thus also implements the recommendation in paragraph 2.57 of the Report. The Commission, in its *Consultation Paper on Personal Debt Management and Enforcement* (LRC CP 56-2009) and *Interim Report on Personal Debt Management and Enforcement* (LRC 96-2010), has proposed significant reform of this area. The Commission's final *Report on Personal Debt Management and Enforcement* will be published by the end of 2010. In the event that the Commission's final proposals for reform are enacted by the Oireachtas, it will be possible to include these as a new *Schedule 8* to the Bill without the need for substantial alteration to the structure of the Bill itself. [*Schedule 8*: ECOA 1751, s.4; CIA 1834, s.8; DIA 1840, ss.13-18, 20, 22-24, 28; JIA 1844, ss.2, 8; JRIA 1850, ss.3, 4, 10-12; CLPAAI 1853, ss.128, 129, 130 (albeit repealed in part), 131-136, 143, 144; CLPAI 1856, ss 19, 53-59, 69, 80; CRIA 1856, s.3; CBCAI 1864, s.29; CBCPAIA 1864, ss.12, 13, 16, 24, 25, 32; CIA 1867, s.170; DIA 1872, ss.5-8, 23-24 (subs (3) and (4)); LPIA 1876, s.3; COCAI 1877, ss.62, 63; DA 1878, s.1; CCRJA 1937, s.2; ECOA 1926, ss.3-17, 20, 21, 23, 26; ECOA 1940, ss.2(2), 3-6, 6A, 8, 9; CA 1981, s.25; C(2)A 1986, s.3(2); ECOAA 2009, s.2; CPCROCA 2010, ss.65, 136]

Section 112 is, in part, new in a Courts Bill and defines the term "judgment" as a final decision of the courts, including for the payment of any money or the delivery of land or goods, and also the award of costs. It also includes an enforcement order under relevant EU law, such as an enforceable maintenance order. "Money judgment" is defined as any judgment for the payment of a specified sum of money. The section defines "judgment date" as including the date on which a Court makes or is deemed to have made a decision concerning a money judgment. [S.I. No. 648 of 2005, Reg.7; S.I. No. 525 of 2008, Reg.7]

Section 113 is new in a Courts Bill and defines further relevant terms, notably those involving the enforcement of judgments in *Schedule 8* of the Bill. For example, the section defines an "attachment of earnings order" to include any order of a Court directed to a person which directs that person to make at periodical deductions from a judgment debtor's earnings and to pay the amounts deducted in the manner directed (whether to the creditor or to a court office). An "execution order" is defined as including any document issued by a Court authorising a person (often a sheriff) to take action to execute and give full effect to a judgment, including an order of possession, an order of seizure and sale, and an order to deliver property.

Section 114 sets out particular powers of a Court concerning execution and enforcement in civil proceedings. These powers include: (a) an order to pay damages or other money; (b) an order requiring the transfer of title to any property; (c) any execution order or order of enforcement mentioned in *Schedule 7* of the Bill. [CBCIA 1851, s.112; CLPAAI 1853, ss.98 and 133]

Section 115 is new in a Courts Bill and deals with issuing particular execution orders. It provides that the proper officer of the Supreme Court, the proper officer of the High Court or the proper officer of the Circuit Court, as the case may be, may issue an execution order in the form of an order of possession, an order to deliver property or an order of seizure or

sale. It also provides that the proper officer of the District Court may issue an execution order in the form of an order to deliver property or an order of seizure or sale.

Section 116 reiterates long-standing existing arrangements under which a judgment creditor may apply to register a judgment by delivering an application to register judgment to the Registrar of Judgments. The application to register judgment must include the following information: (a) the name, usual or last known place of residence (or, in the case of a body corporate, the place of its registered office or principal place of business), and occupation or other description of every party to the proceedings in which the judgment was given; and (b) the Court in which the judgment was given, the date of the judgment, and the amount of any debt, damages, costs, or other money ordered to be recovered or paid. It also provides that the President of the High Court may approve from time to time the form in which the Register of Judgments is kept (which may include electronic form) and that the public may inspect the Register of Judgments. [DIA 1840, ss.22, 28; JIA 1844, ss.2, 8; JRIA 1850, ss.10-12; CLPAAI 1853, ss.143, 144; JRIA 1871, ss.3, 4; CCRJA 1937, s.2; CA 1981, s.25]

Section 117 deals with set-off of judgments between parties (see also *section 102* of the Bill, above). It provides that, in general, money judgments obtained by parties against each other may be set off against each other. It also provides that where a set-off order is made: (a) if the money judgments are equal in amount, then a fresh judgment is deemed to issue that no money is payable by either party to the other; and (b) if the money judgments are unequal in amount, then a fresh judgment is deemed to issue for the amount which remains after deducting from the sum due on the money judgment for the larger amount.

Section 118 deals with the forms of orders of enforcement concerning a money judgment. It provides that, in general, a judgment creditor may apply to court for any one or more of the following orders of enforcement of a money judgment: (a) a third party creditor order; (b) an order appointing a receiver by way of equitable execution (a receiver may not be appointed where the amount due does not exceed €200); (c) an order attaching or charging any stock or share; (d) an order charging the interest of a person in a partnership; (e) an order attaching or charging any funds held in Court on behalf of the judgment debtor; (f) an order for the examination on oath as to the means of the judgment debtor; (g) an order for the payment of a judgment debt by instalments by a judgment debtor; (h) an order for the production of information or documents concerning the judgment debtor's assets or means; (i) an order directing the issue of an execution order; and (j) a personal enforcement order or a temporary seizure order.

Section 119 deals with the forms of orders of enforcement concerning of other judgments. It provides that, in general, a person in whose favour a judgment has been given may apply to court for any one or more of the following orders of enforcement: (a) an order authorising a court officer or other person to execute a document (defined in the same way as in section 3 of the *Land and Conveyancing Law Reform Act 2009*) or a negotiable instrument (such as a cheque) if a person refuses to comply with a direction to execute it; (b) a personal enforcement order or a temporary seizure order; and (c) an order declaring a solicitor entitled to a charge for costs on property recovered or preserved, on behalf of a party.

Section 120 deals with the forms of orders of enforcement in the District Court. It provides that, in general, a judgment creditor may apply to the District Court for any one or more of the following orders of enforcement of a money judgment: (a) an examination order or an instalment order in accordance with *Schedule 8, Part 3* of the Bill; (b) where authorised by an enactment, an attachment of earnings order in accordance with *Schedule 8, Part 3*; (c) an order directing the issue of an execution order to deliver property or an execution order for seizure and sale; (d) a third party creditor order; and (e) a temporary seizure order.

Section 121, which is linked to *Schedule 8* of the Bill, deals with some supplementary powers and rules on the execution and enforcement of decisions. It provides that, in general terms, a Court may exercise from time to time its power to issue an execution order or enforcement order, and may make any order for the execution or enforcement of its decision by any other means permitted by an Act or by rules of court. It also provides that, unless otherwise ordered by a Court, the costs of execution by an execution order shall be added to the amount authorised to be recovered or secured by that execution order. [CLPAAI 1853, s.130; ECO 1926, s.26]

Section 122 is new in a Courts Bill but reflects the existing practice and provides that statutory rules of court may limit the period, following the date on which a Court's decision becomes enforceable, within which proceedings for particular means of enforcement mentioned in *Schedule 8* may be brought, or particular execution orders may be sought, issued or executed.

Part 2, Chapter 11 (sections 123 to 128) of the Bill deals with orders that may be made to assist with foreign civil proceedings and also with the enforcement of judgments in civil proceedings to which certain European Union enactments apply. In terms of foreign proceedings generally, this involves significant modernisation of statutory provisions dating back to the mid-19th Century, including the *Evidence on Commission Act 1831*, the *Perpetuation of Testimony Act 1842*, the *Evidence by Commission Act 1843* and the *Foreign Tribunals Evidence Act 1856*. This also implements the recommendation in paragraph 2.60 of the Report. In the EU context, this includes matters such as the enforcement of maintenance orders in family disputes and the enforcement of orders made in civil and commercial matters where these orders were made by, for example, a court in another EU member State. *Part 2, Chapter 11* also deals with the enforcement of an EU Institutional judgment, such as a decision of the Court of Justice of the European Union or of the European Commission. All these enforcement provisions are already contained in Ministerial Regulations made under the *European Communities Act 1972*, and their inclusion forms part of the consolidation aspect of the Bill. This also implements the recommendation in paragraph 2.64 of the Report.

Section 123 sets out definitions used in *Part 2, Chapter 11*. These include references to the key EU enactments covered in *Part 2, Chapter 11*: (a) the "Insolvency Regulation," Regulation (EC) No.1346/2000 on insolvency proceedings; (b) the "Brussels I Regulation," Regulation (EC) No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; (c) the "Evidence Regulation," Regulation (EC) No. 1206/2001 on cooperation in the taking of evidence in civil or commercial matters; (d) the "European Enforcement Order Regulation," Regulation (EC) No. 805/2004 creating a European Enforcement Order for uncontested claims; (e) the "European Order for Payment Regulation," Regulation (EC) No. 1896/2006 creating a European Order for Payment procedure; and (f) the "Maintenance Regulation," Regulation (EC) No. 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. [SI No.52 of 2002, Regs.1, 11]

Section 124 deals with taking evidence in civil or commercial proceedings under the EU Evidence Regulation. It provides that the Circuit Court may take evidence to which the EU Evidence Regulation applies. It also provides that the Courts Service is the designated central body in the State under the Evidence Regulation. [SI No.102 of 2008 (modified)]

Section 125 deals with taking evidence in civil or commercial proceedings being conducted in a non-EU State. It provides that where the High Court is satisfied that a court or tribunal of competent jurisdiction in a non-EU State, before which civil or commercial proceedings are pending, wishes to obtain evidence in relation to those proceedings of a witness within the

State, the High Court may make an order under the section. Such an order may provide for the examination of the witness before a judge, a commissioner appointed in accordance with *section 87* of the Bill or another person appointed by the High Court for that purpose. The witness may be examined on oath, on interrogatories or otherwise. Where the High Court is satisfied that the witness before the foreign court or tribunal would enjoy the same privileges, immunities, rights and incidents when giving evidence before the High Court and that the foreign court or tribunal has so requested, the High Court may require that the witness give evidence before the foreign court or tribunal by a live television link. The section also deals with certification by an ambassador, Minister, or other diplomatic or consular agent of any State that the proceedings are civil or commercial proceedings. [EOCA 1831, s.9 (modified); FTEA 1856, ss.1-6 (modified)]

Section 126 provides for any overlaps between the “Brussels I Regulation” (which primarily applies to EU member States) and the *Jurisdiction of Courts and Enforcement of Judgments Act 1998* (which also applies to some non-EU member States). [SI 52 of 2002, Reg.14]

Section 127 provides that the High Court may make orders to enforce judgments in civil proceedings to which the specified EU enactments apply. These orders include: (a) giving provisional, including protective, measures at a preliminary stage; and (b) declaring enforceable a judgment given in another EU member State. Some of these orders can be made by the Master of the High Court rather than a judge of the High Court. [SI 52 of 2002, Regs.4, 7; SI 333 of 2002, Regs.6, 9; SI 334 of 2002, Regs.5, 8; SI 112 of 2005, Regs.4, 5]

Section 128 provides for the detailed supplemental provisions concerning recognition and enforcement of the specified EU-based judgments, as set out in *Schedule 9* of the Bill. These detailed provisions include: judgments which the Master of the High Court is empowered to recognise and enforce; provisional or protective measures under the relevant EU enactments on maintenance and civil and commercial matters; that an uncontested civil claim under the European Enforcement Order Regulation has the same force and effect as a judgment of the High Court and may be enforced by the High Court as if it were a judgment of that Court; that an application for a European Order for Payment in accordance with the European Order for Payment Regulation must be made to and decided by the High Court; that the amount of an EU-based maintenance payment is usually to be paid in the current of the State (the euro), but that if the maintenance order provides otherwise the exchange rate to be used is the rate prevailing on the date the EU-based maintenance order was originally made; that the District Court has jurisdiction to enforce an EU-related enforceable maintenance order (which is consistent with the District Court’s jurisdiction under existing Irish law); the admissibility in evidence of certain authenticated documents made by courts and other issuing authorities under the relevant EU enactments on maintenance and civil and commercial matters; payment of interest and legal costs; and enforcement arrangements where the EU-based judgment emerges from an EU Institutional judgment, such as a decision of the European Court of Justice or the European Commission. [SI No.52 of 2002, Regs.5-10; SI No.112 of 2005, Reg.6; S.I. No. 648 of 2005; SI No.121 of 2007; S.I. No. 525 of 2008]

Part 2, Chapter 12 (sections 129 to 137) of the Bill deals with the powers exercisable by courts in criminal proceedings. This includes matters such as search warrants, pre-trial orders, the orders which a Court exercising criminal jurisdiction may make following a conviction (for example, probation, fines and sentences of imprisonment) and the enforcement and collections of fines.

Section 129 is, in part, new in a Courts Bill, but reflects existing practice, and provides that a Court or judge may, where authorised by any other enactment, issue a search warrant, or

comparable order or instrument, in connection with the investigation of an offence or suspected offence. [CJAA 2009, s.26]

Section 130 is new in a Courts Bill but reiterates existing pre-trial powers of courts in criminal proceedings. Among the matters which the section refers to are the following (subject to any specific common law or statutory provisions): (a) issue a warrant for the arrest of a person; (b) remand a person in custody or on bail; (c) order the production to the accused by the prosecutor of any document, thing or information; (d) make any order authorised by an enactment in relation to the seizure, detention, freezing, realisation or disposal of any property; (e) permit service or the giving of notice outside the State of a document; and (f) make an order binding a person to the peace or to good behaviour and requiring the person to enter into a Court bond for that purpose (also often imposed after conviction: see *section 133*, below). [CJAA 1914, s.27; C(SP)A 1961, s.54]

Section 131 provides that, in respect of trials on indictment, where an accused person has been sent forward for trial to the Circuit Court, that Court may remand the accused in custody to appear at a sitting of an alternative Circuit Court, the Circuit Court in the Circuit in which is situated the prison or place of detention where the accused is to be held in custody. [CPA 1967, s.4Q]

Section 132 complements *section 131* and provides that, in respect of any criminal trial, the District Court before which a person first appears charged with a particular offence may remand that person in custody to appear at a sitting of an alternative District Court, in the District in which the prison where he or she is to be held in custody is situated or an adjoining District. [CJMPA 1997, s.5]

Section 133 is, predominantly, new in a Courts Bill and sets out the main orders which a Court exercising criminal jurisdiction may make following a conviction in criminal proceedings. These orders can only be made where authorised by specific legislation or existing common law powers. They include: (a) an order convicting the person; (b) an order remanding the person, in custody or on bail, for sentencing pending the production of any report; (c) an order sentencing the person convicted to a term of imprisonment required or permitted by law, including a suspended sentence; (d) an order imposing on the person convicted a fine; (e) an order binding the person to the peace or to good behaviour and requiring the person to enter into a Court bond for that purpose (also often imposed before conviction: see *section 130* of the Bill, above); (f) an order forfeiting, revoking or endorsing any licence, permit or authorisation held by the person, which is relevant to the offence concerned; (g) an order to the person to produce any goods or things relevant to the offence concerned and for the forfeiture or destruction of those goods or things in accordance with law; (h) an order that details of the person be included in any register required by law to be maintained; (i) any community service order, probation order, compensation order, restitution order, exclusion order, monitoring order or other order cognate with the foregoing orders authorised by an enactment and, where appropriate, requiring the person to enter into a Court bond for the purpose of such an order; (j) in a case involving a child, any order mentioned in Part 9 of the Children Act 2001; (k) an order discharging an offender. [C(SP)A 1961, s.54]

Section 134 is, in part, new in a Courts Bill. *Subsections (1) and (2)* reflects the existing law, and provides that a Court which has heard and decided criminal proceedings may award such costs as seem appropriate to be paid to or by any party to those proceedings, except where provided otherwise in an Act or statutory rules of court. This section also provides that a Court which has heard and decided any criminal proceedings may, where a person has been convicted of an offence, order the person convicted to pay to the prosecutor, for transmission to the authority responsible for investigating the offence (where that authority is

not the Garda Síochána), such amount as to it seems appropriate towards the cost incurred in detecting and investigating the offence.

Section 135 is, in part, new in a Courts Bill and provides that a sentence, penalty or other order of a Court in criminal proceedings takes effect and shall be executed immediately, unless it is stayed, suspended or deferred under or in accordance with an enactment or by the order of a Court having jurisdiction to stay, suspend or defer it. *Section 135* is also linked to *Schedule 10* of the Bill, which sets out detailed provisions concerning the collection and disposal, and execution in the event of non-payment, of fines. *Schedule 10* incorporates some provisions of the Fines Act 2010 and would permit the repeal of certain older legislation on this area and their replacement with a complete, modern, legislative framework. [*Section 135*: PSIA 1851, s.23] [*Schedule 10*: FIA 1851, ss.1-3, 5, 6, 8, 10; CJAA 1914, ss.1-3; COA 1926, s.51; C2A 1986, s.2 (modified) s.2A; C2A 1991, s.1 (modified); FA 2010, s.19]

Section 136 is new in a Courts Bill and provides that a Court may, where authorised by any other enactment, make a request for the taking of evidence for criminal proceedings in the State by a Court or tribunal outside the State or make an order for or cause the taking of evidence by or with the authority of a Court in the State in aid of criminal proceedings before an international court or a court in another state. The section also provides that a Court may issue a warrant (in accordance with *section 138*) in connection with mutual or international co-operation with other States, including in the EU context. This can include, for example, co-operation under: the Extradition Acts 1965 to 2001; the European Arrest Warrant Act 2003; the Transfer of Sentenced Persons Acts 1995 and 1997; the Transfer of Execution of Sentences Act 2005; the International Criminal Court Act 2006; or the proposed European Evidence Warrant Bill.

Section 137 is, in part, new in a Courts Bill and provides that a Court may, where authorised by any other enactment, issue a search warrant in connection with the investigation of an offence or suspected offence in another State. It complements *section 129*, above. [CJAA 2009, s.26]

Part 2, Chapter 13 (sections 138 to 145) of the Bill deals with court instruments. This includes arrest warrants, court bonds and the evidentiary effect of court documents.

Section 138 predominantly replicates existing statutory provisions and provides that in the exercise of its criminal jurisdiction a Court may issue a warrant addressed to an officer or employee of the State, or where the Court considers it necessary, to another person, commanding or authorising that person to take the action specified in the warrant. The section provides that, in general, an arrest warrant must be addressed to the superintendent or an inspector of the Garda Síochána. [DPA 1839, s.14 (and new provisions); DPA 1842, s.48; PSIA 1851, ss.25(1) and (2), 32(6) and (7); CJA 2006, ss.193, 194]

Section 139 provides that, in respect of unexecuted warrants, the warrant is to be returned to the Court by which it was issued within the time specified by that warrant (or within a reasonable time where no time is so fixed), with a certificate of the reasons why the warrant was not executed. The warrant may, if the Court so decides, be re-issued. [PSIA 1851, s.33]

Section 140 reiterates the long-standing protection of the law (going back to the *False Imprisonment Act 1410*) that a person executing a warrant is protected from legal liability, for example, in terms of false imprisonment where a person is arrested under a warrant. [FIA 1410, s.15; POPAI 1803, s.6; CIA 1836, s.50; DPA 1839, s.13]

Section 141 sets out general provisions concerning Court bonds. The section defines a “Court bond” (currently referred to as a “recognisance”) as including any binding undertaking in writing given by a person, called the “principal,” in connection with court proceedings to comply with a condition specified by the Court to perform an act or requirement. Under a Court bond, the principal acknowledges that he or she owes a personal debt to the State in the amount secured, on the basis that (a) the obligation to pay that debt does not arise if the principal complies with the condition specified by the Court, but that (b) the obligation to pay that debt may be enforced in the manner permitted by law against the principal and any surety if the principal fails to comply with the condition specified by the Court. An example would be where a person enters into a bail bond, surety or recognisance. [RIA 1817; CJIA 1828, s.34; PSIA 1851, ss.24, 34; CCOIA 1877, s.75; CJAA 1914, s.24; CJA 1951, ss.16, 17; CCOA 2009, s.26]

Section 142 deals with Court bonds given by corporate bodies, including how the Court bond may be entered into by an agent for and on behalf of the corporate entity. [RIA 1817]

Section 143 deals with Court bonds given where an order is made binding a person to keep the peace in the District Court. [CJA 1951, s.16]

Section 144 provides for the specific consequences for compliance, or non-compliance, with the conditions of a Court bond. It provides that where the condition of a Court bond has been performed, any sum or security paid into Court must be repaid or returned to the person who paid it in. The section also provides that a Court may order the forfeiture of any money or security paid into Court on foot of the Court bond by the principal or surety. [PSIA 1851, s.34]

Section 145 deals with the evidentiary weight of Court instruments and records, and predominantly reiterates the long-established position. It provides that a written judgment or Court instrument of the Supreme Court, Court of Criminal Appeal, Courts-Martial Appeal Court, High Court or Circuit Court may be signed or authenticated in accordance with statutory rules of court by a judge or proper officer of the Court. It is then evidence, in the absence of proof to the contrary, in any proceedings of the decision of the Court or judge of the Court to which the written judgment or Court instrument relates. The section also provides that a written order recording a decision of a Judge of the District Court is evidence in any legal proceedings of the decision of that Judge, until the contrary is shown, when the order is signed by a Judge of the District Court or a District Court Clerk assigned to the District in which the order was made. The section also provides that, in all proceedings, an entry in the Court’s record kept by the proper officer of a Court shall be evidence of the matter to which it relates, unless the contrary is shown. [CBCPAAI 1864, s.57; CA 1971, s.14; CLMPA 2008, s.23]

Part 2, Chapter 14 (sections 146 to 149) of the Bill deals with remittal or transfer between courts in civil proceedings.

Section 146 provides that when civil proceedings are pending in the High Court which might have been commenced in the Circuit Court or in the District Court, a party may apply to the High Court for the proceedings to be remitted to the Circuit Court or, as the case may be, to the District Court. The section also sets out the factors to be considered in any such application. [CJA 1924, s.25; CJA 1936, s.11; CJA 1953, s.13; CA 1991, s.15(3)]

Section 147 provides that when civil proceedings are pending in the Circuit Court which might have been commenced in the District Court, a party to those proceedings may apply to the Circuit Court for the proceedings to be remitted to the District Court. As with *section 146*,

the section also sets out the factors to be considered in any such application. [CA 1991, s.15]

Section 148 provides that a party may at any time apply to the Circuit Court to have the proceedings or appeal forwarded to the High Court. [CBCIA 1874, s.2; C(SP) 1961, s.22(8)(a); CA 1971, s.21]

Section 149 contains provisions dealing with the transfer of certain family proceedings from the Circuit Family Court to the High Court, in particular where the value of any property exceeds the general jurisdiction in property matters of the Circuit Court. [JSFLR1989, s.31(3); FLA 1995, s.38(3) and (5); FLDA 1996, s.38(2)]

Part 2, Chapter 15 (sections 150 to 154) of the Bill deals with remittal or transfer between courts in criminal proceedings.

Section 150 provides that in all criminal cases not disposed of summarily by the District Court, the District Court shall send the accused person forward for trial to the Circuit (Criminal) Court, or, in the a case of the reserved cases listed in *section 33* of the Bill, to the High Court (Central Criminal Court). [CJA 1926, s.6]

Section 151 is new in a Courts Bill and provides, to avoid any doubt, that the transfer provisions in this Chapter do not affect any obligation under the *Offences against the State Act 1939* to transfer any charge or trial to a Special Criminal Court. This means, for example, that these transfer provisions do not affect the power of the Director of Public Prosecutions under the 1939 Act to certify that a trial that would ordinarily require a trial with a jury should be transferred to a Special Criminal Court.

Section 152 provides that where, after being sent forward for trial to the Circuit Court for an indictable offence (the “original offence”), an accused person is sent forward for trial for another “reserved” indictable offence to the Central Criminal Court connected with or arising from the circumstances that gave rise to the original offence, the Circuit Court may, unless it considers it that would not be in the interests of justice to do so, transfer the trial of the original offence to the Central Criminal Court. This section, which reflects current arrangements, also implements the recommendation in paragraph 2.68 of the Report (see also *sections 32 and 52* concerning jurisdiction in indictable offences). [CPA 1967, s.4P]

Section 153 provides that a judge of the Circuit Court may transfer criminal trials from one location to another location within a Circuit. [C(SP)A1961, s.26]

Section 154 provides that a judge of the Circuit Court may transfer a criminal trial that would otherwise be held outside Dublin to the Dublin Circuit, but only where it would be manifestly unjust not to do so. [CCOA 1995, s.32]

Part 2, Chapter 16 (sections 155 to 177) of the Bill deals with Court venues, administration of Court business and local jurisdiction.

Section 155 sets out two key definitions used in *Part 2, Chapter 16*, “relevant District”, in relation to a Judge of the District Court, and “scheduled sittings”, in connection with court sittings. [C(SP)A 1961, Schedule 6, para 2; CA 1991, s.20]

Section 156 is new in a Courts Bill and provides that the times and places of scheduled sittings of a Court must be published in the manner directed or authorised by the President of that Court and, in the case of the Court of Criminal Appeal or the Courts-Martial Appeal

Court, by the Chief Justice. This is nowadays done, for example, on the website of the Courts Service, www.courts.ie, or in *Iris Oifigiúil*. The section also provides that urgent business of a court may be heard and determined at the time and place that a court or a judge directs. This could occur in a courthouse, but outside normal court times, or at a judge's home.

Section 157 is, in part, new in a Courts Bill and provides that the Supreme Court has its permanent seat at the Four Courts, Dublin, but that the Chief Justice may direct that the Supreme Court shall sit at any other place. The section also provides that the Supreme Court shall sit for the transaction of its judicial business, so far as is practicable, continuously on working days throughout the year, except during periods designated as vacations of that Court. [SCJIA 1877, ss.29 (modified), 30, 31, 33 (modified)]

Section 158 provides that the High Court has a permanent seat at Dublin, and shall sit outside Dublin in accordance with directions under this section and *Schedule 11*, but that the President of the High Court may direct that the High Court shall sit at any other place. The section provides that, as is the case with the Supreme Court, the High Court shall sit for the transaction of its judicial business, so far as is practicable, continuously on working days throughout the year, except during periods designated as vacations of that Court. [SCJIA 1877, ss.29 (modified), 30, 31, 33 (modified); CJA 1936, s.33; C(SP)A 1961, s.13]

Section 159 provides that the Court of Criminal Appeal and the Courts-Martial Appeal Court, each when constituted, may sit and act at any time and place directed by the Chief Justice, for the transaction of that business of the Court, or for the discharge of any duty required to be discharged by that Court or a judge of each Court. The section also provides that the Court of Criminal Appeal and the Courts-Martial Appeal Court shall each ordinarily sit in Dublin, but the Chief Justice may direct that either such Court shall sit at any other place. [CMAA 1983, s.12(1)]

Section 160 provides that the eight groups of local government areas listed in *Schedule 11, Part 3* continue to be the basis for the 8 Circuits into which the Circuit Court has been divided since 1953. The 8 Circuits are: the Dublin Circuit (comprising the local authority areas of South Dublin, Fingal, Dun Laoghaire-Rathdown and Dublin City); the Cork Circuit (Cork County and Cork City); the Northern Circuit (Cavan, Donegal, Leitrim and Monaghan); the Midland Circuit (Laois, Longford, Offaly, Roscommon, Sligo and Westmeath); the Eastern Circuit (Kildare, Louth, Meath and Wicklow); the South-Western Circuit (counties Clare, Kerry and Limerick; and Limerick City); the South-Eastern Circuit (counties Carlow, Kilkenny, North Tipperary, South Tipperary, Waterford and Wexford; and Waterford City) and the Western Circuit (counties of Galway and Mayo; and Galway City). These will continue to be the Circuits unless altered in accordance with *section 161*. [CJA 1953, s.16; C(SP)A 1961, s.20]

Section 161 provides that the Courts Service may, by statutory order, alter the composition of a Circuit (other than the Dublin Circuit and the Cork Circuit) by adding to or removing from the Circuit any local government area, and change the name of a Circuit. The section also provides for the consultation process involved before making any such order. [CJA 1953, s.16; CA 1964, s.3]

Section 162 is new in a Courts Bill and provides that the Circuit Court shall sit for the transaction of its judicial business in accordance with directions given under *section 189(2)*, which deals with the powers of the President of the Circuit Court.

Section 163 provides that, in general, the President of the Circuit Court must allocate judges to a Circuit by reference to the volume of the judicial business of the Court in that Circuit,

and that at least one judge of the Circuit Court must be permanently assigned to every Circuit. [C(SP)A 1961, s.20; CA 1977, s.2; CCOA 1995, s.36]

Section 164 provides for the temporary assignment of judges to a Circuit. [CJA 1947, s.11; CA 1977, s.2(6)]

Section 165 provides that, in a designated Gaeltacht area, that is, an Irish speaking area, then *either*: (a) an assigned judge of the Circuit Court must be registered in Clár na Gaeilge (Óstaí an Rí) (the Irish Language Register (King's Inns)) or in Clár na Gaeilge (An Dlí-Chumann) (the Irish Language Register (Law Society)) or (b) where no such judge is available, the assigned judge must possess sufficient knowledge of, or has sufficient experience of practising in, the Irish language as enables him or her to dispense with the assistance of an interpreter when conducting the business of the Court in the national language, Irish. The section also provides that these provisions do not limit any right or obligation under section 8 or section 9 of the *Official Languages Act 2003*. It also implements the recommendation in paragraph 2.72 of the Report. [CJA 1924, s.44 (modified)]

Section 166 provides that the existing Dublin Metropolitan District, together with the other 25 Districts set out in the *District Court (Districts) Order 2008* (S.I. No. 461 of 2008), continue to be the District Court Districts for the purposes of the District Court. By way of examples, District No. 1 comprises the District Court Areas of Buncrana, Carndonagh, An Clochán Liath, An Fál Carrach, Na Gleannta and Letterkenny; while District No. 25 comprises the District Court Areas of Athy, Kilcock, Kildare and Naas. *Section 166* also provides that these Districts may be modified in accordance with *section 168*. [CJA 1953, s.22 (repealed); C(SP)A 1961, s.32]

Section 167 provides that the Courts Service, having consulted with the President of the District Court, appoints locations as District Court venues, that is, where scheduled sittings of the District Court may be held. [CJA 1953, s.26 (part); C(SP)A 1961, s.40]

Section 168 provides that the Courts Service, having consulted with the President of the District Court, determines the days on which scheduled sittings of the District Court are held. Among the factors to be applied in this respect are: the desirability that criminal proceedings should be conducted separately from civil proceedings and the efficient use of resources. The section also authorises the Courts Service to establish administrative sub-divisions of District Court Districts, called Areas, for operational purposes. This implements the recommendation in paragraph 2.75 of the Report. [CJA 1953, s.26 (part); C(SP)A 1961, ss.41-43]

Section 169 provides that, at a scheduled sitting, a judge of the District Court may transact at that sitting any class of judicial business of the District Court and may also transfer or adjourn any judicial business in which he or she has jurisdiction to another day and time at the District Court venue. [CJA 1953, s.27]

Section 170 provides that the Courts Service may, by statutory order: (a) vary or abolish a District, (b) create a new District or (c) assign a name to or change the name of any District. [CJA 1953, s.26; CJA1936, s.64]

Section 171 provides that, in general (mirroring *section 163* for the Circuit Court), the President of the District Court must allocate judges to a District by reference to the volume of the judicial business of the Court in that District, and that at least one judge of the District Court must be permanently assigned to every District. [C(SP)A 1961, s.39 and Schedule 6, para 2; CA 1991, s.20; CCOA 1995, s.38]

Section 172 (mirroring *section 164* for the Circuit Court) provides for the temporary or special assignment of judges to a District. [C(SP)A 1961, Schedule 6, para 3; CCOA 1995, s.37; CLMPA 2008, s.14]

Section 173 provides that the powers and duties of a temporarily or specially assigned judge of the District Court are, in general, the same as those of a permanently assigned judge. [C(SP)A 1961, Schedule 6, para 3; CLMPA 2008, s.14]

Section 174 provides for the appointment, by the President of the District Court, of a substitute judge of the District Court on the request of a permanently assigned judge who indicates that he or she cannot properly deal with proceedings before him or her. [C(SP)A 1961, Schedule 6, para 4]

Section 175 (mirroring *section 165* for the Circuit Court) provides that, in a designated Gaeltacht area, that is, an Irish speaking area, then *either*: (a) the sitting judge of the District Court must be registered in Clár na Gaeilge (Óstaí an Rí) (the Irish Language Register (King's Inns)) or in Clár na Gaeilge (An Dlí-Chumann) (the Irish Language Register (Law Society)) or (b) where no such judge is available, the sitting judge must possess sufficient knowledge of, or has sufficient experience of practising in, the Irish language as enables him or her to dispense with the assistance of an interpreter when conducting the business of the Court in the national language, Irish. The section also provides that these provisions do not limit any right or obligation under section 8 or section 9 of the *Official Languages Act 2003*. It also implements the recommendation in paragraph 2.72 of the Report. [CJA1924, s.71 (modified)]

Section 176 provides that the Minister for Justice and Law Reform may, by statutory order, declare that certain specified urgent summary cases be dealt with in the District Court outside the scheduled sittings for criminal business. [CA 1971, s.15]

Section 177 provides that a Judge of the District Court may exercise certain powers outside his or her District. These include: (a) the power to issue a warrant for the arrest of a person; (b) the power conferred by any enactment to issue a search warrant; (c) the power conferred by any enactment to make an order directing a person to produce, to make available for inspection or to give access to any particular document, material or thing for the purposes of investigating any criminal offence; and (d) the power conferred by the Criminal Justice Act 1994, as amended concerning international co-operation on money laundering. [C(SP)A 1961, s.32A, inserted by CJA 2006, s.180; CJMAA 2008, s.108; CJSA 2009, s.18; CJMLTFA 2010, s.115]

EXPLANATORY NOTES TO PART 3 OF THE BILL: JUDGES AND PRESIDING JUDGES

Part 3 of the Bill, *Judges and Presiding Judges* (sections 178 to 192), contains provisions concerning the role and functions of judges in general, as well as specific provisions as to the role of the presiding judges, the Chief Justice (who is also presiding judge of the Supreme Court), the President of the High Court, the President of the Circuit Court and the President of the District Court.

Section 178 sets out the main contents of *Part 3* of the Bill.

Part 3, Chapter 1 (sections 179 to 182) of the Bill contains a number of general provisions applicable to all judges.

Section 179 provides that where proceedings have been part-heard by a judge appointed to another judicial office (for example, where a High Court judge is appointed to the Supreme

Court) that judge shall complete the hearing of any proceedings that he or she has partly heard. [C(E&C)A 1961, s.6A; CCOA 2002, s.12]

Section 180 provides for judicial precedence among the judges of the courts. The order is, in general, as follows: the Chief Justice, the President of the High Court, judges of the Supreme Court, judges of the High Court, the President of the Circuit Court, judges of the Circuit Court, the President of the District Court and judges of the District Court. [CJA 1924, ss.9, 38; CJA 1947, s 9(3); C(2)A 1997, s.9]

Section 181 provides that each judge of the Supreme Court and each judge of the High Court has jurisdiction to hear all cases, but that no judge may sit on appeal from his or her own decision. [CJA 1924, s.24]

Section 182 provides that the prescribed, that is, maximum, number of judges of each Court is as set out in *Schedule 12* to the Bill, which reflects the current position (in 2010). The current number of Supreme Court judges is 8 (comprising the Chief Justice and 7 judges of the Supreme Court). The current number of High Court judges is 36 (the President of the High Court and 35 judges of the High Court). The current number of Circuit Court judges is 38 (the President of the Circuit Court and 37 judges of the Circuit Court). The current number of District Court judges is 64 (the President of the District Court and 63 judges of the District Court). This makes a total maximum number of 146 judges. [CCOA 1995, ss.6(1), 9(1), 10, 11(1); CCOAA 2007, ss.2, 3, 4]

Part 3, Chapter 2 (sections 183 to 185) of the Bill deals with presiding judges and senior ordinary judges of the courts.

Section 183 provides that references to the senior ordinary Judge of the Supreme Court or to the senior ordinary Judge of the High Court shall be interpreted by reference to the order of precedence of such judges in *section 180*, that is, primarily by reference to the date of their appointment as judges. [C(2)A 1997, s.11]

Section 184 provides that if the Chief Justice is unable owing to illness or for any reason to act, or the office of Chief Justice is vacant, then during that period the President of the High Court is to perform most of the Chief Justice's functions (other than the allocation of the Court's business under *section 186* and the number of judges allocated to hear a case under *section 17(2)*, which the senior ordinary judge of the Supreme Court is to carry out). In similar situations concerning the illness etc of the Presidents of the High Court, Circuit Court or District Court, their functions are to be performed by the senior ordinary judge of the Court concerned who is permanently assigned to Dublin. [CA 1981, s.18 (modified)]

Section 185 provides that the most senior judge is to preside at a sitting of the Court of Criminal Appeal or the Courts-Martial Appeal Court (usually, the Supreme Court judge member of the three-judge panel). [CJA 1924, s.28]

Part 3, Chapter 3 (sections 186 and 187) of the Bill deals with specific aspects of the role of the Chief Justice.

Section 186 provides that a general function of the Chief Justice is to arrange the distribution and allocation of the judicial business of the Supreme Court. [CCOA 1995, s.8]

Section 187 is new in a Courts Bill and provides that the Chief Justice may nominate a judge of the Supreme Court or, with the agreement of the President of the High Court, a judge of High Court, to have charge of the list of the Court of Criminal Appeal. It also provides for a

similar process of nomination by the Chief Justice in respect of the Courts-Martial Appeal Court. This reflects principally that the changes proposed to the leave arrangements in criminal appeals may require additional judicial input at appeal court level to filter groundless or vexatious notices of appeal.

Part 3, Chapter 4 (section 188) of the Bill deals with specific aspects of the role of the President of the High Court.

Section 188 provides that a general function of the President of the High Court is to arrange the distribution and allocation of the judicial business of the High Court. [C(SP)A 1961, s.10(3)]

Part 3, Chapter 5 (section 189) of the Bill deals with specific aspects of the role of the President of the Circuit Court.

Section 189 provides that a general function of the President of the Circuit Court is to arrange the distribution of the judicial business of the Circuit Court amongst the judges of the Circuit Court and the prompt despatch of the judicial business of the Circuit Court in the Circuits. This includes setting out by statutory order places at which scheduled sittings of the Circuit Court are to be held, and publishing such orders. This is often done on the website of the Courts Service, www.courts.ie, and in *Iris Oifigiúil*. [CJA 1947, s.10]

Part 3, Chapter 6 (sections 190 to 192) of the Bill deals with specific aspects of the role of the President of the District Court.

Section 190 provides that a general function of the President of the District Court is to arrange the distribution of the judicial business of the District Court amongst the judges of the District Court and the prompt despatch of the judicial business of the District Court in the Districts. The section also provides that the President of the District Court may convene, not more than twice a year, meetings of the judges of the District Court for the purpose of discussing matters relating to the discharge of the judicial business of the District Court, including the manner of disposal of criminal proceedings in the District Court. The section also provides that any such meeting may be held using a television link or other suitable technology. The section also provides that the President of the District Court may, having regard to the functions of the Courts Service under *section 168* of the Bill, make recommendations to the Courts Service in relation to the places at which, days on which and times at which, scheduled sittings of the District Court should be held in or for any District. [C(SP)A 1961, ss.36, 42; CCOA 1995, s.39]

Section 191 provides that the President of the District Court must be permanently assigned to the Dublin Metropolitan District. [C(SP)A 1961, s.35(2)]

Section 192 provides that, in general, any former President of the District Court who has served the maximum seven year term as President specified under *section 4(2)* of the *Courts (No.2) Act 1997* must continue to be permanently assigned by virtue of *section 191* to the Dublin Metropolitan District. [C(2)A1997, s.12]

EXPLANATORY NOTES TO PART 4 OF THE BILL: SPECIAL RULES IN PARTICULAR PROCEEDINGS AND MATTERS OF PROCEDURE

Part 4 of the Bill, *Special Rules in Particular Proceedings and Matters of Procedure (sections 193 to 276)*, contains detailed provisions about court procedure and is linked to *Schedule 13*

of the Bill. *Part 4* deals with the constitutional requirement that, subject to limited exceptions, the courts must administer justice in public. It also deals with some aspects of the role of juries (although much of this is dealt with in the *Juries Act 1976*, as amended). *Part 4* also deals with, for example, the use of Information and Communications Technology (ICT) in the courts and how proceedings in the courts are commenced. The general basis on which the detailed statutory Rules of Court are drawn up is also described. *Schedule 13* sets out the composition and related proceedings of the different Court Rules Committees, the Superior Courts Rules Committee, the Circuit Court Rules Committee and the District Court Rules Committee. *Part 4* also deals with offences related to the operation of the courts, notably, perjury and contempt of court.

Section 193 sets out the main contents of the 11 Chapters in *Part 4* of the Bill.

Part 4, Chapter 1 (sections 194 to 208) of the Bill deals with the constitutional requirement that, subject to the limited exceptions referred to, the courts must administer justice in public. It also deals with the extent of permissible reporting of such proceedings, including family proceedings. It also introduces the possibility of allowing a person to remain anonymous in certain civil proceedings by using a pseudonym.

Section 194 defines the main terms used in *Part 4, Chapter 1*.

Section 195 is new in a Courts Bill, but it complements the requirement in Article 34.1 of the Constitution of Ireland that “[j]ustice shall be administered in courts established by law... and, save in such special and limited cases as may be prescribed by law, shall be administered in public.” *Section 195* provides that a Court when administering justice or conducting other judicial business at a scheduled sitting shall sit in a place provided by the Courts Service which is open to the public, unless a specific provision allows the hearing to be otherwise than in public. The section also provides that, to avoid any doubt, nothing in the section prevents the members of a jury or the members of a Court from attending or viewing any place for a purpose connected with civil or criminal proceedings (in a case involving a trial with a jury, this is done by a court order made under section 22 of the *Juries Act 1976*).

Section 196 sets out the special and limited cases, referred to in Article 34.1 of the Constitution, in which a court may deal with a case otherwise than in public. Two phrases have, traditionally, been used for this purpose, “a hearing *in camera*” and “a hearing in chambers” and the specific legislative provisions concerned have used both, giving rise to the risk that some may consider that they mean different things. *Section 194* of the Bill (which defines the main terms used in *Part 4, Chapter 1*) proposes to avoid any confusion on this important matter; it provides that, where a court hearing otherwise than in public under *section 196* concerns judicial business (that is, civil or criminal proceedings) it may be referred to as “a hearing *in camera*,” while a hearing by a judge that does not involve judicial business or is otherwise for a particular policy reason prescribed as one which is heard privately and not in an ordinary courtroom may be referred to as “a hearing in chambers.” The Latin word *camera* means a chamber or room (derived from the Greek *kamara*, meaning a vaulted room; *chambre* is, of course, also the modern French word for room), and a judge’s private office is often called his or her chambers. In effect, therefore both traditional phrases used for a court hearing other than in public have the same meaning, but the proposed distinction in *section 196* may be of use in clarifying the different types of hearing that are held otherwise than in public.

Section 196 then sets out the following specific cases in which a court may currently deal with a case otherwise than in public: (a) applications of an urgent nature for an inquiry under Article 40.4.2^o of the Constitution, for bail, for any injunction or in judicial review proceedings seeking an order of prohibition; (b) family proceedings; (c) in proceedings under the care and

protection jurisdiction (this phrase anticipates the enactment by the Oireachtas of legislation along the lines of the *Scheme of the Mental Capacity Bill 2008*, which proposes to replace the wardship system); (d) proceedings concerning a child (a person under 18 years); (e) proceedings involving the disclosure of a secret manufacturing process; (f) any other cases prescribed by this Act or by any other Act of the Oireachtas, including in any case where any hearing is to be held in camera. *Section 196* also provides that, to avoid any doubt, nothing in the Bill requires any business of a court that does not involve the administration of justice to be held in public.

Section 196 also provides that, subject to *section 201* and any court order or statutory Regulations made under *section 201*, a person permitted to be present at an in camera hearing shall not publish information given at the in camera hearing: (a) which would, in family proceedings or proceedings concerning the protection or welfare of a person, enable the parties, the person who is the subject of the proceedings or, as the case may be, a child to whom the proceedings relate, to be identified by the public or a substantial section of it, or (b) which would, in any other case, substantially deprive the party or person concerned of the benefit of the in camera hearing or, as the case may be, in chambers hearing. These reporting restrictions do not apply to any communication made for the purposes of the proceedings concerned, or for the purpose of giving or receiving legal advice. [C(SP)A 1961, s.45]

Section 197 is new in a Courts Bill but confirms existing practice that, subject to any direction given by the court, an *in camera* hearing shall take place in a courtroom or other place from which persons other than the following shall be excluded while the hearing is in camera: (a) the members of the Court and of the jury, where the proceedings are being tried with a jury; (b) the court officer acting as registrar to the Court; (c) the parties to the proceedings; (d) the parties' legal representatives, if any; (e) a person approved by the Court who is permitted by the Court in accordance with *section 201(6)* to accompany a party to relevant proceedings; (f) any assistant referred to in *section 194*; (g) a person called or proposed to be called to give evidence as a witness in the hearing; (h) a person permitted to be present in accordance with *section 201(4)*; (i) a person whose presence is decided by the court to be necessary in accordance with *section 198*. A person referred to in (g), (h) or (i) may be ordered to leave the courtroom or place where an in camera hearing is taking place during any part of that hearing.

Section 198 is new in a Courts Bill but confirms existing practice that *section 196* does not require the exclusion from attendance at an in camera hearing of a person whose presence the court determines is necessary for the proper or efficient conduct of the hearing. This may include: (a) another court officer or other person performing duties in relation to the Court, (b) a prison officer, (c) a member of the Garda Síochána, (d) a person (including a person employed by a person) retained by the Courts Service to provide a security service or (e) an interpreter.

Section 199 provides that where a Court is satisfied in proceedings before it that a person mentioned in *section 197* acting in the Court as a legal representative or a Court friend on behalf of a party in the proceedings has a disability (within the meaning of section 2(1) of the *Disability Act 2005*) and for that reason requires assistance, the Court may, on a request by or on behalf of that person and notwithstanding any other enactment or rule of law, authorise another person to accompany the person in the proceedings and provide assistance to that person, subject to such directions as the Court may give to the assistant. [CLMPA 2008, s.28]

Section 200 is new in a Courts Bill but confirms existing practice that the reasons for the Court's decision in any proceedings or matter heard in camera or in chambers may be announced in public or published provided that any written decision or statement of the

Court's reasons does not contain information: (a) which would, in family proceedings or proceedings concerning the protection or welfare of a person, enable the parties, the person who is the subject of the proceedings or, as the case may be, a child to whom the proceedings relate, to be identified by the public or a substantial section of it, or (b) which would, in any other case, substantially deprive the party or person concerned of the benefit of the *in camera* hearing or, as the case may be, in chambers hearing. *Section 195* also provides that nothing in the section prevents a Court from giving its reasons or a written decision at a sitting otherwise than in public before announcing any reasons in public or publishing a written decision.

Section 201 provides that, as an exception to the reporting restrictions concerning *in camera* hearings, certain reports of family and child law proceedings may be published. This continues the arrangements begun in recent years under which the Courts Service has published a series of reports under the title *Family Matters*, which are available on the Courts Service website, www.courts.ie. The section also confirms existing arrangements under which court judgments in family law cases may be published either on the Judgments Database of the Courts Service (also published on its website) or in law reports (the published volumes of the decisions of the courts). [CLCA 2004, s.40; CLMPA 2008, s.31]

Section 202 is new in a Courts Bill but confirms existing practice that where a Court has made an order prohibiting the publication or broadcast of particular information given in court proceedings *that have been heard in public*, the Court may give directions to persons present at the hearing to ensure that this order is carried out. It also provides that any person affected by such a direction to may apply to the court to vary or discharge the direction. This could include, for example, members of the media who are reporting the proceedings.

Section 203 provides that, in civil proceedings, a court may make an order prohibiting the publication or broadcast of any matter which would, or would be likely to, identify a party or witness in the case as having a specified medical condition. Such an order can only be made if the court is satisfied that his or her identification as a person with that condition would be likely to cause undue stress to him or her and that the order would not be prejudicial to the interests of justice. It is an offence to publish or broadcast any matter in contravention of such an order; the penalties are set out in *section 205*. [CLMPA 2008, s.27]

Section 204 mirrors the provisions of *section 203* in the context of criminal proceedings. [CJA 2006, s.181]

Section 205 provides that it is an offence to publish or broadcast any matter in contravention of an order made under *section 203* or *section 204*. It provides that a person guilty of an offence under either section is liable on conviction on indictment to a maximum fine of €25,000 and/or imprisonment for a maximum term of 3 years. [CJA 2006, s.181]

Section 206 is new in a Courts Bill and provides that the High Court may make an anonymity order, an order that the identity of the person should not be disclosed in civil proceedings, whether the case is being heard in the High Court or any other court. This section introduces the possibility of allowing a person to remain anonymous in certain civil proceedings by using a pseudonym or initials (in this respect, names traditionally used include John Doe or Jane Doe). The High Court is empowered to make such an order only where it is satisfied that the person is not otherwise entitled to have his or her identity protected in the proceedings by virtue of this Act or any other enactment and, having regard to the damage which might be suffered by the applicant (or by another person) if the applicant's identity is disclosed in the proceedings, that the needs of justice require that the party should not be identified. This section also implements the recommendation in paragraph 2.82 of the Report. Such an anonymity order is intended to protect the privacy and dignity of a person in sensitive civil proceedings.

Section 207 is new in a Courts Bill but is intended primarily to clarify the existing law that, in general, any direction under *section 202* or order under *sections 203 to 205 continues to apply*: (a) during any application to vary or set aside the direction or order, (b) during any appeal against the direction or order, (c) in any appeal in the proceedings to which the direction or order relates, and (d) following the conclusion of the proceedings to which the direction or order relates. It also provides that any direction under *section 202* or order under *sections 203 to 205 ceases to apply*: (a) when the direction or order expires in accordance with its terms; or (b) if the direction or order is set aside by a Court.

Section 208 provides that, in civil proceedings, a Court may direct that a person (other than a party or an expert witness) who it is intended will be called to give evidence shall not attend until he or she is called to give evidence. [CLCA 2004, s.54]

Part 4, Chapter 2 (sections 209 to 214) of the Bill deals with the circumstances in which civil and criminal proceedings involve trial with a jury, as well as some related procedural matters. This also implements the recommendation in paragraph 2.85 of the Report.

Section 209 is new in a Courts Bill and provides that, to avoid any doubt, this Bill does not affect the provisions in the *Juries Act 1976* (as amended) on qualification and liability for selection for service as a juror, selection and service as a juror, and excusal of jurors.

Section 210 provides that trials on indictment before the Central Criminal Court (High Court) or the Circuit Court shall be tried with a jury. It also provides that, on any trial on indictment, the indictment shall be preferred directly to the jury which tries the accused. *Section 210* also confirms that a majority verdict may be given by a jury in criminal proceedings in accordance with section 25 of the *Criminal Justice Act 1984*. [CJA 1924, s.27]

Section 211 provides that civil proceedings in the High Court may be tried with a jury only where damages (compensation) is sought in relation to (a) defamation, (b) false imprisonment, or (c) intentional trespass to the person. The section provides for a process by which a court may decide that it would not be reasonable for a jury to deal with the case because, having regard to the evidence likely to be called, it would not be reasonable to seek damages in the case. The section also provides that the jury decides whether there is liability in such civil proceedings, and that a question of fact or question as to the amount of damages to be decided by a jury or issue to be tried by a jury shall be put into writing in the form the Court directs. [CAA 1858, s.4; SCJIA 1877, s.33; CA 1988, s.1]

Section 212 confirms that no civil proceedings in either the Circuit Court or the District Court are to be tried with a jury. This has been the situation in the Circuit Court since 1971, and in the District Court since the foundation of the State. [SA 1965, s.44; CA 1971, s.6]

Section 213 provides that a majority verdict of 9 of the 12 members of a jury in civil cases is necessary and sufficient to decide the verdict. It also provides that the High Court judge must inform the jury of the majority necessary and that the verdict of 9 or more members must be taken and recorded as the verdict of the jury, without disclosure of any dissenting members. [CJA 1924, s.95]

Section 214 deals with the right to make, and the order of, opening and closing speeches in criminal proceedings tried with a jury and in civil proceedings. In criminal proceedings tried with a jury, the prosecution has the right to make an opening speech and, subject to certain conditions, so does the defence. The prosecution and defence each has the right to make closing speeches, and the order of closing speeches is confirmed to be in accordance with section 24 of the *Criminal Justice Act 1984*, which provides: (a) the prosecution has the right

to a closing speech in all cases except where the accused is not represented by counsel or a solicitor and does not call any witness (other than a witness to character only), and the defence shall have the right to a closing speech in all cases; and (b) the closing speech for the defence shall be made after that for the prosecution. In civil proceedings, *section 214* provides that, in general, the same approach applies, but this is subject to the discretion of the court, taking account of the case conduct principles in *section 75* of the Bill. [CLPAAI 1856, s.21]

Part 4, Chapter 3 (sections 215 to 224) of the Bill deals with summary criminal procedure, that is, criminal cases initiated and decided in the District Court on the basis of a criminal summons, as opposed to criminal trials on indictment, which are dealt with in the Central Criminal Court (High Court) or the Circuit Criminal Court. This Chapter also implements the recommendation in paragraph 2.88 of the Report. In recent years the District Court has dealt annually with over 500,000 summary criminal matters, and over 400,000 of these involve prosecutions under the *Road Traffic Acts*.

Section 215 defines the main terms used in *Part 4, Chapter 3*. This includes the term “qualified prosecutor” which means the Attorney General, the Director of Public Prosecutions, a member of the Garda Síochána or a person authorised by or under an enactment to bring and prosecute proceedings for the offence concerned (such as the Health and Safety Authority under the *Safety, Health and Welfare at Work Act 2005*). Each of these “qualified prosecutors” may apply to the District Court for the issue of a summons as of right under *section 218* of the Bill, and without the need to obtain the leave (permission) of the Court under *section 219*. [C(3) A 1986, s.1 (and new definitions)]

Section 216 is new in a Courts Bill and provides that, to avoid any doubt, the pre-trial and trial procedures for criminal proceedings on indictment (in which the District Court is involved before the case is sent forward for trial) continue to be those prescribed by the *Criminal Procedure Act 1967*, as amended, as well as other applicable law, and that those procedures are unaffected by this Bill unless explicitly modified by a specific provision of this Bill.

Sections 217 to 219 provide for an integrated process to commence summary criminal proceedings in the District Court by means of a summons. They integrate the administrative summons procedure introduced in the *Courts (No.3) Act 1986* with the older “complaint” summons procedure provided for under section 10 of the *Petty Sessions (Ireland) Act 1851*. In practice, the administrative summons procedure in the 1986 Act, in which the summons is applied for by a member of the Garda Síochána and issued by a District Court clerk, is used in the vast majority of summary cases dealt with in the District Court, notably the cases dealt with under the *Road Traffic Acts* which annually involve more than 400,000 such summonses. *Sections 217 to 219* of the Bill therefore replicate the administrative summons process provided for in the 1986 Act. *Section 218* of the Bill also includes an updated version of the “complaint” summons procedure in the 1851 Act, which involves (as is the case under the 1851 Act) the need for approval by (or leave of) a judge of the District Court to allow the prosecutor to bring the case, but which would be aligned more closely with the administrative summons procedure in the 1986 Act. There is a strong case for putting in place a single summons process based on the 1986 Act but, in the absence of comprehensive reform of the existing law on criminal procedure, the Commission considered that it would be better to proceed with some caution at this point and to retain for the present the essential elements of the complaint procedure in the 1851 Act.

Section 217 confirms that the summons procedure provided for in *sections 217 to 219* is without prejudice to the ability to commence criminal proceedings in respect of an offence in the District Court by charging a person who is before the Court with an offence or by accusing a person of an offence when he or she is before the Court. *Section 217* then

provides that criminal proceedings in respect of an offence may be commenced in the District Court by either: (a) the issuing of a summons, as a matter of administrative procedure, following an application by a “qualified prosecutor” (as defined in *section 215*) for a summons in accordance with *section 218* (this is the administrative summons procedure introduced in the *Courts (No.3) Act 1986*); or (b) the issuing of a summons, as a matter of administrative procedure, following an application by a prosecutor who is not a “qualified prosecutor” for a summons, which requires that a judge of the District Court has given leave (permission) for the summons to be issued in accordance with *section 219* (this is the updated version of the “complaint” summons procedure under section 10 of the *Petty Sessions (Ireland) Act 1851*). *Section 217* also reiterates the existing general time limit that the application for a summons must be made within 6 months from the time when the offence was committed. This is subject to any different period specified in specific Acts, such as the 2 year period under the *Animal Remedies Act 1993* or under Regulations made under the *European Communities Act 1972* (as amended in 1993).

Section 217 also provides that a summons must (a) specify the name of the prosecutor or the person who applied for the issue of the summons, (b) specify the date of the application for the summons, (c) state shortly and in ordinary language particulars of the alleged offence, the name of the person alleged to have committed the offence and the address (if known) at which that person ordinarily resides, (d) notify that person that he or she will be accused of that offence at a sitting of the District Court specified by reference to its date and venue and, so far as is practicable, the time during that sitting when the summons is scheduled to be heard, (e) specify the name of the relevant District Court Clerk and (f) where the summons is issued following an application for leave (the updated version of the complaint procedure under the 1851 Act), specify the date of the application for leave to issue the summons and the name of the judge of the District Court who gave leave. [PSIA 1851, ss.10(4), 38; CCOIA 1877, s.78; CJA 1951, s.7; C(3)A 1986, s.1; ECAA 1993, s.7; CLCA 2004, s.49; CLMPA 2008, s.19]

Section 218 reiterates other details concerning the process for applying for and issuing a summons that were introduced in the *Courts (No.3) Act 1986* (as amended). This includes transmitting the application to the appropriate office in the District Court by electronic means, or by any other permitted means, and also issuing it by electronic means to the prosecutor who applied for it or a person acting on the prosecutor’s behalf or by any other permitted means. *Section 218* also allows for processing through a central processing office, rather than a local District Court office. [C(3)A 1986, s.1; CLCA 2004, s.49]

Section 219 provides for the detailed aspects of the process for applying for a “complaint” summons, replacing and updating the relevant provisions of the *Petty Sessions (Ireland) Act 1851*, as the essential precursor to actually issuing a summons under *section 217*. The application for leave from the District Court must be supported by information given on oath and in writing by the applicant. The section also reiterates the current position that a summons alleging an offence against a member of the Gárda Síochána acting in the course of his or her duty shall not be issued without an order under *section 219*. [DPA 1842, ss.49, 51; PSIA 1851, ss.10, 11]

Section 220 provides that a judge of the District Court may issue an arrest warrant, in accordance with *section 138* of the Bill, where there are reasonable grounds for believing that: (a) the person to whom the warrant relates has committed an indictable offence, and (b) it will not be sufficient or appropriate in the interests of justice for a summons to issue in the first instance to cause that person to attend before the District Court. [DPA 1842, ss.49, 51; PS(I)A 1851, s.11]

Section 221 provides that a variance between a summons issued in accordance with this Chapter and the evidence given by the prosecutor on the hearing of the case as to the time

when the offence is alleged to have been committed, or as to the place in which the offence is alleged to have been committed, is not material if the judge is satisfied that the application for the summons was made within the relevant time limit or that the offence was committed within his or her District. It also provides that if the accused has been misled or disadvantaged in preparing his or her defence by any alleged defect in the substance or form of any Court document or document, or by any variance between a summons and the evidence adduced on the hearing of the case, the judge may adjourn the hearing of the summons to another date, on such terms as he or she thinks fit. [PSIA 1851, s.39; COCAI 1877, s.76]

Section 222 provides for the procedure to be followed on the hearing of criminal proceedings being tried summarily in the District Court. It provides that when the accused or his or her legal representative is present, the substance of the offence alleged (whether or not set out in a summons to which the proceedings relate) must be put to him or her. It also provides for the general procedure to be followed where the accused pleads guilty and where the accused pleads not guilty. The section also provides that a judge may adjourn a case where the prosecutor does not appear. [PSIA 1851, s.20; SJIA 1851, s.1; COCAI 1877, s.78]

Section 223 provides that a secondary offender, that is a person who aids, abets, counsels, or procures the commission of an offence which is punishable on summary conviction may be proceeded against and convicted, either together with the principal offender or before or after conviction of the principal offender. This complements the comparable provisions for arrestable offences in section 7(1) of the *Criminal Law Act 1997*. [PSIA 1851, s.22 proviso]

Section 224 provides that, where a summons has been issued under *section 218* and properly served on the person to whom it is directed but that person does not appear at the time and place specified in the summons, the District Court may, if it considers it undesirable in the interests of justice, whether because of the gravity of the offence or otherwise, to continue the hearing in the absence of the person, adjourn the hearing to such time and District Court venue as the Court directs to enable the person to be notified, in the manner the Court directs, of the adjourned hearing. [CA 1991, s.22(3)-(9); CPA 2010, s.36]

Part 4, Chapter 4 (section 225) of the Bill deals with fixed charge notices.

Section 225 is, in part, new in a Courts Bill and provides that, in the event that specific legislation concerning a fixed charge notice does not provide for an appeal against such a notice, an appeal may be brought to District Court where the amount of the fixed charge does not exceed €2,500, or in any other case to the Circuit Court. This also implements the recommendation in paragraph 2.91 of the Report. [FIA 1851, s.7 (modified)]

Part 4, Chapter 5 (sections 226 to 231) of the Bill deals with the use of Information and Communications Technology (ICT) in the courts.

Section 226 defines the main terms used in *Part 4, Chapter 5*. [PA 2007, ss.33, 34; CLMPA 2008, s.26]

Section 227 is new in a Courts Bill and provides that statutory rules of court shall, where practicable and appropriate, support the efficient use of information and communications technology in the conduct of proceedings before Courts.

Section 228 sets out the general conditions for the use of television link. Where this involves a party to a hearing, the Court must be satisfied that: (a) facilities are or will be available to enable the party participating by television link to see and hear the proceedings at the

hearing and to be seen and heard by those present in the courtroom in which the hearing is taking place; (b) it is or will be possible for the party and his or her legal representative to communicate in confidence; (c) it would not be unfair or prejudicial to a party or otherwise be contrary to the interests of justice to give such a direction; and (d) where a prisoner is intended to participate by television link in an application in criminal proceedings, it would be appropriate to give such a direction having regard to the nature of the application, the complexity of the hearing, the prisoner's age, mental capacity and physical capacity. Where the issue of a television link involves a witness, the Court must, in general, be satisfied that facilities are or will be available to enable the witness participating by television link to see and hear the proceedings at the hearing and to be seen and heard by those present in the courtroom in which the hearing is taking place. [PA 2007, ss.33, 34; CLMPA 2008, s.26]

Section 229 provides that a Court may, in any civil proceedings, give a television link direction of its own motion or on the application of a party, and having heard the parties. It also provides that nothing in this Chapter of the Bill limits the power of a judge to transfer proceedings under section 27 of the *Children Act 1997* (which allows a court to transfer proceedings involving children to a court where television link facilities are available). [CLMPA 2008, s.26]

Section 230 deals with the use of television link proceedings involving prisoners, whether an accused or a convicted person, who is in prison. This applies to a "specified application," which, as defined in *section 226* of the Bill means any of the following 4 instances: (a) an application for bail or for free legal aid; (b) in relation to proceedings on indictment, any other application except: (i) an application made at the commencement of the trial, (ii) an application relating to the arraignment or sentence of the prisoner, (iii) an application relating to the capacity of the prisoner to stand trial, (iv) an application to dismiss the charges against the prisoner on the ground that there is not sufficient evidence to put the prisoner on trial, or (v) any other application that appears to the Court to require the presence of the prisoner at the hearing; (c) in relation to proceedings in the District Court, any other application to that Court before the date on which: (i) a trial before the District Court begins or that Court accepts a plea of guilty, or (ii) the accused is sent forward for trial or sentence, or (d) any application in appeal proceedings or any subsequent proceedings. [PA 2007, ss.33 and 34]

Section 231 provides that nothing in this Chapter of the Bill limits the power of a Court in criminal proceedings to receive evidence by live television link in accordance with the *Criminal Evidence Act 1992* or any other enactment.

Part 4, Chapter 6 (sections 232 to 240) of the Bill deals with the procedure for service of court documents. This Part implements the recommendation in paragraph 2.97 of the Report.

Section 232 defines the main terms used in *Part 4, Chapter 6*. This includes providing that "electronic communication" and "information system" each has the same meaning as in section 2(1) of the *Electronic Commerce Act 2000*. [CBCIA 1851, s.65; PSIA 1851, s.12(3); CLPAAI 1853, s.32; CA 1971, s.23]

Section 233 deals with the times at which personal service of a court document may not be made and provides that, unless permitted by the Court before which the civil proceedings are brought, personal service of a Court document shall not be effected on a Sunday, Good Friday, or Christmas Day or between the hours of midnight and 6 am. [PSIA 1851, s.12(3); CBCIA 1851, s.65; CLPAAI 1853, s.32]

Section 234 sets out certain presumptions concerning service of court documents by registered post. It provides that, in general, where an envelope containing a Court document

or a copy of a summons is addressed to the person to be served at his or her usual or last known residence or place of business in the State, registered and posted: (a) the Court document or copy summons is deemed to have been received by the person to whom the envelope was addressed at the time at which the envelope would be delivered in the ordinary course of post, and (b) where evidence is given in the form prescribed or permitted by rules of court that the envelope containing the Court document or copy summons was so addressed, registered and posted, the document is deemed to have been served by registered post service on the person concerned. This presumption applies unless it is proved that the Court document or copy summons was not delivered. In addition, where such an envelope is returned to the sender, the Court document or copy summons shall be deemed conclusively not to have been served on the person to whom the envelope was addressed. [CA 1991, s.22]

Section 235 sets out certain presumptions concerning service of court documents by electronic service, which mirror the provisions in *section 234* concerning registered post. *Section 235* provides that where an information system used by a person on whom electronic service of a Court document has been effected sends an electronic communication to the sender confirming that the communication has been received, seen, opened or read by the person concerned, the Court document is deemed to have been served by electronic service on the person concerned, unless it is proved that the Court document was not received, seen, opened or read by the person concerned. The section also provides that where an information system used by a person on whom electronic service of a Court document has been effected sends an electronic communication to the sender confirming that the communication has not been received, seen, opened or read by the person concerned, the Court document shall be deemed conclusively not to have been served on the person concerned by electronic service. [ECA 2000, s.21(2) and (3); CA 1991, s.22]

Section 236 provides that a Court may, in any case in which it considers it appropriate, make an order authorising the service of a Court document by “substituted service”, that is, by any method other than the “authorised method of service” referred to in *section 237* of the Bill. *Section 236* also provides that the Court may allow a notice by advertisement or otherwise as it thinks proper. The Court must have regard to the reasonableness of the efforts made by the moving party to serve any Court document or to notify any other party of the proceedings, application or matter, and to the opportunity afforded to the responding party to become aware of and respond to the proceedings, application or matter. [PSIA 1851, s.12(3); CBCIA 1851, s.65; CLPAAI 1853, s.32]

Section 237 sets out the general rules concerning service of Court documents in the State. It confirms that a Court document may be served at any place in the State. It also sets out the following “authorised methods of service”: (a) by personal service on the person to be served; (b) by registered post service on the person to be served; (c) by electronic service on the person to be served; (d) by service on the solicitor on record for the person to be served; (e) where the person to be served is a company, by the method provided by section 379 of the *Companies Act 1963*; (f) where the person to be served is a public authority (defined in *section 5* of the Bill) or other corporation which is neither a company nor an individual, by delivering the document to the secretary of the public authority or corporation at its principal office by or registered post service on the secretary of the public authority or corporation at its principal office. The section also provides that service of a Court document may be proved in the manner permitted by statutory rules of court. [CLPAAI 1853, ss.31, 33; CA 1964, s.7]

Section 238 is new in a Courts Bill but reiterates existing rules concerning serving, or giving notice, outside the State of Court documents. It provides that a Court document may be served, or notice given of a Court document outside the State: (a) as of right, and in

accordance with rules of court where jurisdiction over the proceedings to which the Court document relates is conferred on a Court in the State under a European Union enactment or Convention; or (b) in any other case, with the permission of the Court before which it is intended to begin proceedings, and in accordance with the order of the Court giving permission and with rules of court. This section also takes account of: the 1965 “Service Convention,” the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters; and the 2007 EU “Service Regulation,” Regulation No.1393/2007 on service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents).

Section 239 is new in a Courts Bill but reiterates existing rules concerning service of foreign Court documents in the State. It provides that a document in civil proceedings pending before a court outside the State may be served on a person within the State: (a) by personal service of the document made by a person authorised on behalf of the party at whose instance the document is served; (b) by registered post service from within the State on the person to be served; (c) by electronic service from within the State on the person to be served; (d) where the person to be served is a company, by the method provided by section 379 of the *Companies Act 1963*; (e) where the person to be served is a public authority or other corporation which is neither a company nor a natural person, by delivering the document to the secretary of the public authority or corporation at its principal office or by registered post service on the secretary of the public authority or corporation at its principal office; (f) in the case of a document to which the 2007 EU Service Regulation applies (see *section 238*, above), by any other means authorised in accordance with that Regulation or with any enactment giving further effect in the State to that Regulation; (g) by any other means for the time being permitted by the statutory *Rules of the Superior Courts 1986* (SI No.15 of 1986) (including rules that implement in the State the Service Convention: see also *section 238*, above).

Section 240 sets out the general rules concerning service of summonses and other documents in criminal proceedings. In terms of summary proceedings in the District Court, *section 240* provides that, in general, a summons issued under *section 218* may be served upon the person to whom it is directed: (a) by personal service of a copy of the summons; (b) by registered post service of a copy of the summons, or (c) by delivery of a copy of the summons to the person by any other method of “recorded delivery service” specified in the statutory *District Court Rules 1997* (SI No.93 of 1997). The section also provides that service of a copy of a summons may be proved in the manner permitted by statutory rules of court. As to service of documents in criminal proceedings on indictment, *section 240* confirms that this continues to be on the basis prescribed in the *Criminal Procedure Act 1967* (as amended) and other applicable law. [PSIA 1851, s.12; CA 1991, s.22]

Part 4, Chapter 7 (sections 241 to 248) of the Bill deals with the process for commencement of civil proceedings, the documents used filed in court for civil proceedings (called pleadings) and particular defences to civil claims.

Section 241 defines terms used in *Part 4, Chapter 7*. This includes that “pleadings” includes all documents, of whatever name, which rules of court require or permit a party to deliver to, or serve on, any other party or to deliver to the Court before any hearing in civil proceedings.

Section 242 is, in part, new in a Courts Bill and provides that civil proceedings are to be initiated before a Court: (a) by issuing the document prescribed by the appropriate statutory rules of court for civil proceedings of that kind and containing the information required by those rules, or (b) where required or permitted by the appropriate rules of court, by the practice of the court or by an order of the Court, by making to the Court, without or before issuing any document, an application required or permitted by those rules of court or by the

Court. The section also provides that where proceedings are initiated by a document it must, in every case, include: (a) the name and last known place of residence or place of business of each applicant and each respondent; (b) the name and place of business of any solicitor who issued the application notice on behalf of an applicant; (c) where the application is for a liquidated sum by way of damages, particulars of any demand made, particulars of any and every credit to which each respondent is entitled, and the amount of the balance sought, and (d) any other information required by statute or rules of court for the kind of application concerned.

Section 242(5) reiterates the long-standing statutory rule that no initiating document is to be deemed invalid on account of a technical error or omission.

Section 242 also provides that statutory rules of court may provide: (a) that an initiating document ceases to have effect after a specified period of time, or where a particular step (including service of that document) has not been taken within a specified period of time, and (b) for the renewal of an initiating document before or after it ceases to have effect.

Section 242 also provides that a person (referred to using the traditional term a “next friend”) may commence proceedings on behalf of: (a) a child (that is, a person under 18), or (b) an adult party who lacks sufficient capacity to conduct proceedings on his or her own account, and also provides that the Court may make an order removing a person as next friend or appointing another person as next friend. [DIA 1840, s.7 (modified); CLPAAI 1853, ss.9-12; 16, 28, 29, 50; CIA 1867, s.111]

Section 243 provides that statutory rules of court may, subject to the specific requirements in this Bill, provide for the name, content and form of pleadings, and the time at which any pleading, is required or permitted to be served or delivered. It also provides that pleadings in civil proceedings in a Court other than the District Court should be sufficient to enable each party to understand the case being made and the material facts concerning the case. The section also provides that a Court may amend pleadings in accordance with its power to do so in *section 94(1)* of the Bill, among other purposes, to ensure that the Court’s decision reflects or will reflect the rights and obligations of the parties and that no right or obligation is defeated by any technical defect, deficiency or oversight, which would not mislead any other party, in any initiating document referred to in *section 242(1)* or in any pleading. [AJA 1707; CBCIA 1851, s.105; CLPAAI 1853, s.16]

Section 244 provides that, in certain cases, a civil claim may be initiated in advance of an event that gives rise to a claim so that the evidence of a witness who might not be available by the time the claim arises can be taken and then preserved by the Court. [PTA 1842]

Section 245 provides that in proceedings where possession of land is in issue, the High Court or the Circuit Court may, on such terms or conditions as to it seem just, inquire into and decide the true ownership of the land. [CLPAAI 1856, s.89]

Section 246 provides that in proceedings concerning an instrument (that is, a document), the Court may order that the loss of the instrument shall not be set up against any application without an indemnity, on such terms or conditions as to it seem just, against any claim of any other person on the instrument. [CLPAAI 1856, s.90]

Section 247 provides that the death or bankruptcy of a party does not necessarily cause civil proceedings to end (abate), provided that the cause of action otherwise survives. [CLPAAI 1853, ss.155-162; CCOIA 1877, s.64]

Section 248 provides that statutory rules of court which provide for the making of an offer (tender) of amends in civil proceedings (other than civil proceedings for the tort of

defamation) in accordance with *section 107(3)(b)* of the Bill may require that to be permitted to make a tender of amends, a respondent must, where appropriate: (a) confirm that he or she disclaims any interest in any land or goods of the applicant to which the proceedings relate and acknowledges the applicant's interest in the land or goods in question; (b) confirm that any interference by the respondent with any interest in any land or goods of the applicant was not intended to cause loss or damage to the applicant; (c) offer to communicate any such acknowledgement to any third party; (d) offer a specified amount of compensation, offer another specified remedy or offer other specified action by way of amends, or (e) offer to pay the applicant's legal costs of the proceedings to date. [TA 1634, s.16]

Part 4, Chapter 8 (sections 249 to 252) of the Bill deals with appearances in Court. This includes how a judge or court is to be addressed, who (in addition to the parties involved in proceedings) has a right to appear and address a court on behalf of a party, and court attire.

Section 249 provides that, when conducting judicial business, judges are to be addressed in the manner provided by the statutory rules of court. The current statutory rules of court provide that a judge or court should be addressed as "judge" or "the Court." Older forms of address, such as "My Lord," are prohibited. [CJA 1924, ss. 10, 38]

Section 250 provides that the following persons have a right, without application for the permission of the Court for that purpose, to appear and address the Court in proceedings on behalf of a party: (a) the party in person; (b) a practising barrister instructed by a solicitor on record for a party; (c) a practising solicitor on record for a party (including such a solicitor who is a member of a firm of solicitors or who is employed by a firm or by another solicitor); (d) a visiting lawyer, having the same right of audience as a lawyer established in the State by virtue of Regulation 3 of the *European Communities (Freedom to Provide Services) (Lawyers) Regulations 1979* (S.I. No. 58 of 1979), who is acting for a party; (e) a registered lawyer, having the same right of audience as a practising barrister or a solicitor qualified to practise by virtue of Regulation 10 of the *European Communities (Lawyers' Establishment) Regulations 2003* (S.I. No. 732 of 2003), who is acting for a party; (f) in summary criminal proceedings at the suit of the Director of Public Prosecutions in respect of an offence, the Director of Public Prosecutions or a member of the Garda Síochána appearing on behalf of or prosecuting in the name of the Director of Public Prosecutions; (g) in proceedings in the District Court to which the Revenue Commissioners are a party or an officer of the Revenue Commissioners is a party, an authorised officer of the Revenue Commissioners; and (h) any other person whom rules of court prescribe shall have such a right in any case. *Section 250* also provides that in small claims proceedings in the District Court (as provided for in *section 269* of the Bill): (a) a company or other body corporate (such as a local authority or State body) may be represented by a director, member or employee duly authorised in that regard; and (b) a club or society may be represented by a trustee, member or employee duly authorised in that regard. *Section 250* also provides that nothing in the section limits the power of a Court to, for example, authorise a person to address the Court in proceedings on behalf of a party where necessary in the interests of justice. This implements the recommendation in paragraph 2.100 of the Report. [CCOIA 1877, s.68 (modified); CA 1971, s.17]

Section 251 deals with court attire. It provides that, in general (except in family law cases) court attire for judges is to be set out in the statutory rules of court. The statutory provisions concerning court attire for judges date back to the *Courts Act 1476*, one of the 192 Acts proposed for repeal by this Bill. *Section 251* also provides that the statutory rules of court may (except in family cases) set out the form of attire to be worn by other persons when appearing in a professional capacity before a court. The section then reiterates the existing requirement that judges, barristers and solicitors are prohibited from wearing wigs or gowns

when dealing with family law cases. *Section 251* also reiterates a provision that has been in place since 1995, that neither barristers nor solicitors are required to wear any wig of a ceremonial type when appearing in any Court. [JSFLRA 1989, ss.33, 45; CCOA 1995, s.49]

Section 252 provides that family proceedings in the courts must be as informal as is practicable and consistent with the administration of justice. [JSFLRA 1989, ss.33, 45]

Part 4, Chapter 9 (sections 253 to 256) of the Bill deals with court fees and funds under Court control. This also includes updating the provisions of the *Police Property Act 1897* on the disposal of certain property in the possession of the Garda Síochána.

Section 253 reiterates the current arrangements under which the Minister for Justice and Law Reform may, with the consent of the Minister for Finance, make a statutory Court Fees Order, which may provide for: (a) fees to be charged in respect of any business in any court; (b) annual fees to be charged in respect of the total value or income of any fund in Court, including a fund which is the property of a person under the personal care and protection of a Court (currently called a ward of Court. The section also provides that a Court Fees Order may prescribe general or special exemptions from the payment of Court fees. The Courts Service collects court fees and they are then paid into the Exchequer in the manner the Minister for Finance directs. The section also provides that where a Court, having regard to the circumstances of a person, is satisfied that the person's right of access to the Court would be unreasonably inhibited by the requirement to pay a Court fee, the Court may order that a fee paid by the person be remitted, or that the person be exempt from the payment of a Court fee that would otherwise be payable by him or her. [PSCIA 1858, s.19; LRIA 1871, ss.109-114; CJA 1936, ss.65, 66; CLMPA 2008, s. 9]

Section 254 is, in part, new in a Courts Bill and provides for payments into and out of Court and by court officers. It provides that a payment or lodgment of money in or into a Court may be made by payment to the Courts Service for the account of the Court Funds Office, accompanied by details of the proceedings or matter to which the payment relates. A receipt for any such payment or lodgment given by a member of the staff of the Courts Service assigned to the Court Funds Office is valid for all purposes. [COCAI 1877, s.39]

Section 255 deals with the deposit of property (other than land) and provides that where a person has custody or possession of any property (other than land) on behalf of another person, and is required to, or wishes to, transfer custody or possession of the property to the person entitled to it but is unable, having made reasonable inquiries, to establish the identity or whereabouts of the person so entitled, he or she may, in accordance with statutory rules of court, pay or deliver the property concerned into the appropriate Court. The section also deals with the payment out of the property after a court hearing. [PDA 1846; COCAI 1877, s.38; PDBA 1892; LACA 1896]

Section 256 deals the disposal of certain property in the possession of an Garda Síochána, currently dealt with in the *Police Property Act 1897*. It provides that where property has come into the possession of an Garda Síochána in connection with any criminal proceedings or investigation, the District Court may, on the application either of a member of an Garda Síochána or of a claimant, make an order for the delivery of the property to the person who appears to the Court to be the owner of that property or, if the owner cannot be ascertained, make such order with respect to the property as the Court considers appropriate. [PPA 1897, s.1; CJA 1951, s.25]

Part 4, Chapter 10 (sections 257 to 269) of the Bill, which is linked to *Schedule 13*, deals with the process for making statutory rules of court, including a number of general principles and factors that are to be taken into consideration when rules of court are being prepared.

Section 257 defines terms used in *Part 4, Chapter 10*.

Section 258 provides that the jurisdiction exercisable by the courts (and by judges with specific powers, such as the Chief Justice and the President of the High Court) is to be carried out in the manner specified in the relevant statutory rules of court. The section also provides that where there is no specific statutory rule of court to deal with an aspect of the jurisdiction of the courts, it is to be carried out as closely as possible as it might have been immediately before the commencement of this Bill. [SCJAI 1877, s.26; C(SP)A 1961, ss.14, 27, 34]

Section 259 is new in a Courts Bill and sets out a number of general principles and factors that are to be taken into consideration when statutory rules of court are being prepared. This implements the recommendation in paragraph 2.104 of the Report, which reflects similar recommendations made in 2003 in the 28th Report of the Committee on Court Practice and Procedure, *Rules of Court Committees*. *Section 259* provides that, in preparing rules of court, each Rules of Court Committee must have regard to the following considerations: (a) rules of court should provide simple and efficient Court procedures, consistently with the requirements of justice; (b) rules of court should use plain language, and differences among the procedures and terms used in different Courts for similar matters should be avoided if possible; (c) rules of court should encourage the use of alternative dispute resolution procedures, where appropriate, and should encourage expeditious conduct of proceedings and discourage and, where appropriate and just, penalise delay by a party, so as to help minimise the cost of litigation; (d) rules of court should provide for and support, where possible, the development of case management, in accordance with the case conduct principles specified in *section 75* of the Bill and (e) where practicable, rules of court should regularly be reviewed. The section also reiterates current arrangements under which the Rules of Court Committees consult with each other.

Section 260 is new in a Courts Bill and provides that the rules of court: (a) may specify conditions to be met and procedures to be followed before applying for particular orders, or before particular orders are made; (b) may regulate how applications for particular orders are conducted; and (c) must support the conduct of civil proceedings in accordance with the case conduct principles specified in *section 81* of the Bill.

Section 261 is new in a Courts Bill and provides that the rules of court may modify the rules of evidence as they apply to proceedings, or may prescribe new rules concerning the manner in which evidence may be adduced.

Section 262 is new in a Courts Bill and provides a clear statutory basis for the making of what have traditionally been called Practice Directions. Practice directions have often been used to provide guidance on a specific matter of court procedure to complement the statutory rules of court, for example, by specifying the precise arrangements for case management in the Commercial Law List of the High Court. They have also been used to put in place interim procedural arrangements pending the making of rules of court. *Section 262* provides that the President of a Court may issue a Practice Direction on any matter of practice or procedure in that Court, provided that any such direction is not inconsistent with any rules of court. It also reiterates current arrangements under which Practice Directions are published by the Courts Service, usually on its website, www.courts.ie.

Section 263 is new in a Courts Bill and provides that a Rules of Court Committee may approve, and may authorise publication as approved of, forms of: (a) applications which may

be made only by a public authority, or only by a member of the Garda Síochána, or (b) Court instruments, which may be used in proceedings in a Court in which the rules of court made by that Committee apply and which may, but are not required to, be included in those rules of court. This section would mean that the precise forms of court orders and warrants, which currently must be included in the statutory rules of court (the *District Court Rules 1997* currently contain almost 1,000 forms), could be published separately, for example, on the Courts Service website, www.courts.ie. It is common in many other settings that such forms are not contained in legislation but are published by the relevant responsible body, such as the forms for reporting accidents and dangerous occurrences at work to the Health and Safety Authority under the *Safety, Health and Welfare at Work Act 2005*.

Section 264 provides for the continuation of the existing Superior Courts Rules Committee, which is responsible for preparing the statutory rules of court for the Supreme Court, the Court of Criminal Appeal, the Courts-Martial Appeal Court and the High Court, currently set out in the *Rules of the Superior Courts 1986* (SI No.15 of 1986). *Schedule 13, Part 1* of the Bill contains the detailed provisions concerning the membership and proceedings of the Committee. [CJA 1936, s.67; CLMPA 2008, s.20]

Section 265 provides for the detailed functions and powers of the Superior Court Rules Committee, notably regulating pleading, practice and procedure generally in civil and criminal proceedings, including appeals from the Circuit Court, the District Court and statutory bodies. [CJA 1924, s.36; CCOA 1995, s.45]

Section 266 provides for the continuation of the existing Circuit Court Rules Committee, which is responsible for preparing the statutory rules of court for the Circuit Court, currently set out in the *Circuit Court Rules 2001* (SI No.510 of 2001). *Schedule 13, Part 2* of the Bill contains the detailed provisions concerning the membership and proceedings of the Committee. [CJA 1936, s.69; CLMPA 2008, s.21]

Section 267 provides for the detailed functions and powers of the Circuit Court Rules Committee, notably regulating pleading, practice and procedure generally in civil and criminal proceedings, including appeals from the District Court and statutory bodies. [CJA 1924, s.66; CCOA 1995, s.45]

Section 268 provides for the continuation of the existing District Court Rules Committee, which is responsible for preparing the statutory rules of court for the District Court, currently set out in the *District Court Rules 1997* (SI No.93 of 1997). *Schedule 13, Part 3* of the Bill contains the detailed provisions concerning the membership and proceedings of the Committee. [CJA 1936, s.71; C(SP)A 1961, s.44; CLMPA 2008, s.22]

Section 269 provides for the detailed functions and powers of the District Court Rules Committee, notably regulating pleading, practice and procedure generally in civil and criminal proceedings, including appeals from statutory bodies. [CJA 1924, s.91; CJA 1936, s.72]

Part 4, Chapter 11 (sections 270 to 276) of the Bill deals with offences against the administration of justice (such as contempt of court and perverting the course of justice) and civil liability for obstructing or interfering with the courts. This also implements the recommendation in paragraph 2.108 of the Report.

Section 270 provides for the continuation of existing offences against the administration of justice. These include contempt of court, perverting the course of justice (which may involve fabricating or disposing of evidence, intimidating or threatening a witness or juror, or intimidating or threatening a judge) and perjury. *Section 270* also provides that any person

who wilfully and corruptly takes an oath or makes an affidavit is guilty of the offence of perjury. [CTMIA 1845, s.5; CBCIA 1851, s.157; CCLOIA 1867, s.17]

Section 271 provides that it is an offence to imitate Court documents in order to deceive another person. It also provides that a class C fine could be imposed on conviction for this offence (currently, under section 3 of the *Fines Act 2010*, this means a fine not exceeding €2,500). [CJA 1936, s.81]

Section 272 provides that it is an offence to demand or receive payment for execution or non-execution of a court order (other than where the payment is authorised by law). It also provides that a class A fine could be imposed on conviction for this offence (currently, under section 3 of the *Fines Act 2010*, this means a fine not exceeding €5,000) and that, on conviction for this offence, a person may be disqualified from being authorised to execute any warrant or execution order issued by a Court. [SA 1707]

Section 273 provides that, without prejudice to the law of contempt of court, a person who disobeys custody or access orders made by the District Court under the *Guardianship of Infants Act 1964* is guilty of an offence and is liable on summary conviction to a class C fine (currently, under section 3 of the *Fines Act 2010*, this means a fine not exceeding €2,500) and/or a maximum of 6 months imprisonment. [C(2)A 1986, s.5]

Section 274 provides that any person who resists, obstructs, or impedes a sheriff, execution officer, or other person in the lawful execution of an execution order or resists, obstructs, or impedes a member of the *Gárda Síochána* in the lawful execution of a personal enforcement order or other order of a Court for the arrest, attachment of the person, or committal of a person is guilty of an offence and is liable on summary conviction to a class C fine (currently, under section 3 of the *Fines Act 2010*, this means a fine not exceeding €2,500) and/or a maximum of 12 months imprisonment. [ECOIA 1926, s.24]

Section 275 provides that any person who rescues, removes, or conceals any seized goods which have been taken in execution of an execution order is guilty of an offence and is liable on summary conviction to a class C fine (currently, under section 3 of the *Fines Act 2010*, this means a fine not exceeding €2,500) and/or a maximum of 12 months imprisonment. It also provides that whenever a sheriff enters on and takes possession of land in execution of an execution order of possession and delivers possession of the land to the judgment creditor, a person who, within one month after delivery by the sheriff of possession, without the consent of the owner, enters on that land, and takes possession of that land, is guilty of an offence and is liable on summary conviction to a class C fine (currently, under section 3 of the *Fines Act 2010*, this means a fine not exceeding €2,500) and/or a maximum of 6 months imprisonment. [ECOIA 1926, s.25]

Section 276 provides for the continuation of civil liability for various interferences with the administration of justice. This includes civil liability towards any person who has suffered financial loss arising from: perjury (see *section 270* of the Bill); embracery (attempting to influence a juror corruptly to give his or her verdict in favour of one side or the other); malicious prosecution (where a criminal prosecution was taken without reasonable and probable cause and was motivated by malice); maintenance or champerty (maintenance is the support of litigation by a non-party without just cause, while champerty is an aggravated form of maintenance because it involves the support of litigation by a non-party in return for a share of the proceeds). [MEA 1634; PA 1586]

EXPLANATORY NOTES TO PART 5 OF THE BILL: RIGHTS OF APPEAL, APPEALS AND REFERENCES OF QUESTIONS OF LAW

Part 5 of the Bill, Rights of Appeal, Appeals and References of Questions of Law (sections 277 to 326), describes the different ways in which decisions of a court may be appealed to a higher court. This follows the same sequence as in *Part 2*, beginning with appeals to the Supreme Court. This is followed by the process for appeals to the Court of Criminal Appeal, the Courts-Martial Appeal Court, to the High Court, and to the Circuit Court. It also deals with appeals to the District Court from statutory bodies other than the courts, such as from regulatory bodies.

Section 277 sets out the main contents of the 7 Chapters in *Part 5* of the Bill.

Part 5, Chapter 1 (sections 278 to 284) of the Bill deals with general rules concerning appeals.

Section 278 defines the term a “leave appeal” used in *Part 5, Chapter 1* as including an appeal against a refusal of leave, an appeal against a condition subject to which leave is given, and an appeal against an extension of, or refusal to extend, the time permitted for an application for leave to appeal.

Section 279 is new in a Courts Bill and provides for a single process for referring questions of law: (a) to the Supreme Court from the Circuit Court and (b) to the High Court from the District Court. This single process replaces a number of existing provisions, in pre-1922 and post-1922 Acts, which describe that process by using a phrase such as “appeal on a point of law” or “case stated.” The existing provisions describe the basis for referring questions of law to a higher court in different ways, and this has given rise to unnecessary litigation as to whether the appropriate appeal process has been used. *Section 279*, which implements the recommendation in paragraph 2.118 of the Report, is intended to avoid such problems in the future.

Section 279 provides that an appeal on a point of law may be brought: (a) to the Supreme Court from the Circuit Court and (b) to the High Court from the District Court on the following conditions. In either case, the referring Court (the Circuit Court or the District Court) may do so only: (a) following a request, which the referring Court does not consider frivolous or vexatious, by a party to proceedings before the referring Court, or (b) of the referring Court’s own motion, but with the agreement of the parties to the proceedings before the referring Court, and (c) where the referring Court is satisfied that the decision of the question of law concerned is necessary to the decision of the proceedings before the referring Court. *Section 279* also provides that the referring Court must, before referring a question of law under the section, hear all of the evidence offered which relates to the question of law at issue in the proceedings, and must make findings concerning such facts relative to that question if law. The section also provides that the referring Court may adjourn the proceedings before itself in which a reference has been made pending the outcome of the decision on the question of law referred to the Supreme Court or High Court. It also provides that, where the reference is from the District Court to the High Court, an appeal lies, but only with the permission (leave) of the High Court, to the Supreme Court. [SJA 1857, s.2; CJA 1924, s.86; C(SP)A 1961, ss.51, 52]

Section 280 is new in a Courts Bill and provides for referring a question of EU law to the Court of Justice of the European Union to give a preliminary ruling under Article 19(3)(b) of the Treaty on European Union or Article 267 of the Treaty on the Functioning of the European Union.

Section 281 is new in a Courts Bill and provides that where permission (leave) is required to appeal in civil proceedings, the Court giving leave to appeal is only to do so where it is

satisfied that there are substantial grounds justifying an appeal or that there is a reasonable prospect that an appeal will be allowed, in whole or in part. The court may attach conditions, such as requiring security for costs of the appeal (that is, lodging money into court to meet the costs incurred by the other party if the appeal is dismissed) or paying a specified part of any damages (compensation) awarded in the original case. The section also provides that an appeal can be brought against a refusal of leave.

Section 281(5) also provides that, unless otherwise provided and subject to *section 281(6)*, an appeal in civil proceedings is to be heard and decided on: (a) the Court's record (or any other record accepted by the appellate Court) of the proceedings which led to the decision which is appealed, and (b) any written submissions of the parties to the appellate Court. *Section 281(6)* provides that the appellate Court (whether this is the Supreme Court, the High Court or the Circuit Court when each of them operates as an appeal court in civil cases) may hear evidence (including new evidence) or re-hear evidence, where that Court considers: (a) that the record of the proceedings appealed from is unsatisfactory in a material respect, or (b) that it necessary in the interests of justice to do so.

Section 282 reiterates existing provisions concerning aspects of appeals in civil proceedings. These include that: an appeal in civil proceedings may be limited to a specified part of the decision which is the subject of the appeal, and that where there are several applicants or several respondents, any applicant or any respondent may appeal although any other applicant or respondent does not appeal. [CBCIA 1851, ss.134-137; CJA 1936, s.40]

Section 283 provides that no appeal lies from an order made by consent of all the parties unless by leave of the Court or judge who made the order. [SCJIA 1877, s.52]

Section 284 provides that, in the context of appeals to the Supreme Court, the Court of Criminal Appeal or the Courts-Martial Appeal Court, directions that are incidental to a civil or criminal case, or urgent orders, may be made by a single judge of any of those courts rather than requiring a decision of all the judges involved. [SCJIA 1877, s.56]

Part 5, Chapter 2 (sections 285 to 294) of the Bill deals with appeals to the Supreme Court.

Section 285 defines the terms used in *Part 5, Chapter 2*.

Section 286 provides that, in general (and subject to exceptions in specific legislation where leave of the High Court is required), an appeal lies from the High Court to the Supreme Court in civil proceedings. It also provides that, to avoid any doubt, any requirement in legislation concerning leave of the High Court to appeal to the Supreme Court does not apply to a decision of the High Court in so far as it relates to the validity of any law having regard to the provisions of the Constitution. [CJA 1924, s.26]

Section 287 provides that, in the case of an appeal to the Supreme Court in a civil case heard with a jury (for example, a defamation case), the Supreme Court may, in addition to any other order that it deems appropriate to make: (a) order a new trial, or (b) set aside the verdict, findings, and decision appealed against and make such decision as the Supreme Court considers proper. In that decision, the Supreme Court may substitute for any amount of damages awarded to a party by the High Court the amount it considers appropriate. [CJA 1924, s.96 (modified); Defamation Act 2009, s.13]

Section 288 provides that where a person tried on indictment is acquitted (whether in respect of the whole or part of the indictment) the Director of Public Prosecutions may, without prejudice to the verdict or decision in favour of the accused person, refer a question of law arising during the trial to the Supreme Court for determination. This "without prejudice"

appeal does not affect the acquittal verdict (by contrast, the “with prejudice” appeal referred to in *sections 291 and 301-303*, below, can affect an acquittal). [CPA 1967, s.34; CJA 2006, s.21]

Section 289 provides that where a person tried on indictment has been convicted and has appealed to the Court of Criminal Appeal, he or she may only bring a further appeal to the Supreme Court if the Court of Criminal Appeal or the Director of Public Prosecutions certifies that the decision involves a point of law of exceptional public importance and that it is desirable in the public interest that the person should take an appeal to the Supreme Court. [CJA 1924, s.29; CJA 1993, s.3; CJA 2006, s.22; CJA 2007, s.59; CPA 2010, s.32]

Section 290 provides that where a person who has been convicted by a military court and has appealed to the Courts-Martial Appeal Court, he or she may only bring a further appeal to the Supreme Court if the Courts-Martial Appeal Court or the Director of Public Prosecutions certifies that the decision involves a point of law of exceptional public importance and that it is desirable in the public interest that the person should take an appeal to the Supreme Court. [CMAA 1983, s.14 (modified)]

Section 291 provides that where (a) a person has been acquitted on indictment, or (b) a person’s conviction on indictment is quashed on appeal by the Court of Criminal Appeal and that Court makes no order for the re-trial of the person under *section 303*, below, the Director of Public Prosecutions may appeal to the Supreme Court, subject to the conditions set out in the section. These are that: (a) a ruling was made by a court during the course of a trial or, as the case may be, the hearing of an appeal to the Court of Criminal Appeal which erroneously excluded compelling evidence, or (b) a direction was given by a court during the course of a trial on indictment directing the jury in the trial to find the person not guilty where (i) the direction was wrong in law, and (ii) the evidence adduced in the proceedings was evidence upon which a jury might reasonably be satisfied beyond a reasonable doubt of the person’s guilt in respect of the offence concerned. *Section 291* also provides that the Supreme Court, on hearing an appeal under this section, may (a) quash the acquittal or reverse the decision of the Court of Criminal Appeal, as the case may be, and order the person to be re-tried for the offence concerned if it is satisfied that (i) the requirements laid down in the section are met, and (ii) that, having regard to the matters referred to in the section it is, in all the circumstances, in the interests of justice to do so. Alternatively, the Supreme Court may affirm the acquittal or the decision of the Court of Criminal Appeal, as the case may be. [CPA 2010, ss.23, 24]

Section 292 provides that an appeal lies to the Supreme Court by the acquitted person or the Director of Public Prosecutions from a decision of the Court of Criminal Appeal under *section 301* or *section 302*, below, if the Court of Criminal Appeal or the Director of Public Prosecutions certifies that the decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court. [CPA 2010, s.14]

Section 293 provides that no appeal lies to the Supreme Court from a decision of the Central Criminal Court (the name of the High Court when it deals with trials on indictment), other than an appeal under *section 291* or a reference under *section 288*. It also provides that, to avoid any doubt, this does not apply to a decision of the Central Criminal Court in so far as it relates to the validity of any law having regard to the provisions of the Constitution. [CPA 1993, s.11; CCOA 1995, s.44]

Section 294 deals with the provision of legal aid in appeals to the Supreme Court where *sections 288 to 292* apply. [CJA 1924, s.29(7)-(9); CPA 1967, s.34(6)-(8); CJA 2006, s.21, 22; CPA 2010, ss.14(3)-(5), 23(8)-(10)]

Section 295 provides that, where the conditions in *section 279* of the Bill are met (which deals with referral of a point of law), the Circuit Court may, in accordance with *section 279*, refer to the Supreme Court a question of law the decision of which is necessary to the decision of the Circuit Court proceedings. This includes a case where the Circuit Court has heard an appeal from a decision of an adjudicating tribunal such as, under the *Taxes Consolidation Act 1997*, an appeal from the Appeal Commissioners. The section also provides that where an enactment (other than this Bill) so permits, a judge of the High Court may refer of a question of law to the Supreme Court. [CJA 1947, s.16]

Part 5, Chapter 3 (sections 296 to 304) of the Bill deals with appeals and applications to the Court of Criminal Appeal.

Section 296 defines the terms used in *Part 5, Chapter 3*.

Section 297 provides that an appeal under this Bill lies to the Court of Criminal Appeal by: (a) a person convicted on indictment before the Central Criminal Court, the Circuit Court or a Special Criminal Court, or (b) a person sent forward by the District Court to the Central Criminal Court (High Court) or the Circuit Criminal Court for sentence under *section 13(2)* of the *Criminal Procedure Act 1967* or a person who has pleaded guilty to a charge before or a Special Criminal Court, who wishes to appeal against the severity of the sentence imposed. [CJA 1924, ss.31, 32; CPAA 1973, s.1; CPA 2010, s.31]

Section 298 provides that where a person tried on indictment is acquitted the Director of Public Prosecutions may appeal to the Court of Criminal Appeal against an order for costs made by the trial Court against the Director in favour of the accused person. [CJA 2006, s.24]

Section 299 provides that, to avoid any doubt, the appeal arrangements in the *Criminal Law (Insanity) Act 2006* are without prejudice to the appeal arrangements in this Chapter. [CL(I)A 2006, s.8]

Section 300 provides that an application to the Court of Criminal Appeal may be made by a person who has been convicted of an offence on indictment that an alleged miscarriage of justice has occurred. This is on the basis that the person alleges that a new or newly-discovered fact shows that there has been a miscarriage of justice in relation to the conviction or that any sentence imposed is excessive. The Court may deal with the case as if it was an appeal and may make any order it would make on that basis, including quashing the conviction or reviewing the sentence. [CPA 1993, s.2]

Section 301 provides that the Director of Public Prosecutions may apply to the Court of Criminal Appeal for a retrial after a person has been acquitted having been tried on indictment in respect of the offences specified in *Schedule 1* of the *Criminal Procedure Act 2010*. This may only occur where it appears to the Director: (a) that there is new and compelling evidence against the person acquitted and (b) that it is in the public interest to do so. [CPA 2010, s.8]

Section 302 provides that the Director of Public Prosecutions may apply to the Court of Criminal Appeal for a retrial after a person has been acquitted having been tried on indictment in respect of any offence and where the acquittal is tainted because the acquitted person (or another person) has been convicted of an offence against the administration of justice relating to the proceedings which resulted in the acquittal. This may only occur where it appears to the Director: (a) that it is probable that the commission of the offence against the administration of justice concerned affected the result of the proceedings concerned, and (b) that it is in the public interest to do so. [CPA 2010, s.9]

Section 303 sets out the conditions under which the Court of Criminal Appeal may make a re-trial order after it has heard appeals under *section 301* or *section 302*. The key factor is that the Court must be satisfied that it is, in all the circumstances, in the interests of justice to make a re-trial order. In determining whether to make a re-trial order, the Court must have regard to: (a) whether or not it is likely that any re-trial could be conducted fairly, (b) the amount of time that has passed since the act or omission that gave rise to the indictment, (c) the interests of any victim of the offence concerned, and (d) any other matter which the Court considers relevant to the application. [CPA 2010, s.10]

Section 304 provides that, in general, an appeal is to be heard and decided by the Court of Criminal Appeal on the Court's record of the trial, which means: (a) where available, a transcript of the proceedings at the trial, certified to be a transcript of those proceedings by the judge before whom the case was tried, or (b) any other record of the proceedings at the trial, certified to be such record of those proceedings by the judge before whom the case was tried. The section also reiterates the current position that the Court may hear new or additional evidence, and may call for the production of any other available record of the proceedings at the trial. On the hearing of an appeal against conviction the Court may: (a) affirm the conviction (and may do so, notwithstanding that it is of opinion that a point raised in the appeal might be decided in favour of the appellant, if it considers that no miscarriage of justice has actually occurred), or (b) quash the conviction and make no further order, or (c) quash the conviction and order the appellant to be re-tried for the offence, or (d) quash the conviction and, if it appears to the Court that the appellant could have been found guilty of some other offence and that the jury (or, as the case may be, the Court of trial) must have been satisfied of facts which proved him or her guilty of the other offence (i) substitute for the verdict a verdict of guilty of the other offence, and (ii) impose such sentence in substitution for the sentence imposed at the trial as may be authorised by law for the other offence, not being a sentence of greater severity. On the hearing of an appeal against sentence, the Court may quash the sentence and in place of it impose such sentence or make such order as it considers appropriate, being a sentence or order which could have been imposed on the convicted person for the offence at the Court of trial. [CJA 1924, s.33; CJA 1928, s.7 (modified); CPA 1993, ss.3, 5; CJMPA 1997, s.7 (modified)]

Part 5, Chapter 4 (sections 305 to 310) of the Bill deals with appeals, applications and references to the Courts-Martial Appeal Court.

Section 305 defines the terms used in *Part 5, Chapter 4*.

Section 306 provides that a person convicted by a court-martial under the *Defence Act 1954* (as amended) may appeal to the Courts-Martial Appeal Court against the finding or sentence of the court-martial or against both the finding and the sentence. [CMAA 1983, s.13]

Section 307 is new in a Courts Bill and provides that, to avoid any doubt, the appeal arrangements in *sections 19A-C* of the *Defence Act 1954* (as amended) (appeal against special verdict; order or of committal or refusal of such order; and decision that the accused is unfit to take his or her trial) are without prejudice to the appeal arrangements in this Chapter.

Section 308 (which mirrors *section 300*) provides that an application to the Courts-Martial Appeal Court may be made by a person who has been convicted by a limited or general court-martial of an offence that an alleged miscarriage of justice has occurred. This is on the basis that the person alleges that a new or newly-discovered fact shows that there has been a miscarriage of justice in relation to the conviction or that any sentence imposed is excessive. The Court may deal with the case as if it was an appeal and may make any order

it would make on that basis, including quashing the conviction or reviewing the sentence. [CPA 1993, s.2, as applied by s.6 of 1993 Act]

Section 309 (which mirrors *section 304*) provides that, in general, an appeal is to be heard and decided by the Courts-Martial Appeal Court on the Court's record of the trial, which means, in general, the record of the proceedings at the trial by court-martial made by the Court-Martial Administrator, certified to be such record of those proceedings by the military judge before whom the case was tried. The section also reiterates the current position that the Court may hear new or additional evidence, and may call for the production of any other available record of the proceedings at the trial by court-martial. On the hearing of an appeal against conviction the Court may: (a) affirm the conviction (and may do so, notwithstanding that it is of opinion that a point raised in the appeal might be decided in favour of the appellant, if it considers that no miscarriage of justice has actually occurred), or (b) quash the conviction and make no further order, or (c) quash the conviction and order the appellant to be re-tried for the offence, or (d) quash the conviction and, if it appears to the Court that the appellant could have been found guilty of some other offence and that the court-martial must have been satisfied of facts which proved him or her guilty of the other offence (i) substitute for the verdict a verdict of guilty of the other offence, and (ii) impose such sentence in substitution for the sentence imposed at the trial as may be authorised by law for the other offence, not being a sentence of greater severity. On the hearing of an appeal against sentence, the Court may quash the sentence and in place of it impose such sentence or make such order as it considers appropriate, being a sentence or order which could have been imposed on the convicted person for the offence at the court-martial. [CJA 1924, s.33; CJMPA 1997, s.7 (modified as above and applied to CMAC); CMAA 1983, ss.15-17; CPA 1993, ss.3, 5, as applied to CMAC by s.6 of 1993 Act]

Section 310 is new in a Courts Bill and provides that *section 279*, which deals with the reference of a point of law to a higher court, applies to a reference by a summary court-martial to the Courts-Martial Appeal Court.

Part 5, Chapter 5 (sections 311 to 321) of the Bill deals with appeals and references of question of law to the High Court.

Section 311 provides that, in general, an appeal lies to the High Court from a decision of the Master of the High Court. [CCOA 1995, s.25(5)]

Section 312 is new in a Courts Bill and provides that, in general, an appeal lies to the High Court from a decision of the Taxing Master of the High Court.

Section 313 provides that there is no right of appeal to the High Court from a decision of the Circuit Court in a number of specified instances. These include a decision of the Circuit Court: (a) which is final and conclusive by virtue of an Act of the Oireachtas; (b) on a petition under Schedule 6 to the *Local Government Act 1925* (compulsory purchase orders cases); (c) on an appeal to the Circuit Court under an enactment relating to a tax or duty under the care and management of the Revenue Commissioners; (d) on an appeal to the Circuit Court under any enactment concerning valuation; (e) if, before the decision of the Circuit Court is given, all of the parties to the proceedings agree, in writing signed by them, that the Circuit Court's decision shall be final. [CJA 1936, s.31; C(SP)A 1961, s.22(15)(a)]

Section 314 is new in a Courts Bill and provides that, subject to the conditions in *section 279*, the Circuit Court may refer a question of law to the High Court in accordance with *section 295(2)* in proceedings mentioned in examples (c) or (d) of *section 313*, above.

Section 315 provides that, except for the exclusions in *section 313*, an appeal lies to the High Court from every decision of the Circuit Court in civil proceedings, and involves a re-hearing of the case (this mirrors *section 324* concerning appeals to the Circuit Court from the District Court in civil proceedings). This also implements the recommendation in paragraph 2.114 of the Report. [CJA 1936, ss.37, 38]

Section 316 deals with the venue for appeals to the High Court from the Circuit Court in civil proceedings. It provides that an appeal under *section 315*, or a leave appeal, is to be heard by the High Court sitting in the High Court venue designated by the President of the High Court in accordance with *section 158* and *Schedule 11* or, where no such designation applies to the appeal or leave appeal, by the High Court sitting in Dublin. This modifies the existing position under which appeals to the High Court from the Circuit Court in civil cases are heard by the High Court on Circuit. *Section 316* allows the President of the High Court a degree of flexibility, permitting a decision to be made as to a venue for such appeals by reference to the volume of cases involved, rather than being required, as at present, to send a High Court judge on Circuit where the number of appeals involved might not justify this inefficient use of resources. This also implements the recommendation in paragraph 2.125 of the Report. [CJA 1936, s.38; CCOA 1995, s.43 (modified)]

Section 317 provides that the decision of the High Court on an appeal from the Circuit Court under this Chapter of the Bill or on a leave appeal from the Circuit Court is final and conclusive and not appealable. [CJA 1936, s.39]

Section 318 is new in a Courts Bill and provides that appeals to the High Court from adjudicating tribunals, such as from the Controller of Patents, Designs and Trade Marks, are to be heard and decided in accordance with the provisions of any enactment under which the right of appeal arises.

Section 319 provides that, where the conditions in *section 279* of the Bill are met (which deals with referral of a point of law), the District Court may, in accordance with *section 279*, refer to the High Court a question of law the decision of which is necessary to the decision of the District Court proceedings. It also provides that an appeal lies, by leave of the High Court, to the Supreme Court from a decision of the High Court on such a question of law referred to the High Court. [C(SP)A 1961, ss.51, 52]

Section 320 is new in a Courts Bill and provides that, to avoid any doubt, the provisions in this Bill concerning referral of a point of law will replace the case stated procedure from the District Court to the High Court under the *Summary Jurisdiction Act 1857*.

Section 321 is new in a Courts Bill and provides that a statutory adjudicating tribunal may, if empowered to do so, refer any question of law arising in proceedings before that adjudicating tribunal to the High Court provided that the conditions in *section 279* are met. It also provides that an appeal lies, by leave of the High Court, to the Supreme Court from a decision of the High Court on such a question of law referred to the High Court.

Part 5, Chapter 6 (sections 322 to 325) of the Bill deals with appeals to the Circuit Court.

Section 322 provides that, in general, an appeal lies to the Circuit Court from a decision of a County Registrar. [CCOA 1995, Schedule 2, para 8]

Section 323 deals with appeals to the Circuit Court from the District Court in criminal proceedings. It provides that an appeal from a decision of a judge of the District Court in criminal proceedings may be brought to the Circuit Court, by the person against whom the order is made, against any order: (a) for the payment of a fine or penal or other sum; (b) for

the doing of anything at any expense; (c) finding that there has been a breach of a Court bond, authorising the enforcement on a Court bond, ordering the forfeiture of any money or security paid into Court on foot of a Court bond or ordering the recovery of any money on foot of a Court bond; (d) for the undergoing of any term of imprisonment or detention, or (e) under section 1(1) of the *Probation of Offenders Act 1907*. It also provides that no appeal lies against an order of the District Court returning for trial or binding to the peace or good behaviour or to both the peace and good behaviour.

Section 323 also reiterates the current position that, in general, an appeal from an order of a judge of the District Court made in criminal proceedings may be brought by a prosecutor only where expressly provided by this Bill or another enactment. An example is the power of the Health and Safety Authority under section 83 of the *Safety, Health and Welfare at Work Act 2005*. While *section 323* of the Bill is, from the defendant's point of view, related to an appeal from the District Court to the Circuit Court, it should be noted that the reference of a point of law from the District Court to the High Court under *section 319* amounts to an appeal on a point of law which is available to both the prosecution and the defence.

Section 323 also reiterates the current position that an appeal to the Circuit Court from the District Court in criminal proceedings involves a full re-hearing, unless the appeal is against sentence only. This also implements the recommendation in paragraph 2.114 of the Report. [CJA 1928, s.18; CJA 1936, s.58; CJA 1953, s.33; C(SP)A 1961, s.50]

Section 324 deals with appeals to the Circuit Court from the District Court in civil proceedings (and mirrors section 315 concerning appeals to the High Court from the Circuit Court in civil proceedings). It provides that, except where otherwise provided by an enactment, an appeal may be brought by any party to civil proceedings from a decision of a judge of the District Court to the Circuit Court. As with *section 317* concerning criminal proceedings, such an appeal involves a re-hearing, and that the decision of the Circuit Court is final and conclusive and not appealable. This also implements the recommendation in paragraph 2.114 of the Report. [CJA 1924, ss.84, 87]

Section 325 is new in a Courts Bill and provides that appeals to the Circuit Court from statutory adjudicating tribunals are to be heard and decided in accordance with the provisions of any enactment under which the right of appeal arises.

Part 5, Chapter 7 (section 326) of the Bill deals with appeals to the District Court.

Section 326 is new in a Courts Bill and provides that appeals to the District Court from statutory adjudicating tribunals are to be heard and decided in accordance with the provisions of any enactment under which the right of appeal arises.

EXPLANATORY NOTES TO PART 6 OF THE BILL: COURT OFFICES AND COURT OFFICERS

Part 6 of the Bill, *Court Offices and Court Officers (sections 327 to 359)*, sets out the general powers and functions of the many court offices and court officers involved in the courts and is linked to *Schedule 14* of the Bill. This Part also implements the recommendation in paragraph 2.133 of the Report. *Schedule 14* sets out the detailed functions, powers and duties of, and supplemental provisions concerning, court officers. *Schedule 14* deals with: the Master of the High Court; the Taxing Masters; the Probate Officer; the Examiner; the Officer in charge of the Court Funds Office and Courts Accountant; the Registrar of Wards of Court; the Official Assignee in Bankruptcy; the Registrar of the Supreme Court; the officer managing the Central Office of the High Court; High Court Registrars; County Registrars; Sheriffs and County Registrars performing the office of sheriff; and District Court Clerks.

Section 327 sets out the main purposes of *Part 6* of the Bill.

Part 6, Chapter 1 (sections 328 to 340) of the Bill deals with the Court Offices attached to the courts.

Section 328 defines the terms used in *Part 6, Chapter 1*. [CCOA 2009, s.13]

Section 329 is new in a Courts Bill and confirms the existing position that the Courts Service, established under the *Courts Service Act 1998*, must maintain each of the court offices mentioned in this Bill.

Section 330 is new in a Courts Bill and confirms the existing position that the business mentioned in this Bill or any other enactment concerning a Court is to be transacted in the appropriate court office mentioned in this Chapter. The details of the specific business to be conducted in the court offices are set out in *Schedule 14, Part 1* of the Bill.

Section 331 is new in a Courts Bill and provides for the establishment of a Court Funds Office. This implements the recommendation in paragraph 2.136 of the Report, and anticipates planned legislation on the establishment of such a Court Funds Office.

Section 332 specifies, by reference to the detail in *Schedule 14, Part 1* of the Bill, the various functions of the Court Offices and Court Officers attached to the Superior Courts, that is, the Supreme Court, the Court of Criminal Appeal, the Courts-Martial Appeal Court and the High Court. *Section 332* provides that the Office of the Registrar of the Supreme Court is to conduct the general business associated with the work of the Supreme Court, the Chief Justice, the Court of Criminal Appeal and the Courts-Martial Appeal Court (see *Schedule 14, Part 1, para 6*). It also provides that the Central Office of the High Court is to conduct the general business associated with the work of the High Court (see *Schedule 14, Part 1, para 7*). *Section 332* also provides for the carrying out of specialised business associated with the High Court by the following other 5 offices: (i) the Taxing Masters' Office (see *Schedule 14, Part 1, para 8*); (ii) the Office of Wards of Court (likely to be renamed the Office of Care and Protection, assuming the Oireachtas enacts the *Mental Capacity Bill 2010*) (see *Schedule 14, Part 1, para 9*); (iii) the Office of the Official Assignee in Bankruptcy (see *Schedule 15, Part 1, para 10*); (iv) the Examiner's Office (see *Schedule 14, Part 1, para 11*); and (v) the Probate Office (see *Schedule 14, Part 1, para 12*). [CBCIA 1851, s.10 (modified); COA 1926, ss.31(3) (modified), 38; C(SP)A 1961, Schedule 8; CCOA 1995, ss.24, 25, 34, 50, Schedule 2, paras 1-6, 10; CCOA 2002, s.22; CLCA 2004, s.44; SI No.112 of 2005, Reg.9; CLMPA 2008, ss.7 (modified), 15]

Section 333 provides that the relevant Circuit Court Office is to conduct the general business associated with its associated Circuit Court, which correspond with one or more local government areas (see *Schedule 14, Part 1, para 14*). The section also provides that the Courts Service may amalgamate two or more local government areas for the purposes of the Circuit Court, in which case only one Circuit Court Office would be needed. Similarly, the Courts Service may divide a local government area into two or more parts for the purposes of the Circuit Court, in which case a separate Circuit Court Office would be needed for each Circuit. [COA 1926, s.34]

Section 334 is new in a Courts Bill and provides that the relevant District Court Office is to conduct the general business associated with its associated District (see *Schedule 14, Part 1, para 15*). As with the provisions in *section 333* for the Circuit Court, *section 334* also provides that the Courts Service may amalgamate or, as the case may be, divide Districts

Section 335 is new in a Courts Bill and provides that nothing in *section 333* or *section 334* prevents, in connection with the Circuit Court or the District Court: (a) particular business being transacted in a court office or by post or by means of electronic communication, or (b) the sharing of premises, facilities and staff by or among court offices, whether in a Combined Court Office (see *sections 337 to 339* of the Bill) or otherwise.

Section 336 provides that District probate registries may be provided for such districts and at such places as the Minister for Justice and Law Reform, following consultation with the Courts Service, appoints by statutory order. [COA 1951, s.5; SA 1965, ss.129, 130]

Section 337 confirms that the Courts Service may establish a Combined Court Office. In doing so, the Courts Service must (a) designate two or more court offices to be constituent court offices of that Combined Court Office, and (b) specify the business of the constituent court offices that is to be transacted in the Combined Court Office. [CCOA 2009, ss.14, 15]

Section 338 provides that the Courts Service must consult with the Chief Justice, President of the High Court, President of the Circuit Court or President of the District Court, where relevant, before establishing a Combined Court Office. [CCOA 2009, s.16]

Section 339 provides that the Government may, by statutory order, provide that specified business of a Special Criminal Court is to be transacted in a Combined Court Office. [CCOA 2009, s.17]

Section 340 provides that where, under *section 337* or *section 339*, the business of a constituent court office is transacted in a Combined Court Office, the Combined Court Office is deemed to be an office of or attached to the constituent Court concerned. [CCOA 2009, s.18]

Part 6, Chapter 2 (sections 341 to 356) of the Bill deals with the Court officers attached to the courts.

Section 341 provides that Court officers attached to the relevant courts are: the Master of the High Court; two Taxing Masters; the Probate Officer; the Official Assignee in Bankruptcy; the Examiner; the officer managing the Central Office; the Officer in charge of the Court Funds Office and Courts Accountant; High Court Registrars; the Registrar of the Supreme Court; the Registrar of Wards of Court; County Registrars; Sheriffs and County Registrars performing the office of sheriff; and District Court Clerks. It also provides that the court officers are subject, in regard to all matters of general administration, to the general directions of the Courts Service, subject to section 9 of the *Courts Service Act 1998* (which is to ensure that any such directions do not affect the independence of the exercise of judicial functions). [C(SP)A 1961, Schedule 8, para 3; CCOA 2009, s.18]

Section 342 is new in a Courts Bill but confirms that the office of sheriff continues to be an office of the State for each local government area. It also provides that a person performing a duty of the office of sheriff, when executing a decision or order of a Court or performing another duty in relation to a Court shall, for that purpose but not otherwise, be subject to the direction of that Court.

Section 343 provides that the court officers and persons assigned to perform the duties of the court officers mentioned in *section 341(3), (4), (5) and (10)* are principal officers of the Court concerned. It also provides that no such officer may be removed from his or her office without the concurrence of the Chief Justice and the President of the High Court. [COA 1926, s.3; C(SP)A 1961, Schedule 8]

Section 344 is new in a Courts Bill but confirms that the following Court officers are appointed by the Government: the Master of the High Court, the Taxing Masters, each County Registrar and each sheriff.

Section 345 is new in a Courts Bill and provides that the following court officers shall be appointed from among the staff of (and, where necessary, assigned by) the Courts Service: every principal officer, within the meaning of *section 341* (other than the Master of the High Court and the Taxing Masters) and every District Court Clerk.

Section 346 sets out general duties of court officers. It provides that a barrister or solicitor appointed to be a court officer or sheriff must cease to practice as a barrister or solicitor prior to taking up his or her duties as a court officer or sheriff. The section also provides that a court officer appointed or assigned under this Bill, while holding such office or assignment, must not: (a) practice as a barrister or solicitor, (b) hold any other office or employment, or (c) directly or indirectly receive or secure any continuing benefit from any business or firm in which he or she was engaged prior to his or her appointment to be a court officer. *Section 346* also provides that a court officer must keep and account to the Courts Service for all money received by him or her in that capacity. It also provides that every court officer may attest the accuracy of any copy of any document filed in or delivered to the office of the Court of which he or she is an officer. [PSCIA 1858, s.8; CBCPAAI 1864, s.61; CCLOIA 1867, ss.15, 19, 45; CIA 1867, ss.14, 15]

Section 347 provides that every court officer and every commissioner directed to take an examination in proceedings has authority to administer any oath or take any affidavit or statutory declaration required for any purpose connected with his or her duties. No such person is to seek or accept any fee, charge, or payment of expenses in connection with administering any oath or taking any affidavit or statutory declaration. It also provides that these provisions are separate from any obligation of a person under the *Ethics in Public Office Acts 1995 and 2001*. [CCLOIA 1867, ss.16, 18]

Section 348 provides that a Circuit Court County Registrar for an area outside Dublin is deemed to be a registrar to the High Court when the High Court is sitting at a regular High Court venue in that County Registrar's Circuit Court area. The Courts Service may also, after consultation with the President of the High Court, direct one or more High Court Registrars to travel to a particular regular High Court venue or other place for a particular sitting of the High Court. [CJA 1936, s.42]

Section 349 provides that no person appointed after the commencement of this section to be an officer of any Court is required to give any security for the discharge of the duties of the office before entering on the duties of the office. This provides for abolishing this requirement, currently contained in section 61 of the *Court Officers Act 1926*. [Abolishes requirement in COA 1926, s.61]

Section 350 is new in a Courts Bill but confirms the detailed functions, powers and duties of court officers, which are set out *Schedule 14, Part 2 and Part 3*.

Section 351 provides that court officers may be assisted by staff of the Courts Service employed in the offices under their management. [COA 1926, s.58]

Section 352 provides that the Courts Service may retain persons to render occasional services for any Court, judge or any court officer, as the Service (subject to the sanction of the Minister for Finance in respect of any payment out of public moneys) thinks proper. This can include: interpreters, stockbrokers, receivers, auctioneers or assessors. It also provides that the President of the High Court and the President of the Circuit Court may each retain such counsel, solicitors, doctors, visitors and other persons as he or she considers

necessary for the proper exercise of that Court's care and protection jurisdiction (this assumes the enactment by the Oireachtas of the *Mental Capacity Bill 2010* to replace the wardship jurisdiction) [COA 1926, s.59]

Section 353 provides that, after the commencement of this section, no person is to be appointed to be a summons-server. [COA 1926, s.44]

Section 354 reiterates the existing power of the Minister for Justice and Law Reform to appoint by warrant such number of fit and proper persons as Peace Commissioners as he or she thinks expedient in each county or other local government area. A Peace Commissioner performs the duties and powers sets out in this Bill and under any other enactment. It also provides that, so far as practicable, a person appointed to be a Peace Commissioner in a Gaeltacht area must have a knowledge of the Irish language adequate for the transaction of the business of a Peace Commissioner in the Irish language. A Peace Commissioner may, in accordance an enactment authorising him or her to do so: (a) sign any warrant or other document which he or she is authorised by law to sign; (b) administer any oath and take any declaration, affirmation, information, bond or Court bond he or she is authorised by law to administer or take; (c) sign a certificate required by section 2 of the *Registration of Clubs (Ireland) Act 1904* (required when registering, or renewing registration of, a club). [CJA 1924, s.88; CLMPA 2008, s.6]

Section 355 provides that a commissioner for oaths may: (a) administer an oath or take an affidavit for the purposes of a court or of proceedings in the State, including matters relating to applications for notarial faculties, and matters relating to the registration of any instrument, whether under an Act or otherwise; (b) take an affidavit required or provided for under any enactment, including in particular, the *Merchant Shipping Acts 1894 to 2005* and the *Customs Consolidation Act 1876*; (c) take a Court bond in or for the purpose of any civil proceedings; and (d) exercise any other power which it is provided by an enactment may be exercised by a commissioner for oaths. It also provides that an oath or affidavit required for purposes of a Court or of proceedings in the State, or for the purpose of the registration of any instrument in the State, may be taken or made in a place outside the State in accordance with section 5 of the *Diplomatic and Consular Officers (Provision of Services) Act 1993* or otherwise before any person having authority to administer an oath in that place. *Section 355* also provides that a person who wilfully and corruptly swears falsely in an oath or affidavit taken or made in accordance with this section is guilty of perjury. [COCAI 1877, s.70; CFOA 1889; CFOA 1891]

Section 356 is new in a Courts Bill and provides that a person being appointed as a notary public or a commissioner for oaths must, subject to certain conditions, have a tax clearance certificate before his or her appointment.

Part 6, Chapter 3 (sections 357 to 359) of the Bill deals with Court Registers and other records.

Section 357 is, in part, new in a Courts Bill and provides that where an enactment requires any register or index to be maintained in a court office, the officer responsible for the management of that court office must, subject to the provisions of that enactment and of *section 351*, have custody of, and be responsible for the maintenance of, that register or index. It also provides that every sheriff must keep, have custody of, and be responsible for the maintenance of, the necessary records of execution orders given to him or her for execution and of execution orders executed or returned. [CBCPAIA 1864, ss.20, 22]

Section 358 reiterates that where the decision in any civil proceedings is reserved (that is, the judge has postponed giving his or her decision at the end of hearing the case in order to

deliver a written, reserved, judgment in the case), the relevant officer of the Court concerned must ensure that the case is listed before the judge or Court 2 months after that (and, if required, every 2 months after that) until the reserved decision has been delivered. [CCOA 2002, s.46; CLCA 2004, s.55]

Section 359 reiterates that the Courts Service must maintain a register of personal injuries actions. Each entry in the Register must contain: (a) the name and address of the solicitor for each party to a personal injuries action, (b) the name and occupation of each party to a personal injuries action, and (c) the address at which each party to a personal injuries action ordinarily resides. The register must be made available to persons with a sufficient interest in seeking access to it. [CLCA 2004, s.30]

SCHEDULE TO EXPLANATORY MEMORANDUM
ABBREVIATIONS FOR ACTS REFERRED TO IN THIS EXPLANATORY MEMORANDUM

The abbreviations for specific Acts used in this Explanatory Memorandum are as follows.

1. AJA 1707 Administration of Justice Act 1707 1707 (6 Ann.) c. 10
2. ASIA 1849 Attorneys and Solicitors (Ireland) Act 1849 1849 (12 & 13 Vict.) c. 53
3. ASA 1870 Attorneys and Solicitors Act 1870 (33 & 34 Vict.) c. 28
4. BA 1988 Bankruptcy Act 1988 1988 No. 27
5. CIA 1858 Chancery Amendment Act 1858 1858 (21 & 22 Vict.) c. 27
6. CCLOIA 1867 Chancery and Common Law Offices (Ireland) Act 1867 1867 (30 & 31 Vict.) c. 129
7. CIA 1834 Chancery (Ireland) Act 1834 1834 (4 & 5 Will. 4) c. 78
8. CIA 1867 Chancery (Ireland) Act 1867 1867 (30 & 31 Vict.) c. 44
9. CRIA 1856 Chancery Receivers (Ireland) Act 1856 1856 (19 & 20 Vict.) c. 77
10. CTMIA 1845 Chancery Taxing Master (Ireland) Act 1845 1845 (8 & 9 Vict.) c. 115
11. CA 1997 Children Act 1997 1997 No. 40
12. CA 2001 Children Act 2001 2001 No. 24
13. CCRJA 1937 Circuit Court (Registration of Judgments) Act 1937 1937 No. 3
14. CBCIA 1851 Civil Bill Courts (Ireland) Act 1851 1851 (14 & 15 Vict.) c. 47
15. CBCIA 1874 Civil Bill Courts (Ireland) Act 1874 1874 (37 & 38 Vict.) c. 66
16. CBCPAIA 1864 Civil Bill Courts Procedure Amendment (Ireland) Act 1864 1864 (27 & 28 Vict.) c. 99
17. CLMPA 2008 Civil Law (Miscellaneous Provisions) Act 2008 2008 No. 14
18. CLCA 2004 Civil Liability and Courts Act 2004 2004 No. 31
19. CPCROCA 2010 Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 2010 No. 24
20. CFOA 1889 Commissioners for Oaths Act 1889 1889 (52 & 53 Vict.) c. 10
21. CFOA 1891 Commissioners for Oaths Act 1891 1891 (54 & 55 Vict.) c. 50
22. CLPIA 1821 Common Law Procedure (Ireland) Act 1821 1821 (1 & 2 Geo. 4) c. 53
23. CLPAAI 1853 Common Law Procedure Amendment Act (Ireland) 1853 1853 (16 & 17 Vict.) c. 113
24. CLPAAI 1856 Common Law Procedure Amendment Act (Ireland) 1856 1856 (19 & 20 Vict.) c. 102
25. CIA 1836 Constabulary (Ireland) Act 1836 1836 (6 & 7 Will. 4) c. 13
26. CCAIA 1889 County Court Appeals (Ireland) Act 1889 1889 (52 & 53 Vict.) c. 48
27. COCAI 1877 County Officers and Courts Act (Ireland) 1877 1876 (40 & 41 Vict.) c. 56
28. CCIA 1823 Court of Chancery (Ireland) Act 1823 1823 (4 Geo. 4) c. 61
29. COA 1926 Court Officers Act 1926 1926 No. 27

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| 30. COA 1945 | Court Officers Act 1945 | 1945 No. 25 |
| 31. COA 1951 | Court Officers Act 1951 | 1951 No. 8 |
| 32. CA 1964 | Courts Act 1964 | 1964 No. 11 |
| 33. CA 1971 | Courts Act 1971 | 1971 No. 36 |
| 34. CA 1977 | Courts Act 1977 | 1977 No. 11 |
| 35. CA 1981 | Courts Act 1981 | 1981 No. 11 |
| 36. CA 1988 | Courts Act 1988 | 1988 No. 14 |
| 37. CA 1991 | Courts Act 1991 | 1991 No. 20 |
| 38. CCOA 1995 | Courts and Court Officers Act 1995 | 1995 No. 31 |
| 39. CCOA 2002 | Courts and Court Officers Act 2002 | 2002 No. 15 |
| 40. CCOA 2009 | Courts and Court Officers Act 2009 | 2009 No. 36 |
| 41. C(E&C)A 1961 | Courts (Establishment and Constitution) Act 1961 | 1961 No. 38 |
| 42. CMAA 1983 | Courts-Martial Appeals Act 1983 | 1983 No. 19 |
| 43. C(2)A 1986 | Courts (No No. 2) Act 1986 | 1986 No. 26 |
| 44. C(2)A 1991 | Courts (No No. 2) Act 1991 | 1991 No. 21 |
| 45. C(2)A 1997 | Courts (No No. 2) Act 1997 | 1997 No. 43 |
| 46. C(3)A 1986 | Courts (No No. 3) Act 1986 | 1986 No. 33 |
| 47. CJA 1924 | Courts of Justice Act 1924 | 1924 No. 10 |
| 48. CJA 1928 | Courts of Justice Act 1928 | 1928 No. 15 |
| 49. CJA 1936 | Courts of Justice Act 1936 | 1936 No. 48 |
| 50. CJA 1947 | Courts of Justice Act 1947 | 1947 No. 20 |
| 51. CJA 1953 | Courts of Justice Act 1953 | 1953 No. 32 |
| 52. CJDCA 1946 | Courts of Justice (District Court) Act 1946 | 1946 No. 21 |
| 53. C(SP)A 1961 | Courts (Supplemental Provisions) Act 1961 | 1961 No. 39 |
| 54. CEA 1992 | Criminal Evidence Act 1992 | 1992 No. 12 |
| 55. CJA 1951 | Criminal Justice Act 1951 | 1951 No. 2 |
| 56. CJA 1993 | Criminal Justice Act 1993 | 1993 No. 6 |
| 57. CJA 2006 | Criminal Justice Act 2006 | 2006 No. 26 |
| 58. CJA 2007 | Criminal Justice Act 2007 | 2007 No. 29 |
| 59. CJAA 1914 | Criminal Justice Administration Act 1914 | 1914 (4 & 5 Geo. 5), c. 58 |
| 60. CJAA 2009 | Criminal Justice (Amendment) Act 2009 | 2009 No. 32 |
| 61. CJMPA 1997 | Criminal Justice (Miscellaneous Provisions) Act 1997 | 1997 No. 4 |
| 62. CJMAA 2008 | Criminal Justice (Mutual Assistance) Act 2008 | 2008 No. 7 |
| 63. CJMLTFA 2010 | Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 | 2010 No. 6 |

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| 64. CJSA 2009 | Criminal Justice (Surveillance) Act 2009 | 2009 No. 19 |
| 65. CJ(UNCAT)A 2000 | Criminal Justice (United Nations Convention Against Torture) Act 2000 | 2000 No. 11 |
| 66. CLIA 2006 | Criminal Law (Insanity) Act 2006 | 2006 No. 11 |
| 67. CLIA 1828 | Criminal Law (Ireland) Act 1828 | 1828 (9 Geo. 4.) c. 54 |
| 68. CLRAA1990 | Criminal Law (Rape) (Amendment) Act 1990 | 1990 No. 32 |
| 69. CPA 1967 | Criminal Procedure Act 1967 | 1967 No. 12 |
| 70. CPA 1993 | Criminal Procedure Act 1993 | 1993 No. 40 |
| 71. CPA 2010 | Criminal Procedure Act 2010 | 2010 No. 27 |
| 72. CCAA 1973 | Criminal Procedure (Amendment) Act 1973 | 1973 No. 16 |
| 73. DIA 1840 | Debtors (Ireland) Act 1840 | 1840 (3 & 4 Vict.) c. 105 |
| 74. DIA 1872 | Debtors (Ireland) Act 1872 | 1872 (35 & 36 Vict.) c. 57 |
| 75. DA 1878 | Debtors Act 1878 | 1878 (41 & 42 Vict.) c. 54 |
| 76. DPA 1839 | Dublin Police Act 1839 | 1839 (2 & 3 Vict.) c. 78 |
| 77. DPA 1842 | Dublin Police Act 1842 | 1842 (5 & 6 Vict.) c. 24 |
| 78. ECA 2000 | Electronic Commerce Act 2000 | 2000 No. 27 |
| 79. ECOA 1751 | Enforcement of Court Orders Act 1751 | 1751 (25 Geo. 2) c. 12 |
| 80. ECOA 1926 | Enforcement of Court Orders Act 1926 | 1926 No. 18 |
| 81. ECOA 1940 | Enforcement of Court Orders Act 1940 | 1940 No. 23 |
| 82. ECOAA 2009 | Enforcement of Court Orders (Amendment) Act 2009 | 2009 No. 21 |
| 83. EA 1851 | Evidence Act 1851 | 1851 (14 & 15 Vict.) c. 99 |
| 84. EBCA 1843 | Evidence by Commission Act 1843 | 1843 (6 & 7 Vict.) c. 82 |
| 85. EOCA 1831 | Evidence on Commission Act 1831 | 1831 (1 Will. 4) c. 22 |
| 86. FIA 1410 | False Imprisonment Act 1410 | 1410 (11 Hen. 4) c. 15 [P.R.O. vol. 1] |
| 87. FLA 1995 | Family Law Act 1995 | 1995 No. 26 |
| 88. FLDA 1996 | Family Law (Divorce) Act 1996 | 1996 No. 33 |
| 89. FA 1819 | Felony Act 1819 | 1819 (59 Geo. 3) c. 27 |
| 90. FIA 1851 | Fines (Ireland) Act 1851 | 1851 (14 & 15 Vict.) c. 90 |
| 91. FAIAA 1874 | Fines Act (Ireland) 1851 Amendment Act 1874 | 1874 (37 & 38 Vict.) c. 72 |
| 92. FA 2010 | Fines Act 2010 | 2010 No. 8 |
| 93. FTEA 1856 | Foreign Tribunals Evidence Act 1856 | 1856 (19 & 20 Vict.) c. 113 |
| 94. GA 1973 | Genocide Act 1973 | 1973 No. 28 |
| 95. HCA 1804 | Habeas Corpus Act 1804 | 1804 (44 Geo. 3) c. 102 |
| 96. IOIA 1849 | Indictable Offences (Ireland) Act 1849 | 1849 (12 & 13 Vict.) c. 69 |
| 97. ICCA 2006 | International Criminal Court Act 2006 | 2006 No. 30 |

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| 98. JIA 1844 | Judgments (Ireland) Act 1844 | 1844 (7 & 8 Vict.) c. 82 |
| 99. JRIA 1850 | Judgments Registry (Ireland) Act 1850 | 1850 (13 & 14 Vict.) c. 74 |
| 100.JRIA 1871 | Judgments Registry (Ireland) Act 1871 | 1871 (34 & 35 Vict.) c. 72 |
| 101.JSFLRA 1989 | Judicial Separation and Family Law Reform Act 1989 | 1989 No. 6 |
| 102.LPIA 1876 | Legal Practitioners (Ireland) Act 1876 | 1876 (39 & 40 Vict.) c. 44 |
| 103.LA 1931 | Legitimacy Act 1931 | 1931 No. 13 |
| 104.LDIA 1868 | Legitimacy Declaration (Ireland) Act 1868 | 1868 (31 & 32 Vict.) c. 20 |
| 105.LACA 1896 | Life Assurance Companies (Payment into Court) Act 1896 | 1896 (59 & 60 Vict.) c. 8 |
| 106.LG(D)A 1993 | Local Government (Dublin) Act 1993 | 1993 No. 31 |
| 107.LR(I)A 1871 | Lunacy Regulation (Ireland) Act 1871 | 1871 (34 & 35 Vict.) c. 22 |
| 108.MEA 1634 | Maintenance and Embracery Act 1634 | 1634 (10 Chas. 1 sess. 3) c. 15 |
| 109.MCMLIA 1870 | Matrimonial Causes and Marriage Law (Ireland) Act 1870 | 1870 (33 & 34 Vict.) c. 110 |
| 110.OAPA 1861 | Offences Against the Person Act 1861 | 1861 (24 & 25 Vict.) c. 100 |
| 111.PDA 1846 | Parliamentary Deposits Act 1846 | 1846 (9 & 10 Vict.) c. 20 |
| 112.PDBA 1892 | Parliamentary Deposits and Bonds Act 1892 | 1892 (55 & 56 Vict.) c. 27 |
| 113.PA 1586 | Perjury Act 1586 | 1586 (28 Eliz.) c. 1 |
| 114.PTA 1842 | Perpetuation of Testimony Act 1842 | 1842 (5 & 6 Vict.) c. 69 |
| 115.PSIA 1851 | Petty Sessions (Ireland) Act 1851 | 1851 (14 & 15 Vict.) c. 93 |
| 116.PSCIA 1858 | Petty Sessions Clerk (Ireland) Act 1858 | 1858 (21 & 22 Vict.) c. 100 |
| 117.PPA 1897 | Police (Property) Act 1897 | 1897 (60 & 61 Vict.) c. 30 |
| 118.PA 2007 | Prisons Act 2007 | 2007 No. 10 |
| 119.POPAI 1803 | Public Officers Protection Act Ireland 1803 | 1803 (43 Geo. 3) c. 143 |
| 120.RIA 1817 | Recognisances (Ireland) Act 1817 | 1817 (57 Geo. 3) c. 56 |
| 121.SA 1707 | Sheriffs Act 1707 | 1707 (6 Ann.) c. 7. |
| 122.SIA 1835 | Sheriffs (Ireland) Act 1835 | 1835 (5 & 6 Will. 4) c. 55 |
| 123.SLRA 2007 | Statute Law Revision Act 2007 | 2007 No. 28 |
| 124.SA 1965 | Succession Act 1965 | 1965 No. 27 |
| 125.SJIA 1851 | Summary Jurisdiction (Ireland) Act 1851 | 1851 (14 & 15 Vict.) c. 92 |
| 126.SJIAA 1871 | Summary Jurisdiction (Ireland) Amendment Act 1871 | 1871 (34 & 35 Vict.) c. 76 |
| 127.SPSFIA 1919 | Summons and Process Servers' Fees (Ireland) Act 1919 | 1919 (9 & 10 Geo. 5) c. 4 |
| 128.SCJIA 1877 | Supreme Court of Judicature (Ireland) Act 1877 | 1877 (40 & 41 Vict.) c. 57 |
| 129.TA 1634 | Trespass Act 1634 | 1634 (10 Chas. 1 sess. 2) c. 6 |



The Law Reform Commission is an independent statutory body established by the *Law Reform Commission Act 1975*. The Commission's principal role is to keep the law under review and to make proposals for reform, in particular by recommending the enactment of legislation to clarify and modernise the law.

This role is carried out primarily under a Programme of Law Reform. The Commission's *Third Programme of Law Reform 2008-2014* was prepared and approved under the 1975 Act following broad consultation and discussion. The Commission also works on specific matters referred to it by the Attorney General under the 1975 Act. Since 2006, the Commission's role also includes two other areas of activity, Statute Law Restatement and the Legislation Directory. Statute Law Restatement involves incorporating all amendments to an Act into a single text, making legislation more accessible. The Legislation Directory (previously called the Chronological Tables of the Statutes) is a searchable guide to legislative changes.

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